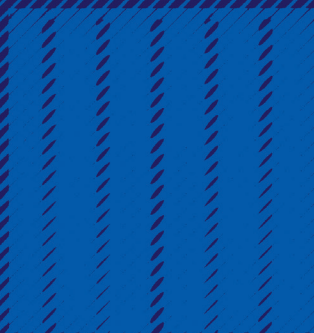


Blueprint for Smart Justice
West Virginia



Blueprint *for* Smart Justice
West Virginia

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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. This overreliance on the criminal justice system doesn't just affect the people who are incarcerated — millions of lives have been upended, and families torn apart. The 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 and invest instead in alternatives to prison, including approaches better designed to break the cycle of crime and recidivism by helping 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 — and in some cases would worsen them. In West Virginia — where the imprisonment rate of Black adults was nearly four times that of white adults in 2017¹ — reducing the number of people imprisoned will not on its own reduce racial disparities within the prison system. These findings confirm for the Campaign that urgent work remains for advocates, policymakers, and communities across the nation to focus on efforts like policing and prosecutorial reform that are specific to combatting these disparities.

West Virginia's prison population² grew by an astronomical 470 percent between 1980 and 2016,³ and by 2017, there were 7,042 people imprisoned in the state.⁴ At least 40 percent of people in West Virginia prisons in 2017 were serving time for a nonviolent offense,⁵ and between 2010 and 2014, prison admissions for drug offenses grew by 19 percent.⁶ Theft, burglary, and fraud were other common offenses for people admitted to prison in 2014.⁷ In 2017, three out of every five people (59 percent) in West Virginia prisons had less than a high school level education.⁸ The state's jail population has also grown in recent years.⁹ In June 2017, there was an average of 4,929 people in regional jails in West Virginia on any given day.¹⁰

Although the state enacted Justice Reinvestment¹¹ reforms in 2014, a 2015 forecast from the state's Department of Military Affairs and Public Safety predicted the West Virginia prison population would continue to grow at an average annual rate of 1.8 percent for the following 10 years absent further reform.¹²

So, what's the path forward?

To start, criminal justice stakeholders in West Virginia must prioritize comprehensive, transparent data collection and analysis to better identify shortcomings and solutions within the existing system. In the juvenile context, the West Virginia Legislature has already tasked the Division of Justice and Community Services, under the Department of Military Affairs and Public Safety, with creating a centralized juvenile system database that will standardize records and consolidate data from various agencies.¹³ This database offers a model that could be replicated in the adult criminal justice system.

Nearly one in every four people released from prison in West Virginia in 2014 was returned to prison within three years,¹⁴ which reflects the state's need to invest in alternatives to prison such as drug and mental health treatment programs. While the West Virginia Community Corrections Act¹⁵ is a promising start, more alternatives to incarceration must be developed, and officials at all levels must be educated about these tools. Diversion from the criminal justice system and treatment programs for people with mental illness is also essential; in particular, treatment must be made available to at-risk youth and young adults before they make contact with the legal system.

While the West Virginia Legislature is currently required to produce fiscal notes to justify punishment ranges against their costs to the state, these notes must be more carefully tailored to their specific circumstances, and more thorough. The high costs of incarceration, and the savings gained by employing alternatives to incarceration, should be considered at all phases of contact with the criminal justice system. For example, West Virginia courts should require prosecutors to include and justify estimates of the cost of potential incarceration.

If West Virginia were to adopt the changes outlined in this Smart Justice 50-State Blueprint's forecaster chart and achieve a 50 percent reduction in its prison population, the state could save more than \$375 million by 2025 — money that could be better spent on schools, infrastructure, and services for West Virginians.

Ultimately, the answer is up to West Virginia's voters, policymakers, communities, and criminal justice advocates as they move forward with the urgent work of ending West Virginia's obsession with mass incarceration.

The State of the West Virginia Prison System

Between 1980 and 2016, West Virginia's prison population increased nearly six-fold (a 470 percent increase).¹⁶ While the state population decreased by 2 percent between 2012 and 2017, the prison population increased by 13 percent, and the state's jail population increased by 1 percent.¹⁷ As of June 2017, there were 7,042 people imprisoned in West Virginia.¹⁸ When you include people on community supervision, like probation and parole, and in local jails, the reach of the criminal justice system is even greater: In 2016, West Virginia had nearly 1.4 percent of its adult population under some form of correctional control.¹⁹

Although the U.S. state imprisonment rate decreased by 7 percent between 2000 and 2016, West Virginia's imprisonment rate increased 86 percent over the same time period.²⁰ Although the state passed Justice Reinvestment²¹ reforms in 2013, the Department of Military Affairs and Public Safety predicted the West

AT A GLANCE

WEST VIRGINIA PRISONS

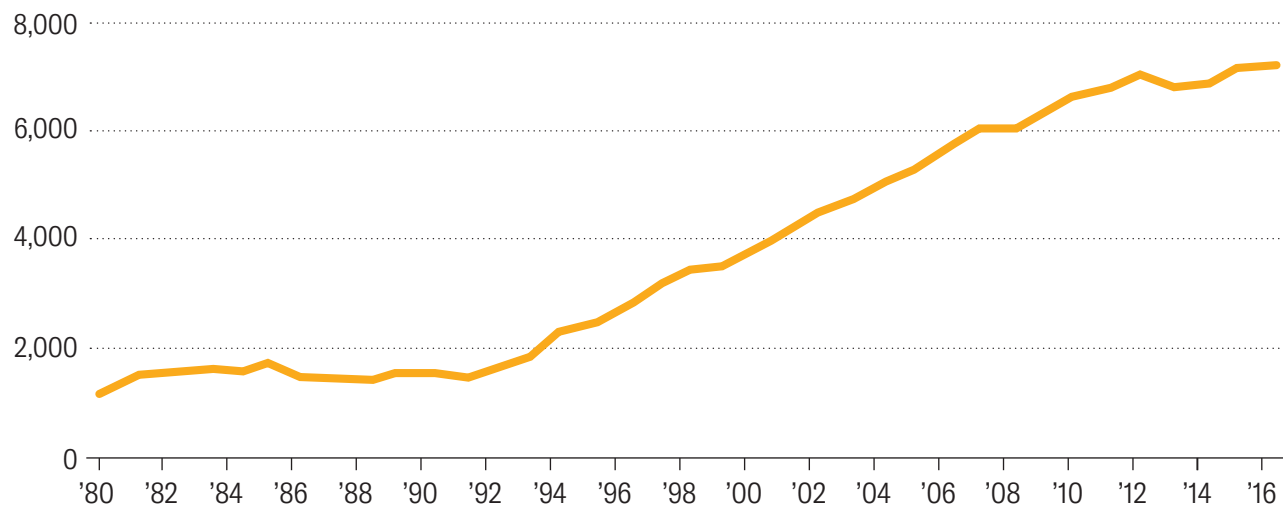
West Virginia's prison population grew by **470 percent** between 1980 and 2016.

