

Blueprint for Smart Justice
Montana



Blueprint *for* Smart Justice Montana

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

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

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

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

The analysis was eye-opening.

In every state, we found that reducing the prison population by itself does little to diminish racial disparities in incarceration — and in some cases would worsen them. In Montana — where the adult Native American imprisonment rate¹ is nearly five times higher than the white adult imprisonment rate² — 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 average state imprisonment rate dropped by 7 percent between 2000 and 2016, Montana's rate of imprisonment increased by 6 percent over the same period of time.³ There were 2,706 people in Montana prisons as of February 5, 2019.⁴ In 2015, sexual assault offenses⁵ accounted for nearly one in four people in prison in Montana. Other common offenses in Montana prisons include property offenses, homicide, and assault.⁶ Incarceration costs the state an increasingly large amount of money. In 2017, Montana spent \$200 million of its general fund on corrections.⁷

In addition to the state's prison population, there are an estimated 2,204 people in county jails, according to the most recently available data.⁸ In a 2015 report, the ACLU of Montana found many of these facilities were crowded, understaffed, and failing to meet the medical, mental health, and substance abuse treatment needs of the people incarcerated there.⁹

While many different offenses drive prison admissions in Montana, revocations from community supervision due to a technical violation of supervision or for committing a new crime accounted for 74 percent of admissions to prison in 2015.¹⁰ Most new crimes

leading to admissions from community supervision were drug or property offenses.¹¹ Recidivism rates in Montana are driven in part by a lack of access to treatment options and reentry support for people who have been released from prison. Of people released in 2015,¹² 39 percent of men and 24 percent of women returned to a Montana prison within three years for either a technical violation or a new crime.¹³

So, what's the path forward?

While the Montana Legislature passed significant criminal justice reforms in 2017, the Legislature must continue to push back against new bills that aim to criminalize behavior that should not lead to incarceration. Legislators must stop expanding the criminal code, and they should support alternatives to incarceration and treatment programs that address underlying drivers of crime such as mental health needs and substance use. Treatment options should be community based and include rural and tribal areas, and there should be proactive recruitment and support of Indigenous staff and staff of color as providers.

The Montana Legislature and regulatory agencies should also enact laws that prevent private actors such as bail bond outlets from profiting off of Montanans as they navigate the criminal justice system. Further, prosecutorial reform that increases transparency, enhances oversight, and encourages diversion from the criminal justice system must be enacted.

Criminal justice stakeholders in Montana can also reduce the state's prison population by eliminating mandatory minimum sentences, which often require people who are not a threat to public safety to be incarcerated for longer periods of time than necessary, at a cost to the state. The Legislature should also limit the use of sentencing enhancements and enact parole reform that expands access to early release. As the state moves forward with criminal justice reforms, it is critical that this work be coupled with efforts to eliminate racial disparities and inequities within and outside of the criminal justice system, such as creating culturally competent programming for Indigenous people involved in the probation and parole system and removing law enforcement from schools.

If Montana 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 \$180 million by 2025 – money that could be better spent on schools, infrastructure, and services for Montanans.

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

The State of the Montana Prison System

As prison populations across the United States have climbed over the last few decades, Montana has been no exception. The state's prison population increased 416 percent between 1980 and 2016.¹⁴ While the average state imprisonment rate dropped by 7 percent between 2000 and 2016, Montana's rate of imprisonment increased by 6 percent over the same period of time.¹⁵ As of February 5, 2019, there were 2,706 people in Montana prisons.¹⁶

These trends, coupled with projected growth of the prison population, led Montana to participate in the Justice Reinvestment Initiative¹⁷ and pass a legislation package in May 2017. This package included reduced mandatory minimum sentences for many misdemeanors and drug offenses, and it is expected to curb the projected prison population growth over the next several years.¹⁸

