

*Blueprint for Smart Justice*  
**New Jersey**





# Blueprint *for* Smart Justice New Jersey

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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 under-resourced 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 communities with approaches designed to break the cycles of poverty, 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 New Jersey – which in 2014 had the largest disparity between the imprisonment rates of Black and white residents of any state<sup>1</sup> – 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.

New Jersey's prison population exploded between 1980 and its peak in 1999, growing by 466 percent in that period.<sup>2</sup> Between 1999 and 2016, the state accomplished the largest percentage reduction in prison population of any state in the U.S, reducing its total population by 37 percent.<sup>3</sup> Still, in 2016, New Jersey's prison population was more than three times larger than it was in 1980.<sup>4</sup> As of January 2019, 19,212 people were imprisoned across the state.<sup>5</sup>

The implementation of sentencing and other reforms in New Jersey has reduced the role that drug offenses play in prison admissions, but they are still a key driver of the state's prison population; in 2013, they made up 28 percent of all prison admissions.<sup>6</sup> Property offenses accounted for 21 percent of admissions that year, followed by weapons offenses (11 percent), robbery (11 percent), and assault (9 percent).<sup>7</sup>

The number of people held in local jails has gone down in the wake of sweeping reforms, dropping from about 15,000<sup>8</sup> in 2012 to fewer than 9,000 by 2018.<sup>9</sup> During that time, the proportion of people held in jail on bail of \$2,500 or less — effectively, imprisonment based on the inability to pay — dropped from 12 percent to 5 percent.<sup>10</sup>

New Jersey’s mass incarceration crisis has had a disproportionate impact on communities of color. In 2017, the state had an imprisonment rate for Black adults that was almost 13 times that of white adults.<sup>11</sup> Despite only accounting for 13 percent of the state’s adult population in 2017, Black adults made up 61 percent of New Jersey’s prison population.<sup>12</sup>

All this incarceration is expensive. In 2017, New Jersey spent more than \$1.5 billion of its general fund on corrections.<sup>13</sup>

So, what’s the path forward?

New Jersey has made strides in reducing the number of people who are incarcerated in local jails while awaiting trial, but there is still more that can be done. Pretrial detention should only be used in the rarest of circumstances, and only after a defendant has received robust due process protections. In addition, the state could reform its sentencing laws to allow judges to use their discretion rather than being forced to hand down mandatory minimum sentences. Reforming policing practices so that people are not unnecessarily shepherded into the criminal legal system would also help, as would providing better alternatives to incarceration such as expanded drug treatment and other programs.

Improving parole practices to ensure that eligible people are paroled more quickly is another key way to reduce the amount of time people stay in prison, which would reduce the number of people who are incarcerated at any given time. Reducing sentencing ranges, especially for drug offenses, burglary and other property offenses, robbery, assault, and public order offenses should also be a priority for lawmakers. For elderly people and those suffering from serious illnesses, expanding compassionate release (also called medical parole) could allow people who do not

pose a threat to their communities to be released from incarceration while reducing systems costs that are passed on to taxpayers.

In 2017, the American Civil Liberties Union of New Jersey released its groundbreaking *Vision to End Mass Incarceration in New Jersey*.<sup>14</sup> In that report, we discussed the state of the carceral system and proposed a set of priority recommendations for achieving our goal of cutting the state’s incarcerated population by 50 percent. We wanted to reduce the number of people being admitted to jails and prisons, fix components of the system each step of the way, and reimagine release and reintegration to support people in their communities. In the two years since that report’s publication, we have seen the implementation of a number of policies that have continued the downward trajectory of the size of the state’s incarcerated population.

Now, more than ever, we are committed to seeing this vision through to fruition. This report seeks to bolster that vision and lay the comprehensive blueprint for achieving our goal.

For more detailed information on potential reforms, see the below sections on “Reducing Admissions” and “Reducing Time Served.” If New Jersey were to adopt the changes we detail in this report, the state could have 10,120 fewer people in prison by 2025, leading to a cost savings of over \$1 billion.

Ultimately, the answer is up to New Jersey’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 New Jersey Prison System

New Jersey's prison population increased more than fivefold between 1980 and its peak in 1999, a 466 percent increase. After that year, the New Jersey prison population began to drop, declining by more than one-third – 37 percent – between 1999 and 2016, the largest drop nationwide during this period.<sup>15</sup> This decline was achieved in part by a series of criminal justice system reforms, including changing the administration of parole and newly available sentencing flexibility offered by changes in the law and by the use of drug courts for people charged with low-level drug offenses. New Jersey's reforms also included a redesign of its pretrial system, including the elimination of jail time for many people awaiting trial.<sup>16</sup>

