

Blueprint for Smart Justice
Tennessee



Blueprint *for* Smart Justice Tennessee

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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, poverty, and broken schools. As a result, the United States today incarcerates more people, in both absolute numbers and per capita, than any other nation in the world. Millions of lives have been upended and families torn apart. This mass incarceration crisis has transformed American society, damaged families and communities, and 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. It's time for the United States to dramatically reduce its reliance on incarceration, invest instead in alternatives to prison and 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 kinds of changes needed to cut the number of people in prison in each state by half and reduce racial disparities in incarceration. In every state, Urban Institute researchers identified primary drivers of incarceration. They then 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. In Tennessee — where Black men constituted 43 percent of the male prison population in 2017 despite making up only 15 percent of the overall adult male population in the state¹ — reducing the number of people imprisoned will not on its own reduce racial disparities within the prison system. This finding confirms for the Campaign that urgent work remains for advocates, policymakers, and communities in Tennessee and across the nation to focus on efforts that are specific to combatting these disparities, like reducing incarceration before trial through bail reform, preventing the incarceration of people arrested on misdemeanor and low level felony charges, and implementing parole reform.

In Tennessee, the prison population has grown four-fold between 1980 and 2017², increasing by over 30 percent since 2000 alone.³ In 2017, there were more than 30,000 people in the state's prisons, more than at any point in history.⁴ Drug offenses are a major contributor to this growth, accounting for over one-quarter of 2017 admissions. In addition, property offenses have played a key role, accounting for 33 percent of admissions that same year.⁵ Overall admissions to the state's prisons declined by 14 percent between 2007 and 2017, but a growing proportion of people who are sentenced to serve prison time have been charged with violating the terms of community supervision, like probation or

parole.⁶ Some of these violations included charges for new crimes, but others were for actions that on their own would not be illegal, such as missing a scheduled appointment.

As prison populations have swelled in Tennessee, the state's prison and jail facilities have struggled to cope with incarcerating so many people. In June 2017, there were 29,369 people in Tennessee county jails; nearly half of those individuals hadn't been convicted of a crime and were locked up awaiting trial.⁷ Sixteen percent of those incarcerated in county jails would be held in a state prison if there were space in a permanent facility.

Over the past decade, fewer people have been released annually from prison, partially as a result of a decline in the number of people released on parole, which dropped by nearly one-third between 2007 and 2017.⁸ Mandatory minimum sentences result in many people spending additional time in prison, requiring judges to give longer sentences to people who have prior convictions. And the state's "Truth in Sentencing" legislation restricts how much time people can earn towards parole or early release, forcing them to serve at least 85 percent of their sentence before being eligible for any kind of earned release option.⁹

Imprisonment of women has skyrocketed in Tennessee, growing at a rate over five times that of men between 2007 and 2017.¹⁰ By 2017, women accounted for 11 percent of the state's prison population—the largest overall number in its history.¹¹ And many of the state's prison population is rapidly aging. In 2017, one in six people in Tennessee prisons was age 50 or older, a group generally considered to pose a negligible risk to public safety.¹²

So, what's the path forward?

Any meaningful effort to reach a 50 percent reduction in incarceration in Tennessee will need to, at a minimum, eliminate money bail so that people do not spend weeks, months, or in some cases years waiting for their day in court. Even one week in detention can have massively destabilizing effects on someone's life, increasing pressure to take a plea deal that could send them to prison.¹³

In addition, the state could build on recently passed legislation that provides drug treatment for the uninsured, increasing funding for those programs so that people can be released into probation after being admitted into a residential drug treatment facility.¹⁴ The expansion of this program to include diversion of people from the criminal justice system into treatment options is vital to reducing Tennessee's prison population while simultaneously addressing the underlying causes of crime.

Broadening the ability of judges to impose appropriate sentences without being constrained by harsh sentence enhancements — such as those that increase penalties for drug offenses committed in school-zones¹⁵ — will also help curb mass incarceration in Tennessee. In addition, supporting reentry into communities through targeted programs that smooth people's transition out of prison, as well as eliminating prison time for technical violations committed by people on parole or probation, will help the state prevent people from being unnecessarily imprisoned.

Tennessee should also consider expanding the availability of earned credits against prison sentences through participation in educational, vocational, and other opportunities. And the "85 percent" rule that imposes harsh restrictions on release, disconnected from any individual mitigating circumstances, should be reformed. If these and other reforms outlined in this report were adopted, Tennessee could have 14,411 fewer people in prison in 2025, with a projected total cost savings of just under \$1 billion dollars.

Reforming juvenile justice in the state is also crucial, as it is often the first contact people have with the criminal justice system. Community-based alternatives that do not force juveniles into out-of-home detention centers are less costly and more effective, and they will help to cut recidivism rates by young people, as research shows that they are less likely to re-offend if they do not spend time in prison-like environments.¹⁶

The answer is ultimately up to Tennessee's voters, communities, activists, elected officials, policymakers, and criminal justice reform advocates as they move forward with the urgent work of ending the state's obsession with mass incarceration.

