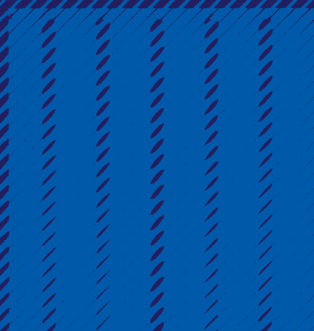


# *Blueprint for Smart Justice* Virginia





# Blueprint *for* Smart Justice Virginia

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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 underfunded schools. As a result, the United States today incarcerates more people, in both absolute numbers and per capita, than any other nation in the world. Millions of lives have been upended and families torn apart. This 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 reduce dramatically its reliance on incarceration, invest instead in alternatives to prison and in approaches better designed to break the cycle of crime and recidivism, and help people rebuild their lives.

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

To advance these goals, the Campaign partnered with the Urban Institute to conduct a two-year research project to analyze the 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 Virginia — where in 2015 Black adults were just 19 percent of the adult state population<sup>1</sup> but a staggering 57 percent of those imprisoned,<sup>2</sup> and where one in 27 Black men was in prison in 2014<sup>3</sup> — reducing the number of people imprisoned will not on its own reduce racial disparities within the prison system. This finding confirms for the Campaign that urgent work remains for advocates, policymakers, and communities in Virginia and across the nation to focus on efforts like policing or prosecutorial reform that are specific to combatting these disparities.

In Virginia, the prison population more than quadrupled between 1980 and 2016,<sup>4</sup> giving the state the 11th-largest prison population in the country in 2016.<sup>5</sup> While the national state imprisonment rate declined between 2000 and 2016, Virginia's imprisonment rate increased over the same time period,<sup>6</sup> and the state's prison population is predicted to keep climbing.<sup>7</sup> When you include people in local jails and on community supervision, like probation and parole, there were 120,000 people living under the supervision of the criminal justice system in Virginia in 2016<sup>8</sup> — more than the entire population of cities such as Roanoke, Portsmouth, and Charlottesville.<sup>9</sup>

Zealous prosecution and harsh sentences for drug and property offenses<sup>10</sup> fuel Virginia's overimprisonment,

with three out of five people admitted to Virginia prisons in 2014 convicted of a drug or property offense.<sup>11</sup> And the Virginia Department of Corrections reports that approximately 80 percent of people in Virginia prisons have “a history of substance abuse that contributed to their criminality.”<sup>12</sup> The state also has severe laws that build a direct pipeline to prison — even for less serious offenses that other states classify as misdemeanors. With truth-in-sentencing laws and harsh sentencing enhancements that trigger long mandatory minimum sentences for people with prior convictions, people in Virginia prisons are there for longer amounts of time, with the average length of imprisonment of people released from prison each year increasing by 24 percent between 2000 and 2015.<sup>13</sup> Updated sentencing guidelines that lead to longer prison terms for some people<sup>14</sup> contribute to the problem, further exacerbated by judges and juries too often handing down punishments that are more punitive than those recommended. In 2016, 27 percent of people recommended for probation were sentenced to jail or prison instead.<sup>15</sup>

So what’s the path forward?

Any meaningful effort to reach a significant reduction in incarceration in Virginia will, at a minimum, need to reconsider substance use disorders and treat them as the public health problem they are. This should include reducing penalties for drug offenses, legalizing marijuana, reclassifying simple drug possession offenses as misdemeanors, and shifting the state’s spending priorities to ensure that everyone who needs substance abuse and mental health treatment receives it.

Beyond addressing issues of substance use, Virginia should strongly consider sentencing and release reform across the board. The Legislature can amend Virginia’s laws to reduce sentences for offenses like burglary and robbery, and end mandatory minimum requirements. The state can likewise improve release policies and practices to ensure that more people are released earlier from prison, including eliminating the requirement that people serve 85 percent of their sentence in every case, and offer expanded opportunities for people to earn more time against their prison sentences, including through participation

in educational, vocational, and other programs to aid reentry. In some cases, people with disabilities in prison face barriers to earning good time credits.<sup>16</sup> These opportunities must be accessible. Virginia must also embrace alternatives to incarceration that have shown great success in reducing both violent and nonviolent criminal activity, including programs offering treatment for substance use disorders, mental health care, employment, housing, health care, and vocational training.

The answer is ultimately up to Virginia’s voters, policymakers, communities, and criminal justice reform advocates as they move forward with the urgent work of ending Virginia’s obsession with mass incarceration.