## AT A GLANCE

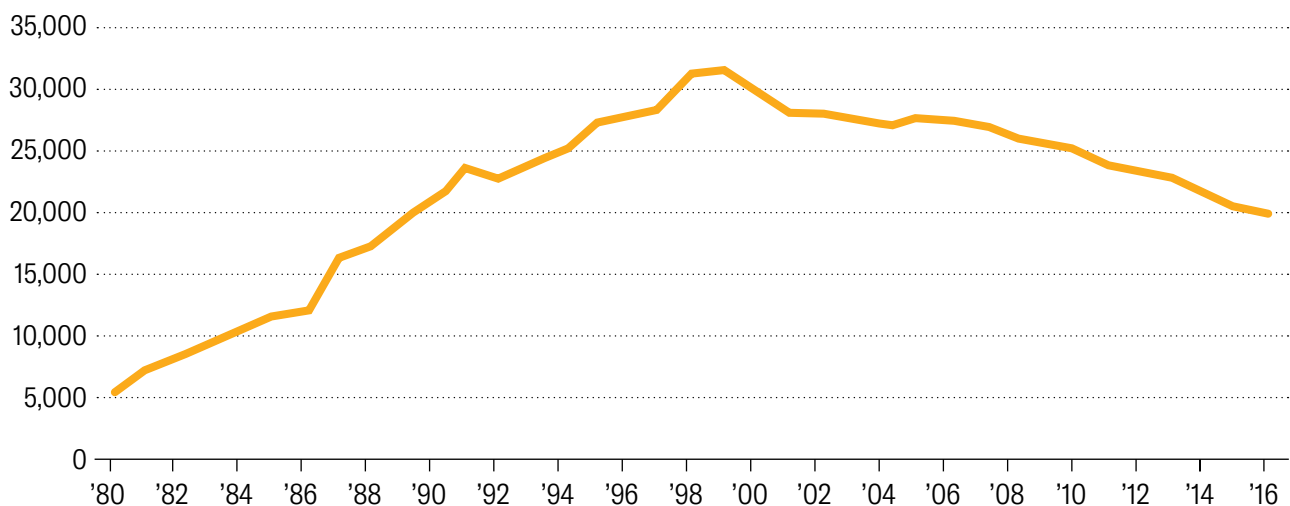
### NEW JERSEY PRISONS

New Jersey's prison population increased by **466 percent** between 1980 and 1999.

As of January 2019, **19,212 people** were imprisoned across the state.

New Jersey's correctional control population was the **eighth largest** in the nation in 2016.

## NEW JERSEY PRISON POPULATION





Overall, however, in 2016, the state’s prison population was more than three times larger than it was in 1980, a 256 percent increase.<sup>17</sup> While the prison population is currently trending downward, 19,212 people were imprisoned across the state as of January 2019.<sup>18</sup> When we consider the number of people in local jails and those under different forms of community supervision, such as probation and parole, the reach of New Jersey’s criminal justice system is even broader. In 2016, approximately one in every 37 adults in New Jersey were under some form of correctional control – 3 percent of the state’s adult population. At 186,300 people, New Jersey’s correctional control population was the eighth largest nationwide that year.<sup>19</sup>

### What Is Driving People Into Prison?<sup>20</sup>

In 2017, admissions to New Jersey prisons totaled 8,611 people, a 38 percent reduction from 2007.<sup>21</sup>

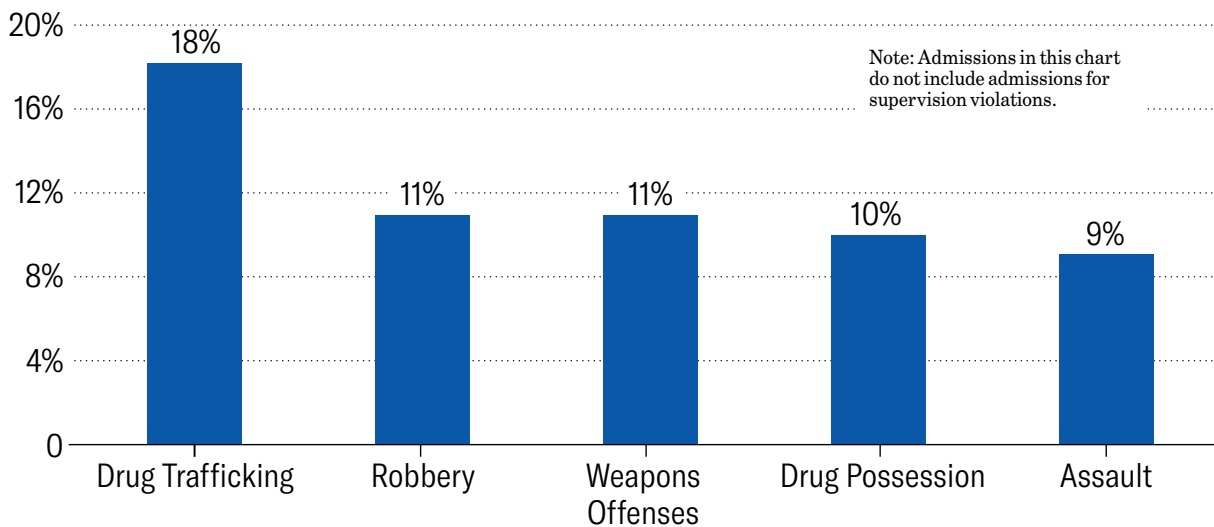
A range of offenses<sup>22</sup> drives people into prisons in New Jersey. The number of admissions for drug offenses has dropped significantly in recent years, but they still remain a key driver of the prison population. In 2013, drug offenses accounted for over one-quarter (28 percent) of all prison admissions in New Jersey.

