

Blueprint for Smart Justice
Utah



Blueprint *for* Smart Justice Utah

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Executive Summary

Over the past five decades, the United States has dramatically increased its reliance on the criminal justice system as a way to respond to drug addiction, mental illness, poverty, and underfunded schools. As a result, the United States today incarcerates more people, in both absolute numbers and per capita, than any other nation in the world. Millions of lives have been upended and families torn apart. This mass incarceration crisis has transformed American society, damaged families and communities, created gross racial disparities, 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, invest instead in alternatives to prison and approaches better designed to break the cycle of crime and recidivism, and help people rebuild their lives.

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

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

drivers of incarceration. They then predicted the impact of reducing prison admissions and length of stay on state prison populations, state budgets, and the racial disparity of those imprisoned.

The analysis was eye-opening.

In every state, we found that reducing the prison population by itself does little to diminish racial disparities in incarceration — and in some cases would worsen them. In Utah — where the imprisonment rate for Black adults was 8.3 times that of white adults in 2017¹ — 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, law enforcement officials, district attorneys, and communities in Utah and across the nation to focus on efforts that are specific to combatting these disparities, like reducing incarceration before trial through bail reform, preventing the incarceration of people arrested on misdemeanor and low-level felony charges, and reforming parole practices.

In Utah, the prison population has increased dramatically since 1980, growing nearly sevenfold (563 percent) by 2016.² As of May 2018, 6,476 people were imprisoned in the state.³ Reforms passed in 2015 included changes that downgraded certain drug possession charges from felonies to misdemeanors, but without additional reform, the number of people imprisoned in Utah is projected to surpass 7,200 people by 2031.⁴

Like in many other states, the war on drugs has been a major driver of mass incarceration in Utah. Despite

a 32 percent drop in annual admissions to prison for drug convictions between 2005 and 2015, more than one in three (35 percent) 2015 prison admissions were for a drug conviction, including 23 percent for drug possession.⁵ Property offenses are also a key contributor to the state's large prison population — that same year, they accounted for one in four (24 percent) of prison admissions, including 9 percent for theft and 6 percent for burglary.⁶

Among people imprisoned in Utah in 2018, nearly one in three had been convicted of a third-degree felony, the least serious felony category. And 11 percent of the total prison population was serving time for drug and alcohol convictions.⁷ While the number of people admitted to Utah prisons every year dropped by 22 percent between 2005 and 2015,⁸ the overall prison population increased by 2 percent.⁹ This has been attributed in part to a significant increase in the average length of imprisonment, which grew by 47 percent over the same period, reaching an average of 3.2 years for people imprisoned in 2015.¹⁰ A large number of people are also incarcerated in local jails — 6,834 people in 2015, of which more than half had been detained pretrial, meaning they had not been convicted of a crime.¹¹

People of color are disproportionately represented inside Utah's prison system. As of 2017, Black adult Utahns are imprisoned at a rate that is more than eight times that of white adult Utahns,¹² and although Latinos comprised only 12 percent of the state's adult population, they made up 19 percent of its 2017 prison population.¹³ Native Americans and Alaskan Natives made up 5 percent of the 2017 prison population, despite representing only 1 percent of the state's adult population.¹⁴ Nearly half of the people voluntarily screened in Utah jails were identified as needing an additional assessment for substance use disorders, and 40 percent required an additional mental health assessment.¹⁵

And all this incarceration is expensive. In 2016, Utah spent \$453 million of its general fund on corrections, an increase of 316 percent from 1985.¹⁶

So, what's the path forward?

If Utah were to adopt the reforms outlined in this Blueprint, it could reduce its prison population

by 50 percent in just a few years. At a minimum, the state should modify penalties for property and public order offenses, revising them downwards or eliminating incarceration as a sentencing option. Passing legislation that reduces sentencing ranges for nonviolent crimes could also help to reduce the number of people in Utah's prison system. In addition, repealing the felony murder rule, which allows people to be charged with murder if another person dies during the commission of certain predicate offenses, would prevent people from serving life sentences for crimes that would otherwise have carried a sentence of just a few years in prison. Parole reform, emphasizing transparency and accountability for parole board decisions, should also be a priority, with release guidelines established that take into account an individual's improvements and rehabilitation while incarcerated.

