

# Blueprint *for Smart Justice* Colorado





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# Executive Summary

Over the past five decades, the United States has dramatically increased its reliance on the criminal justice system as a way to respond to drug addiction, mental illness, and poverty. As a result, the United States today incarcerates more people, in both absolute numbers and per capita, than any other nation in the world. 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 end its reliance on incarceration, invest instead in alternatives to prison and in approaches better designed to break the cycle of crime and recidivism, and help people rebuild their lives.

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

To advance these goals, the Campaign partnered with the Urban Institute to conduct a two-year research project to analyze the kinds of changes needed to cut by half the number of people in prison in every state and reduce racial disparities in incarceration. In each state and the District of Columbia, 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 2014, Colorado had the ninth-highest incarceration rate for Black people and the fourth-highest incarceration rate for Latino people<sup>1</sup> in the country. These findings confirm for the Campaign that urgent work remains for advocates, policymakers, and communities across the nation to focus on efforts like prosecutorial reform that are specific to combatting these disparities.

In Colorado, the prison population grew seven-fold between 1980 and 2016.<sup>2</sup> There is a litany of offenses<sup>3</sup> — including drug possession and distribution, burglary, and assault — that drives people into Colorado prisons. Drug offenses alone accounted for one in every seven admissions to prison in 2016.<sup>4</sup> These and other offenses that do not involve violence account for nearly half of people imprisoned in Colorado.<sup>5</sup>

Without reform, Colorado is on a trajectory to increase the number of people in its prisons by 38 percent by 2024.<sup>6</sup> One main driver of this increase is a growing number of new court commitments — likely due to a significant growth in the number of criminal cases prosecutors filed in District Court, which rose by 46 percent over the past five years, reaching 51,775 in 2017.<sup>7</sup>

The amount of time people spend in prison in Colorado is a key contributor to the large prison population.

Between 2010 and 2016, the number of people released annually to parole decreased by 11 percent.<sup>8</sup> In addition, Colorado's harsh sentencing enhancement laws have led to longer sentences. For example, one law requires a person convicted of a fourth felony to serve four times the maximum sentence for the new offense.<sup>9</sup> Some of these harsh sentences have recently garnered media attention, including one instance where a man convicted of leading a theft and forgery ring received a 96-year sentence.<sup>10</sup> Another man was sentenced to 48 years under the habitual offender statute for stealing a truck, despite probation officers recommending he be sentenced to probation based on his minor criminal past.<sup>11</sup>

So, what's the path forward?

Any meaningful effort to reach a 50 percent reduction in incarceration in Colorado must encourage prevention-oriented approaches to public safety, such as recognizing drug addiction as a public health problem. Rather than relying on jails and prisons, policymakers should implement evidence-based alternatives, like expanded treatment or mental health care programs, to help divert people to rehabilitative centers. Colorado lawmakers should also decriminalize certain offenses to avoid overly harsh penalties and reduce lengthy habitual sentencing for drug-related conduct. They should further evaluate ways to increase parole for those with multi-year records of safe behavior, increase transition to community correction facilities, and reconsider legislation that previously decreased parole eligibility for low-level offenders.

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

# The State of the Colorado Prison System

Colorado's prison population has soared in recent decades, growing more than seven-fold (661 percent) between 1980 and 2016.<sup>12</sup> At its peak in 2008, Colorado imprisoned 23,274 people.<sup>13</sup> As of June 2018, there were 20,136 people in Colorado prisons.<sup>14</sup> When people in local jails and on community supervision, like probation and parole, are included, the reach of Colorado's criminal justice system is even greater.

In 2015, 2,830 per 100,000 adult residents in Colorado were in prison, jail, or on community supervision — the 16th highest rate in the nation.<sup>15</sup> Without reform, the number of people imprisoned in Colorado is projected to increase by 38 percent by 2024.<sup>16</sup>

## AT A GLANCE

### COLORADO PRISONS

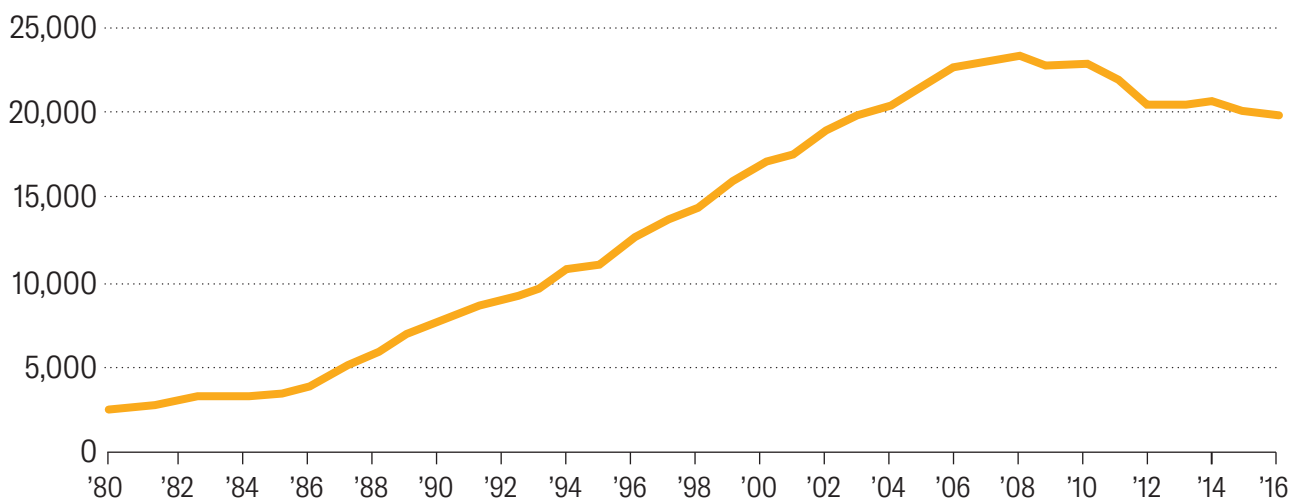
The Colorado prison population increased **661 percent** between 1980 and 2016.