This is a significantly smaller proportion than in 2003, when they accounted for almost half (47 percent) of all admissions. Between 2003 and 2013, the number of admissions for drug possession offenses dropped by almost half (47 percent), although they still accounted for one in 10 (10 percent) admissions to prison in 2013.<sup>23</sup>

Property offenses accounted for an additional 21 percent of prison admissions in 2013, including 8 percent for burglary. Despite overall admissions falling by one-third (33 percent) between 2003 and 2013, admissions for weapons offenses rose by 79 percent over that period, accounting for 11 percent of all admissions in 2013.<sup>24</sup> Other common offenses that year included robbery (11 percent) and assault (9 percent).<sup>25</sup>

New Jersey offers limited access to treatment options and reentry support for people who have served time in its prisons, and many people are subsequently convicted of new crimes. Among those released from New Jersey prisons in 2014, over half (51 percent) were rearrested within three years of their release, and nearly one-third (31 percent) returned to a Department of Corrections (NJDOC) institution during the same post-release period.<sup>26</sup>

## NEW JERSEY PRISON ADMISSIONS BY TOP OFFENSE TYPES (2013)



## The Current Prison Population

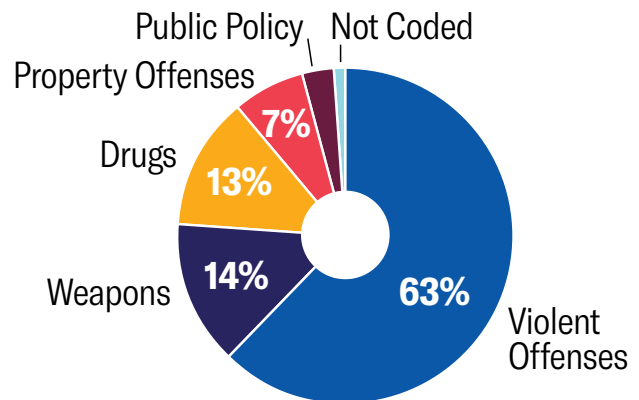
The composition of New Jersey’s prison population has shifted in recent years. In January 2019, 37 percent of those serving time in New Jersey prisons were locked up for nonviolent offenses, down from 43 percent in January 2014.<sup>27</sup> During that time, the proportion of people serving time for drug violations also dropped, from 18 percent to 13 percent. However, during that same period, the number of people serving time for weapons offenses jumped by 20 percent. In 2019, one in seven people in prison (14 percent) were serving time for a weapons offense.<sup>28</sup>

The state has implemented a number of reforms in recent years intended to reduce the number of people serving prison time for drug offenses. These policy changes include giving judges greater discretion regarding mandatory minimum sentences associated with the state’s “drug free school zone” law<sup>29</sup> and increasing reliance on drug courts, which were made mandatory by law in 2017.<sup>30</sup> The drug court program diverts people charged with certain nonviolent offenses to drug treatment programs rather than prisons.<sup>31</sup> In fiscal year 2017–18, there were 6,532 active participants in the drug court program, which is administered by the state judiciary. According to a 2018 report, drug court graduates had a three-year recidivism rate<sup>32</sup> of 7 percent, whereas those released from state prison had a nearly 40 percent rate of recidivism within three years of their release.<sup>33</sup>

## The Current Jail Population

The number of people held in local jails has gone down in the wake of sweeping reforms to the state’s pretrial justice system that took effect in January 2017, dropping from about 15,000 in 2012 to fewer than 9,000 by 2018.<sup>34</sup> The pretrial jail population dropped by 19 percent during 2017, to 5,718 people, continuing a decline that started in 2015, when superior and municipal courts across the state, along with an advisory council, reviewed local pretrial jail populations ahead of the reform implementation.<sup>35</sup> Overall, the state’s pretrial jail population fell by 44 percent between the end of 2015 and 2018.<sup>36</sup>

## NEW JERSEY PRISON POPULATION BY OFFENSE TYPE (2017)



According to the state judiciary’s annual report on criminal justice reform for 2018, the state’s jail population decreased significantly between 2012 and 2018 due to criminal justice reforms, including significant reform of the pretrial system. The circumstances that resulted in detention changed as well; the report points out that during that same period, the proportion of the jail population charged with or sentenced for one or more violent offenses rose by 12 percentage points to almost half (47 percent) of the total population, while the proportion of people held in jail on bail of \$2,500 or less – effectively, imprisonment

### AT A GLANCE

## NEW JERSEY PRISON POPULATION

**37 percent** of people in New Jersey prisons were incarcerated for nonviolent offenses as of January 2019.

Bail reforms implemented in 2017 led to a **19 percent** drop in the pretrial jail population that year.

The number of people held in local jails dropped from about **15,000** in 2012 to fewer than **9,000** by 2018.

based on the inability to pay – dropped from 12 percent to 5 percent.<sup>37</sup>

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

As the breakdown of offenses for which people are incarcerated in New Jersey prisons has shifted over time, the sentences people are serving have become longer. Between January 2011 and 2019, the median sentence length rose from 5.7 years to six years.<sup>38</sup> As of January 2019, nearly two in five (39 percent) people in the prison population were serving sentences of 10 years or longer, a number that includes 1,169 people serving life sentences.<sup>39</sup>

Since 1979, New Jersey has imposed mandatory minimum sentences that contribute to people spending long terms in prison. Individuals who receive these sentences must serve the entire minimum sentence before becoming eligible for release. Between 2011 and 2019, the proportion of people in prison serving mandatory minimum terms rose from 71 percent to 76 percent, and the median mandatory minimum term rose from five to six years. Between 2011 and 2019, the proportion of the prison population serving a mandatory minimum sentence of 10 years or more rose from 22 percent to 29 percent.<sup>40</sup> Even as the prison population continues to drop, without policy

intervention, rigid mandatory sentences will continue to hold people in prison for lengthy terms.

