

Blueprint for Smart Justice
Indiana



Blueprint *for* Smart Justice Indiana

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Executive Summary

Over the past five decades, the United States has dramatically increased its reliance on the criminal justice system as a way to respond to drug addiction, mental illness, poverty, and broken schools. As a result, the United States today incarcerates more people, in both absolute numbers and per capita, than any other nation in the world. Millions of lives have been upended, and families torn apart. The mass incarceration crisis has transformed American society, has damaged families and communities, and has wasted trillions of taxpayer dollars.

We all want to live in safe and healthy communities, and our criminal justice policies should be focused on the most effective approaches to achieving that goal. But the current system has failed us. It's time for the United States to dramatically reduce its reliance on incarceration. Instead, it should invest in alternatives to prison and approaches better designed to break the cycle of crime and recidivism as well as help people rebuild their lives.

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

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

prison admissions and length of stay on state prison populations, state budgets, and the racial disparity of those imprisoned.

The analysis was eye-opening.

In every state, we found that reducing the prison population by itself does little to diminish racial disparities in incarceration — and in some cases would worsen them. In Indiana — where one in every 25 adult Black men was imprisoned in 2016¹ — 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.

While the national state imprisonment rate dropped 8 percent between 2000 and 2016, Indiana's imprisonment rate grew 18 percent.² Acknowledging this unsustainable growth, Indiana lawmakers restructured the state's criminal code between 2013 and 2015 (HEA 1006). Though the prison population has decreased to 26,877 people as of January 2019³ following these efforts from its peak of 29,220 people in 2014,⁴ Indiana prisons for both men and women hover concerningly close to operational bed capacity.⁵

While HEA 1006 has helped slow the growth of the prison population, Indiana's jail population is increasing.⁶ In 2018, an evaluation by the Indiana Criminal Justice Institute found 77 percent of Indiana's jails to be overcrowded or at capacity.⁷ There were an estimated 21,187 people in Indiana county jails

in 2018, more than half of whom were awaiting trial and had not been convicted of a crime.⁸

Many offenses drive people into Indiana's prisons and jails. In January 2019, 24 percent of people in Indiana prisons were serving time for a drug offense,⁹ while 15 percent were serving time for property offenses. The segment of people serving time for weapons offenses (4 percent in 2019) has grown 63 percent over the past decade.¹⁰ Although admissions to Indiana prisons each year declined 33 percent between 2007 and 2017, the average length of stay has increased and annual releases from prison have declined, resulting in a nearly constant total prison population.¹¹

Long prison stays result in part from the harsh sentencing enhancements in Indiana's criminal code, which lengthen prison sentences for people with prior felony convictions. It is also difficult for people incarcerated in Indiana to earn time off their prison terms for good behavior or for participating in programs and treatment.¹² As of 2019, people serving 20 years or longer in prison accounted for one in three people in Indiana prisons.¹³

As in many other jurisdictions across the country, the incarceration rate for Black adults in Indiana is higher than that for white adults in the state. As of 2017, Black Hoosiers were imprisoned at more than five times the rate of white adults, and although Black people accounted for just 9 percent of the state's adult population, they comprised 34 percent of the prison population that year.¹⁴

Further, the population of women in Indiana prisons and jails is rising, even as other demographics of incarcerated people decrease. Between 2009 and 2019, the number of women in the state's prisons grew 9 percent while the population of men in prison dropped 4 percent;¹⁵ between 2005 and 2015, the population of women in jail increased 28 percent, while the overall jail population declined 6 percent.¹⁶

So, what's the path forward?

There are many avenues for reform that will help Indiana reduce its prison and jail populations. To start, the Indiana Legislature should invest in holistic public

defender services. Strong, well-resourced indigent defense systems that are able to provide assistance to people who have housing, treatment, employment, family court and/or transportation needs – in addition to their legal needs – are critical to preventing unnecessary incarceration.

Criminal justice stakeholders in Indiana should also support the implementation of programs that provide alternatives to incarceration, which address many of the root causes of many prison admissions. Expanding access to treatment for both mental health and substance use needs is also essential, as these needs are sometimes underlying drivers of crime.

Further, the Indiana Legislature must stop expanding the criminal code and stop broadening the net of criminalization. Moving towards the decriminalization of personal drug use and possession in favor of an evidence-based health policy approach to substance use would be a step in the right direction. Defelonizing certain offenses would also decrease the reach of the state's criminal code, which is overbroad in its current form.

To reduce Indiana's growing jail population, the state must enact pretrial justice reform. Currently, the overreliance on cash bail by judges often leaves people languishing behind bars awaiting trial simply because they cannot afford their bail, not because they pose a risk to public safety. Fixing this problem won't be solved by merely shifting to a system that relies on risk assessment tools, which have not been shown to eliminate bias in pretrial decision-making.¹⁷ Instead, the legislature must enhance speedy trial rights, expand access to counsel, and expand mandatory cite-and-release policies.