# The State of the Virginia Prison System

In 2016, Virginia had the 11th-largest prison population in the country, with 37,813 people imprisoned.<sup>17</sup> Between 1980 and 2016, Virginia's prison population grew more than fourfold, a 341 percent increase.<sup>18</sup> When you include people in local jails and on community supervision, like probation and parole, the expansive reach of the criminal justice system is even greater: In 2016, Virginia had 120,000 people under correctional control<sup>19</sup> — more than the entire population of cities such as Roanoke, Portsmouth, and Charlottesville.<sup>20</sup>

Virginia's prison population has continued to climb in recent decades — in 2015, its prison population was larger than at any other time in the state's history.<sup>21</sup> While the national state imprisonment rate decreased by 7 percent between 2000 and 2016, Virginia's imprisonment rate grew by 8 percent over the same time period. In 2016, Virginia imprisoned 450 out of every 100,000 of its residents, giving Virginia the

## AT A GLANCE

### VIRGINIA PRISONS

Virginia ranked 11th nationally in number of people imprisoned in 2016.

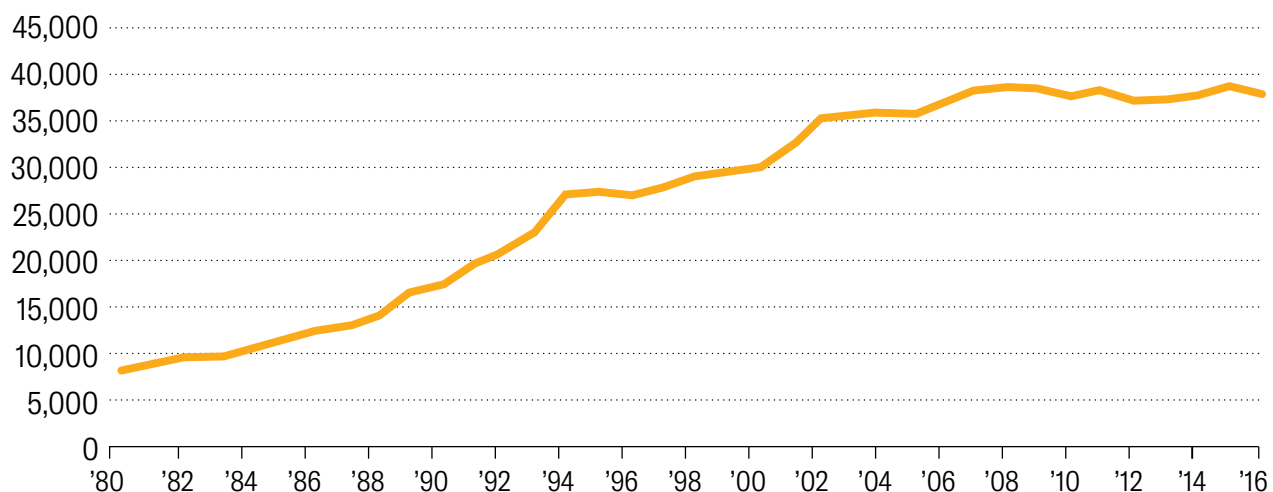
There were **38,403** people imprisoned in Virginia at the prison population's peak in 2015.\*

Virginia's prison population grew by **341 percent** between 1980 and 2016.

\* BJS, Corrections Statistical Analysis Tool.

13th-highest imprisonment rate in the nation.<sup>22</sup> If no reforms are enacted, Virginia's prison population is predicted to continue to grow.<sup>23</sup>

## VIRGINIA PRISON POPULATION



## What Is Driving People Into Prison?

A litany of offenses drives people into Virginia's prisons.<sup>24</sup> In 2014, three out of five people (61 percent) admitted to Virginia prisons were convicted of a drug or property offense. Nearly one out of four admissions (24 percent) was for a drug conviction, and another 27 percent was for theft-related offenses. Other common offenses for prison admissions in 2014 were assault (11 percent), burglary (10 percent), and robbery (7 percent).<sup>25</sup>

Since its peak in 2007 — when Virginia admitted 13,973 people to prison — the number of annual admissions to Virginia prisons has decreased by 13 percent. In 2016, Virginia admitted 12,163 people to prison.<sup>26</sup> Despite this promising trend, Virginia has harsh laws that build a direct pipeline to prison — even for less serious offenses.

For example, multiple offenses that are considered misdemeanors in other states are classified as felonies in Virginia. Although Virginia finally raised the threshold for felony grand larceny to \$500 in 2018, it is still one of the lowest in the country. This means that someone convicted of an offense involving fraud or theft of goods valued at more than \$500 can serve a prison sentence.<sup>27</sup> By making small changes to state statutes, Virginia could decrease its prison population.

