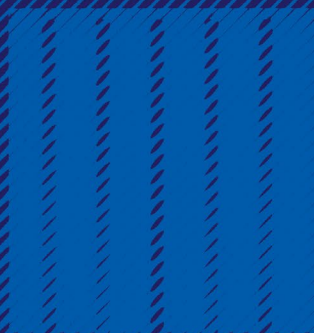


# *Blueprint for Smart Justice* Wyoming







# Blueprint *for* Smart Justice Wyoming

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# Executive Summary

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

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

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

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

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

The analysis was eye-opening.

In every state, we found that reducing the prison population by itself does little to diminish racial disparities in incarceration and in some cases would worsen them. In Wyoming — where the imprisonment rate of Black adults was nearly five times that of white adults in 2015<sup>1</sup> — reducing the number of people imprisoned will not on its own reduce racial disparities within the prison system. These findings confirm for the Campaign that urgent work remains for advocates, policymakers, and communities across the nation to focus on efforts like policing and prosecutorial reform that are specific to combating these disparities.

Wyoming's prison population has increased dramatically in recent decades, nearly quintupling in size between 1980 and 2017.<sup>2</sup> Its growth stands in contrast to more recent declines nationwide: Between 2012 and 2017, the number of people in state prisons across the country dropped by 3 percent, but in Wyoming that number grew by 12 percent.<sup>3</sup> As of December 2018, there were 2,493 people imprisoned under the state's jurisdiction.<sup>4</sup> The imprisoned population has become so large, in fact, that the state is no longer able to house all of the people who have been sentenced to prison terms. As of December 2018, Wyoming was paying a private contractor to house 90 people in Mississippi.<sup>5</sup>

Drug offenses are a particularly significant driver of Wyoming's prison population. In 2015, they accounted for almost three in 10 prison admissions in the state.<sup>6</sup>

In 2017, there were 1,047 admissions to state prisons, a number that was 28 percent higher than the number of admissions in 2009.<sup>7</sup> An increasing number of prison admissions in Wyoming are due to revocations from supervision, such as parole and probation. In 2017, more than half of all admissions to state prisons were due to such revocations.<sup>8</sup>

A growing portion of the Wyoming prison population is serving longer sentences. Between 2006 and 2015, the proportion of people in Wyoming prisons who had sentences of 10 years or longer rose from 39 percent to nearly half (47 percent).<sup>9</sup> Harsh sentencing laws play a role in these long sentences — several recent reforms have increased penalties, including for lower-level crimes.<sup>10</sup>

Unsurprisingly, Wyoming’s mass incarceration crisis has had a disproportionate impact on the state’s communities of color. Black adult Wyomingites accounted for 5 percent of the state’s prison population in 2015, despite making up only 1 percent of the overall state adult population that year.<sup>11</sup> Also in 2015, the imprisonment rate of Native American adults was more than three times that of white adults in the state.<sup>12</sup>

All this incarceration is expensive. In 2017, Wyoming spent \$124 million of its general fund on corrections, accounting for 8 percent of its general fund spending that year.<sup>13</sup> Spending on corrections more than quadrupled between 1986 and 2017, increasing by 327 percent, while higher education spending increased by merely 31 percent during that same period.<sup>14</sup>

So, what’s the path forward?

Offering alternatives to incarceration such as substance use treatment, mental health care, employment, housing, health care, and vocational training could reduce recidivism and ensure that people don’t wind up in prison when they need other forms of intervention. The Wyoming Restorative Justice Council has been advocating for a restorative justice model for juveniles in the state, providing opportunities for victims and people who commit crimes to communicate — the Legislature should invest in and expand such programs as an alternative to

incarceration in the wider criminal justice system as well.

Expanding probation as the presumptive punishment for certain offenses would also keep people from entering the system unnecessarily, as would ensuring that probation does not become a pipeline into prison. Enacting pretrial justice reform by reducing reliance on cash bail and creating a fairer, smarter pretrial system would also help.

Expanding the availability of earned credits against a prison sentence through behavior and participation in educational, vocational, and other opportunities could help keep prison populations down. So would extending compassionate release to people above the age of 50, when statistically they are less likely to commit further offenses.

For more detailed information about these and other potential reforms, see the below sections on “Reducing Admissions” and “Reducing Time Served.” If Wyoming were to adopt the changes we detail in this report, the state could have 1,528 fewer people in prison by 2025, leading to a cost savings of over \$150 million.