**23,274** people were imprisoned in Colorado at its peak in 2008.

In 2015, Colorado ranked **16th** nationally in the number of people incarcerated or under community supervision like parole or probation, at 2,830 per 100,000 adult residents.

Colorado's prison population is projected to increase by **38 percent** by 2024.

## COLORADO PRISON POPULATION



## What Is Driving People Into Prison?

In Colorado, a litany of offenses drives people into prisons.<sup>17</sup> In 2016, drug offenses were the most common, accounting for one in every seven (15 percent) admissions to Colorado prisons.<sup>18</sup> Other common offenses were escape<sup>19</sup> (11 percent), burglary (9 percent), assault (9 percent), menacing<sup>20</sup> (8 percent), and theft (6 percent). In addition, 5 percent of admissions were for offenses classified as “trespassing/mischief.”<sup>21</sup> Admissions to prison for low-level felonies have progressively made up a greater portion of total admissions: In 2016, convictions for low-level felonies (including Felony 6, D3, and D4) accounted for one-fifth (20.5 percent) of all admissions to prison, compared to 16 percent in 2013.<sup>22</sup>

Although annual admissions to prison for drug possession have decreased in recent years, 8 percent of people admitted to Colorado prisons in 2015 had been convicted of drug possession.<sup>23</sup> In 2013, Colorado passed legislation (S.B. 13-250) that reformed drug sentencing, specifically for drug possession. A 2017 analysis found that although the number of people convicted of possession of Schedule I or II drugs had increased since the legislation was passed, the percentage of people receiving prison sentences for those drug possession convictions had gone down.

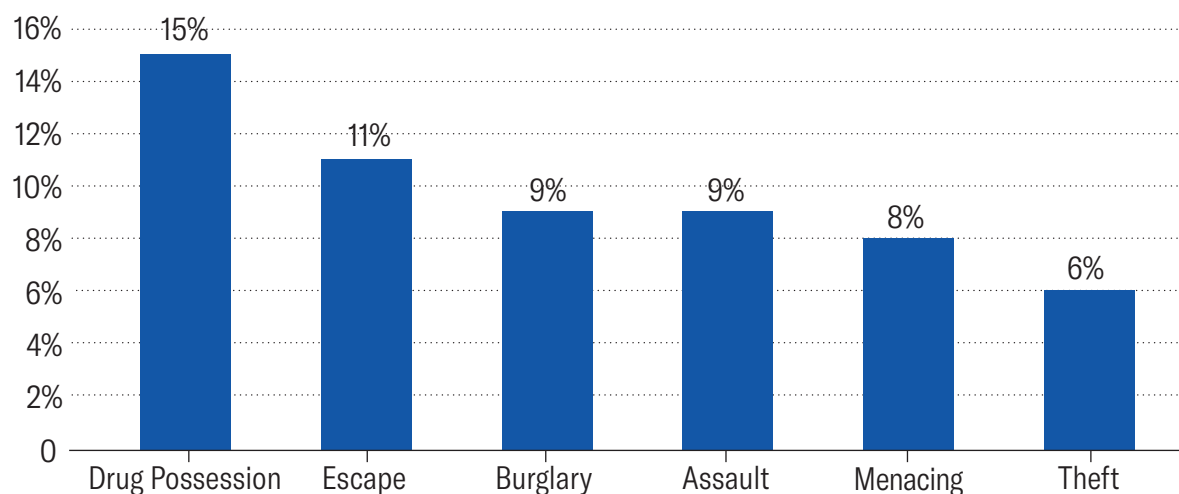
After the passage of S.B. 13-250, approximately 14 percent of people convicted of drug possession were sentenced to prison, compared to 19 percent before.<sup>24</sup>

Although the number of admissions to prison for technical parole violations has decreased in recent years – likely due to legislation passed in 2015<sup>25</sup> – the number of new court commitments to Colorado prisons has increased over the same time period and is projected to continue to grow.<sup>26</sup> This increase is likely due to a significant growth in the number of criminal cases filed: In the past five years, the number of criminal cases filed in District Court annually has increased by 46 percent,<sup>27</sup> reaching 51,775 in 2017.<sup>28</sup>

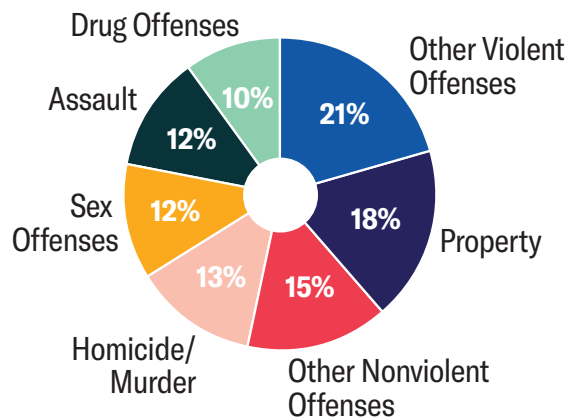
Probation revocations also contribute to the growing prison population. An estimated 38 percent of prison sentences in Colorado are due to probation revocations, and approximately one in four probation sentences ends with the individual being incarcerated, either for a technical violation or a new crime.<sup>29</sup>