Finally, lawmakers must turn their attention to Indiana's youth by ending excessive sentences and extreme punishments for young people, particularly those from disenfranchised communities. Youth jails and prisons should be reserved for exceptional circumstances, and effective community-based services and supports for young people and their families must become the norm.

If Indiana 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 \$541 million by 2025 – money that could be better spent on schools, infrastructure, and services for Hoosiers.

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

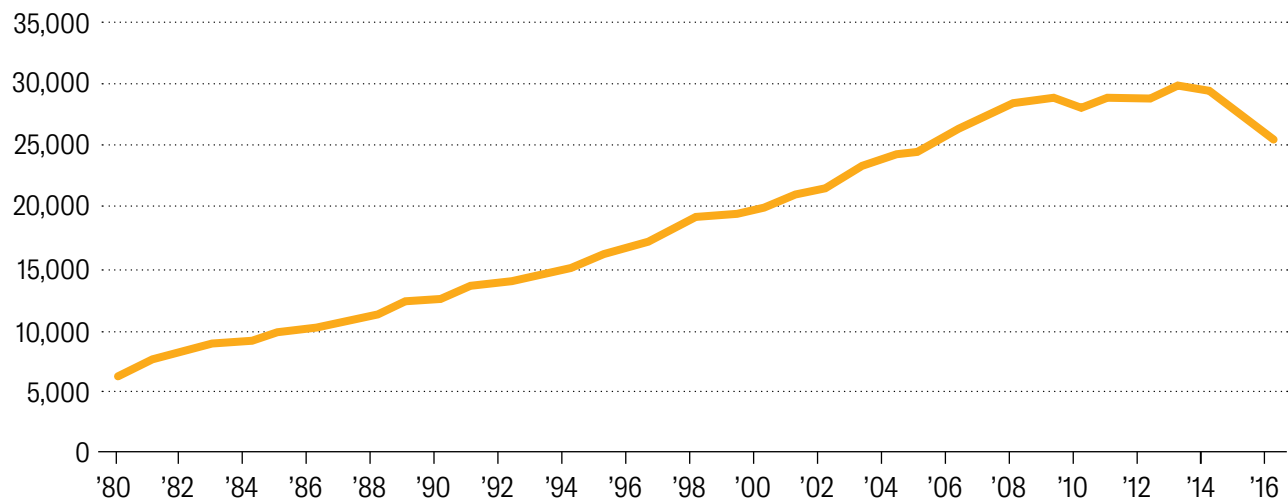
The State of the Indiana Prison System

The Indiana prison population more than quadrupled between 1980 and 2016,¹⁸ reaching its peak in 2014 of 29,220 people in prison.¹⁹ While the national state imprisonment rate dropped 7 percent between 2000 and 2016, Indiana’s imprisonment rate grew 18 percent.²⁰ In an effort to avoid projected growth in the prison population, Indiana lawmakers restructured the state’s criminal code between 2013 and 2015 (HEA 1006).

Under the new code, people convicted of the least serious felony offenses who may have previously been sent to prison are now generally sentenced to jail, probation, or community supervision.²¹ Following these reforms, the prison population decreased to 26,877 people as of January 2019 – still 17 percent more than were there in 2004.²²

Meanwhile, Indiana’s jail population has risen due to an influx of people convicted of low-level felonies.²³ On the whole, Indiana’s prisons and jails remain crowded. As of February 2019, the prison population was just 2 percent below operational bed capacity for men and 7 percent below operational bed capacity for women.²⁴ In 2018, 77 percent of Indiana’s jails were either overcrowded or over capacity.²⁵ Assessments of HEA 1006 suggest that while the reforms have helped divert people who have been convicted of crimes that did not involve people from prison, too little attention has been paid to reducing recidivism and facilitating reentry into the community.²⁶

INDIANA PRISON POPULATION



AT A GLANCE

INDIANA PRISONS

Between 1980 and 2016, the Indiana prison population **more than quadrupled**.

As of January 2019, there were **26,877 people** in Indiana's prisons, down from its peak in 2014 when 29,220 were imprisoned.

Indiana's male prison population was just **two percent** below operational bed capacity as of February 2019.

Additionally, an increasing share of these revocations are for technical violations of supervision conditions rather than admissions to prison for new offenses committed while on supervision. In 2007, 59 percent of all revocations were for technical violations; by 2017, that number was 70 percent. In total, the number of admissions for technical violations grew 33 percent between 2007 and 2017.³⁰ Overall, 39 percent of admissions to prison in 2017 were for a technical violation of supervision rather than for committing a new crime.³¹