In 2016, nearly **1.4 percent** of West Virginia's adult population was under some form of correctional control.

West Virginia's imprisonment rate increased **86 percent** between 2000 and 2016.

Virginia prison population would continue to grow at an average annual rate of 1.8 percent between 2014 and 2024 absent further reform.²²

WEST VIRGINIA PRISON POPULATION



What Is Driving People Into Prison?

The number of people admitted to West Virginia prisons²³ annually increased 14 percent from 2007 to 2017.²⁴ In 2017, 3,693 people were committed to West Virginia prisons. Fifty-seven percent of these admissions were people convicted of new crimes who were not on parole at the time of their arrest.²⁵

In 2014, nearly one in four (24 percent) people admitted to West Virginia prisons had been convicted of drug offenses, the most common controlling offense²⁶ category.²⁷ Admissions for drug offenses increased 19 percent between 2010 and 2014²⁸ and are predicted to continue to increase absent reform.²⁹ Admissions for theft increased 17 percent over the same time period and accounted for one in ten admissions (10 percent) to West Virginia prisons in 2014. Sixteen percent of admissions to West Virginia prisons in 2014 were for burglary, and another 7 percent were for fraud. Other common offenses for admissions to West Virginia prisons in 2014 included assault (5 percent) and robbery (5 percent).³⁰

Admissions to prison from supervision also contribute to the growing prison population. The number of people admitted to West Virginia prisons for a parole violation increased 24 percent between 2007 and 2017.³¹ In 2017, nearly one in five (17 percent) admissions to prison in West Virginia were for parole violations. The

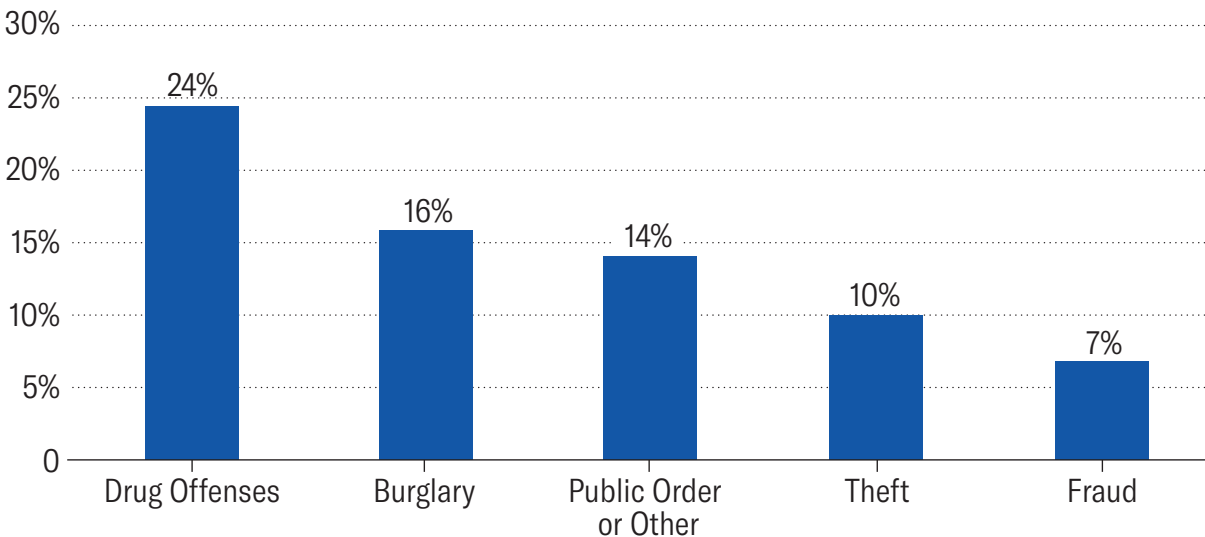
vast majority of these revocations (83 percent) were for technical violations, which can include things like missing an appointment or failing a drug test.³²

Additionally, a lack of access to treatment options and reentry support for people who have served time in West Virginia prisons means many return to prison. Nearly one in four people (24 percent) released from prison in West Virginia in 2014 was returned to prison within three years.³³

The Current Prison and Jail Population

At least 40 percent of people imprisoned in West Virginia in 2017 were serving time for a nonviolent offense.³⁴ More than one in four people (26 percent) were serving time for a property offense, which included 13 percent of people imprisoned for burglary or breaking and entering. One in nine (11 percent) people imprisoned in West Virginia in 2017 was serving time for a drug or narcotics offense, the vast majority (96 percent) of whom had been convicted of a drug distribution offense. Other common offenses in the 2017 West Virginia prison population included robbery (10 percent), larceny and theft offenses (6 percent), and assault (5 percent).³⁵ Additionally, in 2017, three out of

WEST VIRGINIA PRISON ADMISSIONS BY TOP OFFENSE TYPES (2014)



every five people (59 percent) in West Virginia prisons had less than a high school level education.³⁶

In addition to state prisons, in June 2017, there was an average of 4,929 people in regional jails in West Virginia on any given day, one-third (33 percent) of whom were under West Virginia Division of Corrections and Rehabilitation (WVDOC) authority awaiting transfer to a state prison and another 4 percent of whom were under federal jurisdiction.³⁷ People held in regional jails often lack access to various educational and rehabilitative services that are more readily available in state prisons.³⁸ In 2015, more than half (55 percent) of people under local jurisdiction in West Virginia jails were being held pretrial and had not been convicted of a crime.³⁹

Why Do People Stay in Prison for So Long?

