

Blueprint for Smart Justice
North Carolina



Blueprint *for* Smart Justice

North Carolina

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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 fractured 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 North Carolina — where, as of 2016, the per capita adult imprisonment rate of Black people is 4.5 times higher than that of white people¹ — 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 across the nation to focus on efforts like policing and prosecutorial reform that are specific to combating these disparities.

North Carolina's prison population has more than doubled between 1980 and 2016,² and it is projected to exceed capacity by 2025.³ As of June 2018, 37,104 people were imprisoned across the state.⁴ The war on drugs continues to fuel North Carolina's mass incarceration crisis — while the number of people admitted to prison every year for a drug offense decreased between 2008 and 2018, non-trafficking drug offenses still made up 18 percent of all prison admissions in fiscal year 2018.⁵ People with mental health or substance use disorders continue to suffer in North Carolina prisons: A screening sample of sentenced people in 2016 established that 71 percent self-reported a need for intermediate or long-term substance-use disorder treatment,⁶ and the state estimates that 25,000 people with severe mental illness are in jail every year.⁷

In an effort to address the growing prison population and to decrease admissions, North Carolina enacted the Justice Reinvestment Act (House Bill 642) in June 2011. These reforms included limiting the circumstances under which a person can be sentenced and imprisoned for a misdemeanor, which contributed to a 19 percent decline in prison admissions between

2011 and 2016.⁸ In spite of this progress, the size of North Carolina's prison population remained nearly static over the same time period. While the Justice Reinvestment Act was undoubtedly a step in the right direction, North Carolina's incarcerated population remains untenably large.

And all that incarceration is expensive — in 2016, North Carolina spent \$1.9 billion of its general fund on corrections.⁹

So what's the path forward?

Reducing the time people serve in North Carolina's prisons through sentencing reform is an essential step in reducing the prison population. People age 50 and older accounted for nearly one in five people (17.9 percent) imprisoned in 2016,¹⁰ a trend that is at odds with overwhelming evidence that this group poses little risk to public safety and is unlikely to recidivate.¹¹ To reduce the aging prison population, the North Carolina Legislature should reform its current structured sentencing grid, which calculates time served based on a defendant's charge and criminal history.¹² The state should limit mandatory minimum sentences, remove sentencing enhancements, and expand its compassionate release program in order to address its rapidly aging prison population.

Further, North Carolina lawmakers should channel more funding into alternatives to incarceration that can reduce criminal activity, such as mental health care and housing. Funding should be increased for programs already in use in North Carolina that divert people away from the criminal justice system, such as the Law Enforcement Assisted Diversion and Crisis Intervention Team training.

If North Carolina were to adopt the changes outlined in this Smart Justice 50-State Blueprint's forecaster chart the state could save a staggering \$1 billion by 2025 — money that could be better spent on schools, infrastructure, and services for North Carolinians.

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

The State of the North Carolina Prison System

The North Carolina prison population has more than doubled between 1980 and 2016¹³ — reaching a peak of 41,030¹⁴ people in 2011 — and the state had the 13th-largest prison population in the country as of the most recently available national data (2016).¹⁵

In 2011, the state passed the Justice Reinvestment Act, a policy reform law that contributed to significant reductions in its prison population. However, additional reforms are still urgently needed. As of June 2018, 37,104 people were imprisoned across the state,¹⁶ and North Carolina's Department of Public Safety projects the state's prison population will grow in the near future, exceeding current capacity by 2025.¹⁷