In addition, Colorado has adopted harsh laws that trigger mandatory prison sentences in many situations, including when someone has a prior felony conviction. This can require prison sentences for someone who would otherwise be eligible for community supervision sentences such as probation or other alternative programs.<sup>30</sup>

## COLORADO PRISON ADMISSIONS BY TOP OFFENSES (FY 2016)



## COLORADO PRISON POPULATION TOP OFFENSE TYPE (2016)



### The Current Prison Population

The number of people imprisoned in private prisons in Colorado increased 83 percent between 2000 and 2018.<sup>31</sup> As of 2016, 18 percent of people imprisoned in Colorado were serving time in private prisons,<sup>32</sup> compared to just 7 percent of the entire U.S. state prison population.<sup>33</sup> The proportion of Colorado's prison population held in private prisons has continued to increase since 2016; as of June 2018, 19 percent of people imprisoned in Colorado were serving time in private prisons.<sup>34</sup>

Over two-fifths (42 percent) of the people imprisoned in Colorado in 2016 were serving time for nonviolent offenses. Approximately one in nine people (12 percent) imprisoned in Colorado in 2016 were serving time for assault, the most common controlling offense. Another one in 10 (10 percent) were serving time for drug offenses, and 18 percent were serving time for property offenses, such as theft and forgery.<sup>35</sup>

In 2016, 7 percent of the prison population was imprisoned for a technical violation of community supervision — misbehavior that is not by itself a criminal offense, such as failing a drug test or missing an appointment.<sup>36</sup> In addition, in 2016 146 people were imprisoned in Colorado for traffic offenses.<sup>37</sup> Although the number of people in prison for drug possession has decreased significantly in recent years, 561 people were nonetheless imprisoned for drug possession in Colorado in 2015.<sup>38</sup>

In 2017, the estimated average length of imprisonment for all new commitments to Colorado prisons was 3.3 years (39.5 months).<sup>39</sup> Between 2006 and 2016, the average time served at release increased for all felony classes except Class 6 felonies<sup>40</sup> — which include offenses such as impersonating a peace officer and theft of an item valued between \$2,000 and \$5,000.<sup>41</sup> Average time served for Class 1 felonies — which include crimes like murder in the first degree<sup>42</sup> — more than tripled over the same time period (208 percent

#### AT A GLANCE

### COLORADO PRISON POPULATION

There was an **83 percent** increase in the number of people incarcerated in private prisons in Colorado between 2000 and 2018.

**42 percent** of those imprisoned in Colorado in 2016 were serving time for an offense not involving violence.

**1 in 10** people in Colorado prisons in 2016 was serving time for a drug offense.

**146** people in Colorado prisons in 2016 were serving time for traffic offenses.

#### AT A GLANCE

### SENTENCES AND TIME SERVED

The estimated average length of imprisonment for new commitments to prison in 2017 was **3.3 years**.

The percentage of Colorado's 2016 prison population serving a life or lifetime supervision sentence was **14 percent**.

The average time served for people convicted of the most serious felony level and released in 2016 was **31 years**.

increase), from 10 years to over 31 years.<sup>43</sup> According to a Pew study from 2012 that examined length of imprisonment in 34 states, Colorado had the sixth-longest average time served for drug crimes in 2009.<sup>44</sup>

In addition, 14 percent of the 2016 prison population was serving a life or lifetime supervision sentence, up from 8 percent in 2006.<sup>45</sup> The number of people serving life without parole sentences in Colorado has nearly doubled over the past decade.<sup>46</sup> In 2016, Colorado ranked 11th nationally in the percentage of its prison population serving a life sentence.<sup>47</sup>

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

Between 2010 and 2016, the number of people released annually to parole decreased by 11 percent.<sup>48</sup> In 2015, the Colorado State Board of Parole denied parole to more than half (55 percent) of all people who had a parole hearing.<sup>49</sup>

In addition, Colorado's harsh sentencing enhancement laws have led to longer sentences. For example, habitual offender laws require a person convicted of a fourth felony to serve four times the presumptive maximum sentence of the new offense. If the fourth felony involves violence, the mandatory sentence is life in prison.<sup>50</sup> However, the likelihood that a person will commit a serious crime declines with age,<sup>51</sup> and research shows that the commission of crime drops sharply as people reach their thirties and forties.<sup>52</sup> The National Research Council concludes: "Because recidivism rates decline markedly with age, lengthy prison sentences, unless they specifically target very high-rate or extremely dangerous offenders, are an inefficient approach to preventing crime by incapacitation."<sup>53</sup> Older people are also far less likely to be rearrested or reconvicted than younger people; in Colorado specifically, people age 50 years or older who are released from prison are less likely to be returned to prison within three years of release than younger people.<sup>54</sup>

Habitual offender laws contribute to Colorado's growing prison population through a "stacking effect." Although a relatively small number of people are

### AT A GLANCE

## LENGTH OF IMPRISONMENT

**55 percent** of people who had a parole hearing in 2015 were denied parole.

The average sentence under habitual offender laws for a person with three previous convictions was **67 years** in 2016.