### AT A GLANCE

## VIRGINIA PRISON POPULATION

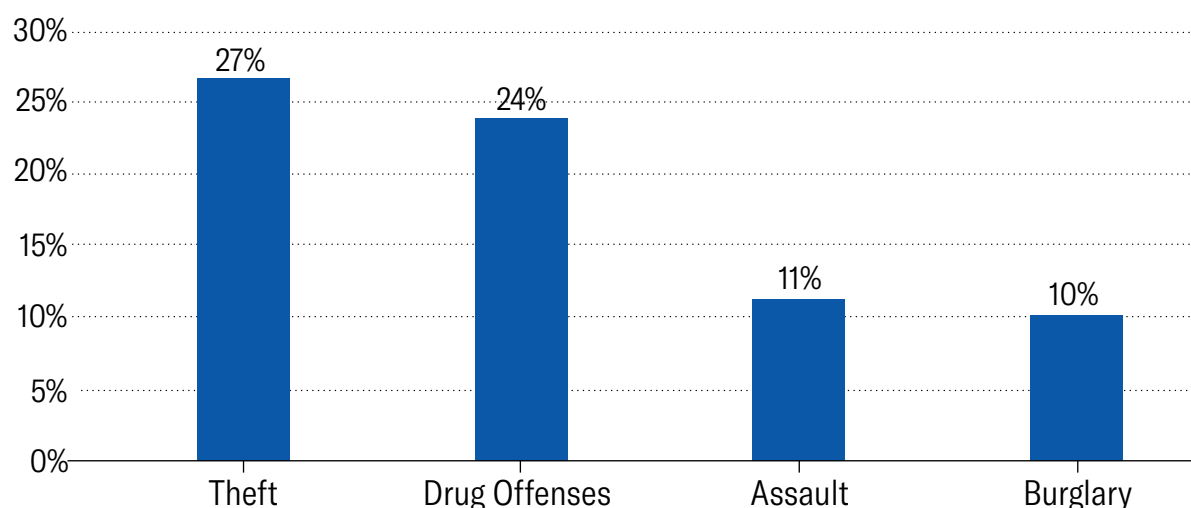
**15 percent** of people in Virginia prisons were serving time for a drug offense in 2015.

**14 percent** of people in Virginia prisons were serving time for larceny or fraud in 2015.

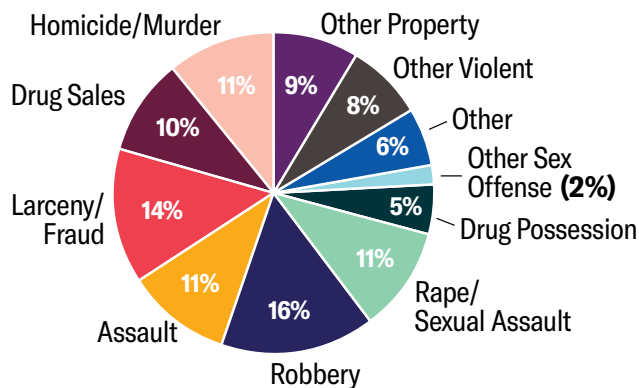
## The Current Prison Population

As of December 2015, approximately one out of seven people (15 percent) imprisoned in Virginia was serving time for a drug offense, including 10 percent for drug sales and 5 percent for drug possession. Another one in seven people (14 percent) was serving time for larceny or fraud offenses.<sup>28</sup> The number of people imprisoned for burglary increased by 21 percent between 2010 and 2015, accounting for 8 percent of the 2015 prison population. The number of people serving time for assault has increased as well, growing by 34 percent between 2010 and 2015 and accounting for 11 percent of the 2015 prison population.<sup>29</sup> Other common offenses in the 2015 prison population included robbery (17 percent), rape and sexual assault (11 percent), and homicide (11 percent).<sup>30</sup>

## VIRGINIA PRISON ADMISSIONS BY TOP OFFENSE TYPES (2014)



## VIRGINIA PRISON POPULATION BY OFFENSE TYPE (2015)



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

In Virginia, the average length of imprisonment of people released from prison increased by 24 percent between 2000 and 2015. For people released in 2015, the average length of imprisonment was 2.8 years. For people serving time for offenses involving violence, the average amount of time served is even greater, despite overwhelming evidence that longer prison sentences do not deter crime. People released in 2015 who were imprisoned for offenses involving violence served an average of five years in prison — an increase of 74 percent since 2000.<sup>31</sup> Almost half (47 percent) of

#### AT A GLANCE

### SENTENCES

The average length of imprisonment at release increased by **24 percent** between 2000 and 2015.

**47 percent** of Virginia's prison population in 2015 was serving sentences over 10 years.

**24 percent** of Virginia's prison population in 2015 was serving sentences over 25 years.

More than **1 in 15** people imprisoned were serving a life sentence in 2015.

#### AT A GLANCE

### LENGTH OF IMPRISONMENT

**27 percent** of people recommended for probation were sentenced to jail or prison instead in 2016.

People are required to serve **at least 85 percent** of their sentence based on Virginia's truth-in-sentencing law.

the 2015 prison population was serving a sentence of more than 10 years. Nearly one out of four people (24 percent) was serving a sentence of more than 25 years.<sup>32</sup> More than one in 15 people (7 percent) was serving a life sentence.<sup>33</sup>

In 2013, the Virginia Legislature changed its sentencing guidelines. The Virginia Criminal Sentencing Commission subsequently predicted these changes were “likely to result in longer prison terms for some offenders.”<sup>34</sup> In 2016, 27 percent of people recommended for probation were sentenced to jail or prison instead.<sup>35</sup> What’s more, judges and juries can — and often do — hand down punishments that are more punitive than recommended under these guidelines.

