

Blueprint for Smart Justice
Nevada



Blueprint *for* Smart Justice Nevada

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Executive Summary

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

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

The ACLU's Campaign for Smart Justice is committed to transforming our nation's criminal justice system and building a new vision of safety and justice. The Campaign is dedicated to cutting the nation's incarcerated population in half and 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 Nevada — where one in 25 Black men was in prison in 2017¹ — 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.

As in many states, Nevada's prison population has experienced explosive growth in recent decades, growing more than sevenfold between 1980 and 2016.² As of February 2019, an estimated 13,686 people were incarcerated in the state's prisons. The Nevada Department of Corrections (NDOC) anticipates the prison population will continue to grow in the absence of reform, resulting in overcrowding of correctional facilities and rising corrections costs³ — already a burden to the state.

Between 2008 and 2018, the number of annual admissions to Nevada prisons increased by 8 percent.⁴ The number of admissions to prison for property offenses increased by 31 percent between 2010 and 2015, while the number of admissions to prison for a violent or sex offense decreased by 30 percent over the same period of time.⁵ In 2015, one in four admissions to Nevada prisons were for a violation of probation, and an additional 15 percent were for parole violations.⁶ That

same year, at least 63 percent of admissions to Nevada prisons had no prior history of felony incarceration.⁷

In addition to people held in state prisons, Nevada incarcerates roughly 6,650 people in county jails across the state, according to the most recent data available. Fifty-seven percent of those people in jail are awaiting trial and have not been convicted of a crime.⁸

The size of Nevada's prison population has been influenced by sentencing enhancements in the state's criminal code, which increase prison terms in many cases, including when people have prior felony convictions. The state's "truth-in-sentencing" laws, enacted in 1995, also contribute to long prison terms. These laws limit the amount of time someone can earn off of their sentence for participating in programs and treatments that are shown to improve reentry outcomes.⁹

Nevada's reliance on incarceration has a disproportionate impact on people of color. As of 2017, the Black imprisonment rate was more than four times higher than the white imprisonment rate, and Black people accounted for 30 percent of the prison population but just 9 percent of the state population.¹⁰ The same year, the Native American imprisonment rate was nearly three times higher than the white imprisonment rate, and one in 41 Native American men in Nevada was in prison.¹¹

Women have also been disproportionately affected by mass incarceration in Nevada: Between 2008 and 2018, the number of women in the state's prisons grew 24 percent, while the number of men in prison grew only 2 percent.¹² In 2017, more than half of women who entered prison in Nevada had an identified mental health need – which is particularly concerning given that the state's only women's prison does not have an on-site mental health unit.¹³

All of this incarceration comes at a high cost to taxpayers. In 2017, Nevada spent \$266 million of state general funds on corrections, and these costs have grown 164 percent since 1986.¹⁴

So, what's the path forward?

Nevada lawmakers took important steps toward addressing the state's mass incarceration crisis during

the 2019 legislative session by passing Assembly Bill 236, but much work remains ahead. Criminal justice stakeholders in the state must continue to support alternatives to incarceration. The state's Legislature should expand eligibility for pre-prosecution diversion courts to gross misdemeanors and certain felonies.¹⁵ Expanding pretrial diversion programs would immediately address increasing prison population rates, save the state millions of dollars, and ensure that people are not needlessly serving prison time for nonviolent felonies.

Following the passage of AB 236, the Legislature must continue to move away from a culture of criminalization, stop expanding the criminal code, and look at alternatives to incarceration. The state can start by decriminalizing traffic offenses and drug possession. The Nevada Legislature should focus its resources on addressing addiction – the underlying cause of possession offenses. In addition to the decriminalization of certain offenses, the Legislature should carefully assess any proposed new criminal offense to ensure the sentence is proportionate to the act committed, rather than simply making every new crime a high-level felony.

The Nevada Department of Public Safety and state lawmakers should also engage in probation and parole reform to ensure that eligible people are paroled more quickly and that no one remains on supervision solely due to financial conditions. The Legislature should also focus its attention on reforms that will reduce probation and parole revocations for technical violations. These are just a few of the recommendations detailed in this report, all of which must be coupled with deliberate efforts to reduce racial disparities throughout Nevada's criminal justice system.

If Nevada were to adopt the changes outlined in this report, the state could achieve a 50 percent reduction in its prison population and save more than \$234 million by 2025 – money that could be better spent on schools, infrastructure, and services for Nevadans.

