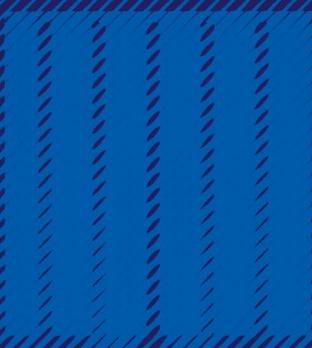


# Blueprint for Smart Justice Minnesota





# Blueprint *for* Smart Justice **Minnesota**

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# Executive Summary

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

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

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

To advance these goals, the ACLU 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 Minnesota – where the adult Black imprisonment rate was more than 10 times higher than the white adult imprisonment rate in 2017<sup>1</sup> – reducing the number of people imprisoned will not on its own reduce racial disparities within the prison system. These findings confirm for the ACLU Campaign for Smart Justice that urgent work remains for advocates, policymakers, and communities across the nation to focus on efforts such as policing and prosecutorial reform that are specific to combating these disparities.

The Minnesota prison population has experienced astronomical growth in the last few decades. While the national state imprisonment rate dropped by 7 percent between 2000 and 2016, Minnesota's imprisonment rate grew 51 percent. Between 1980 and 2016, the number of people in the state's prisons grew more than fivefold,<sup>2</sup> and as of July 2018, there were 9,849 people imprisoned in Minnesota.<sup>3</sup> There were also more than 111,000 adults across the state under community supervision, such as probation or parole, in 2017.<sup>4</sup> Further, there were roughly 6,000 people held in county jails across the state in 2015, according to the most recently available data.<sup>5</sup>

How did Minnesota get here? Many different offenses<sup>6</sup> drive people into Minnesota prisons, but revocations from community supervision represent a major

segment of admissions. In 2018,<sup>7</sup> 41 percent of admissions were returns to prison from community supervision, and 88 percent of those returns to prison were for violations of supervision conditions – meaning no new crime was committed.<sup>8</sup> (These violations can be as minor as missing a meeting or staying out past curfew.) Even as new commitments to prison in Minnesota fell by 10 percent over the past decade, returns to prison for community supervision violations increased by 19 percent.<sup>9</sup>

In 2018, nearly one in five people imprisoned in Minnesota had been convicted of a drug offense, making drug offenses the most common offense for people in prison that year. In 2017, 18,288 people were sentenced for felony offenses – 69 percent more than were sentenced in 2001. Much of that growth can be attributed to an increase in the number of people sentenced for drug offenses, which more than doubled over this period.<sup>10</sup>

People are also staying in Minnesota prisons for longer than they have in the past. In 2015, the average person imprisoned in Minnesota had served three years, 19 percent more time than the average person in 2000. This can partially be attributed to an increase in length of stay for property crimes; between 2000 and 2015, the average length of stay for people in prison for property crimes grew 23 percent.<sup>11</sup> Legislators' decision in 1982 to abolish parole has also contributed to the increase in the length of time people spend in Minnesota prisons. Instead of being able to offer parole, judges hand down sentences that define a specific minimum period of imprisonment. There is no opportunity to earn time off the sentence by participating in programs and treatment while incarcerated.

The explosive growth of imprisonment in Minnesota has hit people of color hardest. In 2017, Black Minnesotans accounted for 34 percent of the prison population and only 6 percent of the Minnesota state adult population.<sup>12</sup> Between 2008 and 2018, the Black prison population grew by 13 percent while the white prison population fell by 2 percent.<sup>13</sup> Native American adults are imprisoned at nearly 14 times the rate of white adults in Minnesota, and though they account for only 1 percent of the state's adult population,

they comprised 10 percent of the Minnesota prison population in 2017.<sup>14</sup> Latinos in Minnesota are also disproportionately impacted by incarceration.<sup>15</sup> Though they made up 4 percent of the adult state population in 2017, Latinos comprised 6 percent of Minnesota's prison population that year.

So, what's the path forward?

In 2016, Minnesota lawmakers passed the state's first major drug sentencing reform in decades, known as the Drug Sentencing Reform Act.<sup>16</sup> While the law made progress by reducing drug sentences for a number of low-level offenses, eliminating certain mandatory minimums, and increasing the drug threshold for some controlled substances, more reforms are needed to truly address Minnesota's growing prison population.

The Minnesota Legislature can support alternatives to incarceration by passing laws to increase access to both pre- and post-charge diversion for substance use, prostitution, and property offenses. Expanding Medicaid and MinnesotaCare to ensure Minnesotans have greater access to mental health and substance use treatment while on probation and parole is essential. Further, the state Legislature and governor should invest in developing a stronger network of mental health and drug treatment providers, especially in rural areas that often lack access to local services.<sup>17</sup> The Legislature should also ensure there is better access to substance use treatment facilities, and county attorneys should consistently offer diversion around the state.

The Minnesota Legislature must move away from a culture of criminalization, end the practice of constantly expanding the criminal code, and prioritize alternatives to incarceration. One avenue of decriminalization the Legislature should support is full legalization of marijuana, especially given the known racial disparities in the policing of marijuana possession.<sup>18</sup> Further, lawmakers must roll back practices engrained in Minnesota's criminal code that perpetuate disproportionate, harsh sentencing practices from the so-called "tough on crime" era, such as mandatory minimums.

Greater prosecutorial oversight is also needed in Minnesota. The Legislature should pass a law to institute statewide oversight of prosecutors, addressing wrongful convictions, prosecutorial misconduct, and transparency around areas of practice such as charging, diversion, and plea bargaining. Oversight encourages prosecutors to use greater scrutiny when reviewing and charging cases. The information obtained through statewide oversight should be disaggregated by race and income level and be made publicly available.

Finally, Minnesota must engage in meaningful reform of its probation and supervised release systems. The Legislature should enact statewide reforms to limit the total time served and decrease the mandatory amount of time spent in a correctional facility. As they stand, Minnesota's lengthy probation sentences do not support improved public safety outcomes.