admitted each year under these statutes — 30 people with three previous convictions in 2016<sup>55</sup> — they stay in prison for such lengthy periods that they contribute to the growing prison population over time. In 2016, the average habitual offender sentence for someone with three previous convictions was 67 years.<sup>56</sup>

## Who Is Imprisoned

**Black Coloradans:** Incarceration in Colorado has a profoundly disparate impact on communities of color. In 2017, at 2,058 per 100,000 adult residents, the imprisonment rate for Black adults in Colorado was nearly seven (6.9) times that of white adults.<sup>57</sup> In 2014, Colorado had the ninth highest Black imprisonment rate in the country.<sup>58</sup> Although they made up just 4 percent of the 2017 adult state population,<sup>59</sup> Black people made up 18 percent of the Colorado prison population in 2017.<sup>60</sup> In the same year, approximately one in 28 adult Black men in Colorado was in prison.<sup>61</sup>

**Latino Coloradans:** In 2014, Colorado had the fourth highest Latino imprisonment rate in the country.<sup>62</sup> In 2017, at 774 per 100,000 adult residents, the Latino adult imprisonment rate was significantly higher than that of white adults.<sup>63</sup> Although they made up just one-fifth (19 percent) of the adult state population in 2017,<sup>64</sup> Latinos made up 32 percent of the state's 2017 prison population.<sup>65</sup>

**American Indian Coloradans:** The American Indian population in Colorado prisons nearly doubled between 2000 and 2017.<sup>66</sup> In 2017, although they made up less than 1 percent of the adult state population,<sup>67</sup>

#### AT A GLANCE

## DEMOGRAPHICS

Colorado ranked **ninth** in the country for the rate of Black people imprisoned in 2014.

Colorado ranked **fourth** in the country for the rate of Latinos imprisoned in 2014.

There was a **58 percent** increase in the female prison population between 2000 and 2018.

**19 percent** of people serving time in Colorado prisons in 2018 were age 50 or older.

American Indians made up 3 percent of Colorado's prison population.<sup>68</sup>

**Female Coloradans:** Between 2000 and 2018, the number of women imprisoned in Colorado increased by 58 percent, increasing at more than twice the rate of growth of the number of men imprisoned over the same time period.<sup>69</sup>

**Older Coloradans:** Colorado's prison population is rapidly aging. Though generally considered to pose a negligible risk to public safety,<sup>70</sup> people age 50 or older are the fastest-growing age group in the Colorado prison population. Between 2000 and 2018, the number of imprisoned people age 50 or older nearly tripled,<sup>71</sup> increasing at 10 times the rate of growth in the overall prison population.<sup>72</sup> In 2018, one out of every five (19 percent) people imprisoned in Colorado was 50 or older.<sup>73</sup>

## People With Mental Health and Substance Use Disorders

As of June 2018, nearly two out of five people (37 percent) imprisoned in Colorado were considered to have mental health needs.<sup>74</sup> Despite this high rate of mental illness, only 5 percent of the Colorado prison population was enrolled in a mental health program.<sup>75</sup> In 2018, women in Colorado prisons were more than

#### AT A GLANCE

## MENTAL HEALTH AND SUBSTANCE USE DISORDERS

**37 percent** of people imprisoned in Colorado have mental health needs as of 2018.

**80 percent** of women imprisoned in Colorado have mental health needs as of 2018.

**74 percent** of Colorado's prison population has substance abuse needs as of 2018.

twice as likely as men to have mental health needs — 80 percent for women compared with 32 percent for men.<sup>76</sup>

Colorado's prison population also has substance use disorder challenges — some simultaneously with mental health disorders. As of June 2018, an estimated 74 percent of people imprisoned in Colorado had substance abuse needs.<sup>77</sup>

## Budget Strains

As Colorado's prison population has risen, so has the cost burden. Colorado spent \$770 million of its general fund on corrections in 2016, a nearly seven-fold increase in general fund spending since 1985. This increase has far outpaced growth in spending on other priorities like education.<sup>78</sup>

#### AT A GLANCE

## BUDGET

Colorado spent **\$770 million** of its general fund on corrections in 2016.

There has been a **579 percent** increase in general fund spending on corrections between 1985 and 2016.

# Ending Mass Incarceration in Colorado: A Path Forward

To end mass incarceration, Colorado must break its overreliance on prisons as a means to hold people accountable for their crimes. Evidence indicates that prisons seldom offer adequate solutions to wrongful behavior. At worst, imprisonment can be counterproductive — failing to end cycles of misbehavior and violence or to provide rehabilitation for incarcerated people or adequate accountability to the survivors of crime.<sup>79</sup>

Recent projections of the Colorado prison population are alarming — a significant increase of the prison population is expected, yet available bed space is extremely limited.<sup>80</sup> To buck this trend, policy reforms aimed at decarceration need to both reduce the amount of time people serve in prisons and reduce the number of people entering prisons in the first place. Below is an outline of some potential reforms available to lawmakers.

## Reducing Admissions

In Colorado, there are a number of ways that lawmakers can take action to reduce the number of people entering prison.

- **Encourage substance abuse treatment as an alternative to incarceration:** In recent years, Colorado has experienced a dramatic rise in filings for felony drug possession. In 2016, felony drug possession convictions increased by 17 percent overall and by 24 percent for women alone.<sup>81</sup> Lawmakers should recognize drug use as a public health problem rather than a criminal justice issue and promote treatment as an alternative to a prison sentence. Treatment beds

can be cheaper than prison beds — monies saved from reduced incarceration can be reinvested in community-based programs.