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

The State of the Nevada Prison System

The Nevada prison population grew more than sevenfold between 1980 and 2016,¹⁶ when Nevada was one of 12 states with an imprisonment rate above the national average.¹⁷ As of February 2019, an estimated 13,686 people were in Nevada prisons, 35 percent more than in 2000.¹⁸

Nevada's prison population has already surpassed existing capacity, and the NDOC projects that the prison population will continue to grow in the coming years.¹⁹ The rapid growth of Nevada's prison population has resulted in overcrowded facilities. In 2017, the state signed a two-year, \$9.2 million contract to house 200 people in a private corrections facility in Arizona.²⁰ The NDOC director has since indicated that although NDOC has the capacity to return 100 of those individuals to Nevada facilities, high staff turnover and staff vacancies present a challenge for bringing back all

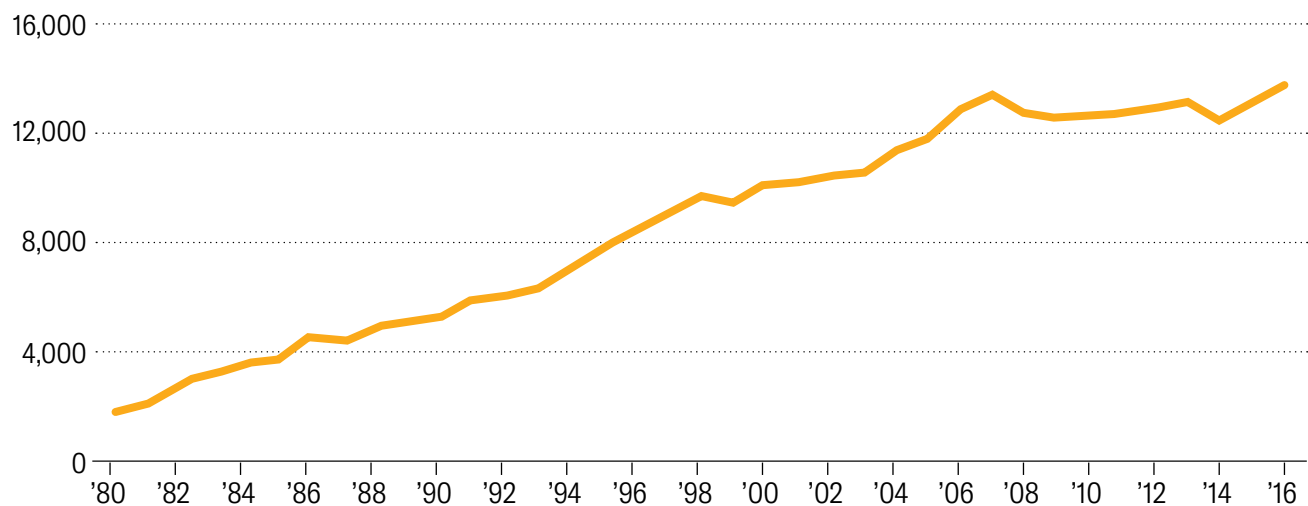
people held out of state.²¹ Absent reform, it is projected that the NDOC will add nearly 1,200 prison beds between 2018 and 2028 at a cost of over \$770 million.²²

What Is Driving People Into Prison?²³

The number of annual admissions to Nevada prisons increased by 8 percent between 2008 and 2018, when there were 6,432 admissions to prison.²⁴

In 2015, burglary was the most common offense type²⁵ for admissions to prison in Nevada, accounting for one in seven (14 percent) admissions to prison that year. Other common offenses that contributed to admissions to Nevada prisons that year included drug trafficking (11 percent), assault (8 percent), theft (7 percent),

NEVADA PRISON POPULATION



AT A GLANCE

NEVADA PRISONS

As of February 2019, there were an estimated **13,686 people** imprisoned in Nevada.

The Nevada prison population increased by **35 percent** between 2000 and February 2019.

The nearly 1,200 additional prison beds NDOC is projected to add absent reform would cost Nevada more than **\$770 million** between 2018 and 2028.

in 2015. Property offenses made up 25 percent of all admissions in 2010 and 32 percent in 2015.²⁷

In 2015, 2,319 people – 39 percent of all admissions to prison – entered prison for violations to supervision, which are not by themselves considered criminal behavior. That year, one in four (24 percent) admissions to Nevada prisons was for a violation of probation, and an additional 15 percent were for parole violations.²⁸

Additionally, at least 63 percent of admissions to Nevada prisons in 2015 were people who had no prior history of felony incarceration.²⁹ While pre-prosecution diversion is available for people charged with certain misdemeanor offenses who have no prior convictions, there is no similar diversion available to people convicted for felony offenses.³⁰

