

Blueprint for Smart Justice

Vermont



Blueprint *for* Smart Justice Vermont

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Executive Summary

Over the past five decades, the United States has dramatically increased its reliance on the criminal legal system as a way to respond to substance use disorders, mental illness, poverty, and underfunded 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. Mass incarceration 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 legal system and building a new vision of community wellbeing, public safety, and justice. The Campaign is dedicated to cutting the nation's incarcerated population in half and challenging systemic racism in the criminal legal 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 challenge racism in the criminal legal system. 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 Vermont – where the incarceration rate for Black adults was more than 10 times as high as the rate for white adults in 2014¹ – reducing the number of people imprisoned will not on its own reduce racial disparities within the prison system. These findings confirm for the Campaign that urgent work remains for advocates, policymakers, and communities across the nation to include in any criminal legal reform efforts policing and prosecutorial reforms that are specific to combating these disparities.

As in many states across the country, the incarcerated population in Vermont has grown dramatically in recent decades. Between 1980 and 2009, the number of people incarcerated in Vermont's unified corrections system² rose by 363 percent, reaching a peak of 2,220 people. Aware of the need to reverse course, lawmakers in Vermont took part in the Justice Reinvestment Initiative,³ passing legislation in 2008 in an effort to stem the growth of the incarcerated population. These reforms contributed to a significant decline in the population between 2009 and 2017.⁴ As of June 2019, 1,708 people were still incarcerated under the Vermont Department of Corrections' (DOC) jurisdiction.⁵

The criminal legal system in Vermont is home to some of the highest racial disparities in the country. Although Black people made up just 1 percent of the

state's adult population in 2017, they accounted for 8 percent of admissions to correctional facilities that year. The rate at which Black adults entered correctional facilities in Vermont in 2017 was more than seven times higher than the rate for white adults.⁶ These disparities can be found at other points in the state's criminal legal system as well. For example, one study found that Black and Latinx drivers in Vermont were two and a half to four times more likely to have their vehicles searched by law enforcement than white drivers, and between 30 to 50 percent less likely to have those searches result in recovering contraband.⁷

Many people in Vermont are serving sentences under the jurisdiction of the DOC longer than their minimum sentence length. As of September 2018, 704 people – nearly two in three people (63 percent) in the sentenced population – had been incarcerated beyond their minimum sentence length, on average by just over two years.⁸ That includes hundreds of people held because they have either not accessed or completed programming, or due to lack of housing.⁹ Punitive sentencing laws in Vermont contribute to the long periods of time people serve in the state's correctional facilities. Some sentences for assault and robbery can range up to 20 years,¹⁰ and sentences for drug sales and trafficking offenses can range up to 30 years.¹¹

In 2018, the American Civil Liberties Union of Vermont reported that Vermont has the lowest felony threshold for theft of any state in New England, with laws that trigger felony sentences for offenses that would be treated as misdemeanors in any other state in the region.¹²

Another key driver of incarceration in Vermont is admissions to correctional facilities for violations of probation, parole, and furlough. An estimated two out of three admissions to correctional facilities in Vermont in 2017 were for violations of community supervision,¹³ exacerbated by a lack of adequate community supports and programs to support people in their communities.

Further, a substantial proportion of Vermont's incarcerated population is imprisoned awaiting trial. Despite recent efforts at bail reform, in January 2019, 23 percent of the people incarcerated in Vermont were being held pretrial and had not been convicted of a crime.¹⁴

A NOTE ON THE LACK OF AVAILABLE DATA

The information in this report is limited by the fact that the Vermont Department of Corrections publishes little publicly available data and was not responsive to researchers' requests for key metrics included across Blueprint for Smart Justice reports – including data that was generally available in other states. Vermont's public data are particularly lacking in relation to prosecutorial decision making, admissions to incarceration, full charge and sentence offense breakdowns for the incarcerated population, use of sentencing enhancement policies, length of stay in correctional facilities over time, and decisions about probation, parole, and furlough.

As of May 2019, the DOC reported that 761 people in its incarcerated population (nearly half of the total population) were on Medication Assisted Treatment.¹⁵ These numbers are a powerful reminder of the need to expand access to alternatives to incarceration, and to make treatment for substance use disorders and mental health conditions available to all who need it. Diversion programs can be an effective way to redirect people out of the criminal legal system and into supportive community treatment.

Vermont lawmakers reiterated their continuing commitment to criminal justice reform in the state budget for fiscal year 2020,¹⁶ emphasizing that policies considered by the Joint Legislative Oversight Committee “should be pursued in order to create a smarter criminal justice system that prevents avoidable incarceration, returns people to communities without risking public safety, and reduces or eliminates the need for out-of-state prison placements or new prison bed capacity in Vermont.” This language is a powerful articulation of legislators' commitment

to reducing Vermont's reliance on incarceration by engaging in thoughtful criminal legal reforms.

The lack of publicly available data documenting various trends and facets of Vermont's criminal legal system poses significant challenges for advancing the reforms presented in this report. In particular, state's attorneys' offices should make an effort to collect and share data. For more information, please see the text box on this issue.

For more detailed information about potential reforms, see the below sections on "Reducing Admissions" and "Reducing Time Served." Ultimately, the answer is up to Vermont's voters, policymakers, communities, and criminal justice advocates as they move forward with the urgent work of ending the state's damaging overreliance on mass incarceration.

The State of the Vermont Prison System

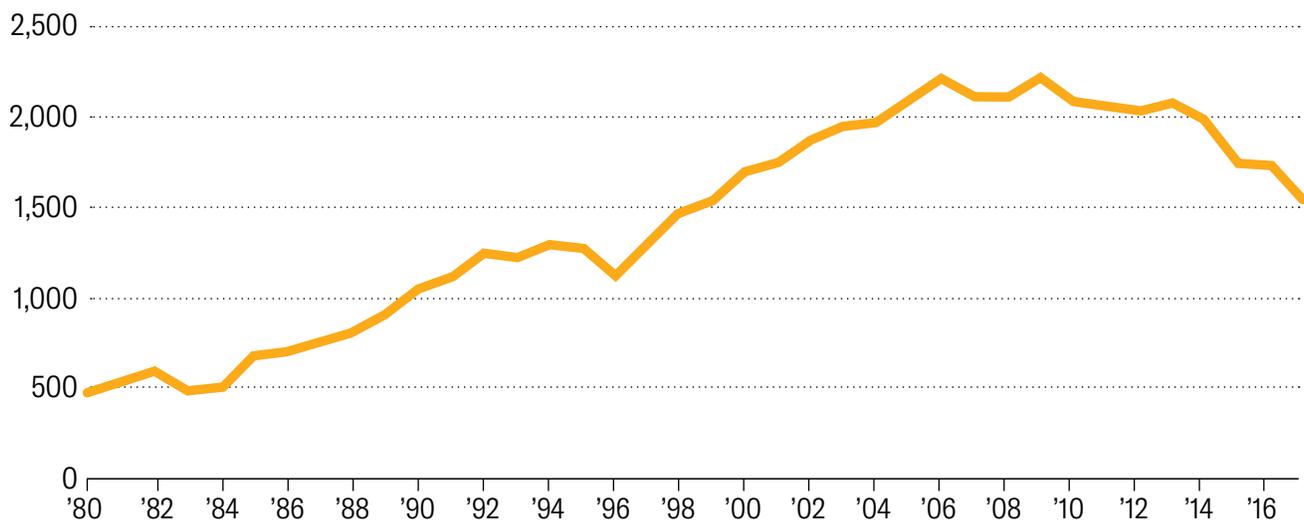
Between 1980 and 2009, the number of people incarcerated in Vermont’s unified corrections system rose by 363 percent to its peak of 2,220 people. Recognizing the unsustainability of this trend, the state engaged in the Justice Reinvestment Initiative, passing reform legislation in 2008 to stem projected additional growth in the state’s incarcerated population.¹⁷ State policymakers also passed legislation in 2011 designed to reduce recidivism by strengthening treatment and reentry support and offering alternatives to incarceration in some situations,¹⁸ among other strategies. Between 2009 and 2017, the state’s incarcerated population declined by 30 percent.¹⁹

