

Blueprint for Smart Justice
Maine



Blueprint *for* Smart Justice Maine

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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, both in 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, damaged families and communities, and wasted trillions of taxpayer dollars.

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

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

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

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

The analysis was eye-opening.

In every state, we found that reducing the prison population by itself does little to diminish racial disparities in incarceration and in some cases would worsen them. In Maine — where the Black adult imprisonment rate was ten times the white adult imprisonment rate in 2018¹ — 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 combating these disparities.

While Maine's prison population is low relative to other states in the nation, it has still increased by 195 percent between 2000 and 2017.² As of July 29, 2019, there were 2,319 people in Maine prisons.³ The number of imprisoned women has seen a particularly sharp rise in Maine — between 2000 and 2017, it grew by a staggering 244 percent.⁴

Probation violations are a key source of admissions into prison in Maine. In 2018, 42 percent of people who entered prison were incarcerated due to probation violations,⁵ which can include rule violations that are not crimes, such as moving without telling their probation officer or consuming alcohol.⁶ Drug offenses⁷ also play a key role in prison admissions, accounting for one in three (33 percent) admissions to prison for a new crime in 2018.⁸ "Habitual offender" laws require mandatory prison time for people who have

accumulated three or more convictions or adjudications for certain motor vehicle and traffic offenses, such as operating a vehicle without a license, passing a police roadblock, or operating a vehicle after license suspension.⁹ If someone is found operating a vehicle with a revoked or suspended license and sentenced under the habitual offender laws, they can be incarcerated with a minimum sentence ranging from 30 days to two years and a maximum sentence of five years.¹⁰

Unsurprisingly, Maine's incarceration crisis has had a disproportionate impact on the state's communities of color. Despite accounting for only 1 percent of the state's adult population, Black people accounted for more than 1 in 10 people in prison in 2018.¹¹ That same year, the Native American adult imprisonment rate in Maine was five times the white adult imprisonment rate.¹²

And all this incarceration is expensive. In fiscal year 2018-2019, Maine spent \$186 million of its general fund on corrections.¹³ Maine spent \$182 million of its general fund on corrections in 2017, accounting for 5 percent of the state general fund expenditures. These costs have grown 167 percent since 1985, far outpacing spending growth in other areas like education.¹⁴

So, what's the path forward?

Investing in statewide public defender services that ensure quality representation for anyone facing criminal charges would be a good start. The absence of a strong, well-resourced indigent defense system leads to unfair results and contributes to Maine's overburdened and wasteful jail and prison systems. Expanding diversion and alternatives to incarceration could reduce prison admissions while also leading to better outcomes. And reducing probation and bail revocations, particularly for technical violations, could ensure that community supervision isn't a pipeline to incarceration.

In addition, eliminating mandatory minimums that force judges to dole out severe sentences would help keep prison and jail populations down. And amending Maine's criminal code to reduce sentencing ranges, including and especially for drug offenses, burglary

and other property offenses, and assault, would reduce punitive sentencing practices. For people who have been in prison for long periods of time, expanding access to compassionate release when appropriate could ensure that people are not imprisoned after they've aged past the point when they're likely to present a threat to society, which is extremely expensive due to the increased needs of imprisoned people over the age of 50.¹⁵

For more detailed information about these and other potential reforms, see the sections below on "Reducing Admissions" and "Reducing Time Served." If Maine were to adopt the changes we detail in this report, the state reduce the prison population by half by 2025, leading to cost savings of \$91,059,352.

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

The State of the Maine Prison System

The Maine prison population increased steadily between 1980 and 2017, growing 195 percent over that period.¹⁶ Between 2000 and 2016, while the average U.S. state imprisonment rate dropped by 8 percent, Maine's imprisonment rate grew by 38 percent.¹⁷ As of July 29, 2019, there were 2,319 people in Maine prisons.¹⁸

The rate of increase in the number of women incarcerated in Maine has been even more dramatic than the increase in the number of men. Between 2000 and 2017, the number of women imprisoned in Maine grew by 244 percent while the number of men grew by 35 percent.¹⁹ As of July 2019, there were 217 women in Maine prisons.²⁰