In addition, incarceration should not be the automatic response to criminal behavior, which may mask underlying issues of substance use disorder and/or mental health disabilities. Mental health diversion is one effective way to redirect people with disabilities out of the criminal legal system and into supportive community treatment, and it should be a priority for legislators and criminal justice reform advocates. While there has been some movement on expanding treatment programs for substance use disorder, more must be done statewide, including expanding Medicaid so that Utahns have greater access to mental health and substance use treatment while on probation or parole and after they leave the criminal justice system. There should also be mechanisms to review and assess prosecutorial decisions to ensure they were made appropriately, and that prosecutorial misconduct and wrongful conviction are adequately addressed. Finally, incarceration should be eliminated as a penalty for technical violations of parole or probation.

If Utah were to adopt the changes outlined in this Blueprint's forecaster chart and achieve a 50 percent reduction in its prison population, the state could save a staggering \$250 million by 2025 — money that could be better spent on schools, infrastructure, and services for Utahns.

The State of the Utah Prison System

Utah's prison population¹⁷ has soared in recent decades, growing nearly sevenfold (563 percent) between 1980 and 2016.¹⁸ At its peak in 2013, Utah imprisoned 7,077 people.¹⁹ As of May 2018, 6,476 people were in Utah's prisons.²⁰

In 2016, 203 out of every 100,000 Utah residents were in prison.²¹ When people in local jails and on community supervision like probation and parole are included, the reach of the criminal justice system is even greater. More than 1 percent (1.18 percent) of Utah's adult population was under some form of correctional control – including in prison, in jail, or under community supervision – in 2016.²²

Thanks in part to 'Justice Reinvestment'²³ reforms passed in 2015, which expanded access to treatment options and downgraded certain drug possession charges from felonies to misdemeanors, the state's

AT A GLANCE

UTAH PRISONS

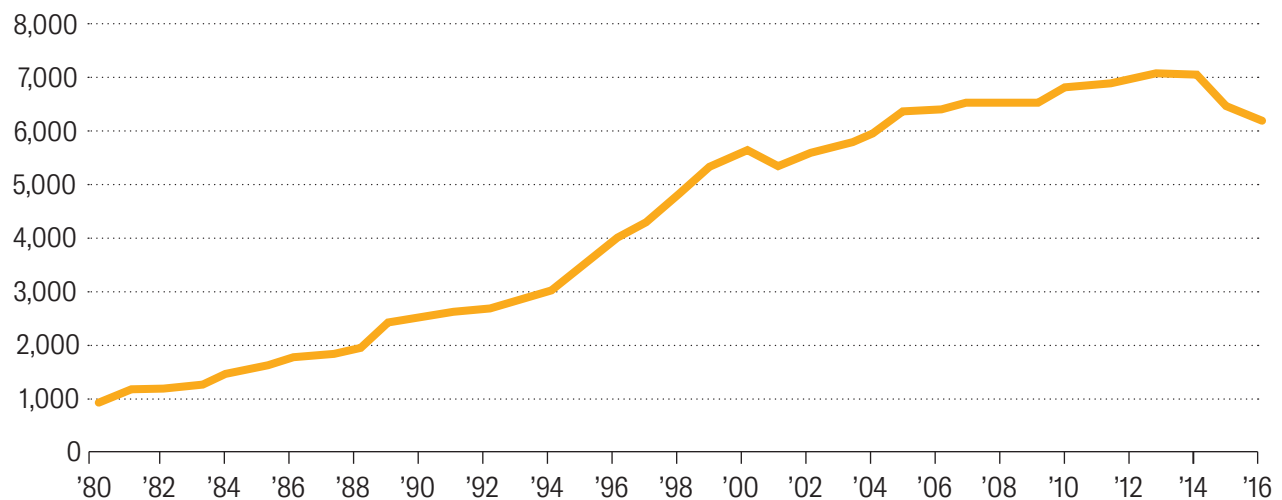
The Utah prison population increased by **563 percent** between 1980 and 2016.

7,077 people were imprisoned in Utah at its peak in 2013.