AT A GLANCE

NORTH CAROLINA PRISONS

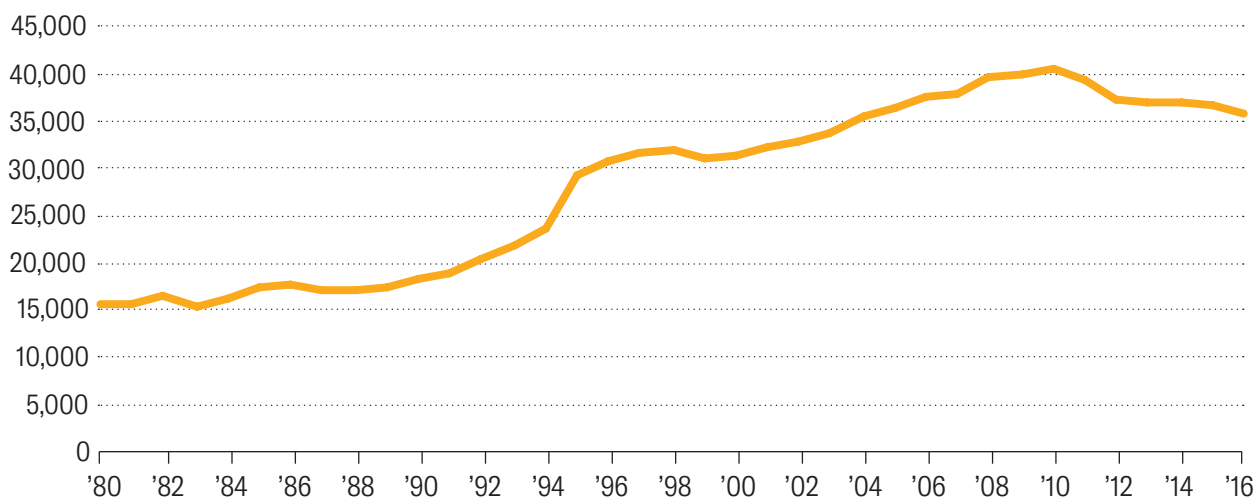
41,030 people were imprisoned in North Carolina at its prison population peak in 2011.

North Carolina's state prisons are expected to exceed current capacity by **2025**.

What Is Driving People Into Prison?

A litany of offenses drives people into North Carolina's prisons, with non-trafficking drug offenses making up 18 percent of all prison admissions in fiscal year 2018.

NORTH CAROLINA PRISON POPULATION



While overall admissions for drug offenses dropped by 15 percent between 2008 and 2018, they still accounted for more than one in five admissions to North Carolina prisons in fiscal year 2018. Other top conviction offenses for prison admissions in 2018 were breaking and entering (12 percent), larceny (11 percent), assault (7 percent), and fraud (7 percent).¹⁸ In fiscal year 2018, North Carolina admitted 25,217 people to state prisons.¹⁹

More than half (56.7 percent) of people admitted to prison in 2016 had committed violations of probation and other forms of community supervision, including for technical reasons such as missing an appointment, while only 39.1 percent were admitted to prison with new sentences. As of the most recently available data (2015), nearly half (44.9 percent) of people admitted to prison had no prior history of incarceration for a felony conviction.²⁰

The state took a big step toward reducing admissions into the prison system when it enacted the Justice Reinvestment Act (HB 642) in June 2011, a law that limited the circumstances under which a person could be sentenced to prison for a misdemeanor. These reforms contributed to an overall decline of 13.7 percent in admissions to North Carolina prisons

AT A GLANCE

NORTH CAROLINA PRISON AND COUNTY JAIL POPULATION

16,871 people were incarcerated in county jails in North Carolina in 2015.

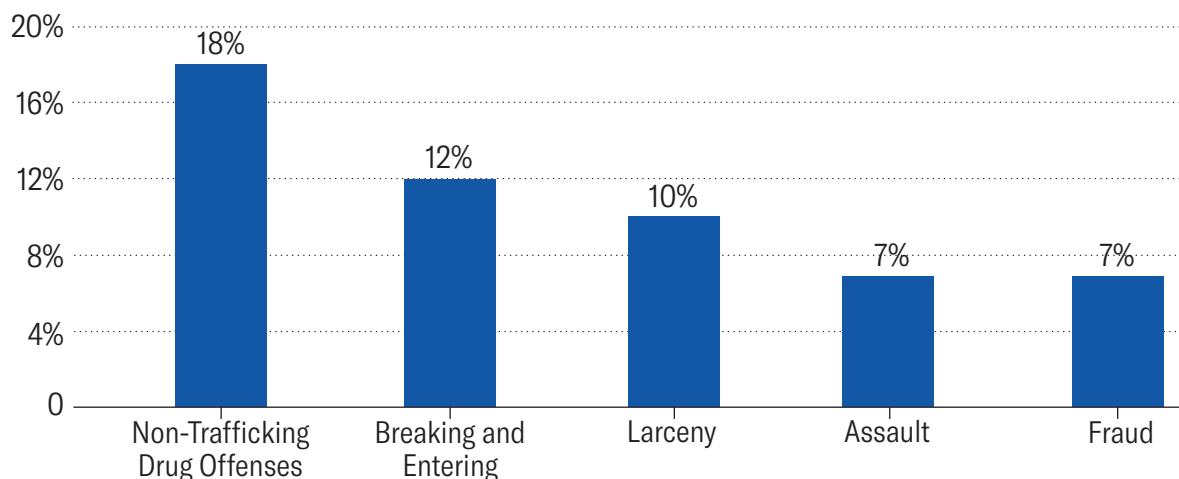
Nearly **90 percent** of people in county jail in 2015 had not been convicted of a crime.