Still, in 2017, 1,546 people were incarcerated under the jurisdiction of the DOC, which was 222 percent higher

than the number of people incarcerated under the DOC’s jurisdiction in 1980.²⁰ By June 2019, the DOC reported that there were 1,708 people incarcerated under its jurisdiction.²¹ When people on community supervision are included, the reach of the Vermont justice system is even greater. At the end of 2016, 7,400 people — over 1 percent of state’s total population — were under some form of correctional control.²²

Vermont’s incarcerated population has long exceeded its in-state capacity, and the state has maintained contracts with facilities in other states — some as far away as Arizona — since 1998.²³ Until recently, more than 200 people incarcerated under the jurisdiction of the DOC were held in a facility in Camp Hill, Pennsylvania. After several deaths and allegations of abuse, lack of access to medical care, and poor

VERMONT INCARCERATED POPULATION (1980–2016)



conditions in the Pennsylvania facility, however, the DOC decided to seek a different contract.²⁴ In 2018, the DOC signed a contract with a private facility located in Tutwiler, Mississippi, over 1,300 miles away from the Vermont border.²⁵

Not all Vermont communities rely on incarceration to the same extent. As of 2016, Bennington County had the highest incarceration rate in the state, incarcerating people at nearly twice the statewide average. Reporting has highlighted the county's aggressive prosecution practices and lack of alternatives to incarceration as likely contributors to its high incarceration rate.²⁶

Moreover, compared with other states, a particularly high proportion of admissions²⁷ to Vermont correctional facilities are people coming from community supervision. The Bureau of Justice Statistics estimated that in 2017, Vermont had the third-highest proportion of people entering the prison system for violations of community supervision rather than for new court commitments. That year, approximately two out of every three admissions to facilities under the state's jurisdiction were for a violation of community supervision.²⁸

Additionally, many people who return home after being incarcerated in Vermont lack sufficient access to treatment options and reentry support, and subsequently return to correctional facilities. Vermont's three-year recidivism rate²⁹ has increased slightly, from 43 percent in 2004 to 45 percent in 2014.³⁰

In January 2019, nearly one-quarter of the people incarcerated in Vermont (23 percent, or 381 people) were being held pretrial and had not been convicted of a crime.³¹ Of the people held pretrial in 2018, 44 percent were held under conditions that involved money bail.³²

Why Do People Stay in Prison for So Long?

Many people serving sentences under the jurisdiction of the DOC are incarcerated long beyond their minimum sentence length. As of September 2018, 704 people – nearly two in three people (63 percent) in the sentenced population – had been incarcerated beyond their minimum sentence length, on average by two years. Many of these individuals face structural barriers that prevent them from returning to their communities; for example, 326 people were being held because they had not accessed or completed programming and 127 were being held due to lack of housing.³³

Vermont has punitive sentencing laws that can require people to serve long periods of time in correctional facilities. For example, under the state's "habitual offender" law, a conviction for a fourth felony can carry a life sentence.³⁴ Some sentences for assault and robbery can range up to 20 years,³⁵ and sentences for drug sales and trafficking offenses can range up to 30 years.³⁶ Offenses such as kidnapping carry a maximum sentence of life.³⁷ In 2018, the American Civil Liberties Union of Vermont reported that Vermont has the lowest felony threshold for theft of any New England state,

AT A GLANCE

VERMONT JAIL AND PRISON POPULATION

The number of people incarcerated in Vermont's unified corrections system increased by **363 percent** between 1980 and 2009.

At the end of 2016, **7,400 people** in Vermont were under some form of correctional control.

In January 2019, **23 percent** of the people incarcerated in Vermont were being held pretrial and had not been convicted of a crime.

triggering felony sentences for offenses that would be treated as misdemeanors in any other state in the region.³⁸

Who Is Imprisoned?

Black Vermonters: In 2017, the rate at which Black adults entered correctional facilities in Vermont was more than seven times higher than the rate for white adults. Although Black people made up just 1 percent of the state’s adult population in 2017, they accounted for 8 percent of admissions to correctional facilities that year.³⁹

The Vermont criminal legal system has some of the highest racial disparities in the country. In 2014, the state had the third-highest incarceration rate for Black people in the country, and one in 14 Black men in the state were in prison – the highest proportion of any state. That same year, Vermont was one of a small handful of states where the incarceration rate for Black adults was more than 10 times as high as the rate for white adults.⁴⁰

Black adults are overrepresented at other points in the Vermont justice system, as well. For example, one study found that Black and Latinx drivers in Vermont were two and a half to four times more likely to have their vehicles searched by law enforcement than white drivers, and between 30 to 50 percent less likely to have those searches result in recovering contraband.⁴¹

Women in Vermont: Since the number of people incarcerated in Vermont peaked in 2009, the number of incarcerated men had dropped by 32 percent by 2017, while the number of women remained relatively flat.⁴² In 2019, 8 percent of the people incarcerated under DOC jurisdiction were women,⁴³ who research shows generally have particularly high rates of exposure to trauma and experiences with physical, sexual, and emotional abuse.⁴⁴

A 2013 survey found that women in the Vermont justice system are twice as likely as men to have their parental rights terminated, and one in five incarcerated women respondents (20 percent) reported that their parental

AT A GLANCE

LENGTH OF IMPRISONMENT

63 percent of the state’s sentenced population had been incarcerated beyond their minimum sentence length, on average by 2 years, as of September 2018.

As of September 2018, **127 people** were being held in Vermont prisons solely due to lack of housing.

rights had been terminated at some point, compared with one in 10 men (11 percent).⁴⁵

Older Vermonters: Between 2008 and 2018, the proportion of incarcerated people who were age 50 or older – a group generally considered to pose a negligible risk to public safety⁴⁶ – increased from approximately 11 percent to 19 percent.⁴⁷ DOC staff have indicated that this demographic shift has presented new challenges for meeting the additional medical care needs of older people who are incarcerated.⁴⁸

AT A GLANCE

DEMOGRAPHICS

In 2017, the rate at which Black adults entered correctional facilities in Vermont was more than **seven times higher** than the rate for white adults.

Between 2009 and 2017, the number of women incarcerated under Vermont’s jurisdiction remained relatively flat, while the number of men dropped by **32 percent**.

The proportion of people age 50 or older incarcerated under Vermont jurisdiction increased from approximately **11 to 19 percent** between 2008 and 2018.

Parents and Children in Vermont: A 2013 survey of a subset of the incarcerated population in Vermont found that most respondents were the parents of a minor child, including about two out of every three women (64 percent). About four in five of these parents (82 percent) reported living with or having frequent contact with their children prior to incarceration. Based on the survey data, the researchers surmised that there could be more than 1,700 children with a parent incarcerated under Vermont’s jurisdiction on any given day.⁴⁹ Based on that survey, the authors estimated that over the course of a year, 6,000 children will experience having a parent incarcerated in Vermont.⁵⁰

People with Mental Health Conditions and Substance Use Disorders

Many people in Vermont’s incarcerated population have mental health conditions, and the state has struggled to provide adequate care in correctional facilities. In 2016, an estimated 5 percent of people incarcerated in Vermont were designated as having “Significant Function Impairments,” a term that is not inclusive of all people with a mental health diagnosis.⁵¹

In 2017, the Legislature passed Act 78, which required the DOC to develop additional capacity to provide care for people with mental health conditions. In 2018, the Vermont Legislature allocated funds for 13 additional “therapeutic beds” for incarcerated people who require mental health services, but the project remained incomplete as of February 2019.⁵²

Moreover, people with substance use disorders are overrepresented in the state’s criminal legal system. As of May 2019, the DOC reported that 761 people in its custody were on Medication Assisted Treatment – a significant portion of the total incarcerated population.⁵³

Budget Strains

As Vermont’s imprisoned population has risen, so has the cost burden. In 2017, Vermont spent \$148 million

AT A GLANCE

BUDGET

Vermont spent **\$148 million** of its general fund on corrections in 2017.