In 2016, **1.18 percent** of Utah's adult population was under correctional control.

prison population has decreased in recent years.²⁴ However, without additional reform, the number of people imprisoned in Utah is projected to surpass 7,200 people by 2031.²⁵

UTAH PRISON POPULATION



What Is Driving People Into Prison?

A litany of offenses contribute to Utah's prison population. After remaining relatively level between 2014 and 2016, annual admissions²⁶ to Utah prisons increased by 24 percent between 2016 and 2017. This increase is due predominantly to an increase in the number of people admitted to prison from probation and parole; these admissions from supervision collectively increased by 26 percent from 2016 to 2017, while new court commitments increased by just 7 percent.²⁷

In 2015, 2,809 people were admitted to Utah prisons, a decrease of 22 percent since 2005.²⁸ Although annual admissions to prison for drug convictions have decreased in recent years – dropping by 32 percent between 2005 and 2015—drug convictions still accounted for more than one in three (35 percent) 2015 admissions, including 23 percent for drug possession and 11 percent for drug trafficking. In 2015, property offenses accounted for one in four (24 percent) admissions, including 9 percent for theft and 6 percent for burglary. Other common offenses were assault (7 percent), robbery (6 percent), and driving while intoxicated (4 percent).²⁹

In 2017, parole violations made up more than half (51 percent) of all admissions to prison.³⁰ When probation is included, this percentage is even higher. In 2017, probation and parole violations accounted for

three-fourths (76 percent) of all admissions.³¹ In 2013, nearly half (43 percent) of admissions to prison from probation or parole were for technical violations while on community supervision, rather than new offenses.³²

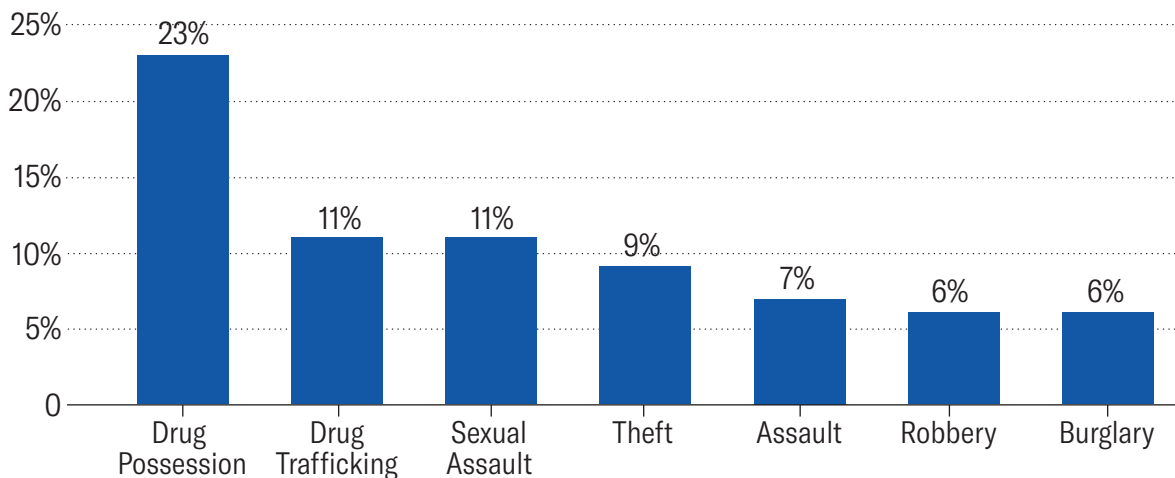
The Current Prison and Jail Population

As of June 2018, nearly one in three people (31 percent) imprisoned in Utah had been convicted of a third-degree felony, the least serious felony category. Thirty-one percent of people imprisoned in Utah in 2018 were serving time for an alcohol and drug, property, or driving offense, including 17 percent serving time for a property offense.³³

