

Blueprint *for* Smart Justice

# Oregon





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# Executive Summary

Over the past five decades, the United States has dramatically increased its reliance on the criminal justice system as a way to respond to drug addiction, mental illness, and poverty. As a result, the United States today incarcerates more people, in both absolute numbers and per capita, than any other nation in the world. Our overreliance on incarceration does not impact everyone equally: People of color are disproportionately affected.<sup>1</sup> Millions of lives have been upended and families torn apart. This mass incarceration crisis has transformed American society, has damaged families and communities, and has wasted trillions of taxpayer dollars.

We all want to live in safe and healthy communities, and our criminal justice policies should be focused on the most effective approaches to achieving that goal. But the current system has failed us. Studies have demonstrated incarceration's diminishing returns. In 2007, for example, every dollar invested in incarceration in Oregon resulted in only \$0.91 of public safety benefits.<sup>2</sup> By contrast, research has shown that treatment, community supervision, reentry programs and victim services can provide better value.<sup>3</sup>

We have learned much about what works effectively and fairly in addressing public safety. In fact, several states that have reduced their reliance on incarceration have experienced larger declines in crime than states with the biggest growth in imprisonment.<sup>4</sup>

It's time for the United States to end its reliance on incarceration, invest instead in alternatives to prison and in approaches better designed to break the cycle of crime and recidivism, and help people rebuild their lives.

The ACLU's Campaign for Smart Justice is committed to transforming our nation's criminal justice system and building a new vision of safety and justice. The Campaign is dedicated to cutting the nation's incarcerated population in half and combatting racial disparities in the criminal justice system.

To advance these goals, the Campaign partnered with the Urban Institute to conduct a two-year research project to analyze the kind of changes needed to cut by half the number of people in prison in every state and reduce racial disparities in incarceration. In each state we identified primary drivers of incarceration and predicted the impact of reducing prison admissions and length of stay on state prison populations, state budgets, and the racial disparity of those imprisoned.

The analysis was eye-opening.

In every state, we found that reducing the prison population by itself does little to diminish racial disparities in incarceration – and in some cases would worsen them. In Oregon – where the per capita imprisonment rate for Black people is the seventh highest in the country, and one in 21 Black men age 18 and older is in prison as of 2014<sup>5</sup> – reducing the number of people imprisoned will not on its own reduce racial disparities within the prison system. The status quo simply does not reflect Oregonians' values of fairness. This finding confirms for the Campaign that urgent work remains for advocates, policymakers, and communities across the nation to focus on efforts like sentencing reform that are specific to combatting these unjust disparities.

Recidivism contributes significantly to Oregon's incarceration crisis. More than one in five people

admitted to prison in 2017 were sent there for violating probation,<sup>6</sup> and two out of five people released in the first six months of 2014 after serving a felony sentence<sup>7</sup> had been convicted of a new misdemeanor or felony.<sup>8</sup> Among people released in 2013, those most likely to be reincarcerated after being on parole or postprison supervision were those originally convicted of drug possession and property crimes.<sup>9</sup>

Sentencing enhancements and mandatory minimum laws contribute to the situation, often resulting in harsh, inflexible penalties that keep people in prison for years and even decades. Particularly troublesome is Ballot Measure 11, a 1994 law that established mandatory minimum sentences for people convicted of certain offenses involving violence<sup>10</sup> and prohibiting those people from receiving a reduction in their sentence for any reason, including participation in rehabilitation programs.<sup>11</sup> Four in 10 people in Oregon prisons have been convicted of a Ballot Measure 11 mandatory minimum offense, which means that they have no possibility of a reduced sentence.<sup>12</sup> This dynamic may also contribute to recidivism, because prohibiting people from earning time off their sentence lessens the incentive for people in prison to use their time positively.

So, what's the path forward? Any meaningful effort to reach a 50 percent reduction in incarceration in Oregon will need to look at evidence-based alternatives to imprisonment, such as addiction treatment, decriminalization of personal drug use and possession, or support services such as mental health care, employment, housing, health care, or vocational training. Oregon should consider reforming the state's sentencing enhancements and mandatory minimum laws by providing access to earned-time opportunities. Oregon should also consider modifying sentences for offenses that include a broad spectrum of behaviors, like Robbery 2, Assault 2, or Sex Abuse 1, so that the sentences are better aligned with the crime. Reducing time served, even by just a few months, could result in thousands of fewer people in Oregon's prisons.

The answer is ultimately up to Oregon's voters, policymakers, communities, and criminal justice reform advocates as they move forward with the urgent work of ending Oregon's overreliance on incarceration.

# The State of the Oregon Prison System

Oregon’s prison population grew nearly fivefold between 1980 and 2016, including a staggering 41 percent increase between 2000 and 2010.<sup>13</sup> In 2013, Oregon lawmakers passed criminal justice reforms through the Justice Reinvestment Initiative,<sup>14</sup> which included reduced penalties for certain drug and property offenses and expanded community supervision programming as an alternative to imprisonment. However, these policy reforms fell short of more ambitious changes – like modifying mandatory minimum sentences – that would have led to more meaningful reductions in the state’s prison population. In 2016, Oregon imprisoned 370 out of every 100,000 of its residents, slightly lower than the national state average of 397 out of every 100,000.<sup>15</sup> As of Jan. 1, 2018, there were 14,713 people held in Oregon prisons.<sup>16</sup>