Vermont general fund spending on corrections increased by **335 percent** between 1985 and 2017.

of its general fund on corrections, accounting for 10 percent of the state’s general fund spending that year. Corrections general fund spending increased 335 percent between 1985 and 2017. By comparison, total general fund spending on education increased by just 57 percent over the same time period.⁵⁴ In 2019, DOC appropriations totaled almost \$157 million.⁵⁵

In addition to the expense of incarceration, Vermont’s broader criminal legal system costs hundreds of millions of dollars annually. A 2017 report from the Office of the Vermont State Auditor noted that public safety spending in Vermont that year was projected to total \$574 million dollars, including costs associated with the judiciary, sheriffs, the Defender General, State’s Attorneys, and local law enforcement. DOC spending comprised about one-quarter (27 percent) of the total.⁵⁶

Ending Mass Incarceration in Vermont: 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 Vermont reduce its incarcerated population and end its overreliance on mass incarceration, but it will be up to the people and policymakers of Vermont to decide which changes to pursue.

A significant first step for Vermont is to collect and publish data on its criminal legal system. With better data, system stakeholders and state policymakers can accurately identify the sources of persistent racial and geographic disparities and craft smarter criminal justice policies. H.284 – a bill introduced in the 2019 legislative session – would require standard and comprehensive data reporting from all criminal legal system entities, including courts, state’s attorneys, law enforcement, and the DOC.

Following the lead of other states that have improved their data collection practices, H.284 would require the collection of key data, including information regarding police searches, use of force, and arrests; prosecutorial case declinations, diversions, and plea deals; pretrial release and sentence recommendations and determinations; prison admissions and overall population charge and sentence data; the total number of people held past their minimum release date; and revocations from community supervision and overall recidivism rates. Importantly, this data would be collected along with related race, gender, age, and residential information to provide broader context on how the system impacts all Vermonters.

The Legislature should pass this legislation, review collected data, and craft policies to accurately address ending mass incarceration and disparities embedded in the current system. To reach a 50 percent reduction, these 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, Vermont must break its overreliance on prisons as a means of addressing societal problems. Evidence indicates that prisons seldom offer adequate solutions to wrongful behavior. In fact, imprisonment can be counterproductive – increasing cycles of harm and violence and failing to provide rehabilitation for incarcerated people or adequate accountability to the survivors of crime.⁵⁷ Here are some strategies:

- **Expand alternatives to incarceration:** Vermont has developed several diversion programs as alternatives to its traditional criminal legal system with guiding principles based on restorative justice, which are designed to hold responsible people accountable and support those who were harmed.⁵⁸ Fourteen court diversion programs across the state offer youth and adults in every county the opportunity to participate in lieu of adjudication after getting charged with a crime, with the referral of the state’s attorney.⁵⁹ Review boards – made up of community members – develop contracts that address particular offenses and their underlying reasons, while victims have the opportunity to voice their opinion. These contracts may

require people to pay restitution, participate in counseling or substance abuse treatment, or write letters of apology; if successfully implemented, they allow participants to avoid a criminal record with charges dropped and record sealed in two years. When they are rigorous and well-implemented, these kinds of processes have not only been demonstrated to reduce recidivism for defendants,⁶⁰ they have also been shown to decrease symptoms of posttraumatic stress in victims of crime.⁶¹

However, these programs can be both better implemented and improved. People charged with their third or higher misdemeanor, their second or higher nonviolent felony, or any violent felony are ineligible for diversion, unless they show they have a substance use disorder or mental health condition.⁶² Access to the programs relies on prosecutorial referrals, but these case-by-case decisions have resulted in a majority of participants being people who were charged with misdemeanors alone.⁶³ This fragmented implementation also allows for the possibility of different use rates in different jurisdictions. Moreover, these programs charge participants fees up to \$300. Even when participants successfully complete the program, the law requires two years before the court may expunge their criminal record.

The Vermont Legislature should pass comprehensive reform to make diversion presumptive across the state, expand eligibility to people facing any criminal arrest or charge, eliminate participant fees, require public records that detail the kinds of cases resolved through diversion, and allow immediate expungement consideration upon program completion. Importantly, the Legislature must invest more resources into these programs, ensuring sufficient staffing, resources, and capacity to take all cases referred to them.

- **Support decriminalization:** As policymakers consider a comprehensive review of the criminal legal system through a Justice Reinvestment II initiative, they should strongly consider

whether the law criminalizes behaviors that should not involve police, prosecutors, and incarceration. Decriminalization has proven a winning commitment both for the community and the ballot box nationally. While Vermont has decriminalized possession of marijuana, there is still progress to be made in more fully committing to addressing substance use disorder as a public health issue. One of the next steps in this effort is for the Legislature to decriminalize other drug offenses and related crimes, such as trespassing, sex work, and writing bad checks.

- **Expand treatment for mental health conditions and substance use disorders:** Mental health and substance use diversion is an effective way to redirect people out of the criminal legal system and into supportive community treatment. Diversion programs have been shown to be effective for people charged with both nonviolent and violent offenses, and help reduce crime.⁶⁴ Vermont currently uses post-guilty plea specialty courts to divert referred, nonviolent cases.⁶⁵ These programs should be reformed to include diversion at earlier phases in the process, like pre-arrest diversion, and eliminate eligibility limitations based on offense. When implemented more effectively, earlier diversion would reduce arrests, encourage voluntary treatment in the community, and save money.⁶⁶ Effective diversion programs coordinate with community services that provide a wide range of substantial, quality wraparound treatments and support for people with disabilities to access housing, employment, and intensive, individualized supports in the community. After an initial investment, diversion programs have the potential of saving jurisdictions large amounts of money.⁶⁷ Upfront services like these are preferable to the cost and decreased efficiency of a post-plea specialty court diversion program.
- **Eliminate cash bail:** Far too often, people who cannot afford their bail will end up in jail for weeks or months as they wait for their day

in court. When this happens, the criminal legal 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.⁶⁸ 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.⁶⁹ Vermont can significantly reduce its rates of pretrial detention by eliminating its use of cash bail for all crimes, rather than only for expungement-eligible misdemeanors.⁷⁰ The fact is that for real bail reform to work in Vermont, pretrial detention needs to be limited to the rare case where a person poses a serious, clear threat to another person.

- **Prosecutorial reform:** Prosecutors are the most powerful actors in the criminal legal system, with the ability to wield the power of the state against an individual to deprive that person of life, liberty, and property. The initial decision of whether to charge someone with 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 faces and eventually serves incarcerated. In addition to the clear need for more transparency via better data collection and reporting by state's attorneys, there should be additional mechanisms for the state and counties to review and assess prosecutors' decisions overall to ensure that they make these decisions appropriately.

For example, prosecutors sometimes wrongfully convict a person, whether through prosecutorial misconduct or the 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. Moreover, they can correct past wrongs by initiating sentence review units to review past cases, identify egregious sentences, and determine whether the office should pursue earlier release.

- **Decarcerate women:** A majority of women arrive to prison with and because of extensive histories of complex trauma. In Vermont, 90 percent of system-involved women have experienced physical and/or sexual abuse.⁷¹ Among incarcerated women, trauma – and its co-occurring mental health conditions and substance use disorders – remains largely or entirely untreated in prison.⁷² The Vermont Legislature should support these women by establishing alternative programs that will address the underlying trauma, substance abuse and mental illness, such as counseling, medical care, and community supports, rather than incarcerating them. Fewer women should be involved in the legal system in the first place, and the Legislature should invest in programs that divert from the system prior to arrest.