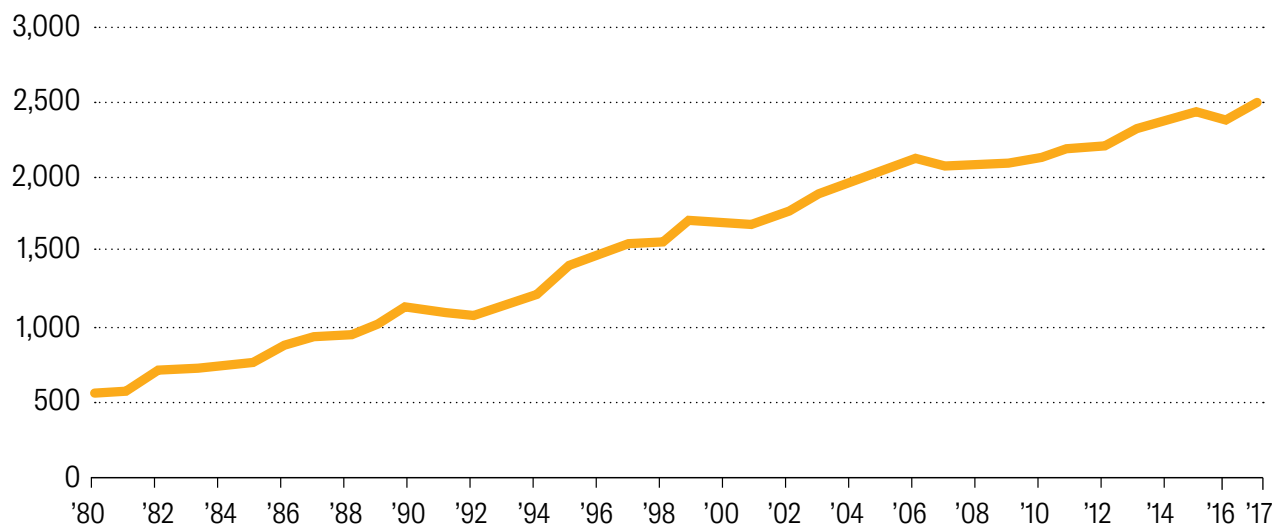
Ultimately, the answer is up to Wyoming’s voters, policymakers, communities, and criminal justice advocates as they move forward with the urgent work of ending the state’s obsession with mass incarceration.

# The State of the Wyoming Prison System

Wyoming's prison population has soared over the last few decades, nearly quintupling in size (a 363 percent increase) between 1980 and 2017.<sup>15</sup> This growth has bucked national trends in recent years: Between 2012 and 2017, as the number of people in state prisons across the nation fell by 3 percent, Wyoming's prison population grew by 12 percent.<sup>16</sup> As of December 2018, there were 2,493 people imprisoned under the state's jurisdiction, which was about 4 percent higher than the state's projections for the prison population for that year.<sup>17</sup> When people in local jails and those under different forms of community supervision such as probation and parole are also considered, the reach of Wyoming's criminal justice system is even greater: In 2016, Wyoming had 2 percent of its adult population under some form of correctional control.<sup>18</sup>

In May 2017, the state's prisons were operating at 97 percent capacity.<sup>19</sup> As of December 2018, Wyoming Department of Corrections (WDOC) data indicated that the state was already paying a private contractor running a facility in Mississippi to house 90 people who were serving time under WDOC's jurisdiction, while another 80 were housed at state expense in county jails.<sup>20</sup> The Council for State Governments estimated in 2018 that, absent reform, the state's prison population will rise by another 200 people by 2023, costing the state more than \$50 million in new contracts and/or prison construction.<sup>21</sup>

## WYOMING PRISON POPULATION





## AT A GLANCE

### WYOMING PRISONS

Wyoming's prison population grew by **363 percent** between 1980 and 2017.

Wyoming's prisons were operating at **97 percent** capacity as of May 2017.

As of December 2018, there were **2,493 people** imprisoned under the jurisdiction of the Wyoming Department of Corrections.

There were 1,047 admissions to Wyoming prisons in 2017, a number that was 28 percent higher than the number of admissions in 2009.<sup>25</sup>

Property offenses accounted for an additional one-quarter (26 percent) of all 2015 prison admissions, including 13 percent of admissions for burglary. Other common offenses among admissions to Wyoming prisons that year included sexual assault (13 percent) and assault (12 percent).<sup>26</sup>

An increasing number of prison admissions in Wyoming are due to revocations from supervision. Between 2013 and 2017, the number of prison admissions for supervision revocations increased by over one-quarter (27 percent), and more than four out of every five revocation admissions (84 percent) during this period did not include a new felony conviction. In 2017, more than half (54 percent) of all admissions to state prisons were for a parole or probation revocation.<sup>27</sup>

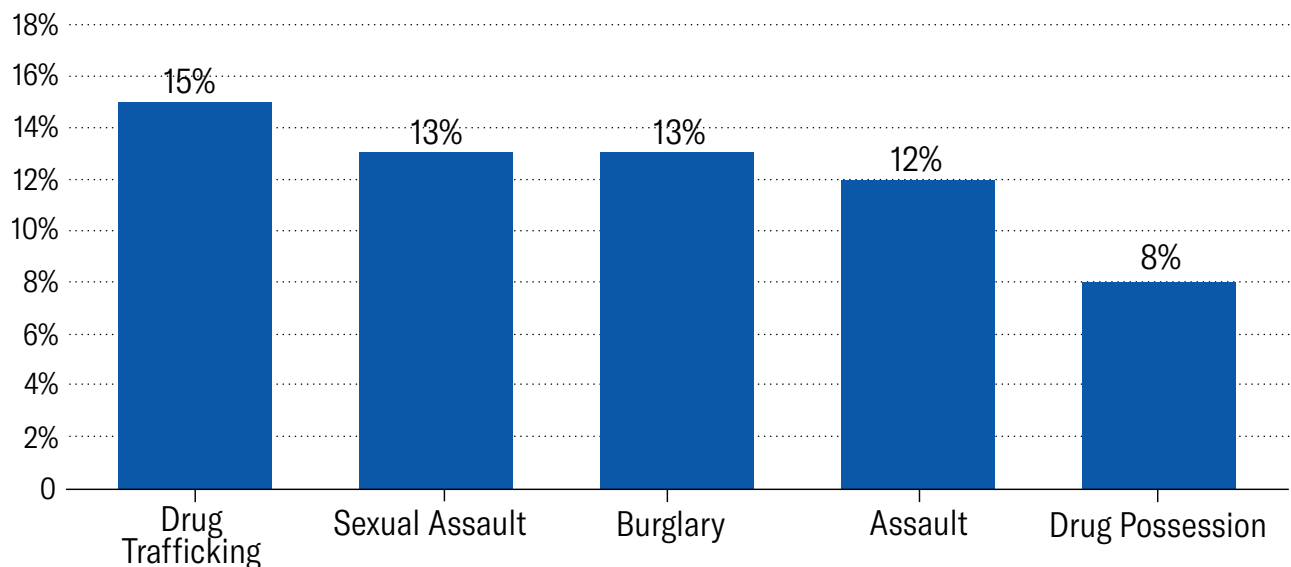
## What Is Driving People Into Prison?<sup>22</sup>