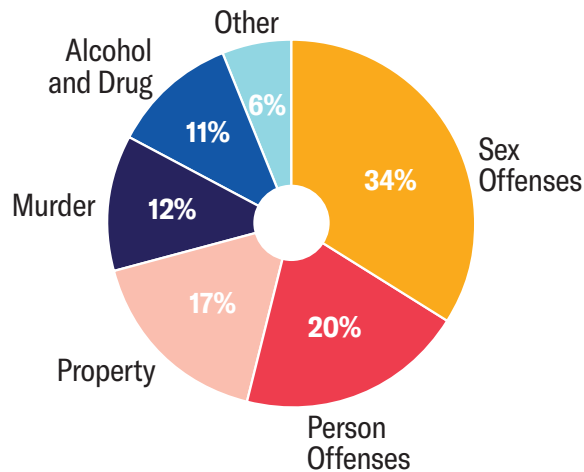
Between 2005 and 2015, the number of people imprisoned in Utah for a drug offense decreased by 24 percent.³⁴ However, drug and alcohol offenses still accounted for 11 percent of people imprisoned in Utah in 2018, including 154 people (2 percent) serving time only for drug possession.³⁵

Utah also incarcerates a significant number of people in local jails. In 2015, 6,834 people were incarcerated in local jails. More than half (52 percent) of the local jail population that year was detained pretrial, meaning they had not been convicted of a crime.³⁶

UTAH PRISON ADMISSIONS BY TOP OFFENSE TYPES (2015)



UTAH PRISON POPULATION BY OFFENSE TYPE (2018)



Why Do People Stay in Prison for So Long?

The number of people admitted to Utah prisons every year dropped by 22 percent between 2005 and 2015.³⁷ Despite this considerable decrease in annual admissions, the overall prison population increased by 2 percent.³⁸ This discrepancy is attributed in part to a significant increase in the average length of imprisonment. The average amount of time people in Utah prisons have served increased by 47 percent between 2005 and 2015 — reaching an average of 3.2 years in 2015. For offenses not involving violence, this increase is even more pronounced: the average length of imprisonment increased by 66 percent for drug offenses and 62 percent for property offenses over the same time period. In 2015, more than three in five people (63 percent) imprisoned in Utah were serving a sentence of at least 15 years.³⁹

In an attempt to reverse this trend, Utah passed Justice Reinvestment Initiative (JRI) reforms in 2015, which capped the length of imprisonment for people who have been sent to prison from community supervision. These reforms also allowed people to earn credit against their sentences after completing certain treatment programs.⁴⁰ Due to these reforms, preliminary data indicates that the average length of imprisonment for parole and probation violations and

AT A GLANCE

UTAH JAIL AND PRISON POPULATION

6,834 people were incarcerated in Utah's local jails in 2015.

More than half of the people incarcerated in Utah's local jails in 2015 had not been convicted of a crime.

31 percent of those imprisoned in Utah in 2018 were serving time for an alcohol and drug, property, or driving offense.

drug and property offenses is trending downward. An analysis of that data carried out by the Utah Commission on Criminal and Juvenile Justice (CCJJ) compared people admitted to or released from prison before and after the implementation of JRI and found that time served in prison has decreased for parole violations, probation violations, and drug and property offenses. Time served for drug possession saw an especially significant drop, decreasing by almost half (from 12.0 months to 6.6 months).⁴¹

In 2015, Utah policymakers made extensive changes to the Sentencing Guidelines — a set of nonbinding

AT A GLANCE

LENGTH OF IMPRISONMENT

The average amount of time people in Utah prisons have served increased by **47 percent** between 2005 and 2015.

The number of people serving life sentences in Utah increased by **74 percent** between 2000 and 2015.

More than **1 in 4** people imprisoned in Utah was serving a life sentence in 2015.

sentencing rules for judges that take into account a person’s criminal history and the nature of the crime committed, among other factors. Despite these changes, recent analysis suggests that these new guidelines have not brought about a meaningful shift in judicial decision-making and sentencing. A 2017 report from the CCJJ found that people convicted of felony offenses were sentenced to Utah’s prisons at approximately the same rate before and after the new guidelines were implemented.⁴²

Life sentences also contribute to Utah’s prison population through a “stacking effect.” Although a relatively small number of people are admitted on a life sentence each year – 255 people in 2015⁴³ – they stay in prison for such lengthy periods that they contribute to the growing prison population over time. Between 2000 and 2015, although the number of people admitted annually to Utah prisons for life sentences decreased by 5 percent, the number of people in prison serving life sentences increased by 74 percent. In 2015, over one in four people (28 percent) imprisoned in Utah were serving a life sentence.⁴⁴