People in West Virginia are increasingly receiving longer sentences and spending more time in prison. In 2014, more than half (52 percent) of all people admitted to West Virginia prisons were sentenced to at least 10 years. The number of people admitted to West Virginia prisons with sentences of at least 10 years increased 8 percent between 2010 and 2014.⁴⁰

AT A GLANCE

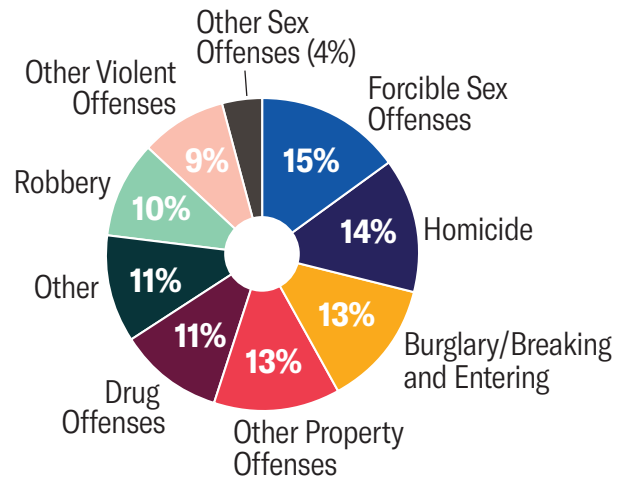
WEST VIRGINIA JAIL AND PRISON POPULATION

In June 2017, there was an average of **4,929 people** in regional jails in West Virginia on any given day.

Nearly **1 in 4 people** admitted to West Virginia prisons in 2014 was convicted of a drug offense.

In 2017, **59 percent** of people in West Virginia prisons had less than a high school education.

WEST VIRGINIA PRISON POPULATION BY OFFENSE TYPE (2018)



These longer prison sentences influence the amount of time that people serve in prison. Between 2010 and 2014, the average amount of time that people released from West Virginia prisons had served increased 10 percent to nearly two (1.96) years. Over the same time period, time served for violent offenses increased by 40 percent, and people convicted of violent offenses who were released in 2014 had spent an average of more than four (4.19) years in prison. Average time served for drug offenses also increased over this time period, growing 7 percent and reaching 1.28 years for people released in 2014.⁴¹

Between 2008 and 2013, the number of parole decisions increased 73 percent, and the number of people granted parole increased by 84 percent. Still, many people considered for parole are denied, thus lengthening their prison terms. In 2013, the West Virginia Parole Board denied parole to more than two out of every five (43 percent) people given a parole decision.⁴²

Additionally, West Virginia has harsh sentencing laws that mandate lengthy sentences for people convicted of prior offenses. For example, under West Virginia law, a person convicted of a third offense punishable by a prison sentence can be subject to a sentencing enhancement of an additional five years of imprisonment.⁴³

AT A GLANCE

LENGTH OF IMPRISONMENT AT A GLANCE

Between 2010 and 2014, the average time served at release in West Virginia prisons for violent offenses increased by **40 percent**.

10 percent of West Virginia's prison population was serving a life sentence in 2017.

Of all people who entered West Virginia prisons in 2014, 52 percent had a sentence of at least **10 years**.

Life sentences contribute to the West Virginia prison population through a “stacking effect,” meaning that a small number of people are admitted to prison on a life sentence each year but they stay in prison for a very long time and can therefore make a significant contribution to prison population growth over time. Although a small number of people enter prison with a life sentence each year — just 20 people in 2014⁴⁴ — 10 percent of the 2017 prison population (682 people) was serving a life sentence.⁴⁵ The number of people serving life sentences in West Virginia prisons increased 11 percent between 2007 and 2017.⁴⁶

Who Is Imprisoned

Black West Virginians: Incarceration in West Virginia has a profoundly disparate impact on Black communities. In 2017, the imprisonment rate of Black adults in West Virginia (1,475 per 100,000) was nearly four (3.9) times that of white adults. Although they made up just 3 percent of the state's adult population, Black people made up 13 percent of the prison population in West Virginia in 2017. Within the population of Black people in West Virginia prisons in 2017, the vast majority (95 percent) were Black men, while the remaining 5 percent were Black women.⁴⁷ In

AT A GLANCE

DEMOGRAPHICS AT A GLANCE

The imprisonment rate of Black adults in West Virginia was **nearly four times** that of white adults in 2017.

Roughly **1 in every 5** people in West Virginia prisons in 2017 were over the age of 50.

The number of women in West Virginia prisons grew by **22 percent** between 2007 and 2017.

2014, one in every 39 adult Black men in West Virginia was in prison.⁴⁸

Women in West Virginia: Between 2007 and 2017, the number of women in West Virginia prisons grew by 22 percent.⁴⁹ In 2016, seven in every ten women (71 percent) serving time in West Virginia prisons were there for a drug, property, or public order offense.⁵⁰ West Virginia is now imprisoning 95 women for every 100,000 — the 8th-highest rate in the United States.⁵¹

Older West Virginians: The number of people over the age of fifty in West Virginia prisons, a population generally considered to pose a negligible risk to public safety,⁵² increased by 13 percent between 2012 and 2017 and accounted for over one in five (21 percent) people in West Virginia prisons in 2017.⁵³ In 2014, approximately half (53 percent) of the prison population older than 50 were admitted after their 50th birthday, and 8 percent of all prison admissions in 2014 were for people older than 50.⁵⁴

People With Mental Health and Substance Use Disorders

Mental health needs are prevalent in West Virginia's prison population. According to the most recent available data (2011), at least 22 percent of people given a psychological examination upon entrance into the

AT A GLANCE

MENTAL HEALTH AND SUBSTANCE USE DISORDERS

Of all people revoked to prison from probation in 2010, **62 percent** were identified as needing substance use treatment.

At least **22 percent** of people admitted to West Virginia prisons in 2011 who were examined were identified as in need of mental health treatment.

In 2015, it was estimated that **85 percent to 90 percent** of incarcerations could be attributed to drug or alcohol use.