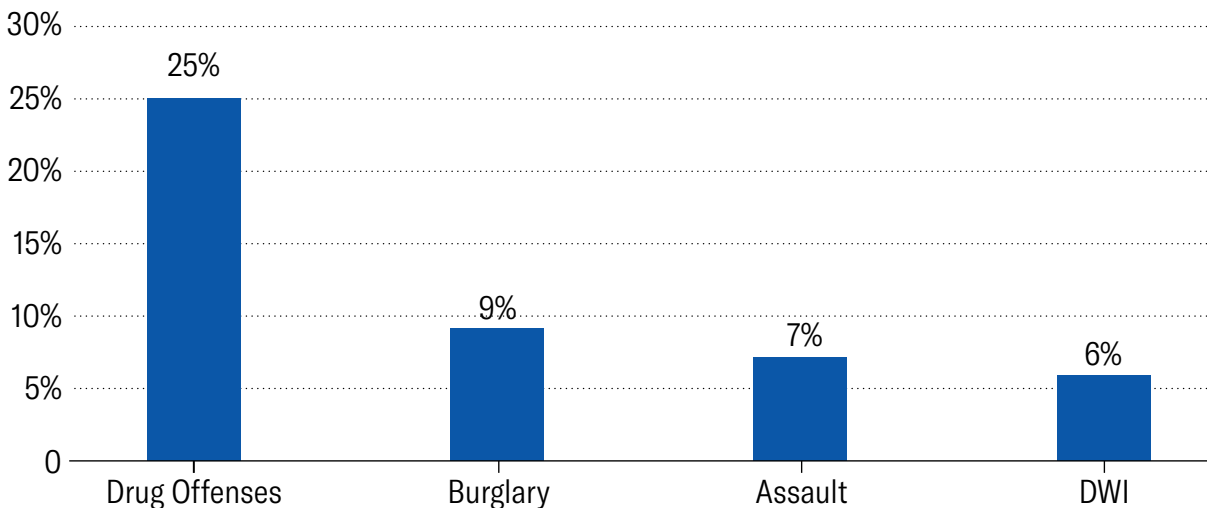
In 2015, one in four people entered prison for a drug offense,³² including 10 percent for trafficking and 7 percent for drug possession. Drug trafficking was the most common offense for admissions to prison in Indiana in 2015. Other common offenses for people entering Indiana prisons were burglary (9 percent), assault (7 percent), drug possession (7 percent), and driving while intoxicated (6 percent).³³ In 2017, about half of all people (51 percent) entering prison in Indiana for a new offense conviction were serving their first prison sentence.³⁴

While placements to the DOC have fallen slightly since the state's criminal code was restructured under HEA 1006 (2015), placements to jail have risen steeply. In the years since reform was implemented, substantially more people have been sentenced overall, and

What Is Driving People Into Prison?

Between 2007 and 2017, the number of annual admissions²⁷ to Indiana prisons declined substantially, dropping 33 percent in one decade.²⁸ The majority of the decline can be attributed to decreases in the annual number of new commitments to prison, which declined 55 percent over that time period. In contrast, the annual number of admissions to prison from community supervision has grown steadily, increasing 12 percent between 2007 and 2017. This is especially true for probation revocations, which increased 52 percent in just a decade.²⁹

INDIANA PRISON ADMISSIONS BY TOP OFFENSE TYPE (2015)



placements of sentenced individuals to both jail and community supervision have steadily grown.³⁵

The Current Prison and Jail Population

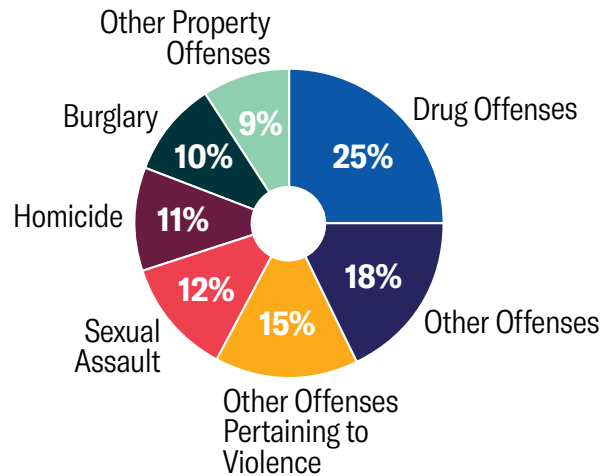
As of January 2019, nearly one in four (24 percent) people in Indiana prisons was there for a drug offense,³⁶ and an additional 15 percent were serving time for property offenses. People serving time for weapons offenses accounted for 4 percent of all people in prison in 2019, a population which has grown 63 percent over the past decade.³⁷

According to most recently available aggregated data (2015), drug trafficking is the most common offense category for people serving time in Indiana prisons (14 percent of the prison population), followed by sexual assault (12 percent), homicide (11 percent), and burglary (10 percent). An additional four percent of the population was in prison for drug possession.³⁸

In 2018, there were also an estimated 21,187 people under local jurisdiction in county jails in Indiana. More than half (nearly 56 percent) were awaiting trial and had not been convicted of a crime.³⁹

Additionally, some of the people serving time in county jails are actually under the jurisdiction of the state's

INDIANA PRISON POPULATION BY OFFENSE TYPE (2015)



Department of Corrections, awaiting transfer to a prison facility. While this population has declined in recent years – down 30 percent since 2015 alone – there were still 300 people under the jurisdiction of the Department of Corrections in county jails as of July 2018.⁴⁰

Indiana's jails are extremely overcrowded. In 2018, an estimated 77 percent of Indiana's jails were either overcrowded⁴¹ or over capacity.⁴²

Why Do People Stay in Prison for So Long?