AT A GLANCE

MONTANA PRISONS

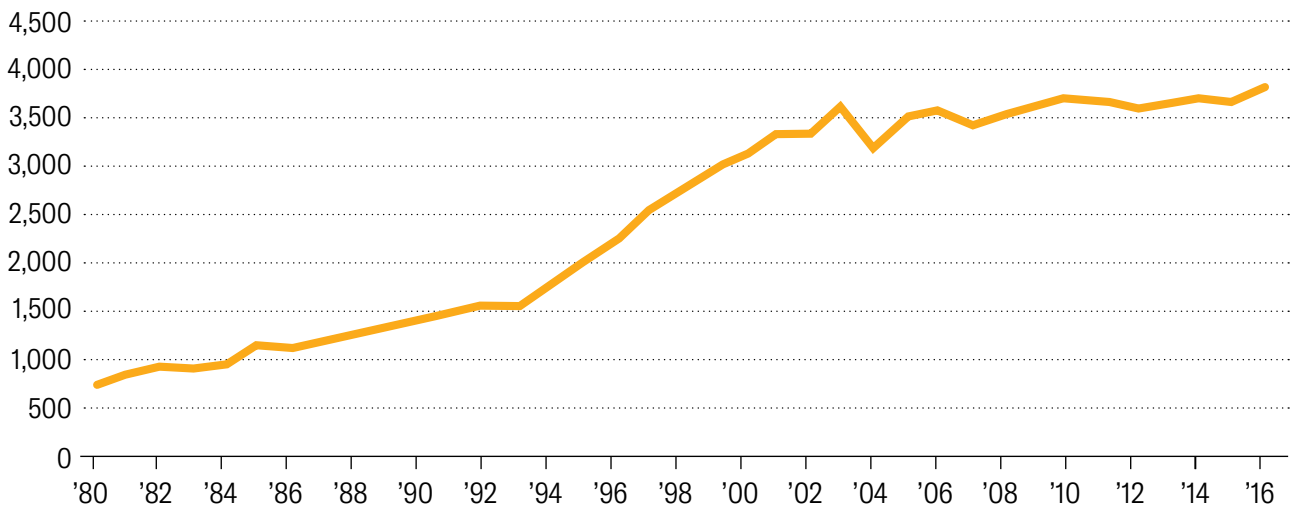
As of 2019, there were **2,706 people** in Montana prisons.

Between 1980 and 2016, the Montana prison population grew by **416 percent**.

What Is Driving People Into Prison?

In Montana, a litany of offenses drives people into prisons.¹⁹ In 2015, nearly one in five (18 percent) people who entered a Montana prison did so for a drug offense, 67 percent of which were possession offenses. Other common offenses included assault (13 percent), sexual

MONTANA PRISON POPULATION



assault (12 percent), and driving while intoxicated (10 percent). Overall, property offenses accounted for nearly one in five (19 percent) admissions to Montana prisons in 2015.²⁰

The increase in annual admissions to prison is outpacing the increase in annual prison releases: Between 2008 and 2018, admissions to Montana prisons increased by 24 percent while releases increased by only 18 percent.²¹ In 2018, Montana admitted 2,774 people to prison and released 2,458.²²

A primary driver of admissions is the large number of people who have been revoked from community supervision due to technical violations of supervision or for committing new crimes, which accounted for 74 percent of admissions to prison in 2015.²³ The majority of new crimes committed by people on supervision were drug or property offenses.²⁴

The Current Prison and Jail Population

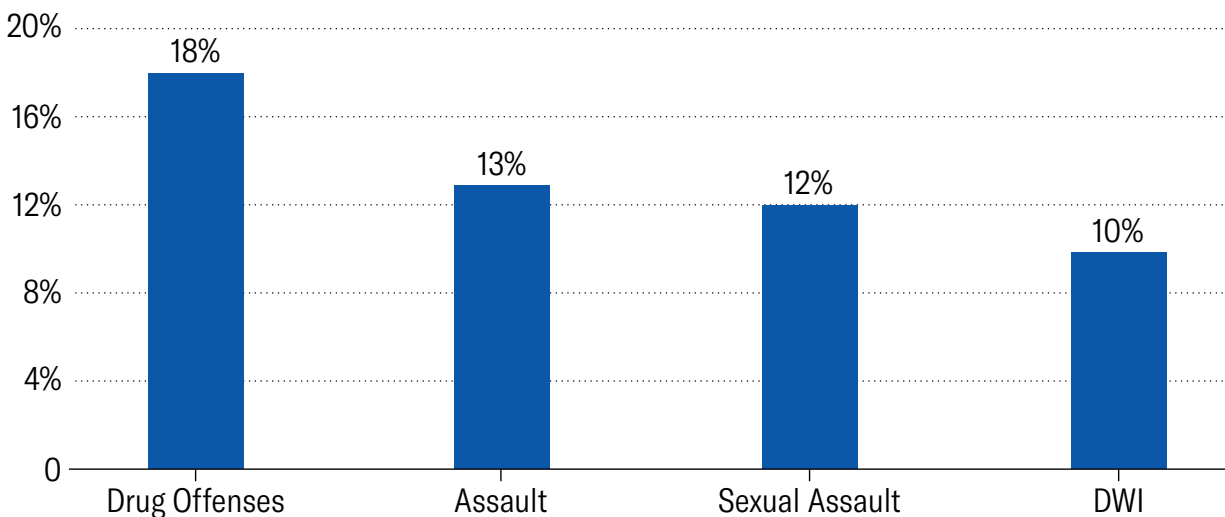
In 2015, sexual assault offenses accounted for nearly one in four (23 percent) people in prison in Montana. Other common offenses among people in Montana prisons that year included property offenses (16