The State of the Tennessee Prison System

In 2017, there were more than 30,000 people in Tennessee’s prisons, more than at any other point in state history.¹⁷ Tennessee’s prison population grew four-fold between 1980 and 2016,¹⁸ and increased by over 30 percent between 2001 and 2017 alone.¹⁹

The Tennessee Department of Corrections (TDOC) projects that the prison population will continue to grow, exacerbating concerns about the capacity of state prisons to cope with more people.²⁰ While the overall non-federal imprisonment rate at the national level dropped by 7 percent between 2000 and 2016, Tennessee’s imprisonment rate rose by 9 percent. Between 1990 and 2016, that rate increased by 100 percent – the eleventh largest increase in the nation over that time period.²¹

AT A GLANCE

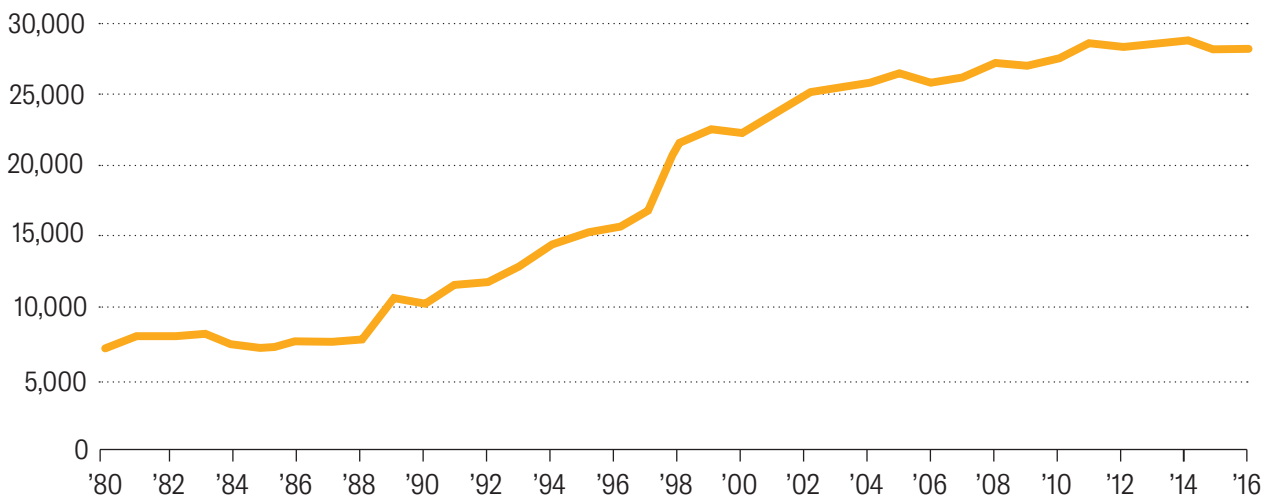
TENNESSEE PRISONS

Over **30,000** people were locked up in Tennessee prisons in 2017.

Tennessee’s prison population has grown by **33 percent** between 2001 and 2017.

The state imprisonment rate grew by **100 percent** between 1990 and 2016.

TENNESSEE PRISON POPULATION



What Is Driving People Into Prison?

In Tennessee, a litany of offenses drives people into prisons.²² In 2017, the most common offenses for people entering Tennessee prisons were drug offenses (26 percent), burglary (15 percent), larceny or theft (13 percent), and aggravated assault (11 percent). Property offenses, including larceny, burglary, fraud, and arson, accounted for 33 percent of admissions in 2017.²³

While overall admissions to Tennessee prisons declined by 11 percent between 2007 and 2017, a growing proportion of people admitted to prison are there for violating the conditions of their community supervision.²⁴ In 2017, returns from community supervision (which includes violations of technical conditions of parole, such as breaking curfew or positive drug test results, as well as violations for new crimes) accounted for nearly two in five (39 percent) prison admissions in the state.²⁵

In addition, Tennessee has adopted harsh laws that increase sentencing ranges, limit parole opportunities, and trigger mandatory prison sentences for people in certain situations. For example, a single prior class A or B felony conviction can require a prison sentence for someone who would otherwise be eligible for smart release options such as community supervision.²⁶

AT A GLANCE

TENNESSEE PRISON AND COUNTY JAIL POPULATION

16 percent of the total county jail population was awaiting transfer to a permanent facility in 2017.

49 percent of the 2017 county jail population had not been convicted of any crime.