Although the number of admissions to Indiana prisons each year declined 33 percent between 2007 and 2017, the total population remained nearly constant.⁴³ This is due in part to an increasing length of stay and declining annual releases from prison. In 2015, the average person imprisoned in Indiana had served nearly four years so far, 25 percent more time than the average person in 2005. This growth has resulted, in part, from substantial growth in time served for drug offenses; between 2005 and 2015, average time served for drug offenses grew 31 percent.⁴⁴

A growing share of the prison population is serving very long sentences. Between 2009 and 2019, while

AT A GLANCE

INDIANA JAIL AND PRISON POPULATION

Nearly **1 in 4 people** in Indiana prisons were serving time for a drug offense as of January 2019.

56 percent of people in Indiana's jails in 2018 had not been convicted of a crime.

The population of people serving time for weapons offenses in Indiana prisons has grown by **63 percent** in the last decade.

AT A GLANCE

LENGTH OF IMPRISONMENT AT A GLANCE

Between 2007 and 2017, the annual number of releases from Indiana prisons declined **38 percent**.

In 2015, the average person imprisoned in Indiana had served nearly **25 percent** more time than the average person in 2005.

People serving a sentence of 20 years or longer accounted for **1 in 3 people** in Indiana prisons in 2019.

the total number of people in Indiana prisons declined slightly (3 percent), the number of people serving sentences of 20 years or more increased 17 percent. As of 2019, people serving a sentence of 20 years or longer accounted for one in three (32 percent) people in Indiana prisons.⁴⁵

Indiana's criminal code includes harsh sentencing enhancements that lengthen prison sentences for people with prior felony convictions. For example, people who have two or more prior felony convictions in Indiana are subject to an additional fixed term of imprisonment of between two and 20 years on top of their original sentence.⁴⁶ In 2016 – shortly after overhauling the state's criminal code – Indiana legislators passed HB 1235, which reinstated mandatory minimum sentences of 10 years for people convicted of certain drug trafficking offenses who were previously convicted of such an offense.⁴⁷

Meanwhile, the number of releases from Indiana prisons each year has dropped significantly. Between 2007 and 2017, the annual number of releases from Indiana prisons declined 38 percent.⁴⁸ The number of releases to parole each year declined 30 percent between 2007 and 2017. Including releases to probation and community transition programs, overall releases to community supervision⁴⁹ dropped 32 percent over that time period.⁵⁰

Indiana law limits the time someone can earn off of their prison term for participating in programs and treatment that are shown to improve reentry outcomes. People eligible for educational credits can earn at most two years off of their sentence for participating in educational or rehabilitative programming.⁵¹

Additionally, “good time” credits, awarded for good behavior during incarceration, are restricted depending on offense type. People convicted of certain offense types are entirely barred from earning good time, while others are allowed to earn only one day of credit for every six days served.⁵²

Who Is Imprisoned

Black Hoosiers: As of 2017, the Black adult imprisonment rate in Indiana was more than five (5.1) times higher than that for white adults. In total, Black people accounted for 34 percent of the prison population and only 9 percent of the state's adult population.⁵³ According to the most recently available data (2016), one in every 25 adult Black men is imprisoned in Indiana.⁵⁴

Female Hoosiers: Between 2009 and 2019, the number of women in Indiana prisons grew 9 percent while the population of men in prison dropped 4 percent.⁵⁵ The vast majority of women imprisoned in Indiana in 2016 (78 percent) were incarcerated for offenses not involving people, including 41 percent

AT A GLANCE

DEMOGRAPHICS AT A GLANCE

1 in every 25 adult Black men is imprisoned in Indiana.

The population of people over 55 in Indiana prisons **more than doubled** between 2005 and 2015.

The number of women in Indiana prisons grew **9 percent** between 2009 and 2019.

AT A GLANCE

BUDGET

Indiana spent **744 million** general fund dollars on corrections in 2017.

General fund corrections spending grew **215 percent** between 1985 and 2017.

for controlled substance offenses and 23 percent for property offenses.⁵⁶

Women account for 10 percent of people in prison in Indiana (2019) and 18 percent of the people in jail (2015).⁵⁷ Between 2005 and 2015, the population of women in jail increased 28 percent while the overall jail population declined 6 percent.⁵⁸

Older Hoosiers: Though generally considered to pose a negligible risk to public safety, the prison population older than 55 years more than doubled (107 percent increase) in Indiana prisons between 2005 and 2015. As of 2015, people over 55 years old accounted for nearly one in every 10 people (9 percent) in Indiana prisons.⁵⁹

Budget Strains

As Indiana's prison population has risen, so has the cost burden. Indiana spent \$744 million from its general fund on corrections in 2017, accounting for 4.7 percent of the state general fund expenditures. General fund corrections spending grew 215 percent between 1985 and 2017, far outpacing growth in other areas like higher education, which grew just 36 percent over the same period.⁶⁰

In addition, the return on investment for incarceration has been poor. Despite spending more than \$500 million on the operation of prisons in 2017, 34 percent of people released from Indiana prisons in 2014 were reincarcerated within three years.⁶¹

Ending Mass Incarceration in Indiana: A Path Forward

Mass incarceration is a result of many systems failing to support our communities. To end it, we must develop policies that better address inadequacies throughout our education, health care, and economic systems – to name a few. There are many potential policy changes that can help Indiana end its mass incarceration crisis, but it will be up to the people and policymakers of Indiana 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, reduce the number of people entering jail and prison in the first place, or both.