Nearly **1 in 3** people imprisoned in North Carolina was serving time for a drug or property offense as of May 2018.

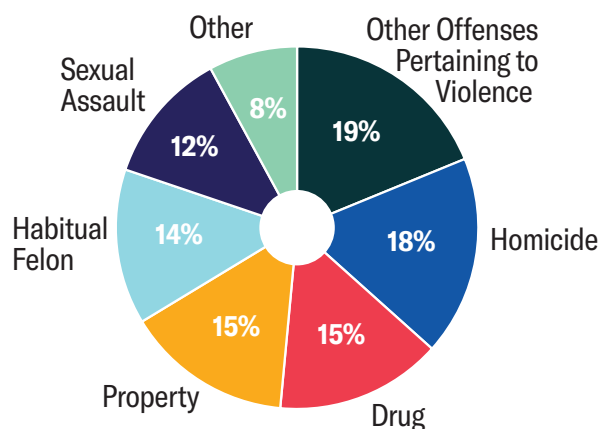
between 2006 and 2016 — largely driven by a 76.5 percent decline in misdemeanor admissions.²¹

In an effort to address persistently high probation revocation rates, reforms in the Justice Reinvestment Act also limited the circumstances under which a person could return to prison from probation and expanded alternatives to prison for people who violate parole, probation, and other forms of community supervision. Since enacting these reforms, admissions

NORTH CAROLINA PRISON ADMISSIONS BY TOP OFFENSE TYPES (FY 2018)



NORTH CAROLINA PRISON POPULATION BY OFFENSE (2018)



to prison for probation revocations plummeted — decreasing by 45.6 percent between 2011 and 2016.²²

Despite these reforms, significant work remains. In 2016, admissions for misdemeanor offenses still made up 9.1 percent of prison admissions, while admissions for felony offenses grew by 18.2 percent between 2006 and 2016.²³ Of 2016 admissions, community supervision revocations accounted for 56.7 percent, and 4.2 percent had not been convicted of any crime and were sent to prison either for diagnostic testing requested by a judge or for “safekeeping” — when detention in a local jail is determined by a judge to pose potential danger to the individual.²⁴

The Current Prison and Jail Population²⁵

North Carolina incarcerated an estimated 16,871 people in county jails in 2015. Nearly 90 percent of those serving time in county jail were being held pretrial and had not been convicted of a crime.²⁶ While most states hold people convicted of a misdemeanor in county jails, people convicted of a misdemeanor with sentences longer than 90 days can be sent to North Carolina’s prisons, and people with sentences longer than six months must serve their full sentence in prison.²⁷

As of June 2018, 37,104 people were imprisoned across the state.²⁸ Nearly one in three was serving time for a drug or property offense.²⁹

Why Do People Stay in Prison for So Long?

Between 2006 and 2016, the number of people entering North Carolina prisons each year declined by 13.7 percent. However, the total prison population remained nearly constant, driven primarily by two factors: an increase in the average amount of time people spend in prison and a decrease in the number of people released from prison every year.

During this time period, the number of people released from prison each year dropped by 22.2 percent, while the average amount of time served continued to climb: In 2015, a person serving time in North Carolina had served an average of 29.4 percent more time than just a decade earlier. This can partially be explained by an increase in the average amount of time served for drug offenses, which jumped by 63.2 percent during that time period.³⁰

North Carolina’s criminal code includes harsh sentencing laws that can trigger long prison sentences and mandate prison time for people who would otherwise be eligible for probation or other alternatives to prison. For example, under a policy known as the “Habitual Offender Law,” a person convicted of three or more felony offenses is automatically sentenced

AT A GLANCE

LENGTH OF IMPRISONMENT

The number of people released from prison each year dropped by **22 percent** between 2006 and 2016.