In Wyoming, a litany of offenses<sup>23</sup> drives people into prisons. Drug offenses are a particularly significant driver of the Wyoming prison population. In 2015, drug offenses accounted for almost three in every 10 (29 percent) prison admissions in the state. Fifteen percent of all admissions in 2015 were for drug trafficking, and the annual number of people admitted for drug trafficking increased by 22 percent between 2006 and 2015. Similarly, the number of prison admissions for drug possession was 45 percent higher in 2015 than in 2006.<sup>24</sup>

## The Current Prison and Jail Population

In December 2018, almost two in five people (38 percent) in Wyoming prisons were serving time for

## WYOMING PRISON ADMISSIONS BY TOP OFFENSE TYPE (2015)



## AT A GLANCE

# WYOMING PRISON AND JAIL POPULATION

In December 2018, **38 percent** of people imprisoned in Wyoming were serving time for a drug or property offense.

The number of prison admissions for supervision revocations increased by **27 percent** between 2013 and 2017.

County jails in Wyoming held **1,472 people** in 2015.

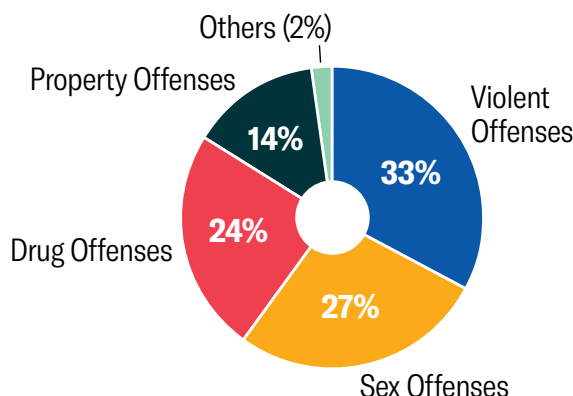
a drug or property offense. At that time, the WDOC estimated that almost one-quarter (24 percent) of Wyoming's prison population were serving time for drug offenses. They estimated that an additional one-quarter (27 percent) were serving time for sex offenses, and another one-third (33 percent) of the prison population were incarcerated for offenses categorized by WDOC as violent.<sup>28</sup> Between 2006 and 2015, the proportion of people in prison serving time for sex offenses rose from 17 percent to almost one-quarter (23 percent) of the total prison population.<sup>29</sup>

In 2015, county jails in Wyoming held 1,472 people, more than half (58 percent) of whom were being detained pretrial.<sup>30</sup> Based on its pretrial detention rate, lack of validated pretrial assessment, and use of money bail, a 2017 Pretrial Justice Institute report that ranked states based on their pretrial justice practices awarded an "F" to Wyoming, the lowest possible grade.<sup>31</sup>

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

People are spending more time in Wyoming prisons, contributing to the state's prison population growth. Between 2006 and 2015, the proportion of people in Wyoming prisons who had sentences of 10 years or longer rose from 39 percent to nearly half (47 percent).

## WYOMING PRISON POPULATION BY OFFENSE CATEGORY (2018)



People in prison in 2015 had been there, on average, for almost three years and 10 months, 11 percent more time than that served by those in prison in 2006, on average. In 2015, nearly one in 10 people in Wyoming prisons (9 percent) were serving a life or life without parole sentence.<sup>32</sup>

Wyoming has harsh sentencing laws that can require people to serve long prison terms, a situation exacerbated by several recent reforms to increase penalties, including for lower-level crimes.<sup>33</sup> The state's "habitual offender" laws require mandatory prison terms of at least 10 years for people convicted of a violent felony who already have two previous felonies of any kind on their record, and life sentences if they have previously been convicted of three or more felonies.<sup>34</sup> The ACLU of Wyoming has documented this punitive sentencing trend, finding that between 2014 and 2017, the legislature passed 28 bills that created new crimes or increased penalties.<sup>35</sup>

Additionally, in 2018, a Natrona County public defender posited that the longer sentence lengths were due in part to a 2007 law change that made it harder to defend against allegations of sexual offenses against children, and judges' increased propensity over the prior decade to sentence people convicted of first-time felonies to prison.<sup>36</sup>

## AT A GLANCE

### LENGTH OF IMPRISONMENT

Nearly **1 in 10** people in Wyoming prisons were serving a life or life without parole sentence in 2015.

The proportion of people in Wyoming prisons who were serving sentences of 10 years or more rose from **39 percent to 47 percent** between 2006 and 2015.