Reducing Admissions

To end mass incarceration, Indiana 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 as well as failing to provide rehabilitation for incarcerated people or adequate accountability to the survivors of crime.⁶² Here are some strategies:

- **Invest in statewide holistic public defender services:** Access to counsel can be critical to a person’s success, whether during the pretrial stage or upon release from custody. Access to an attorney means little if that attorney lacks the time, resources, or skills to be an effective advocate. Across the country, public defenders and assigned counsel are too often forced to juggle hundreds of cases at once, giving short shrift to investigation, case preparation, and legal research. They often meet their clients

for the first time minutes before critical proceedings.

Moreover, public defenders are frequently out-funded by prosecutors armed with greater resources, larger staffs, and a partnership with the local police department. The absence of strong, well-resourced indigent defense systems offends the Constitution, leads to deeply unfair results, and contributes to our overburdened and wasteful jail and prison systems. Further, many people going through the criminal legal system have other, unaddressed legal needs that either have driven them into the system or are exacerbated by their being entangled in the system.

The Indiana Legislature should invest in holistic public defender services that can provide assistance to people who have housing, treatment, employment, family court and/or transportation needs through comprehensive social services. Holistic public defender services should be adequately funded by the legislature and free of cost to people using the services. The legislature should also eliminate the use of contract attorneys and repeal any statutes that allow recoupment of fees for attorney services provided to people who are indigent.

- **Alternatives to incarceration:** Indiana should implement programs that provide alternatives to incarceration and address root causes of many of the state’s admissions to prison. 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.⁶³ Other successful models include programs that divert people to treatment and support services before arrest and prosecutor-led programs that divert people before they are charged. Lawmakers can explore such interventions at multiple phases in the system, whether through decriminalization or alternatives to arrest, charges, or incarceration.

- **Expanded treatment for mental health and addiction:** Substance use and mental health needs are sometimes underlying drivers of crime, including offenses such as burglary, robbery, and assault. Addressing mental health and addiction through treatment, rather than incarceration, can more effectively reduce crime.⁶⁴ Diversion is an effective way to redirect people with mental health needs and substance use issues out of the criminal legal system and into supportive community treatment. Diversion programs have been shown to be effective for people charged with all types of offenses.⁶⁵ When implemented effectively, diversion reduces arrests, encourages voluntary treatment in the community, and saves money.⁶⁶ Despite the initial investment in community supports, diversion programs have the potential of saving jurisdictions large amounts of money.⁶⁷
- **Support decriminalization and defelonization:** The Indiana Legislature needs to move away from a culture of criminalization, stop expanding the criminal code, and adopt alternatives to incarceration. Indiana should work to employ decriminalization strategies that eliminate criminal penalties while embracing diversion and alternatives to incarceration. The state can move towards decriminalization of personal drug use and possession in favor of an evidence-based health policy approach to what is a public health problem. This includes the decriminalization of drug possession and working to undo the criminalization of poverty across Indiana. Criminal penalties can be replaced with civil fines that account for a person's present ability to pay, diversion,

and expanded social services and treatment for mental health and substance use needs. Indiana should also consider the defelonization of offenses as a way to contract the breadth and reach of the Indiana criminal code.

- **Enact pretrial justice reform:** Indiana can significantly reduce its rates of pretrial detention by creating a fairer, smarter pretrial system. Cash bail is over-relied on and leaves people languishing in jail simply because they cannot afford to pay. 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 in pretrial detention, research shows many people face significant collateral damage, such as job loss or interrupted education.⁶⁸ 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.⁶⁹ 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.⁷⁰ The solution is not to shift from a cash-based system to a system where risk assessment instruments inform or support judicial decisions about who loses their liberty after an arrest. Risk assessment instruments have not been shown to eliminate bias in pretrial decision-making, even as a supplement to decisions made by judges.⁷¹ In order to significantly reduce pretrial detention and combat racial disparities, the Indiana Legislature should enact pretrial reform — including enhancing speedy trial rights, expanding access to counsel, and expanding mandatory cite and release policies — and limit pretrial detention to the rare case in which a person poses a serious, clear threat to another person.