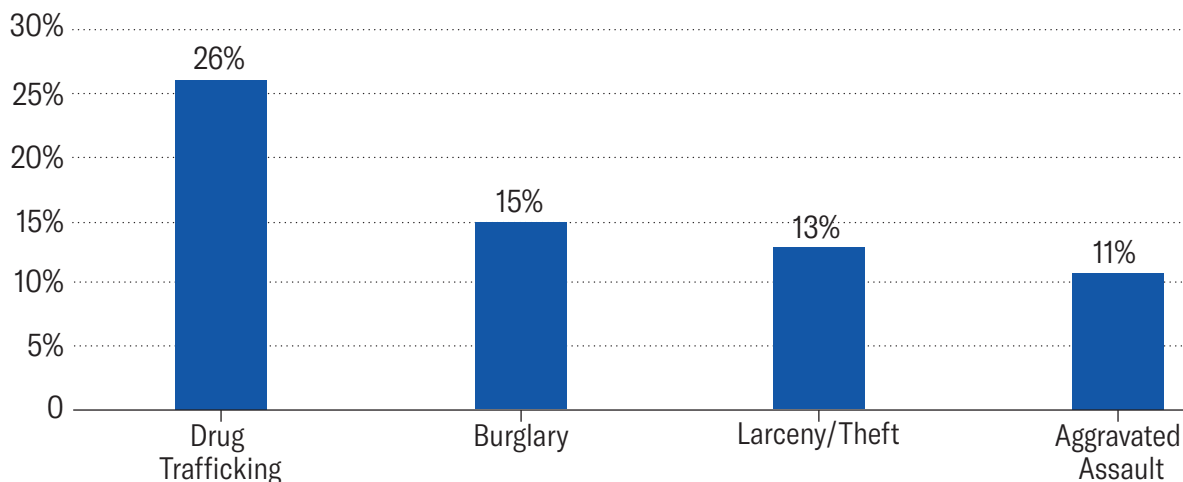
1 in 4 people sent to prison in 2017 were convicted of a drug offense.

There was a **44 percent** increase in people serving time for drug offenses between 2003 and 2017.

The Current Prison and Jail Population

To accommodate its growing prison population, TDOC holds some people who have been convicted of a crime and would typically be held in a state prison in county jails until there is space in a permanent facility. In

TENNESSEE PRISON ADMISSIONS BY OFFENSE TYPE (FY 2017)



June 2017, the TDOC “backup jail population” made up 15 percent of the total county jail population. In the past decade, the total jail population has grown by 14 percent, while the number of people under TDOC jurisdiction held in jails has grown by 125 percent, accounting for a growing proportion of the total jail population.²⁷

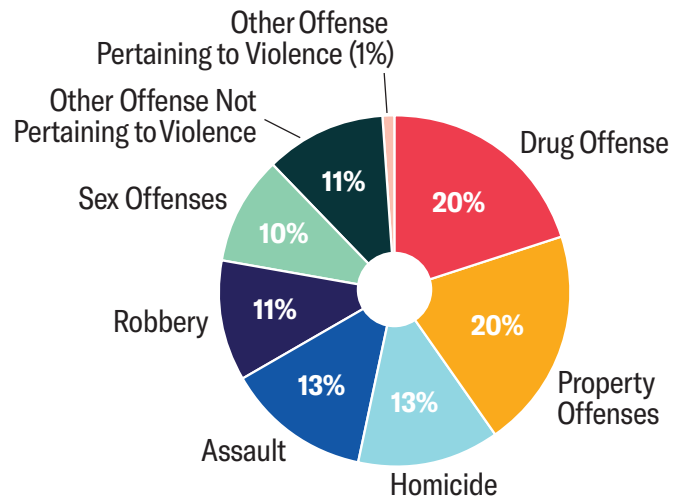
In June 2017, in addition to the 16 percent of people who were awaiting transfer to a TDOC facility, nearly half (49 percent) of the county jail population in Tennessee was awaiting trial and had not been convicted of any crime. This means less than one-third (32 percent) of the people in Tennessee jails had been convicted and were serving their jail sentence. In June 2017, 29,369 people were incarcerated in county jails in Tennessee.

As of 2017, TDOC prisons were operating at 96 percent of total capacity.²⁸ Drug offenses are the most prevalent offense type among people in Tennessee prisons.²⁹ In 2017, one in five people (20 percent) in prison were serving time for a drug offense, and the population of people in prison for such an offense grew by 18 percent between 2007 and 2017. The population of people imprisoned for drug offenses has steadily increased over time – rising 44 percent since 2003. An additional 20 percent of the prison population is imprisoned for property offenses like burglary and theft while less than half (48 percent) is imprisoned for a violent offense.³⁰

Why Do People Stay in Prison for So Long?

Despite a recent drop in prison admissions, the prison population in Tennessee has continued to grow – due both to a rise in the length of imprisonment and a slight drop in annual releases from prison. On average, someone released from prison in 2017 served 18 percent more time in prison than someone released in 2007, and the average sentence length for people in Tennessee prisons increased by 14 percent during that time period. The average time served for drug offenses is also on the rise. For example, time served for cocaine offenses has increased by 50 percent since 2007.³¹

TENNESSEE PRISON POPULATION BY OFFENSE TYPE (FY 2017)



For more serious offenses, this increase has been even more pronounced. In the past decade, the average sentence length for individuals charged with murder has increased by 90 percent.³² Lengthy sentences of this kind have not been proven to deter crime or improve victim satisfaction.³³

Over the past decade, fewer people have been released from prison, stemming in part from a decline in the number of people released on parole, which dropped by 31 percent between 2007 and 2017.³⁴

AT A GLANCE

LENGTH OF IMPRISONMENT

There was a **31 percent** drop in the number of people released on parole between 2007 and 2017.