percent), homicide (14 percent), and assault (13 percent).²⁵

A lack of sufficient access to treatment options and reentry support for people who have served time in Montana prisons means many are rearrested and returned to prison. Of people released from prison in 2015,²⁶ 39 percent of men and 24 percent of women returned to a Montana prison within three years for either a technical violation or a new crime.²⁷ Of those who were released, 5 percent of men and 3 percent of women returned due to committing a new crime.²⁸

In addition to people held in state prisons, Montana incarcerates an estimated 2,204 people in county jails, according to the most recently available data (2015). The majority of those in jail – 1,351 people, or 61 percent – are being held pretrial and have not been convicted of a crime.²⁹ A 2015 report found that many of Montana’s local detention centers are crowded and understaffed, and they do not meet the medical, mental health, and substance abuse treatment needs of the people incarcerated there.³⁰ The time it takes for a case in Montana district courts to reach disposition after a guilty plea increased 60 percent between 2012 and 2015, potentially contributing to longer jail stays.³¹

MONTANA PRISON ADMISSIONS BY TOP OFFENSE TYPES (2015)



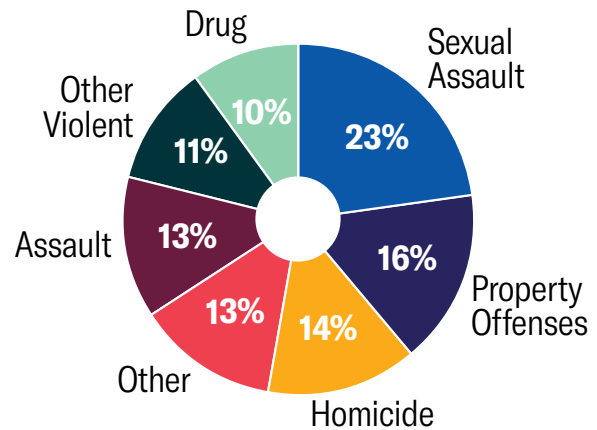
Why Do People Stay in Prison for So Long?

As in many states, increasingly long prison stays have contributed to the growth of Montana's prison population. Between 2010 and 2015, the average length of time that people in Montana prisons had served increased by 17 percent. Some of this increase can be attributed to a 24 percent growth in the average time served for people convicted of property offenses.³² In 2015, the average person in Montana prisons had already spent nearly four years imprisoned.³³

Montana has a persistent felony law that contributes to long lengths of stay in prison. Before being revised in 2017, this law required that people previously convicted of a felony be sentenced to a five-year minimum and 100-year maximum for their second felony offense. The 2017 Justice Reinvestment legislation revised the persistent felony law into a three-strike law, meaning it can be imposed only when someone has previously been convicted of two felony offenses, and one of the three felony convictions must be either a violent or sexual offense.³⁴ For some felonies, a repeat offense results in a life sentence without the possibility of release.³⁵

Legislation passed in 1995 eliminated the ability to earn good time off of sentences for the purpose of parole eligibility. Instead, people imprisoned must

MONTANA PRISON POPULATION BY OFFENSE TYPE (2015)



serve 25 percent of their sentence before becoming parole eligible, and people with life sentences must serve at least 30 years of their sentence.³⁶ Between 2000 and 2013, the average length of time that elapsed between initial parole eligibility and a parole grant decision increased more than three-fold, meaning that people who are eligible to be considered can spend months or years waiting to receive a release decision. In 2013, people who were parole eligible waited over two years on average to receive a parole grant decision.³⁷

AT A GLANCE

MONTANA JAIL AND PRISON POPULATION

Property offenses accounted for approximately **1 in 5** admissions to Montana prisons in 2015.