- **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. Indiana should aim to adopt prosecutorial reform that increases transparency, enhances oversight, and embraces diversion and alternatives to incarceration. The initial decisions of whether to charge someone with a crime – and if so, what and how many – 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. Moreover, sometimes prosecutors wrongfully convict a person, whether through prosecutorial misconduct or the conviction of an innocent person. Legislation that supports statewide Conviction Integrity Units in each county prosecutor’s office 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. Prosecutors should also be incentivized to prioritize the utilization of diversion and alternatives to incarceration. The Legislature should pass a bill that requires statewide, uniform data collection by each prosecutor so that wrongful convictions, prosecutorial misconduct, access to diversion, timeliness of disposition, and disparate impact on vulnerable communities can be reviewed.
- **Expanding judicial options at sentencing:** The legislature can 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 have a variety of options at their disposal besides imprisonment, allowing them to require

“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.”⁸⁹

– From *The New Jim Crow*, Michelle Alexander

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.

- **Youth justice:** The ACLU is committed to challenging the criminalization and incarceration of young people – particularly youth from disenfranchised communities. Indiana should promote positive approaches to school discipline and seek to dismantle the “school-to-prison pipeline.” Additionally, ending excessive sentences and extreme punishments is of paramount importance to protect young people in the juvenile justice system. All young people should remain in the juvenile justice system, regardless of their crimes. The Legislature can reform laws and policies so that jurisdictions use youth jails and prisons sparingly and instead provide effective community-based services and supports to system-involved young people and their families.

- **Eliminate parole revocations for technical violations:** In Indiana, the revocation of parole is a significant driver of incarceration rates. In total, the number of admissions in Indiana for technical violations grew 33 percent between 2007 and 2017. Overall, 39 percent of admissions to prison in 2017 were for a technical violation of supervision, rather than for committing a new crime. Parole revocations for technical violations are often due to the onerous conditions and unreasonable requirements placed on people who are released without adequate support to meet those requirements. Incarceration for technical violations that do occur should be eliminated entirely; instead, parole officers should be required to provide supportive services to ensure a person’s successful completion of parole.

Reducing Time Served

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

- **Eliminate mandatory minimums:** The Indiana Legislature should eliminate mandatory minimums that keep people in prison even when they can demonstrate that they pose no risk of harm to anyone. In 2016—shortly after overhauling the state’s criminal code—Indiana legislators passed HEA 1235,⁷² which reinstated mandatory minimums for certain drug trafficking offenses for people who were previously convicted of such offenses. These harsh, one-size-fits-all approaches don’t allow for consideration of unique variables like mental health history, trauma, or substance use disorder to be taken into account. They also make a significant portion of the incarcerated population automatically ineligible for certain reduction credits, regardless of individual mitigating circumstances. Further, they limit the discretion of other actors in the criminal justice system, including the court, jury, and

parole board. By eliminating mandatory minimums, the Legislature can ensure that people who have shown improvement while serving their sentences are allowed to return to their communities.

- **Sentencing reform:** Since passing significant criminal justice reforms laws between 2013 and 2015, the Indiana Legislature has consistently introduced bills to criminalize behavior and expand sentences that previously would not have led to incarceration. The Legislature should amend Indiana’s criminal code to reduce sentencing ranges, including and especially for drug offenses. The Legislature should also limit the circumstances and the severity of Indiana’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.
- **Earned time/earned credit reform:** Indiana law limits the time someone can earn off of their prison term for participating in programs and treatment that are shown to improve reentry outcomes. Additionally, “good time” credits, awarded for good behavior during incarceration, are restricted depending on offense type. People convicted of certain offense types are entirely barred from earning good time, while others are allowed to earn only up to 17 percent of their time served for good behavior. Indiana should expand the availability of earned credits against a prison sentence through good behavior and participation in educational, vocational, and other opportunities.
- **Compassionate release:** The Indiana Legislature and the Department of Correction should allow compassionate release from prison whenever appropriate. The state’s prison population older than 55 years more than doubled (107 percent increase) in Indiana prisons between 2005 and 2015. As of 2015, people over 55 years old accounted for nearly one in every ten people (9 percent) in Indiana

prisons.⁷³ 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.⁷⁴ What is more, keeping older people behind bars does not serve the goal of preventing recidivism, particularly as studies have clearly shown that as people age, their propensity to commit crime significantly declines.⁷⁵ There is also clear evidence showing that older persons have much lower rates of recidivism than their younger counterparts.⁷⁶

Reducing Racial Disparities

Reducing the number of people who are imprisoned in Indiana 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.⁷⁷ 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 2012.⁷⁸ 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.⁷⁹

Ending mass incarceration is critical to eliminating racial disparities, but it's 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 over-policing in communities of color
- Evaluating prosecutors' charging and plea-bargaining practices to identify and eliminate bias
- Investing in diversion and community-based alternatives to detention in communities of color
- Reducing the use of pretrial detention and eliminating wealth-based incarceration
- Ending sentencing enhancements based on location (e.g., drug-free school zones and public property, such as parks and housing)
- 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
- Abolishing the death penalty. Numerous studies illustrate that racial disparities are rampant throughout the capital sentencing process.⁸⁰
- Addressing any potential racial bias in risk assessment instruments used to assist decision-making in the criminal justice system

- Removing law enforcement from schools and 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 processes 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.⁸¹ In particular, people with mental illness are dramatically overrepresented in jails and prisons across the country.⁸²

- People showing signs of mental illness are twice as likely to be arrested as people without mental illness for the same behavior.⁸³
- People with mental illness are sentenced to prison terms that are, on average, 12 percent longer than other people in prison.⁸⁴
- 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.⁸⁵

Furthermore, sentencing reforms appear to leave people in prison with mental health needs behind.