There has been an **18 percent** increase in the average length of imprisonment since 2007.

Nearly **5,000** people serving time in Tennessee prisons in 2017 were sentenced under the 85 percent “Truth in Sentencing” law.

Tennessee also has strict mandatory minimum laws, which result in many people spending additional time in prison. Regardless of circumstance, the state requires that judges give longer sentences and include sentencing enhancements for people with prior convictions.³⁵

Lastly, Tennessee’s penal code also includes “Truth in Sentencing,” which restricts how much time people can earn towards parole or early release. Some individuals are ineligible for parole entirely. These restrictions require that people convicted of certain crimes serve at least 85 percent of their sentence before being eligible for any kind of earned release option, such as community supervision or parole.³⁶ In 2017, nearly 5,000 people were serving time for an “85 percent offense,” with an average sentence length of 24 years and five months.³⁷ These requirements severely limit the amount of time someone can earn against their sentence for participating in programming and treatment.

Who Is Imprisoned

Black Tennesseans: Black men constituted 43 percent of the male prison population in Tennessee as of 2017, despite making up only 15 percent of the adult male population in the state, resulting in more than 1 in 30 Black men being in prison.³⁸ According to the most recently available data (2015), Black people account for 37 percent of the jail population overall.³⁹ The disproportionate number of Black people who are incarcerated cannot be attributed directly to criminal activity level. Disparities in the treatment of Black people in the justice system contribute to their overrepresentation. Please see the Reducing Racial Disparities section below for more information.

Disabled Tennesseans: TDOC has identified more than 27 percent of the prison population as needing mental health care in 2016.⁴⁰ But the true number is likely much higher: TDOC excludes from its mental health count anyone who also has substance use disorders. In 2016, TDOC provided substance use treatment for approximately 9 percent of the prison population.⁴¹ Estimates of disability in jails are even

AT A GLANCE

DEMOGRAPHICS

1 in 33 Black men were imprisoned in Tennessee in 2017.

Black men make up **43 percent** of the Tennessee male prison population despite only being 15 percent of the state adult male population overall in 2017.

More than **26 percent** of people in Tennessee prisons had mental health needs in 2016.

There was a **64 percent** increase in the prison population age 50 or older since 2007.

higher. The chief financial officer of TDOC estimates that more than 70 percent of women who arrive in jails in Tennessee have a mental health or substance use disorder.⁴² The Tennessee General Assembly has not equipped substance use initiatives with appropriate funding,⁴³ and people with substance use disorders wait behind bars for months until space becomes available in substance use treatment programs.⁴⁴

Female Tennesseans: Over the past 10 years, the number of women in Tennessee prisons has grown at a rate that is over five times that of men. In 2017, Tennessee imprisoned more women than ever before.⁴⁵ In 2015, according to the most recent available data, women accounted for 18 percent of the jail population (including all people held in local jails, under both state and local jurisdiction).⁴⁶

Older Tennesseans: Tennessee’s prison population is rapidly graying. Though generally considered to pose a negligible risk to public safety,⁴⁷ the number of people in prison age 50 or older increased by 64 percent since 2007, accounting for one in six people (16 percent) of the Tennessee state prison population in 2017.⁴⁸

Budget Strains

As Tennessee's prison population has risen, so has the cost burden. Tennessee spent an estimated \$1 billion on corrections in fiscal year 2018, surpassing its approved budget of \$975 million. For fiscal year 2019, the Department of Corrections budget is over \$1 billion.⁴⁹ Between 1985 and 2016, general fund spending on corrections grew by more than 175 percent, far outpacing growth in spending on other state priorities, like education, which grew only 87 percent over the same time period.⁵⁰

AT A GLANCE

BUDGETS

Tennessee spent **\$1 billion** on corrections in fiscal year 2018 and is projected to spend even more in 2019.

General fund spending on corrections increased by more than **175 percent** between 1985 and 2016.

Ending Mass Incarceration in Tennessee: A Path Forward

Mass incarceration is a result of many systems failing to support our communities. To end it, we must develop policies that better address inadequacies throughout our education, health care, and economic systems, as well as other structures within our society.

But there are many potential criminal justice policy changes that can help Tennessee continue the path towards ending its mass incarceration crisis. It will be up to the people and policymakers of Tennessee to decide which changes to pursue. To reach a 50 percent reduction, policy reforms will need to reduce the amount of time people serve in prisons and/or reduce the number of people entering prison in the first place.

Reducing Racial Disparities

Reducing the number of people who are imprisoned in Tennessee 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 disproportionality cannot be accounted for by disparate involvement in illegal activity, and it grows at each stage in the criminal justice system, beginning with initial law enforcement contact and increasing at subsequent stages, such as pretrial detention, conviction, sentencing, and post-release opportunity.⁵¹ Focusing on only one of the factors that drives racial disparity does not address issues across the whole system.