More than **2,000 people** were held in Montana's county jails in 2015.

Community supervision revocations accounted for **74 percent** of Montana prison admissions in 2015.

Who Is Imprisoned

Native Americans: Montana's Native American population is overrepresented in the prison system. In 2017, Native Americans accounted for 5 percent of all adults in the state, while 20 percent of all men in prison and 33 percent of all women in prison were Native American.³⁸ The adult Native American imprisonment rate is nearly five times higher than the white adult imprisonment rate.³⁹

Black Montanans: Incarceration in Montana has a disproportionate impact on communities of color. The adult Black imprisonment rate is nearly six times higher than the white adult imprisonment rate. Approximately 1 in 40 Black men are imprisoned in Montana. Despite accounting for only 1 percent of the

AT A GLANCE

LENGTH OF IMPRISONMENT AT A GLANCE

The average length of time people in Montana prisons had served grew by **17 percent** between 2010 and 2015.

On average, parole-eligible people waited **over two years** to receive a grant decision in 2013.

adult state population, Black people accounted for 3 percent of the prison population.⁴⁰

Female Montanans: Between 2010 and 2018, the number of women in Montana prisons increased by 36 percent while the number of men in Montana prisons increased by 7 percent.⁴¹ In 2016, seven out of 10 women serving time in Montana prisons were there for nonviolent offenses; drug possession was the most common offense of women in prison in 2016.⁴²

Older Montanans: In 2019, the Montana Department of Corrections reported that people 55 years old and older accounted for approximately one in six people in Montana prisons.⁴³ People in this age demographic are generally considered to pose a negligible risk to public safety.⁴⁴

AT A GLANCE

DEMOGRAPHICS AT A GLANCE

In 2017, **20 percent** of all men in Montana prisons were Native American.

Native American adults in Montana were imprisoned at nearly **five times** the rate of white adults in 2017.

The number of women in Montana prisons grew by **36 percent** between 2010 and 2018.

AT A GLANCE

BUDGET

Montana spent **\$200 million** of its general fund on corrections in 2017.

Corrections spending from the general fund increased by nearly **350 percent** between 1985 and 2017.

Budget Strains

As Montana's prison population has risen, so has the cost burden. Montana spent \$200 million of its general fund on corrections in 2017, accounting for more than 8 percent of the state general fund expenditures. These costs have grown nearly 350 percent since 1985.⁴⁵

Ending Mass Incarceration in Montana: 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 Montana end its mass incarceration crisis, but it will be up to the people and policymakers of Montana 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, Montana must break its overreliance on jails and prisons as a means to hold people accountable for their crimes. Evidence indicates that prisons seldom offer adequate solutions to wrongful behavior. In fact, imprisonment can be counterproductive – increasing cycles of harm and violence, and failing to provide rehabilitation for incarcerated people or adequate accountability to the survivors of crime.⁴⁶ Here are some strategies:

- **Alternatives to incarceration:** Montana should implement programs that provide alternatives to incarceration and address root causes of many of the state’s admissions to jail and 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.⁴⁷ For crimes

involving violence, restorative justice programs – which are designed to hold responsible people accountable and support those who were harmed – can be particularly promising. When they are rigorous and well implemented, these processes have not only been demonstrated to reduce recidivism for defendants,⁴⁸ but they have also been shown to decrease symptoms of posttraumatic stress in victims of crime.⁴⁹ Prosecutors and judges who embrace these solutions can fulfill their responsibilities to public safety and to supporting victims in their healing – and can often generate far better results than imprisonment can deliver. Other successful models include programs that divert people to treatment and support services before arrest and programs led by prosecutors that divert people before they are charged. Lawmakers can explore such interventions at multiple phases in the system, whether through decriminalization or alternatives to arrest, charges, or incarceration.

- **Expand treatment – 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.⁵⁰ Mental health 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.⁵¹ When implemented effectively, diversion reduces arrests, encourages voluntary treatment in the community, and saves money.⁵² Despite the initial investment in community supports, diversion programs have the potential of saving jurisdictions large amounts of money.⁵³ One way to support treatment options is to expand Medicaid so that Montanans have greater access to mental health treatment and substance use treatment while on probation/parole and after their separation from the criminal justice system. These services should be community based, including covering rural areas and tribal areas, to ensure that people being released from custody can have a continuity of care. Further, providers of mental health and substance use care should be culturally competent and require proactive recruitment and support of Indigenous staff and staff of color as providers.