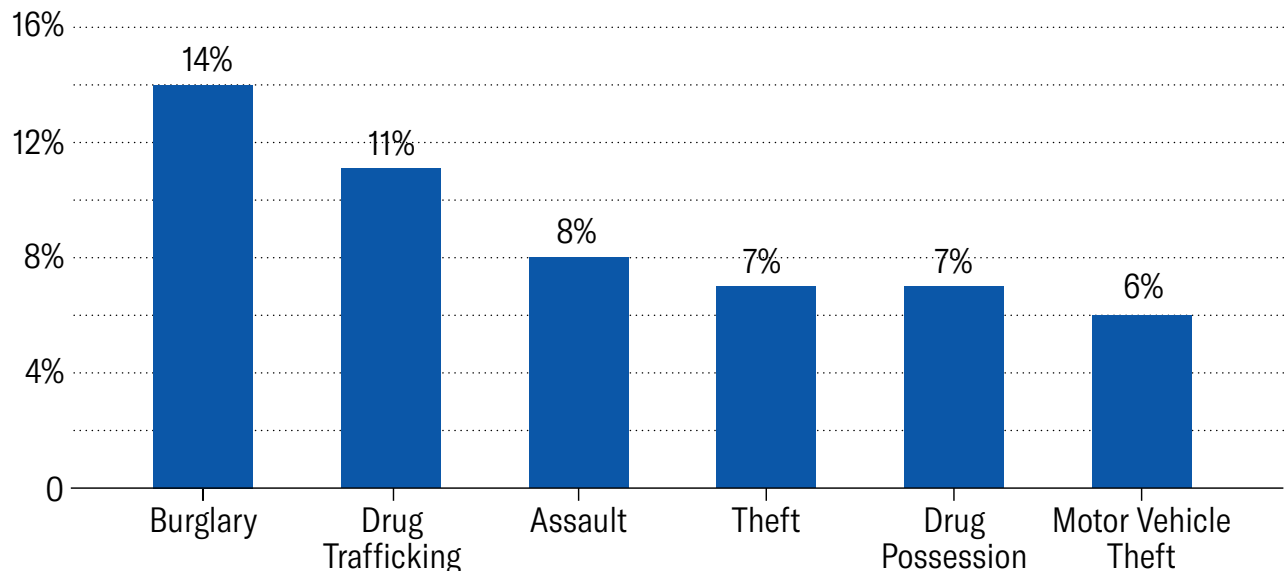
drug possession (7 percent), and motor vehicle theft (6 percent).²⁶

The number of admissions to prison for property offenses increased by 31 percent between 2010 and 2015, while the number of admissions to prison for a violent or sex offense decreased by 30 percent over the same period of time. Violent and sex offenses made up 46 percent of all admissions in 2010 and 31 percent

The Current Prison and Jail Population

As of 2018,³¹ about one in five (18 percent) people in prison in Nevada was imprisoned for a property offense, and an additional 12 percent of people were imprisoned for drug offenses. Overall, 39 percent of people in Nevada prisons in 2018 were there due to convictions for nonviolent offenses.³² Despite an 8

NEVADA PRISON ADMISSIONS BY TOP OFFENSE TYPES (2015)



percent decline in admissions for drug convictions between 2010 and 2015, sentences for these offenses remain a significant contributor to Nevada’s prison population.³³ In 2015, about one in four people (24 percent) in prison for a drug offense was incarcerated for drug possession.³⁴

A lack of access to treatment options and reentry support for people who have served time in Nevada prisons means many are subsequently rearrested and returned to prison. Of people released from Nevada prisons in 2014, more than a quarter (29 percent) were readmitted to NDOC within three years of their release. Readmission rates were higher for people incarcerated for low-level crimes such as drug and property offenses, who had recidivism rates of 30 percent and 37 percent, respectively. Fifty-six percent of people who returned to prison between 2014 and 2017 were readmitted on a parole violation without a conviction for a new crime.³⁵

In addition to people held in state prisons, Nevada incarcerates an estimated 6,650 people in county jails across the state, according to the most recent data available (2015). Women account for 17 percent of the jail population. The majority of those in jail – 3,780 people, or 57 percent – are awaiting trial and have not been convicted of a crime.³⁶

AT A GLANCE

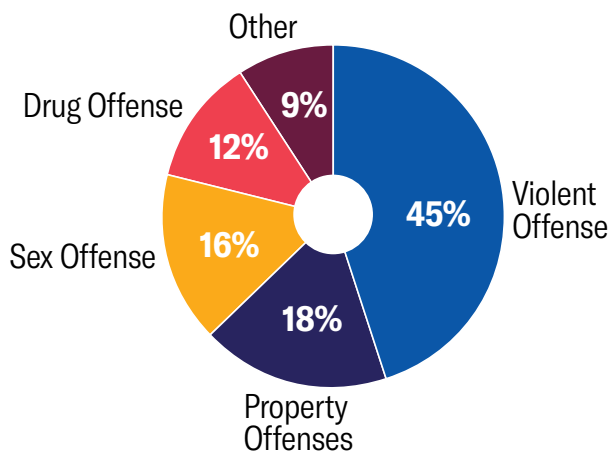
NEVADA JAIL AND PRISON POPULATION

1 in 7 admissions to Nevada prisons in 2015 were for burglary.