The average amount of time someone in prison had served for drug offenses jumped by **63 percent** between 2006 and 2016.

at a felony class that is four levels above the actual offense they were convicted for, potentially adding years to their prison sentence.³¹ Further, if a person is convicted of more than one violent felony — defined as any Class A through Class E felony, which includes crimes ranging from murder to arson — judges are required to hand down a sentence of life without the possibility of parole.³²

Other similar sentencing laws include a status offense for breaking and entering, in which a person must be sentenced as a Class E felon if they have committed one or more previous breaking and entering felonies and proceeds to commit another.³³ And a “two strikes” law requires that anyone who has already committed one or more felonies involving a firearm must be punished for the second felony at the Class C level, with a mandatory minimum of 120 months’ active time.³⁴

The Structured Sentencing Act, enacted in 1994, established specific maximum and minimum sentences, or structured sentences, based on crime type and criminal history, which has contributed to longer prison terms. The act was supported by many progressive prison reform advocates as a way to reduce racial disparities in sentencing; however, data regarding the impact of structured sentencing on disparity is mixed, with one study indicating that non-white people receive more severe punishment than do white people under structured sentencing.³⁵ Further, data shows that people released in 2016 after serving structured felony sentences served 53.9 percent more time on average than people serving structured felony sentences released in 2006. And people released for structured misdemeanor sentences served an average of 35.8 percent more time in prison.³⁶ These delineated maximums and minimums have been affected by enhancements that have been added or adjusted since the Structured Sentencing Act, such as the enhancement for a felony involving a firearm or deadly weapon. That particular enhancement was expanded in 2013 to apply to all classes of felonies, increasing its scope.³⁷ In addition, sentencing enhancements were recently added for felonies related to gang activity.³⁸

The 1994 legislation also effectively eliminated the state’s parole system. Under the law, every person sentenced to prison in North Carolina must serve at

least 100 percent of their minimum sentence and 85 percent of their maximum sentence. This means they can earn only 15 percent off their maximum sentence for participation in treatment and other alternative programs, which have been shown to improve reentry outcomes.³⁹ In 2016, people admitted to prison for structured felony sentences had served an average of 109 percent of their minimum sentence upon release.⁴⁰

Who Is Imprisoned

Black North Carolinians: As of 2017, North Carolina’s Black per capita adult imprisonment rate is 4.5 times higher than its white adult per capita imprisonment rate. While Black people accounted for 52.9 percent of the 2016 prison population, they made up only 21.5 percent of the state’s adult population, resulting in one in 40 Black men in the state imprisoned.⁴¹

Disabled North Carolinians: Seventy-one percent of people who were incarcerated and screened for substance abuse in 2016 reported a need for intermediate or long-term substance use disorder treatment.⁴² The state estimates that 25,000 people with severe mental illness end up in North Carolina jails annually.⁴³

Female North Carolinians: From 2006 and 2016, the number of women imprisoned in North Carolina grew

AT A GLANCE

DEMOGRAPHICS

1 in 40 Black men in North Carolina were imprisoned as of 2016.

71 percent of screened people who are incarcerated reported having a substance use disorder requiring intermediate or long-term treatment.

The population of people over age 50 in prison grew by nearly **105 percent** between 2006 and 2016.

by 5.8 percent, while the number of men declined by 0.5 percent. Based on the most recently available data, women account for one in 14 people (7.6 percent) in North Carolina prisons (2016)⁴⁴ and one in seven people (13.5 percent) in county jails (2015).⁴⁵

Older North Carolinians: North Carolina’s prison population is also rapidly aging, due in part to an increase in the average amount of time served. The prison population age 50 and older more than doubled – a 104.8 percent increase – between 2006 and 2016. In addition, people age 50 and older accounted for nearly one in five people (17.9 percent) imprisoned in 2016, despite accounting for only 8 percent of all people admitted to prison that year.⁴⁶ This trend is egregious given the overwhelming evidence showing that people older than 50 pose a negligible risk to public safety and are the least likely to return to prison for new offenses upon release.⁴⁷

Budget Strains

As the North Carolina prison population has risen, so has the cost burden. In 2015, North Carolina spent \$1.7 billion of its general fund on corrections, accounting for 8.4 percent of the state’s general fund expenditures. General fund spending on corrections has grown 254 percent since 1986, far outpacing growth in other state spending priorities, like education.⁴⁸ As of 2016, imprisoning one person in North Carolina cost an average of \$89.30 per day.⁴⁹

AT A GLANCE

BUDGETS

North Carolina spent **\$1.7 billion** of its general fund on corrections in 2015.

General fund spending on corrections has increased by **254 percent** between 1986 and 2016.