Who Is Imprisoned

Black Utahns: Incarceration in Utah has a profoundly disparate impact on communities of color. In 2017, at 1,932 per 100,000, the imprisonment rate for Black adults in Utah was more than eight (8.3) times that of white adults.⁴⁵ In 2017, one in 32 Black men in Utah was in prison.⁴⁶ Although they made up just 1 percent of the state’s adult population, Black people made up 7 percent of the 2017 Utah prison population.⁴⁷

Latino Utahns: In 2017, at 453 per 100,000, the Latino adult imprisonment rate was nearly double (1.9) that of white adults.⁴⁸ Although they made up only 12 percent of the state’s adult population, Latinos made up 19 percent of the state’s 2017 prison population.⁴⁹

Native Americans/Alaskan Natives: In 2017, at 1,499 per 100,000, the adult imprisonment rate for Native Americans and Alaskan Natives in Utah was more than six (6.4) times that of white adults.⁵⁰ Although they made up only 1 percent of the state’s adult population, Native Americans and Alaskan

AT A GLANCE

DEMOGRAPHICS

In 2017, the imprisonment rate for Black adults in Utah was **8.3 times** that of white adults.

Native American and Alaskan Native adults were imprisoned at **6.4 times** the rate of white adults in 2017.

The number of women imprisoned increased by **152 percent** between 1995 and 2016.

Natives made up 5 percent of the state’s 2017 prison population.⁵¹

Disabled Utahns: Of all people voluntarily screened for substance use and mental health needs in Utah jails since 2015, nearly half (49 percent) were identified as needing an additional assessment for substance use disorders, and 40 percent required an additional mental health assessment.⁵² Of the same population, 26 percent of people charged with property offenses and 20 percent of people charged with drug offenses were identified as having “high needs” for substance use treatment.⁵³ In 2015, Utah’s Division of Substance Abuse and Mental Health estimated that 72 percent of people who received publicly provided treatment for mental health or substance use were involved with the criminal justice system.⁵⁴ Although the 2015 Justice Reinvestment reforms included provisions to broaden access to treatment options, the number of people receiving substance use treatment did not increase significantly between 2014 and 2017.⁵⁵

Female Utahns: Between 1995 and 2016, the number of women imprisoned in Utah increased by 152 percent, far outpacing the growth of the total prison population, which grew by 78 percent over the same time period.⁵⁶

Older Utahns: Utah’s prison population is rapidly aging. Though generally considered to pose a negligible risk to public safety,⁵⁷ the number of people age 55 or older more than tripled (a 234 percent increase)

between 2000 and 2015.⁵⁸ In 2015, one in 10 people imprisoned in Utah was 55 or older.⁵⁹

Budget Strains

As Utah's prison population has risen, so has the cost burden. In 2016, Utah spent \$453 million of its general fund on corrections.⁶⁰ Corrections general fund spending more than quadrupled (a 316 percent increase) between 1985 and 2016, forcing tradeoffs in other state spending priorities, like education.⁶¹

AT A GLANCE

BUDGETS

Utah spent **\$453 million** of its general fund on corrections in 2016.

General fund spending on corrections increased by **316 percent** between 1985 and 2016.

Ending Mass Incarceration in Utah: A Path Forward

There are many potential policy changes that can help Utah end its mass incarceration crisis, but it will be up to the people and policymakers of Utah 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, Utah must break its overreliance on 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.⁶² Here are some strategies:

- **Alternatives to incarceration:** The good news is that alternatives exist. Several types of alternative-to-incarceration programs have shown great success in reducing both violent and nonviolent criminal activity. Programs offering support services such as substance use treatment, mental health care, employment, housing, health care, and vocational training – often with some element of community service requirement – have significantly reduced recidivism rates for participants.⁶³ Court-based programs, including drug, veterans, and mental health courts, can be effective in certain circumstances, with adequate precautions. Other successful models include programs that

divert people to treatment and support services before arrest and programs led by prosecutors that divert people before they are charged.