- **Support decriminalization:** Since passing significant criminal justice reforms law in 2017, the Montana Legislature has consistently introduced bills to criminalize behavior that previously would not lead to incarceration. The Legislature needs to move away from a culture of criminalization, stop expanding the criminal code, and look at alternatives to incarceration. Montanans can let their representatives know that decriminalization is a winning commitment both for the community as well as the ballot box.
- **Invest in holistic indigent defense:** Access to counsel can be critical to a person's success, whether during the pretrial stage or upon release from custody. The Legislature should invest in holistic indigent defense services that can provide assistance and support to people who have housing, treatment, and transportation needs. Enhancing indigent defense services can ensure that the legal system adheres to constitutional requirements and that people are afforded adequate due process protections as they navigate the criminal legal system.
- **Eliminate pretrial profiteering:** The Montana Legislature and regulatory agencies should enact laws and regulations that prevent private,

for-profit actors from enriching themselves off of the traumatic experiences of people navigating the criminal legal system and their families. This is not a matter of mere regulation, as for-profit actors in the criminal legal system are inherently exploitative and extractive in nature. For example, a person requiring a bail bondsperson to post a bail set outside of that person's present ability to pay is required to pay an additional nonrefundable fee and waive rights, in addition to any money required by courts, in order to gain their freedom.

- **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. Montana should aim to enact 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 charges, have a major impact on every aspect of a person's experience with the system, not least of which is the amount of time someone faces and eventually serves incarcerated. There should be some mechanism for the state and counties to review and assess those decisions overall to ensure that they make these decisions appropriately. Moreover, sometimes prosecutors wrongfully convict a person, whether through prosecutorial misconduct or the conviction of an innocent person. Legislation that supports state-wide 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.
- **Expanding judicial options at sentencing:** The Legislature can also limit the circumstances in which a judge is required to impose a prison

sentence instead of community supervision, especially for drug offenses and in situations when the mandatory prison sentence is triggered by a prior felony. Judges must also have a variety of options at their disposal besides imprisonment, allowing them to require treatment, mental health care, restorative justice, or other evidence-based alternatives to incarceration. These programs should be available to the court in all 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.

Reducing Time Served

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

- **Eliminate mandatory minimum sentences:** The Legislature can amend Montana's criminal code to eliminate mandatory minimums for all crimes. The Legislature can further act and reduce sentencing ranges, including and especially for drug offenses, burglary and other property offenses, robbery, public order offenses, sexual offenses, and assault offenses. Mandatory minimums lead people to remain incarcerated for time periods that are beyond reasonable and that are not in the best interest of either the individual incarcerated or the public.
- **Sentencing reform – enhancements:** The Legislature can limit the circumstances and the severity of Montana's prior felony sentencing by eliminating sentencing enhancements and recognizing that prior convictions should have no bearing on sentencing of new convictions.
- **Parole reform:** Reducing the time people spend in prison is a necessary step to decrease Montana's prison population. Since 2014, the number of people both released on parole and who complete parole has remained relatively stagnant, even as the number of people granted

parole has increased.⁵⁴ The Montana Legislature needs to enact parole reform that expands access to early release and provides clear guidelines to parole boards about how to make decision in an equitable way.

- **Eliminate parole and probation revocations for technical violations:** Parole revocations for technical violations are often due to onerous conditions and unreasonable requirements placed on people who are released, yet who are not given adequate support to meet them. 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.
- **Compassionate release:** The Montana Legislature should expand access to compassionate release from prison. The state's prison population is rapidly aging, in significant part due to long average sentence lengths and a lack of access to parole. 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.⁵⁵ What is more, keeping older people behind bars does not serve the goal of incapacitation, particularly as studies have clearly shown that as people age their propensity to commit crime significantly declines.⁵⁶ There is also clear evidence showing that older persons have much lower rates of recidivism than their younger counterparts.⁵⁷

Challenging Racism in the Criminal Legal System

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

People of color (especially Black, Latino, and Indigenous 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.⁵⁸ 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 2012.⁵⁹ 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.⁶⁰

Ending mass incarceration is critical to eliminating racial disparities but insufficient without companion efforts that take aim at other drivers of racial inequities outside of the criminal justice system. Reductions in disparate imprisonment rates require implementing explicit racial justice strategies.