Imprisoning one person in North Carolina cost an average of **\$89.30** per day in 2016.

Ending Mass Incarceration in North Carolina: A Path Forward

There are many potential policy changes that can help North Carolina end its mass incarceration crisis, but it will be up to the people and policymakers of North Carolina 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 prison in the first place.

Reducing Admissions

To end mass incarceration, North Carolina must break its overreliance on prison as a response to social problems. 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 and accountability to the survivors of crime.⁵⁰ Here are some strategies:

- **Eliminate cash bail:** The North Carolina Legislature can significantly reduce the state's rate of pretrial detention by eliminating its use of cash bail. Far too often, people who cannot afford their bail will end up in jail for weeks, months, or, in some cases, years as they wait for their day in court.⁵¹ When this happens, the criminal justice system leaves them with a difficult choice: take a plea deal or fight the case from behind bars. While detained pretrial, research shows many people face significant collateral damage, such as job loss or interrupted education.⁵² After even a short stay in jail, taking a plea deal can sound less burdensome than losing everything, which is likely why evidence shows that pretrial detention significantly increases a defendant's risk of conviction.⁵³ The current cash bail system harms people of color in particular. Research shows that people of color are detained at higher rates across the country when unable to meet bail, and that courts set significantly higher bail amounts for them.⁵⁴ Notably, even when the inability to post bail was controlled for, Black people spent more than double the time than whites spent in detention.⁵⁵ In order to significantly reduce pretrial detention and combat racial disparities, the North Carolina Legislature should eliminate cash bail and limit pretrial detention to the rare cases where a person poses a serious, clear threat to another person. Mecklenburg County was the first in the state to change its policies and processes around pretrial detention to try to combat this problem. In lieu of cash bail, the county instituted a risk assessment tool, which it uses to assess the danger to public safety and flight risk that the defendant poses pretrial. This is a potentially viable path forward, and two other counties are testing similar systems.⁵⁶ However, it is important to keep in mind that risk assessments can replicate or even exacerbate racial disparities, as they inevitably rely on generalizations about identity, geography, and socioeconomic characteristics.⁵⁷
- **Alternatives to incarceration:** The good news is that alternatives exist. Several types of alternative-to-imprisonment programs have shown great success in reducing criminal activity. Programs offering support services

such as substance use disorder treatment, mental health care, employment, housing, health care, and vocational training — often with some element of community service requirement — can significantly reduce recidivism rates for participants. North Carolina’s Legislature should channel more funding to diversion and other alternatives to incarceration, and ensure that diversion or another alternative is the presumptive option where it is available. Should a judge wish to instead incarcerate a person convicted of a crime, they should be required to write a statement explaining why incarceration is the more appropriate option for the case at hand. The state has already invested in a number of such options, particularly at the pre-arrest stage. The Legislature should increase funding for programs already in use, like Law Enforcement Assisted Diversion and Crisis Intervention Team training, which teach law enforcement officers to better address behavioral health issues and proactively divert people to treatment or other support services. Prosecutor-led diversion efforts should also be encouraged.

- **Alternatives to incarceration — mental health treatment:** Mental health diversion can be an effective way to redirect people with disabilities out of the criminal legal system and into supportive community treatment. Diversion programs have been shown to be effective for people charged with both nonviolent and violent offenses.⁵⁸ When implemented effectively, diversion reduces arrests, encourages voluntary treatment in the community, and saves money.⁵⁹ 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 to save jurisdictions large amounts of money.⁶⁰

- **Alternatives to incarceration — substance use disorder treatment:** North Carolina should expand its use of and funding for diversion programs that specifically treat substance use issues. Diversion programs that offer treatment for substance use disorders can reduce the collateral damage of incarceration, while also addressing the underlying causes of the criminal offense. The opioid epidemic, which continues to ravage the state, has increased public interest in alternatives to arrest and incarceration that focus instead on treatment. In response, the North Carolina Legislature recently established a task force to examine the prevalence of addiction and mental illness in state prisons and jails to search for better ways forward, and to examine whether changes should be made to sentences for opioid-related drug crimes.⁶¹ The task force should not only recommend the use of diversion programs to treat underlying causes of crime, it should also urge the Legislature to sufficiently fund successful programs to avoid long waits before diversion from jail, as a typical wait is three to six months.⁶²
- **Probation and parole violations:** Though the 2011 Justice Reinvestment Act lowered admissions to prison for probation and parole revocations by providing officers with more non-incarceration responses to technical violations, further reform is necessary.⁶³ In 2016, supervision revocations still accounted for over half of all prison admissions.⁶⁴ The state Legislature should build on its 2011 reforms by eliminating re-incarceration as an option for all parole and probation technical violations. The state should further invest the dollars that would otherwise have been spent on incarceration into increased education for parole and probation officers regarding evidence-based alternative responses to supervision violations, as well as accommodations for parolees with disabilities. People with disabilities are twice as likely to have their parole or probation revoked, likely due to the inability or unwillingness of supervision officers to accommodate their