If Minnesota were to adopt the changes outlined in this report, the state could achieve a 50 percent reduction in its prison population and save more than \$411 million by 2025 – money that could be better spent on schools, infrastructure, and services for Minnesotans.

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

# The State of the Minnesota Prison System

Between 1980 and 2016, the Minnesota prison population increased more than fivefold.<sup>19</sup> As of July 2018, there were 9,849 people in Minnesota prisons, a 57 percent increase from 2000.<sup>20</sup> While the national state imprisonment rate dropped by 7 percent between 2000 and 2016, Minnesota's imprisonment rate grew 51 percent, the second largest increase of any state over that time period.<sup>21</sup> In addition to people incarcerated in prisons in Minnesota, as of July 2017, more than 111,000 adults across the state were under community supervision.<sup>22</sup> While the probation population has declined in recent years, as of the most recent available national data (2015), Minnesota has the fifth-highest adult probation rate in the nation at 2,328 per 100,000 adults.<sup>23</sup>

## AT A GLANCE

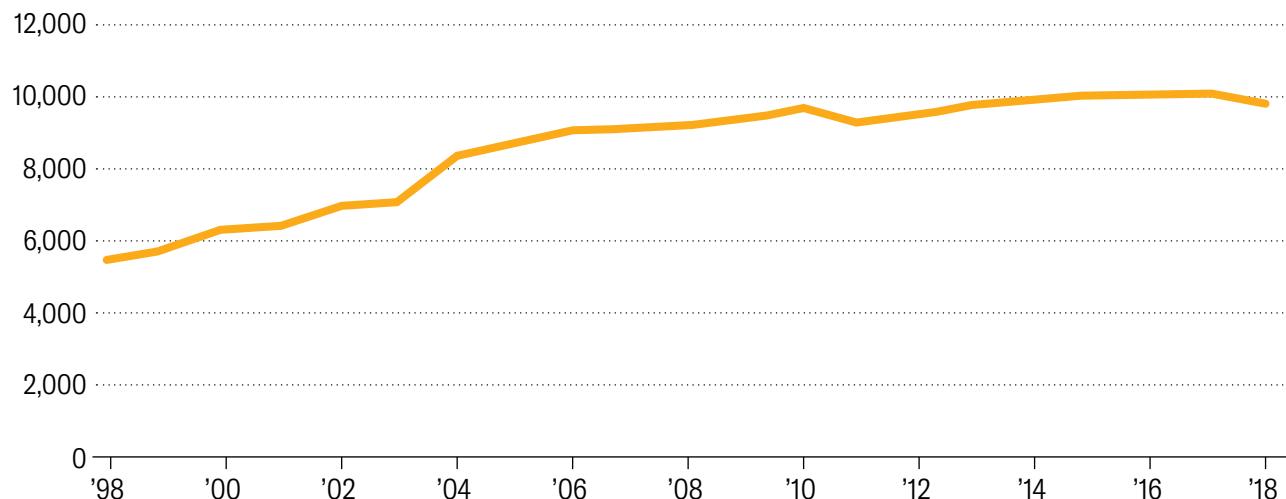
### MINNESOTA PRISONS

Between 2000 and 2018, the Minnesota prison population increased by **57 percent**.

Minnesota prisons were operating at **99 percent** capacity as of 2016.

More than **111,000 Minnesota** adults were under community supervision as of 2017.

## MINNESOTA PRISON POPULATION



Minnesota prisons have been consistently full in recent years. As of July 2016, Minnesota prisons were at 99 percent capacity, and the number of people in prison has remained relatively stable since then.<sup>24</sup> To accommodate the prison population growth, the Minnesota Department of Corrections (MN DOC) began placing some people sentenced to prison in contract facilities in 2012, including county jails across the state; as of July 2018, at least 224 people were held in such facilities in Minnesota.<sup>25</sup> A 2015 analysis from the MN DOC and Sentencing Guidelines Commission projected that without reform, the prison population would continue to increase in coming years.<sup>26</sup>

## What Is Driving People Into Prison?<sup>27</sup>

In 2018,<sup>28</sup> there were 7,775 admissions to Minnesota prisons, and two in five (41 percent) admissions were returns to prison from supervision. The vast majority of these returns (88 percent) were for violations of supervision conditions, meaning no new offense was committed.<sup>29</sup> Violations of supervision conditions may include offenses as minor as missing a weekly meeting or showing up late, staying out past curfew, or failing to make a restitution payment.<sup>30</sup>

In 2015, the most common offenses among people entering Minnesota prisons included drug offenses (25 percent), assault (21 percent), sexual assault (10 percent), burglary (8 percent), driving while impaired (7 percent), and weapons offenses (5 percent). Overall, offenses not involving violence accounted for 62 percent of admissions to Minnesota prisons in 2015.<sup>31</sup>

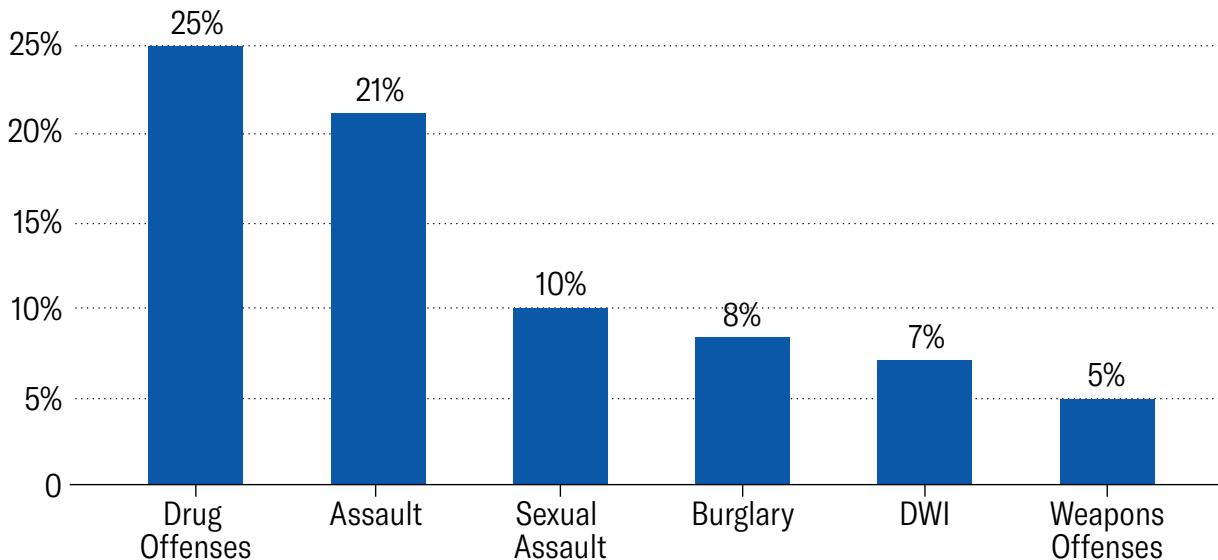
Revocations to prison from community supervision have increased in recent years. While new commitments to prison fell by 10 percent over the past decade, returns to prison for community supervision violations increased by 19 percent.<sup>32</sup>