- **Increase opportunities for pre-arrest diversion:** New court commitments, particularly relating to drug use, are a significant driver of the rise in Colorado's prison population.<sup>82</sup> To curb the flow of new court commitments, lawmakers could implement a statewide diversion program at the pre-booking stage to direct people towards community-based treatment rather than deeper contact with the criminal justice system. As of 2018, Colorado's Office of Behavioral Health has been implementing several Law Enforcement Assisted Diversion (LEAD) pilots throughout the state, which could become the model for a statewide plan.<sup>83</sup>
- **Promote prosecutorial reform:** The rise in new court commitments, the rapid increase in felony drug filings, and the growth of women as a proportion of the population in recent years speak to a need for change at the prosecutorial level. After all, prosecutors have vast control over who enters the justice system, what charges they face, whether they will remain in custody pretrial, and how their case will progress. Lawmakers could implement measures to encourage prevention-oriented approaches to public safety, reduce overcharging, and disincentivize plea bargaining.

## Reducing Time Served

Reducing time served, even by just a few months, can lead to thousands of fewer people in Colorado's prisons.

- **Sentencing reform:** Lengthy prison sentences continue to drive Colorado's prison population upwards. There are a number of sentencing reform possibilities that lawmakers could consider:

Decriminalizing nonviolent conduct and reclassifying nonviolent felony offenses to misdemeanors to avoid harsh penalties, particularly for drug possession and other addiction-related conduct.

Cutting sentencing ranges by one-third unless there is demonstrative evidence that a long sentence furthers public safety. For decades, sentences have increased without benefits to prisoners or to society; it's time to step back from decades of movement in the wrong direction.

Reclassifying crimes that can trigger a habitual sentence. Currently, even repeat drug possession convictions can trigger a lengthy sentence under habitual offender laws.

Ending presumptive penalties. Currently, judges are required in certain circumstances to adhere to mandatory minimums or indeterminate sentences. Lawmakers should increase judicial discretion, allowing judges to consider the specific facts of the case when imposing a sentence.

Providing a second look for long sentences. For prisoners not serving a life sentence or on death row, lawmakers could create a pathway for resentencing to provide relief from outdated sentencing schemes. This would also allow the court to consider an individual's behavior and achievements while in custody.

- **Increase releases to parole:** At the end of fiscal year 2016, 43.2 percent of people in the

prison population in Colorado were past their parole eligibility date.<sup>84</sup> Lawmakers could take action to increase releases by enacting presumptive parole for people with a multiyear record of safe behavior in prison. These people would be considered eligible for parole unless the Board of Parole were to find a compelling public safety concern.

- **Reconsider recent legislation:** H.B. 15-1043 created a new class of felony DUI offenders and has increased admissions to prison much more quickly than expected. H.B. 15-1122 made individuals ineligible for parole if they were convicted of a Class 1 Code of Penal Discipline infraction (the highest level). These measures restricted the discretion of the Board of Parole and decreased the number of people eligible for release.
- **Increase the use of community corrections beds:** Community corrections is underutilized in Colorado, with several hundred vacant beds.<sup>85</sup> For prisoners with safe behavior who are nearing their release date, lawmakers should promote transition into community corrections beds. There, people can work, socialize in a more normalized setting, and have the opportunity to begin reintegration into society.

## Reducing Racial Disparities

Reducing the number of people who are imprisoned in Colorado will not on its own significantly reduce racial disparities in the prison system. Racial disparities need to be addressed both in the community and at every stage of the criminal justice process. For example, a report examining Colorado District Court cases in 2016 showed that at the initial sentencing stage, Black Coloradans are more likely than other race/ethnicity groups to be sentenced to prison.<sup>86</sup>

People of color (especially Black, Latino, and Native American people) are at a higher risk of becoming involved in the justice system, including living under heightened police surveillance and being at higher risk for arrest. This imbalance cannot be accounted for by

disparate involvement in illegal activity, and it grows at each stage in the justice system, beginning with initial law enforcement contact and increasing at subsequent stages such as pretrial detention, conviction, sentencing, and postrelease opportunity.<sup>87</sup> Focusing on only one of the factors that drives racial disparity does not address issues across the 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 will not address comparative disproportionality across populations. For example, focusing on reductions to prison admissions and length of stay in prison is critically important, but those reforms do not address the policies and practices among police, prosecutors, and judges that contribute greatly to the racial disparities that plague the prison system.

New Jersey, for example, is often heralded as one of the most successful examples of reversing mass incarceration, passing justice reforms that led to a 26 percent decline in the state prison population between 1999 and 2012.<sup>88</sup> However, the state did not intentionally target racial disparities in incarceration and, in 2014, Black people in New Jersey were still more than 12 times as likely to be imprisoned as white people – the highest disparity of any state in the nation.<sup>89</sup>

Ending mass incarceration is critical to eliminating racial disparities, but it's not sufficient without companion efforts that take aim at other drivers of racial inequities outside of the criminal justice system. Reductions in disparate imprisonment rates require implementing explicit racial justice strategies.