Chittenden Regional Correctional Facility is the only prison in Vermont that incarcerates women. There is mounting support to close the prison due to poor conditions, and a call to shift the majority of incarcerated women to alternative programs.⁷³ The Legislature should initiate and fund alternative programs to decarcerate the majority of women in the facility. Similar advocacy in New York City to close Rikers Island led groups to produce recommendations on how their local government could decarcerate all women from that facility.⁷⁴

- **Improve community supervision:** Community supervision is intended to be an alternative to incarceration, a mechanism for early release, and an opportunity to lower recidivism through effective reentry practices. Probation occurs in lieu of serving a sentence in prison, while furlough and parole occur after serving time. Vermont's furlough program, run by the DOC, allows people deemed low-risk in prison to serve time in the community

before completing their prison sentences under supervision and conditions, such as curfews and electronic monitoring. Parole similarly allows people to return to their communities, if the independent parole board determines to grant it, regardless of the DOC's recommendation. Thus, community supervision reform is key to addressing both correctional control in communities and actual prison populations.

Perhaps surprisingly, probation, parole and furlough practices can drive incarceration rates. In Vermont, mandatory supervision and conditions required by the DOC or parole officers and transitional living facility rules – unique to each individual facility – detract released people from complying with other release requirements, such as finding a job. For example, a person tasked with finding and keeping a job may have to regularly meet with their supervision officer, attend counseling sessions several times each week, prepare and attend transitional house dinners, and comply with curfews that dictate which times they must be inside the transitional living home, all of which can conflict with their work schedule. The DOC, parole officers, and transitional living facilities should not compound the stress on newly released people with extreme conditions. Instead, the Legislature should limit unnecessary requirements to supervision and require officers to prioritize the risk-need-responsivity principle, ensuring the level and parameters of supervision are aligned and lead to better public safety and rehabilitation outcomes.

- **Reduce probation and parole revocations:** Too often, people in Vermont are revoked from supervision and sent to prison for technical violations, not for committing new crimes. The state imposes a system of graduated sanctions for people on probation,⁷⁵ ensuring responses to violations are proportional and encourage successful completion. The Vermont Legislature should expand this system to furlough and parole violations, which allow for

vast discretion to continue or revoke community supervision. Additionally, the Vermont Legislature should prohibit incarceration in all cases of technical violations, rather than offering exceptions, as the system does today. The Legislature should further require appointed counsel at revocation hearings and require the publication of more data on probation and parole revocation decisions and outcomes, to be made available to the public.

Parole revocations for technical violations are often due to physical or mental disabilities. Parole and probation officers are required to provide reasonable accommodations so that parolees and probationers 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 significantly reduce the number of technical violations.

Reducing Time Served

Reducing the amount of time people serve can lead to hundreds fewer people in Vermont's prisons. Here's how:

- **Sentencing reform – general:** More than 200 percent of prison growth nationwide is attributable to excessive criminal sentences.⁷⁶ While overly harsh sentences have greatly increased incarceration,⁷⁷ they do not make society safer and are actually linked to an increase in recidivism.⁷⁸ These sentencing trends have resulted in overcrowded facilities and state fiscal burdens. All this despite increasing evidence that large-scale incarceration is not an effective means of achieving public safety – and in fact is diminishing in effectiveness on crime control, including for more serious crimes.⁷⁹

The Vermont Legislature has recently reestablished a sentencing commission to overhaul its sentencing laws. This commission

should review both the use of incarceration and the length of incarceration imposed for all offenses with the goal of using incarceration as a last resort. The state should eliminate laws that mandate increased prison time, shorten sentencing ranges broadly, cap all sentences with a maximum of 20 years, raise the Vermont monetary felony threshold to at least \$1,000 to match other New England states,⁸⁰ and ensure all reforms are applied retroactively so those already serving harsh sentences for the same offenses may seek similar relief.

- **Sentencing reform — enhancements:** The Legislature can also limit the circumstances and the severity of Vermont’s habitual offender enhancement, in which the presence of prior felonies can both substantially increase the sentencing range of already lengthy sentences and delay initial parole eligibility.
- **Furlough and parole release:** Improving release policies and practices to ensure that eligible people are paroled and furloughed quickly is another key way to reduce the amount of time people spend in prison. Based in part on its lack of presumptive parole policies, discouragement in law for subjective denials of parole, and a meaningful appeals process, a 2019 Prison Policy Initiative report that ranked states’ parole processes awarded a D+ to Vermont.⁸¹ The Legislature should act swiftly to pass laws that would presume parole unless the board can articulate important reasons to deny an individual, ban subjective denials, and establish an appeals process to board decisions.

Moreover, in Vermont, more than half of the incarcerated population is held past their minimum release date, many of them for “lack of adequate housing”⁸² — having housing is one of the requirements for release.⁸³ Currently, Vermont requires some people eligible for release to arrange their own DOC-approved housing from inside prison, presenting those eligible for release with a series of barriers they are not well-equipped to handle. Even if a person seeking release is able to secure that housing, the

corrections officials exercise too much discretion in approving or denying housing. There is also a shortage of DOC-approved transitional living facilities. The Legislature should limit the discretion of the DOC and require officials to examine the reasons that incarcerated people are not released on their minimum release dates, including people imprisoned for violent crimes, with particular attention to any policies that create barriers for those who are eligible seeking release. Lawmakers should pass parole reform or change those policies to successfully release those people back to society and their families. The Legislature should also fund more transitional living facilities to accommodate those eligible for release.

- **Compassionate release:** In 2018, Vermont passed a law to allow medical parole of people who are seriously ill, acknowledging that those imprisoned with health problems belong with their families, and that the cost of medical care to the state is extraordinarily high in such situations.⁸⁴ The Vermont Legislature should expand access to compassionate release from prison beyond these circumstances. The state’s prison population is rapidly aging, in part due to the state’s already long sentences and habitual offender law. Keeping aging people incarcerated significantly taxes prison resources. Studies have shown that incarcerating an older (50 and above) person costs double what it costs to incarcerate a younger person.⁸⁵ What’s more, keeping older people behind bars does not serve the goal of incapacitation, particularly as studies have clearly shown that as people age, their propensity to commit crime significantly declines.⁸⁶ There is also clear evidence showing that older persons have much lower rates of recidivism than their younger counterparts.⁸⁷

Challenging Racism in the Criminal Legal System

Reducing the number of people who are imprisoned in Vermont will not on its own significantly reduce racial disparities in the prison system. While some data is available on racial disparities at different steps within the criminal legal system, the Legislature should pass the language found in H.284 of 2019 to mandate data reporting on racial disparities systemwide in a place and format that is easily accessible, complete, and easy to read. Having data available from the DOC, courts, prosecutors, and police in an accessible format will help better identify and remedy the causes of racial disparity that plague Vermont’s criminal legal system.

People of color (especially Black and Latinx 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. In Vermont, Black and Latinx drivers are up to 3.9 times more likely to be pulled over while driving than white people.⁸⁸ Black and Latinx people are also more likely to be searched as the result of a traffic stop, but only half as likely to be caught with illegal contraband as their white counterparts.⁸⁹ In 2017, the rate at which Black adults entered correctional facilities in Vermont was more than seven times higher than the rate for white adults.⁹⁰ This imbalance cannot be accounted for by disparate involvement in illegal activity, and it grows at each stage in the justice system, beginning with initial law enforcement contact and increasing at subsequent stages, such as pretrial detention, conviction, sentencing, and post-release opportunity.⁹¹ 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 solely by 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,

“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.”¹⁰³

— From *The New Jim Crow*, Michelle Alexander

and judges that contribute greatly to the racial disparities that plague the prison system.