In 2017, 18,288 people were sentenced for felony offenses, the highest number of felony sentences in state history and 69 percent more than were sentenced in 2001. Much of this growth can be attributed to an increase in people sentenced for drug offense convictions, which more than doubled over this period.<sup>33</sup>

## The Current Prison and Jail Population

Minnesota incarcerates an estimated 6,092 people in county jails across the state, according to most recently

## MINNESOTA PRISON ADMISSIONS BY TOP OFFENSE TYPES (2015)



## AT A GLANCE

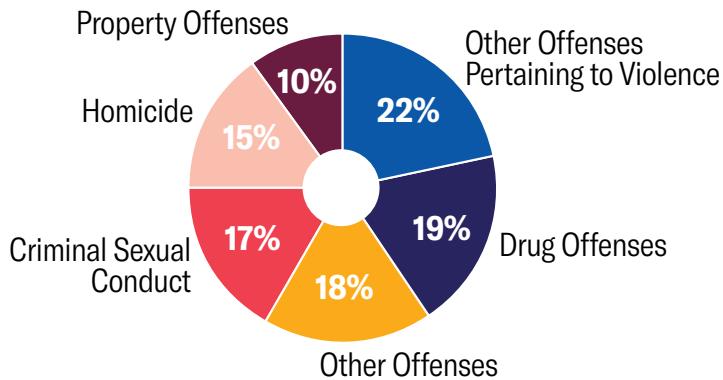
### MINNESOTA JAIL AND PRISON POPULATION

More than **6,000 people** were incarcerated in Minnesota jails as of 2015.

Nearly **1 in 5 people** in Minnesota prisons in 2018 were incarcerated for a drug offense.

**88 percent** of returns to Minnesota prisons in 2018 were for violations of supervision conditions.

### MINNESOTA PRISON POPULATION BY OFFENSE TYPE (2018)



available data (2015). 66 percent of those people held in jails were awaiting trial and had not been convicted of any crime. While the overall jail population in Minnesota has declined since its peak in 2005, the number of people held pretrial has grown, increasing 10 percent between 2005 and 2015.<sup>34</sup> In addition, several local jails contract with U.S. Immigration and Customs Enforcement (ICE), and held more than 600 people in immigration detention in January 2018.<sup>35</sup>

Drug offenses were the most common offenses for people in Minnesota prisons in 2018, accounting for nearly one in five people in prison (19 percent). One in ten people in prison (10 percent) had been convicted of a property offense. Other common offenses included assault (9 percent) and weapons offenses (7 percent).<sup>36</sup> Between 2008 and 2018, the number of people serving time for a weapons offense increased 49 percent.<sup>37</sup> In 2017, 81 percent of people convicted of a weapons offense in Minnesota were convicted of being a “felon in possession of a gun,” while only 8 percent were convicted for discharging a firearm.<sup>38</sup>

As of 2018, 27 percent of the people in Minnesota prisons had yet to graduate from high school or receive their GED. Less than one in five people in Minnesota prisons had received formal education beyond high school.<sup>39</sup>

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

The average person imprisoned in Minnesota in 2015 had served three years, 19 percent more time than the average person in 2000. This is due in part to an increase in length of stay for property crimes; between 2000 and 2015, the average length of stay for people in prison for property crimes grew 23 percent. Average length of stay for drug offenses grew 9 percent across the same time period.<sup>40</sup>

In 1982, Minnesota abolished parole in favor of determinate sentencing, meaning judges hand down sentences that define a specific minimum period of imprisonment and there is no longer any opportunity to earn time off the sentence for participation in programs and treatments that are shown to improve reentry outcomes. People serving determinate sentences must serve two-thirds of their sentence in prison, with the remaining third served on supervised release in their community.<sup>41</sup> To determine sentence length, Minnesota judges use a sentencing grid that takes into consideration both offense severity and criminal history. The law triggers mandatory prison sentences for people convicted of offenses like felony DWI and theft with prior felony convictions.<sup>42</sup>

## Who Is Imprisoned?

**Black Minnesotans:** In 2017, the adult Black imprisonment rate in Minnesota was more than 10 times higher than the white adult imprisonment rate.<sup>43</sup> According to the most recent available data (2014), 1 in 28 Black men are imprisoned in Minnesota.<sup>44</sup> In 2017, Black people accounted for 34 percent of the prison population and only 6 percent of the state adult population.<sup>45</sup> The disparity between Black and white incarceration in Minnesota is growing; between 2008 and 2018, the Black prison population grew by 13 percent while the white prison population fell by 2 percent.<sup>46</sup>

**Native American Minnesotans:** Native American adults are imprisoned at nearly 14 times the rate of white adults in Minnesota. Despite accounting for only 1 percent of the state adult population, Native American people accounted for 10 percent of the Minnesota prison population in 2017.<sup>47</sup> In recent years, that disparity has grown; between 2008 and 2018, the Native American prison population grew by 34 percent, while the white prison population fell by 2 percent.<sup>48</sup>