AT A GLANCE

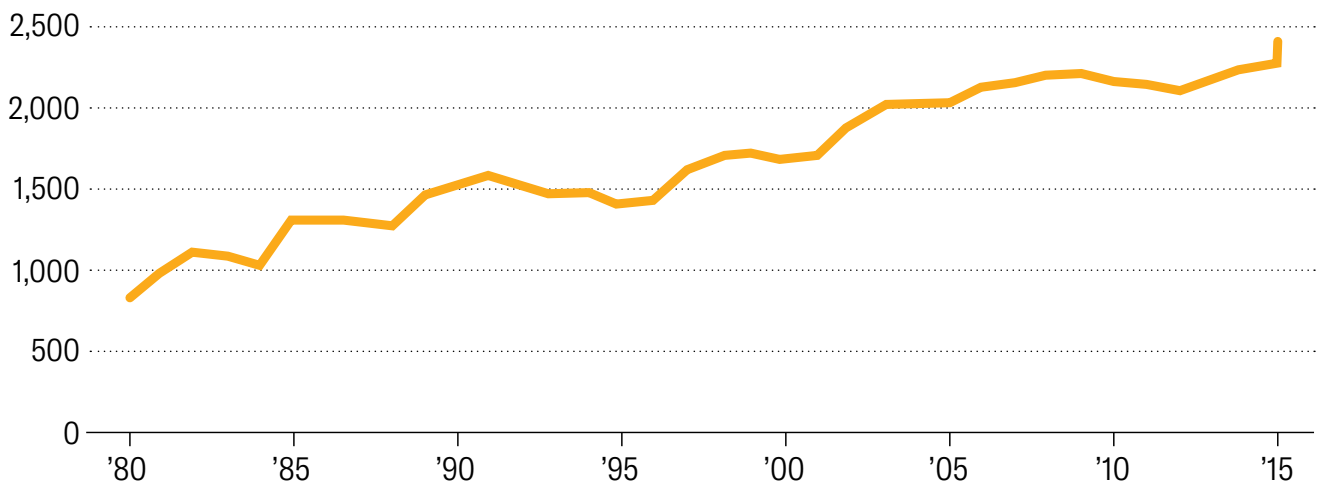
MAINE PRISONS

Maine's prison population grew **195 percent** between 1980 and 2017.

There were **2,319 people** in Maine prisons as of July 29th, 2019.

There were **217 women** in Maine prisons as of July 29th, 2019.

MAINE PRISON POPULATION



What Is Driving People Into Prison?²¹

The number of people who are sent to Maine prisons every year increased by 16 percent between 2015 and 2018. Of the 1,327 people who entered prison in 2018, 42 percent were incarcerated due to probation violations,²² which can include things like moving without telling their probation officer and consuming alcohol.²³

People who are sent to prison in Maine for new crimes are convicted of a range of offenses. The number of admissions to Maine prisons each year for drug offenses increased by 59 percent between 2014 and 2018.²⁴ In 2018, one in three admissions (33 percent) to prison for a new crime was sentenced for a drug offense, making it the largest admissions offense category.²⁵ Other common offenses among prison admissions for new crimes that year included assault (14 percent), theft (12 percent), and traffic crimes (10 percent).²⁶ Nearly three-fourths (72 percent) of admissions of women to prison in 2018 for new offenses were for drug or theft convictions.²⁷

Maine has habitual offender laws that carry mandatory prison terms for certain offenses in some circumstances. These laws apply to people who have accumulated three or more convictions or

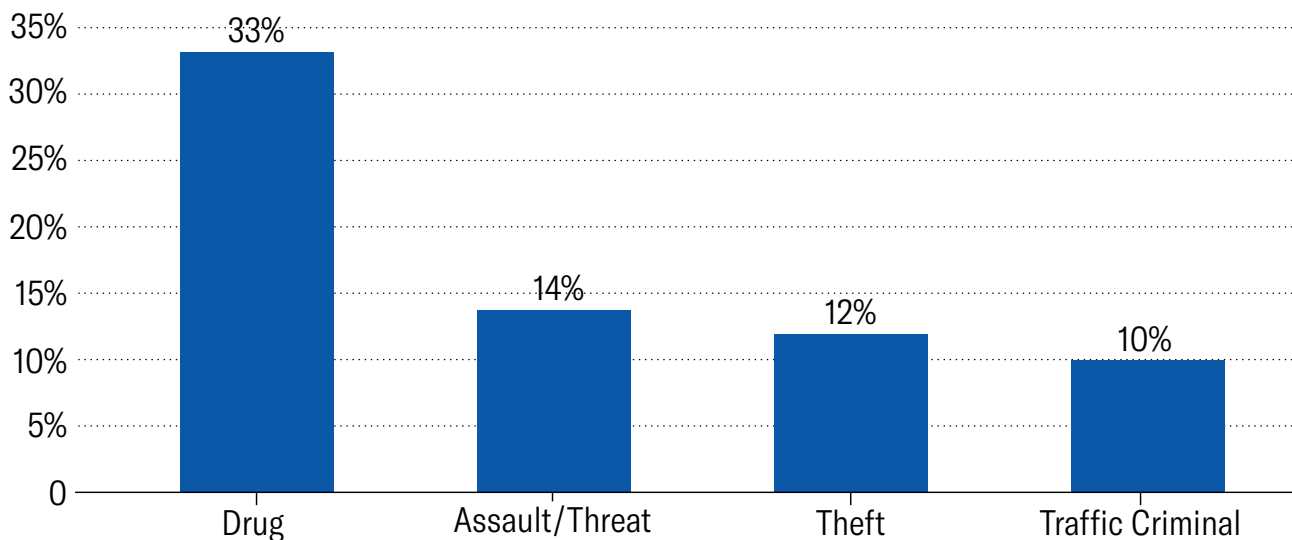
adjudications for specific motor vehicle and traffic offenses within a five-year time frame. These offenses include operating a vehicle without a license, passing a police roadblock, and operating a vehicle after license suspension.²⁸ Convictions can result in an indefinite license revocation lasting a minimum of three years.²⁹ If someone is found operating a vehicle with a revoked or suspended license and sentenced under the habitual offender laws, they can be subject to mandatory minimum sentences ranging from 30 days to two years of incarceration, with a maximum sentence of five years.³⁰