New Jersey, for example, is often heralded as one of the most successful examples of reversing mass incarceration, passing justice reforms that led to a 26 percent decline in the state prison population between 1999 and 2012.⁹² 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.⁹³

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

Some examples include:

- Ending overpolicing in communities of color
- Evaluating prosecutors’ charging and plea bargaining practices to identify and eliminate bias
- Investing in diversion/alternatives to detention in communities of color

- Reducing the use of pretrial detention and eliminating wealth-based incarceration
- Ending sentencing enhancements based on location (e.g., drug-free school zones)
- Reducing exposure to reincarceration due to revocation from supervision
- Requiring racial impact statements before any new criminal law or regulation is passed and requiring legislation to proactively rectify any potential disparities that may result from new laws or rules
- Eliminating discriminatory gang sentencing enhancements that disproportionately target people of color
- Addressing any potential racial bias in risk assessment instruments used to assist decision-making in the criminal legal 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 processes 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 legal system are two to six times that of the general population.⁹⁴ In particular, people with psychiatric disabilities are dramatically overrepresented in jails and prisons across the country.⁹⁵

- People showing signs of mental illness are twice as likely to be arrested as people without mental illness for the same behavior.⁹⁶
- People with mental illness are sentenced to prison terms that are, on average, 12 percent longer than other people in prison.⁹⁷
- 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.⁹⁸

Vermont is no exception to these trends. Attorney General T.J. Donovan has acknowledged that people with mental health conditions are overrepresented in the state’s criminal legal system, estimating half the people served annually by pretrial services have mental health needs.⁹⁹

The same is true of people with substance use disorders. The state has reported that there were 761 people behind bars on Medication Assisted Treatment in May 2019, up significantly since the Legislature approved Act 176 in 2018 to bolster the administration of buprenorphine and methadone behind bars.¹⁰⁰

The fact that people with mental illness are arrested more frequently, stay incarcerated longer, and return to prisons faster is not due to any inherent criminality related to psychiatric conditions. 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.

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Prosecutors: They make decisions on when to prosecute an arrest, what charges to bring, and which plea deals to offer and accept, whether to divert people to treatment programs (for example, substance abuse or mental health programs), and whether to seek enhancements that greatly increase the length of sentences. They can voluntarily provide transparent, available, and easy-to-understand information to the public about how they resolve the cases they deal with, including race of the defendants. Moreover, they can correct past wrongs by initiating sentence review units to review past cases, identify egregious sentences, and determine whether the office should pursue earlier release.

Police: They are generally the first point of contact with the criminal legal system. The practices that police employ in communities can shape the public's view of and trust in that system. Police can decide whether or not to arrest people and how much force to use during encounters with the public. Police departments can also participate in diversion programs, which enable officers to divert people into community-based intervention programs rather than into the criminal 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.

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

Department of Corrections: It has the authority to grant furlough to people so they serve the remainder of their sentence in their community, and determines the conditions of furlough release for each individual. DOC staff should be trained to better recognize when release is appropriate and how extreme conditions of release drive people back into the system. Moreover, the DOC is responsible for providing programming in prison, and should ensure that programming is both robust and accessible to everyone.

Parole Board: They decide when to allow people to leave prison. If the Parole Board is trained to consider and accommodate disability issues, they may recognize and release more people who have disciplinary issues in their records that are due to a lack of accommodations for their disabilities.

Strategies to reduce disability disparities within the criminal legal system 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 substance use disorder.
 - 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.¹⁰¹

- 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 conditions and substance use disorders 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 legal system
- Shifting funding away from law enforcement and corrections into supportive housing, intensive case management, schools, substance abuse and mental health treatment, community organizations, job creation, and other social service providers

Endnotes

- 1 Ashley Nellis, *The Color of Justice: Racial and Ethnic Disparity in State Prisons* (Washington, D.C.: Sentencing Project, 2016), <https://www.sentencingproject.org/wp-content/uploads/2016/06/The-Color-of-Justice-Racial-and-Ethnic-Disparity-in-State-Prisons.pdf>.
- 2 Vermont has a unified correctional system in which all facilities, including both prisons and jails, are run by the Vermont Department of Corrections. In this Blueprint, “incarceration” refers to all people incarcerated under the jurisdiction of the Vermont Department of Corrections, including both pretrial and sentenced populations, as well as people incarcerated in state-run facilities and under private contract.
- 3 The Justice Reinvestment Initiative is a data-driven approach to state criminal justice reform that seeks to control corrections costs and reinvest savings in practices demonstrated to improve safety; The Council of State Governments Justice Center, *Justice Reinvestment State Brief: Vermont* (2012), https://csgjusticecenter.org/wp-content/uploads/2012/12/Vermont_State_Brief.pdf.
- 4 Bureau of Justice Statistics (BJS), Correctional Statistics Analysis Tool; Jennifer Bronson and E. Ann Carson, *Prisoners in 2017* (BJS, April 2019), <https://www.bjs.gov/content/pub/pdf/p17.pdf>.
- 5 Michael Touchette, *DOC Updates June 2019* (June 2019), <https://legislature.vermont.gov/Documents/2020/WorkGroups/Justice%20Oversight/DOC/W%20Michael%20Touchette%20DOC%20Update%206-20-2019.pdf>.
- 6 Urban Institute analysis of U.S. Census Bureau, “Annual Estimates of the Resident Population by Sex, Age, Race, and Hispanic Origin for the United States and States,” 2017 population estimates; Vermont Department of Corrections, *Report to the Vermont Legislature: Act 164 Section 6: Incarceration Rates of People of Color* (October 2018), <https://legislature.vermont.gov/assets/Legislative-Reports/Act-164-Section-6-Incarceration-Rates-of-People-of-Color.pdf>.
- 7 Stephanie Seguino and Nancy Brooks, *A Deeper Dive Into Racial Disparities in Policing in Vermont* (March 2018), http://mediad.publicbroadcasting.net/p/vpr/files/201803/a_deeper_dive_into_racial_disparities_in_policing_in_vermont_3.26_final.pdf.
- 8 Vermont Department of Corrections, *Inmate Population Statistics* (September 2018).
- 9 *Id.*
- 10 Vermont Statute 13 § 608(b)(c).
- 11 Vermont Statute 18 § 4231-4238; 4249-4253.
- 12 American Civil Liberties Union of Vermont, letter to the Vermont Sentencing Commission (November 26, 2018).
- 13 Jennifer Bronson and E. Ann Carson, *Prisoners in 2017* (BJS, April 2019), <https://www.bjs.gov/content/pub/pdf/p17.pdf>. Note: this figure includes both technical violations of supervision and violations due to new convictions while on community supervision.
- 14 Vermont Department of Corrections, *Population Analysis* (January 2019).
- 15 Vermont Department of Corrections, MAT graphs presented at Joint Legislative Justice Oversight Committee meeting (June 2019), <https://legislature.vermont.gov/Documents/2020/WorkGroups/Justice%20Oversight/DOC/W%20Annie%20Ramniceanu%20MAT%20graphs%206-20-2019.pdf>.
- 16 Fiscal Year 2020 Appropriations Act, H.542 (June 18, 2019).
- 17 The Council of State Governments Justice Center, *Justice Reinvestment State Brief: Vermont* (2012), https://csgjusticecenter.org/wp-content/uploads/2012/12/Vermont_State_Brief.pdf.
- 18 An Act Relating to Effective Strategies to Reduce Criminal Recidivism, Vermont SB 108 (May 20, 2011).
- 19 BJS, Correctional Statistics Analysis Tool; Jennifer Bronson and E. Ann Carson, *Prisoners in 2017* (BJS, April 2019), <https://www.bjs.gov/content/pub/pdf/p17.pdf>.
- 20 BJS, Correctional Statistics Analysis Tool; Jennifer Bronson and E. Ann Carson, *Prisoners in 2017* (BJS, April 2019), <https://www.bjs.gov/content/pub/pdf/p17.pdf>.
- 21 Michael Touchette, *DOC Updates June 2019* (June 2019), <https://legislature.vermont.gov/Documents/2020/WorkGroups/Justice%20Oversight/DOC/W%20Michael%20Touchette%20DOC%20Update%206-20-2019.pdf>.
- 22 Danielle Kaeble and Mary Cowhig, *Correctional Populations in the United States, 2016* (BJS, April 2018), <https://www.bjs.gov/content/pub/pdf/cpus16.pdf>.
- 23 Colin Meyn and Alan J. Keays, “Vermont’s Out-of-State Prisoners Settling in to Mississippi Facility,” *VT Digger* (November 30, 2018), <https://vtdigger.org/2018/11/30/vermonts-state-prisoners-settling-mississippi-facility>.
- 24 Colin Meyn and Anne Galloway, “Vermont to Exit Prisoner Contract With Camp Hill Due to ‘Severe’ Conditions,” *VT Digger* (February 22, 2018), <https://vtdigger.org/2018/02/22/vermont-exit-prisoner-contract-camp-hill-due-severe-conditions>.
- 25 “Inmates Housed Out of State,” Vermont Department of Corrections, <https://doc.vermont.gov/information-for-inmate-families-and-friends/inmates-housed-out-of-state>.
- 26 Mark Davis, “Bennington Locks Up More People Than Any Other Vermont County,” *Seven Days* (March 9, 2016), <https://www.sevendaysvt.com/vermont/bennington-locks-up-more-people-than-any-other-vermont-county/Content?oid=3221641>.
- 27 Admissions data reflects the number of people entering Vermont correctional facilities in a given year, while the total incarcerated population refers to the total number of people incarcerated under the Vermont Department of Corrections’ jurisdiction at a given point in time.
- 28 Jennifer Bronson and E. Ann Carson, *Prisoners in 2017* (BJS, April 2019), <https://www.bjs.gov/content/pub/pdf/p17.pdf>. Note: This figure includes both technical violations of supervision as well as violations due to new convictions while on community supervision.
- 29 This recidivism rate measures people who return to correctional facilities for at least 90 days within three years of being released after serving sentences of at least one year.
- 30 Vermont Department of Corrections, *FY 2020 Budget Presentation* (January 2019), <https://doc.vermont.gov/about/reports/department-of-corrections-budget-documents/doc-fy20-budget-presentation>.
- 31 Vermont Department of Corrections, *Population Analysis* (January 2019).
- 32 Monica Weeber, *Detention Data* (memo to the House Committee on Corrections and Institutions, February 2018), <https://legislature.vermont.gov/Documents/2018/WorkGroups/House%20Corrections%20and%20Institutions/Dept.%20of%20Corrections/W%20Lisa%20Menard%20and%20Monica%20Weeber%20Detention%20Report%202-7-2018.pdf>.
- 33 Vermont Department of Corrections, *Inmate Population Statistics* (September 2018).
- 34 Vermont Statute 13 § 11.
- 35 Vermont Statute 13 § 608(b)(c).