## Who Is Imprisoned?

**Black Wyomingites:** Incarceration in Wyoming has a profoundly disparate impact on Black communities. In 2015, the imprisonment rate of Black adults in Wyoming was nearly five times that of white adults.<sup>37</sup> In 2014, one out of every 38 adult Black men in Wyoming was in prison.<sup>38</sup> Although they made up just 1 percent of the state's adult population in 2015,<sup>39</sup> Black adults accounted for 5 percent of the state's prison population in 2015.<sup>40</sup>

**Native American Wyomingites:** In 2015, the imprisonment rate of Native American adults in Wyoming was over three times than that of white adults.<sup>41</sup> In that same year, Native American adults accounted for 5 percent of the prison population and only 2 percent of the state's adult population.<sup>42</sup>

**Hispanic Wyomingites:** In 2015, the imprisonment rate of Hispanic adults in Wyoming was almost twice that of white adults.<sup>43</sup> In that same year, Hispanic adults accounted for 12 percent of the prison population and only 9 percent of the state's adult population.<sup>44</sup>

**Women in Wyoming:** Between 1980 and 2017, the number of women imprisoned in Wyoming grew tenfold – the 907 percent increase was more than double the increase in the overall prison population during this period.<sup>45</sup> In December 2018, there were 334 women serving time under the state's jurisdiction.<sup>46</sup>

## AT A GLANCE

### DEMOGRAPHICS

In Wyoming, Black adults were imprisoned at nearly **5 times** the rate of white adults in 2015.

The number of women imprisoned in Wyoming grew by **907 percent** between 1980 and 2017.

Native Americans accounted for **5 percent** of Wyoming's prison population and only 2 percent of the state's adult population in 2015.

Despite empty beds at the Wyoming Women's Center (WWC), the state-run facility for women, eight women were moved to a county jail in 2018 due to understaffing at WWC.<sup>47</sup> A lawsuit filed in early 2019 by three women serving time at WWC alleged unconstitutional conditions due to overcrowding and deteriorating facilities,<sup>48</sup> and other women who have served time in the WWC have spoken out about the prison's failing heating system, leaking roof, and crumbling ceilings.<sup>49</sup>

**Older Wyomingites:** Wyoming's prison population is also rapidly graying, despite the fact that older people are generally considered to pose a negligible risk to public safety.<sup>50</sup> The proportion of people in Wyoming prisons older than 55 increased from one in every 14 (7 percent) in 2006 to more than one in every eight people (13 percent) imprisoned in 2015.<sup>51</sup>

## People with Mental Health and Substance Use Disorders

In Wyoming, substance abuse is highly prevalent in the state's prison population. Some experts point to recent budget cuts to mental health and drug treatment programs as having put additional pressure on the criminal justice system to address this widespread problem. In 2018, a senior WDOC official estimated that nine out of 10 men and eight out of 10 women

#### AT A GLANCE

## MENTAL HEALTH AND SUBSTANCE USE DISORDERS

An estimated **9 out of 10** men and **8 out of 10 women** serving time in Wyoming in 2018 were in need of substance use treatment.

**42 percent** of people who started felony probation or parole supervision between 2014 and 2017 had a mental health issue.

in state prisons needed some form of substance use treatment, and that half of all new admissions were due to violations of supervision guidelines pertaining to use of prohibited substances.<sup>52</sup>

Substance abuse and mental health issues are also pervasive among the community supervision population: An analysis of everyone who started felony probation and/or parole supervision between 2014 and 2017 showed that almost four in five people (78 percent) had a substance abuse issue and more than two in five (42 percent) had a mental health issue.<sup>53</sup>

## Budget Strains

As Wyoming's prison population has risen, so has the cost burden. In 2017, Wyoming spent \$124 million of its general fund on corrections, accounting for 8 percent of its general fund spending that year.<sup>54</sup> General fund spending on corrections more than quadrupled between 1986 and 2017 (327 percent increase), forcing tradeoffs between other state priorities like education – higher education spending increased by merely 31 percent over this period.<sup>55</sup>

Despite Wyoming's prison population growth, budget constraints have led WDOC to reduce its staff. As a result, WDOC has relied more heavily on contracts with local jails to house the people under its jurisdiction, despite the fact that people in jails have insufficient

#### AT A GLANCE

## BUDGET

**8 percent** of Wyoming's general fund spending in 2017 was on corrections.

General fund spending on corrections more than **quadrupled** between 1986 and 2017.

WDOC eliminated **60 positions** and defunded **122 positions** between 2011 and 2018.

access to programming and medical care.<sup>56</sup> Despite a high staff turnover rate and chronic staff shortages, WDOC eliminated 60 positions and defunded 122 positions between 2011 and 2018, reducing overall staff by 14 percent.<sup>57</sup> If the state does not enact reform to change course, the predicted increase in the prison population in the coming years<sup>58</sup> is likely to exacerbate these capacity and staffing challenges.

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

## Reducing Admissions

To end mass incarceration, Wyoming 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.<sup>59</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 criminal activity. Programs offering support services such as substance use treatment, mental health care, employment, housing, health care, and vocational training — often with a community service requirement — have significantly reduced recidivism rates for participants.<sup>60</sup> 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. The Wyoming Restorative Justice Council has been advocating for a restorative justice model for juveniles in the state,<sup>61</sup> providing opportunities for victims and people who commit crimes to communicate. The Legislature should invest in and expand restorative justice programs like these as an alternative to incarceration in the criminal system.<sup>62</sup> When they are rigorous and well-implemented, these processes have not only been demonstrated to reduce recidivism for defendants,<sup>63</sup> they have also been shown to decrease symptoms of posttraumatic stress in victims of crime.<sup>64</sup> Prosecutors and judges who embrace these solutions can fulfill their responsibilities to the public safety and to supporting victims in their healing — and can often generate far better results than imprisonment can deliver. Other successful models include those that divert people to treatment and support services before arrest and prosecutor-led programs that divert people before they are charged. Lawmakers can explore such interventions at multiple phases in the system, whether through decriminalization or alternatives to arrest, charges, or incarceration.
- **Expand treatment — mental health:** Mental health diversion is an effective way to redirect people out of the criminal legal system and into supportive community treatment. Diversion programs have been shown to be effective for people charged with a variety of offenses.<sup>65</sup> When