Some examples include:

- Ending overpolicing in communities of color
- Evaluating prosecutors' charging and plea-bargaining practices to identify and eliminate bias

- Investing in diversion/alternatives to detention in communities of color
- Reducing the use of pretrial detention and eliminating wealth-based incarceration
- Ending sentencing enhancements based on location (drug-free school zones)
- Reducing exposure to reincarceration due to revocations from supervision
- Requiring racial impact statements before any new criminal law or regulation is passed and requiring legislation to proactively rectify any potential disparities that may result with new laws or rules
- Fighting discriminatory gang sentencing enhancements that disproportionately target people of color
- Addressing any potential racial bias in risk assessment instruments used to assist decision-making in the criminal justice system
- Shifting funding from law enforcement and corrections to community organizations, job creation, schools, drug and mental health treatment, and other social service providers
- Strengthening the requirements of the 2015 CLEAR Act (Community Law Enforcement Action Reporting Act). Since this law came into effect in 2015, it has fallen short of its objectives because of problematic data. For example, the Judicial Department collects information on race but not ethnicity – meaning that many Hispanic defendants are classified as white, causing racial disparities to be underestimated.<sup>90</sup>

## Forecaster Chart

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

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“Merely reducing sentence lengths, by itself, does not disturb the basic architecture of the New Jim Crow. So long as large numbers of African Americans continue to be arrested and labeled drug criminals, they will continue to be relegated to a permanent second-class status upon their release, no matter how much (or how little) time they spend behind bars. The system of mass incarceration is based on the prison label, not prison time.”<sup>91</sup>

— From *The New Jim Crow*, Michelle Alexander

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## TAKING THE LEAD

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

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

**Parole boards:** They decide when to allow people to leave prison. In Colorado, the parole board is an especially important player when it comes to reforming how long people spend in prison.

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

# 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****
<b>Public order offenses*****</b>	Reduce average time served by 60% (from 1.14 to 0.46 years) Institute alternatives that reduce admissions by 60% (1,063 fewer people admitted)	9.41% reduction (1,707 fewer people)	White: 0.3% decrease Black: 2.1% increase Hispanic/Latino: 0.7% decrease Native American: 1.8% decrease Asian: No change	\$46,729,644
<b>Assault</b>	Reduce average time served by 60% (from 2.16 to 0.86 years) Institute alternatives that reduce admissions by 40% (386 fewer people admitted)	8.87% reduction (1,610 fewer people)	White: 1.7% increase Black: 0.9% decrease Hispanic/Latino: 1.6% decrease Native American: 3.9% decrease Asian: 0.6% increase	\$37,039,690
<b>Burglary</b>	Reduce average time served by 60% (from 1.82 to 0.73 years) Institute alternatives that reduce admissions by 40% (443 fewer people admitted)	8.38% reduction (1,522 fewer people)	White: 0.7% decrease Black: 0.9% increase Hispanic/Latino: 0.5% increase Native American: 1.1% decrease Asian: 1.4% increase	\$35,849,118
<b>Robbery</b>	Reduce average time served by 60% (from 3.26 to 1.30 years) Institute alternatives that reduce admissions by 40% (244 fewer people admitted)	7.87% reduction (1,428 fewer people)	White: 2.3% increase Black: 6.8% decrease Hispanic/Latino: 0.6% increase Native American: 0.5% increase Asian: 2.5% increase	\$30,175,316
<b>Drug offenses</b>	Institute alternatives that end all admissions for drug possession (555 fewer people admitted) Reduce average time served for drug distribution by 60% (from 1.68 to 0.67 years) Institute alternatives that reduce admissions for drug distribution by 50% (370 fewer people admitted)	7.49% reduction (1,359 fewer people)	White: 1.0% increase Black: 0.2% decrease Hispanic/Latino: 1.8% decrease Native American: 3.8% increase Asian: 1.1% increase	\$34,325,079

### Impact Compared to 2025 Baseline\*

Offense category**	Policy outcome	Prison population impact	Impact on racial and ethnic makeup of population***	Cost savings****
<b>Theft</b>	Reduce average time served by 60% (from 1.21 to 0.48 years) Institute alternatives that reduce admissions by 50% (220 fewer people admitted)	2.35% reduction (427 fewer people)	White: 0.7% decrease Black: 0.8% increase Hispanic/Latino: 0.5% increase Native American: No change Asian: 0.6% decrease	\$11,655,969
<b>Other property offenses*****</b>	Reduce average time served by 60% (from 0.78 to 0.31 years) Institute alternatives that reduce admissions by 50% (311 fewer people admitted)	2.15% reduction (390 fewer people)	White: 0.5% decrease Black: 0.8% increase Hispanic/Latino: 0.2% increase Native American: 0.5% increase Asian: 0.2% increase	\$10,479,079
<b>Fraud</b>	Reduce average time served by 60% (from 0.75 to 0.30 years) Institute alternatives that reduce admissions by 50% (268 fewer people admitted)	1.76% reduction (320 fewer people)	White: 0.6% decrease Black: 0.8% increase Hispanic/Latino: 0.5% increase Native American: 0.1% increase Asian: 0.2% increase	\$8,656,916
<b>Motor vehicle theft</b>	Reduce average time served by 60% (from 1.17 to 0.47 years) Institute alternatives that reduce admissions by 50% (146 fewer people admitted)	1.51% reduction (274 fewer people)	White: 0.4% decrease Black: 0.9% increase Hispanic/Latino: 0.1% increase Native American: 0.2% decrease Asian: 0.6% decrease	\$7,161,128
<b>Weapons offenses*****</b>	Reduce average time served by 60% (from 0.71 to 0.28 years)	0.26% reduction (48 fewer people)	White: No change Black: No change Hispanic/Latino: No change Native American: No change Asian: No change	\$1,145,050