## AT A GLANCE

### OREGON PRISONS

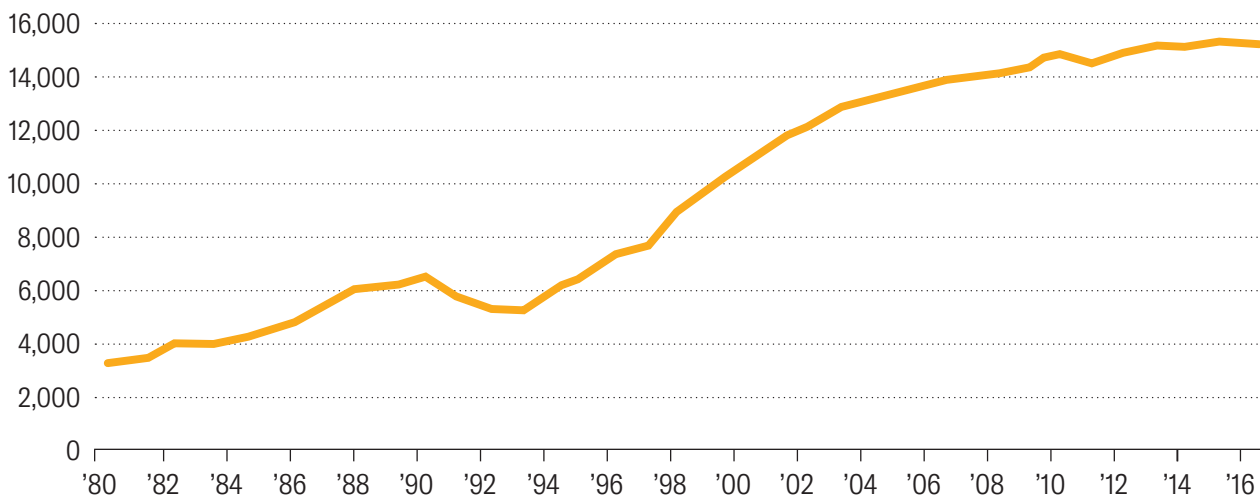
The Oregon prison population grew **41 percent** between 2000 and 2010.

**15,230** people were imprisoned in Oregon at its peak in 2015.

## What Is Driving People Into Prison?

In Oregon, a litany of offenses drives people into prison.<sup>17</sup> In 2013, the most common offenses<sup>18</sup> for Oregon prison admissions were drug trafficking (14.4 percent), burglary (11.9 percent), assault (11.2 percent), sexual assault (10.6 percent), and identity

## OREGON PRISON POPULATION



theft/other fraud (7.4 percent).<sup>19</sup> In 2017, more than one in five people were sent to prison for violating probation.<sup>20</sup>

Between 2013 and 2017, admissions for drug offenses fell by 25.2 percent. Although admissions for property offenses fell by 3.3 percent overall and by 14.1 percent for a first sentence, the number of people sent back to prison from probation for a property offense actually rose by 35.2 percent.<sup>21</sup>

While probation revocations have accounted for about one in five admissions to prison since 2013, probation revocations for property offenses have been steadily rising. In 2017, 30.7 percent of prison admissions for a property offense were probation revocations.<sup>22</sup> Given that recidivism also accounts for a larger percentage of property offense admissions to prison compared with other offense types, people convicted of property offenses may be especially likely to cycle in and out of Oregon’s prison system.<sup>23</sup>

Recidivism — defined as reincarceration, a new conviction, or new arrest within three years of release — contributes significantly to Oregon’s incarceration crisis. Nearly one in five people released in the first six months of 2014 after serving a felony sentence<sup>24</sup> were reincarcerated in prison or jail for a new felony crime within three years of their release, according to a 2017 study from the Oregon Criminal Justice Commission.<sup>25</sup>

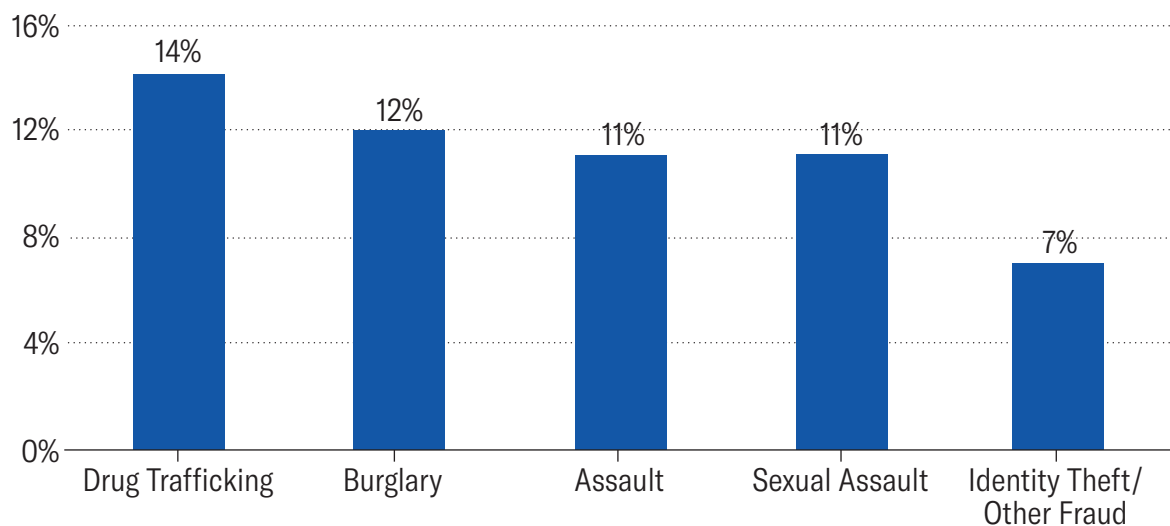
During that same period, two out of five people were convicted of a new misdemeanor or felony, and more than half were arrested for a new crime.<sup>26</sup> Among people released in 2013, those most likely to be reincarcerated after being on parole or post-prison supervision were those originally convicted of drug possession and property crimes.<sup>27</sup> Focusing on incarceration isn’t effective at addressing addiction, lowering recidivism or breaking cycles of crime.<sup>28</sup>

Probation revocations occur when an individual who has received a downward departure from a prison sentence does not successfully complete probation and is then given a prison sentence.<sup>29</sup> In Oregon, many probation violations can be handled through intermediate sanctions — such as check-ins to a day reporting center, community service work crews, drug testing, and electronic monitoring — instead of revocation. However, people on probation can be arrested and jailed for violating any condition of their probation, and some may be required to return to prison before their probation officers can impose intermediate sanctions.<sup>30</sup>

## The Current Prison and Jail Population

Oregon’s jail incarceration per capita rate nearly doubled between 1980 and 2015.<sup>31</sup> As of 2015, Oregon