Exacerbating the problem, Virginia has harsh sentencing enhancement laws that trigger long mandatory minimum sentences for people with prior convictions. For example, a person with two prior convictions for certain offenses involving violence who is then convicted of a subsequent offense involving violence automatically receives a mandatory life sentence.<sup>36</sup> Additionally, a person convicted of three petit larcenies automatically becomes a felon on the third offense even if none of the offenses involves more than the theft of a couple of bags of chips and no violence.<sup>37</sup> And in 1994, Virginia passed truth-in-sentencing legislation eliminating parole and requiring people convicted of offenses committed after January 1, 1995, to serve at least 85 percent of their sentence.<sup>38</sup>

#### AT A GLANCE

## DEMOGRAPHICS

Black people made up **57 percent** of the Virginia prison population in 2015.

The female prison population grew by **1,031 percent** between 1980 and 2016.

**1 in 5** people in Virginia prisons was age 50 or older in 2015.

#### AT A GLANCE

## MENTAL HEALTH AND SUBSTANCE USE DISORDERS

Approximately **15 percent** of Virginia's prison population requires mental health services.

About **80 percent** of Virginia's prison population had a history of substance abuse that played a role in their criminal offense.

## Who Is Imprisoned

**Black Virginians:** At 1,386 per 100,000 people, the imprisonment rate of Black people in 2014 was nearly five times that of white people (280 per 100,000).<sup>39</sup> Although they made up just 19 percent of the state adult population,<sup>40</sup> Black people constituted 57 percent of the 2015 prison population.<sup>41</sup> In 2014, one in 27 Black men in Virginia was in prison.<sup>42</sup>

**Female Virginians:** Between 1980 and 2016, the number of women in prison grew more than eleven-fold (1,031 percent), far outpacing the growth of the total prison population.<sup>43</sup> The female prison population grew by 9 percent between 2010 and 2016, while the male prison population remained relatively level.<sup>44</sup>

**Older Virginians:** Though generally considered to pose a negligible risk to public safety,<sup>45</sup> the number of people imprisoned who are age 50 or older more than doubled between 2004 and 2015. In 2015, people

age 50 or older accounted for one in five people imprisoned in Virginia.<sup>46</sup>

## People With Mental Health and Substance Use Disorders

Virginia jails report that over 17 percent of people in jails were known or suspected to have a mental illness (7,451 people in 2017), including about 28 percent of women and 15 percent of men.<sup>47</sup> Screening in jails is often conducted by employees who are not mental health professionals, which could lead to undercounting or other errors.<sup>48</sup>

According to the Virginia Department of Corrections, approximately 15 percent of people in Virginia prisons require some level of mental health services.<sup>49</sup> The Virginia Department of Corrections also reports that approximately 80 percent of people in Virginia prisons have “a history of substance abuse that contributed to their criminality.”<sup>50</sup>

#### AT A GLANCE

## CORRECTIONS SPENDING

Virginia spent more than **\$1.2 billion** of its general fund on corrections in 2016.

General fund corrections spending rose by **78 percent** between 1985 and 2016.

## Budget Strains

As Virginia's imprisoned population has risen, so has the cost burden. In 2016, Virginia spent more than \$1.2 billion of its general fund on corrections.<sup>51</sup> Corrections general fund spending nearly doubled (a 78 percent increase) between 1985 and 2016, forcing tradeoffs in other state priorities like education: Higher education general fund spending grew by just 18 percent over the

# Ending Mass Incarceration in Virginia: A Path Forward

same time period.<sup>52</sup> In 2016, the Virginia Department of Corrections spent \$29,416 to house a single person in prison for the year, a 4 percent increase from just the prior year.<sup>53</sup>

There are many potential policy changes that can help Virginia end its mass incarceration crisis. To substantially reduce the prison population and address racial disparities, policy reforms will need to reduce the amount of time people serve in prisons and/or reduce the number of people entering prison in the first place, as well as address the racial disparities in law enforcement, prosecutions, and adjudications that contribute to the racial disparities among people arrested and convicted of crimes. While the below reforms are promising potential avenues for the state, they are not the only options. It will be up to the people and policymakers of Virginia to determine exactly which changes to pursue.

## Reducing Admissions

To end mass incarceration, Virginia must break its overreliance on prisons to hold people accountable for their crimes and examine whether laws that criminalize homelessness, addiction, and mental illness should be enforced through arrest, prosecution, and imprisonment. In fact, evidence indicates that prisons seldom offer adequate solutions to wrongful behavior. At worst, imprisonment can be counterproductive — failing to end cycles of misbehavior and violence, or to provide rehabilitation for incarcerated people or adequate accountability to the survivors of crime.<sup>54</sup> 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 disorders treatment, mental health care, employment, housing, health care, and vocational training — often with some element of court supervision and/or a community service requirement — have significantly reduced recidivism rates for participants.<sup>55</sup> 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.<sup>56</sup>
- **Sentencing reform — reclassification:** Virginia is well behind the curve when it comes to sentencing for property offenses. For example, the state exposes people to felony sentences for offenses that would be misdemeanors in almost any other state in the country.