disabilities.⁶⁵ Parole and probation officers are required to provide reasonable accommodations so that parolees with disabilities have an equal opportunity to comply with the requirements of supervision. Proper training of parole officers, and greater awareness of, and advocacy for, these requirements could reduce the number of technical violations. Savings from reducing incarceration for technical parole violations could also be channeled toward reentry programming and services, which would contribute to reducing incarceration levels along with new prison admissions in the state.

Reducing Time Served

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

- **Sentencing reform — general:** The state's 1994 Structured Sentencing Act created maximum and minimum sentences calculated according to the crime and the defendant's criminal history.⁶⁶ These lengthy sentences have contributed toward longer prison terms and an aging prison population. The North Carolina Legislature should reform its structured sentencing grid to reduce the prevalence of long prison stays, beginning by eliminating mandatory minimums for all drug offenses, including drug trafficking. This first step would significantly alter the state's prison population, as people serving time for drug offenses represented 14 percent of this population in 2015, and drug trafficking offenses accounted for nearly 15 percent of 2015 admissions.⁶⁷
- **Sentencing Reform — enhancements:** The North Carolina Legislature should remove sentencing enhancements that lead to overly severe sentences. A primary example: Under its habitual felon law, when someone is convicted of a third felony offense, this triggers a charge up to four times more severe than the principal offense.⁶⁸ Additionally, if a person is convicted of more than one violent felony, the law requires judges to sentence that person to life without the possibility of parole, eliminating any chance of future release and rehabilitation.⁶⁹ Similarly, "habitual" breaking and entering triggers a more severe charge and often significantly longer punishment when a person has just one previous similar conviction.⁷⁰ These examples of increased sentence lengths are part of the reason why there are fewer people released from prison every year despite a decline in overall admissions.⁷¹ Worse still, these enhancements do not serve the ostensible goals of the justice system. Studies have shown that long sentences are not correlated to increased deterrence, with any slight effect completely leveled out for punishments over several years long.⁷² Researchers have also failed to find a correlation between long sentences and lower rates of recidivism.⁷³ Even if the state's prison admissions continue to decline, North Carolina will not be able to make a significant change in the overall size of the prison population if sentencing enhancements like these are not eliminated.
- **Parole reform:** The Legislature should adopt presumptive parole statewide. In 1994, North Carolina effectively eliminated parole by mandating that people serve 85 percent of their maximum sentence before they are eligible for parole — even where a judge would have used their discretion to issue a lower sentence.⁷⁴ Without sufficient parole opportunities, fewer people are released every year and the elderly population in prisons continues to grow. By moving to a system of presumptive parole, the law would require the parole board to justify denying release when someone is eligible for parole. Increasing parole opportunities allows more people to reintegrate into society, saving taxpayer dollars every year. Research shows that presumptive parole will also reduce recidivism after release while promoting safety inside of correctional facilities.⁷⁵

Compassionate release: The North Carolina Legislature should expand access to compassionate release from prison. The state’s prison population is rapidly aging, in large part due to increases in average sentence lengths and severely curtailed opportunities for parole. From 2006 to 2016, the number of incarcerated persons over 50 more than doubled — a level of growth that will only continue to accelerate if nothing is done.⁷⁶ Currently, people who are incarcerated are eligible for release if they are 1) permanently, totally disabled; 2) likely to pass away within six months from a terminal illness; or 3) at least 65 years old and are incapacitated to the point that they do not pose any threat to public safety.⁷⁷ The Legislature should expand eligibility for compassionate release by eliminating the restrictions on age-based early release and expanding the range of people who qualify based on disability and serious illness. Further, the Legislature should allot specific funding to educate the Department of Public Safety and Post-Release Supervision as well as the Parole Commission on how to effectively incorporate these changes into the release process. Keeping aging and seriously injured or ill people incarcerated significantly taxes prison resources and does not serve the goal of incapacitation, particularly as studies have clearly shown that as people age their propensity to commit crime significantly declines.⁷⁸