Division of Corrections were identified as having some level of mental health treatment needs.⁵⁵

Additionally, of all people revoked to prison from probation in 2010, 62 percent were identified as needing substance use treatment. In 2011, possession or use of drugs or alcohol was a factor in 78 percent of all technical parole revocations to prison. Justice Reinvestment legislation passed in 2013 attempted to address this issue by increasing access to substance abuse treatment both inside prisons and for people on community supervision.⁵⁶ Still, in 2015, then-Commissioner of the West Virginia Division of Corrections Jim Rubenstein estimated that 85 percent to 90 percent of incarcerations could be attributed to drug or alcohol abuse.⁵⁷

Budget Strains

As West Virginia's imprisoned population has risen, so has the cost burden. In 2017, West Virginia spent \$191 million of its general fund on corrections, accounting for 4.5 percent of the state's total general fund spending.⁵⁸ General fund spending on corrections increased more than four-fold (307 percent increase) between 1986 and 2017, forcing tradeoffs in other state spending priorities like education: Higher education

AT A GLANCE

BUDGET

General fund spending on corrections increased by **307 percent** between 1986 and 2017.

In 2017, West Virginia spent **\$191 million** of its general fund on corrections.

general fund spending decreased 14 percent over the same time period.⁵⁹

Ending Mass Incarceration in West Virginia: A Path Forward

Mass incarceration is a result of many systems failing to support our communities. The consequences that flow from it do not impact only those in the system; families are upended, leaving children without their parents, and the employment pool dwindles as millions of potential workers remain behind bars. To end it, we must develop policies that better address inadequacies throughout our education, health care, and economic systems – to name a few. There are many potential policy changes that can help West Virginia end its mass incarceration crisis, but it will be up to the people and policymakers of West Virginia 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 jail and prison in the first place.

As a foundational step to develop stronger policy recommendations beyond those listed below, West Virginia criminal system stakeholders should prioritize data collection and analysis to allow for targeted and systematic approaches that can be taken to reduce incarceration and they should be transparent about such analysis with the public. Comprehensive, reliable, and uniform criminal system data from jails, courts, and prisons could help strengthen the system significantly by identifying needed areas of reform. The West Virginia Legislature has already recognized the need for this in the juvenile context, having tasked the Division of Justice and Community Services, under the Department of Military Affairs and Public Safety, with creating a centralized juvenile system database.⁶⁰ The adult criminal justice system would similarly benefit from standardizing records and centralizing data from various agencies.

Reducing Admissions

To end mass incarceration, West Virginia must break its overreliance on jails and prisons as a means to hold people accountable for their crimes. Evidence indicates that prisons seldom offer adequate solutions to wrongful behavior. In fact, imprisonment can be counterproductive – increasing cycles of harm and violence, and failing to provide rehabilitation for incarcerated people or adequate accountability to the survivors of crime.⁶¹ Here are some strategies:

- **Alternatives to incarceration:** The good news is that alternatives exist. Several types of alternative-to-incarceration programs have shown great success in reducing both violent and nonviolent criminal activity. Programs offering support services such as substance use treatment, mental health care, employment, housing, health care, and vocational training – often with a community service requirement – have significantly reduced recidivism rates for participants.⁶² For crimes involving violence, restorative justice programs – which are designed to hold responsible people accountable and support those who were harmed – can be particularly promising. When they are rigorous and well implemented, these processes have not only been demonstrated to reduce recidivism for defendants,⁶³ but they have also been shown to decrease symptoms of posttraumatic stress in victims of crime.⁶⁴ Prosecutors and judges who embrace these solutions can fulfill their responsibilities to public safety and to supporting victims in their healing – and can often generate far better results than imprisonment can deliver. Other successful models include programs that

divert people to treatment and support services before arrest, and programs led by prosecutors that divert people before they are charged.

Lawmakers can explore such interventions at multiple phases in the system, whether through decriminalization or alternatives to arrest, charges, or incarceration. The West Virginia Community Corrections Act is a good start⁶⁵; however, officials at all levels must be made aware of these tools, and alternatives that have been created under this law. More alternatives to incarceration must also be developed. To encourage building these types of programs, the cost saving relative to avoided incarceration should be calculated regularly and that amount placed in a special revenue account to fund further alternatives to incarceration.

- **Expanded treatment – mental health:**

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.⁶⁶ When implemented effectively, diversion reduces arrests, encourages voluntary treatment in the community, and saves money.⁶⁷ Effective diversion programs coordinate with community services that provide a wide range of substantial, quality wraparound treatment and support for people with disabilities to access housing, employment, and intensive, individualized supports in the community. After an initial investment in community supports, diversion programs have the potential of saving jurisdictions large amounts of money.⁶⁸ One way to support treatment options is expanding Medicaid so that West Virginians have greater access to mental health treatment and substance use treatment while on probation/parole and after their separation from the criminal justice system. West Virginia should also ensure that mental health treatment is available and accessible for at-risk youth and young adults before they even have contact with the legal system.

- **Expanded treatment – addiction:** Substance use disorders are often underlying drivers of a substantial number of crimes, including and especially more serious offenses like burglaries, robberies, and assaults. Addressing substance use through treatment rather than incarceration can more effectively reduce crime.⁶⁹ Drug courts and day report centers have been effective in West Virginia, but policymakers must understand that treatment for substance abuse is not a one-size-fits-all approach. Instead, the state should make a variety of treatments, including medication-assisted treatment, readily available.
- **Support decriminalization:** With the passage of the Medical Cannabis Act, West Virginia has taken the first steps in ending prohibition, allowing qualifying patients with doctors' written certifications for medical cannabis to register with the health department to use and buy it from regulated dispensaries.⁷⁰ The Legislature needs to more broadly move away from a culture of criminalization, stop expanding the criminal code, and look at alternatives to incarceration. West Virginians can let their representatives know that decriminalization is a winning commitment both for the community as well as the ballot box.
- **Eliminate cash bail:** West Virginia can significantly reduce its rates of pretrial detention by eliminating its use of cash bail. Far too often, people who 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 leaves them with a difficult choice: take a plea deal or fight the case from behind bars. While detained pretrial, research shows many people face significant collateral damage, such as job loss or interrupted education.⁷¹ After even a short stay in jail, taking a plea deal sounds less burdensome than losing everything, which is likely why evidence shows that pretrial detention significantly increases a defendant's risk of conviction.⁷² The current cash bail system harms people of color in particular. Research shows that people of color are detained

at higher rates across the country when unable to meet bail and that courts set significantly higher bail amounts for them.⁷³ In order to significantly reduce pretrial detention and combat racial disparities, the West Virginia Legislature should eliminate cash bail and limit pretrial detention to the rare case where a person poses a serious, clear threat to another person.