implemented effectively, diversion reduces arrests, encourages voluntary treatment in the community, and saves money.<sup>66</sup> Unfortunately, current mental health diversion efforts in Wyoming have proven ineffective because of a lack of adequate upfront funding. Title 25, a recent mental health initiative that allows for the courts to order outpatient mental health treatment, is critically underfunded, inhibiting the potential for success in fighting Wyoming's mental health crisis.<sup>67</sup> The Department of Health's budget for Title 25 has remained the same at \$4 million since 2013, though spending has increased to \$10.3 million per year. Further cuts to the Department's budget seriously limited its ability to address the growing mental health crisis. The Department lost 9 percent of its budget in 2017 — \$100 million in legislative and gubernatorial cuts and an additional \$40.9 million in federal cuts. The Legislature should invest in Title 25 and ensure that it is not implemented in a way that increases involuntary hospital stays. To do this, the Legislature should strengthen the statute governing the civil commitment process to provide attorneys and due process protections. Mental health programs are already feeling the pinch as suicide prevention and substance-abuse programs have been impacted by funding cuts. Effective diversion programs coordinate with community services that provide a wide range of substantial, quality wraparound treatment and support for people with disabilities to access housing, employment, and intensive, individualized supports in the community. After an initial investment in community supports, diversion programs have the potential of saving jurisdictions large amounts of money.<sup>68</sup> One way to support treatment options is expanding Medicaid so that Wyomingites have greater access to mental health treatment while on community supervision and after release from the criminal system.

- **Expand treatment — addiction:** Substance use disorders are often underlying drivers of a substantial number of crimes. Addressing

substance use through treatment rather than incarceration can more effectively reduce crime.<sup>69</sup> One way to support treatment options is expanding Medicaid so that Wyomingites have greater access to drug treatment while on community supervision and after release from the criminal system. Wyoming courts can also institute diversion programs specifically targeted to prevent people with substance use issues from entering the criminal legal system, while also addressing the root cause of system involvement.

- **Improve community supervision and reduce revocations:** Community supervision is intended to be an alternative to incarceration, a mechanism for early release, and an opportunity to lower recidivism through effective reentry practices. Yet, many state probation and parole practices perpetuate mass incarceration. Probation and parole offices must prioritize the risk-need-responsivity principle, ensuring the level and parameters of supervision are aligned and lead to better public safety and rehabilitation outcomes. The Wyoming Legislature should ensure probation is used as a prison alternative, not widening the net of system-involved people. The state recently passed reforms to allow judges to utilize unsupervised probation<sup>70</sup> and capping parole terms at three years, unless there is reason to lengthen the term.<sup>71</sup> The Legislature should expand on this reform by making probation the presumptive punishment for certain offenses. This would allow people to remain in their communities while completing their obligations, increasing the possibility of employment and maintaining relationships with families and communities.
- **Reform Wyoming's probation and parole processes:** Too often, people revoked from supervision are sent to prison for technical violations, not because they committed a new crime; missing curfew or lack of employment could result in incarceration. In February 2019, the governor signed reform requiring WDOC to reform its parole

revocation policies to be “swift, certain, and proportional” and to provide substance abuse training and other rehabilitative programming to people incarcerated for sanctions.<sup>72</sup> Racial disparities are stark in revocation decision-making. One study found that Black probationers were revoked at significantly higher rates than white or Latinx probationers.<sup>73</sup> While drafting the new parole sanction policy, WDOC should implement a more modern system of graduated sanctions than the current system for probation and parole violations, ensuring responses are proportional and fair. WDOC should also track racial demographics and geographic locations of those who have their supervision revoked. Further, incarceration should be prohibited in cases of technical violations. WDOC should further provide appointed counsel at revocation hearings and put an end to wealth-based probation and parole practices by prohibiting the revocation or extension of terms of supervision for financial reasons.

- **Support decriminalization and defelonization:** The Wyoming Legislature consistently introduces bills to criminalize behavior that previously would not — and should not — have led to incarceration. The Legislature should undertake a study of the entire criminal code to determine which crimes should be decriminalized and which should no longer be felonies. The Legislature needs to move away from a culture of criminalization, stop expanding the criminal code, and look at alternatives to incarceration. Decriminalization is a winning commitment both for the community as well as the ballot box.
- **Enact pretrial justice reform:** Wyoming can significantly reduce its rates of pretrial detention by creating a fairer, smarter pretrial system. Wyoming relies too heavily on cash bail, leaving people languishing in jail simply because they cannot afford to pay. Far too often, people who cannot afford their bail will

end up in jail for weeks or months as they wait for their day in court. When this happens, the legal system leaves them with a difficult choice: Take a plea deal or fight the case from behind bars. Research shows that many people face significant collateral damage while detained pretrial, such as painful and dangerous forced drug detoxification, job loss, or interrupted education.<sup>74</sup> And evidence shows that pretrial detention significantly increases a defendant’s chance of conviction.<sup>75</sup> The current pretrial system harms people of color in particular. Research shows that people of color are detained at higher rates across the country when unable to meet bail, and that courts set significantly higher bail amounts for them.<sup>76</sup> In order to significantly reduce pretrial detention and combat racial disparities, the Wyoming Legislature should enact pretrial reform — including increasing reliance on personal recognizance bail, adopting mandatory cite and release policies, enhancing speedy trial rights, and expanding access to counsel — and limit pretrial detention to the rare case where a person poses an imminent, serious, clear threat to another person.