### OREGON PRISON ADMISSIONS BY TOP OFFENSE TYPES (2013)



## AT A GLANCE

# COUNTY JAIL AND PRISON POPULATION

**1 in 5** people were serving time for a property offense as of 2017.

**5,375** people were serving time in county jails as of 2015.

**6 percent** of the prison population was serving time for a drug offense in 2017.

held an estimated 5,375 people in county jails. Two-thirds were awaiting trial and had not been convicted of a crime.<sup>32</sup>

In 2017, the majority (63 percent) of people imprisoned in Oregon were serving time for offenses involving violence, including one-quarter of the prison population convicted of a sex offense. Property offenses made up the second-highest category — one in five people in prison had been convicted of a property offense such as burglary, theft, or forgery. Only 6 percent were serving time for a drug-related offense.<sup>33</sup>

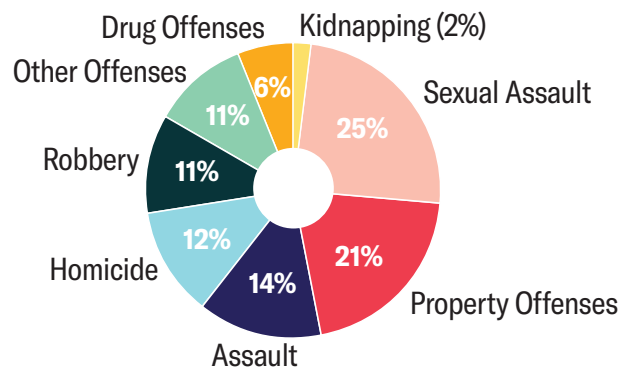
## Why Do People Stay in Prison for So Long?

As of 2013, the average person imprisoned in Oregon had served 4.1 years — 21 percent more time than the average person in 2001 had served. This increase was especially dramatic among people convicted of offenses involving violence.<sup>34</sup>

Since 2013, the average time served has risen significantly for some types of offenses and remained relatively flat for others. Between 2013 and 2017, the average time served for a sex offense rose from 8.2 to 9.8 years. There was very little change in time served for drug offenses, property offenses, and driving offenses.<sup>35</sup>

Oregon’s sentencing enhancements and mandatory minimum laws often inflict harsh, inflexible penalties

## OREGON PRISON POPULATION BY OFFENSE TYPE (2017)



that can keep people in prison for years and even decades. While most people convicted of property crimes in Oregon receive probation instead of a prison sentence,<sup>36</sup> under the state’s “repeat property offender” statute, people who are convicted of multiple property crimes receive increasing sentencing enhancements for each new conviction.<sup>37</sup> In addition, under Oregon’s “gun minimum” statute, people who use or threaten to use a firearm while committing a felony receive a severe minimum sentence, even if it is their first conviction.<sup>38</sup>

## Ballot Measure 11

In 1994, Oregon voters approved Ballot Measure 11, which established mandatory minimum sentences for people convicted of certain offenses involving violence and prohibited them from receiving a reduction in their sentence for any reason, including good behavior and participation in rehabilitation programs.<sup>39</sup> As of March 2018, four in 10 people in Oregon prisons have been convicted of a Ballot Measure 11 mandatory minimum offense, meaning that they have no possibility of a reduced sentence.<sup>40</sup>

In a 2011 study, the Oregon Criminal Justice Commission estimated that if Oregon voters had not passed Measure 11, Oregon’s prisons would need about 2,900 fewer beds.<sup>41</sup> After the law went into effect, people indicted for offenses involving violence became much more likely to go to prison and receive a

longer sentence. Although most would also have gone to prison prior to Measure 11, some people — who may otherwise have received probation for less-serious second-degree offenses — were given prison sentences instead. The biggest impact of the ballot measure, however, was the amount of time served by those who went to prison for Measure 11 offenses. In the year after Measure 11 went into effect, people indicted for these offenses served 81 percent more time in prison than the year before.<sup>42</sup>

The effects of the ballot measure extend well beyond the number of mandatory minimum sentences imposed. To avoid these sentences, many people indicted for Measure 11 offenses agree to plead guilty to a lesser offense — yet these “plea-downs” frequently result in prison sentences and lengthy terms. In fact, the Oregon Criminal Justice Commission estimated that for the first four years after Measure 11 passed, these pleas were an even larger driver of prison growth in Oregon than Measure 11 convictions.<sup>43</sup>

Although legislation passed in 1997 allowed downward departures from Measure 11’s minimum sentences for people convicted of less-serious offenses under certain circumstances,<sup>44</sup> this had little to no effect on the size of the prison population. Prosecutors — who gained substantial decision making power with the passage of the ballot measure — shifted their practices and sought more Measure 11 convictions, offsetting the shorter sentences imposed.<sup>45</sup>

Although criminal history is a factor in sentencing under Measure 11, most people (70 percent) indicted for these offenses as of 2008 had never been convicted of a felony before, and even fewer had ever been incarcerated. Only one in eight had previously been convicted of a felony crime against another person.<sup>46</sup> Partly because Measure 11 requires people as young as 15 to be tried as adults for certain crimes, regardless of the person’s criminal history or the circumstances of the case, Oregon incarcerates young people at a higher per capita rate than almost any other state.<sup>47</sup> This has had a devastating impact on Black youth, who accounted for 15.5 percent of Measure 11 indictments between 1994 and 2012, but less than 2 percent of Oregon’s resident population as of 2010.<sup>48</sup>

#### AT A GLANCE

## LENGTH OF IMPRISONMENT

As of 2018, **4 in 10** people are imprisoned with a Measure 11 conviction and have no possibility of a reduced sentence.

The average person had served **4.1 years** in prison as of 2013.

The average time served increased **21 percent** between 2001 and 2013.

## Ballot Measure 57

In 2008, Oregon voters approved Ballot Measure 57, which extended mandatory minimum sentences for people convicted of property crimes that do not involve violence. Measure 57 reduced the number and type of previous convictions required to trigger these harsher penalties, including the “attempt to commit” a property crime. Measure 57 has had a disparate impact on women and has helped drive an increase in the women’s prison population in Oregon.<sup>49</sup>

In 2017, lawmakers passed the Safety and Savings Act (HB 3078), which rolled back some of the provisions of Measure 57 by reducing penalties for certain property crimes. However, this law was struck down in February 2018 when a special panel of Clackamas County Circuit Court judges deemed it unconstitutional. The Oregon Department of Justice has appealed the ruling, leaving the fate of the law uncertain.