## Who Is Imprisoned?

**Black New Jerseyans:** Incarceration in New Jersey has a profoundly disparate impact on Black communities. In fact, an analysis of data from 2014 found that New Jersey had the largest disparity in the imprisonment rates for Black and white residents of any state.<sup>41</sup> In 2017, the imprisonment rate of Black adults in New Jersey was almost 13 times that of white adults.<sup>42</sup> In 2014, one out of every 31 Black men in New Jersey was in prison.<sup>43</sup> Although they made up just 13 percent of the state’s adult population in 2017,<sup>44</sup> Black adults accounted for 61 percent of New Jersey’s prison population in 2017.<sup>45</sup>

**Female New Jerseyans:** Between 1980 and 1999, the number of women imprisoned in New Jersey grew more than ninefold – an 840 percent increase. As the overall state prison population fell by 37 percent between 1999 and 2016, the number of women in the prison population dropped by more than half (55 percent).<sup>46</sup> In 2017, there were 774 women in prison in New Jersey.<sup>47</sup>

Women in prison are particularly vulnerable to abuse and trauma while incarcerated. In 2019, there were 609 women in the state-run Edna Mahan Correctional

### AT A GLANCE

## LENGTH OF IMPRISONMENT

As of January 2019, **39 percent** of people serving time in New Jersey prisons had a sentence of 10 years or longer.

As of January 2019, **1,169 people** in New Jersey prisons were serving a life sentence.

Between 2011 and 2019, the proportion of people in prison serving mandatory minimum terms rose from **71 percent to 76 percent**.

### AT A GLANCE

## DEMOGRAPHICS

In 2014, New Jersey had the **largest disparity** in imprisonment rates between Black and white residents of any state in the country.

In 2017, Black adults accounted for **61 percent** of New Jersey’s prison population despite making up only **13 percent** of the state’s overall adult population.

Between 2010 and 2017, medical parole was only granted at most **twice per year**.

Facility for Women, which has a separate compound for people with special mental health issues.<sup>48</sup> This facility is presently the subject of a Justice Department investigation into sexual abuse by staff<sup>49</sup> as a result of rampant allegations of sexual abuse, violations of the Prison Rape Elimination Act, and at least seven correctional officers being criminally charged for assaults committed while on the job.<sup>50</sup>

Evidence collected by the ACLU of New Jersey suggests that transgender women are also consistently misgendered and improperly detained in men's prisons. While data of the numbers of transwomen impacted by misgendering is not publicly available, reports of misgendering and other forms of violence as well as improper provision of medical care and housing assignments have been confirmed and substantiated in New Jersey prisons.<sup>51</sup>

**Older New Jerseyans:** New Jersey's prison population is also rapidly graying. Though generally considered to pose a negligible risk to public safety,<sup>52</sup> the prison population aged 50 or older accounted for 17 percent of the January 2019 prison population, up from 11 percent in January 2011. During that period, the median age of the prison population rose from 33 to 35 years.<sup>53</sup> New Jersey also has stringent rules that limit compassionate release on medical grounds. Between 2010 and 2017, medical parole was granted at most twice annually.<sup>54</sup>

## People With Mental Health and Substance Use Disorders

A 2018 estimate suggested that 80 percent of New Jersey's incarcerated population with a substance use disorder were under the influence at the time of their crime.<sup>55</sup>

The state has recently taken steps to address mental illness and substance abuse among its prison population, including introducing Medication-Assisted Treatment in select facilities in response to the rise of opioid-related deaths across the state.<sup>56</sup>

### AT A GLANCE

## MENTAL HEALTH AND SUBSTANCE USE DISORDERS

A 2018 estimate suggested that **80 percent** of New Jersey's incarcerated population with a substance use disorder were under the influence when they committed their crime.

## Budget Strains

As New Jersey's imprisoned population has risen, so has the cost burden. In 2017, New Jersey spent more than \$1.5 billion of its general fund on corrections, accounting for 4.5 percent of its general fund spending that year.<sup>57</sup> General fund spending on corrections more than doubled between 1985 and 2017 (a 154 percent increase), outpacing spending growth on other state priorities, like education. Over this same period, general fund spending on higher education increased by 48 percent, less than one-third of the increase in corrections spending.<sup>58</sup> In 2015, the state spent an average of \$61,603 annually per person in prison – the third-highest annual cost per imprisoned individual of any state in the country.<sup>59</sup>

### AT A GLANCE

## BUDGET

In 2017, New Jersey spent more than **\$1.5 billion** of its general fund on corrections.

In 2015, the state spent **\$61,603**, on average, for every person in prison.

# Ending Mass Incarceration in New Jersey: 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 and mental health care, and economic systems – to name a few. Additionally, we must address underlying structurally based social disparities that drive criminalization of communities of color, LGBTQ+ communities, immigrant communities, low-income individuals, and many other vulnerable populations. There are many potential policy changes that can help New Jersey end its mass incarceration crisis, but it will be up to the people and policymakers of New Jersey 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 reduce the number of people entering jail and prison in the first place.