“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.”⁵²

—From *The New Jim Crow*, Michelle Alexander

One of the factors that disproportionately affects communities of color is the school-to-prison pipeline. While African-American students, for instance, made up 23 percent of the student body in Tennessee (according to most recently available data, 2010), 58 percent of the students that schools decide to suspend and 71 percent of students who were expelled were Black.⁵³ During the 2017–2018 school year, 91 percent of the 113 students age 12 and under arrested in Metro Nashville Public Schools were African Americans.⁵⁴

Instead of addressing students’ behavior through in-house resources like counseling, schools often call the police. This is how many young people then end up involved in the criminal justice system at an early age. To make matters worse, a 2017 Blue Ribbon Task

Force on Juvenile Justice found discrepancies in juvenile court outcomes from county to county, with Black children being disproportionately represented at every stage of the system.⁵⁵ Statistics suggest that a significant number of these children will later end up in prison.⁵⁶

Income inequality also drives racial disparities in the Tennessean criminal justice system. For example, Nashville's controversial Operation Safer Streets program often targets low-income minority neighborhoods, including those with public housing developments, by placing more police in areas where the department believes crime is more likely.⁵⁷ This typically correlates with less affluent locations.⁵⁸ In addition, a recent report demonstrated that in Nashville, Black people are much more likely to be stopped and searched by police than white people in virtually every police patrol zone in the city.⁵⁹ The greater police presence in areas that heavily populated by people of color, as well as racial profiling that takes place in all areas, results in people of color being arrested at higher rates for common crimes, despite the fact that all races commit those crimes at the same rate.⁶⁰

By addressing socio-economic issues such as poverty, addiction, mental health, and school discipline through the criminal system, Tennessee is placing law enforcement at odds with the communities they are assigned to protect, and worsens the risks faced by troubled youths. This drives racial disparities in both charging decisions and sentence lengths. 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 2012.⁶¹ However, the state did not intentionally target racial disparities in incarceration and, in 2016, 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.⁶²

Ending mass incarceration is critical to eliminating racial disparity, but insufficient 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 re-incarceration due to revocations from supervision
- Requiring racial impact statements before any new criminal law or regulation is passed and requiring legislation 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
- Limiting the circumstances in which schools use police or school resource officers to intervene in a child's behavior.

Reducing Admissions

To end mass incarceration, Tennessee must break its overreliance on prisons as a response to social problems. Evidence indicates that prisons seldom offer adequate solutions to wrongful behavior. In fact, imprisonment can be counterproductive, failing to end cycles of harm and violence, as well as failing to provide rehabilitation for incarcerated people or adequate accountability to the survivors of crime.⁶³ Here are some strategies:

- **Eliminate money bail:** Far too often, people who are eligible for release but cannot afford their bail will end up in jail for weeks, months, or in some cases years as they wait for their day in court. When this happens, the criminal justice system frequently leaves them with a difficult choice: take a plea deal or fight the case from behind bars. This is challenging for a number of reasons. Pre-trial detention limits how often a defense attorney can meet with her client, preventing her from building a strong case.⁶⁴ Moreover, even one week of detention can have massively destabilizing effects on someone's life, including potential job or housing loss, education disruption, and inability to parent. After even a short stay in jail, taking a plea deal sounds less burdensome than losing everything.⁶⁵ Ultimately, those detained pretrial are four times more likely to end up in prison.⁶⁶ The General Assembly should eliminate money bail in order to require its criminal justice system to treat people with fairness and humanity. Further, with almost half of the state's jails operating above capacity, eliminating this system in Tennessee would

allow its overall jail population to shrink to a more manageable size.⁶⁷

- **Alternatives to incarceration — mental health diversion:** Mental health diversion is an effective way to redirect people with disabilities out of the criminal legal system and into supportive community treatment. Diversion programs have been shown to be effective for people charged with both nonviolent and violent offenses.⁶⁸ When implemented effectively, diversion reduces arrests, encourages voluntary treatment in the community, and saves money.⁶⁹ Effective diversion programs coordinate with community programs that provide a wide range of substantial, quality wraparound treatment and support services for people with disabilities in order to access housing, employment, and intensive, individualized supports in the community. After an initial investment in community supports, diversion programs have the potential to save jurisdictions large amounts of money. Sheriffs in urban and rural counties recognize the need for alternatives to incarceration and are designing and implementing model programs. In addition, the state recently allocated \$15 million in grant funds to support counties diverting individuals with behavioral health needs away from jail and to appropriate community-based treatment and implementing effective strategies local communities can use regarding serving those in psychiatric crisis. The growing state and local support for these programs and accompanying resources is a good sign, but more programs are needed across the state.
- **Alternatives to incarceration — substance use diversion:** The good news is that alternatives exist and have shown great success in reducing both violent and nonviolent drug-related charges. In fact, the state recently implemented a plan, dubbed "TN Together," that includes legislation, funding, and executive actions to combat the state's opioid crisis — including providing drug treatment for those without the means to acquire treatment