- **Prosecutorial reform:** Prosecutors are the most powerful actors in the criminal justice system with the ability to wield the power of the state against an individual to deprive that person of life, liberty, and property. The initial decision of whether to charge someone with crimes and, if so, what and how many, has a major impact on every aspect of a person’s experience with the system, not least of which is the amount of time someone faces and eventually serves incarcerated. They decide, often unilaterally, whether an individual is diverted from the criminal system, thereby avoiding the collateral consequences of a criminal record. They resolve most convictions through plea bargains where they primarily decide how the charges are settled. Prosecutors also make influential recommendations regarding bail and sentences. The Legislature should mandate that prosecutors collect data on these decisions and

publish their data and related policies so they are available to the communities that they serve. Moreover, 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.

## Reducing Time Served

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

- **Sentencing reform — general:** The Legislature can amend Wyoming's criminal code to reduce sentencing ranges, including and especially for drug offenses, burglary and other property offenses, robbery, public order offenses, and assault. Moving away from mandatory minimum sentences should be a priority for Wyoming, as they have proven ineffective as a deterrent and often result in long prison sentences.<sup>77</sup>
- **Sentencing reform — enhancements:** The Legislature can also limit the circumstances and severity of Wyoming's prior felony sentencing rules, 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.
- **Earned time/earned credit reform:** Wyoming can also consider expanding the availability of earned credits against a prison sentence through behavior and participation in educational, vocational, and other opportunities. These opportunities should be available for people to earn prior to sentencing and while they are in jail prior to their transfer to prison. Further, there should not be a limit to the amount of credit that a person can earn.
- **Compassionate release:** The Wyoming Legislature should expand access to

compassionate release from prison. The state provides medical parole in circumstances of terminal illness or serious illness and to incarcerated people who are incapacitated because of old age.<sup>78</sup> The state's prison population is rapidly aging, in large part due to habitual offender laws. 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.<sup>79</sup> What is more, keeping older people behind bars does not serve the goal of incapacitation, particularly as studies have clearly shown that as people age, their propensity to commit crime significantly declines.<sup>80</sup> There is also clear evidence showing that older persons have much lower rates of recidivism than their younger counterparts.<sup>81</sup> The state should allow potential compassionate release and a parole hearing for incarcerated people above the age of 50, incapacity notwithstanding.

## Reducing Racial Disparities

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

People of color (especially Black, Latinx, and Native American people) are at a higher risk of becoming involved in the justice system, including living under heightened police surveillance and being at higher risk for arrest. This imbalance cannot be accounted for by disparate involvement in illegal activity, and it grows at each stage in the justice system, beginning with initial law enforcement contact and increasing at subsequent stages, such as pretrial detention, conviction, sentencing, and post-release opportunity.<sup>82</sup> Focusing on only one of the factors that drives racial disparity does not address issues across the whole system.

Of particular concern in Wyoming are racial disparities for the Native American population. In 2015, the imprisonment rate of Native American adults

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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>97</sup>

— From *The New Jim Crow*, Michelle Alexander

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in Wyoming was more than three times than that of white adults.<sup>83</sup> In that same year, Native American adults accounted for 5 percent of the prison population and only 2 percent of the state’s adult population.<sup>84</sup>

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>85</sup> However, the state did not target racial disparities in incarceration and, in 2014, Black people in New Jersey were still more than 12 times as likely to be imprisoned as white people — the highest disparity of any state in the nation.<sup>86</sup>

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

Some examples include:

- Ending overpolicing in communities of color
- Evaluating prosecutors’ charging and plea bargaining practices to identify and eliminate bias
- Investing in diversion/alternatives to detention in communities of color
- Reducing the use of pretrial detention and eliminating wealth-based incarceration
- Ending sentencing enhancements based on location (e.g., 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 from 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.<sup>87</sup>
- 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.<sup>88</sup> In particular, people with psychiatric disabilities are dramatically overrepresented in jails and prisons across the country.<sup>89</sup>

- People showing signs of mental illness are twice as likely to be arrested as people without mental illness for the same behavior.<sup>90</sup>
- People with mental illness are sentenced to prison terms that are, on average, 12 percent longer than other people in prison.<sup>91</sup>
- People with mental illness stay in prison longer because they frequently face disciplinary action from conduct that arises due to their illness — such as attempted suicide — and they seldom qualify for early release because they are not able to participate in rehabilitative programming, such as educational or vocational classes.<sup>92</sup>

Furthermore, sentencing reforms appear to leave people in prison with psychiatric disabilities behind. In recent years in California, for example, the prison population has decreased by more than 25 percent following a court order, but the number of people with a serious mental disorder has increased by 150 percent — an increase in both the rate and absolute number of incarcerated people with psychiatric disabilities.<sup>93</sup>

Screening tools to evaluate psychiatric disabilities vary by state and jurisdiction, but the most reliable

data indicates that more than half of jail populations and close to half of prison populations have mental health disabilities.<sup>94</sup> The fact that people with mental health disabilities are arrested more frequently, stay incarcerated longer, and return to prisons faster is not due to any inherent criminality related to psychiatric disabilities. It arises in part because of the lack of accessible and appropriate mental health treatment in the community; in part because of a perception of dangerousness by police, prosecutors and judges; and in part because prison staff and probation officers fail to recognize and accommodate disability.