For instance, Virginia's felony larceny threshold is below most other states', despite a recent increase in the threshold to \$500 effective July 1, 2018.<sup>57</sup> Virginia should consider raising that threshold to at least \$1,500. Similarly, it should consider decriminalizing or legalizing marijuana drug possession, another step many states across the country have already taken. Prison time, a felony record, and the countless collateral consequences that attach to a felony conviction make it harder for someone to find work, find housing, or support a family.

- **Expanded treatment:** Substance use disorders can be underlying drivers of crime, including and especially more serious offenses like burglaries, robberies, and assaults. The clearest path to reducing the incidence of these crimes may be to more effectively address this underlying driver — something best achieved through the expanded use of evidence-based alternative responses rather than prison time in a substantial number of cases.<sup>58</sup> Similarly, mental health treatment and supervision can provide another better and more productive alternative for many offenses, whether they are minor or more serious, and are again more effective in addressing underlying needs and improving overall public safety in the long term.<sup>59</sup>

## Reducing Time Served

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

- **Sentencing reform:** The Legislature can amend Virginia’s laws to reduce sentences for offenses like assault, burglary, and robbery, as well as drug offenses like drug sales. Similarly, changes made to the operation of Virginia’s sentencing guidelines can reform sentence length for these and other offenses on a more granular level.

In addition, Virginia could repeal all mandatory minimum sentences in the Virginia Code that were enacted before 1994, when the Virginia Legislature passed a “no parole” package of legislation that did two important things: 1) establish in the judicial branch the Virginia Criminal Sentencing Commission charged with developing and implementing sentencing guidelines for all felony convictions in Virginia<sup>60</sup> and 2) abolish parole and mandate that all persons convicted serve 85 percent of the sentence imposed, essentially establishing a mandatory minimum sentence for all felonies.

Virginia could also retroactively apply current guidelines to sentences that were handed down prior to the creation of the new sentencing commission, and change the law to require juries to review and adhere to the sentencing guidelines just as judges do.

- **Release reform:** To further reduce time served, Virginia should improve its release policies and practices, which would ensure that more people are released earlier from prison. For example, the Legislature should scale back its requirement that people serve 85 percent of their sentence in every case, which was established by the “no parole” legislation passed in 1994 that applies to all persons convicted of a crime that occurred after January 1, 1995. Reform to that law should expand opportunities for imprisoned people to earn more time against their prison sentences, including through in-prison participation in educational, vocational, and other programs to aid reentry. These opportunities must be accessible to people with disabilities.

The state should continue to examine whether the Virginia Parole Board is focusing on the nature of the crime for which a person is convicted – rather than the degree of rehabilitation or current danger to the public – in making parole decisions for the almost 3,000 people still incarcerated for crimes committed prior to 1995 who were still eligible for parole as of 2015.<sup>61</sup> According to the Virginia chapter of Citizens United for Rehabilitation of Errants, just 3.7 percent of cases reviewed by the Parole Board in 2012 were granted parole. Between December 2015 and December 2016, the Board did not grant parole in 536 out of the 547 cases it considered. During that time period, “every person in prison over 50 years of age was denied parole.”<sup>62</sup> Prior to the change in the law in 1995, 41 percent of people eligible for parole were granted it by the Board.<sup>63</sup> The governor, who appoints the members of the Parole Board, replaced the head of the Parole Board in 2017 in an effort to “speed reforms” recommended in

2015 by a gubernatorial commission studying parole reform.<sup>64</sup>

## Reducing Racial Disparities

Reducing the number of people who are imprisoned in Virginia 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 postrelease opportunity.<sup>65</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 1999 and 2012.<sup>66</sup> However, the state did not intentionally 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>67</sup>

Ending mass incarceration is critical to eliminating racial disparities, but not sufficient 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
- Collecting and reporting data on stops by law enforcement to be analyzed for racial bias
- Creating a statewide standard to govern police conduct and the certification of law enforcement officers to be enforced by loss of the certification for serious misconduct
- Investing in diversion/alternatives to detention in communities of color
- Reducing the use of pretrial detention and eliminating wealth-based incarceration
- 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 from new laws or rules
- Fighting discriminatory gang sentencing enhancements that disproportionately target people of color
- Revising jury sentencing guidelines to avoid harsh over-sentencing
- Addressing any potential racial bias in risk assessment instruments used to assist decision-making in the criminal justice system
- Shifting funding from law enforcement and corrections to community organizations, job creation, schools, drug and mental health treatment, and other social service providers

## Forecaster Chart

There are many pathways to cutting the prison population in Virginia 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 by 50 percent 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 Virginia, visit the interactive online tool at <https://urbn.is/ppf>.

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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>69</sup>

— From *The New Jim Crow*, Michelle Alexander

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## TAKING THE LEAD

**Prosecutors:** They decide on what charges to bring and which plea deals to offer. They can decide to divert more people to treatment programs (for example, drug or mental health programs) rather than send people to prison. And they can decide not to charge enhancements that require the imposition of prison sentences.