## Who Is Imprisoned

**Black Oregonians:** As of the most recently available national data (2014), the per capita imprisonment rate for Black people in Oregon is the seventh-highest in the country, and one in 21 Black men age 18 and older is in prison.<sup>50</sup> While Black people constitute only 1.9 percent of the total state population,<sup>51</sup> they make up 9.1 percent of Oregon’s total prison population.<sup>52</sup> Black people are imprisoned at five times the per

## AT A GLANCE

### DEMOGRAPHICS

As of 2014, Oregon ranks **seventh** nationally for the per capita rate of Black people imprisoned.

**47 percent** of women who entered prison in 2016 were convicted of a property offense.

**7 percent** of the Oregon prison population is 61 years old or older.

**3 percent** of the Oregon prison population is Native American.

capita rate of white people in the state.<sup>53</sup> In an effort to address this disparity, Oregon passed a law in 2013 allowing legislators to request an analysis of how new legislation may affect different racial and ethnic groups before it is passed.<sup>54</sup> Unfortunately, the law was constructed in a way that severely limits the use of racial impact statements, rendering a good policy concept ineffective.

**Female Oregonians:** The number of women imprisoned in Oregon has more than doubled since 2000, growing from 5 to 9 percent of the state's prison population between 2000 and 2017.<sup>55</sup> Nearly half of the women who entered prison in 2016 were convicted of a property offense, which suggests that Oregon's

## AT A GLANCE

### MENTAL HEALTH AND SUBSTANCE USE DISORDERS

**70 percent** of people imprisoned in 2018 have substance addiction, dependence, or abuse challenges.

In 2018, **55 percent** of the prison population is in need of mental health services.

punitive property crime sentencing laws have a disproportionate impact on women.<sup>56</sup>

**Older Oregonians:** Despite overwhelming evidence that people age 50 and older are the least likely to return to prison for new offenses upon release,<sup>57</sup> Oregon's prison population is rapidly aging. Between 2007 and 2017, the number of people age 61 and older in Oregon prisons nearly doubled, rising from 4 to 7 percent of the total prison population.<sup>58</sup>

**Native American Oregonians:** Native Americans constitute approximately 1 percent of the state's total population,<sup>59</sup> yet make up nearly 3 percent of Oregon's prison population.<sup>60</sup> In 2017, Native Americans were imprisoned at a rate of 847 per 100,000 people — more than twice the rate of white people.<sup>61</sup>

### People With Mental Health and Substance Use Disorders

As of early 2018, at least 58 percent of people imprisoned in Oregon reported a substance use disorder or dependence. An additional 12 percent had some problem with substance abuse.<sup>62</sup>

As of early 2018, more than half of those in Oregon prisons needed mental health services. More than one-third had at least a moderate need for these services and nearly one-quarter had a need that was deemed severe or extremely severe.<sup>63</sup>

There are currently inadequate resources being committed both at the community level and within Oregon's prison system to effectively provide treatment, recovery, and mental health services.<sup>64</sup>

### Budget Strains

As Oregon's prison population has grown, so has the cost burden. In 2016, Oregon spent \$950 million from the state general fund on corrections — a 485 percent increase since 1985.<sup>65</sup> Spending on corrections in Oregon has far outpaced growth in spending on other priorities, like education.<sup>66</sup>

# Ending Mass Incarceration in Oregon: A Path Forward

There are many potential policy changes that can help Oregon end its mass incarceration crisis, but it will be up to the people and policymakers of Oregon to decide which changes to pursue. To reach a 50 percent reduction, policy reforms will need to either reduce the amount of time people serve in prisons or reduce the number of people entering prisons in the first place.

## Reducing Admissions

To end mass incarceration, Oregon must break its overreliance on prisons to hold people accountable for their crimes. In fact, evidence indicates that prisons seldom offer adequate solutions to wrongful behavior. At worst, imprisonment can be counterproductive — failing to end cycles of misbehavior and violence or to provide rehabilitation for incarcerated people or adequate accountability to the survivors of crime.<sup>67</sup>

Here are some strategies:

- **Alternatives to incarceration:** Offer alternative programs that provide addiction treatment, mental health care, employment, housing, health care, and vocational training. Such programs — often with some community service requirement — can significantly cut recidivism rates for participants.

For crimes involving violence, restorative justice programs designed to hold people accountable and support those who were harmed can be promising. When they are rigorous and well-implemented, these strategies have been shown to reduce recidivism<sup>68</sup> and decrease symptoms of posttraumatic stress in survivors of crime.<sup>69</sup>

By embracing these approaches, prosecutors and judges may be able to achieve better results for public safety and better support crime survivors in their healing than imprisonment can deliver. Other successful models include programs that divert people to treatment and support services before arrest, and prosecutor-led programs that divert people before they are charged.

- **Sentencing reform:** Oregon has the dubious distinction of treating youth automatically as adults as soon as a prosecutor charges them with a Measure 11 offense. This law defies overwhelming research about the best ways to hold young people accountable.

Here is just a sampling of what we know now that we didn't know when Measure 11 was passed:

- Trying young people as adults makes it more likely they will reoffend than if they were handled in the juvenile justice system.
- Advances in understanding adolescent brain development clearly show that young people differ from adults and explain why they can age out of impulsive behavior.
- There are more cost-effective and proven approaches to reducing youth crime and recidivism.
- Prosecuting youth as adults creates systemic barriers that prevent successful reentry into the community and increases the chances of reoffending.