## Reducing Admissions

To end mass incarceration, New Jersey must break its overreliance on jails and prisons as a means to punish people 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 bring solace or closure to the survivors of crime.<sup>60</sup> Here are some strategies:

- **Reduce pretrial detention:** As the United States Supreme Court has long recognized, “In our society, liberty is the norm, and detention prior to trial or without trial is the carefully limited exception.”<sup>61</sup> New Jersey has made

great strides in reducing the number of people who are detained pretrial. But more work remains; pretrial detention should only be used in the rarest of circumstances and only after a defendant has received robust due process protections. New Jersey must identify strategies to eliminate profound racial disparities in the use of pretrial detention.

- **Expand judicial discretion:** The Legislature can limit the circumstances in which a judge is required to impose mandatory minimum sentences instead of community supervision. When not bound by mandatory minimum sentences, judges must have a variety of options at their disposal besides imprisonment, allowing them to require treatment, mental health care, restorative justice, or other evidence-based alternatives to incarceration. These programs should be available to the court in all or most cases, regardless of the severity of the offense or someone’s prior criminal history – having faith in due process means allowing judges to determine the correct sentence for the severity of an offense. The court, not the Legislature, should be in a position to decide whether such an option is appropriate in each individual case.
- **Reduce unnecessary police encounters:** The New Jersey Legislature consistently introduces bills to criminalize behavior that previously would not have led to incarceration. The Legislature needs to move away from a culture of criminalization, stop expanding the criminal code, and identify opportunities to legalize or decriminalize activity whenever safe

and possible. Reducing the range of activity that is criminalized would benefit communities of color and help New Jersey address the immense racial disparities present in our criminal justice system. The legalization of marijuana is overwhelmingly supported by New Jersey residents,<sup>62</sup> and support for the decriminalization of sex work has also gained momentum. Ending arrests for drug possession and ending criminal punishment for crimes related to drug dependence would reduce unnecessary police encounters, benefit residents, and reduce criminal justice costs.

- **Alternatives to incarceration:** The good news is that alternatives exist and have been rigorously evaluated and validated. Several types of alternative-to-incarceration programs have shown great success in reducing both violent and nonviolent criminal activity. Programs offering support services such as substance use treatment, mental health care, employment, housing, health care, and vocational training — often with a community service requirement — have significantly reduced recidivism rates for participants.<sup>63</sup> 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,<sup>64</sup> they have also been shown to decrease symptoms of post-traumatic stress in victims of crime.<sup>65</sup> 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 those 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

through various alternatives to arrest, charges, or incarceration.

- **Improve community supervision:** Community supervision has traditionally been seen as an alternative to incarceration, a mechanism for early release, and an opportunity to lower recidivism through effective reentry practices. Yet, many state probation and parole practices perpetuate mass incarceration. Probation and parole offices must prioritize the risk-need-responsivity principle, ensuring the supervision levels and parameters both align and lead to better public safety and rehabilitation outcomes. The New Jersey Legislature should ensure probation is used as a prison alternative, not widen the net of people entrenched in the criminal justice apparatus. Further, it should expand parole eligibility and other release mechanisms. For the many offenses for which either jail time or probation are possible, judges should consider the costs — both social and economic — of incarceration and give probation rather than a prison sentence.
- **Reduce probation and parole revocations:** Too often, the revocation of supervision, resulting in reimprisonment, stems from technical violations of parole or probation, not the commission of new crimes. For example, missing curfew or lack of employment could result in incarceration. The racial disparities are stark; one study found that Black probationers had their supervision revoked at significantly higher rates than white or Hispanic probationers.<sup>66</sup> The New Jersey Legislature should implement a system of graduated sanctions for probation and parole violations, ensuring responses are proportional. Incarceration should be prohibited in cases of technical violations. The Legislature should further provide appointed counsel at revocation hearings. Parole revocations for technical violations are often due to physical or mental disabilities, and parole and probation officers are required to provide reasonable accommodations



to allow parolees and probationers with disabilities to have an equal opportunity to comply with the requirements of parole. Proper training of parole officers, along with greater awareness and advocacy for these requirements, could significantly reduce the number of technical violations.

- **Expand treatment — mental health:** Mental health diversion is an effective way to redirect people with disabilities out of the criminal legal system and into supportive community treatment. Diversion programs have been shown to be effective for people charged with both nonviolent and violent offenses.<sup>67</sup> When implemented effectively, diversion reduces arrests, encourages voluntary treatment in the community, and saves money.<sup>68</sup> Effective diversion programs work with social service providers to coordinate community services that provide a wide range of substantial, quality wraparound treatments and support for people with mental health needs in accessing housing, employment, and intensive, individualized supports in the community. After an initial investment in community supports, diversion programs have the potential to save jurisdictions large amounts of money.<sup>69</sup> One way to support treatment options is expanding Medicaid so that New Jerseyans have greater access to mental health treatment and substance use treatment while on probation, on parole, and after their separation from the criminal justice system.
- **Expand treatment — addiction:** Substance use disorders are often underlying factors in a substantial number of crimes, especially more serious offenses like burglaries, robberies, and assaults. Addressing substance use through treatment rather than incarceration can more effectively reduce crime.<sup>70</sup>

## A NOTE ON SPECIALTY COURTS

Many jurisdictions assign some people to “specialty courts” with decision-making powers over certain populations’ cases, including those whose histories involve mental health issues, behavior, veteran status, and drug use. The ACLU has concerns about the growing use of these courts. They may violate due process rights, including the rights to notice, hearing, and counsel, and may needlessly subject people with disabilities to criminal justice control. And they require significant resources that would be better spent providing up-front services in the community.