63 percent of admissions to Nevada prisons in 2015 had no prior history of felony incarceration.

An estimated **6,650 people** were incarcerated in county jails across Nevada in 2015.

NEVADA PRISON POPULATION BY OFFENSE TYPE (2018)



Why Do People Stay in Prison for So Long?

As in many states, increasingly long prison terms for certain offenses have contributed to the size of Nevada’s prison population. In 2015, the average length of time people imprisoned in Nevada had served so far was more than four and a half years – 20 percent more time than in 2008.³⁷ Some less serious offenses carry particularly long lengths of stay in Nevada prisons. For example, the 428 people imprisoned for driving while intoxicated in Nevada in 2015 had served over two years so far, on average, and the 1,569 people who were imprisoned for public order offenses³⁸ had served an average of nearly four years.³⁹

Nevada’s criminal code includes sentencing enhancements that increase prison terms in many cases, including when people have prior felony convictions. These “habitual offender” laws impose a state prison sentence of five to 20 years for any person with a felony conviction who has previously been convicted of two prior felonies. Additionally, for people with three or more felony convictions, the law requires judges to impose a sentence of 25 years or more, up to a sentence of life without the possibility of parole.⁴⁰ Laws such as these can require prison sentences for people who could otherwise be eligible for probation or other alternative programming.

AT A GLANCE

LENGTH OF IMPRISONMENT AT A GLANCE

The average length of time people in Nevada prisons had served so far in 2015 was **20 percent** longer than in 2008.

Nevada spent **\$800,000** in 2015 on a new death chamber for executions, despite the fact that no drug companies in the state will provide execution drugs.

51 percent of all people in Nevada prisons in February 2019 had a sentence of 10 or more years.

In 1995, Nevada enacted “truth-in-sentencing” laws that limit the amount of time someone can earn off of their sentence for participating in programs and treatments that are shown to improve reentry outcomes.⁴¹ For people with indeterminate sentencing, or sentences that carry a minimum and maximum prison term, earned time can be deducted only up to the minimum prison sentence; all people are required to serve 100 percent of their minimum prison sentence before becoming eligible to be considered for parole.⁴² These sentences have lengthened in recent years: The Nevada Advisory Commission on the Administration of Justice found that judges have been imposing longer minimum and maximum sentences, with minimums increasing by 12 percent and maximums increasing by 7 percent between 2008 and 2017.⁴³

As of February 2019, half (51 percent) of all people imprisoned in Nevada had a sentence of 10 years or more, including more than one in 10 (12 percent) serving time for a determinate sentence of 20 or more years and one in five (21 percent) serving a sentence with a life maximum.⁴⁴

As of February 2019, 77 people in Nevada were in prison with an active death sentence.⁴⁵ In 2015, Nevada spent \$800,000 on a new death chamber to carry out executions, despite the fact that no drug

companies in the state will provide necessary drugs for the process. State lawmakers proposed a bill in 2017 that would end the practice of execution in Nevada, citing its unconstitutionality as a cruel and unusual punishment, but the bill failed to make it to the floor for a vote.⁴⁶ In 2019, two additional bills were proposed to ban capital punishment in Nevada, but they failed to receive hearings.⁴⁷

Who Is Imprisoned

Black Nevadans: Incarceration in Nevada has a disproportionate impact on communities of color. As of 2017, the Black imprisonment rate in Nevada was more than four times higher than the white imprisonment rate, and Black people accounted for 30 percent of the prison population and only 9 percent of the state adult population. In 2017, one in 25 Black men in Nevada was in prison.⁴⁸

Native American Nevadans: Nevada’s Native American population is overrepresented in the prison system. In 2017, the Native American imprisonment rate was nearly three times higher than the white imprisonment rate. That year, one in 41 Native American men in Nevada was in prison.⁴⁹

Female Nevadans: Between 2008 and 2018, the number of women in Nevada prisons grew 24 percent, while the number of men in prison grew only 2 percent.⁵⁰ As of February 2019, women accounted for 10 percent of the prison population in Nevada.⁵¹

AT A GLANCE

DEMOGRAPHICS

Black people accounted for **30 percent** of Nevada’s prison population but only 9 percent of the state’s population in 2017.

1 in 41 Native American men in Nevada was in prison in 2017.

60 percent of women in Nevada prisons were serving time for nonviolent offenses in 2018.

AT A GLANCE

MENTAL HEALTH AND SUBSTANCE USE DISORDERS

In 2015, **16 percent** of people in Nevada prisons experienced some level of mental health impairment.

More than **half of women** who entered Nevada prisons in 2017 had an identified mental health need.