## Reducing Time Served

Reducing time served, even by just a few months, can lead to thousands of fewer people in Oregon’s prisons. Here’s how:

### **Sentencing reform:**

- **Earned time:** Oregon’s Measure 11 mandatory minimum sentencing law has resulted in four in 10 people in prison having no possibility of a reduced sentence. They have no access to earned time. Providing a modest incentive for people to earn time off their sentence for constructively using their time in prison promotes rehabilitation. Even moving Oregon closer in line with the federal “truth in sentencing” standard by requiring people serving Measure 11 sentences to serve at least 85 percent of their sentence would be a significant step forward.
- **Modify sentences for Robbery 2, Assault 2, and Sex Abuse 1:** In 2012, the Governor’s Commission for Public Safety recommended changes to three of the 22 Measure 11 offenses. These offenses can include such a broad spectrum of behavior that the severity of the sanctions can be fundamentally out of alignment with the circumstance. These offenses are also among the more common offenses youth are charged with, and Measure 11 automatically treats youth as adults, in direct conflict with the best practices of addressing youth accountability.
- **Release policy reform:** Some adolescents age 15 to 17 – who are convicted as adults – are eligible to be evaluated by a judge halfway through their sentence to see if they can be safely transferred to a community placement to serve the rest of their sentence. This policy called Second Look is designed to reduce recidivism and improve the future prospect of youth in the system. The policy is currently limited to a very small number of youth and could be meaningfully expanded.

## Reducing Racial Disparities

Reducing the number of people who are imprisoned in Oregon will not on its own significantly reduce racial disparities in the prison system.

People of color (especially Black, Latino, and Native American people) are at a higher risk of becoming involved in the justice system, including living under heightened police surveillance and being at higher risk for arrest. This imbalance cannot be accounted for by disparate involvement in illegal activity, and it grows at each stage in the justice system, beginning with initial law enforcement contact and increasing at subsequent stages such as pretrial detention, conviction, sentencing, and postrelease opportunity.<sup>70</sup> Focusing on only one of the factors that drives racial disparity does not address issues across the whole system.

Racial disparity is so ingrained in the system that it cannot be mitigated by solely reducing the scale of mass incarceration. Shrinking the prison population across the board will likely result in lowering imprisonment rates for all racial and ethnic populations, but it will not address comparative disproportionality across populations. For example, focusing on reductions to prison admissions and length of stay in prison is critically important, but those reforms do not address the policies and practices among police, prosecutors, and judges that contribute greatly to the racial disparities that plague the prison system.

New Jersey, for example, is often heralded as one of the most successful examples of reversing mass incarceration, passing justice reforms that led to a 26 percent decline in the state prison population between 1999 and 2012.<sup>71</sup> However, the state did not target racial disparities in incarceration, and, in 2014, Black people in New Jersey were still more than 12 times as likely to be imprisoned as white people – the highest disparity of any state in the nation.<sup>72</sup>

Ending mass incarceration is critical to eliminating racial disparities but not sufficient without companion efforts that take aim at other drivers of racial inequities outside of the criminal justice system. Reductions in

disparate imprisonment rates require implementing explicit racial justice strategies.

Some examples include:

- Ending overpolicing in communities of color
- Evaluating prosecutors' charging and plea-bargaining practices to identify and eliminate bias
- Investing in diversion/alternatives to detention in communities of color
- Reducing the use of pretrial detention and eliminating wealth-based incarceration
- Ending sentencing enhancements based on location (drug-free school zones)
- Reducing exposure to reincarceration due to revocations from supervision
- Requiring racial impact statements before any new criminal law or regulation is passed and requiring legislation to proactively rectify any potential disparities that may result with new laws or rules

- Fighting discriminatory gang sentencing enhancements that disproportionately target people of color
- Addressing any potential racial bias in risk assessment instruments used to assist decision making in the criminal justice system
- Shifting funding from law enforcement and corrections to community organizations, job creation, schools, drug and mental health treatment, and other social service providers

A 2014 Urban Institute study found that Black people on probation in Multnomah County were more than twice as likely as white and Hispanic people to have their probation revoked and be sent to prison or jail. Though the reasons for this are unclear, one possibility is that Black people on probation may be deemed higher risk due to more severe criminal history and crime severity scores — indicators that may themselves be the result of past bias from previous contact with the justice system. In addition to explicitly addressing potential bias, one solution could be to focus on improving the success rate of higher risk probationers through risk reduction programs.<sup>73</sup>

## TAKING THE LEAD

**Prosecutors:** They decide on what charges to bring and which plea deals to accept. They can decide to divert more people to treatment programs (for example, drug or mental health programs) rather than send them to prison. And they can decide to charge enhancements that require the imposition of prison sentences.

**State lawmakers:** They decide which behaviors to criminalize, how long sentences can be, and when to take away judges' discretion. They can change criminal laws to remove prison as an option when better alternatives exist, and they can also fund the creation of new alternatives.

**Parole boards:** They decide when to allow people to leave prison. In Oregon, the parole board is an especially important player when it comes to making reforms that could reduce the amount of time people spend in prison.

**Judges:** They often have discretion over pretrial conditions imposed on defendants, which can make a difference. For example, individuals who are jailed while awaiting trial are more likely to plead guilty and accept longer prison sentences than people who are not held in jail pretrial. Judges can also have discretion in sentencing and should consider alternatives to incarceration when possible.

## Forecaster Chart

There are many pathways to cutting the prison population in Oregon by 50 percent. To help end mass incarceration, communities and policymakers will need to determine the optimal strategy to do so. This table presents one potential matrix of reductions that can contribute to cutting the state prison population in half by 2025. The reductions in admissions and length of stay for each offense category were selected based on potential to reduce the prison population, as well as other factors. To chart your own path to reducing mass incarceration in Oregon, visit the interactive online tool at <https://urbn.is/ppf>.

“Merely reducing sentence lengths, by itself, does not disturb the basic architecture of the New Jim Crow. So long as large numbers of African Americans continue to be arrested and labeled drug criminals, they will continue to be relegated to a permanent second-class status upon their release, no matter how much (or how little) time they spend behind bars. The system of mass incarceration is based on the prison label, not prison time.”<sup>74</sup>