New Jersey’s 10 drug courts work with people who abuse substances without prior convictions for violent crimes who have been charged with nonviolent offenses. These programs impose intensive supervision of participants, including frequent drug testing and court appearances, as well as treatment and recovery services. A system of graduated sanctions and incentives is used to encourage recovery goals and hold offenders accountable for noncompliant behaviors.<sup>71</sup> From April 1, 2002, to April 8, 2019, 24,999 participants have been enrolled in the New Jersey adult drug court program. 5,828 participants have successfully graduated from all phases of the program as of April 8, 2019.<sup>72</sup>

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

- **Prosecutorial reform:** Prosecutors are the most powerful actors in the criminal justice system, with the ability to wield the power of the state against an individual to deprive that person of life, liberty, and property. The initial decision of whether to charge someone with a crime and, if so, which 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. The New Jersey Legislature should require more data collection and reporting by county prosecutors so that constituents can better understand and assess the role of their local prosecutor, and explore opportunities to increase accountability and transparency in the appointment and confirmation process for prosecutors.

## Reducing Time Served

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

- **Sentencing reform – general:** The Legislature can amend New Jersey's criminal code to reduce sentencing ranges, especially for drug offenses, burglary and other property offenses, robbery, assault, and public order offenses.
- **Sentencing reform – enhancements:** The Legislature can also limit the circumstances and severity of New Jersey's prior felony sentencing, in which the presence of even a single prior felony can both substantially increase the sentencing range and delay initial parole eligibility. Multiple prior felonies trigger even more substantial enhancements to both sentencing ranges and initial parole eligibility.
- **Parole reform:** Improving parole and release policies and practices to ensure that eligible people are paroled more quickly is another key way to reduce the amount of time people spend in prison. New Jersey's parole board must increase its transparency and accountability, and should be required to provide a sound, objective explanation when it denies parole applications.
- **Earned time/earned credit reform:** New Jersey can also consider expanding the availability of earned credits against a prison sentence through participation in educational, vocational, and other opportunities.
- **Compassionate release:** The New Jersey Legislature should expand access to compassionate release (also known as medical parole) from prison. The state's prison population is rapidly aging, in large part due to a shift in the offenses for which people are serving time. Keeping aging and seriously injured or ill people incarcerated significantly taxes prison resources. Studies have shown that incarcerating people aged 50 and above costs double what it costs to incarcerate a younger person.<sup>73</sup> 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 crimes significantly declines.<sup>74</sup> There is also clear evidence that older people have much lower rates of recidivism than their younger counterparts.<sup>75</sup>
- **Data and transparency:** Requiring robust data collection and transparency is an important step toward ensuring a fairer and more equitable criminal justice system. Standardized data collection will provide policymakers, advocates, researchers, and members of the public with an accurate understanding of both the issues facing the criminal justice system and their potential solutions. It will also enable New Jersey to develop evidence-based reforms, rather than fear-based policies. Public access to criminal justice data is critical to ensuring that the government remains accountable to the public it serves. The Legislature should mandate uniform, standardized data collection and aggregation at all critical points in the criminal justice process, making that information available in an electronic format that outside

researchers can manipulate. In identifying and developing collection and reporting systems, the Legislature should create task forces that include relevant criminal justice policymakers and administrators, researchers and academics, advocates, and, crucially, individuals who have experienced arrest, incarceration, parole, probation, and reentry services.

## Reducing Racial Disparities

Reducing the number of people who are imprisoned in New Jersey 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.<sup>76</sup> 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

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“Merely reducing sentence lengths, by itself, does not disturb the basic architecture of the New Jim Crow. So long as large numbers of African Americans continue to be arrested and labeled drug criminals, they will continue to be relegated to a permanent second-class status upon their release, no matter how much (or how little) time they spend behind bars. The system of mass incarceration is based on the prison label, not prison time.”<sup>88</sup>

— From *The New Jim Crow*, Michelle Alexander

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1999 and 2012.<sup>77</sup> 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.<sup>78</sup> This disparity is also mirrored in the juvenile justice system, and while there have been significant reductions in the numbers of juveniles detained, there have been no improvements in the racial disparities.

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

Some examples include:

- Ending overpolicing in communities of color
- Evaluating prosecutors’ charging and plea bargaining practices to identify and eliminate bias
- Investing in diversion/ alternatives to detention in communities of color
- Reducing the use of pretrial detention

- Ending sentencing enhancements based on location (e.g., drug-free school zones)
- Reducing exposure to reincarceration due to revocations from supervision
- Eliminating discriminatory gang sentencing enhancements that disproportionately target people of color
- Addressing any potential racial bias in risk assessment instruments used to assist decision-making in the criminal justice system
- Encouraging prosecutors and 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.<sup>79</sup> In particular, people with psychiatric disabilities are dramatically overrepresented in jails and prisons across the country.<sup>80</sup>