Additionally, 60 percent of the women in Nevada prisons in 2018 were serving time for nonviolent offenses, including one in six (17 percent) imprisoned for a drug offense.⁵² The population of women in prison is projected to continue to increase by 14 percent between 2018 and 2028.⁵³

Older Nevadans: Though generally considered to pose a negligible risk to public safety,⁵⁴ the population of people in prison who are 55 years old and older has more than doubled (increasing 124 percent) between 2006 and 2018.⁵⁵ This increase is likely related to a growing number of people aging in prison while serving long prison terms. In 2015, despite accounting for less

AT A GLANCE

BUDGET

The average length of time people in Nevada prisons had served so far in 2015 was **20 percent** longer than in 2008.

Nevada spent **\$800,000** in 2015 on a new death chamber for executions, despite the fact that no drug companies in the state will provide execution drugs.

51 percent of all people in Nevada prisons in February 2019 had a sentence of 10 or more years.

than 5 percent of admissions, people over the age of 55 accounted for more than one in nine people (11 percent) in Nevada prisons.⁵⁶

People With Mental Health and Substance Use Disorders

Mental health treatment needs are prevalent in the Nevada prison population. The NDOC reported that in 2015, 16 percent of people in Nevada prisons experienced some level of mental health impairment. That rate is more than twice as high for women: In the same year, 39 percent of women imprisoned in Nevada experienced a mental health impairment.⁵⁷ In 2017, more than half of women who entered prison had an identified mental health need, compared to 25 percent of men admitted to prison that year. This is particularly concerning given that the state's only women's prison does not have an on-site mental health unit.⁵⁸

Budget Strains

As Nevada's prison population has risen, so has the cost burden. In 2017, Nevada spent \$266 million of state general funds on corrections, accounting for 7 percent of the state general fund expenditures, and these costs have grown 164 percent since 1986.⁵⁹ Overall, Nevada plans to spend over \$347 million on corrections in fiscal year 2019.⁶⁰

In addition, return on investment for incarceration has been poor. Nevada approved spending of an average of \$21,513 per person in prison in 2018 despite the fact that many people who are released from prison return in the future.⁶¹

Ending Mass Incarceration in Nevada: 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 Nevada end its mass incarceration crisis, but it will be up to the people and policymakers of Nevada to decide which changes to pursue.

Nevada took further steps to address its mass incarceration crisis during the 2019 legislative session. Assembly Bill 236 (AB 236) arose out of recommendations from the Crime & Justice Institute to reduce reliance on incarceration and reinvest in alternatives.⁶² AB 236 changes probation and parole practices, expands specialty court and domestic violence programs, reduces certain crimes from a category B to a category C felony, reforms Nevada’s draconian burglary statute, increases the felony theft threshold, reforms felony drug possession statutes, and more. Although AB 236 is a good first step toward effective crime prevention and humane treatment of people with behavioral health challenges, it will not eliminate future prison growth. None of these policies passed will reduce the state’s current prison population, which means the state will have less money for treatment, support services, law enforcement, and victim support. 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, Nevada 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.⁶³ Here are some strategies:

- **Alternatives to incarceration:** The good news is that alternatives exist. 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.⁶⁴ 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,⁶⁵ but they have also been shown to decrease symptoms of posttraumatic stress in victims of crime.⁶⁶ 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 prosecutor-led programs that divert people before they are charged. Lawmakers can explore such interventions at multiple phases in the system, whether through decriminalization or alternatives to arrest, charges, or incarceration. Although Nevada offers several effective alternatives to incarceration, the state can do more. Sixty-seven specialty court programs currently operate in the state and include misdemeanor pre-prosecution diversion programs, drug courts, prostitution diversion court, veterans' courts, medicated assistance courts, and habitual offender courts.⁶⁷ But a glaring problem remains: People are serving time for nonviolent felonies in Nevada prisons. Nevada's Legislature should expand eligibility for pre-prosecution diversion courts to gross misdemeanors and certain felonies.⁶⁸ Expanding the pretrial diversion program would immediately address increasing prison population rates and save the state millions of dollars — a policy Nevada should embrace.

- **Support decriminalization:** Until AB 236, the Nevada Legislature had consistently introduced bills to criminalize behavior that previously would not have led to incarceration.⁶⁹ The Legislature must continue to move away from a culture of criminalization, stop expanding the criminal code, and look at alternatives to incarceration. The state should start by decriminalizing traffic offenses and drug possession. Under Nevada law, simple possession of a controlled substance under 14 grams is a category E felony. Although AB 236 permits a court to grant probation in lieu of a prison sentence, this may still lead to imprisonment for probation violations, creating a cycle of incarceration.⁷⁰ The Nevada Legislature should decriminalize possession and focus its resources on addressing addiction — the underlying cause of such offenses. Nevadans can let their representatives know that decriminalization is a winning commitment both for the community as well as the ballot box.