**State lawmakers:** They decide which offenses to criminalize, how long sentences can be, and when to take away judges' discretion. 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.

**Parole boards:** They decide when to allow people to leave prison. In Virginia, the parole board is an especially important player when it comes to reforming how long people spend in prison.

**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.

**Juries:** In Virginia, if a defendant asks for a jury trial, the jury also decides the sentence and does so without access to or knowledge of the sentencing guidelines. This often penalizes those who seek a jury trial with a harsher sentence if convicted.<sup>68</sup>

# 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>Theft</b>	<ul style="list-style-type: none"> <li>Reduce average time served by 70% (from 1.57 to 0.47 years)</li> <li>Institute alternatives that reduce admissions by 70% (2,505 fewer people admitted)</li> </ul>	14.93% reduction (5,080 fewer people)	White: 5.5% decrease Black: 3.3% increase Hispanic/Latino: 11.0% increase Native American: 7.0% increase Asian: 6.0% increase	\$127,297,653
<b>Drug offenses</b>	<ul style="list-style-type: none"> <li>Reduce average time served by 70% (from 2.00 to 0.60 years)</li> <li>Institute alternatives that reduce admissions by 80% (2,027 fewer people admitted)</li> </ul>	14.18% reduction (4,824 fewer people)	White: 3.1% increase Black: 2.5% decrease Hispanic/Latino: 7.0% increase Native American: 12.0% increase Asian: 10.3% increase	\$121,773,651
<b>Robbery</b>	<ul style="list-style-type: none"> <li>Reduce average time served by 70% (from 5.99 to 1.80 years)</li> <li>Institute alternatives that reduce admissions by 70% (494 fewer people admitted)</li> </ul>	11.68% reduction (3,973 fewer people)	White: 6.2% increase Black: 4.6% decrease Hispanic/Latino: 6.8% increase Native American: 2.9% increase Asian: 2.3% increase	\$71,458,081
<b>Burglary</b>	<ul style="list-style-type: none"> <li>Reduce average time served by 70% (from 2.84 to 0.85 years)</li> <li>Institute alternatives that reduce admissions by 70% (545 fewer people admitted)</li> </ul>	6.32% reduction (2,151 fewer people)	White: 2.8% decrease Black: 1.8% increase Hispanic/Latino: 3.9% increase Native American: 2.9% decrease Asian: 4.2% increase	\$48,936,140
<b>Public order offenses*****</b>	<ul style="list-style-type: none"> <li>Reduce average time served by 70% (from 1.11 to 0.33 years)</li> <li>Institute alternatives that reduce admissions by 80% (470 fewer people admitted)</li> </ul>	1.80% reduction (613 fewer people)	White: No change Black: No change Hispanic/Latino: No change Native American: 4.5% decrease Asian: 1.8% increase	\$13,888,342
<b>DWI</b>	<ul style="list-style-type: none"> <li>Reduce average time served by 70% (from 0.84 to 0.25 years)</li> <li>Institute alternatives that reduce admissions by 80% (344 fewer people admitted)</li> </ul>	1.00% reduction (339 fewer people)	White: 0.6% decrease Black: 0.5% increase Hispanic/Latino: 2.7% decrease Native American: 3.1% decrease Asian: 0.6% decrease	\$8,602,556

\* 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 Virginia, where Black people make up 57 percent of the prison population but constitute only 19 percent of the state's total population.

\*\*\*\* 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.

## Total Fiscal Impact

If Virginia were to carry out reforms leading to the changes above, 16,980 fewer people would be in prison in Virginia by 2025, a 50 percent decrease. This would lead to a total cost savings of \$1,144,949,522 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 Virginia'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 was 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, then added up to generate a measure of cumulative dollars saved over that time period.