Some examples include:

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

- Creating culturally relevant programming for Indigenous people involved in the probation and parole systems to reduce recidivism, such as mentoring programs, peer support programs, and implementation of traditional restorative justice practices
- Investing in diversion and community-based alternatives to detention in communities of color
- 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
- Abolishing the death penalty. Numerous studies illustrate racial disparities are rampant throughout the capital sentencing process.⁶¹
- Eliminating any potential racial bias in risk assessment instruments used to assist decision-making in the criminal justice system, or eliminating the use of risk assessments if bias is unable to be eliminated
- 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 process to avoid incarcerating children during their most formative years
- Eliminating fines and fees, which effectively criminalize poverty
- Shifting funding from law enforcement and corrections to community organizations, job creation, schools, drug and mental health treatment, and other social service providers

Reducing Disability Disparities

The rates of people with disabilities in the U.S. criminal system are two to six times that of the general population.⁶² In particular, people with mental illness

are dramatically overrepresented in jails and prisons across the country.⁶³

- People showing signs of mental illness are twice as likely to be arrested as people without mental illness for the same behavior.⁶⁴
- People with mental illness are sentenced to prison terms that are, on average, 12 percent longer than those of other people in prison.⁶⁵
- 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.⁶⁶

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

Screening tools to evaluate mental health needs 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.⁶⁷ The fact that people with mental health needs are arrested more frequently, stay incarcerated longer, and return to prisons faster is not due to any inherent criminality related to psychiatric needs. 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.⁶⁸ Not surprisingly, many of the strategies to reduce disability disparities are similar

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.

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

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 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.

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.⁶⁹
- Ending arrest and incarceration for low-level public order charges, such as being drunk in public, urinating in public, loitering, trespassing, vandalism, and sleeping on the street. If needed, refer people who commit these crimes to behavioral health centers.
- Requiring prosecutors to offer diversion for people with substance use and mental health needs 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 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, wrap-around services, and mental health supports
- Reducing the use of pretrial detention while increasing reminders of court dates and other supports to ensure compliance with pretrial requirements
- Reducing reincarceration due to parole or probation revocations through intensive case

management, disability-competent training for officers on alternatives to incarceration and reasonable modifications to requirements of supervision, and no return to incarceration for first and second technical violations

- Addressing bias against mental disabilities in risk assessment instruments used to assist decision-making in the criminal justice system
- Shifting funding away from law enforcement and corrections into supportive housing, intensive case management, schools, drug and mental health treatment, community organizations, job creation, and other social service providers

Forecaster Chart

There are many pathways to cutting the prison population in Montana 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 2025.⁷⁰ 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 Montana, 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 drug distribution by 70% (from 1.53 to 0.46 years) Institute alternatives that reduce admissions for drug distribution by 80% (51 fewer people admitted) Institute alternatives that end all admissions for drug possession (177 fewer people admitted) 	9.98% reduction (291 fewer people)	White: 0.6% increase Black: 10.1% decrease Native American: 0.8% decrease Asian: 22.0% decrease Other: 11.1% increase	\$11,776,396
Assault	<ul style="list-style-type: none"> Reduce average time served by 70% (from 2.17 to 0.65 years) Institute alternatives that reduce admissions by 70% (95 fewer people admitted) 	9.31% reduction (271 fewer people)	White: 1.3% increase Black: 1.5% decrease Native American: 4.6% decrease Asian: 10.3% increase Other: 10.3% increase	\$9,977,613
Public order offenses*****	<ul style="list-style-type: none"> Reduce average time served by 70% (from 1.72 to 0.51 years) Institute alternatives that reduce admissions by 80% (83 fewer people admitted) 	5.70% reduction (166 fewer people)	White: 0.7% increase Black: 7.3% decrease Native American: 1.8% decrease Asian: 6.0% increase Other: 6.0% increase	\$6,282,382
Other violent offenses	<ul style="list-style-type: none"> Reduce average time served by 70% (from 1.60 to 0.48 years) Institute alternatives that reduce admissions by 80% (86 fewer people admitted) 	5.51% reduction (160 fewer people)	White: 0.2% increase Black: 1.2% increase Native American: 1.1% decrease Asian: 5.8% increase Other: 5.8% increase	\$6,076,443
Burglary	<ul style="list-style-type: none"> Reduce average time served by 70% (from 1.86 to 0.56 years) Institute alternatives that reduce admissions by 70% (55 fewer people admitted) 	4.59% reduction (134 fewer people)	White: No change Black: 2.6% increase Native American: 0.5% decrease Asian: 4.8% increase Other: 4.8% increase	\$5,135,551