- **Eliminate cash bail:** Nevada can significantly reduce its rates of pretrial detention by eliminating its use of cash bail. Far too often, people who cannot afford their bail will end up in jail for weeks, months, or, in some cases, years as they wait for their day in court. When this happens, the criminal justice system leaves them with a difficult choice: take a plea deal or fight the case from behind bars. While detained pretrial, research shows many people face significant collateral damage, such as job loss or interrupted education.⁷¹ After even a short stay in jail, taking a plea deal sounds less burdensome than losing everything, which is likely why evidence shows that pretrial detention significantly increases a defendant's risk of conviction.⁷² The current cash bail system harms people of color in particular. Research shows that people of color are detained at higher rates across the country when unable to meet bail and that courts set significantly higher bail amounts for them.⁷³ In order to significantly reduce pretrial detention and combat racial disparities, the Nevada Legislature should eliminate cash bail and limit pretrial detention to the rare case where a person poses a serious, clear threat to another person.

Current law establishes that any person arrested must be admitted to bail, unless they are charged with first-degree murder.⁷⁴ Also, Nevada courts have the discretion to increase bail and detain an individual for nonpayment.⁷⁵ These policies lead to high rates of pretrial detention and increase the likelihood that a person is detained due to an inability to pay. The Legislature should pass a law establishing a rebuttable presumption that an individual be released on their own recognizance. Further, the Legislature should pass legislation requiring release under the least restrictive conditions necessary to reasonably ensure appearance and public safety within 24 hours of arrest.

Aside from eliminating cash bail, Nevada legislators could limit a court's ability to increase bail by imposing procedural

requirements, such as presenting new or different reasons that were unknown at the original bail hearing.

- **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 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 statewide Conviction Integrity Units in each county prosecutor's office can address wrongful convictions and prosecutorial misconduct. Conviction Integrity Units add oversight to a prosecutor's decisions, which encourages prosecutors to use greater scrutiny when reviewing and charging cases.
- **Expanding judicial discretion:** 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 or most cases, regardless of the severity of the offense or someone's prior criminal history. The court, not the Legislature, should be in a position to

decide whether such an option is appropriate in individual cases.

Reducing Time Served

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

- **Sentencing reform — general:** The Legislature can amend Nevada's criminal code to eliminate mandatory minimums and reduce its wide sentencing ranges, including and especially for drug offenses, burglary and other property offenses, robbery, public order offenses, and assault. Furthermore, the Legislature should carefully assess any proposed new criminal offense to ensure the sentence is proportionate to the act committed, rather than simply making every new crime a high-level felony. Lawmakers should pass a bill to defelonize car burglary, housebreaking, and various low-level theft offenses. Current statutory law sets the felony threshold for theft at \$1,200 — meaning stealing one iPhone could result in a felony conviction and permanently alter a person's life and subject them to thousands of collateral consequences.⁷⁶ The Legislature should amend this law and increase the felony threshold for theft to \$2,000. Finally, the Legislature should evaluate the criteria for presentence investigations to ensure more objective sentencing recommendations, with an eye towards eliminating racial disparities.
- **Sentencing reform — enhancements:** The Legislature can also limit the circumstances and the severity of Nevada's prior felony sentencing in which the presence of even a single prior felony can both substantially increase the sentencing range and delay initial parole eligibility. Multiple prior felonies trigger even more substantial enhancements to both sentencing range and initial parole eligibility. More specifically, in Nevada, a person with two prior felonies can face a minimum of five years and a maximum of 20 years in prison. If

an individual has three prior felonies, they can face life imprisonment without the possibility of parole.⁷⁷ The Legislature recently amended sentencing enhancements, but it addressed only nonviolent offenses. For more meaningful reform, Nevada lawmakers should completely eliminate the state's three strikes laws or, at a minimum, extend the new sentencing structure to all offenses and institute a cleansing period for prior felonies.

- **Probation and parole reform:** In addition, 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. The Nevada Department of Public Safety or state lawmakers should expand mechanisms for early termination from probation and parole, and ensure an individual does not remain on supervision solely due to financial conditions. The Legislature should also pass a bill to establish caps on probation and parole term lengths. This legislation should severely limit conditions to those with a clear nexus to the protection of public safety, based on an individualized assessment of the current risk and needs of the individual. Finally, lawmakers should amend state law to provide parole eligibility for individuals considered minors at the time of their sentencing.
- **Reducing probation and parole revocations:** Parole revocations for technical violations are often due to the physical or mental disabilities that many parolees have. Parole and probation officers are required to provide reasonable accommodations so that parolees with disabilities have an equal opportunity to comply with the requirements of parole. Proper training of parole officers and greater awareness of and advocacy for these requirements could reduce the number of technical violations significantly. The Nevada Legislature should establish an administrative procedure to process supervision violations that do not involve the commission of a new offense, and incarceration should be

prohibited as a response to technical violations. Lawmakers should also institute a strict burden in cases where an individual is detained prior to a revocation hearing; additionally, the number of hours a person may be detained prior to a revocation hearing should be decreased to 48 hours.