The Current Prison and Jail Population

In 2018, 22 percent of people in prison in Maine were imprisoned for a drug offense, and an additional 20 percent were imprisoned for a property offense (e.g., theft or property damage).³¹ Other common offenses people in Maine prisons were serving time for in 2018 included sex offenses (13 percent), assault/threatening (13 percent), and murder/manslaughter (11 percent).³²

A lack of sufficient access to treatment options and reentry support for people who have served time in Maine prisons means many are rearrested and

MAINE PRISON ADMISSIONS BY TOP OFFENSE TYPES (2018)



AT A GLANCE

MAINE JAIL AND PRISON POPULATION

The number of annual admissions to Maine prisons for drug offenses increased by **59 percent** between 2014 and 2018.

Of people released from prison in 2014, **31 percent** of men and **28 percent** of women returned to a Maine prison within 3 years.

Over the course of 2015, there were approximately **40,000 admissions** to county jails across Maine.

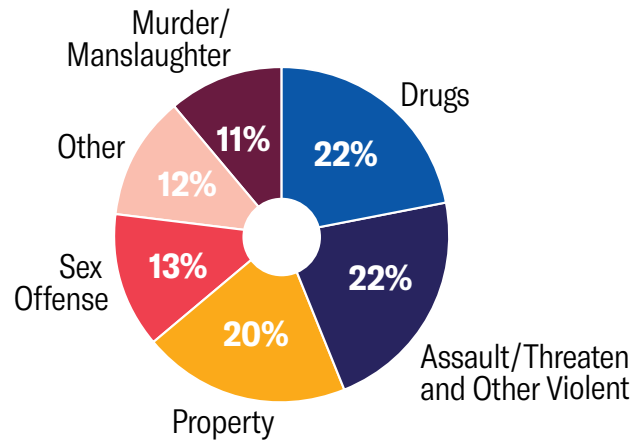
In 2015, nearly **two-thirds** of people in Maine jails were awaiting trial and had not been convicted of a crime.

returned to prison. Of people released from prison in 2014, 31 percent of men and 28 percent of women returned to a Maine prison within three years. The three-year return rate to prison for people released in 2014 was 23 percent higher than it was for people released in 2010.³³ This increase was particularly pronounced for women, whose three-year return rate doubled from 14 percent to 28 percent over the same time period.³⁴

In addition to people held in state prisons, in 2015 there were an estimated 1,670 people at any one time in county jails in Maine, according to the most recently available data. That year, women accounted for about 14 percent of the jail population.³⁵ The majority of people held in jail – 1,102 people, or about 61 percent – were awaiting trial and had not been convicted of a crime.³⁶

Because many people stay in jail for relatively short periods of time and some people are admitted multiple times in a given year, the number of admissions to jails in a given year is much greater. Over the course of 2015, there were nearly 40,000 admissions to jails in Maine.³⁷

MAINE PRISON POPULATION BY OFFENSE TYPE (2018)



Why Do People Stay in Prison for So Long?