— From *The New Jim Crow*, Michelle Alexander

## CUTTING BY 50%: PROJECTED REFORM IMPACTS ON POPULATION, DISPARITIES, AND BUDGET

Impact Compared to 2025 Baseline*				
Offense category**	Policy outcome	Prison population impact	Impact on racial and ethnic makeup of prison population***	Cost savings ****
<b>Burglary</b>	<ul style="list-style-type: none"> <li>Reduce average time served by 60% (from 2.68 to 1.07 years).</li> <li>Institute alternatives that reduce admissions by 40% (253 fewer people admitted).</li> </ul>	9.17% reduction (1,257 fewer people)	White: 1.0% decrease Black: 1.5% increase Hispanic/Latino: 5.0% increase Native American: 1.2% increase Asian: 0.4% increase	\$34,698,424
<b>Drug offenses*****</b>	<ul style="list-style-type: none"> <li>Institute alternatives that end all admissions for drug possession (115 fewer people admitted).*</li> <li>Reduce average time served for drug distribution by 60% (from 1.75 to 0.70 years).</li> <li>Institute alternatives that reduce admissions for drug distribution by 60% (456 fewer people admitted).</li> </ul>	8.94% reduction (1,224 fewer people)	White: 0.8% increase Black: 2.1% increase Hispanic/Latino: 7.5% decrease Native American: 4.8% increase Asian: 2.6% decrease	\$37,074,932

**Impact Compared to 2025 Baseline\***

<b>Offense category**</b>	<b>Policy outcome</b>	<b>Prison population impact</b>	<b>Impact on racial and ethnic makeup of prison population***</b>	<b>Cost savings ****</b>
<b>Robbery</b>	<ul style="list-style-type: none"> <li>Reduce average time served by 50% (from 4.68 to 2.34 years).</li> <li>Institute alternatives that reduce admissions by 30% (100 fewer people admitted).</li> </ul>	6.89% reduction (943 fewer people)	White: 0.7% increase Black: 6.0% decrease Hispanic/Latino: 1.1% increase Native American: 1.4% decrease Asian: 3.0% decrease	\$23,520,102
<b>Assault</b>	<ul style="list-style-type: none"> <li>Reduce average time served by 50% (from 2.52 to 1.26 years).</li> <li>Institute alternatives that reduce admissions by 40% (210 fewer people admitted).</li> </ul>	6.81% reduction (933 fewer people)	White: 0.3% increase Black: 0.4% decrease Hispanic/Latino: 1.0% decrease Native American: 4.3% decrease Asian: 2.0% increase	\$26,467,914
<b>Identity Theft/ Other Fraud</b>	<ul style="list-style-type: none"> <li>Reduce average time served by 60% (from 1.83 to 0.73 years)</li> <li>Institute alternatives that reduce admissions by 50% (226 fewer people admitted)</li> </ul>	4.75% reduction (651 fewer people)	White: 0.6% decrease Black: 0.2% decrease Hispanic/Latino: 3.8% increase Native American: 2.1% increase Asian: 0.4% increase	\$18,878,559
<b>Other property offenses*****</b>	<ul style="list-style-type: none"> <li>Reduce average time served by 60% (from 1.52 to 0.61 years)</li> <li>Institute alternatives that reduce admissions by 60% (265 fewer people admitted)</li> </ul>	4.08% reduction (559 fewer people)	White: 0.7% decrease Black: 2.6% increase Hispanic/Latino: 2.5% increase Native American: 0.7% decrease Asian: 0.3% increase	\$16,823,989
<b>Theft</b>	<ul style="list-style-type: none"> <li>Reduce average time served by 60% (from 1.56 to 0.63 years)</li> <li>Institute alternatives that reduce admissions by 50% (180 fewer people admitted)</li> </ul>	3.27% reduction (447 fewer people)	White: 0.4% decrease Black: 0.2% increase Hispanic/Latino: 2.4% increase Native American: 1.4% increase Asian: 2.3% decrease	\$13,590,351

Impact Compared to 2025 Baseline*				
Offense category**	Policy outcome	Prison population impact	Impact on racial and ethnic makeup of prison population***	Cost savings ****
<b>Public order offenses*****</b>	<ul style="list-style-type: none"> <li>Reduce average time served by 60% (from 1.48 to 0.59 years)</li> <li>Institute alternatives that reduce admissions by 60% (187 fewer people admitted)</li> </ul>	2.83% reduction (388 fewer people)	White: 0.2% increase Black: 1.8% decrease Hispanic/Latino: 0.1% increase Native American: 1.1% decrease Asian: 2.9% increase	\$12,119,761
<b>Weapons offenses*****</b>	<ul style="list-style-type: none"> <li>Reduce average time served by 60% (from 1.79 to 0.72 years)</li> </ul>	2.55% reduction (349 fewer people)	White: 0.2% increase Black: 1.4% decrease Hispanic/Latino: 0.6% increase Native American: 3.4% decrease Asian: 1.3% increase	\$8,963,306
<b>DWI</b>	<ul style="list-style-type: none"> <li>Reduce average time served by 60% (from 1.31 to 0.52 years)</li> <li>Institute alternatives that reduce admissions by 70% (87 fewer people admitted)</li> </ul>	1.04% reduction (143 fewer people)	White: No change Black: 0.2% increase Hispanic/Latino: 0.2% decrease Native American: 0.6% decrease Asian: 0.3% decrease	\$4,621,977

\* The baseline refers to the projected prison population based on historical trends, assuming that no significant policy or practice changes are made.

\*\* The projections in this table are based on the offense that carries the longest sentence for any given prison term. People serving prison terms may be convicted of multiple offenses in addition to this primary offense, but this model categorizes the total prison term according to the primary offense only.

\*\*\* Racial and ethnic disproportionality is traditionally measured by comparing the number of people in prison – of a certain race – to the number of people in the state’s general population of that same race. For example, nationally, Black people comprise 13 percent of the population, while white people comprise 77 percent. Meanwhile, 35 percent of people in state or federal prison are Black, compared to 34 percent who are white. While the proportion of people in prison who are Black or white is equal, Black people are incarcerated at nearly three times their representation in the general population. This is evident in Oregon where Black people make up 9.1 percent of the prison population, but only constitute 1.8 percent of the state’s total population. This column represents the percent change in the share of the prison population made up by each racial/ethnic group. It compares the proportion of the population made up by a group in the 2025 baseline prison population to the proportion of the population made up by that group when the reform scenario is applied. We then calculate the percent change between those two proportions.

\*\*\*\* Note: Cost impact for each individual policy change represents the effect of implementing that change alone and in 2015 dollars. The combined cost savings from implementing two or more of these changes would be greater than the sum of their combined individual cost savings, since more capital costs would be affected by the population reductions.