- **Earned time/earned credit reform:** Nevada can also consider expanding the availability of earned credits against a prison sentence or supervision term through participation in educational, vocational, and other opportunities. These programs provide incentives to people on probation and parole, and they result in reduced caseloads and improved outcomes. Nevada lawmakers should work to create a uniform policy for people on probation and parole, expanding opportunities to earn credits through measures outside of payment of supervision fees and restitution.
- **Compassionate release:** The Nevada Legislature should expand access to compassionate release from prison. The state's prison population is rapidly aging. 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.⁷⁸ 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.⁷⁹ There is also clear evidence showing that older persons have much lower rates of recidivism than their younger counterparts.⁸⁰

Reducing Racial Disparities

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

People of color (especially Black, Latino, and Native American people) are at a higher risk of becoming

involved in the justice system, including living under heightened police surveillance and being at higher risk for arrest. This imbalance cannot be accounted for by disparate involvement in illegal activity, and it grows at each stage in the justice system, beginning with initial law enforcement contact and increasing at subsequent stages, such as pretrial detention, conviction, sentencing, and post-release opportunity.⁸¹ 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 2012.⁸² 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.⁸³

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

“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.”⁹³

— From *The New Jim Crow*, Michelle Alexander

- Investing in diversion/alternatives to detention in communities of color
- Reducing the use of pretrial detention and eliminating wealth-based incarceration
- Ending sentencing enhancements based on location (drug-free school zones)
- Reducing exposure to reincarceration due to revocations from supervision
- Requiring racial impact statements before any new criminal law or regulation is passed and requiring legislation to proactively rectify any potential disparities that may result with new laws or rules
- Eliminating discriminatory gang sentencing enhancements that disproportionately target people of color
- Abolishing the death penalty. Numerous studies illustrate racial disparities are rampant throughout the capital sentencing process.
- Addressing any potential racial bias in risk assessment instruments used to assist decision-making in the criminal justice system

- 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.⁸⁴ In particular, people with psychiatric disabilities are dramatically overrepresented in jails and prisons across the country.⁸⁵

- People showing signs of mental illness are twice as likely to be arrested as people without mental illness for the same behavior.⁸⁶
- People with mental illness are sentenced to prison terms that are, on average, 12 percent longer than those of other people in prison.⁸⁷
- 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.⁸⁸

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 the absolute number of incarcerated people with psychiatric disabilities.⁸⁹

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.⁹⁰ 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.⁹¹ 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.⁹²
- 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
- 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

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.

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.

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.

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.

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.

- 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 Nevada by 50 percent. To help end mass incarceration, communities and policymakers will need to determine the optimal strategy to do so. This table presents one potential matrix of reductions that can contribute to cutting the state prison population in half by 2025. The reductions in admissions and length of stay for each offense category were selected based on potential to reduce the prison population, as well as other factors. To chart your own path to reducing mass incarceration in Nevada, 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****
Public order offenses*****	<ul style="list-style-type: none"> • Reduce average time served by 60% (from 3.21 to 1.29 years) • Institute alternatives that reduce admissions by 50% (377 fewer people admitted) 	12.11% reduction (1,784 fewer people)	White: 1.4% decrease Black: 2.4% decrease Hispanic/Latino: 5.7% increase Native American: 2.2% increase Asian: 3.2% increase Other: 1.8% increase	\$16,499,907
Drug offenses	<ul style="list-style-type: none"> • Reduce average time served for drug distribution by 60% (from 1.61 to 0.64 years) • Institute alternatives that reduce admissions for drug distribution by 60% (390 fewer people admitted) • Institute alternatives that end all admissions for drug possession (433 fewer people admitted) 	8.13% reduction (1,197 fewer people)	White: 0.6% increase Black: 2.9% increase Hispanic/Latino: 5.4% decrease Native American: 2.4% decrease Asian: 3.0% increase Other: 3.6% decrease	\$12,831,551