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.⁸⁶ 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 disability disparities must go hand in hand with efforts to reduce racial disparities.⁸⁷ 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.⁸⁸
- Ending custodial 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 substance use and mental health needs who are charged with non-serious offenses
- Evaluating prosecutors' charging and plea-bargaining practices to identify and eliminate disability bias

- Requiring prosecutors' offices to be transparent in their 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

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.

Police: The practices that police employ in communities can shape the public's view of and trust in the criminal justice system. Police can decide whether or not to arrest people and how much force to use during encounters with the public. Police departments can also participate in pre-booking diversion programs, which enable officers to divert people into community-based intervention programs rather than into the criminal justice system.

Sheriffs: A great deal of power and responsibility lies in the hands of sheriffs. The sheriff has the power to run the county jail system, minimize crime by providing opportunities for rehabilitation, influence state policy, and listen and respond to the community.⁹⁰ Without involvement from advocates, community organizations, opinion leaders, and the media, the immense power put into the hands of sheriffs will go unchecked.

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.

Parole boards: They decide when to allow people to leave prison. If the parole board is better trained to consider information relevant to success upon release, this can be a mechanism to expand access to release. Further, 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.

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 as well as administration of probation and should consider alternatives to incarceration when possible.

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 Indiana 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 the potential to reduce the prison population as well as other factors. To chart your own path to reducing mass incarceration in Indiana, 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"> • Institute alternatives that end all admissions for drug possession (806 fewer people admitted) • Reduce average time served for drug distribution by 60% (from 2.42 to 0.97 years) • Institute alternatives that reduce admissions for drug distribution by 50% (778 fewer people admitted) | 14.84% reduction (3,918 fewer people) | White: 0.7% increase Black: No change Hispanic/Latino: 9.9% decrease Native American: 0.3% decrease Asian: 7.4% increase Hawaiian/Pacific Islander: 17.4% increase Other: 3.5% decrease | \$53,736,112 |
| Public order offenses***** | <ul style="list-style-type: none"> • Reduce average time served by 60% (from 1.44 to 0.58 years) • Institute alternatives that reduce admissions by 60% (1,417 fewer people admitted) | 10.77% reduction (2,845 fewer people) | White: 0.4% decrease Black: 0.3% increase Hispanic/Latino: 3.9% increase Native American: 3.0% increase Asian: 7.1% decrease Hawaiian/Pacific Islander: 0.6% decrease Other: 0.4% decrease | \$40,916,416 |

Impact Compared to 2025 Baseline*

| Offense category** | Policy outcome | Prison population impact | Impact on racial and ethnic makeup of prison population*** | Cost savings**** |
|-------------------------------------|---|--------------------------------------|--|-------------------------|
| Burglary | <ul style="list-style-type: none"> • Reduce average time served by 50% (from 1.96 to 0.98 years) • Institute alternatives that reduce admissions by 40% (516 fewer people admitted) | 6.77% reduction (1,788 fewer people) | White: 1.0% decrease Black: 1.4% increase Hispanic/Latino: 2.5% increase Native American: 3.8% decrease Asian: 5.1% increase Hawaiian/Pacific Islander: 7.3% increase Other: 0.3% increase | \$24,008,321 |
| Other property offenses***** | <ul style="list-style-type: none"> • Reduce average time served by 60% (from 0.91 to 0.36 years) • Institute alternatives that reduce admissions by 50% (860 fewer people admitted) | 4.73% reduction (1,248 fewer people) | White: 1.4% decrease Black: 2.1% increase Hispanic/Latino: 2.9% increase Native American: 1.8% increase Asian: 2.2% increase Hawaiian/Pacific Islander: 5.0% increase Other: 2.0% decrease | \$18,247,152 |
| Robbery | <ul style="list-style-type: none"> • Reduce average time served by 50% (from 2.75 to 1.37 years) • Institute alternatives that reduce admissions by 30% (217 fewer people admitted) | 4.72% reduction (1,248 fewer people) | White: 1.7% increase Black: 3.2% decrease Hispanic/Latino: 1.3% increase Native American: 1.5% increase Asian: 2.9% increase Hawaiian/Pacific Islander: 3.1% decrease Other: 1.6% decrease | \$15,368,114 |
| Assault | <ul style="list-style-type: none"> • Reduce average time served by 50% (from 1.30 to 0.65 years) • Institute alternatives that reduce admissions by 40% (457 fewer people admitted) | 3.93% reduction (1,038 fewer people) | White: 0.4% increase Black: 0.6% decrease Hispanic/Latino: 0.5% decrease Native American: No change Asian: 0.4% increase Hawaiian/Pacific Islander: 5.7% decrease Other: 2.0% decrease | \$14,438,841 |