Maine has several sentencing enhancements that lengthen certain sentences. For instance, for certain offenses committed with the use of a “dangerous weapon,” the sentence imposed must be increased by one sentencing class (i.e., from a Class C offense with a five-year maximum to a Class B offense with a 10-year maximum).³⁸ Similarly, Maine law requires that certain people with two or more prior convictions be sentenced at one sentencing class higher than the offense would normally carry.³⁹

In 1976, Maine enacted laws that limit release options available to people in prison. These laws eliminated parole and ended indeterminate sentencing (sentences with a minimum and a maximum term) in favor of determinate sentencing.⁴⁰ In 2014, those in prison serving the longest terms (10 percent of the prison population) had served an average of 17 years.⁴¹

Who Is Imprisoned?

Black Mainers: Incarceration⁴² in Maine has a disproportionate impact on communities of color. In 2018, the Black adult imprisonment rate was ten times the white adult imprisonment rate. Despite accounting for only 1 percent of the state’s adult population,⁴³

Black people accounted for 11 percent of the state's adult prison population in 2018.⁴⁴ Approximately 1 in 31 Black men in Maine were imprisoned that year.⁴⁵ Black people also represent a growing share of the prison population: Between 2014 and 2018, the number of Black people in Maine prisons grew by 65 percent, increasing from 8 percent of Maine's prison population to 11 percent.⁴⁶

Native American Mainers: Maine's Native American population is overrepresented in the prison system. In 2018, Native Americans accounted for 1 percent of all adults in the state and 3 percent of the adult prison population.⁴⁷ The Native American adult imprisonment rate in Maine in 2018 was five times the white adult imprisonment rate. Approximately 1 in 54 Native American men in Maine were imprisoned in 2018.⁴⁸

Female Mainers: Between 2000 and 2017, the number of women in Maine prisons increased by 244 percent, while the number of men in prison increased by only 35 percent over the same period of time.⁴⁹ As of July 2019, women accounted for 9 percent of the prison population in Maine (about 217 people).⁵⁰

Older Mainers: Though generally considered to pose a negligible risk to public safety,⁵¹ people 55 years old and older accounted for 11 percent of Maine's prison population in 2015.⁵²

Mainers with Mental Health Issues: Maine DOC does not report the number of people with behavioral health needs under its jurisdiction. However, others have attempted to determine the prevalence of mental health needs among people in Maine prisons. For example, a survey conducted by a local newspaper in 2015 found that approximately one-third of the state prison population was taking psychiatric medication.⁵³ Nationally, the Bureau of Justice Statistics estimated that 64 percent of people in jails and 50 percent of people in prisons in 2011-2012 had some indication of a mental health problem. However, only 35 percent of people in jails and 54 percent of people in prisons who met the threshold for serious psychological distress had received treatment since admission.⁵⁴

AT A GLANCE

DEMOGRAPHICS

Maine's Black adult imprisonment rate was **10 times** the white adult prison rate in 2018. One in 31 Black men in Maine were imprisoned in 2018.

Maine's Native American adult imprisonment rate was **5 times** the white adult imprisonment rate in 2018.

Between 2000 and 2017, the number of women in Maine prisons increased by **244 percent**.

Budget Strains

As Maine's prison population has risen, so has the cost burden. Maine spent \$182 million of its general fund on corrections in 2017. These costs have grown 167 percent since 1985, far outpacing spending growth in other areas like education.⁵⁵ In fiscal year 2018-2019, Maine spent \$186 million of its general fund on corrections.⁵⁶

AT A GLANCE

BUDGET

Maine spent **\$186 million** of its general fund on corrections in fiscal year 2018-2019.

General fund spending on corrections grew by **167 percent** between 1985 and 2017.

Ending Mass Incarceration in Maine: 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 Maine end its mass incarceration crisis, but it will be up to the people and policymakers of Maine to decide which changes to pursue. To reach a 50 percent reduction, policy reforms will need to reduce the amount of time people serve in prisons and/or reduce the number of people entering jail and prison in the first place.

Reducing Admissions

To end mass incarceration, Maine must break its overreliance on jails and prisons and reinvest its resources into other areas, such as public health, community mental health options, and housing. Evidence indicates that prisons seldom offer adequate solutions to problematic behavior. In fact, imprisonment can be counterproductive – increasing cycles of harm and violence and failing to provide rehabilitation for incarcerated people or adequate accountability to the survivors of crime.⁵⁷ Here are some strategies:

- **Invest in statewide public defender services:** Access to counsel can be critical to a person’s success at every stage, from pretrial through release from custody. But this access means little if the attorney lacks the time, resources, or skills to be an effective advocate. Maine is the only state in the country that provides all public defender services through private attorneys. Assigned attorneys and contract attorneys

are coordinated by the Maine Commission on Indigent Legal Services (MCILS). MCILS is expected to oversee the representation by and cost of nearly 600 attorneys handling more than 30,000 cases each year in 47 courthouses presided over by approximately 90 justices, judges, and magistrates – with a staff of just three people. This means there is inadequate supervision of attorneys, and the quality of representation is uneven across the state. 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. The Maine Legislature should restructure the system to establish statewide public defender services that are adequately funded by the Legislature, free of cost to people using the services, and appointed as early as the first court appearance to help people defend their charges and protect their freedom.