Burglary	<ul style="list-style-type: none"> • Reduce average time served by 60% (from 1.56 to 0.62 years) • Institute alternatives that reduce admissions by 50% (454 fewer people admitted) 	7.64% reduction (1,125 fewer people)	White: 1.2% decrease Black: No change Hispanic/Latino: 3.0% increase Native American: 0.1% increase Asian: 3.6% decrease Other: 1.7% increase	\$12,146,955
Assault	<ul style="list-style-type: none"> • Reduce average time served by 60% (from 2.34 to 0.94 years) • Institute alternatives that reduce admissions by 50% (235 fewer people admitted) 	5.90% reduction (869 fewer people)	White: 1.5% increase Black: 1.3% decrease Hispanic/Latino: 0.7% decrease Native American: 5.3% decrease Asian: 0.3% increase Other: 4.8% decrease	\$8,902,088
Robbery	<ul style="list-style-type: none"> • Reduce average time served by 60% (from 3.50 to 1.40 years) • Institute alternatives that reduce admissions by 50% (138 fewer people admitted) 	4.92% reduction (724 fewer people)	White: 2.1% increase Black: 3.5% decrease Hispanic/Latino: 0.4% increase Native American: 0.6% increase Asian: 0.8% decrease Other: 1.1% decrease	\$6,791,462
Motor vehicle theft	<ul style="list-style-type: none"> • Reduce average time served by 60% (from 1.18 to 0.47 years) • Institute alternatives that reduce admissions by 50% (223 fewer people admitted) 	2.86% reduction (421 fewer people)	White: 0.8% decrease Black: 1.3% increase Hispanic/Latino: 0.1% decrease Native American: 0.5% increase Asian: 0.6% decrease Other: 0.6% increase	\$4,586,899
Theft	<ul style="list-style-type: none"> • Reduce average time served by 60% (from 1.11 to 0.45 years) • Institute alternatives that reduce admissions by 50% (220 fewer people admitted) 	2.66% reduction (391 fewer people)	White: 0.7% decrease Black: 0.1% decrease Hispanic/Latino: 1.3% increase Native American: 1.4% increase Asian: 1.7% increase Other: 0.6% increase	\$4,319,173

Fraud	<ul style="list-style-type: none"> • Reduce average time served by 60% (from 1.15 to 0.46 years) • Institute alternatives that reduce admissions by 50% (176 fewer people admitted) 	2.20% reduction (324 fewer people)	White: 0.6% decrease Black: 0.3% increase Hispanic/Latino: 1.1% increase Native American: 1.1% increase Asian: 3.4% decrease Other: 1.6% decrease	\$3,643,760
Other property offenses*****	<ul style="list-style-type: none"> • Reduce average time served by 60% (from 1.35 to 0.54 years) • Institute alternatives that reduce admissions by 60% (166 fewer people admitted) 	2.14% reduction (315 fewer people)	White: 0.4% decrease Black: 0.3% increase Hispanic/Latino: 0.4% increase Native American: No change Asian: No change Other: 2.2% increase	\$3,594,154
Weapons offenses*****	<ul style="list-style-type: none"> • Reduce average time served by 60% (from 1.76 to 0.71 years) 	1.88% reduction (276 fewer people)	White: 0.5% increase Black: 0.5% decrease Hispanic/Latino: 0.4% decrease Native American: 0.5% increase Asian: 0.8% increase Other: No change	\$2,566,321

*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 Nevada, where Black people make up 30 percent of the prison population but constitute only 9 percent of the state’s total adult population.

****Note: Cost impact for each individual policy change represents the effect of implementing that change alone and in 2015 dollars. The combined cost savings from implementing two or more of these changes would be greater than the sum of their combined individual cost savings, since more capital costs would be affected by the population reductions.

*****Some public order offenses include drunk or disorderly conduct, escape from custody, obstruction of law enforcement, court offenses, failure to comply with sex offense registration requirements, prostitution, and stalking, as well as other uncategorized offenses.

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

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

Total Fiscal Impact

If Nevada were to implement reforms leading to the changes above, 7,426 fewer people would be in prison in the state by 2025, a 50 percent decrease. This would lead to a total cost savings of \$234,459,103 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 Nevada's prison population, racial and ethnic representation in the prison population, and state corrections spending. First, trends in admissions and exit rates for each offense category in recent years are analyzed and projected out to estimate a baseline state prison population projection through 2025, assuming recent trends will continue. Then, a mathematical model is used to estimate how various offense-specific reform scenarios (for example, a 10 percent reduction in admissions for drug possession or a 15 percent reduction in length of stay for robbery) would change the 2025 baseline projected prison population. The model allows for reform scenarios to include changes to the number of people admitted to prison and/or the average length of time served for specific offenses. The model then estimates the effect that these changes would have by 2025 on the number of people in prison, the racial and ethnic makeup of the prison population, and spending on prison. The analysis assumes that the changes outlined will occur incrementally and be fully realized by 2025.

All results are measured in terms of how outcomes under the reform scenario differ from the baseline projection for 2025. Prison population size impacts are measured as the difference between the 2025 prison population under the baseline scenario and the forecasted population in that year with the specified changes applied. Impacts on the racial and ethnic makeup of the 2025 prison population are measured by comparing the share of the prison population made up by a certain racial or ethnic group in the 2025 baseline population to that same statistic under the reform scenario and calculating the percent change between these two proportions. Cost savings are calculated by

estimating the funds that would be saved each year based on prison population reductions relative to the baseline estimate, assuming that annual savings grow as less infrastructure is needed to maintain a shrinking prison population. Savings relative to baseline spending are calculated in each year between the last year of available data and 2025, and then added up to generate a measure of cumulative dollars saved over that time period.

Endnotes

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