Many people of color in jails and prisons are also people with disabilities, and efforts to reduce racial disparities must go hand in hand with efforts to reduce disability disparities.<sup>95</sup> Not surprisingly, many of the strategies to reduce disability disparities are similar to approaches that reduce racial disparities. Some examples include:

- Investing in pre-arrest diversion:
  - Creating behavioral health centers, run by state departments of health, as alternatives to jails, or emergency rooms for people experiencing mental health crises or addiction issues.
  - Training dispatchers and police to divert people with mental health issues who commit low-level nuisance crimes to these behavioral health centers. Jurisdictions that have followed this approach have significantly reduced their jail populations.<sup>96</sup>
- Ending arrest and incarceration for low-level public order charges, such as being drunk in public, urinating in public, loitering, trespassing, vandalism, and sleeping on the street. If needed, refer people who commit these crimes to behavioral health centers.
- Requiring prosecutors to offer diversion for people with mental health and substance use disabilities who are charged with low-level crimes



- Evaluating prosecutors' charging and plea bargaining practices to identify and eliminate disability bias
- Requiring prosecutors' offices be transparent in their hiring practices, charging decisions, and plea deals
- Investing in diversion programs and alternatives to detention designed for people with disabilities, including programs that provide supportive housing, Assertive Community Treatment, wraparound services, and mental health supports
- Reducing the use of pretrial detention while increasing reminders of court dates and other supports to ensure compliance with pretrial requirements
- Reducing reincarceration due to parole or probation revocations through intensive case management, disability-competent training for officers on alternatives to incarceration and reasonable modifications to requirements of supervision, and no return to incarceration for first and second technical violations
- Addressing bias against mental disabilities in risk assessment instruments used to assist

## 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.

**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 fund the creation of new alternatives, including diversion programs that provide supported housing, treatment, and vocational training. They can also decide to sufficiently fund mental health and substance use treatment so it is available for people who need it before they encounter the criminal legal system.

**Governor:** The governor has vast influence over the state's criminal system, including — but not limited to — influence over the annual proposed state budget. Rather than maintaining the status quo, where taxpayer dollars support the enormous scope of today's system, the governor should consider investments, including drug and mental health treatment, that would result in a safer and healthier community and ultimately reap savings from a smaller incarcerated population.

**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 accommodation 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.

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 Wyoming 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 Wyoming, visit the interactive online tool at <https://urbn.is/ppf>.

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

Impact Compared to 2025 Baseline*				
Offense category**	Policy outcome	Prison population impact	Impact on racial and ethnic makeup of prison population***	Cost savings****
<b>Drug offenses</b>	<ul style="list-style-type: none"> <li>• Institute alternatives that end all admissions for drug possession (82 fewer people admitted)</li> <li>• Reduce average time served for drug distribution and other drug offenses by 70% (from 1.71 to 0.51 years)</li> <li>• Institute alternatives that reduce admissions for drug distribution and other drug offenses by 80% (195 fewer people admitted)</li> </ul>	17.03% reduction (523 fewer people)	White: 0.1% increase Black: 4.0% decrease Hispanic/Latino: 3.1% decrease Native American: 7.9% increase Asian: 6.7% increase Hawaiian/Pacific Islander: 20.5% increase Other: 20.5% increase	\$20,460,864
<b>Assault</b>	<ul style="list-style-type: none"> <li>• Reduce average time served by 70% (from 2.11 to 0.63 years)</li> <li>• Institute alternatives that reduce admissions by 70% (106 fewer people admitted)</li> </ul>	9.15% reduction (281 fewer people)	White: 2.0% increase Black: 13.3% decrease Hispanic/Latino: 0.7% decrease Native American: 13.5% decrease Asian: 20.2% decrease Hawaiian/Pacific Islander: 31.4% decrease Other: 10.1% increase	\$8,855,531



Impact Compared to 2025 Baseline*				
Offense category**	Policy outcome	Prison population impact	Impact on racial and ethnic makeup of prison population***	Cost savings****
<b>Burglary</b>	<ul style="list-style-type: none"> <li>Reduce average time served by 70% (from 1.72 to 0.52 years)</li> <li>Institute alternatives that reduce admissions by 70% (88 fewer people admitted)</li> </ul>	6.44% reduction (198 fewer people)	White: No change Black: 1.2% increase Hispanic/Latino: 0.1% decrease Native American: 0.3% decrease Asian: 1.9% decrease Hawaiian/Pacific Islander: 6.9% increase Other: 90.4% decrease	\$6,844,381
<b>Public order offenses*****</b>	<ul style="list-style-type: none"> <li>Reduce average time served by 70% (from 2.11 to 0.63 years)</li> <li>Institute alternatives that reduce admissions by 80% (46 fewer people admitted)</li> </ul>	3.7% reduction (114 fewer people)	White: 0.1% decrease Black: 1.1% increase Hispanic/Latino: 0.1% increase Native American: 0.2% decrease Asian: 3.8% increase Hawaiian/Pacific Islander: 3.8% increase Other: 3.8% increase	\$3,794,325
<b>DWI</b>	<ul style="list-style-type: none"> <li>Reduce average time served by 80% (from 2.09 to 0.42 years)</li> <li>Institute alternatives that reduce admissions by 80% (40 fewer people admitted)</li> </ul>	3.22% reduction (99 fewer people)	White: No change Black: 0.3% decrease Hispanic/Latino: 0.4% increase Native American: 2.2% decrease Asian: 3.3% increase Hawaiian/Pacific Islander: 3.3% increase Other: 3.3% increase	\$3,468,708
<b>Other property offenses*****</b>	<ul style="list-style-type: none"> <li>Reduce average time served by 70% (from 1.79 to 0.54 years)</li> <li>Institute alternatives that reduce admissions by 70% (35 fewer people admitted)</li> </ul>	2.58% reduction (79 fewer people)	White: 0.3% decrease Black: 0.4% increase Hispanic/Latino: 0.8% increase Native American: 1.9% increase Asian: 2.7% increase Hawaiian/Pacific Islander: 2.7% increase Other: 2.7% increase	\$2,613,900