- **Expand diversion and alternatives to incarceration:** Under Maine statute, law enforcement has the authority to issue citations instead of an arrest in certain circumstances.⁵⁸ The Legislature should amend the law to eliminate the exceptions and make citations instead of arrest mandatory where there is no imminent threat to public safety. Maine courts should also implement programs that provide alternatives to incarceration and address the 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.⁵⁹ For crimes involving violence, restorative justice programs — which are designed to hold people accountable and support those who were harmed — can be particularly promising. When they are rigorous and well-implemented, these processes have not only been demonstrated to reduce recidivism for defendants,⁶⁰ they have also been shown to decrease symptoms of posttraumatic stress in victims of crime.⁶¹ Prosecutors and judges who embrace these solutions can fulfill their responsibilities to public safety while supporting victims in their healing — and can often generate far better results than imprisonment can deliver. Other successful models include law enforcement-led initiatives 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.

- **Improve and increase community supervision:** Community supervision is intended to be an alternative to incarceration, a mechanism for early release, and an opportunity to lower recidivism through effective reentry practices. Yet, many state probation practices perpetuate mass incarceration.⁶² Probation offices must prioritize the risk-need-responsivity principle,⁶³ ensuring the level and parameters of supervision are tailored to each individual and lead to better public safety and rehabilitation outcomes. Maine law authorizes Supervised Community Confinement,⁶⁴ but currently there are only 10 people under this type of supervision. This is likely due to the onerous eligibility requirements, including tight restrictions on the length of time one can be sentenced to and must have served prior to eligibility and requirements that people be involved in approved work or education programs, often hard to come by prior to release. The Legislature should

increase investment in the program and work with the DOC to expand it as an alternative to incarceration, making sure not to widen the net of system-involved people.

- **Reduce probation and bail revocations:** Too often, people revoked from supervision are sent to prison for technical violations or violations of their conditions of release that do not threaten public safety. Racial disparities are stark in revocation decision-making. One national study found that Black probationers were revoked at significantly higher rates than white and Latinx probationers.⁶⁵ Further, revocations for technical violations can sometimes be due to physical or mental disabilities. Probation officers are legally required to provide reasonable accommodations so that people with disabilities have an equal opportunity to comply with the requirements. Proper training of probation officers and greater awareness of, and advocacy for, these requirements could reduce the number of technical violations significantly. The Legislature should also revisit what conditions are allowed to be imposed in the first place, including prohibition on drugs or alcohol consumption for those who have substance use disorders. Judges know that these conditions set defendants up for failure, yet they continue to impose them so long as they are allowed to under the law. The Maine Legislature should implement a system of graduated sanctions for probation violations, ensuring responses are proportional to the harm of the violation. Incarceration should be prohibited in cases of technical violations.
- **Expand treatment for mental health and substance use:** Substance use and mental health needs are often underlying drivers of crime. Addressing mental health and substance use through treatment in the community can more effectively reduce crime while also redirecting people out of the criminal legal system.⁶⁶ Diversion programs have been shown to be effective for people charged with all types of offenses.⁶⁷ When implemented effectively,

diversion reduces arrests, encourages voluntary treatment in the community, and saves money.⁶⁸ After an initial investment in community supports, diversion programs have the potential to save jurisdictions large amounts of money.⁶⁹

- **Support decriminalization and defelonization:** Over the last several years, the Maine Legislature has moved away from a culture of criminalization and expansion of the criminal code. The Legislature should continue on this path, working to employ decriminalization strategies that eliminate criminal penalties while embracing diversion and alternatives to incarceration. The state should move toward decriminalization of personal drug use and possession in favor of an evidence-based health policy approach. The Legislature should also move to decriminalize minor traffic offenses, sex work, and quality of life crimes, in addition to working to undo the criminalization of poverty generally across Maine. Criminal penalties can be replaced with diversion, expanded social services and treatment for mental health and substance use needs, and civil fines that account for a person's present ability to pay. Maine should also consider defelonization of offenses as a way to contract the breadth and reach of the Maine criminal code.
- **Enact pretrial justice reform:** Maine can significantly reduce its rates of pretrial detention by creating a fairer, smarter pretrial system. Maine relies too heavily on cash bail, leaving 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 or months as they wait for their day in court. When this happens, the legal system leaves them with a difficult choice: Take a plea deal — even if they are innocent — or fight the case from behind bars. Research shows that many people face significant collateral damage while detained pretrial, such as painful and dangerous forced drug detoxification, job loss, or interrupted education.⁷⁰ And evidence shows