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

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

\*\*\*Racial and ethnic disproportionality is traditionally measured by comparing the number of people in prison — of a certain race — to the number of people in the state's general population of that same race. For example, nationally, Black people comprise 13 percent of the population, while white people comprise 77 percent. Meanwhile, 35 percent of people in state or federal prison are Black, compared to 34 percent who are white. While the proportion of people in prison who are Black or white is equal, Black people are incarcerated at nearly three times their representation in the general population. This is evident in Colorado, where Black people make up 18 percent of the prison population but constitute only 4 percent of the state's 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 escape, drunk or disorderly conduct, 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 Colorado were to carry out reforms leading to the changes described above, 9,086 fewer people would be in prison in Colorado by 2025, a 50.06 percent decrease. This would lead to a total cost savings of \$675,657,383 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 Colorado'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 The Sentencing Project, *The Color of Justice: Racial and Ethnic Disparity in State Prisons* (2016).
- 2 BJS Corrections Statistical Analysis Tool.
- 3 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.
- 4 Colorado DOC 2016 Statistical Report, Appendices (Admissions, Crime, Sentence). Note: In this blueprint, drug offenses refer to all offenses categorized in Colorado as controlled substance offenses.
- 5 Colorado DOC 2016 Statistical Report
- 6 Colorado Division of Criminal Justice, *Adult and Juvenile Correctional Populations Forecasts* (January 2018). Note: 38.2% refers to the growth in the prison population between FY 2017 and FY 2024.
- 7 Colorado Division of Criminal Justice, *Adult and Juvenile Correctional Populations Forecasts* (January 2018); Colorado Judicial Branch, *Annual Statistical Report* (FY 2017). Note: Refers to fiscal years.
- 8 Colorado DOC 2015 Statistical Report; Colorado DOC 2016 Statistical Report. Note: Refers to fiscal years.
- 9 Colorado DOC 2016 Statistical Report.
- 10 Christopher N. Osher, *Fort Morgan Times*, Critics say Colorado’s habitual offender law is too tough on non-violent offenders (October 20, 2017).
- 11 Ed. Bd., *The Denver Post*, Update Colorado’s habitual offender law (November 18, 2017).
- 12 BJS, *Corrections Statistical Analysis Tool*.
- 13 BJS, *Corrections Statistical Analysis Tool*.
- 14 Colorado DOC, *Dashboard Measures* (accessed 7/17/2018).
- 15 BJS, *Correctional Populations in the United States* (2015).
- 16 Colorado Division of Criminal Justice, *Adult and Juvenile Correctional Populations Forecasts* (January 2018). Note: 38.2 percent refers to the growth in the prison population between FY 2017 and FY 2024.
- 17 Prison admissions reflect the number of people entering Colorado prisons in a given year, while the total prison population refers to the total number of people incarcerated at a given point in time.
- 18 Colorado DOC 2016 Statistical Report, Appendices (Admissions, Crime, Sentence). Note: In this Blueprint, drug offenses refer to all offenses categorized as “controlled substances,” “marijuana,” or “other drug offenses.”
- 19 Colorado has a broad definition of “escape” offenses. In addition to a very small number of people convicted of escaping from a secure prison facility, this offense category can include absconding while on intensive parole supervision, absconding from community centers, not returning to a halfway house, running from a police car, and not returning from jail work release (Escape: Mandatory Consecutive Sentences). There were seven reported escapes from secure Colorado facilities over the last five years; yet, in 2016, there were 1,536 admissions to prison for escape (CO DOC 2016 Statistical Report). Sentences are especially harsh for these offenses, as Colorado statute mandates consecutive sentences for escape convictions (as opposed to nearly all other crimes, where consecutive sentences are at the discretion of the judge).
- 20 Colorado legal statute defines “menacing” as placing or attempting to place another person “in fear of imminent serious bodily injury,” by any threat or physical action. Menacing is a Class 5 felony and can be punished by a period of imprisonment if it involves the use of a deadly weapon or an indication that the person is armed with a deadly weapon (Colorado Legal Statute, 18-3-206 C.R.S.).
- 21 Colorado DOC 2016 Statistical Report, Appendices (Admissions, Crime, Sentence).
- 22 Colorado Division of Criminal Justice, *Adult and Juvenile Correctional Populations Forecasts* (January 2017). Note: Refers to fiscal year and excludes returns for technical violations.
- 23 BJS, *National Corrections Reporting Program*.
- 24 Colorado Department of Public Safety, *Analysis of Senate Bill 13-250* (February 2017).
- 25 Colorado Senate Bill 15-124 (2015).
- 26 Colorado Division of Criminal Justice, *Adult and Juvenile Correctional Populations Forecasts* (January 2018).
- 27 Colorado Division of Criminal Justice, *Adult and Juvenile Correctional Populations Forecasts* (January 2018). Note: Refers to fiscal years.
- 28 Colorado Judicial Branch, *Annual Statistical Report* (FY 2017). Note: Refers to fiscal years.
- 29 Colorado Division of Criminal Justice, *Adult and Juvenile Correctional Populations Forecasts* (January 2018).
- 30 BJS State Fact Sheet, Colorado.
- 31 BJS, *Corrections Statistical Analysis Tool*; Colorado DOC, *Dashboard Measures* (accessed 7/17/2018).
- 32 Colorado DOC, *Dashboard Measures* (accessed 7/17/2018).
- 33 BJS, *Corrections Statistical Analysis Tool*.
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- 38 BJS, *National Corrections Reporting Program*.
- 39 Colorado Division of Criminal Justice, *Adult and Juvenile Correctional Populations Forecasts* (January 2017). Note: Refers to fiscal year.
- 40 Colorado DOC 2016 Statistical Report; Colorado DOC 2006 Statistical Report. Note: Includes only court commitments that were released to parole or discharged.
- 41 Report to the Colorado General Assembly, *Crime Classification Guide: A Listing of Crimes and Traffic Infractions in Colorado* (January 2015).
- 42 Colorado General Assembly, *Felonies and Misdemeanors by Crime Type*.
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- 44 Pew Center on the States, *Time Served: The High Cost, Low Return of Longer Prison Terms* (2012).
- 45 Colorado DOC 2016 Statistical Report; Colorado DOC 2015 Statistical Report.
- 46 Colorado DOC 2016 Statistical Report.
- 47 The Sentencing Project, *Still Life: America’s Increasing Use of Life and Long-Term Sentences* (2017). Note: Includes people serving life with