- **More frequent grand jury decisions:** Grand juries are typically convened infrequently, and people can sit in jail for a long time waiting for an indictment. Courts and prosecutors alike should ensure that no one is held behind bars for lengthy periods simply awaiting a grand jury determination on whether to bring criminal charges or an indictment against them.
- **Prosecutorial reform:** Prosecutors are the most powerful actors in the criminal justice system, with the ability to wield the power of the state against an individual to deprive that person of life, liberty, and property. The initial decisions of whether to charge someone with a crime and, if so, what and how many charges, have a major impact on every aspect of a person's experience with the system, not least of which is the amount of time someone faces and eventually serves incarcerated. There should be some mechanism for the state and counties to review and assess those decisions overall to ensure that they make these decisions appropriately. To ensure their recommendations on pretrial conditions and sentences for individuals are also appropriate, courts should mandate that prosecutors include and justify estimates of the cost of potential incarceration.

Prosecutorial reform also means leveling the playing field between prosecutors and defense attorneys. One way to level this field is to ensure public defenders are given the same financial resources per case as the prosecution. With better resources, public defenders can invest in more thorough investigations and spend

“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.”⁹³

— From *The New Jim Crow*, Michelle Alexander

more time on individual cases, allowing them to provide zealous representation.

Moreover, sometimes prosecutors wrongfully convict a person, whether through prosecutorial misconduct or the conviction of an innocent person. Legislation that supports Conviction Integrity Units can address wrongful convictions and prosecutorial misconduct. Conviction Integrity Units add oversight to a prosecutor's decisions, which encourages prosecutors to use greater scrutiny when reviewing and charging cases. Prosecutorial misconduct should be overseen and punished by the West Virginia Bar Association rather than judges, who work closely with prosecutors.

- **Expanding judicial discretion:** The Legislature can also limit the circumstances in which a judge is required to impose a prison sentence instead of community supervision, especially for drug offenses and in situations when the mandatory prison sentence is triggered by a prior felony. Judges must also have a variety of options at their disposal besides imprisonment, allowing them to require 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. The court, not the Legislature, should be in a position to decide whether such an option is appropriate in individual cases. Judges in West Virginia should be regularly informed of programs that they can use instead of incarceration. Judges should be given guidance through a “least restrictive” policy – mandating that judges always give the least restrictive punishment that is appropriate. The Legislature can and should rein in excessive sentences through maximum sentences, allowing judges to determine what is appropriate below or, at most, up to that punishment length.

A NOTE ON SPECIALTY COURTS

Many jurisdictions assign some people to “specialty courts” such as mental health, behavioral, veterans, and drug courts. The ACLU has concerns about the growing use of these courts. They may violate due process rights, including the rights to notice, hearing, and counsel, and may needlessly subject people with disabilities to criminal justice control. And they require significant resources that would be better spent providing upfront services in the community.

Where established, participation in these courts must be voluntary and not require a guilty plea. Specialty court providers must be disability-competent and informed in public health, addiction, and treatment. People in these courts must have access to counsel, and supervision should not last beyond the length of any sentence that would have been imposed for the underlying charge. Participants should be allowed to quit the program and either take a plea agreement or stand trial, protected by all due process rights, at any time. All programs must be tailored to meet individual needs, including having specialized, evidence-based options for people with dual diagnoses (mental health and substance use disorders). Finally, the response to lapses or non-compliance should be enhanced case management, not incarceration.

Reducing Time Served

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

- **Sentencing reform – general:** The Legislature can amend West Virginia’s criminal code to reduce sentencing ranges, including and especially for drug offenses, burglary and other property offenses, robbery, public order offenses, and assault. Further, while the Legislature must produce fiscal notes to justify punishment ranges against their costs to the state, often these notes use templated and overly brief language. Instead, the Legislature should include more thorough explanations to justify the costs of any lengthy sentences. West Virginia courts should also be more transparent in sentencing, making it easier for individuals, their families, and the public to understand how long a period of incarceration will last. The Legislature and courts should set clear guidelines on when to use consecutive and concurrent sentences, which can drastically alter the length of time a person is incarcerated. In those guidelines, judges should be mandated to include and justify estimates of the cost of incarceration to help prevent the imposition of unnecessarily harsh punishments.
- **Sentencing reform – enhancements:** The Legislature can also limit the circumstances and the severity of West Virginia’s prior felony sentencing in which the presence of even a single prior felony can both substantially increase the sentencing range and delay initial parole eligibility. Multiple prior felonies trigger even more substantial enhancements to both sentencing range and initial parole eligibility. West Virginia judges use their own discretion in what qualifies as a violent crime. Comparatively, the Federal Bureau of Investigation specifically defines violent crime as specific offenses, including murder and non-negligent manslaughter, forcible rape, robbery, and aggravated assault.⁷⁴ By adopting a limited, uniform definition of a violent crime, the West

Virginia Legislature can limit enhancements based on violence.

