

A Presidential Roadmap to Ending Mass Incarceration

Invest in People, not Prisons

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Contents

The Brief Case For Ending Mass Incarceration	4
How To Use This Roadmap	6
Policing.....	7
Prosecution.....	9
Indigent Defense.....	11
Pretrial Process	13
The War On Drugs	15
Sentencing	17
Probation and Parole Supervision	19
Release.....	21
Clemency.....	23
Re-Entry.....	24
Americans Overwhelmingly Support Reform.....	26

The ACLU

For nearly 100 years, the ACLU has been our nation's guardian of liberty, working in courts, legislatures, and communities to defend and preserve the individual rights and liberties that the Constitution and the laws of the United States guarantee everyone in this country.

Whether it's achieving full equality for LGBT people, establishing new privacy protections for our digital age of widespread government surveillance, ending mass incarceration, or preserving the right to vote or the right to have an abortion, the ACLU takes up the toughest civil liberties issues to defend all people from government abuse and overreach.

With more than 8 million members, activists, and supporters, the ACLU is a nationwide organization that fights tirelessly in all 50 states, Puerto Rico, and Washington, D.C., to safeguard everyone's rights.

Rights For All

Rights for All is a campaign by the American Civil Liberties Union to get 2020 presidential candidates on the record on civil liberties and civil rights.

If we can raise the volume on key issues like criminal justice reform, immigrants' rights, voting rights and reproductive freedom with presidential candidates before the 2020 primaries, we can make sure civil rights and civil liberties are front and center.

Our goal is to move candidates in this Presidential primary to take stronger positions on these issues. The ACLU is a non-partisan organization that believes that voters should be fully informed about the civil liberties' records of candidates before casting a ballot.

Campaign For Smart Justice

The ACLU Campaign for Smart Justice is an unprecedented nationwide movement working in all 50 states for reforms to usher in a new era of justice in America by cutting incarceration in half and challenging racism in the criminal legal system. Smart Justice is fighting in legislatures, the courts, in the voting booth, and in the streets to end mass incarceration.

In 2018 alone, the ACLU mobilized tens of thousands of volunteers and supporters to advance Smart Justice, helping result in the passage of more than 120 new criminal justice reform laws across the country and making decarceration the dispositive issue in numerous state and local elections.

The Brief Case For Ending Mass Incarceration

Background

In the U.S., more than [2.2 million](#) people are locked behind bars on any given day, and people are incarcerated nearly [11 million](#) times over an average year. The U.S. [locks up more people](#), both in absolute numbers and per capita, than any other country. Since the 1970s, sentences have become ever longer, and our prisons and jails have become costly and outdated behemoths that cause more problems than they solve. Blacks and Latinos represent [56 percent](#) of the adult prison population, while only 28 percent of the U.S. general population. Mass incarceration has deepened racial injustice, shattered neighborhoods, and separated families, all without evidence that it has improved public safety.

ACLU Position

Candidates for President should pledge to cut the federal prison population by 50 percent during their presidency, and develop a plan to ensure the same 50 percent reduction in states and counties across the country.

Mass Incarceration's Heavy Toll

The harms of mass incarceration permeate nearly every aspect of American society:

- **An affront to human dignity and civil rights:** It is impossible to incarcerate 2.2 million people without widespread violations of civil rights, including heavy exposure to [violence](#), [solitary confinement](#), [no meaningful rehabilitation](#),

and other dehumanizing and [traumatizing conditions](#). [There are 1,719 state prisons, 109 federal prisons, 1,772 juvenile correctional facilities, 3,163 local jails, and 80 Indian Country jails](#). Filling these facilities encourages over-policing, overcriminalization, and a machine-like criminal legal system that makes a mockery of due process.

- **Fueling racial injustice:** Many aspects of our current system were designed during the Jim Crow-era to protect white supremacy, as Michelle Alexander has documented well in her book *The New Jim Crow*. That legacy drives vast racial injustices. [One out of every three Black boys are incarcerated in their lifetime, as is one in every six Latino boys – compared with one of every 17 white boys](#). [People of color make up 67 percent of the prison population, but only 37 percent of the US population](#).
- **Destabilizing families and communities:** Even a few days of incarceration has severe consequences, especially for people of color: it increases [housing instability and homelessness](#), worsens [educational outcomes](#), causes [medical and mental health problems](#), reduces [earning potential](#), and increases rates of [divorce and family separation](#).
- **Preying on the vulnerable:** An estimated [54 percent](#) of people incarcerated have dealt with drug or alcohol dependency. In addition, people with disabilities, including people with mental health needs who are often also substance dependent, are [incarcerated at rates up to six times higher than the general population](#).