- 36 Vermont Statute 18 § 4231-4238; 4249-4253. financial-logistical-issues-delay-prison-mental-health-beds.
- 37 Vermont Statute 13 § 2405.
- 38 American Civil Liberties Union of Vermont, letter to the Vermont Sentencing Commission (November 26, 2018).
- 39 Urban Institute analysis of U.S. Census Bureau, “Annual Estimates of the Resident Population by Sex, Age, Race, and Hispanic Origin for the United States and States,” 2017 population estimates; Vermont Department of Corrections, *Report to the Vermont Legislature: Act 164 Section 6: Incarceration Rates of People of Color* (October 2018), <https://legislature.vermont.gov/assets/Legislative-Reports/Act-164-Section-6-Incarceration-Rates-of-People-of-Color.pdf>.
- 40 Ashley Nellis, *The Color of Justice: Racial and Ethnic Disparity in State Prisons* (Washington, D.C.: Sentencing Project, 2016), <https://www.sentencingproject.org/wp-content/uploads/2016/06/The-Color-of-Justice-Racial-and-Ethnic-Disparity-in-State-Prisons.pdf>.
- 41 Stephanie Seguino and Nancy Brooks, *A Deeper Dive Into Racial Disparities in Policing in Vermont* (March 2018), http://mediad.publicbroadcasting.net/p/vpr/files/201803/a_deeper_dive_into_racial_disparities_in_policing_in_vermont_3.26_final.pdf.
- 42 BJS, Corrections Statistical Analysis Center.
- 43 Vermont Department of Corrections, *Population Analysis* (January 2019).
- 44 See Nancy Wolff, B. Christopher Frueh, Jing Shi, Douglas Gerardi, Nicole Fabrikant, and Brooke E. Schumann, “Trauma Exposure and Mental Health Characteristics of Incarcerated Females Self-Referred to Specialty PTSD Treatment,” *Psychiatric Services* 62, no. 8 (August 2011): 954-958, https://ps.psychiatryonline.org/doi/pdf/10.1176/ps.62.8.pss6208_0954.
- 45 Vermont Agency of Human Services, *Report to the Vermont Legislature: The Rights of Children of Arrested and Incarcerated Parents* (January 2015), <http://legislature.vermont.gov/assets/Legislative-Reports/Final-Act-168-Report-1-14-15.pdf>.
- 46 American Civil Liberties Union, *At America’s Expense: The Mass Incarceration of the Elderly* (June 2012), https://www.aclu.org/files/assets/elderlyprisonreport_20120613_1.pdf; Human Rights Watch, *Old Behind Bars: The Aging Prison Population in the United States* (2012), https://www.hrw.org/sites/default/files/reports/usprisons0112webwcover_0.pdf.
- 47 Vermont Department of Corrections, *Overview* (January 2019), <https://legislature.vermont.gov/Documents/2020/WorkGroups/House%20Corrections%20and%20Institutions/Department%20of%20Corrections/W%20Monica%20Weeber%20Department%20of%20Corrections%20Overview%201-22-2019.pdf>.
- 48 Elizabeth Murray, “Why Vermont Inmates Eligible for Medical Release Often Remain Behind Bars,” *Burlington Free Press* (November 20, 2018), <https://www.burlingtonfreepress.com/story/news/local/2018/11/20/what-does-vermont-do-aging-prisoners-sex-offenders/2003409002>; Kathryn Flagg, “Vermont’s Prisons Struggle to Accommodate an Aging Population,” *Seven Days* (January 22, 2014), <https://www.sevendaysvt.com/vermont/vermonts-prisons-struggle-to-accommodate-an-aging-population/Content?oid=2296234>.
- 49 Vermont Agency of Human Services, *Report to the Vermont Legislature: The Rights of Children of Arrested and Incarcerated Parents* (January 2015), <http://legislature.vermont.gov/assets/Legislative-Reports/Final-Act-168-Report-1-14-15.pdf>.
- 50 *Id.*
- 51 Vermont Human Rights Commission, *Newsletter* (July 2016), <https://hrc.vermont.gov/sites/hrc/files/Newsletters/Newsletter%20July%202016%20klr%20edits.pdf>.
- 52 Mike Fahr, “Financial, Logistical Issues Delay Mental Health Beds in Vermont Prisons,” *VTDigger* (February 25, 2019), <https://vtdigger.org/2019/02/25/>
- 53 Vermont Department of Corrections, MAT graphs presented at Joint Legislative Justice Oversight Committee meeting (June 2019), <https://legislature.vermont.gov/Documents/2020/WorkGroups/Justice%20Oversight/DOC/W%20Annie%20Ramniceanu%20MAT%20graphs%206-20-2019.pdf>.
- 54 National Association of State Budget Officers, *State Expenditure Report series*, <https://www.nasbo.org/reports-data/state-expenditure-report/state-expenditure-archives>.
- 55 Vermont Department of Corrections, *FY 2020 Budget Presentation* (January 2019), <https://doc.vermont.gov/about/reports/department-of-corrections-budget-documents/doc-fy20-budget-presentation>. Note: this figure includes funding sources such as the General Fund, federal funding streams and transportation funds among others.
- 56 Office of Vermont State Auditor, *Report to the Governor and the General Assembly: State and Local Spending on Public Safety* (January 2017), <https://auditor.vermont.gov/sites/auditor/files/documents/State%20%26%20Local%20Spending%20on%20Public%20Safety%20Report.pdf>.
- 57 Danielle Sered, *Accounting for Violence: How to Increase Safety and Break Our Failed Reliance on Mass Incarceration* (New York: Vera Institute of Justice, 2017), https://storage.googleapis.com/vera-web-assets/downloads/Publications/accounting-for-violence/legacy_downloads/accounting-for-violence.pdf.
- 58 “Mission & Guiding Principles,” Vermont Court Diversion, <http://vtcourtdiversion.org/about/mission-guiding-principles>.
- 59 “Court Diversion,” Office of the Vermont Attorney General, <https://ago.vermont.gov/court-diversion>.
- 60 Danielle Sered, *Accounting for Violence: How to Increase Safety and Break Our Failed Reliance on Mass Incarceration* (New York: Vera Institute of Justice, 2017), https://storage.googleapis.com/vera-web-assets/downloads/Publications/accounting-for-violence/legacy_downloads/accounting-for-violence.pdf.
- 61 Caroline M. Angel, Lawrence W. Sherman, Heather Strang, Barak Ariel, Sarah Bennett, Nova Inkpen, Anne Keane, and Therese S. Richmond, “Short-Term Effects of Restorative Justice Conferences on Post-Traumatic Stress Symptoms Among Robbery and Burglary Victims: A Randomized Controlled Trial,” *Journal of Experimental Criminology* 10, no. 3 (September 2014): 291-307, <https://doi.org/10.1007/s11292-014-9200-0>.
- 62 Vermont Statute 3 § 164.
- 63 “Court Diversion,” Office of the Vermont Attorney General, <https://ago.vermont.gov/court-diversion>.
- 64 Henry J. Steadman and Michelle Naples, “Assessing the Effectiveness of Jail Diversion Programs for Persons with Serious Mental Illness and Co-Occurring Substance Use Disorders,” *Behavioral Sciences & the Law* 23, no. 2 (March/April 2005): 163-170, <https://doi.org/10.1002/bsl.640>; Gary A. Zarkin, Alexander J. Cowell, Katherine A. Hicks, Michael J. Mills, Steven Belenko, Laura J. Dunlap, and Vincent Keyes, “Lifetime Benefits and Costs of Diverting Substance-Abusing Offenders From State Prison,” *Crime & Delinquency* 61, no. 6 (November 2012): 829-850, <https://journals.sagepub.com/doi/abs/10.1177/0011128712461904>.
- 65 “Chittenden Adult Drug Treatment and Mental Health Court Dockets,” Vermont Judiciary, <https://www.vermontjudiciary.org/programs-and-services/treatment-and-specialty-dockets/chittenden-adult-treatment>.
- 66 Alexander J. Cowell, Nahama Broner, and Randolph Dupont, “The Cost Effectiveness of Criminal Justice Diversion Programs for People with Serious Mental Illness Co-Occurring With Substance Abuse,” *Journal of Contemporary Criminal Justice* 20, no. 3 (August 2004): 292-315, <https://journals.sagepub.com/doi/10.1177/1043986204266892>.
- 67 Henry J. Steadman, Lisa Callahan, Pamela Clark Robbins, Roumen Vesselinov, Thomas G. McGuire, and Joseph P. Morrissey, “Criminal Justice and Behavioral Health Care Costs of Mental Health Court