- **Parole reform:** In addition, improving parole and release policies and practices to ensure that eligible people are paroled more quickly is another key way to reduce the amount of time people spend in prison. Specifically, the Parole Board should adopt a policy of “presumptive parole.” By moving to a system of presumptive parole, the law would require parole boards to justify denying release when someone is eligible for parole. Increasing parole opportunities allows more people to reintegrate into society, saving taxpayer dollars every year. Research shows that presumptive parole will also reduce recidivism after release while promoting safety inside of correctional facilities.⁷⁵
- **Reducing parole revocations:** Parole revocations for technical violations are often due to the physical or mental disabilities that many parolees have. Parole and probation officers are required to provide reasonable accommodations so that parolees with disabilities have an equal opportunity to comply with the requirements of parole. Proper training of parole officers, and greater awareness of and advocacy for these requirements could reduce the number of technical violations significantly. Incarceration for technical violations that do occur should be eliminated entirely.
- **Earned time/earned credit reform:** West Virginia should consider expanding the availability of earned credits against a prison sentence through participation in educational, vocational, and other opportunities. Under legislation passed in 2019,⁷⁶ participation in these types of programs can expedite expungement of criminal records. Expanding these programs to allow early release is a practical next step in reducing incarceration. Further, the Legislature should ensure transparency in the process, guiding people in prison towards earned credits, which will both help reduce recidivism rates while reducing prison population and costs.⁷⁷

- **Compassionate release:** The West Virginia Legislature should expand access to compassionate release from prison by prohibiting private nursing homes and care facilities from banning patients with a history of incarceration. The state’s prison population is rapidly aging. Keeping aging and seriously injured or ill people incarcerated significantly taxes prison resources. Studies have shown that incarcerating an older (50 and above) person costs double what it costs to incarcerate a younger person.⁷⁸ What is more, keeping older people behind bars does not serve the goal of incapacitation, particularly as studies have clearly shown that as people age their propensity to commit crime significantly declines.⁷⁹ There is also clear evidence showing that older persons have much lower rates of recidivism than their younger counterparts.⁸⁰

Reducing Racial Disparities

Reducing the number of people who are imprisoned in West Virginia 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 post-release opportunity.⁸¹ 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 2012.⁸² 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.⁸³

Ending mass incarceration is critical to eliminating racial disparities 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 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
 - Eliminating 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
 - Encouraging judges to use their power to dismiss cases that originate with school officials or on school grounds when the matter may be adequately addressed through school disciplinary or regulatory process to avoid incarcerating children during their most formative years
 - Eliminating fines and fees, which effectively criminalize poverty
 - Shifting funding from law enforcement and corrections to community organizations, job creation, schools, drug and mental health treatment, and other social service providers

Reducing Disability Disparities

The rates of people with disabilities in the U.S. criminal system is two to six times that of the general population.⁸⁴ In particular, people with psychiatric disabilities are dramatically overrepresented in jails and prisons across the country.⁸⁵

- People showing signs of mental illness are twice as likely to be arrested as people without mental illness for the same behavior.⁸⁶
- People with mental illness are sentenced to prison terms that are, on average, 12 percent longer than those of other people in prison.⁸⁷
- 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.⁸⁸

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

TAKING THE LEAD

Prosecutors: They make decisions on when to prosecute an arrest, what charges to bring, and which plea deals to offer and accept. They can decide to divert people to treatment programs (for example, drug or mental health programs) rather than send them to prison. And they can decide not to seek enhancements that greatly increase the length of sentences.

State lawmakers: They decide which offenses to criminalize, what penalties to include, how long sentences can be, and when to take away discretion from judges. 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 it is available for people who need it before they encounter the criminal legal system.

Administration leaders: The Division of Corrections and Rehabilitation, the Division of Justice and Community Services, the Department of Military Affairs and Public Safety, and the Department of Health and Human Resources are all important players in criminal justice reform. Each agency implements legislative policy and creates administrative policy. Engagement with policymakers from each of these agencies is necessary to ensure proper implementation of reform, and to create policies that will reduce admissions, create alternatives, and help individuals succeed outside of incarceration.

Parole boards: They decide when to allow people to leave 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 a lack of accommodations for their disabilities.

Probation and parole officers: Probation and parole officers are given significant deference in parole revocations or modifications. To reduce community supervision revocations, it is important they be trained in working with individuals with disabilities, including substance abuse disorders. It is also important that officers are committed to limiting recommendations for revocation, particularly for technical violations.

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.

Magistrates: In most cases, magistrates are the first judicial officers who people see when brought into the criminal justice system. Magistrates dictate whether a case can proceed, and they set bail and other pretrial release conditions. In West Virginia, magistrates are elected locally and do not require any specific legal training. Ensuring that they are implementing the law fairly and not imposing excessive pretrial conditions is essential for reform.

following a court order, 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.⁸⁹

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.⁹⁰ 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 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.⁹¹ 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 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.⁹²
- 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, refer people who commit these crimes to behavioral health centers.
- Requiring prosecutors to offer diversion for people with mental health and substance use disabilities who are charged with low-level crimes
- Evaluating prosecutors' charging and plea-bargaining practices to identify and eliminate disability bias

- Requiring prosecutors' offices be transparent in their hiring practices, charging decisions, and plea deals
- 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 reincarceration 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

Forecaster Chart

There are many pathways to cutting the prison population in West Virginia 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 West Virginia, visit the interactive online tool at <https://urbn.is/ppf>.

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****
Drug offenses	<ul style="list-style-type: none"> Reduce average time served by 60% (from 1.23 to 0.49 years) Institute alternatives that reduce admissions by 60% (558 fewer people admitted) 	14.10% reduction (1,013 fewer people)	White: 1.3% increase Black: 10.1% decrease Hispanic/Latino: 9.0% increase Native American: 16.4% increase Asian: 16.4% increase Hawaiian/Pacific Islander: 16.4% increase Other: 4.0% decrease	\$36,563,171
Burglary	<ul style="list-style-type: none"> Reduce average time served by 50% (from 1.39 to 0.69 years) Institute alternatives that reduce admissions by 40% (231 fewer people admitted) 	7.81% reduction (561 fewer people)	White: 0.6% decrease Black: 4.7% increase Hispanic/Latino: 1.6% decrease Native American: 8.5% increase Asian: 33.7% decrease Hawaiian/Pacific Islander: 8.9% decrease Other: 2.5% decrease	\$18,978,915
Public order offenses*****	<ul style="list-style-type: none"> Reduce average time served by 60% (from 1.03 to 0.41 years) Institute alternatives that reduce admissions by 60% (366 fewer people admitted) 	7.37% reduction (530 fewer people)	White: 0.2% decrease Black: 1.1% increase Hispanic/Latino: 4.7% increase Native American: 9.2% decrease Asian: 8.0% increase Hawaiian/Pacific Islander: 20.2% decrease Other: 4.0% increase	\$18,609,549