- People showing signs of mental illness are twice as likely to be arrested as people without mental illness for the same behavior.<sup>81</sup>
- People with mental illness are sentenced to prison terms that are, on average, 12 percent longer than other people in prison.<sup>82</sup>
- 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.<sup>83</sup>

Furthermore, sentencing reforms appear to leave people in prison with psychiatric disabilities behind. In recent years in California, for example, the prison population has decreased by more than 25 percent 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.<sup>84</sup>

Screening tools to evaluate psychiatric disabilities vary by state and jurisdiction, but the most reliable data indicates that more than half of jail populations and close to half of prison populations have mental health disabilities.<sup>85</sup> The fact that people with mental health disabilities are arrested more frequently, stay incarcerated longer, and return to prisons faster is not due to any inherent criminality related to psychiatric disabilities. It arises in part because of the lack of accessible and appropriate mental health treatment in the community; in part because of a perception of dangerousness by police, prosecutors and judges; and in part because prison staff and probation officers fail to recognize and accommodate disability.

Many people of color in jails and prisons are also people with disabilities, and efforts to reduce racial disparities must go hand in hand with efforts to reduce disability disparities.<sup>86</sup> Not surprisingly, many of the strategies to reduce disability disparities are similar to approaches that reduce racial disparities. Some examples include:

Investing in pre-arrest diversion:

- Creating behavioral health centers, run by state departments of health, as alternatives to jails, or emergency rooms for people experiencing mental health crises or addiction issues.
- Training dispatchers and police to divert people with mental health issues who commit low-level nuisance crimes to these behavioral health centers. Jurisdictions that have followed this



approach have significantly reduced their jail populations.<sup>87</sup>

- Ending arrest and incarceration for low-level public order charges, such as being drunk in public, urinating in public, loitering, trespassing, vandalism, and sleeping on the street. If needed, refer people who commit these crimes to behavioral health centers.
- Requiring prosecutors to offer diversion for people with mental health and substance use disabilities who are charged with low-level crimes
- Evaluating prosecutors' charging and plea bargaining practices to identify and eliminate disability bias

## TAKING THE LEAD

**Community leaders and community-based organizations:** Community members, leaders (including faith leaders), and organizations serving those who have been disparately criminalized and subjected to criminal justice system contact are the most intimately familiar with the changes needed to advance justice. Engaging and including these actors in designing supportive systems is a critical approach to reforming the criminal justice system and ending mass incarceration.

**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 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.

**Police:** They are generally the first point of contact with the criminal justice 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 arrest people 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 justice system.

**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 extended terms 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.

**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.

- Requiring prosecutors' offices be transparent in their hiring practices, charging decisions, and plea deals
- Investing in diversion programs and alternatives to detention designed for people with disabilities, including programs that provide supportive housing, Assertive Community Treatment, wraparound services, and mental health supports.
- Reducing the use of pretrial detention while increasing reminders of court dates and other supports to ensure compliance with pretrial requirements
- Reducing reincarceration due to parole or probation revocations through intensive case management, disability-competent training for officers on alternatives to incarceration and reasonable modifications to requirements of supervision, and no return to incarceration for first and second technical violations
- Addressing bias against mental disabilities in risk-assessment instruments used to assist decision-making in the criminal justice system
- Shifting funding away from law enforcement and corrections into supportive housing, intensive case management, schools, drug and mental health treatment, community organizations, job creation, and other social service providers.

## Forecaster Chart

There are many pathways to cutting the prison population in New Jersey 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 their potential to reduce the prison population, as well as other factors. To chart your own path to reducing mass incarceration in New Jersey, 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****
<b>Drug offenses</b>	<ul style="list-style-type: none"> <li>Institute alternatives that end all admissions for drug possession (1,076 fewer people admitted)</li> <li>Reduce average time served for drug distribution and other drug offenses by 60% (from 1.93 to 0.77 years)</li> <li>Institute alternatives that reduce admissions for drug distribution and other drug offenses by 50% (559 fewer people admitted)</li> </ul>	16.4% reduction (3,309 fewer people)	White: 6.1% increase Black: 2.9% decrease Hispanic/Latino: 0.7% increase Native American: 9.5% increase Asian: 6.7% increase	\$126,175,888
<b>Robbery</b>	<ul style="list-style-type: none"> <li>Reduce average time served by 50% (from 2.93 to 1.47 years)</li> <li>Institute alternatives that reduce admissions by 40% (586 fewer people admitted)</li> </ul>	14.32% reduction (2,890 fewer people)	White: 2.5% increase Black: 1.8% decrease Hispanic/Latino: 2.2% increase Native American: 12.1% increase Asian: 10.8% increase	\$90,465,073
<b>Assault</b>	<ul style="list-style-type: none"> <li>Reduce average time served by 50% (from 2.08 to 1.04 years)</li> <li>Institute alternatives that reduce admissions by 40% (322 fewer people admitted)</li> </ul>	5.8% reduction (1,169 fewer people)	White: 0.7% increase Black: 0.4% decrease Hispanic/Latino: 0.4% increase Native American: 2.0% increase Asian: 3.3% decrease	\$38,073,911