# Endnotes

- 1 US Census, 2015 Population Estimate. Note: Statistics reflect Black or African American single race, non-Hispanic counts of people age 18 and older.
- 2 VADOC, Management Information Summary Annual Report, FY 2016.
- 3 The Sentencing Project, *The Color of Justice: Racial and Ethnic Disparity in State Prisons*, 2016.
- 4 BJS, Corrections Statistical Analysis Tool.
- 5 BJS, Corrections Statistical Analysis Tool. This includes all people under Department of Corrections jurisdiction, including a number of people (7,931 in 2016) under DOC jurisdiction and incarcerated in county facilities or local jails.
- 6 BJS, Corrections Statistical Analysis Tool. This includes all people under Department of Corrections jurisdiction, including a number of people (7,931 in 2016) under DOC jurisdiction and incarcerated in county facilities or local jails.
- 7 Office of the Secretary of Public Safety and Homeland Security, Report on the Offender Population Forecasts (FY2018 to FY2023), October 15, 2017.
- 8 BJS, Correctional Populations in the United States, 2016.
- 9 US Census Quick Facts. Populations are as of July 1, 2016: Roanoke (99,660), Portsmouth (95,252), Charlottesville (49,912).
- 10 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.
- 11 BJS, National Corrections Reporting Program, 2015.
- 12 VDOC, Substance Abuse Programming.
- 13 BJS, National Corrections Reporting Program, 2015.
- 14 Justice Policy Institute, *Virginia’s Justice System: Expensive, Ineffective and Unfair*, 2013.
- 15 Virginia Criminal Sentencing Commission, 2016 Annual Report.
- 16 See, e.g., *Christy v. Commonwealth*, No. 3:17cv778 (E.D. Va., filed Nov. 21, 2017), available at <http://www.relmanlaw.com/docs/ChristyDouglasComplaint.pdf>.
- 17 BJS, Corrections Statistical Analysis Tool. Note: This includes all people under Department of Corrections jurisdiction, including a number of people (7,931 in 2016) under DOC jurisdiction and incarcerated in county facilities or local jails.
- 18 BJS, Corrections Statistical Analysis Tool.
- 19 BJS, Corrections Populations in the United States, 2016.
- 20 US Census Quick Facts. Populations are as of July 1, 2016: Roanoke (99,660), Portsmouth (95,252), Charlottesville (49,912).
- 21 BJS, Corrections Statistical Analysis Tool.
- 22 BJS, Corrections Statistical Analysis Tool.
- 23 Office of the Secretary of Public Safety and Homeland Security, Report on the Offender Population Forecasts (FY2018 to FY2023), October 15, 2017.
- 24 Prison admissions reflect the number of people entering Virginia prisons in a given year, while the total prison population refers to the total number of people incarcerated at the end of each fiscal year.
- 25 BJS, National Corrections Reporting Program, 2015.
- 26 BJS, Corrections Statistical Analysis Tool.
- 27 Justice Policy Institute, *Virginia’s Justice System: Expensive, Ineffective and Unfair*, 2013; Melissa Hipolit, “New law will increase felony larceny threshold from \$200 to \$500.” WTVR, Feb. 6, 2018. <https://wtvr.com/2018/02/08/new-law-will-increase-felony-larceny-threshold-from-200-to-500/>. Note: New Jersey and Virginia were the only two states in the nation with a \$200 larceny threshold before Virginia’s reform.
- 28 VADOC, Management Information Summary Annual Report, FY 2016.
- 29 VADOC, Management Information Summary Annual Report, FY 2016; BJS, National Corrections Reporting Program, 2015.
- 30 VADOC, Management Information Summary Annual Report, FY 2016.
- 31 BJS, National Corrections Reporting Program, 2015.
- 32 BJS, National Corrections Reporting Program, 2015.
- 33 BJS, National Corrections Reporting Program, 2015. Note: Life sentence includes life and life plus additional years.
- 34 Justice Policy Institute, *Virginia’s Justice System: Expensive, Ineffective and Unfair*, 2013.
- 35 Virginia Criminal Sentencing Commission, 2016 Annual Report. Note: Refers to fiscal year.
- 36 BJS, State Fact Sheets, Virginia.
- 37 Code of Virginia, Section 18.2-104.
- 38 Justice Policy Institute, *Virginia’s Justice System: Expensive, Ineffective and Unfair*, 2013. Note: Parole is still a release option for certain people, including individuals convicted of offenses committed before January 1, 1995.
- 39 The Sentencing Project, *The Color of Justice: Racial and Ethnic Disparity in State Prisons*, 2016.
- 40 US Census, 2015 Population Estimate. Note: Statistics reflect Black or African American single race, non-Hispanic counts.
- 41 VADOC, Management Information Summary Annual Report, FY 2016.
- 42 The Sentencing Project, *The Color of Justice: Racial and Ethnic Disparity in State Prisons*, 2016.
- 43 BJS, Corrections Statistical Analysis Tool.
- 44 BJS, National Corrections Reporting Program, 2015.
- 45 American Civil Liberties Union, *At America’s Expense: The Mass Incarceration of the Elderly*, 2012; Human Rights Watch, *Old Behind Bars*, 2012.
- 46 VADOC, Management Information Summary Annual Report, FY 2016.
- 47 Mental Illness In Jails Report, Compensation Report (Nov. 1, 2015), available at <https://rga.lis.virginia.gov/Published/2017/RD485/PDF>.
- 48 Mental Illness In Jails Report, Compensation Report (Nov. 1, 2015), available at <https://rga.lis.virginia.gov/Published/2017/RD485/PDF>.
- 49 VDOC, Mental Health Services, <https://vadoc.virginia.gov/offenders/institutions/programs/mental-health.shtm>.