Punishing people who need treatment or accommodation is not only cruel, [it is ineffective](#).

- **Draining public resources:** Taxpayers spend [\\$273 billion annually](#) on the criminal legal system, and up to [\\$87 billion of the Gross Domestic Product is lost annually](#) due to the loss of employment opportunities from incarceration.
- **Counterproductive for public safety:** [There is no causal relationship between increased incarceration and public safety](#). Over the past two decades, [19 states](#) have lowered incarceration and reduced crime rates over the same time periods. Long prison sentences [can actually lead to increased crime](#). While there can be a temporary safety value in incapacitating a small number of people, [the net harms of mass incarceration far outweigh the benefits](#).

A Vision For Reform

We can hold people accountable and ensure public safety while respecting fundamental civil rights. We can create a criminal legal system that keeps communities safe, offers second chances and rehabilitation, treats people fairly, and challenges racism. We can advance a vision of reform that not only replaces the current criminal legal system, but also heals and rebuilds communities most harmed by mass incarceration.

The alternative to mass incarceration means locking people in cages as the very last resort, after exhausting all other options, instead of making it the first option. It means our first instinct should be to prevent and treat, rather than to severely punish, for example, by taking cases the criminal legal system addresses poorly and inhumanely, like those involving mental health needs and substance dependency, and diverting these problems to more effective, humane, and cheaper treatment-based options. It means investing in alternatives to incarceration like community service and social programs proven to prevent crime. It means restoring balance and compassion by holding people accountable for harm while reducing extraordinarily

long and punitive prison sentences, and freeing people still trapped behind bars by the tough-on-crime excesses of the past.

The Solution

Although the vast majority of people are incarcerated in the states, the tough-on-crime rhetoric and policies of past presidents have played a significant role in fueling mass incarceration at every level. Bold leadership from the next president must help bring an end to this shameful era at every point in the system, from the early stages before someone enters into the criminal legal system to the very end.

- **At the federal level,** the next president must take swift executive action to achieve a 50 percent reduction in the federal prison population. For example, the creation of a bold and efficient clemency program and making decarceration and racial justice a top priority when selecting the next Attorney General and other key appointments to posts in the criminal legal system. The next president must also champion bold legislative reforms that would reduce past and current sentences, and end the War on Drugs.
- **At the state and local level,** financial incentives from the federal government contributed to mass incarceration by encouraging states to build more prisons and adopt extremely punitive sentencing practices. It is essential that the next president acknowledge those past failures, and champion a 50 percent reduction to bolster public support for reform within the states. The next president must repair this damage by encouraging states to achieve a 50 percent decarceration goal, including by providing financial incentives and grants and leading states by example with a similar reduction in the federal prison population.

How To Use This Roadmap

There are many safe pathways to cutting the U.S. jail and prison population by half. What is needed from the next U.S. President is a serious commitment and vision to ending mass incarceration. Any candidate can use this Roadmap to chart their own path to a 50 percent reduction.

This Roadmap starts with a brief overview of the case for ending the country's mass incarceration crisis. It then presents ideas for reforms at every point in the criminal legal system. Each section of this Roadmap addresses a different topic, starting at the front-end entry points to the criminal system and working all the way to the back: policing, prosecutors, indigent defense, pretrial, probation, the War on Drugs, sentencing, parole and other release mechanisms, clemency, and re-entry. Finally, it collects the wide-range of public polling and messaging data showing that American voters overwhelmingly support these reforms.

Reforms at the front-end of the system would slow the vast number of people coming into the criminal legal system. Reforms in the middle could reduce the time people spend inside jails and prisons. Back-end reforms, like supporting reentry before and after release, would ensure people are not trapped in an endless cycle of re-incarceration.

Each section begins with a brief overview of the issue and describes why we need reforms. Then the section provides estimates for the potential impact those reforms could have on the daily incarcerated population in the United States. Finally, the section details potential policy reforms in that issue area that would reduce incarceration at both the federal and state level.