Combating violence behind bars: For the past several years, the state has been dealing with high levels of violence and disciplinary issues inside prisons.⁷⁹ Several policy reforms can help address this urgent problem without relying on further incarceration. The Department of Corrections should expand access to “earned time” opportunities, through which credits for earlier release are earned through good behavior and participation in programming. This would help to reduce violence and disorder in prisons, as researchers noted an increase in disciplinary infractions for those sentenced after the state’s severe scaling back of early release opportunities in 1994.⁸⁰ This change points to the behavioral benefits derived from the hope and incentive structures created by early release. State legislators should also expand funding for mental health care offered behind bars, including funding improved mental health screenings, hiring

more psychologists and psychiatrists, conducting better training, and reforming policies that have been proven to damage mental health. For example, North Carolina prisons often put mentally ill persons who act out into solitary confinement,⁸¹ which can further aggravate or even trigger mental illness.⁸² These changes in early release opportunities and mental health care could go a long way toward improving safety in prisons while supporting people in rehabilitation and reentry.

Reducing Racial Disparities

Reducing the number of people who are imprisoned in North Carolina 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.⁸³ 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 2012.⁸⁴ However, the state did not target racial disparities in incarceration and, in 2016, 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.⁸⁵

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

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 them to prison. And they can decide 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, including diversion programs that provide supportive housing, treatment, and vocational training. They can also decide to sufficiently fund mental health and substance abuse treatment so that it is available for people who need it before they encounter the criminal legal system.

Parole boards: They decide when to allow people to leave prison. In North Carolina, the parole board is an especially important player when it comes to reforming how long people spend in prison. If parole board members are 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 lack of disability accommodations during incarceration.

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.

- 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 rate of people with disabilities in the criminal justice system is two to six times that of the general population.⁸⁶ In particular, people with psychiatric disabilities are dramatically overrepresented in jails and prisons across the country.⁸⁷

People showing signs of mental illness are twice as likely to be arrested as people without mental illness for the same behavior.⁸⁸

People with mental illness are sentenced to prison terms that are, on average, 12 percent longer than those of other people in prison.⁸⁹

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 many are not able to participate in rehabilitative programming, such as educational or vocational classes.⁹⁰

Furthermore, sentencing reforms appear to leave people with psychiatric disabilities who are incarcerated behind. In recent years, the prison population in California has decreased by more than 25 percent, but the number of people with a serious mental disorder has increased by 150 percent⁹¹ — an increase in both the rate and the absolute number of incarcerated people with psychiatric disabilities.

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.⁹² 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

“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.”⁹⁵

—From *The New Jim Crow*, Michelle Alexander

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.⁹³ 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.⁹⁴

- 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 abuse disabilities who are charged with low-level crimes
- Evaluating prosecutors' charging and plea-bargaining practices to identify and eliminate disability bias
- 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 technical violations
- Addressing bias against mental disabilities in risk assessment instruments used to assist decision-making in the criminal justice system
- Shifting funding away from law enforcement and corrections into supportive housing, intensive case management, schools, drug and mental health treatment, community organizations, job creation, and other social service providers

Forecaster Chart

There are many pathways to cutting the prison population in North Carolina 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 North Carolina, visit the interactive online tool at <https://urbn.us/ppf>.

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

Impact Compared to 2025 Baseline*				
Offense category**	Policy outcome	Prison population impact	Impact on racial and ethnic makeup of prison population***	Cost savings****
Public order offenses****	<ul style="list-style-type: none"> Reduce average time served by 70% (from 3.64 to 1.09 years) Institute alternatives that reduce admissions by 50% (893 fewer people admitted) 	14.76% reduction (5,314 fewer people)	White: 2.6% increase Black: 3.8% decrease Hispanic/Latino: 15.2% increase Native American: 4.7% increase Asian: 14.4% increase Hawaiian/Pacific Islander: 10.7% increase Other: 13.4% increase	\$101,068,928
Drug offenses	<ul style="list-style-type: none"> Reduce average time served for drug distribution by 70% (from 1.65 to 0.49 years) Institute alternatives that reduce admissions for drug distribution by 60% (1,709 fewer people admitted) Institute alternatives that end all admissions for drug possession (880 fewer people admitted) 	12.56% reduction (4,522 fewer people)	White: 0.6% decrease Black: 2.7% increase Hispanic/Latino: 25.4% decrease Native American: 8.0% increase Asian: 1.3% increase Hawaiian/Pacific Islander: 9.0% decrease Other: 0.4% increase	\$92,980,562
Burglary	<ul style="list-style-type: none"> Reduce average time served by 50% (from 1.12 to 0.56 years) Institute alternatives that reduce admissions by 40% (1,029 fewer people admitted) 	5.59% reduction (2,012 fewer people)	White: 1.2% decrease Black: 0.7% increase Hispanic/Latino: 4.1% increase Native American: 5.8% decrease Asian: 3.2% increase Hawaiian/Pacific Islander: 3.3% decrease Other: 3.2% increase	\$40,400,983