- Participants: A Six-Year Study,” *Psychiatric Services* 65, no. 9 (September 2014): 1100-1104, <https://doi.org/10.1176/appi.ps.201300375>.
- 68 Meghan Sacks and Alissa R. Ackerman, “Pretrial Detention and Guilty Pleas: If They Cannot Afford Bail They Must Be Guilty,” *Criminal Justice Studies* 25, no. 3 (July 2012): 265-278, <https://doi.org/10.1080/1478601X.2012.705536>.
- 69 Evidence has shown that pretrial detention puts the defense at a disadvantage and weakens a defendant’s bargaining position during plea negotiations. Evidence has also indicated that a person is more likely to plead guilty to a crime if she is detained pretrial. See Will Dobbie, Jacob Goldin, and Crystal S. Yang, “The Effects of Pretrial Detention on Conviction, Future Crime, and Employment: Evidence from Randomly Assigned Judges,” *American Economic Review* 108, no. 2 (February 2018): 201-240, <https://www.aeaweb.org/articles?id=10.1257/aer.20161503>; Juleyka Lantigua-Williams, “Why Poor, Low-Level Offenders Often Plead to Worse Crimes,” *The Atlantic* (July 2016), <https://www.theatlantic.com/politics/archive/2016/07/why-pretrial-jail-can-mean-pleading-to-worse-crimes/491975>.
- 70 An Act Relating to Bail Reform, Vermont H. 728 (May 22, 2018).
- 71 Testimony of James Lyall, executive director, ACLU of Vermont, to the Senate Committee on Institutions Hearing on H.543 (2019).
- 72 *Id.*
- 73 See Bill Schubart, “It’s Time to Close the Women’s Prison,” *VT Digger* (March 22, 2019), <https://vtdigger.org/2019/03/22/bill-schubart-time-close-womens-prison>.
- 74 Vera Institute of Justice, *A New Path to Justice: Getting Women Off Rikers Island* (November 2018), https://storage.googleapis.com/vera-web-assets/downloads/Publications/a-new-path-to-justice-getting-women-off-rikers-island/legacy_downloads/A-New-Path-to-Justice-v.5.pdf.
- 75 Vermont Department of Corrections, *Graduated Sanctions for Violations of Probation* (2018), <https://doc.vermont.gov/about/policies/active-directives-rules-memos-2015-and-newer/rules/graduated-sanctions-effective-7-5-18>.
- 76 “Criminal Justice Facts,” Sentencing Project, <https://www.sentencingproject.org/criminal-justice-facts>.
- 77 *Id.*
- 78 See David Roodman, *The Impacts of Incarceration on Crime* (Open Philanthropy Project, September 2017), https://www.openphilanthropy.org/files/Focus_Areas/Criminal_Justice_Reform/The_impacts_of_incarceration_on_crime_10.pdf; The Urban Institute, *A Matter of Time: The Causes and Consequences of Rising Time Served in America’s Prisons* (July 2017), <https://apps-staging.urban.org/features/long-prison-terms/intro.html>.
- 79 See Oliver Roeder, Lauren-Brooke Eisen, and Julia Bowling, *What Caused the Crime Decline?* (Brennan Center for Justice, 2015), https://www.brennancenter.org/sites/default/files/publications/What_Caused_The_Crime_Decline.pdf.
- 80 American Civil Liberties Union of Vermont, letter to the Vermont Sentencing Commission (November 26, 2018).
- 81 Jorge Renaud, “Grading the Parole Release Systems of All 50 States,” Prison Policy Initiative (February 26, 2019), https://www.prisonpolicy.org/reports/grading_parole.html.
- 82 Vermont Department of Corrections, 2018 data provided to the Legislature.
- 83 Vermont Statute 28 § 808(f).
- 84 Vermont Statute 28 § 502a.
- 85 B. Jaye Anno, Camelia Graham, James E. Lawrence, and Ronald Shansky, *Correctional Health Care: Addressing the Needs of Elderly, Chronically Ill, and Terminally Ill Inmates* (U.S. Department of Justice, National Institute of Corrections, 2004), <https://info.nicic.gov/nicrp/system/files/018735.pdf>.
- 86 Travis Hirschi and Michael Gottfredson, “Age and the Explanation of Crime,” *American Journal of Sociology* 89, no. 3. (November 1983), <https://www.jstor.org/stable/2779005>.
- 87 American Civil Liberties Union, *At America’s Expense: The Mass Incarceration of the Elderly* (June 2012), https://www.aclu.org/files/assets/elderlyprisonreport_20120613_1.pdf.
- 88 Stephanie Seguino and Nancy Brooks, *A Deeper Dive Into Racial Disparities in Policing in Vermont* (March 2018), http://mediad.publicbroadcasting.net/p/vpr/files/201803/a_deeper_dive_into_racial_disparities_in_policing_in_vermont_3.26_final.pdf.
- 89 Stephanie Seguino and Nancy Brooks, *A Deeper Dive Into Racial Disparities in Policing in Vermont* (March 2018), http://mediad.publicbroadcasting.net/p/vpr/files/201803/a_deeper_dive_into_racial_disparities_in_policing_in_vermont_3.26_final.pdf.
- 90 Urban Institute analysis of U.S. Census Bureau, “Annual Estimates of the Resident Population by Sex, Age, Race, and Hispanic Origin for the United States and States,” 2017 population estimates; Vermont Department of Corrections, *Report to the Vermont Legislature: Act 164 Section 6: Incarceration Rates of People of Color* (October 2018), <https://legislature.vermont.gov/assets/Legislative-Reports/Act-164-Section-6-Incarceration-Rates-of-People-of-Color.pdf>.
- 91 See, for example, Katherine B. Spencer, Amanda K. Charbonneau, and Jack Glaser, “Implicit Bias and Policing,” *Social and Personality Psychology Compass* 10, no. 1 (2016): 50–63, <https://doi.org/10.1111/spc3.12210>; Besiki Kutateladze, Vanessa Lynn, and Edward Liang, *Do Race and Ethnicity Matter in Prosecution? A Review of Empirical Studies* (New York: Vera Institute of Justice, June 2012), https://storage.googleapis.com/vera-web-assets/downloads/Publications/do-race-and-ethnicity-matter-in-prosecution-a-review-of-empirical-studies/legacy_downloads/race-and-ethnicity-in-prosecution-first-edition.pdf; Tushar Kansal, *Racial Disparity in Sentencing: A Review of the Literature*, ed. Marc Mauer (Washington, D.C.: Sentencing Project, January 2005), <https://www.opensocietyfoundations.org/sites/default/files/disparity.pdf>; Michael Pinard, “Collateral Consequences of Criminal Convictions: Confronting Issues of Race and Dignity,” *New York University Law Review* 85, no. 2 (2010): 457–534, <https://www.nyulawreview.org/wp-content/uploads/2018/08/NYULawReview-85-2-Pinard.pdf>; Lisa Stolzenberg, Stewart J. D’Alessio, and David Eitle, “Race and Cumulative Discrimination in the Prosecution of Criminal Defendants,” *Race and Justice* 3, no. 4 (2013): 275, <http://raj.sagepub.com/content/3/4/275.abstract>.
- 92 Marc Mauer and Nazgol Ghandnoosh, *Fewer Prisoners, Less Crime: A Tale of Three States* (Washington, D.C.: Sentencing Project, 2015), <https://sentencingproject.org/wp-content/uploads/2015/11/Fewer-Prisoners-Less-Crime-A-Tale-of-Three-States.pdf>.
- 93 Ashley Nellis, *The Color of Justice: Racial and Ethnic Disparity in State Prisons* (Washington, D.C.: Sentencing Project, 2016), <https://www.sentencingproject.org/wp-content/uploads/2016/06/The-Color-of-Justice-Racial-and-Ethnic-Disparity-in-State-Prisons.pdf>.
- 94 Doris J. James and Lauren E. Glaze, *Special Report: Mental Health Problems of Prison and Jail Inmates* (BJS, September 2006), <https://www.bjs.gov/content/pub/pdf/mhppji.pdf>; Jennifer Bronson and Marcus Berzofsky, *Special Report: Indicators of Mental Health Problems Reported by Prisoners and Jail Inmates, 2011-12* (BJS, June 2017), <https://www.bjs.gov/content/pub/pdf/imhprpji1112.pdf>; Jennifer Bronson, Laura M. Maruschak, and Marcus Berzofsky, *Special Report: Disabilities Among Prison and Jail Inmates, 2011-12* (BJS, December 2015), <https://www.bjs.gov/content/pub/pdf/dpji1112.pdf>.
- 95 Doris J. James and Lauren E. Glaze, *Special Report: Mental Health Problems of Prison and Jail Inmates* (BJS, September 2006), <https://www.bjs.gov/content/pub/pdf/mhppji.pdf>; Jennifer Bronson and Marcus Berzofsky, *Special Report: Indicators of Mental Health Problems Reported by Prisoners and Jail Inmates, 2011-12* (BJS, June 2017), <https://www.bjs.gov/content/pub/pdf/imhprpji1112.pdf>.
- 96 Linda A. Teplin, *Keeping the Peace: Police Discretion and Mentally Ill Persons* (National Institute of Justice Journal, July 2000), <https://www.ncjrs.gov/pdffiles1/jr000244c.pdf>.