**Latino Minnesotans:** In 2017, Latinos made up 6 percent of Minnesota's prison population but just 4 percent of the adult state population.<sup>49</sup>

**Female Minnesotans:** Between 2008 and 2018, the number of women in Minnesota prisons grew more than three times faster than the number of men.<sup>50</sup> As of 2017, 73 percent of the women serving time in Minnesota prisons were there for non-person offenses; 43 percent had been convicted of a drug offense.<sup>51</sup> According to the most recent available data, women comprise 7 percent of people in prison (2018) and 14 percent of people in jail (2015) in Minnesota.<sup>52</sup>

**Older Minnesotans:** Though generally considered to pose a negligible risk to public safety,<sup>53</sup> the prison population age 50 years or older increased 52 percent between 2008 and 2018 and accounted for one in seven people (14 percent) in Minnesota prisons in 2018.<sup>54</sup>

**Young Minnesotans:** Although most youth under age 18 who come into contact with the criminal justice system are tried in juvenile court, children as young as

### AT A GLANCE

## DEMOGRAPHICS

The number of women in Minnesota prisons grew more than **3 times faster** than the number of men between 2008 and 2018.

Native American adults are imprisoned at nearly **14 times** the rate of white adults in Minnesota.

In 2017, Black people accounted for **34 percent** of the prison population and only 6 percent of Minnesota's adult population.

14 can be “certified” to adult court based on the nature of the offense or their criminal history – and for youth charged with committing certain felonies at age 16 or 17, transfer to adult court is automatic.<sup>55</sup> As of January 2019, there were 256 people in Minnesota prisons who were under age 18 when they were sentenced in adult court.<sup>56</sup> A growing body of evidence shows that any contact with the juvenile justice system may increase the likelihood of additional justice involvement in the future.<sup>57</sup> In Minnesota, 15 percent of all arrests in 2016 were of youth under age 18, and more than seven in ten (71 percent) of these arrests were for low-level offenses or status offenses like breaking curfew or loitering.<sup>58</sup> Based on 2015 admissions data, more than 8,000 juvenile cases involved secure detention, and an estimated 1,622 cases ultimately resulted in placement in a juvenile correctional facility after disposition.<sup>59</sup>

## People With Mental Health and Substance Use Disorders

Mental health and substance use treatment needs are prevalent in the Minnesota prison population. The Department of Corrections reports that of the 4,312 chemical dependency assessments given in 2017,<sup>60</sup> 92 percent of people were diagnosed as either chemically abusive or dependent. That year, 3,651 people were directed to treatment in prison for

## AT A GLANCE

# MENTAL HEALTH AND SUBSTANCE USE DISORDERS

**92 percent** of people in prison assessed for chemical dependency in 2017 were diagnosed as chemically abusive or dependent.

In 2016, more than **1,200 people** in Minnesota prisons were diagnosed with personality disorder.

## AT A GLANCE

# BUDGET

Minnesota spent **\$567 million** from its general fund on corrections in 2017.

Corrections general fund spending in Minnesota has grown **191 percent** since 1985.

chemical dependence and 2,725 people received such treatment.<sup>61</sup>

In 2016,<sup>62</sup> personality, anxiety, and mood disorder diagnoses were also common among people in Minnesota prisons. That year, 1,704 people were diagnosed with a personality disorder, 1,426 were diagnosed with a mood disorder, and 817 were diagnosed with an anxiety disorder.<sup>63</sup>

## Budget Strains

As Minnesota's prison population has risen, so has the cost burden. Minnesota spent \$567 million general fund dollars on corrections in 2017, accounting for 3 percent of the state general fund expenditures. This spending has grown 191 percent since 1985, far outpacing growth in other areas like higher education.<sup>64</sup>

In addition, the return on investment for incarceration has been poor. Despite millions spent each year on the operation of MN DOC facilities—nearly \$345 million in 2016 alone—one-quarter of people released from prison return with a new felony conviction within three years. Thirty-six percent of people released from Minnesota prisons in 2012 were convicted of a new felony within three years. In 2016, MN DOC spent \$92.16 on average to incarcerate one adult for just one day.<sup>65</sup>

# Ending Mass Incarceration in Minnesota: A Path Forward

Mass incarceration is a result of many systems failing to support our communities. To end it, we must develop policies that better address inadequacies throughout our education, health care, and economic systems – to name a few. There are many potential policy changes that can help Minnesota end its mass incarceration crisis, but it will be up to the people and policymakers of Minnesota 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 reduce the number of people entering jail and prison in the first place. While Minnesotans routinely tout that they have one of the lowest incarceration rates in the country, trends over the last decade demonstrate that the state is on the path to shed this distinction. Minnesota is one of only a dozen states with prison populations that have grown between 2008 and 2016, bucking the national trend of shrinking incarceration rates.<sup>66</sup> Additionally, the state is a national outlier in community supervision: Minnesota has the fifth-highest probation rate in the country, due largely to overly long probationary sentences.<sup>67</sup>

In 2016, Minnesota passed its first major drug sentencing reform in decades, known as the Drug Sentencing Reform Act.<sup>68</sup> The new law made progress by reducing drug sentences for a number of low-level offenses, eliminating certain mandatory minimums, and increasing the drug threshold for some controlled substances. Supporters believe that the changes will eventually reduce the need for prison beds by 600.<sup>69</sup> However, the law also created new mandatory minimums for offenses and decreased the threshold for certain marijuana crimes.<sup>70</sup>

To end mass incarceration, Minnesota must break its overreliance on jails and prisons as a means to

hold people accountable for their crimes. Evidence indicates that prisons seldom offer adequate solutions to wrongful behavior. In fact, imprisonment can be counterproductive – increasing cycles of harm and violence and failing to provide rehabilitation for incarcerated people or adequate accountability to the survivors of crime.<sup>71</sup> Here are some strategies:

## Reducing Admissions

- **Alternatives to incarceration:** The good news is that alternatives exist. Several types of alternative-to-incarceration programs have shown great success in reducing both violent and nonviolent criminal activity. Programs offering support services such as substance use treatment, mental health care, employment, housing, health care, and vocational training – often with a community service requirement – have significantly reduced recidivism rates for participants.<sup>72</sup> For crimes involving violence, restorative justice programs – which are designed to hold responsible people accountable and support those who were harmed – can be particularly promising. When they are rigorous and well-implemented, these processes have not only been demonstrated to reduce recidivism for defendants,<sup>73</sup> they have also been shown to decrease symptoms of post-traumatic stress in victims of crime.<sup>74</sup> Prosecutors and judges who embrace these solutions can fulfill their responsibilities to the public’s safety and to supporting victims in their healing – and can often generate far better results than imprisonment can deliver.