- **Expanded treatment – mental health:** 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.⁶⁴ When implemented effectively, diversion reduces arrests, encourages voluntary treatment in the community, and saves money.⁶⁵ 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.⁶⁶ One way to support treatment options is expanding Medicaid so that Utahns have greater access to mental health treatment and substance use treatment while on probation/parole and after their separation from the criminal justice system.
- **Expanded treatment – addiction:** Substance use disorders can be underlying drivers of a substantial number of crimes, including and especially more serious offenses like burglaries, robberies, and assaults. Addressing substance abuse through treatment rather than incarceration can more effectively reduce

crime. Efforts like Operation Rio Grande in Salt Lake City have attempted to expand treatment programs to these ends, but more must be done statewide to address mental health and substance abuse issues.

- **Support decriminalization:** Since passing significant criminal justice reforms in 2015, the Utah Legislature has consistently introduced bills to criminalize behavior that previously would not have led to incarceration. The Legislature needs to move away from a culture of criminalization, stop expanding the criminal code, and look at alternatives to incarceration. Utahns can let their representatives know that decriminalization is a winning commitment both for the community as well as at the ballot box.
- **Prosecutorial reform:** Prosecutors are the most powerful actors in the criminal justice system, with the ability to wield the power of the state against an individual to deprive that person of life, liberty, and property. The initial decisions of whether to charge someone with crimes and, if so, what and how many, have a major impact on every aspect of a person's experience with the system, not least of which is the amount of time someone can face and serve in prison or jail. There should be some mechanism for the state and counties to review and assess those decisions overall to ensure that they make these decisions appropriately. Moreover, sometimes prosecutors wrongfully convict a person, whether through prosecutorial misconduct or the accidental conviction of an innocent person. Legislation that supports statewide Conviction Integrity Units in each county prosecutor's office can address wrongful convictions and prosecutorial misconduct. Conviction Integrity Units add oversight to a prosecutor's decisions, which encourages prosecutors to use greater scrutiny when reviewing and charging cases. This is an idea that many county prosecutor candidates support in counties across Utah, as shown by

ACLU of Utah's Campaign for Smart Justice's 2018 County Prosecutor Questionnaire.⁶⁷

- **Parole reform:** Utah needs to provide meaningful ways for incarcerated persons to reenter the community. The state can achieve reduced recidivism rates if incarcerated persons are provided resources prior to parole hearings to help plan their parole and continue to receive resources to succeed while on parole. Additionally, holding Utah's parole board accountable for consistent and fair parole determinations will support successful reentry. These strategies can lower recidivism rates and reduce prison admissions rates from people on parole.
- **Reducing parole revocations:** People with disabilities are twice as likely to have their parole or probation revoked, likely due in part to the inability or unwillingness of supervision officers to accommodate their disabilities.⁶⁸ Parole and probation officers are required to provide reasonable accommodations so that parolees with disabilities have an equal opportunity to comply with the requirements of parole. Proper training of parole officers and greater awareness of, and advocacy for, these requirements could reduce the number of technical violations significantly. Incarceration for technical violations that do occur should be eliminated entirely.

A Note on Specialty Courts

Many jurisdictions assign some people to "specialty courts" such as mental health, behavioral, veterans, and drug courts. The ACLU has concerns about the growing use of these courts. They may violate due process rights, including the rights to notice, hearing, and counsel, and may needlessly subject people with disabilities to criminal justice control. And they require significant resources that would be better spent providing upfront services in the community.

Where established, participation in these courts must be voluntary and not require a guilty plea. Specialty

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

Reducing Time Served

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

- **Sentencing reform – general:** The JRI legislation modified penalties for drug crimes but did not modify penalties for property offenses or public order offenses. Utah's Legislature can work to modify penalties for these and similar offenses with additional legislation that reduces sentencing ranges for nonviolent crimes. Additionally, the Legislature could modify current sentencing laws to provide judges with more discretion at sentencing. For example, judges could be given the power to reduce statutory minimum sentences by up to 50 percent when such a reduction will serve justice after balancing the interests of the public and the individual facing incarceration.
- **Sentencing reform – enhancements:** Utah's criminal code allows people to be charged with murder if another person dies during the commission of certain predicate offenses, such as burglary. This law allows someone to be charged with murder even if they did nothing to cause the death of another. Repealing the felony murder rule will avoid sentencing someone to a life sentence for committing a crime that would

otherwise carry a sentence of a few years in prison.