- 97 Stanford Justice Advocacy Project, *The Prevalence and Severity of Mental Illness Among California Prisoners on the Rise* (2017), <https://law.stanford.edu/publications/the-prevalence-and-severity-of-mental-illness-among-california-prisoners-on-the-rise/>.
- 98 *Id.*
- 99 Liz Strzepa, "Vermont Attorneys Call for Criminal Justice, Mental Health Reform," NBC5 (July 18, 2019), <https://www.mynbc5.com/article/vermont-attorneys-call-for-criminal-justice-mental-health-reform/28439846>.
- 100 Vermont Department of Corrections, MAT graphs presented at Joint Legislative Justice Oversight Committee meeting (June 2019), <https://legislature.vermont.gov/Documents/2020/WorkGroups/Justice%20oversight/DOC/W~Annie%20Ramniceanu~MAT%20graphs~6-20-2019.pdf>; Mike Faher, "More Than 500 Vermont Inmates Receiving Addiction Treatment," VTDigger (January 23, 2019), <https://vtdigger.org/2019/01/23/500-vermont-inmates-receiving-addiction-treatment>.
- 101 John Buntin, "Miami's Model for Decriminalizing Mental Illness in America," *Governing* (August 2015), <http://www.governing.com/topics/public-justice-safety/gov-miami-mental-health-jail.html>; Michael T. Compton, Roger Bakeman, Beth Broussard, Dana Hankerson-Dyson, Lethesia Husbands, Shaily Krishan, Tarianna Stewart-Hutto, Barbara D'Orio, Janet R. Oliva, Nancy J. Thompson, and Amy Watson, "The Police-Based Crisis Intervention Team (CIT) Model: II. Effects on Level of Force and Resolution, Referral, and Arrest," *Psychiatric Services* 65, no. 4 (2014), <https://doi.org/10.1176/appi.ps.201300108>; Michael T. Compton, Masuma Bahora, Amy C. Watson, and Janet R. Oliva, "A Comprehensive Review of Extant Research on Crisis Intervention Team (CIT) Programs," *Journal of American Academy of Psychiatry Law* 36, no. 1 (2008), <http://jaapl.org/content/36/1/47>.
- 102 "Chittenden Adult Drug Treatment and Mental Health Court Dockets," Vermont Judiciary, <https://www.vermontjudiciary.org/programs-and-services/treatment-and-specialty-dockets/chittenden-adult-treatment>.
- 103 Alexander, Michelle. *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*. New York: [Jackson, Tenn.]: New Press; distributed by Perseus Distribution, 2010. Print.