Other successful models include those that divert people to treatment and support services before arrest, and prosecutor-led programs that divert people before they are charged. Lawmakers can explore such interventions at multiple phases in the system, whether through decriminalization or alternatives to arrest, charges, or incarceration. The Minnesota Legislature should pass laws to increase access to both pre- and post-charge diversion for substance use, prostitution, and property offenses. Minnesota lawmakers should also create a diversion program to address admissions for assault, as convictions for fifth-degree assault – the lowest in severity – have seen the greatest increase and have been a significant driver of the state’s increasing incarceration rate.<sup>75</sup>

- **Expanded treatment – mental health:** Diversion is an effective way to redirect people with mental health challenges 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.<sup>76</sup> When implemented effectively, diversion reduces arrests, encourages voluntary treatment in the community, and saves money.<sup>77</sup> 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.<sup>78</sup>

Another way to support treatment options is expanding Medicaid and MinnesotaCare so that Minnesotans have greater access to mental health and substance use treatment while on probation and parole. Access to medical care, for both mental and physical health, is essential to successful reentry.<sup>79</sup> The Minnesota Department of Human Services should enact a

rule change that would ensure the applications of incarcerated people are received and evaluated prior to the individual’s release. In addition, the state Legislature and governor should invest in developing a stronger network of mental health and drug treatment providers, especially in rural areas that often lack access to local services.<sup>80</sup>

- **Expanded treatment – addiction:** Substance use disorders are often underlying drivers of a number of crimes, including more serious offenses like burglaries, robberies, and assaults. Addressing substance use through treatment rather than incarceration can more effectively reduce crime.<sup>81</sup> Treatment options and access to diversion instead of incarceration vary from county to county.<sup>82</sup> Reforms should be at both the state and local level to expand access to diversion and ensure consistency around the state. Right now, Minnesotans in need of treatment are at the whim of their local county attorney and whether treatment options are available locally. This means someone committing a crime in a small rural city could be given a prison sentence for drug use, while a person in another part of the state with a different prosecutor could be offered diversion and treatment instead of incarceration. Everyone should have access to diversion programs across the state. The Legislature should ensure there is better access to treatment facilities, and county attorneys should consistently offer diversion around the state.

Dr. Tyler Winkelman, a Minnesota researcher who has studied health issues in the criminal justice system, found that those faced with substance use disorder are at risk of death from overdose within the first two weeks post-release at a rate 10 times that of the general population.<sup>83</sup> The MN DOC and Department of Human Services should partner to improve the timeliness of delivery of services, which would reduce recidivism and reincarceration and could potentially save lives.

- **Support decriminalization:** One of the reasons Minnesota’s jail and prison populations

are on the rise while other states are reducing their population is because the Minnesota Legislature has consistently introduced bills to criminalize behavior that previously would not lead to incarceration. The Legislature must move away from a culture of criminalization, end the practice of constantly expanding the criminal code, and prioritize alternatives to incarceration. One avenue of decriminalization the Legislature should support is full legalization of marijuana, especially given the known racial disparities in the policing of marijuana possession.<sup>84</sup>

- **Eliminate cash bail:** Minnesota can significantly reduce its rates of pretrial detention by eliminating its use of cash bail. Far too often, people who cannot afford their bail will end up in jail for weeks, months, or, in some cases, years as they wait for their day in court. For instance, Hennepin County jails saw an increase in length of stay from 5.8 days in 2015 to more than 20 days in 2017.<sup>85</sup> 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.<sup>86</sup> After even a short stay in jail, taking a plea deal sounds less burdensome than losing everything, which is likely why evidence shows that pretrial detention significantly increases a defendant's risk of conviction.<sup>87</sup> 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.<sup>88</sup> In order to significantly reduce pretrial detention and combat racial disparities, the Minnesota Legislature should eliminate cash bail across all offenses and limit pretrial detention to the rare case where a person poses a serious, clear threat to another person.

- **Shorten probable cause holds:** The U.S. Constitution and Minnesota's criminal code permit a person to be jailed for 48 hours as the court determines whether probable cause of a crime exists.<sup>89</sup> In Hennepin County, 50 percent of people arrested on probable cause holds are ultimately released without being charged with a crime. This is illustrative of a statewide problem of ineffective policing and unnecessarily detaining people who have not been formally accused of a crime. This practice bloats the jail population, destabilizes families, and destroys lives. The state Legislature should pass a law to lower the time limit a person may be jailed awaiting a formal charge to 24 hours, including those on probation and parole.

- **Cap probation terms:** Probation terms should be limited to the time needed to achieve rehabilitation, accountability, and public safety. However, Minnesota state law allows for people to spend up to 40 years on probation.<sup>90</sup> In 2014 and 2015, the average prison sentence in the state was two years shorter than the average probation sentence.<sup>91</sup> The wide discretion encompassed in Minnesota's current law has also led to vast geographic and racial disparities;<sup>92</sup> probation sentences can vary widely from county to county for the same type of offense.