**Impact Compared to 2025 Baseline\***

<b>Offense category**</b>	<b>Policy outcome</b>	<b>Prison population impact</b>	<b>Impact on racial and ethnic makeup of prison population***</b>	<b>Cost savings****</b>
<b>Burglary</b>	<ul style="list-style-type: none"> <li>• Reduce average time served by 50% (from 1.62 to 0.81 years)</li> <li>• Institute alternatives that reduce admissions by 40% (287 fewer people admitted)</li> </ul>	4.04% reduction (816 fewer people)	White: 2.4% decrease Black: 1.1% increase Hispanic/Latino: 0.3% decrease Native American: 2.2% increase Asian: 2.2% increase	\$28,433,434
<b>Public order offenses*****</b>	<ul style="list-style-type: none"> <li>• Reduce average time served by 60% (from 1.50 to 0.60 years)</li> <li>• Institute alternatives that reduce admissions by 60% (297 fewer people admitted)</li> </ul>	3.11% reduction (628 fewer people)	White: 0.5% decrease Black: No change Hispanic/Latino: 0.8% increase Native American: 3.2% increase Asian: 0.2% increase	\$23,537,852
<b>Fraud</b>	<ul style="list-style-type: none"> <li>• Reduce average time served by 60% (from 1.74 to 0.70 years)</li> <li>• Institute alternatives that reduce admissions by 50% (163 fewer people admitted)</li> </ul>	2.22% reduction (447 fewer people)	White: 1.5% decrease Black: 0.5% increase Hispanic/Latino: 0.7% increase Native American: 3.2% decrease Asian: 0.2% increase	\$15,674,245

**Impact Compared to 2025 Baseline\***

<b>Offense category**</b>	<b>Policy outcome</b>	<b>Prison population impact</b>	<b>Impact on racial and ethnic makeup of prison population***</b>	<b>Cost savings****</b>
<b>Weapons offenses*****</b>	<ul style="list-style-type: none"> <li>Reduce average time served by 60% (from 2.03 to 0.81 years)</li> </ul>	1.85% reduction (373 fewer people)	White: 0.8% increase Black: 0.5% decrease Hispanic/Latino: 0.6% increase Native American: 1.9% increase Asian: 1.0% increase	\$14,021,248
<b>Theft</b>	<ul style="list-style-type: none"> <li>Reduce average time served by 60% (from 1.03 to 0.41 years)</li> <li>Institute alternatives that reduce admissions by 50% (174 fewer people admitted)</li> </ul>	1.42% reduction (287 fewer people)	White: 0.8% decrease Black: 0.2% increase Hispanic/Latino: 0.5% increase Native American: 1.4% increase Asian: 1.0% decrease	\$10,798,750
<b>Other property offenses*****</b>	<ul style="list-style-type: none"> <li>Reduce average time served by 60% (from 1.49 to 0.59 years)</li> <li>Institute alternatives that reduce admissions by 50% (84 fewer people admitted)</li> </ul>	0.99% reduction (200 fewer people)	White: 0.4% decrease Black: 0.1% increase Hispanic/Latino: 0.2% increase Native American: 1.2% decrease Asian: 0.4% increase	\$7,363,942

\* 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 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 New Jersey, where Black people made up 61 percent of the prison population but constituted only 13 percent of the state's total adult population in 2017.

\*\*\*\* 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 weapons offenses include unlawful possession, sale, or use of a firearm or other type of weapon (e.g., explosive device).

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

## Total Fiscal Impact

If New Jersey were to implement reforms leading to the changes above, 10,120 fewer people would be in prison in the state by 2025, a 50.16 percent decrease. This would lead to a total cost savings of \$1,011,027,863 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 New Jersey'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. Impacts on prison-population size 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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- 19 Danielle Kaeble and Mary Cowhig, *Correctional Populations in the United States, 2016* (BJS, April 2018), <https://www.bjs.gov/content/pub/pdf/cpus16.pdf>.
- 20 Prison admissions reflect the number of people entering New Jersey prisons in a given year, while the total prison population refers to the total number of people imprisoned at a given time.
- 21 BJS, Correctional Statistics Analysis Tool; Jennifer Bronson and E. Ann Carson, *Prisoners in 2017* (BJS, April 2019), <https://www.bjs.gov/content/pub/pdf/p17.pdf>. Note: Excludes transfers, escapes, and those absent without leave. Includes other conditional-release violators, returns from appeal or bond, and other admissions.
- 22 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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- 24 This rise follows legislative amendments to the Graves Act in 2008, which expanded it to include the “unlawful simple possession of a handgun.” Previously, the Graves Act sentencing enhancement applied “only to convictions for possession of a firearm for an unlawful purpose, or possession of a firearm during the course of committing certain specified predicate crimes.” The amendments also increased unlawful possession of a firearm from a third-degree offense to a second-degree offense, which carries a presumption of incarceration and a significantly higher statutory maximum. Additionally, in 2013, the mandatory minimum term for such an offense was increased from 36 months to 42 months. See John J. Hoffman, “Clarification of ‘Graves Act’ 2008 Directive With Respect to Offenses Committed by Out-of-State Visitors From States Where Their Gun-Possession Conduct Would Have Been Lawful” (memo to New Jersey Division of Criminal Justice and all county prosecutors, September 24, 2014), <https://www.state.nj.us/lps/dcj/agguide/directives/Graves-Act-clarification-2014.pdf>.
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- 30 The number of graduates from the state’s drug court program rose from 398 for the Court Year 2011-12 to 646 for Court Year 2017-18. New Jersey Courts, *Annual Report of the New Jersey Courts: Court*

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