on their own.⁷⁰ The initiative also includes more than \$16 million in state funding for opioid addiction treatment and services in the 2018–2019 fiscal year.⁷¹ This initiative is an important step in addressing the current lack of access to treatment facilities. Due to prior space constraints in these facilities, men have waited an average of three months behind bars before they can enter, while women waited on average over six months.⁷² Thus, those eligible to otherwise leave on probation are detained in jails for lengthy periods of time until they can be transferred to residential treatment, which is often a condition for probation. Initiatives like TN Together can help Tennessee divert people from the criminal justice system and more adequately serve their substance abuse needs, while reducing crime rates. Further, Tennessee must make alternatives to incarceration the presumptive option for judges and DAs, as only 6 percent of drug offenders in 2017 were diverted from incarceration through pre-trial and judicial diversion initiatives.⁷³ By implementing and continuing to fund the already existent TN Together law and more initiatives like this, and by requesting both DAs and judges to clearly explain each case in which they opted to not take diversion options, Tennessee can ensure that these alternatives are actually being taken advantage of.

- **Juvenile justice reform:** Tennessee can avoid using out-of-home juvenile detention centers and placement facilities by investing in community-based alternative services. Though less costly and more effective, these services are scarce across the state, leaving judges with little choice but to unnecessarily expose youth to prison-like environments. By expanding community-based options, Tennessee will not only be able to significantly reduce the amount of time young people spend behind bars, it can also cut recidivism, as research shows that youths treated through social services are less likely to re-offend than if they spend time in detention and out-of-home placement.⁷⁴ Further, a recent study showed that those who were incarcerated

as juveniles are significantly more likely to be incarcerated as adults when compared with juvenile offenders who were redirected to alternative programs.⁷⁵ Thus, Tennessee can reduce its youth incarcerated population and cut its adult incarcerated population in the long run by favoring and expanding community-based services over detention centers and placement facilities.

- **Judicial discretion:** The General Assembly should also limit the circumstances in which a judge is required to impose a lengthy prison sentence instead of a more appropriate prison sentence or even community supervision, especially for drug offenses and location-enhanced crimes. For example, Tennessee’s school-zone enhancements are one of the broadest and harshest in the nation.⁷⁶ They are so harsh, in fact, that a first time low-level drug offender can see his prison sentence more than quadruple for simply being within 1,000 feet of a school property at the time of the offense, even if school is not in session or children are not present.⁷⁷ In urban areas, virtually the entire map falls within a drug-free school zone. Laws like these contribute to mass incarceration by forcing judges to impose lengthy sentences regardless of the facts and circumstances of the case. Reducing these enhancements will instead allow judges to consider each defendant’s mitigating factors in order to decide on the most appropriate sentence. Judges must have a variety of options at their disposal besides imprisonment, allowing them to offer treatment, mental health care, restorative justice, or other evidence-based alternatives to incarceration. These programs should be available to the court in all or most cases, regardless of the severity of the offense or someone’s prior criminal history.
- **Support reentry:** Tennessee’s General Assembly should support people in their efforts to reenter their communities by providing assistance in finding stable employment; access to community services and viable and accessible housing options; and ensuring that

everyone can have a voice in their community. Guaranteeing a smooth reentry process will cut chances of recidivism and make Tennessee communities safer. Recently, the General Assembly took a significant step in removing unnecessary barriers to employment: It passed into law the Fresh Start Act, which ensures only convictions (excluding certain felonies) directly related to the position can be taken into account during a licensing board’s decision-making process.⁷⁸ Further, Tennessee’s “Ban the Box” law, approved in 2016, also removed employment barriers by preventing the state from systematically discarding potential candidates for many positions simply based on their criminal record.⁷⁹ However, Tennessee’s formerly incarcerated population is still deeply marginalized in the political process, as individuals lose their right to vote upon a felony conviction. Tennessee law requires those who are eligible to restore their right to

vote to complete an extremely burdensome set of requirements including completing their sentence, paying all court fines and fees, and being current in child support to get their voting rights restored. Giving people who were formerly incarcerated a voice helps reintegrate them in their communities, which is a net positive for society. This is why the General Assembly must support a more streamlined voter restoration process for formerly incarcerated individuals by automatically restoring their voting rights upon leaving prison. By ensuring that people have housing options, access to community support and employment, and the ability to vote during the reentry process, Tennessee can avoid recidivism and reduce mass incarceration.

- **Parole and probation – technical violations:** Eliminating prison time for technical violations during parole or probation will significantly reduce prison admissions each year,

TAKING THE LEAD

State lawmakers: They decide which offenses to criminalize, how long sentences can be, and when to take away judicial 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, including diversion programs that provide supported housing, treatment, and vocational training. And they can decide to sufficiently fund mental health and substance use treatment so that it is available for people who need it before they encounter the criminal justice system.

Prosecutors: They decide on what charges to bring and which plea deals to offer. They can decide to divert people to treatment programs (from example, drug or mental health programs) rather than send people to prison. And they can decide not to bring charges that require the imposition of prison sentences.

Parole boards: They decide when to allow people to leave prison. In Tennessee, the parole board is an especially important player when it comes to reforming how long people spend in prison. If the parole board is trained to consider and accommodate disability issues, they may recognize and release more people who have disciplinary issues in their records that are due to lack of accommodations during incarceration.