Theft	<ul style="list-style-type: none"> • Reduce average time served by 60% (from 1.45 to 0.58 years) • Institute alternatives that reduce admissions by 50% (202 fewer people admitted) 	6.47% reduction (465 fewer people)	White: 0.6% decrease Black: 3.6% increase Hispanic/Latino: 6.9% increase Native American: 6.9% increase Asian: 6.9% increase Hawaiian/Pacific Islander: 6.9% increase Other: 0.5% decrease	\$15,651,853
Robbery	<ul style="list-style-type: none"> • Reduce average time served by 50% (from 2.69 to 1.34 years) • Institute alternatives that reduce admissions by 40% (71 fewer people admitted) 	4.70% reduction (337 fewer people)	White: 0.6% increase Black: 3.8% decrease Hispanic/Latino: 5.7% decrease Native American: 3.1% decrease Asian: 27.1% decrease Hawaiian/Pacific Islander: 4.9% increase Other: 0.6% decrease	\$10,276,657
Other property offenses*****	<ul style="list-style-type: none"> • Reduce average time served by 60% (from 1.38 to 0.55 years) • Institute alternatives that reduce admissions by 60% (124 fewer people admitted) 	3.29% reduction (236 fewer people)	White: 0.4% decrease Black: 3.0% increase Hispanic/Latino: 3.4% increase Native American: 3.4% increase Asian: 3.4% increase Hawaiian/Pacific Islander: 36.5% decrease Other: 0.6% increase	\$7,762,332
Assault	<ul style="list-style-type: none"> • Reduce average time served by 50% (from 1.84 to 0.92 years) • Institute alternatives that reduce admissions by 40% (63 fewer people admitted) 	2.83% reduction (204 fewer people)	White: 0.3% increase Black: 2.4% decrease Hispanic/Latino: 3.0% decrease Native American: 2.3% decrease Asian: 2.9% increase Hawaiian/Pacific Islander: 2.9% increase Other: 0.5% increase	\$6,665,613

Fraud	<ul style="list-style-type: none"> • Reduce average time served by 60% (from 1.28 to 0.51 years) • Institute alternatives that reduce admissions by 50% (98 fewer people admitted) 	2.82% reduction (203 fewer people)	White: 0.3% decrease Black: 1.9% increase Hispanic/Latino: 1.0% decrease Native American: 2.9% increase Asian: 2.9% increase Hawaiian/Pacific Islander: 2.9% increase Other: 1.7% increase	\$7,458,936
Weapons offenses*****	<ul style="list-style-type: none"> • Reduce average time served by 60% (from 1.13 to 0.45 years) 	0.63% reduction (45 fewer people)	White: 0.2% increase Black: 1.2% decrease Hispanic/Latino: 0.6% increase Native American: 0.6% increase Asian: 0.6% increase Hawaiian/Pacific Islander: 0.6% increase Other: 0.6% increase	\$1,388,347

*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.

***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. 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 West Virginia, where Black people make up 13 percent of the prison population but constitute only 3 percent of the state’s total adult population.

****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.

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

*****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 West Virginia were to implement reforms leading to the changes above, 3,594 fewer people would be in prison in the state by 2025, a 50 percent decrease. This would lead to a total cost savings of \$375,824,503 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 West Virginia'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, and then added up to generate a measure of cumulative dollars saved over that time period.