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 70% (from 2.59 to 0.78 years) Institute alternatives that reduce admissions by 60% (36 fewer people admitted) 	4.42% reduction (129 fewer people)	White: 0.6% increase Black: 4.9% decrease Native American: 1.2% decrease Asian: 20.3% decrease Other: 2.3% decrease	\$4,336,690
DWI	<ul style="list-style-type: none"> Reduce average time served by 70% (from 1.29 to 0.39 years) Institute alternatives that reduce admissions by 80% (79 fewer people admitted) 	4.14% reduction (121 fewer people)	White: 0.4% increase Black: 3.1% increase Native American: 1.9% decrease Asian: 4.3% increase Other: 4.3% increase	\$4,842,936
Theft	<ul style="list-style-type: none"> Reduce average time served by 70% (from 1.73 to 0.52 years) Institute alternatives that reduce admissions by 70% (34 fewer people admitted) 	2.70% reduction (79 fewer people)	White: 0.3% decrease Black: 1.9% increase Native American: 0.7% increase Asian: 2.8% increase Other: 2.8% increase	\$3,201,280
Fraud	<ul style="list-style-type: none"> Reduce average time served by 70% (from 1.09 to 0.33 years) Institute alternatives that reduce admissions by 70% (33 fewer people admitted) 	1.61% reduction (47 fewer people)	White: 0.2% decrease Black: 1.6% increase Native American: 0.5% increase Asian: 1.6% increase Other: 1.6% increase	\$1,830,782
Other property offenses*****	<ul style="list-style-type: none"> Reduce average time served by 70% (from 2.31 to 0.69 years) Institute alternatives that reduce admissions by 80% (13 fewer people admitted) 	1.16% reduction (34 fewer people)	White: No change Black: 1.2% increase Native American: 0.4% decrease Asian: 1.2% increase Other: 1.2% increase	\$1,232,703
Weapons offenses*****	<ul style="list-style-type: none"> Reduce average time served by 70% (from 2.13 to 0.64 years) Institute alternatives that reduce admissions by 70% (9 fewer people admitted) 	0.85% reduction (25 fewer people)	White: 0.2% increase Black: 0.9% increase Native American: 0.7% decrease Asian: 0.9% increase Other: 0.9% increase	\$829,614