- 50 VDOC, Substance Abuse Programming, <https://vadoc.virginia.gov/offenders/institutions/institutions-overview.shtm>.
- 51 NASBO, State Expenditure Report 1985-2016.
- 52 NASBO, State Expenditure Report 1985-2016.
- 53 VDOC, Management Information Summary Annual Report FY 2016. Note: Includes only people housed in "major institutions." Refers to fiscal years.
- 54 Vera Institute of Justice, "Accounting for Violence: How to Increase Safety & Break our Failed Reliance on Mass Incarceration," 2017.
- 55 Vera Institute of Justice 'Accounting for Violence: How to Increase Safety & Break our Failed Reliance on Mass Incarceration' 2017.
- 56 E.g. "Seattle's Law Enforcement Assisted Diversion (LEAD): Program effects on recidivism outcomes," Susan Collins, Heather Lonczak, Seema Clifasefi, Evaluation and Program Planning, Vol 64 (October 2017), pp49-56.
- 57 Melissa Hipolit, "New law will increase felony larceny threshold from \$200 to \$500," WTVR, Feb. 6, 2018. <https://wtvr.com/2018/02/08/new-law-will-increase-felony-larceny-threshold-from-200-to-500/>; Tom Meagher, "What's the Punishment for Theft? Depends On What State You're In." Marshall Project, April 9, 2017.
- 58 See for e.g., Zarkin et al. "Lifetime Benefits and Costs of Diverting Substance-Abusing Offenders From State Prison," Crime & Delinquency, Vol 61, Issue 6, pp. 829 - 850.
- 59 See for e.g., Daniel Chang, "Criminal mental health program in Miami-Dade seen as a model for nation," Miami Herald, May 21, 2016. Accessed from: <https://www.miamiherald.com/news/health-care/article79004057.html>.
- 60 The Virginia Criminal Sentencing Commission is required by law to "develop discretionary sentencing guidelines to achieve the goals of certainty, consistency, and adequacy of punishment with due regard to the seriousness of the offense, the dangerousness of the offender, deterrence of individuals from committing criminal offenses and the use of alternative sanctions, where appropriate." Code of Virginia §17.1-801.
- 61 Governor's Commission on Parole Review, Final Report and Recommendations, December 4, 2015.
- 62 Reutter, David. Parole Remains Elusive for Virginia Prisoners. Prison Legal News, October 2017. <https://www.prisonlegalnews.org/news/2017/oct/9/parole-remains-elusive-virginia-prisoners/>.
- 63 Governor's Commission on Parole Review, Final Report and Recommendations, December 4, 2015.
- 64 Wilson, Patrick. McAuliff replaces parole board chairwoman in effort to speed reforms. Richmond Times-Dispatch, January 10, 2017. [http://www.richmond.com/news/virginia/government-politics/mcauliffe-replaces-parole-board-chairwoman-in-effort-to-speed-reforms/article\\_c10dceb8-8549-55cb-9af8-a7c36f9a086c.html](http://www.richmond.com/news/virginia/government-politics/mcauliffe-replaces-parole-board-chairwoman-in-effort-to-speed-reforms/article_c10dceb8-8549-55cb-9af8-a7c36f9a086c.html).
- 65 See, for example, Katherine B. Spencer, Amanda K. Charbonneau, and Jack Glaser. "Implicit Bias and Policing." Social and Personality Psychology Compass 10/1 (2016): 50-63, 10.1111/spc3.12210. Accessed from <https://gspp.berkeley.edu/assets/uploads/research/pdf/SpencerCharbonneauGlaser.Compass.2016.pdf>; Kutateladze, B., Lynn, V., & Liang, E., Do race and ethnicity matter in prosecution? A review of empirical studies (New York: Vera Institute of Justice, June 2012). Accessed from <http://archive.vera.org/sites/default/files/resources/downloads/race-and-ethnicity-in-prosecution-first-edition.pdf>; Racial Disparity in Sentencing: A Review of the Literature (Washington, D.C.: Sentencing Project, January 2005). Accessed from <https://www.opensocietyfoundations.org/sites/default/files/disparity.pdf>; see, for example, Michael Pinard, "Collateral Consequences of Criminal Convictions: Confronting Issues of Race and Dignity." New York University Law Review 85, no. 2 (2010): 457-534; Lisa Stolzenberg, Stewart J D'Alessio, and David Eitle. "Race and Cumulative Discrimination in the Prosecution of Criminal Defendants." Race and Justice 3, no. 4 (2013), p. 275. Accessed from <http://raj.sagepub.com/content/3/4/275.abstract>.
- 66 The Sentencing Project, Fewer Prisoners, Less Crime: A Tale of Three States (2014).
- 67 The Sentencing Project, The Color of Justice: Racial and Ethnic Disparity in State Prisons (2016).
- 68 Caleb R. Stone, Sentencing Roulette: How Virginia's Criminal Sentencing System is Imposing an Unconstitutional Trial Penalty That Suppresses the Rights of Criminal Defendants to a Jury Trial, 23 Wm. & Mary Bill Rts. J. 559 (2014), <http://scholarship.law.wm.edu/wmblrj/vol23/iss2/10>.
- 69 Alexander, Michelle. *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*. New York: [Jackson, Tenn.]: New Press; distributed by Perseus Distribution, 2010. Print.