Prolonged periods of probation lead to bloated supervision populations and increase the prison population. In 2015, Minnesota had the fifth-highest rate of supervision in the country.<sup>93</sup> In 2016, the state had 98,258 people on probation. Contrast that with Wisconsin, which has more residents, but only 46,144 people on probation. Extreme probation terms also increase the probability for technical violations, which often lead to incarceration. In fact, MN DOC reported that 60 percent of the total prison admissions in 2016 were for technical violations, not a new crime.<sup>94</sup>

Minnesota's lengthy probation sentences do not support improved public safety outcomes. Lawmakers should pass legislation to cap

probation terms at 36 months for felonies and 12 months for misdemeanors, with robust opportunities for early termination. Creating a uniform system for early termination from probation incentivizes compliance and ensures resources are focused on people for the amount of time relevant to protecting public safety. Research shows that reoffending while on supervision is most likely to occur within the first two years of supervision.<sup>95</sup> Therefore, requiring an individual to stay on probation for decades does not improve compliance or result in better criminal justice outcomes. The Legislature should also expressly prohibit probation terms from being extended based on money (e.g., restitution; fines and fees), ensuring it does not perpetuate a two-tiered system that treats people differently based on wealth.

In pursuing reforms for probation and supervised release, Minnesota lawmakers must also address conditions of supervision. The Legislature should pass a law requiring judges to state in the record their rationale for imposing each condition, detail how the condition is based on the individual's risks and needs, and establish a clear nexus to public safety. One condition that the Legislature should entirely eliminate is requiring incarceration as a condition of supervision. Current law permits a jail term of up to one year in a county facility to be imposed as a condition of probation.<sup>96</sup> This contributes to the practice of the judiciary using probation as a net-widener, rather than its intended purpose of serving as a prison alternative.

- **Reduce probation revocations:** There are no formal revocation guidelines in Minnesota. Courts determine whether probation should be revoked based on three *Austin* factors: identify the condition or conditions violation, find that the violation was intentional or inexcusable, and find that the policies favoring probation no longer outweigh the need for confinement.<sup>97</sup> A majority of revocations occur within the first two years of a felony probation sentence,

supporting evidence-based recommendations to limit probation terms and front-load resources.<sup>98</sup> Revocation decisions also illustrate another area of criminal justice where people of color are disproportionately impacted. In Minnesota, Native Americans have the highest rate of felony probation revocation, mostly for property offenses.<sup>99</sup>

In 2017, approximately 3,000 (36.4 percent of returns) people were returned to prison for violations that did not involve a new sentence. In 2016, two-thirds of the state's prison admissions were for technical violations.<sup>100</sup> While previous legislation has sought to address challenges around technical violations by prohibiting incarceration for people originally convicted of nonviolent drug offenses, that legislation hasn't gone far enough. Sanctions should fit the behavior they seek to address. Minnesota lawmakers should pass legislation to prohibit incarceration as a response to any technical violation, regardless of the original offense.

Courts also have the authority to extend or revoke probation based on payment of restitution, without regard to intent or ability to pay. This practice is an unconstitutional two-tiered system of justice in which wealth determines supervision and incarceration. The Minnesota Legislature should pass a law that requires holding a hearing to determine someone's ability to pay. To extend probation, the court would have to find that the person has the means and has willfully and deliberately not paid restitution. Incarceration should be prohibited for nonpayment of restitution. It does not support victims, is costly to taxpayers, and imprisons people for behavior that does not impact public safety.

- **Prosecutorial reform:** Prosecutors are the most powerful actors in the criminal justice system with the ability to wield the power of the state against an individual to deprive that person of life, liberty, and property. The initial decision whether to charge someone with a crime and, if so, what and how many, has a major

impact on every aspect of a person's experience with the system, not least of which is the amount of time someone eventually spends incarcerated. There should be some mechanism for the state and counties to review and assess those decisions overall to ensure that they make these decisions appropriately. Moreover, sometimes prosecutors wrongfully convict a person, whether through prosecutorial misconduct or the conviction of an innocent person. The Legislature should pass a law to institute statewide oversight of prosecutors, addressing wrongful convictions, prosecutorial misconduct, and transparency around charging, diversion, and plea bargaining. Oversight encourages prosecutors to use greater scrutiny when reviewing and charging cases. The information obtained through statewide oversight should be disaggregated by race and income level and be made publicly available.

## Reducing Time Served

Reducing the amount of time people serve, even by just a few months, could drop the number of people serving in Minnesota's prisons by thousands. Here's how:

- **Sentencing reform – general:** Minnesota's criminal code has been constantly expanded and perpetuates disproportionate, harsh sentencing practices from the tough-on-crime era. Under Minnesota law, people can receive harsher sentences for drug convictions than for first-degree aggravated robbery.<sup>101</sup> The Minnesota Legislature should pass laws to eliminate mandatory minimums and decrease the statutory maximum sentences across offenses. Repealing mandatory minimums empowers judges to set more proportionate sentences based on the facts and circumstances of each individual case. Lowering statutory maximums will limit opportunities for judges to abuse their discretion and impose extreme sentences. Some initiatives the Legislature should initially focus on include:

- defelonizing and eliminating mandatory minimums for first-degree driving while impaired
- reclassifying drug offenses as nonviolent and lowering their statutory maximums
- lowering the statutory maximum for burglary
- overhauling the sentencing schemes for assault with an eye towards lowering penalties

- **Sentencing reform – enhancements:** The presence of even a single prior felony can substantially increase the sentencing range and delay supervised release eligibility. In fact, many misdemeanors are charged as felonies only due to a person's criminal history. Multiple prior felonies trigger even more substantial enhancements to both sentencing range and initial supervised release eligibility. The Legislature should remove felony enhancements for misdemeanors and limit how and when sentencing enhancements are applied. One example is failure to register, which has been enhanced at least seven times over the last 25 years. Another example that should be repealed is fourth-degree assault. Since 2004, the number of people sentenced for this offense has increased by more than 200 percent.<sup>102</sup> Moreover, the Minnesota Legislature commonly enhances sentences based on whether the person has prior convictions over the last decade. This is problematic, especially for property and drug offenses – which are often tied to challenges with addiction. Lawmakers should limit look-back periods for offenses that do not involve physical harm to another person.
- **Supervised release reform:** Minnesota uses determinate sentencing, which means the state does not have a parole board and does not grant time off for good behavior. Typically, people are required to serve two-thirds of a sentence behind bars and the remaining third on supervised release. Alternately, people can

be given probation for a sentence, with no time incarcerated.<sup>103</sup> The Legislature should enact statewide reforms to limit the total time served and decrease the mandatory amount of time spent in a correctional facility.