The impact of reforms in the criminal legal system is notoriously difficult to estimate for a variety of reasons,

including the paucity of reliable and current data, the wide range of individual decision-makers and factors that influence outcomes, and the complexity of the statistical analysis needed.

In estimating policy impacts in this Roadmap, we endeavor to make the best use of available data to provide potential impact of various policy reforms, often informed heavily by the ACLU's position of what the numerical goal *should be* for policy reforms; for example, reducing the number of people jailed before trial by 95 percent. While these estimates can give candidates a good sense of the potential scale and magnitude of action in any one issue area, a more accurate estimate of actual impact would require actual specific policy details proposed by a candidate followed by a more rigorous statistical analysis.

In addition, it should be noted that there is some overlap in the potential impact for each of these issue areas. For example, there would be a substantial overlap in the populations affected by the following two reforms proposed in this roadmap: the reduction of the number of people jailed for low-level offenses, and a reduction of the number of people with serious mental health issues jailed. While any candidate should consider these overlaps when putting together a plan for reducing incarceration, we have also used conservative estimates to account for this dynamic.

Accomplishing all of the reforms in this Roadmap would almost certainly result in a decrease in incarceration well beyond 50 percent. This Roadmap gives candidates a variety of options to reach the 50 percent goal from which they can choose policy reforms that align with their vision, values, and analysis of political feasibility.

Policing

Why we need Policing Reform

Police policies and actions are instrumental in deciding who gets stopped, searched, arrested, and funneled into the criminal legal system; indeed, the United States' over-incarceration crisis begins at the front-end of the system with officers acting as gatekeepers.

Thus, who police officers target for increased interactions and enforcement vastly impacts who ultimately is incarcerated. Law enforcement agencies routinely monitor, harass, profile, stop, search, question, detain and arrest Black and brown people at rates [completely disproportionate to the general population](#). These racist patterns of policing are now being further entrenched by [predictive policing](#) and other technologies that end up "[tech-washing](#)" existing practices. Further, people experiencing mental health crises all too often receive an armed police response and are detained in the local jail, rather than getting the medical and mental health assistance they actually need from social workers and specialists. Many jurisdictions also have stationed police in schools in a misguided belief that officers will be an effective solution to school-based violence. In fact, however, this practice results in heavy-handed and carceral responses to normal adolescent behavior, fueling the school-to-prison pipeline for Black, Latino, and Native American students and drains resources from counseling and mental health programs that could help prevent violence in the first place.

Impact of Reforms

Police make [more than 10 million arrests](#) each year. Many of these arrests focus on misdemeanors and

infractions - on any given day from 2015 through 2017, [about 230,000 people](#) were in jail for these kinds of offenses. If police reduced misdemeanor and infraction arrests by half, there would be about 115,000 fewer people in jails. Any accompanying reduction in felony arrests would further reduce the jail population. Further, since [26.4 percent](#) of people in jail meet the threshold for recent serious psychological distress (about five times higher than the general U.S. population), cutting this in half would result in nearly 97,000 people avoiding jail. Further, if police were removed from schools, there would be at least 30,000 fewer youth arrests in schools (from [61,800 students](#) now arrested) - dropping to the same level as schools with no police presence.

Solutions

The next President can take federal action to reform policing practices by:

- Reconvening the President's Task Force on 21st Century Policing and incentivize local police departments to adopt Task Force report recommendations
- Appointing an Attorney General that will
 - Enforce the Death in Custody Reporting Act and ensure that data on police and community encounters is collected by the federal government
 - Ensure the Department of Justice uses its congressionally mandated authority to investigate and challenge unconstitutional policing

- Issue federal use of force guidance that requires law enforcement to use force only when necessary
- End the practice of civil forfeiture
- Eliminating the [Department of Defense 1033 program](#) that provides military weapons and equipment to federal, state, and local police
- [Budgeting for constitutional policing](#) at the federal level to eliminate or redirect spending for programs that perpetuate over-policing and mass incarceration like the COPS hiring grants, Byrne JAG grants, and DEA funding
- [Supporting law enforcement led diversion](#) that encourages and funds such programs at all levels and incentivizes law enforcement to issue citations in lieu of arrest for non-serious offenses, including federal misdemeanors
- Supporting federal funding for the Civil Rights Division and other agencies to properly investigate police misconduct

The next President can use federal dollars to incentivize or encourage reform to state and local policing practices that would:

- Eliminate [broken-windows policing](#) and remove the police from enforcement of quality-of-life offenses and traffic infractions that do not implicate an immediate safety concern
- Prevent police from using predictive policing technologies and require police to solicit public comment before adopting any new policing technologies
- Encourage and enable the creation of alternative responses to mental health crises, specifically including policies that redirect funding for the creation of alternative response teams/first responders
- Ban the routine presence of police in schools, only allowing law enforcement in schools when there is a real, immediate, and active physical threat to student’s and staff’s safety

Prosecution

Why we need Prosecutorial Reform

Prosecutors are the most powerful actors in the criminal legal system. Unfortunately, for decades, prosecutors have embraced “tough-on-crime” policies and practices that have hyper-focused their offices towards more convictions and harsher punishments. Between 1994 and 2008, felony charges filed by prosecutors [rose by nearly 40 percent](#), even while reported crime and arrests were falling. This approach has increased jail and prison populations dramatically, lengthened sentences through aggressive charging and plea bargaining practices, and sent millions of people with addictions, disabilities, and mental health conditions into jails and prisons when they should instead have received treatment or other social services. Research also shows that prosecutors have deepened racial disparities in the criminal legal system. For example, [one study](#) found that white defendants are 28 percent more likely than Blacks, 13 percent more likely than Latinos, and 31 percent more likely than Asians and Native Americans to receive prosecutorial diversion into treatment and other services rather than prison time.

Impact of Reforms

In 2017, federal and state prisons admitted more than [600,000 people](#) to serve time behind bars. There are another [10.6 million](#) admissions into local jails, both before trial and after conviction. Prosecutors wield so much power and discretion in the system that their actions alone, without any additional legislative change, could halve these numbers. If the next president motivated that kind

of action among prosecutors, it would prevent about 5.3 million admissions into jails and prisons.

Solutions

The next President can take federal action to reform prosecutorial practices by:

- Appointing an Attorney General who will:
 - Offer a more fair and just charging policy that limits the use of mandatory minimums and criminal history in decision making
 - Eliminate sentencing enhancements from plea negotiations
 - Require U.S. Attorneys to use open file discovery
 - Require U.S. Attorneys to publicly report data on charging, plea bargaining, and sentencing decisions
- Supporting federal legislation or agency requirements to mandate transparency in U.S. attorney decision-making, including enabling an assessment of the impact of U.S. Attorney actions on racial disparities in the criminal legal system
- Using federal dollars to incentivize U.S. Attorneys to reduce the prison population and recidivism
- Supporting legislation that ends absolute immunity for federal prosecutors

- Supporting federal funding and agency resourcing to properly investigate local prosecutor misconduct

The next President can use federal dollars to incentivize or encourage reform to state and local prosecutorial practices that would:

- Require robust prosecutorial data [collection and transparency](#) so the government and public alike better understand how prosecutors use their discretion
- Using federal dollars to incentivize local prosecutors to reduce the prison population and recidivism
- Treat incarceration as a last resort in prosecutor’s offices by:
 - Encouraging and incentivizing prosecutors to decline charging people who would be better served outside the legal system
 - Offering diversion from the system into treatment or other services
 - Recommending no pretrial detention or bail
 - Participating in restorative justice programs
 - Pursuing alternative-to-prison sentencing options upon conviction
 - Justifying short sentencing recommendations when incarceration is deemed necessary
 - Supporting parole release when available
- Regularly assess how prosecutorial offices exacerbate racial disparities in the legal system, and develop policies that target the discretionary points that would reduce this disparity
- Remove policies or practices in offices that incentivize prosecutors toward increased charges and convictions, such as staff bonus

and promotion decisions that hinge on conviction rates

- Educate prosecutors’ offices on best practices to avoid driving people back into the system, including providing trainings on systemic collateral consequences to better inform their daily decisions that impact success rates
- Engage community members to better understand their points of view on how prosecutors should use discretion
- Limit expansive and pervasive criminal codes to shrink the scope of charging options available to prosecutors
- Enact reasonable regulations and guardrails on prosecutors, such as mandating standard records of plea bargains, turning over evidence to the defense early in a case, and recording the reasoning behind prosecutors’ discretionary decisions and recommendations in court
- Establish community advisory or review boards to oversee local prosecutors, giving them sufficient authority to correct course when necessary