Endnotes

- 1 Urban Institute analysis of: U.S. Census Bureau, Annual Estimates of the Resident Population by Sex, Age, Race, and Hispanic Origin for the United States and States; West Virginia Division of Corrections and Rehabilitation (WVDOC), Annual Report FY2017.
- 2 Note: Due to prison overcrowding, a portion of people under West Virginia Division of Corrections jurisdiction are held in regional jails. As of June 2017, out of the total WVDOC population of 7,042, 1,148 people (16 percent) were being held in regional jails (WVDOC, Annual Report FY2017). For the purposes of this Blueprint, the “prison population” refers to everyone under WVDOC jurisdiction, including both individuals confined in state prisons and individuals serving state sentences in local jails, unless otherwise noted.
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- 4 WVDOC, Annual Report FY2017.
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- 6 BJS, National Corrections Reporting Program (2015).
- 7 *Id.*
- 8 WVDOC Annual Report, FY2017. Note: Demographic data is not available for people under WVDOC jurisdiction who are being held in regional jails. Thus, the prison population in this statement refers only to people under WVDOC jurisdiction being held in prison (5,867 people in 2017).
- 9 WV Regional Jail and Correctional Facility Authority, Annual Report FY2017.
- 10 *Id.*
- 11 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. West Virginia engaged in the Justice Reinvestment Initiative process, successfully passing legislation in 2013 through Senate Bill 371. (Council of State Governments, West Virginia’s Justice Reinvestment, June 2014, <https://csgjusticecenter.org/wp-content/uploads/2014/06/West-Virginias-Justice-Reinvestment-Summary-Report.pdf>)
- 12 WV Department of Military Affairs and Public Safety, The Impact of Correctional Population Reduction Strategies in West Virginia: Forecast Projections and Cost Savings Estimates for 2014-2024 (Dec. 2015), <http://djcs.wv.gov/ORSP/SAC/Documents/Haas%20and%20Spence%202015%20Forecast%20Projections%20and%20Cost%20Savings%20FINAL.pdf>.
- 13 W.V. §49-2-913.
- 14 WVDOC, “Recidivism...Inmates Released in 2014” (July 2018).
- 15 W.V. §62-11C.
- 16 BJS, Corrections Statistical Analysis Tool.
- 17 U.S. Census Bureau, Annual Estimates of the Resident Population by Sex, Age, Race, and Hispanic Origin for the United States and States (2012 and 2017 estimates); WVDOC, Annual Report FY2012; WVDOC Annual Report FY2017; WV Regional Jail and Correctional Facility Authority, Annual Report FY2017. Notes: Prison population is taken in June of given year and includes only people held under Division of Corrections jurisdiction in prison (not jail). Jail population refers to average daily population in the given fiscal year. State population is taken on July 1 of given year.
- 18 WVDOC, Annual Report FY2017.
- 19 BJS, Correctional Populations in the United States (2016).
- 20 BJS, Corrections Statistical Analysis Tool.
- 21 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. West Virginia engaged in the Justice Reinvestment Initiative process, successfully passing legislation in 2013 through Senate Bill 371. (Council of State Governments, West Virginia’s Justice Reinvestment, June 2014, <https://csgjusticecenter.org/wp-content/uploads/2014/06/West-Virginias-Justice-Reinvestment-Summary-Report.pdf>)
- 22 WV Department of Military Affairs and Public Safety, The Impact of Correctional Population Reduction Strategies in West Virginia: Forecast Projections and Cost Savings Estimates for 2014-2024 (Dec. 2015), <http://djcs.wv.gov/ORSP/SAC/Documents/Haas%20and%20Spence%202015%20Forecast%20Projections%20and%20Cost%20Savings%20FINAL.pdf>.
- 23 Prison admissions reflect the number of people entering West Virginia prisons in a given year, while the total prison population refers to the total number of people imprisoned at a given time.
- 24 WVDOC, Annual Report FY2007; WVDOC, Annual Report FY2017. Note: Refers to fiscal years.
- 25 WVDOC, Annual Report FY2017. Note: Refers to fiscal year.
- 26 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.
- 27 BJS, National Corrections Reporting Program (2015).
- 28 BJS, National Corrections Reporting Program (2015).
- 29 Orsini, M. and Spence, D. (2017). “Drug Offenders Incarcerated in West Virginia: Characteristics and Population Trends, 1998-2015.” WV Department of Military Affairs and Public Safety, Office of Research and Strategic Planning.
- 30 BJS, National Corrections Reporting Program (2015).
- 31 WVDOC, Annual Report FY2007; WVDOC, Annual Report FY2017. Note: Refers to fiscal years.
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- 33 WVDOC, “Recidivism...Inmates Released in 2014” (July 2018).
- 34 Note: Nonviolent excludes all violent and sex offenses. This proportion may be an undercount given that there are a number of offenses (9 percent of the 2017 prison population) labeled as “other,” which cannot be classified as violent or nonviolent.
- 35 WVDOC, Annual Report FY2017.
- 36 WVDOC Annual Report, FY2017. Note: Demographic data is not available for people under WVDOC jurisdiction who are being held in regional jails. Thus, the prison population in this statement refers only to people under WVDOC jurisdiction being held in prison (5,867 people in 2017).
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- 38 Stemming the Tide: The Racial and Economic Impacts of West Virginia’s Prison System (2012), <https://www.afsc.org/sites/default/files/documents/Stemming%20the%20Tide%20The%20Racial%20and%20Economic%20Impacts%20of%20West%20Virginia%27s%20Prison%20System.pdf>.
- 39 Vera, Incarceration Trends (2015). Note: 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.
- 40 BJS, National Corrections Reporting Program (2015).
 - 41 BJS, National Corrections Reporting Program (2015).
 - 42 WV Department of Military Affairs and Public Safety, The Impact of Correctional Population Reduction Strategies in West Virginia: Forecast Projections and Cost Savings Estimates for 2014-2024 (Dec. 2015), <http://djcs.wv.gov/ORSP/SAC/Documents/Haas%20and%20Spence%202015%20Forecast%20Projections%20and%20Cost%20Savings%20FINAL.pdf>. Note: This excludes all parole cases delayed for further considerations (601 cases in 2013).
 - 43 West Virginia Code, §61-11-18, <http://www.wvlegislature.gov/WVCODE/ChapterEntire.cfm?chap=61&art=11§ion=18#11>.
 - 44 BJS, National Corrections Reporting Program (2015).
 - 45 WVDOC, Annual Report FY2017. Note: Life sentences include life with and without mercy and habitual life sentences.
 - 46 WVDOC, Annual Report FY2007; WVDOC, Annual Report FY2017.
 - 47 Urban Institute analysis of: U.S. Census Bureau, Annual Estimates of the Resident Population by Sex, Age, Race, and Hispanic Origin for the United States and States; WVDOC, Annual Report FY2017. Note: Demographic data is not available for people under WVDOC jurisdiction who are being held in regional jails. Thus, the prison population in this and the previous two sentences refers only to people under WVDOC jurisdiction being held in prison (5,867 people in 2017). All numbers are as of June 2017.
 - 48 The Sentencing Project, The Color of Justice: Racial and Ethnic Disparity in State Prisons (2016).
 - 49 WVDOC, Annual Report FY2007; WVDOC, Annual Report FY2017.
 - 50 WVDOC, Female Offenders Data Sheet: 2016. Note: Offense breakdown refers only to people under WVDOC jurisdiction being held in prison (not jail).
 - 51 BJS, Corrections Statistical Analysis Tool (2016).
 - 52 American Civil Liberties Union, At America's Expense: The Mass Incarceration of the Elderly, 2012; Human Rights Watch, Old Behind Bars, 2012.
 - 53 WVDOC Annual Report, FY2017; WVDOC Annual Report, FY2012. Note: Demographic data is not available for people under WVDOC jurisdiction who are being held in regional jails. Thus, the prison population in this paragraph refers only to people under WVDOC jurisdiction being held in prison (5,867 people in 2017).
 - 54 BJS, National Corrections Reporting Program
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 - 59 NASBO, State Expenditure Report 1985-2017.
 - 60 W.V. §49-2-913.
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 - 62 Mark S. Umbreit, Robert B. Coates, & 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.
 - 63 *Id.*
 - 64 Angel, Caroline & Sherman, Lawrence & Strang, Heather & Ariel, Barak & Bennett, Sarah & Inkpen, Nova & Keane, Anne & S. Richmond, Therese. (2014). "Short-term effects of restorative justice conferences on post-traumatic stress symptoms among robbery and burglary victims: a randomized controlled trial," *Journal of Experimental Criminology*. 10. 291-307. 10.1007/s11292-014-9200-0.
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 - 68 Henry J. Steadman, Lisa Callahan, Pamela Clark Robbins, Roumen Vesselinov, Thomas G. McGuire, and Joseph P. Morrissey, "Criminal Justice and Behavioral Health Care Costs of Mental Health Court Participants: A Six-Year Study," *Psychiatric Services* 65, no. 9 (September 2014): 1100-1104, <https://www.ncbi.nlm.nih.gov/pubmed/15818607>.
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