Impact Compared to 2025 Baseline*

Offense category**	Policy outcome	Prison population impact	Impact on racial and ethnic makeup of prison population***	Cost savings****
Robbery	<ul style="list-style-type: none"> • Reduce average time served by 50% (from 2.05 to 1.02 years) • Institute alternatives that reduce admissions by 40% (485 fewer people admitted) 	4.97% reduction (1,791 fewer people)	White: 2.6% increase Black: 2.2% decrease Hispanic/Latino: 3.0% increase Native American: No change Asian: 1.7% increase Hawaiian/Pacific Islander: 0.6% increase Other: 1.9% decrease	\$33,647,760
Theft	<ul style="list-style-type: none"> • Reduce average time served by 60% (from 0.79 to 0.31 years) • Institute alternatives that reduce admissions by 50% (892 fewer people admitted) 	3.12% reduction (1,124 fewer people)	White: 1.4% decrease Black: 0.8% increase Hispanic/Latino: 2.7% increase Native American: 1.3% decrease Asian: 0.8% increase Hawaiian/Pacific Islander: 1.4% increase Other: 3.2% increase	\$22,905,040
Fraud	<ul style="list-style-type: none"> • Reduce average time served by 60% (from 0.83 to 0.33 years) • Institute alternatives that reduce admissions by 50% (775 fewer people admitted) 	2.85% reduction (1,026 fewer people)	White: 1.7% decrease Black: 1.0% increase Hispanic/Latino: 2.3% increase Native American: 0.4% increase Asian: 2.2% increase Hawaiian/Pacific Islander: 0.3% increase Other: 2.2% increase	\$21,070,289

Impact Compared to 2025 Baseline*

Offense category**	Policy outcome	Prison population impact	Impact on racial and ethnic makeup of prison population***	Cost savings****
DWI	<ul style="list-style-type: none"> • Reduce average time served by 70% (from 0.68 to 0.20 years) • Institute alternatives that reduce admissions by 50% (689 fewer people admitted) 	2.20% reduction (794 fewer people)	White: 1.1% decrease Black: 0.9% increase Hispanic/Latino: 0.4% decrease Native American: No change Asian: 2.4% decrease Hawaiian/Pacific Islander: 12.1% decrease Other: 0.9% increase	\$17,552,938
Assault	<ul style="list-style-type: none"> • Reduce average time served by 50% (from 1.39 to 0.69 years) • Institute alternatives that reduce admissions by 40% (317 fewer people admitted) 	2.14% reduction (772 fewer people)	White: 0.2% increase Black: 0.3% decrease Hispanic/Latino: 1.4% increase Native American: 0.1% increase Asian: 1.0% decrease Hawaiian/Pacific Islander: 0.7% decrease Other: 2.2% increase	\$15,753,137
Weapons offenses*****	<ul style="list-style-type: none"> • Reduce average time served by 60% (from 0.98 to 0.39 years) 	2.02% reduction (729 fewer people)	White: 0.3% increase Black: 0.3% decrease Hispanic/Latino: 0.8% increase Native American: 0.3% decrease Asian: 0.3% increase Hawaiian/Pacific Islander: 0.7% increase Other: 1.5% increase	\$12,912,004

*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 North Carolina, where Black people make up 52.9 percent of the prison population but constitute only 21.5 percent of the state's total adult 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.

*****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 North Carolina were to carry out reforms leading to the changes above, 18,085 fewer people would be in prison in North Carolina by 2025, a 50.21 percent decrease. This would lead to a total cost savings of \$1,076,500,450 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 North Carolina'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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