that pretrial detention significantly increases a defendant's chance of conviction.⁷¹ The current pretrial 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.⁷² In order to significantly reduce pretrial detention and combat racial disparities, the Maine Legislature should enact pretrial reform — including increasing reliance on personal recognizance bail, adopting mandatory cite-and-release policies, enhancing speedy trial rights, and expanding access to counsel — and limit pretrial detention to the rare case where a person poses an imminent, serious, clear threat to another person.

- **Prosecutorial reform:** Prosecutors are the most powerful actors in the criminal legal system, with the ability to wield the power of the state against an individual to deprive that person of life, liberty, and property. The initial decision of whether to charge someone with crimes and if so, what and how many, has 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. Prosecutors should collect and make public records of charging, plea offers, and sentencing recommendations, disaggregated by race and gender, and states and counties should review and assess these decisions to ensure they are made appropriately. As Maine Supreme Court Chief Justice Leigh Saufley says, "We manage what we measure."⁷³ Additionally, prosecutors across the board must dramatically change their charging and sentencing policies. The attorney general's office should stop charging drug trafficking in the absence of clear evidence of a person's intent to traffic. Prosecutors should be required to seek high-level approval to charge people with low-level offenses, including but not limited to minor theft, drinking in public, and operating vehicles with expired registration. Prosecutors should follow the lead of other jurisdictions and begin

plea negotiations by offering time less than the highest amount of incarceration mandated by the class of crime one lower than the defendant is charged with.⁷⁴ And prosecutors should charge the lowest level crime appropriate to the situation, ending the practice of overcharging for the purposes of leverage in plea negotiations.

- **Expand judicial options at sentencing:** The Legislature should limit the circumstances under which a judge is required to impose a prison sentence instead of community supervision, especially for drug offenses and in situations when the mandatory prison sentence is triggered by a prior felony. Judges must also have a variety of options at their disposal besides imprisonment, allowing them to mandate 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. Additionally, courts must collect and publish data on what sentences are imposed, disaggregated by crime charged and race and gender of the defendant, so that any racial or gender bias patterns that emerge in the data may be addressed.

Reducing Time Served

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

- **Eliminate mandatory minimums:** The Maine Legislature should eliminate mandatory minimum sentences. These harsh, one-size-fits-all approaches don't allow for unique variables like mental health history, trauma, or substance use disorder to be taken into account during sentencing. By eliminating mandatory minimums, the Legislature can ensure that

judges have appropriate discretion when considering the case before them.

- **Sentencing reform:** The Legislature can amend Maine's criminal code to reduce sentencing ranges, including for drug offenses, burglary and other property offenses, robbery, and assault. The Legislature can also limit the circumstances and severity of Maine's prior felony sentencing rules, in which the presence of even a single prior felony can substantially increase the sentencing range. Multiple prior felonies trigger even more substantial enhancements to both sentencing range and security classification once imprisoned.
- **Earned time/earned credit reform:** Maine can also consider expanding the availability of earned credits against a prison sentence through participation in educational, vocational, and other opportunities. These programs should provide as much day-for-day credit as possible for as wide an array of activities as possible. All people who are incarcerated should be eligible to participate in the programs; there should be no exclusion based on offense or the type or length of sentence.
- **Compassionate release:** The Maine Legislature should expand access to compassionate release from prison wherever appropriate. The state's prison population is rapidly aging, in large part due to laws that eliminated parole and indeterminate sentencing. Keeping aging and seriously injured or ill people incarcerated significantly taxes prison resources. Studies have shown that incarcerating a person aged 50 or above costs double what it costs to incarcerate a younger person.⁷⁵ What is more, keeping older people behind bars does not serve a public safety goal, as studies have clearly shown that as people age, their propensity to commit crime significantly declines.⁷⁶ There is also clear evidence showing that older people have much lower rates of recidivism than their younger counterparts.⁷⁷

Reducing Racial Disparities

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

People of color (especially Black, Latinx, 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.⁷⁸ 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 lower 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 2012.⁷⁹ 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.⁸⁰

Ending mass incarceration is critical to eliminating racial disparities, but it is insufficient without companion efforts that take aim at other drivers of racial inequities outside of the criminal legal system.

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

— From *The New Jim Crow*, Michelle Alexander

Reductions in disparate imprisonment rates require implementing explicit racial justice strategies.