- **Earned time/earned credit reform:** The Minnesota Legislature should establish a concrete system of earning good time, creating an opportunity to earn credits against a prison sentence through participation in educational, vocational, and other opportunities. Such programs are essential to incentivize prosocial behavior, prepare individuals for successful reentry, and reduce the length of stay for those prepared to reintegrate.

## Challenging Structural Racism in the Criminal Legal System

Reducing the number of people who are imprisoned in Minnesota will not, without intentional planning, 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 criminal legal system, in large part because they are more likely than white people to live under heightened police surveillance. For example, Native American adults are imprisoned at nearly 14 times the rate of white adults in Minnesota.<sup>104</sup> This imbalance cannot be accounted for by involvement in illegal activity, and it grows at each stage in the justice system, beginning with initial law enforcement contact and increasing at subsequent stages, such as pretrial detention, conviction, sentencing, and post-release opportunity.<sup>105</sup> Focusing on only one of the factors that drives racial disparity does not address issues across the whole system.

Racism is so inherent 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 reducing

prison admissions and the length of stay 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, having passed justice reforms that led to a 26 percent decline in the state prison population between 1999 and 2012.<sup>106</sup> However, the state did not target racial disparities in incarceration and, in 2014,

## TAKING THE LEAD

**Prosecutors:** They make decisions on when to prosecute an arrest, what charges to bring, and which plea deals to offer and accept. They can decide to divert people to treatment programs (for example, drug or mental health programs) rather than send them to prison. And they can decide not to seek enhancements that greatly increase the length of sentences.

**State lawmakers:** They decide which offenses to criminalize, what penalties to include, how long sentences can be, and when to take away discretion from judges. They can change criminal laws to remove prison as an option when better alternatives exist, and they can fund the creation of new alternatives, including diversion programs that provide supportive housing, treatment, and vocational training. They can also decide to sufficiently fund mental health and substance use treatment so it is available for people who need it before they encounter the criminal legal system.

**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.

Black people in New Jersey were still more than 12 times as likely to be imprisoned as white people.<sup>107</sup>

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

Some examples include:

- Ending over-policing 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
- Eliminating 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
- Encouraging judges to use their power to dismiss cases that originate with school officials or on school grounds when the matter may be adequately addressed through school disciplinary or regulatory process to avoid

incarcerating children during their most formative years

- Eliminating fines and fees, which effectively criminalize poverty
- Shifting funding from law enforcement and corrections to community organizations, job creation, schools, drug and mental health treatment, and other social service providers

## Reducing Disability Disparities

The rates of people with disabilities in the U.S. criminal system are two to six times that of the general population.<sup>108</sup> In particular, people with psychiatric disabilities are dramatically overrepresented in jails and prisons across the country.<sup>109</sup>

- People showing signs of mental illness are twice as likely to be arrested as people without mental illness for the same behavior.<sup>110</sup>
- People with mental illness are sentenced to prison terms that are, on average, 12 percent longer than other people in prison.<sup>111</sup>
- People with mental illness stay in prison longer because they frequently face disciplinary action from conduct that arises due to their illness — such as attempted suicide — and they seldom qualify for early release because they are not able to participate in rehabilitative programming, such as educational or vocational classes.<sup>112</sup>

Furthermore, sentencing reforms appear to leave people in prison with psychiatric disabilities behind.

Screening tools to evaluate psychiatric disabilities vary by state and jurisdiction, but the most reliable data indicates that more than half of jail populations and close to half of prison populations have mental health disabilities.<sup>113</sup> The fact that people with mental health disabilities are arrested more frequently, stay incarcerated longer, and return to prisons faster is not due to any inherent criminality related to psychiatric disabilities. It arises in part because of the lack of accessible and appropriate mental health treatment

“Merely reducing sentence lengths, by itself, does not disturb the basic architecture of the New Jim Crow. So long as large numbers of African Americans continue to be arrested and labeled drug criminals, they will continue to be relegated to a permanent second-class status upon their release, no matter how much (or how little) time they spend behind bars. The system of mass incarceration is based on the prison label, not prison time.”<sup>116</sup>

— From *The New Jim Crow*, Michelle Alexander

in the community; in part because of a perception of dangerousness by police, prosecutors, and judges; and in part because prison staff and probation officers fail to recognize and accommodate disability.

Many people of color in jails and prisons are also people with disabilities, and efforts to reduce racial disparities must go hand in hand with efforts to reduce disability disparities.<sup>114</sup> Not surprisingly, many of the strategies to reduce disability disparities are similar to approaches that reduce racial disparities. Some examples include:

- Investing in pre-arrest diversion:
  - Creating behavioral health centers run by state departments of health as alternatives to jails or emergency rooms for people experiencing mental health crises or addiction issues
  - Training dispatchers and police to divert people with mental health issues who commit low-level nuisance crimes to these behavioral health centers. Jurisdictions that have followed this approach have significantly reduced their jail populations.<sup>115</sup>

- Ending arrest and incarceration for low-level public order charges, such as being drunk in public, urinating in public, loitering, trespassing, vandalism, and sleeping on the street. If needed, refer people who commit these crimes to behavioral health centers.
- Requiring prosecutors to offer diversion for people with mental health and substance use disabilities who are charged with low-level crimes
- Evaluating prosecutors’ charging and plea-bargaining practices to identify and eliminate disability bias
- Requiring prosecutors’ offices be transparent in their hiring practices, charging decisions, and plea deals
- Investing in diversion programs and alternatives to detention designed for people with disabilities, including programs that provide supportive housing, Assertive Community Treatment, wraparound services, and mental health supports
- Reducing the use of pretrial detention while increasing reminders of court dates and other supports to ensure compliance with pretrial requirements
- Reducing reincarceration due to parole or probation revocations through intensive case management, disability-competent training for officers on alternatives to incarceration and reasonable modifications to requirements of supervision, and no return to incarceration for first and second technical violations
- Addressing bias against mental disabilities in risk assessment instruments used to assist 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 Minnesota 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 Minnesota, visit the interactive online tool at <https://urbn.is/pfp>.