Judges: They often have discretion on 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.

as 40 percent of people admitted to Tennessee’s state prisons violated their terms of probation or parole.⁸⁰ Often, a judge can decide to incarcerate someone who is on conditional release based on simple technical violations, such as failing one drug test, missing curfew, or an inability to pay court fees. Incarcerating people who have not committed a new crime imposes an overly harsh punishment on people who are in the process of reentry and overburdens correctional facilities with people that do not pose a threat to anyone. Further, these technical violations can be caused by the physical or mental disabilities that many people on probation and parole have. Parole and probation officers are required to provide reasonable accommodations so that supervisees with disabilities have an equal opportunity to comply with the requirements of parole or probation. Proper training of parole and probation officers, and greater awareness of, and advocacy for, these requirements could reduce the number of technical violations significantly. Tennessee has begun to curb this issue by passing the Public Safety Act of 2016, which institutes graduated sanctions for technical violations during parole and probation. The act is intended to provide judges with a variety of punitive measures they can impose before completely revoking parole and probation.⁸¹ However, this law does not go far enough; the General Assembly should take prison time off the table altogether for technical violations during parole as well as during probation, as these violations rarely affect public safety and can be easily prevented with less restrictive punishments.⁸²

Reducing Time Served

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

- **Sentencing reform:** The General Assembly should amend Tennessee’s criminal code to reduce sentencing ranges for drug offenses,

burglary, property offenses, robbery, public order offenses, and assault. One way Tennessee can accomplish this is by reclassifying less serious offenses — such as drug possession — and minor property offenses as misdemeanors instead of felonies. Furthermore, Tennessee’s criminal code is riddled with numerous enhancements that have not been reviewed since the early 1990s, when the Commission on Sentencing was disbanded. The Commission was originally established by the General Assembly to overhaul the criminal code and develop a consistent and equitable sentencing policy.⁸³ Decades-old and politically motivated laws remain on the books, increasing costs and mandating overly-harsh sentences without formal review. The General Assembly should reinstate the Commission on Sentencing to review and revise the state’s criminal code and sentencing guidelines with the goal of bringing sentence lengths to appropriate levels, cutting costs, and making comprehensive services available.

- **Parole reform:** The General Assembly should reduce the amount of time people spend in prison by reforming the state’s harsh restrictions on release. Tennessee’s “85 percent” rule severely limits people’s eligibility for parole. This rule requires that people convicted of certain crimes serve at least 85 percent of their sentence behind bars and makes them ineligible for certain reduction credits, regardless of individual mitigating circumstances. By adopting an approach based on each person’s trajectory and development, similar to Kansas’ 2013 reform,⁸⁴ Tennessee can tailor people’s eligibility for parole based on their specific circumstances. Further, in accordance with 2015 recommendations from the Governor’s Task Force on Sentencing and Recidivism, Tennessee should eliminate arbitrary parole decisions by adopting a presumptive release date.⁸⁵ Tennessee must also ensure that parole board members have the appropriate expertise to make decisions regarding people’s right to liberty; this includes experience in criminal justice, mental

health, substance abuse treatment, and socio-economic issues.

- **Earned time/credit reform:** Tennessee should also consider expanding the availability of earned credits against a prison sentence through participation in educational, vocational, and other opportunities. Tennessee’s recently-passed “TN Together” initiative invests \$16 million in state funds into opioid treatment options; this plan includes a provision that grants eligible people credit reductions of 60 days upon successful completion of a treatment program.⁸⁶ By making more programs like this available in prisons, the General Assembly would not only reduce overall time served, but could also ensure smoother transitions into society after release, increasing public safety as a whole.

Reducing Disability Disparities

The rate of people with disabilities in the criminal system is two to six times that of the general population.⁸⁷ In particular, people with psychiatric disabilities are dramatically overrepresented in jails and prisons across the country.⁸⁸

- People showing signs of mental illness are twice as likely to be arrested as people without mental illness for the same behavior.⁸⁹
- People with mental illness are sentenced to prison terms that are, on average, 12 percent longer than other people in prison.⁹⁰
- People with mental illness stay in prison longer because they frequently face disciplinary action from conduct that arises due to their illness — such as attempted suicide — and they seldom qualify for early release because they are not able to participate in rehabilitative programming, such as educational or vocational classes.⁹¹

Furthermore, sentencing reforms appear to leave people with psychiatric disabilities behind. In recent years in California, for example, the prison population has decreased by more than 25 percent, but the number of people with a serious mental disorder has

increased by 150 percent — an increase in both the rate and the absolute number of incarcerated people with psychiatric disabilities.⁹²

Screening tools to evaluate psychiatric disabilities vary by state and jurisdiction, but the most reliable data indicates that more than half of jail populations and close to half of prison populations have mental health disabilities.⁹³ The fact that people with mental health disabilities are arrested more frequently, stay incarcerated longer, and return to prisons faster is not due to any inherent criminality related to psychiatric disabilities. It arises in part because of the lack of accessible and appropriate mental health treatment in the community; in part because of a perception of dangerousness by police, prosecutors, and judges; and in part because prison staff and probation and parole officers fail to recognize and accommodate disability.