Some examples include:

- Ending overpolicing in communities of color and requiring transparent reporting of data on stops, searches, arrests, and referrals to prosecution broken down by race
- Evaluating prosecutors’ charging and plea bargaining practices to identify and mitigate 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 public housing)
- Requiring racial impact statements before any new law or regulation is passed and requiring legislation to proactively rectify any potential disparities that may result from new laws or rules
- Eliminating considerations in the legal system that disproportionately target people of color,

such as the consideration of witness tampering/intimidation in the pretrial state

- Closely monitoring the expanding use of risk assessments to assist decision-making in the criminal legal system in order to address their inherent racial bias. All risk assessment tools used for any purpose should be transparent with regard to factors taken into account and algorithms used to assess risk.
- 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 legal system are 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 – such as attempted suicide – that arises due to their illness, 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, many sentencing reforms appear to leave people with mental health needs behind. In recent years in California, for example, the prison population has decreased by more than 25 percent following a court order, but the number of people with a serious mental disorder has increased by 150 percent – an increase in both the rate and absolute number of incarcerated people with psychiatric disabilities.⁸⁶

Screening tools to evaluate psychiatric disabilities vary by state and jurisdiction, but the most reliable data indicate that more than half of people in jail and close to half of people in prison have mental health disabilities.⁸⁷ 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 misperception 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.⁸⁸ 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 small, regional, behavioral health treatment options, 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 recognize when civilian-led crisis intervention teams are more appropriate than police interventions

- Training dispatchers and police to divert people with mental health issues who commit low-level nuisance crimes to behavioral health centers. Jurisdictions that have followed this approach

have significantly reduced their jail populations.⁸⁹

- Ending arrest and incarceration for low-level public order charges, such as being drunk in public, urinating in public, loitering, trespassing,

TAKING THE LEAD

The changes we suggest could lead to a meaningful reduction in prison population but will require concerted efforts at every level of the criminal justice system.

Prosecutors: They make decisions on when to prosecute an arrest, what charges to bring, and which plea deals to offer. 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: They are generally the first point of contact with the criminal legal system. The practices that police employ in communities can shape the public's view of and trust in that system. Police can decide whether or not to charge a person with a crime, whether to arrest, and how much force to use during encounters with the public. Police departments can also participate in diversion programs, which enable officers to divert people into community-based intervention programs rather than into the criminal legal system.

Judges: They often have discretion over pretrial conditions imposed on defendants, including whether a person is incarcerated or can go home before trial, which can make a difference in case outcomes. 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 also must use their discretion in sentencing and should consider alternatives to incarceration when possible.

State lawmakers: They decide which offenses to criminalize or decriminalize, 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. They can also 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.

Governor: Under the Maine Constitution, only the governor has the power to grant reprieves, commutations, and pardons.⁹² Every justice system must be tempered by mercy, and Maine's governor has the responsibility to exercise these powers fairly and with an eye to mitigating against the systems of oppression that manifest in our criminal justice system. Because the Maine Constitution's separation of powers provision has been so strictly construed by courts, tools such as expungement of criminal records are unavailable to citizens returning to their communities from incarceration. The governor should make applications for clemency or pardon easily accessible and should not make the criteria for receiving relief unduly restrictive.

vandalism, and sleeping on the street. If needed, refer people who commit these offenses to behavioral health treatment.

- Requiring prosecutors to offer diversion for people with mental health and substance use disabilities who are charged with low-level crimes
- Evaluating prosecutors' charging and plea bargaining practices to identify and eliminate disability bias
- Requiring prosecutors' offices be transparent in their hiring practices, charging decisions, and plea deals
- Investing in diversion programs and alternatives to detention designed for people with disabilities, including programs that provide supportive housing, Assertive Community Treatment,⁹⁰ 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 bail or probation revocations through intensive case management, disability-competent training

for officers on alternatives to incarceration and reasonable modifications to requirements of supervision, and no return to incarceration for first and second technical violations

- Addressing bias against mental disabilities in risk assessment instruments used to assist decision-making in the criminal legal 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 Maine 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 Maine, visit the interactive online tool at <https://urbn.is/ppf>.