Indigent Defense

Why we need Indigent Defense Reform

More than 50 years ago the U.S. Supreme Court recognized the importance of ensuring the right to counsel for people accused of crimes regardless of how much money they may have in their bank account. The presence of well-trained and sufficiently-resourced defense counsel is critical not just for respecting constitutional rights, but also for preventing unjust and unnecessary incarceration. Yet public defense systems nationwide fail both defendants and the attorneys tasked with representing them. Defending attorneys' crushing caseloads, dearth of investigatory and expert resources, and lack of sufficient time to meet with clients, review discovery, or engage in significant motion practice have combined to threaten—and sometimes eviscerate—the Sixth Amendment right to counsel to which all defendants are entitled. Instead of providing zealous representation to each of their clients, defending attorneys are often forced to triage their cases and cut corners. Such neglect causes direct and dire harms – wrongful conviction and incarceration, unnecessarily harsh sentences that punish families and communities, coerced guilty pleas, needless and prolonged pretrial detention, and exposure to a seemingly endless array of collateral consequences.

Impact of Reforms

Indigent defense reform would result in widespread impact. According to the most recent Bureau of Justice Statistics indigent defense survey of 28 states, public defenders and appointed indigent

defense counsel represented nearly [80 percent of criminal cases](#) in 2013.

A 2018 RAND and University of Pennsylvania Law School [study](#) found that The Bronx Defenders, indigent defense providers with sufficient funding to implement a [holistic defense](#) model, reduces incarceration rates by 16 percent, sentence lengths by 24 percent, and pretrial detention by 9 percent for their clients. If the policies below were implemented, similar decreases would likely result nationally.

Solutions

Public defense systems must be provided with increased funding, resources, and oversight—on par with the resources provided to the prosecution function—to ensure that *all* indigent defendants receive constitutionally-sufficient representation, irrespective of where they happen to be prosecuted or how much money they have.

The next President can take federal action to reform indigent defense practices by:

- Supporting federal legislation that bolsters funding and resources specifically for public defender offices at all levels
- Providing a mechanism whereby states can seek grant funding from the Department of Justice to cover public defense-related costs, and/or whereby counties or municipalities can seek grant funding from the State to cover public defense-related costs

- Supporting federal legislation that eliminates barriers to civil rights lawsuits in federal court for systemic public defense suits or creates a private right of action for such suits
- Support the Department of Justice re-establishing their Access to Justice Office
- Establish the position of “U.S. Public Defender General” to serve as an equal counterpart to the Attorney General

The next President can use federal dollars to incentivize or encourage reform to state and local indigent defense practices that would:

- Require counsel for every person accused of crime, irrespective of the potential punishment
- Require counsel for people accused of crimes at the first appearance where pretrial release decisions are made
- Establish manageable, research-based caseload or workload standards that can be calibrated to local contexts for public defenders nationwide/statewide
- Require the dismissal of cases in which there is no public defender with a manageable caseload available to represent the indigent defendant in question
- Prohibit fixed-fee contracts for defending attorneys or conflict attorneys tasked with representing indigent defendants, and require compensation for such services to be paid at a reasonable hourly rate
- Eliminate recoupment of fees from people who are indigent to recover costs of representation
- Provide loan forgiveness for new lawyers who choose to serve as public defenders
- Expand access to counsel in civil matters such as child welfare and housing

Pretrial Process

Why we Need Pretrial Reform

The pretrial system is the front door of the criminal legal system, beginning when a person is arrested and ending only when resulting charges are resolved by dismissal, a plea, or trial. [Every year](#), millions of people are pulled into this system, separated from their families and loved ones and subjected to long periods of incarceration based on the mere accusation of a crime.

Courts determine whether someone in the pretrial system may return home while awaiting resolution to their charges. They require some people to pay money bail - though many cannot afford the amount; others are denied release altogether and must [languish in jail](#) instead. This all occurs while people are presumed innocent under the law. Black and brown people, their loved ones, and those without the economic resources to thrive suffer the worst harms. Together, local communities spend at least \$14 billion every year to detain people who have not been convicted of the charges against them.

Impact of Reforms

Today, jails across the country are incarcerating [462,000](#) people without any conviction, before trial. If enacted, the policies described below could release at least 95 percent of people before trial, reducing the daily incarcerated population by 439,000, and allowing people to await trial in their own communities while maintaining family responsibilities, employment, school, etc.