*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 Montana, where Black people make up 3 percent of the prison population but constitute only 1 percent of the state’s total adult population. 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 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 Montana were to implement reforms leading to the changes above, 1,457 fewer people would be in prison in the state by 2025, a 50 percent decrease. This would lead to a total cost savings of \$183,804,318 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 Montana’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 Numbers are based on the Montana Department of Corrections' *2019 Biennial Report*, which does not specify for which year race composition represents. It is interpreted as a fiscal year 2018 average.
- 2 U.S. Census Bureau, "Annual Estimates of the Resident Population by Sex, Age, Race, and Hispanic Origin for the United States and States," 2017 population estimates; Montana Department of Corrections, *2019 Biennial Report*, <https://cor.mt.gov/Portals/104/Resources/Reports/2019BiennialReport.pdf>.
- 3 Bureau of Justice Statistics (BJS), Corrections Statistical Analysis Tool.
- 4 Montana Department of Corrections, *Population Report* (February 5, 2019).
- 5 Offense breakdowns in this Smart Justice 50-State 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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- 9 ACLU of Montana, *Locked in the Past: Montana's Jails in Crisis* (2015), <https://www.aclumontana.org/en/publications/locked-past-montanas-jails-crisis>.
- 10 Council of State Governments Justice Center, "Montana's Justice Reinvestment Approach: Curbing State Prison Population Growth and Reinvesting in Local Public Safety Strategies" (June 2017), https://csgjusticecenter.org/wp-content/uploads/2017/06/6.6.17_Montana_Justice-Reinvestment-Approach1.pdf.
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- 12 Refers to fiscal year.
- 13 Montana Department of Corrections, *2019 Biennial Report*, <https://cor.mt.gov/Portals/104/Resources/Reports/2019BiennialReport.pdf>.
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- 15 BJS, Corrections Statistical Analysis Tool.
- 16 Montana Department of Corrections, *Population Report* (February 5, 2019).
- 17 The Justice Reinvestment Initiative is a data-driven approach to state criminal justice reform that seeks to control corrections costs and reinvest savings in practices demonstrated to improve safety. Montana engaged in the Justice Reinvestment Initiative process in 2015, successfully passing legislation in 2017 through Senate Bills 59, 60, 62, 63, 64, 65, and 67; Senate Resolution 3; and House Bill 133.
- 18 Montana HB 133 (2017); Council of State Governments Justice Center, "Montana's Justice Reinvestment Approach: Curbing State Prison Population Growth and Reinvesting in Local Public Safety Strategies" (June 2017), https://csgjusticecenter.org/wp-content/uploads/2017/06/6.6.17_Montana_Justice-Reinvestment-Approach1.pdf.
- 19 Prison admissions reflect the number of people entering Montana prisons in a given year, while the total prison population refers to the total number of people imprisoned at a given time.
- 20 Note: Admissions for technical violations to supervision are categorized in this data under the original controlling offense. BJS, National Corrections Reporting Program, 2015.
- 21 Note: Refers to fiscal years. Montana Department of Corrections, *2019 Biennial Report*; Montana Department of Corrections, *2019 Biennial Report*, <https://cor.mt.gov/Portals/104/Resources/Reports/2019BiennialReport.pdf>.
- 22 Montana Department of Corrections, *2019 Biennial Report*, <https://cor.mt.gov/Portals/104/Resources/Reports/2019BiennialReport.pdf>.
- 23 Council of State Governments Justice Center, "Montana's Justice Reinvestment Approach: Curbing State Prison Population Growth and Reinvesting in Local Public Safety Strategies" (June 2017), https://csgjusticecenter.org/wp-content/uploads/2017/06/6.6.17_Montana_Justice-Reinvestment-Approach1.pdf.
- 24 Council of State Governments Justice Center, "Montana's Justice Reinvestment Approach: Curbing State Prison Population Growth and Reinvesting in Local Public Safety Strategies" (June 2017), https://csgjusticecenter.org/wp-content/uploads/2017/06/6.6.17_Montana_Justice-Reinvestment-Approach1.pdf.
- 25 BJS, National Corrections Reporting Program, 2015.
- 26 Refers to fiscal year.
- 27 Montana Department of Corrections, *2019 Biennial Report*, <https://cor.mt.gov/Portals/104/Resources/Reports/2019BiennialReport.pdf>.
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- 29 Vera Institute of Justice, *Incarceration Trends*, 2015. Note: Total jail population and pretrial jail population data are drawn from different sources in the cited source. Total jail population data is reported as average daily population in 2015 and excludes federal jail populations, while pretrial jail population is reported as a single day count (taken on June 30) and includes federal jail populations.
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- 31 Note: Refers to fiscal years. Council of State Governments Justice Center, "Justice Reinvestment in Montana: Report to the Montana Commission on Sentencing" (January 2017), https://csgjusticecenter.org/wp-content/uploads/2017/01/Justice-Reinvestment-in-Montana_Final-Report1.pdf.
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- 33 BJS, National Corrections Reporting Program, 2015.
- 34 Montana HB 133 (2017).
- 35 Montana Code Annotated 46-18-219.
- 36 State of Montana Board of Pardons and Parole, *Biennial Report* (January 2015), <https://bopp.mt.gov/Portals/42/about/Legislative%20Report%202015.pdf>.
- 37 State of Montana Board of Pardons and Parole, *Biennial Report* (January 2015), <https://bopp.mt.gov/Portals/42/about/Legislative%20Report%202015.pdf>.
- 38 Numbers are based on the Montana Department of Corrections' *2019 Biennial Report*, which does not specify for which year race composition represents. It is interpreted as a fiscal year 2018 average.
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- 2019 Biennial Report, <https://cor.mt.gov/Portals/104/Resources/Reports/2019BiennialReport.pdf>.
- 40 Note: Census numbers reflect the American Indian and Alaska Native category. U.S. Census Bureau, "Annual Estimates of the Resident Population by Sex, Age, Race, and Hispanic Origin for the United States and States," 2017 population estimates; Montana Department of Corrections, 2019 Biennial Report, <https://cor.mt.gov/Portals/104/Resources/Reports/2019BiennialReport.pdf>.
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- 42 *Id.*
- 43 *Id.*
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