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

Impact Compared to 2025 Baseline*				
Offense category**	Policy outcome	Prison population impact	Impact on racial and ethnic makeup of prison population***	Cost savings****
Drug offenses	<ul style="list-style-type: none"> Reduce average time served for all drug offenses by 60% (from 1.81 to 0.72 years) Institute alternatives that reduce admissions by 50% (134 fewer people admitted) 	14.89% reduction (377 fewer people)	White: 2.7% increase Black: 25.2% decrease Native American: 4.9% increase Asian: 3.0% decrease Hawaiian/Pacific Islander: 17.5% increase Other: 8.8% decrease	\$9,497,331
Assault	<ul style="list-style-type: none"> Reduce average time served by 50% (from 1.25 to 0.63 years) Institute alternatives that reduce admissions by 30% (113 fewer people admitted) 	12.02% reduction (305 fewer people)	White: 0.1% increase Black: 0.4% increase Native American: 6.8% decrease Asian: 5.9% increase Hawaiian/Pacific Islander: 13.7% increase Other: 1.7% increase	\$6,884,692
Public order offenses*****	<ul style="list-style-type: none"> Reduce average time served by 50% (from 1.44 to 0.72 years) Institute alternatives that reduce admissions by 50% (69 fewer people admitted) 	5.75% reduction (146 fewer people)	White: No change Black: 0.8% increase Native American: 0.3% decrease Asian: 6.1% increase Hawaiian/Pacific Islander: 6.1% increase Other: 3.2% decrease	\$3,390,729
Theft	<ul style="list-style-type: none"> Reduce average time served by 50% (from 1.13 to 0.57 years) Institute alternatives that reduce admissions by 40% (73 fewer people admitted) 	5.69% reduction (144 fewer people)	White: 0.4% decrease Black: 4.4% increase Native American: 4.5% decrease Asian: 6.0% increase Hawaiian/Pacific Islander: 6.0% increase Other: 2.2% increase	\$3,428,591
Burglary	<ul style="list-style-type: none"> Reduce average time served by 50% (from 1.47 to 0.74 years) Institute alternatives that reduce admissions by 30% (35 fewer people admitted) 	4.45% reduction (113 fewer people)	White: 0.4% decrease Black: 2.9% increase Native American: 0.8% increase Asian: 4.7% increase Hawaiian/Pacific Islander: 4.7% increase Other: 1.0% decrease	\$2,890,936

Impact Compared to 2025 Baseline*

Offense category**	Policy outcome	Prison population impact	Impact on racial and ethnic makeup of prison population***	Cost savings****
Robbery	<ul style="list-style-type: none"> Reduce average time served by 50% (from 3.34 to 1.67 years) Institute alternatives that reduce admissions by 30% (13 fewer people admitted) 	3.85% reduction (98 fewer people)	White: No change Black: 0.1% increase Native American: 0.2% increase Asian: 6.9% decrease Hawaiian/Pacific Islander: 4.0% increase Other: 5.3% decrease	\$2,293,097
Fraud	<ul style="list-style-type: none"> Reduce average time served by 50% (from 1.08 to 0.54 years) Institute alternatives that reduce admissions by 40% (27 fewer people admitted) 	2.0% reduction (51 fewer people)	White: No change Black: 1.1% increase Native American: 0.5% increase Asian: 2.0% increase Hawaiian/Pacific Islander: 69.3% decrease Other: 2.5% decrease	\$1,163,226
Other violent offenses	<ul style="list-style-type: none"> Reduce average time served by 50% (from 1.10 to 0.55 years) Institute alternatives that reduce admissions by 40% (11 fewer people admitted) 	0.8% reduction (20 fewer people)	White: No change Black: 0.3% increase Native American: 0.8% increase Asian: 0.8% increase Hawaiian/Pacific Islander: 0.8% increase Other: 0.8% increase	\$453,845
OUI	<ul style="list-style-type: none"> Reduce average time served by 40% (from 1.33 to 0.8 years) Institute alternatives that reduce admissions by 50% (4 fewer people admitted) 	0.33% reduction (8 fewer people)	White: No change Black: No change Native American: 0.3% increase Asian: 0.3% increase Hawaiian/Pacific Islander: 0.3% increase Other: 0.3% increase	\$206,178

* 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 or ethnic group to the number of people in the state's general population of that same group. 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 Maine, where Black people made up eleven percent of the prison population but constituted only one percent of the state's total adult population in 2018. Note: Data on Hispanic/Latino ethnicity not available in state.

**** 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 (such as facility operation expenses) would be affected by the greater 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.

Total Fiscal Impact

If Maine were to implement reforms leading to the changes above, 1,261 fewer people would be in prison in the state by 2025, a 50 percent decrease. This could lead to a total cost savings of \$91,059,352 by 2025. Any money that is saved from implementing reforms must be reinvested to much-needed public health services, including investing in our mental health infrastructure, housing, and transportation.

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 Maine'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

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- 6 17-A.49 M.R.S.A. § 1204.
- 7 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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