- **Parole reform:** In Utah, judges have little say in how long a person will remain in prison. A person convicted of a felony faces an indeterminate sentence, which means the person will remain in prison until the parole board decides a person should be released. Parole reform should emphasize transparency and accountability for parole board decisions so that stakeholders can see whether the parole board produces consistent and sensible outcomes. This should include tracking data to account for and address racial disparities in the criminal justice system. Additionally, improving parole policies and practices is crucial to reducing time served. Parole release guidelines that take into account an individual's improvements and rehabilitation while incarcerated can give the parole board more power to release eligible people more quickly. These efforts can lead to less time in prison while ensuring community safety.

Reducing Racial Disparities

Reducing the number of people who are imprisoned in Utah 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.⁶⁹ 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 lower 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 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 2012.⁷⁰ 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.⁷¹

Utah’s Justice Reinvestment reform package’s five primary objectives and the 18 policy recommendations did not account for racial disparities in the criminal justice system.⁷² Since implementing the JRI legislation in 2015, the percentage of new admissions to prison accounted for by racial/ethnic minorities increased from 34 percent to 43 percent.⁷³ Although racial disparities have increased, there have not been any steps to address these disparities.

Ending mass incarceration is critical to eliminating racial disparities, but it’s 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
- 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 system is two to six times that of the general population.⁷⁴ In particular, people with psychiatric disabilities are dramatically overrepresented in jails and prisons across the country.⁷⁵

- People showing signs of mental illness are twice as likely to be arrested as people without mental illness for the same behavior.⁷⁶
- People with mental illness are sentenced to prison terms that are, on average, 12 percent longer than those of other people in prison.⁷⁷
- 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.⁷⁸

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 percent – an increase in both the rate and the absolute number of incarcerated people with psychiatric disabilities.⁷⁹

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.⁸⁰ 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.⁸¹ Not surprisingly, many of the strategies to reduce disability disparities are similar to approaches that reduce racial disparities. Some examples include:

TAKING THE LEAD

Prosecutors: They decide 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) or use restorative justice practices rather than send them to prison. And they can decide not to charge enhancements that require the imposition of prison sentences.

State lawmakers: They decide which offenses to criminalize, how long sentences can be, and when to take away judges' discretion. They can change criminal laws to remove prison as an option when better alternatives exist, and they can also fund the creation of new alternatives, 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 that it is available for people who need it before they enter the criminal legal system.

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

A judge sentences a person to prison, but the judge does not determine the length of the sentence. A person sentenced to a felony can spend 0 to 5 years on a third-degree felony, 1 to 15 years on a second-degree felony, or 5 years to life on a first-degree felony. The parole board determines the actual time a person serves in prison within the given ranges. The parole board must be trained to consider and accommodate disability issues and recognize the way that racial disparities in sentencing can impact people of color. With this training, parole boards can recognize and release more people who have disciplinary issues on 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.

- 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 populations⁸²
- 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 first and second technical violations