Many people of color in jails and prisons are also people with disabilities, and efforts to reduce racial disparities must go hand in hand with efforts to reduce disability disparities.⁹⁴ Not surprisingly, many of the strategies to reduce disability disparities are similar to approaches that reduce racial disparities. Some examples include:

- Investing in pre-arrest diversion:
 - Creating behavioral health centers run by state departments of health as alternatives to jails, or creating emergency rooms for people experiencing mental health crises or addiction issues
 - Training dispatchers and police to divert people with mental health issues who commit low-level nuisance crimes to these behavioral health centers. Jurisdictions that have followed this approach have significantly reduced their jail populations.⁹⁵
- Ending arrest and incarceration for low-level public order charges, such as being drunk in public, urinating in public, loitering, trespassing, vandalism, and sleeping on the street. If needed, referring people who commit these crimes to behavioral health centers

- Requiring prosecutors to offer diversion for people with mental health and substance abuse disabilities who are charged with low level crimes
- Evaluating prosecutors' charging and plea-bargaining practices to identify and eliminate disability bias
- Investing in diversion programs and alternatives to detention designed for people with disabilities, including programs that provide supportive housing, Assertive Community Treatment, wraparound services, and mental health supports
- Reducing the use of pretrial detention while increasing reminders of court dates and other supports to ensure compliance with pretrial requirements
- Reducing re-incarceration due to parole or probation revocations through intensive case management, disability-competent training for officers on alternatives to incarceration and reasonable modifications to requirements of supervision, and no return to incarceration for first and second technical violations
- Addressing bias against mental disabilities in risk assessment instruments used to assist decision-making in the criminal justice system
- Shifting funding away from law enforcement and corrections into supportive housing, intensive case management, schools, drug and mental health treatment, community organizations, job creation, and other social service providers.

were selected based on the potential to reduce the prison population, as well as other factors. To chart your own path to reducing mass incarceration in Tennessee, visit the interactive online tool at <https://urbn.is/ppf>.

Forecaster Chart

There are many pathways to cutting the prison population in Tennessee 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

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 population**	Cost savings ***
Drug offenses	<ul style="list-style-type: none"> Institute alternatives that end all admissions for drug possession Reduce average time served for drug distribution by 60% Institute alternatives that reduce admissions for drug distribution by 60% 	15.30% reduction	White: 1.4% increase Black: 1.7% decrease Hispanic/Latino: 2.5% decrease Native American: 4.8% increase	\$108,327,244
Theft	<ul style="list-style-type: none"> Reduce average time served by 60% Institute alternatives that reduce admissions by 50% 	7.94% reduction	White: 2.7% decrease Black: 3.4% increase Hispanic/Latino: 5.7% increase Native American: 2.0% increase	\$51,614,479
Burglary	<ul style="list-style-type: none"> Reduce average time served by 50% Institute alternatives that reduce admissions by 40% 	7.12% reduction	White: 1.7% decrease Black: 2.1% increase Hispanic/Latino: 4.4% increase Native American: 5.4% increase	\$44,739,904
Robbery	<ul style="list-style-type: none"> Reduce average time served by 50% Institute alternatives that reduce admissions by 30% 	6.79% reduction	White: 3.0% increase Black: 4.2% decrease Hispanic/Latino: 1.4% increase Native American: 5.2% increase	\$37,478,075
Public order offenses****	<ul style="list-style-type: none"> Reduce average time served by 60% Institute alternatives that reduce admissions by 50% 	5.40% reduction	White: 2.5% decrease Black: 3.3% increase Hispanic/Latino: 3.7% increase Native American: 2.3% increase	\$34,535,057

Impact Compared to 2025 Baseline*				
Offense category	Policy outcome	Prison population impact	Impact on racial and ethnic makeup of population**	Cost savings ***
Assault	<ul style="list-style-type: none"> Reduce average time served by 50% Institute alternatives that reduce admissions by 30% 	4.90% reduction	White: 0.5% increase Black: 0.7% decrease Hispanic/Latino: 1.4% increase Native American: 11.2% decrease	\$29,213,440
Fraud	<ul style="list-style-type: none"> Reduce average time served by 60% Institute alternatives that reduce admissions by 50% 	2.20% reduction	White: 0.8% decrease Black: 1.0% increase Hispanic/Latino: 0.3% increase Native American: 2.9% decrease	\$14,914,342
Weapons offenses****	<ul style="list-style-type: none"> Reduce average time served by 60% 	0.59% reduction	White: 0.3% increase Black: 0.4% decrease Hispanic/Latino: 0.6% increase Native American: 0.6% increase	\$3,321,408

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

** 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 Tennessee where Black people make up 41 percent of the prison population, but only constitute 17 percent of the state’s total population.⁹⁶

*** 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.

**** 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 Tennessee were to carry out reforms leading to the changes above, 14,411 fewer people would be in prison in Tennessee by 2025, a 50.24 percent decrease. This would lead to a total cost savings of \$957,644,298 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 Tennessee’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 is 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

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