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

Impact Compared to 2025 Baseline*				
Offense category**	Policy outcome	Prison population impact	Impact on racial and ethnic makeup of prison population***	Cost savings****
<b>Drug offenses</b>	<ul style="list-style-type: none"> <li>Reduce average time served by 60% (from 0.92 to 0.37 years)</li> <li>Institute alternatives that reduce admissions by 50% (1,121 fewer people admitted)</li> </ul>	15.17% reduction (1,657 fewer people)	White: 4.9% decrease Black: 6.2% increase Hispanic/Latino: 3.6% decrease Native American: 3.7% increase Asian: 0.9% decrease Other: 17.9% increase	\$44,633,258
<b>Assault</b>	<ul style="list-style-type: none"> <li>Reduce average time served by 50% (from 0.92 to 0.46 years)</li> <li>Institute alternatives that reduce admissions by 40% (911 fewer people admitted)</li> </ul>	13.39% reduction (1,463 fewer people)	White: 3.2% increase Black: 3.4% decrease Hispanic/Latino: 3.7% increase Native American: 5.7% decrease Asian: 1.7% increase Other: 15.5% increase	\$35,314,806
<b>Burglary</b>	<ul style="list-style-type: none"> <li>Reduce average time served by 50% (from 0.96 to 0.48 years)</li> <li>Institute alternatives that reduce admissions by 40% (288 fewer people admitted)</li> </ul>	4.44% reduction (485 fewer people)	White: 0.4% decrease Black: 0.2% increase Hispanic/Latino: 1.9% increase Native American: 0.3% decrease Asian: 0.3% increase Other: 4.6% increase	\$11,891,502

Impact Compared to 2025 Baseline*				
Offense category**	Policy outcome	Prison population impact	Impact on racial and ethnic makeup of prison population***	Cost savings****
<b>Weapons offenses*****</b>	<ul style="list-style-type: none"> <li>Reduce average time served by 60% (from 1.67 to 0.67 years)</li> </ul>	4.29% reduction (468 fewer people)	White: 1.3% increase Black: 2.0% decrease Hispanic/Latino: 1.1% increase Native American: 0.3% increase Asian: 0.2% increase Other: 4.5% increase	\$9,909,177
<b>DWI</b>	<ul style="list-style-type: none"> <li>Reduce average time served by 50% (from 1.16 to 0.58 years)</li> <li>Institute alternatives that reduce admissions by 60% (293 fewer people admitted)</li> </ul>	4.14% reduction (453 fewer people)	White: 1.1% decrease Black: 1.8% increase Hispanic/Latino: 1.0% increase Native American: 3.1% decrease Asian: 2.7% increase Other: 4.3% increase	\$11,614,411
<b>Public order offenses*****</b>	<ul style="list-style-type: none"> <li>Reduce average time served by 50% (from 0.89 to 0.44 years)</li> <li>Institute alternatives that reduce admissions by 60% (302 fewer people admitted)</li> </ul>	3.28% reduction (359 fewer people)	White: 0.4% decrease Black: 0.6% increase Hispanic/Latino: 1.1% increase Native American: 0.5% decrease Asian: 1.3% decrease Other: 3.4% increase	\$9,281,745
<b>Robbery</b>	<ul style="list-style-type: none"> <li>Reduce average time served by 50% (from 1.48 to 0.74 years)</li> <li>Institute alternatives that reduce admissions by 40% (138 fewer people admitted)</li> </ul>	3.27% reduction (358 fewer people)	White: 2.0% increase Black: 3.1% decrease Hispanic/Latino: 1.0% increase Native American: 0.7% increase Asian: 1.4% increase Other: 3.4% increase	\$8,701,124
<b>Theft</b>	<ul style="list-style-type: none"> <li>Reduce average time served by 60% (from 0.39 to 0.16 years)</li> <li>Institute alternatives that reduce admissions by 40% (195 fewer people admitted)</li> </ul>	1.32% reduction (144 fewer people)	White: 0.3% decrease Black: 0.3% increase Hispanic/Latino: 0.9% increase Native American: 0.2% decrease Asian: 1.0% decrease Other: 1.3% increase	\$3,489,802

Impact Compared to 2025 Baseline*				
Offense category**	Policy outcome	Prison population impact	Impact on racial and ethnic makeup of prison population***	Cost savings****
<b>Fraud</b>	<ul style="list-style-type: none"> <li>Reduce average time served by 60% (from 0.61 to 0.24 years)</li> <li>Institute alternatives that reduce admissions by 50% (100 fewer people admitted)</li> </ul>	0.89% reduction (97 fewer people)	White: 0.3% decrease Black: 0.4% increase Hispanic/Latino: 0.2% increase Native American: No change Asian: 1.1% decrease Other: 0.9% increase	\$2,481,338

\*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. An increase or decrease in this measure therefore indicates relative proportion shifts, and does not indicate change in number of people overall. 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% of the population, while white people comprise 77%. Meanwhile, 35% of people in state or federal prison are Black, compared to 34% 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 Minnesota, where Black people make up 34% of the prison population but constitute only 5.6% of the state’s total adult population.

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

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

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

## Total Fiscal Impact

If Minnesota were to implement reforms leading to the changes above, 5,484 fewer people would be in prison in the state by 2025, a 50.19% decrease. This would lead to a total cost savings of \$411,029,700 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 Minnesota'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% reduction in admissions for drug possession or a 15% 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% 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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5 Vera Institute of Justice, “Incarceration Trends,” <http://trends.vera.org/rates/minnesota?incarcerationData=all..>

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7 Data refers to fiscal year 2018.

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