\*\*\*\*\* In 2017, Oregon passed HB 2355, which defelonized drug possession under certain weight thresholds for people with no prior felony convictions, but prison remains an option even for misdemeanor drug possession.

\*\*\*\*\* Some other property offenses include stolen property trafficking, vandalism, property damage, criminal mischief, unauthorized vehicle use, and trespassing.

\*\*\*\*\* Some public order offenses include drunk or disorderly conduct, escape from custody, obstruction of law enforcement, court offenses, failure to comply with sex offense registration requirements, prostitution, and stalking, as well as other uncategorized offenses.

\*\*\*\*\* Some weapons offenses include unlawful possession, sale, or use of a firearm or other type of weapon (e.g., explosive device).

## Total Fiscal Impact

If Oregon were to carry out reforms leading to the changes above, 6,895 fewer people would be in prison in Oregon by 2025, a 50.33 percent decrease. This would lead to a total cost savings of \$584,716,240 by 2025.

## Methodology Overview

This analysis uses prison term record data from the National Corrections Reporting Program to estimate the impact of different policy outcomes on the size of Oregon's prison population, racial and ethnic representation in the prison population, and state corrections spending. First, trends in admissions and exit rates for each offense category in recent years are analyzed and projected out to estimate a baseline state prison population projection through 2025, assuming recent trends will continue. Then, a mathematical model was used to estimate how various offense-specific reform scenarios (for example, a 10 percent reduction in admissions for drug possession or a 15 percent reduction in length of stay for robbery) would change the 2025 baseline projected prison population. The model allows for reform scenarios to include changes to the number of people admitted to prison and/or the average length of time served for specific offenses. The model then estimates the effect that these changes would have by 2025 on the number of people in prison, the racial and ethnic makeup of the prison population, and spending on prison. The analysis assumes that the changes outlined will occur incrementally and be fully realized by 2025.

All results are measured in terms of how outcomes under the reform scenario differ from the baseline projection for 2025. Prison population size impacts are measured as the difference between the 2025 prison population under the baseline scenario and the forecasted population in that year with the specified changes applied. Impacts on the racial and ethnic makeup of the 2025 prison population are measured by comparing the share of the prison population made up by a certain racial or ethnic group in the 2025 baseline population to that same statistic under the reform scenario, and calculating the percent change between these two proportions. Cost savings are calculated by estimating the funds that would be saved each year based on prison population reductions relative to the baseline estimate, assuming that annual savings grow as less infrastructure is needed to maintain a shrinking prison population. Savings relative to baseline spending are calculated in each year between the last year of available data and 2025, then added up to generate a measure of cumulative dollars saved over that time period.

# Endnotes

- 1 The Sentencing Project, *The Color of Justice: Racial and Ethnic Disparity in State Prisons*, 2016.
- 2 Oregon Criminal Justice Commission, *Report of the Reset Subcommittee on Public Safety*, 2010.
- 3 Washington State Institute for Public Policy, *Benefit-Cost Results*, accessed April 2018.
- 4 Pew Charitable Trusts, *National Imprisonment and Crime Rates Continue to Fall*, 2016.
- 5 The Sentencing Project, *The Color of Justice: Racial and Ethnic Disparity in State Prisons*, 2016.
- 6 Oregon Criminal Justice Commission Data Portal.
- 7 This also includes people convicted of felony crimes who were released from jail. Felony sentences of 12 months or less are served in local jail facilities.
- 8 Oregon Criminal Justice Commission, *Oregon Recidivism Analysis*, November 2017.
- 9 Oregon Criminal Justice Commission, *Oregon Recidivism Analysis*, May 2017.
- 10 Offense breakdowns in this blueprint are based on the most serious, or “controlling” offense for which a person in prison is serving time. Some people in prison are serving time for multiple convictions, and are categorized here only under the controlling offense types.
- 11 Oregon.gov, *Measure 11 Mandatory Minimum Sentencing*.
- 12 Oregon Department of Corrections, *Offenders with M11 Convictions as of March 1, 2018*; Oregon Department of Corrections, *Inmate Population Profile for 03/01/2018*.
- 13 BJS, *Correctional Statistical Analysis Tool*. Note: While the analysis in this blueprint contemplates both Oregon jail and prison populations, the decarceration, fiscal, and racial impact analysis found in the chart on pages 14 to 16 only examines Oregon’s prison population.
- 14 The Justice Reinvestment Initiative is a data-driven approach to state criminal justice reform that seeks to control corrections costs and reinvest savings in practices demonstrated to improve safety. Oregon engaged in the Justice Reinvestment Initiative process in 2012, successfully passing legislation in 2013 through HB 3194. (Oregon.gov, *History of Oregon’s Justice Reinvestment Initiative*)
- 15 BJS, *Correctional Statistical Analysis Tool*.
- 16 Oregon Department of Corrections, *Quick Facts*, January 1, 2018.
- 17 Prison admissions reflect the number of people entering Oregon prisons in a given year, while the total prison population refers to the total number of people imprisoned at the end of each fiscal year (June 30<sup>th</sup>).
- 18 Offense breakdowns in this Blueprint are based on the most serious, or “controlling,” offense for which a person in prison is serving time. Some people in prison are serving time for multiple convictions, and are categorized here only under the controlling offense types.
- 19 BJS, *National Corrections Reporting Program*, 2015.
- 20 Oregon Criminal Justice Commission Data Portal.
- 21 *Id.*
- 22 *Id.*
- 23 *Id.*
- 24 This also includes people convicted of felony crimes who were released from jail. Felony sentences of 12 months or less are served in local jail facilities.
- 25 Oregon Criminal Justice Commission, *Oregon Recidivism Analysis*, November 2017.
- 26 *Id.*
- 27 Oregon Criminal Justice Commission, *Oregon Recidivism Analysis*, May 2017.
- 28 *Treating Drug Abuse and Addiction in the Criminal Justice System: Improving Public Health and Safety*, January 2009.
- 29 Oregon Criminal Justice Commission, *Oregon Recidivism Analysis*, November 2017.
- 30 Robina Institute of Criminal Law & Criminal Justice, *Profiles in Probation Revocation: Examining the Legal Framework in 21 States*, November 2014.
- 31 Vera Institute of Justice, *Incarceration Trends*, 2015.
- 32 Vera Institute of Justice, *Incarceration Trends*, 2015. Total jail population and pretrial jail population data are drawn from different sources in the cited source. Total jail population data is reported as average daily population in 2015 and excludes federal jail populations, while pretrial jail population is reported as a single day count (taken on June 30) and includes federal jail populations.
- 33 Oregon Department of Corrections, *Adults in Custody Population Profile*, July 1, 2017.
- 34 Urban Institute analysis of *National Corrections Reporting Program data, 2001-2013*.
- 35 Oregon Criminal Justice Commission Data Portal.
- 36 State of Oregon Legislative Committee Services, *Background Brief on Felony Sentencing*, 2012.
- 37 2015 Oregon Revised Statutes 137.717.
- 38 Oregon Criminal Justice Commission, *Felony Sentencing in Oregon 1998*.
- 39 Oregon.gov, *Measure 11 Mandatory Minimum Sentencing*.
- 40 Oregon Department of Corrections, *Offenders with M11 Convictions as of March 1, 2018*; Oregon Department of Corrections, *Inmate Population Profile for 03/01/2018*.
- 41 Oregon Criminal Justice Commission, *Longitudinal Study of the Application of Measure 11 and Mandatory Minimums in Oregon*, 2011.
- 42 *Id.*
- 43 *Id.*
- 44 Senate Bill 1049.
- 45 Oregon Criminal Justice Commission, *Longitudinal Study of the Application of Measure 11 and Mandatory Minimums in Oregon*, 2011.
- 46 *Id.*
- 47 Oregon Council on Civil Rights, *Youth and Measure 11 in Oregon: Impacts of Mandatory Minimums*, 2018.
- 48 *Id.*
- 49 Oregon Justice Resource Center, *Unlocking Measure 57*, 2017.
- 50 The Sentencing Project, *The Color of Justice: Racial and Ethnic Disparity in State Prisons*, 2016.