“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.”⁸³

—From *The New Jim Crow*, Michelle Alexander

- 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 Utah 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 Utah, 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 population***	Cost savings****
Drug offenses	<ul style="list-style-type: none"> Reduce average time served for drug distribution by 70% (from 1.34 to 0.40 years) Institute alternatives that reduce admissions for drug distribution by 70% (204 fewer people admitted) Institute alternatives that end all admissions for drug possession (647 fewer people admitted) 	18.23% reduction (1,044 fewer people)	White: 1.9% decrease Black: 5.0% increase Hispanic/Latino: 2.4% increase Native American: 2.9% increase Asian: 11.9% increase	\$34,815,529
Robbery	<ul style="list-style-type: none"> Reduce average time served by 60% (from 2.53 to 1.01 years) Institute alternatives that reduce admissions by 50% (86 fewer people admitted) 	6.07% reduction (348 fewer people)	White: 1.6% increase Black: 5.6% decrease Hispanic/Latino: 1.8% decrease Native American: 1.0% decrease Asian: 8.9% decrease	\$9,067,691
Assault	<ul style="list-style-type: none"> Reduce average time served by 60% (from 1.71 to 0.68 years) Institute alternatives that reduce admissions by 60% (130 fewer people admitted) 	5.47% reduction (313 fewer people)	White: 1.5% increase Black: 2.7% decrease Hispanic/Latino: 3.3% decrease Native American: 1.7% decrease Asian: 2.0% decrease	\$8,883,049
Public order offenses*****	<ul style="list-style-type: none"> Reduce average time served by 70% (from 2.30 to 0.69 years) Institute alternatives that reduce admissions by 70% (88 fewer people admitted) 	4.65% reduction (266 fewer people)	White: 0.6% decrease Black: 0.2% increase Hispanic/Latino: 1.2% increase Native American: 0.8% decrease Asian: 4.4% increase	\$7,639,252

Impact Compared to 2025 Baseline*

Offense category**	Policy outcome	Prison population impact	Impact on racial and ethnic makeup of population***	Cost savings****
Burglary	<ul style="list-style-type: none"> • Reduce average time served by 60% (from 2.00 to 0.80 years) • Institute alternatives that reduce admissions by 60% (83 fewer people admitted) 	4.18% reduction (240 fewer people)	White: No change Black: 1.3% increase Hispanic/Latino: 0.4% decrease Native American: 1.4% decrease Asian: 0.2% increase	\$6,918,674
Theft	<ul style="list-style-type: none"> • Reduce average time served by 70% (from 1.08 to 0.32 years) • Institute alternatives that reduce admissions by 70% (165 fewer people admitted) 	4.04% reduction (231 fewer people)	White: 0.5% decrease Black: 0.2% increase Hispanic/Latino: 0.8% increase Native American: 1.5% increase Asian: 3.4% increase	\$7,189,853
Other property offenses*****	<ul style="list-style-type: none"> • Reduce average time served by 70% (from 1.77 to 0.53 years) • Institute alternatives that reduce admissions by 70% (84 fewer people admitted) 	3.31% reduction (190 fewer people)	White: 0.2% decrease Black: 0.6% increase Hispanic/Latino: 0.5% increase Native American: 1.6% increase Asian: 1.0% decrease	\$5,440,039
Fraud	<ul style="list-style-type: none"> • Reduce average time served by 70% (from 1.26 to 0.38 years) • Institute alternatives that reduce admissions by 70% (62 fewer people admitted) 	1.79% reduction (103 fewer people)	White: 0.3% decrease Black: 0.2% increase Hispanic/Latino: 0.7% increase Native American: 1.8% increase Asian: 0.3% decrease	\$3,483,078
DWI	<ul style="list-style-type: none"> • Reduce average time served by 70% (from 1.27 to 0.38 years) • Institute alternatives that reduce admissions by 60% (42 fewer people admitted) 	1.39% reduction (80 fewer people)	White: 0.2% decrease Black: 0.8% increase Hispanic/Latino: 0.2% increase Native American: 0.5% increase Asian: 0.6% increase	\$2,668,758

Impact Compared to 2025 Baseline*

Offense category**	Policy outcome	Prison population impact	Impact on racial and ethnic makeup of population***	Cost savings****
Weapons offenses*****	<ul style="list-style-type: none"> Reduce average time served by 70% (from 2.33 to 0.70 years) 	0.96% reduction (55 fewer people)	White: 0.3% increase Black: 0.4% decrease Hispanic/Latino: 0.4% decrease Native American: 3.4% decrease Asian: 1.4% decrease	\$1,470,921

*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 Utah, where Black people make up 7 percent of the prison population but constitute only 1 percent of the state’s 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 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 Utah were to implement reforms leading to the changes above, 2,870 fewer people would be in prison in Utah by 2025, a 50.09 percent decrease. This would lead to a total cost savings of \$251,532,165 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 Utah’s state 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 through 2015, 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. This model allows for reform scenarios to include changes to the number of people admitted to prison and/or 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

change 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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