- parole, life without parole, and “virtual” life sentences (sentences of 50 years or more).
- 48 Colorado DOC 2015 Statistical Report; Colorado DOC 2016 Statistical Report.
  - 49 Colorado State Board of Parole, Clarification of Information Provided in CLEAR Act Report CY 2015.
  - 50 Colorado DOC 2016 Statistical Report.
  - 51 Human Rights Watch, *Old Behind Bars: The Aging Prison Population in the United States*.
  - 52 The Sentencing Project, *Criminal Justice Facts*.
  - 53 The Sentencing Project, *Criminal Justice Facts*; National Research Council, *The Growth of Incarceration in the United States: Exploring Causes and Consequences* (2015).
  - 54 Human Rights Watch, *Old Behind Bars: The Aging Prison Population in the United States*.
  - 55 Colorado DOC 2016 Statistical Report.
  - 56 Colorado DOC 2016 Statistical Report.
  - 57 Urban Institute analysis of: Census Bureau, *Annual Estimates of the Resident Population by Sex, Age, Race, and Hispanic Origin for the United States and States, 2017 population estimates*; Colorado DOC, *2017 Inmate Population Profile*.
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  - 59 Census Bureau, *Annual Estimates of the Resident Population by Sex, Age, Race, and Hispanic Origin for the United States and States, 2017 population estimates*.
  - 60 Colorado DOC, *2017 Inmate Population Profile* (6/30/17).
  - 61 Urban Institute analysis of: Census Bureau, *Annual Estimates of the Resident Population by Sex, Age, Race, and Hispanic Origin for the United States and States, 2017 population estimates*; Colorado DOC, *2017 Inmate Population Profile*.
  - 62 The Sentencing Project, *The Color of Justice: Racial and Ethnic Disparity in State Prisons* (2016).
  - 63 Urban Institute analysis of: Census Bureau, *Annual Estimates of the Resident Population by Sex, Age, Race, and Hispanic Origin for the United States and States, 2017 population estimates*; Colorado DOC, *2017 Inmate Population Profile*.
  - 64 Census Bureau, *Annual Estimates of the Resident Population by Sex, Age, Race, and Hispanic Origin for the United States and States, 2017 population estimates*.
  - 65 Colorado DOC, *2017 Inmate Population Profile* (6/30/17).
  - 66 Colorado DOC, *2017 Inmate Population Profile* (6/30/17); Colorado DOC 2000 Statistical Report.
  - 67 Census Bureau, *Annual Estimates of the Resident Population by Sex, Age, Race, and Hispanic Origin for the United States and States, 2017 population estimates*.
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  - 79 Vera Institute of Justice, “Accounting for Violence: How to Increase Safety & Break Our Failed Reliance on Mass Incarceration,” 2017.
  - 80 Colorado Division of Criminal Justice, *Adult and Juvenile Correctional Populations Forecasts* (January 2018),
  - 81 Colorado Division of Criminal Justice, “Factors Influencing the Increase in the Prison Population” (February 2018), at page 6. *See also* Colorado Criminal Justice Reform Coalition, “Special Report – Drug felony filings” (March 2018), available at: <https://www.ccjrc.org/wp-content/uploads/2018/03/CCJRC-Prison-Drug-Felony-Report-March-2018.pdf>.
  - 82 Colorado Division of Criminal Justice, *Adult and Juvenile Correctional Populations Forecasts* (January 2018),
  - 83 *See* “CDHS Announces New Community Behavioral Health Partnerships with Local Law Enforcement,” at: <https://www.colorado.gov/pacific/cdhs/2018-01-10-cdhs-new-behavioral-health-partnerships-law-enforcement>.
  - 84 Colorado DOC 2016 Statistical Report, Figure 36.
  - 85 Peter Roper, “Prison Beds: Colorado lawmakers looking for cheaper options.” *The Pueblo Chieftain*. March 10, 2018.
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  - 88 The Sentencing Project, *Fewer Prisoners, Less Crime: A Tale of Three States* (2014).
  - 89 The Sentencing Project, *The Color of Justice: Racial and Ethnic Disparity in State Prisons* (2016).
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