- 51 United States Census Bureau, American Community Survey 2016. Statistics reflect Black or African American single race, non-Hispanic counts.
- 52 Oregon Department of Corrections, Adults in Custody Population Profile, July 1, 2017.
- 53 Urban Institute analysis of data from the United States Census Bureau (2016) and the Oregon Department of Corrections (2017).
- 54 Oregon Legislative Assembly, Senate Bill 463.
- 55 Oregon Department of Corrections, Quick Facts, 2000 and 2017 reports.
- 56 Oregon Justice Resource Center, Unlocking Measure 57, 2017.
- 57 American Civil Liberties Union, At America's Expense: The Mass Incarceration of the Elderly, 2012.
- 58 Oregon Department of Corrections, Adults in Custody Population Profile, July 1, 2017; Oregon Department of Corrections, Quick Facts, 2008.
- 59 United States Census Bureau, American Community Survey 2015. Statistics reflect Native American single race, non-Hispanic counts.
- 60 Oregon Department of Corrections, Adults in Custody Population Profile, July 1, 2017.
- 61 Urban Institute analysis of data from the United States Census Bureau (2015) and the Oregon Department of Corrections (2017).
- 62 Oregon Department of Corrections, Quick Facts, January 1, 2018.
- 63 *Id.*
- 64 "Oregon pays steep price for neglected addiction treatment system." Oregon Live, December 2014.
- 65 National Association of State Budget Officers' State Expenditure Report series.
- 66 *Id.*
- 67 Vera Institute of Justice 'Accounting for Violence: How to Increase Safety & Break our Failed Reliance on Mass Incarceration' 2017.
- 68 Mark S. Umbreit, Robert B. Coates, and Betty Vos, "Victim-Offender Mediation: Three Decades of Practice and Research," *Conflict Resolution Quarterly*, 22, nos. 1-2 (2004), 279-303 and National Council on Crime & Delinquency, *Scaling Restorative Community Conferencing Through a Pay for Success Model: A Feasibility Assessment Report* (Oakland, CA: NCCD, 2015), 9.
- 69 Caroline M. Angel, Lawrence W. Sherman, Heather Strang, Barak Ariel, Sarah Bennett, Nova Inkpen, Anne Keane, and Therese S. Richmond. *Journal of Experimental Criminology*, September 2014, Volume 10, Issue 3, pp 291–307, <https://doi.org/10.1007/s11292-014-9200-0>.
- 70 See, for example, Katherine B. Spencer, Amanda K. Charbonneau and Jack Glaser. "Implicit Bias and Policing." *Social and Personality Psychology Compass* 10/1 (2016): 50–63, 10.1111/spc3.12210. Accessed from <https://gspp.berkeley.edu/assets/uploads/research/pdf/SpencerCharbonneauGlaser.Compass.2016.pdf>; Kutateladze, B., Lynn, V., & Liang, E., Do race and ethnicity matter in prosecution? A review of empirical studies (New York: Vera Institute of Justice, June 2012). Accessed from <http://archive.vera.org/sites/default/files/resources/downloads/race-and-ethnicity-in-prosecution-first-edition.pdf>; Racial Disparity in Sentencing: A Review of the Literature (Washington D.C.: Sentencing Project, January 2005). Accessed from <https://www.opensocietyfoundations.org/sites/default/files/disparity.pdf>; See, for example, Michael Pinard, "Collateral Consequences of Criminal Convictions: Confronting Issues of Race and Dignity." *New York University Law Review* 85, no. 2 (2010): 457-534; Lisa Stolzenberg, Stewart J D'Alessio, and David Eitle. "Race and Cumulative Discrimination in the Prosecution of Criminal Defendants." *Race and Justice* 3, no. 4 (2013), p. 275. Accessed from <http://raj.sagepub.com/content/3/4/275.abstract>.
- 71 The Sentencing Project, *Fewer Prisoners, Less Crime: A Tale of Three States* (2014).
- 72 The Sentencing Project, *The Color of Justice: Racial and Ethnic Disparity in State Prisons* (2016).
- 73 Responding to Racial Disparities in Multnomah County's Probation Revocation Outcomes, April 2014.
- 74 Alexander, Michelle. *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*. New York: [Jackson, Tenn.]: New Press; Distributed by Perseus Distribution, 2010. Print.