Impact Compared to 2025 Baseline*				
Offense category**	Policy outcome	Prison population impact	Impact on racial and ethnic makeup of prison population***	Cost savings****
<b>Other violent offenses</b>	<ul style="list-style-type: none"> <li>• Reduce average time served by 70% (from 2.18 to 0.66 years)</li> <li>• Institute alternatives that reduce admissions by 70% (26 fewer people admitted)</li> </ul>	2.31% reduction (71 fewer people)	White: 0.6% decrease Black: 2.4% increase Hispanic/Latino: 2.0% increase Native American: 2.4% increase Asian: 2.4% increase Hawaiian/Pacific Islander: 40.1% decrease Other: 2.4% increase	\$2,218,497
<b>Theft</b>	<ul style="list-style-type: none"> <li>• Reduce average time served by 70% (from 1.53 to 0.46 years)</li> <li>• Institute alternatives that reduce admissions by 70% (31 fewer people admitted)</li> </ul>	2.06% reduction (63 fewer people)	White: 0.2% decrease Black: 1.2% increase Hispanic/Latino: 0.8% increase Native American: 0.4% increase Asian: 4.9% decrease Hawaiian/Pacific Islander: 2.1% increase Other: 2.1% increase	\$2,272,187
<b>Fraud</b>	<ul style="list-style-type: none"> <li>• Reduce average time served by 70% (from 1.87 to 0.56 years)</li> <li>• Institute alternatives that reduce admissions by 70% (19 fewer people admitted)</li> </ul>	1.5% reduction (46 fewer people)	White: 0.2% decrease Black: 0.4% decrease Hispanic/Latino: 0.6% increase Native American: 1.5% increase Asian: 1.5% increase Hawaiian/Pacific Islander: 1.5% increase Other: 1.5% increase	\$1,652,411
<b>Robbery</b>	<ul style="list-style-type: none"> <li>• Reduce average time served by 70% (from 1.29 to 0.39 years)</li> <li>• Institute alternatives that reduce admissions by 70% (16 fewer people admitted)</li> </ul>	0.92% reduction (28 fewer people)	White: 0.2% increase Black: 2.1% decrease Hispanic/Latino: No change Native American: 0.4% decrease Asian: 3.3% decrease Hawaiian/Pacific Islander: 10.7% decrease Other: 0.9% increase	\$1,047,118

Impact Compared to 2025 Baseline*				
Offense category**	Policy outcome	Prison population impact	Impact on racial and ethnic makeup of prison population***	Cost savings****
<b>Weapons offenses*****</b>	<ul style="list-style-type: none"> <li>Reduce average time served by 70% (from 2.17 to 0.65 years)</li> <li>Institute alternatives that reduce admissions by 70% (10 fewer people admitted)</li> </ul>	0.81% reduction (25 fewer people)	White: No change Black: 0.3% decrease Hispanic/Latino: 0.1% decrease Native American: 0.8% increase Asian: 0.8% increase Hawaiian/Pacific Islander: 0.8% increase Other: 0.8% increase	\$751,755

\*The baseline refers to the projected prison population based on historical trends, assuming that no significant policy or practice changes are made.

\*\*The projections in this table are based on the offense that carries the longest sentence for any given prison term. People serving prison terms may be convicted of multiple offenses in addition to this primary offense, but this model categorizes the total prison term according to the primary offense only.

\*\*\* This column represents the percent change in the share of the prison population made up by each racial/ethnic group. It compares the proportion of the population made up by a group in the 2025 baseline prison population to the proportion of the population made up by that group when the reform scenario is applied. We then calculate the percent change between those two proportions. Racial and ethnic disproportionality is traditionally measured by comparing the number of people in prison of a certain race or ethnic group to the number of people in the state's general population of that same group. For example, nationally, Black people comprise 13 percent of the population, while white people comprise 77 percent. Meanwhile, 35 percent of people in state or federal prison are Black, compared to 34 percent who are white. While the proportion of people in prison who are Black or white is equal, Black people are incarcerated at nearly three times their representation in the general population. This is evident in Wyoming, where Black people made up 5 percent of the prison population in 2015 but constituted only 1 percent of the state's total adult population that year.

\*\*\*\*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 Wyoming were to implement reforms leading to the changes above, 1,528 fewer people would be in prison in the state by 2025, a 50 percent decrease. This would lead to a total cost savings of \$166,185,441 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 Wyoming'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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- 3 BJS, Corrections Statistical Analysis Tool.
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*Lowered Costs* (2017), [https://www.aclu-wy.org/sites/default/files/field\\_documents/bucking\\_the\\_trend\\_aclu\\_report\\_web.pdf](https://www.aclu-wy.org/sites/default/files/field_documents/bucking_the_trend_aclu_report_web.pdf).

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