Impact Compared to 2025 Baseline*

| Offense category** | Policy outcome | Prison population impact | Impact on racial and ethnic makeup of prison population*** | Cost savings**** |
|------------------------------|---|------------------------------------|--|-------------------------|
| Weapons offenses***** | <ul style="list-style-type: none"> Reduce average time served by 60% (from 1.89 to 0.75 years) | 2.44% reduction (644 fewer people) | White: 1.2% increase Black: 2.3% decrease Hispanic/Latino: 1.3% increase Native American: 1.4% decrease Asian: 0.9% decrease Hawaiian/Pacific Islander: 2.5% increase Other: No change | \$7,653,177 |
| Fraud | <ul style="list-style-type: none"> Reduce average time served by 60% (from 1.00 to 0.40 years) Institute alternatives that reduce admissions by 50% (241 fewer people admitted) | 1.47% reduction (387 fewer people) | White: 0.3% decrease Black: 0.4% increase Hispanic/Latino: 0.9% increase Native American: 1.5% increase Asian: 0.5% increase Hawaiian/Pacific Islander: 1.5% increase Other: 0.8% increase | \$5,880,083 |
| Theft | <ul style="list-style-type: none"> Reduce average time served by 60% (from 1.01 to 0.40 years) Institute alternatives that reduce admissions by 50% (92 fewer people admitted) | 0.56% reduction (148 fewer people) | White: 0.1% decrease Black: 0.2% increase Hispanic/Latino: 0.2% increase Native American: 0.8% decrease Asian: 0.6% increase Hawaiian/Pacific Islander: 0.6% increase Other: 0.3% decrease | \$2,169,191 |

* 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 Indiana, where Black people make up 34 percent of the prison population but constitute only 9 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 Indiana were to implement reforms leading to the changes above, 13,263 fewer people would be in prison in the state by 2025, a 50 percent decrease. This would lead to a total cost savings of \$541,707,236 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 Indiana'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: Census Bureau, Annual Estimates of the Resident Population by Sex, Age, Race, and Hispanic Origin for the United States and States, 2016 population estimates (7/1/16); and IDOC, Annual Report, 2016 (12/31/16)
- 2 BJS, Correctional Statistical Analysis Tool
- 3 IDOC, January Fact Cards, 2002-2019
- 4 IDOC, July Fact Cards, 2002-2018. This data reflects fiscal year, not calendar year. For the purposes of this blueprint, the prison population refers to all incarcerated people committed to Indiana Department of Corrections (IDOC) custody, including people in prisons, as well as those awaiting a prison bed in county jail and those housed in contracted beds throughout the state.
- 5 IDOC, Offender Population Statistical Report, January 2019
- 6 Indiana Criminal Justice Institute, Annual Evaluation of Indiana's Criminal Code Reform, December 1, 2018
- 7 *Id.*
- 8 Indiana Criminal Justice Institute, Annual Evaluation of Indiana's Criminal Code Reform, December 1, 2018
- 9 This figure represents people in prison whose most serious conviction was for a drug offense. Some people are convicted of multiple offenses; in January 2019, 29 percent of the prison population had been convicted of one or more drug offenses.
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- 11 IDOC, Offender Population Statistical Report, CY2007-CY2017
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- 27 Prison admissions reflect the number of people entering Indiana prisons in a given year, while the total prison population refers to the total number of people imprisoned at the end of each fiscal year (defined in this case as July 1). Prison admissions figures include a small number of people who were returned to prison following an escape (178 in 2007 and 25 in 2017).
- 28 IDOC, Offender Population Statistical Report, CY2007-CY2017
- 29 IDOC, Offender Population Statistical Report, CY2007-CY2017
- 30 IDOC, Offender Population Statistical Report, CY2007-CY2017
- 31 IDOC, Offender Population Statistical Report, CY2007-CY2017
- 32 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.
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- 34 IDOC, Offender Population Statistical Report, CY2017
- 35 Indiana Criminal Justice Institute, Annual Evaluation of Indiana's Criminal Code Reform, December 1, 2018
- 36 This figure represents people in prison whose most serious conviction was for a drug offense. Some people are convicted of multiple offenses; in January 2019, 29 percent of the prison population had been convicted of one or more drug offenses.
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- 38 BJS, National Corrections Reporting Program, 2015
- 39 Indiana Criminal Justice Institute, Annual Evaluation of Indiana's Criminal Code Reform, December 1, 2018
- 40 IDOC, Total Population Summary Reports, July 2015 and July 2018
- 41 For the purposes of its analysis, the Indiana Criminal Justice Institute labeled a jail as overcrowded if it exceeded 80 percent of its available bed capacity. The National Institute of Corrections notes that symptoms of crowding may become apparent at this threshold, and jails that exceed 80 percent of rated capacity may be classified as non-compliant with Indiana Jail Standards.
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- 43 IDOC, Offender Population Statistical Report, CY2007-CY2017
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- 52 Indiana Criminal Code, § 35-50-6
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