Eliminating the presumptions that people go to jail prior to trial for drug offenses alone could reduce the federal jail and prison population by [7 percent](#).

Solutions

Criminal pretrial procedures are in [dire need of an overhaul](#) to create a fairer, smarter pretrial system. The system should release at least 95 percent of people before trial, immediately after arrest, regardless of charge or past criminal history. States must dramatically reduce pretrial detention, eliminate wealth-based detention, and combat bias and systemic racism.

The next President can take federal action to reform pretrial practices by:

- Supporting reforms to the federal Bail Reform Act that [eliminate the presumptions of detention for drug offenses](#)
- Supporting federal legislation that encourages states to [end money bail systems](#) that do not consider a person's ability to pay
- Encouraging federal oversight of the bail bond insurance companies and other industry actors
- Supporting federal legislation that incentivizes states to enact pretrial procedural protections and encourages states to decrease their pretrial populations

The next President can use federal dollars to incentivize or encourage reform to state and local pretrial practices that would:

- Reduce the harms of the pretrial process by decreasing the number of required in-person court dates, making rescheduling more convenient and flexible, providing free childcare and public transportation, and compensating people who are detained whose cases are later dismissed or who are acquitted
- Expand access to diversion programs
- Eliminate pretrial profiteering by banning for-profit bail, barring for-profit pretrial supervision companies, eliminating fees for pretrial supervision, and prohibiting courts or prosecutors from using pretrial services and diversion programs as revenue-generating endeavors
- Create a wide net of people eligible for mandatory and presumptive pre-booking release with no conditions through decriminalization, defelonization, diversion, and mandatory and presumptive citations/ summonses in lieu of booking
- Facilitate speedy individualized release hearings—distinct from “detention hearings”—with necessary due process protections; including rights to counsel, discovery and witness examination, a strong presumption of release without conditions, and heightened standards for the imposition of liberty-restricting conditions of release
- Create an informant registry, require corroborating evidence for warrants and convictions based on informant testimony, require reliability hearings, and enhance disclosure requirements
- Narrowly limit who can be jailed before conviction
- Ensure robust appeal rights and speedy trial protections for persons who are jailed, as well as for those released on liberty-restricting conditions (i.e., conditions that restrict their freedom of association or travel)
- Remove actuarial algorithms from all pretrial system decisions
- Eliminate wealth-based discrimination by determining one’s ability to pay, and eliminating all payments for any conditions of release as well as fees on monetary bonds

The War On Drugs

Why we need to End the War on Drugs

Nearly 50 years ago, President Richard Nixon declared a “War on Drugs” – a war that has cost roughly a trillion dollars, has produced little to no effect on [the supply of or demand for drugs](#) in the United States, and has contributed to making America the world’s largest incarcerator. The War on Drugs has sent millions of people—disproportionately poor people and people of color—to prison, seriously eroded civil liberties and civil rights, limited those branded with criminal records from gaining employment and housing, and costs taxpayers billions of dollars a year, with nothing to show for it except our status as the world’s largest incarcerator.

Impact of Reforms

In 2017 there were more than 1.6 million arrests for drug law violations. In 2016, [20 percent](#) of people incarcerated in this country were there for drug offenses. Sixty-three percent of people incarcerated in state prison and 58 percent of people serving their sentences in jail were found to have [drug use history or dependence](#), compared to 5 percent of the general adult population. Today, 81,000 people are in federal prison for drug crimes.

Since 80 percent of drug arrests are for possession, decriminalizing drug possession would result in [1.2 million less arrests](#) each year, based on 2016 data. Making this change retroactive would release [45,000 people](#) across the country who were serving prison sentences for drug possession in 2017. Further reducing penalties for all other drug offenses would

offer more than 144,000 people more appropriate sentences than they are currently serving, up to and including release for some who have already served significant time.

Solutions

The next President can take federal action to end the War on Drugs by:

- Supporting federal legislation that deschedules drugs while:
 - Expunging people’s records of federal drug convictions
 - Making those changes apply retroactively so those in federal prison for drug-related convictions can be resentenced
 - Eliminating barriers to federal public benefits for those who have previous drug arrests or convictions
 - Ensuring drug use or participation in legal drug industry does not impact immigration status of noncitizens or their ability to naturalize
- Supporting DOJ guidance that directs federal resources away from enforcement of drug crimes, while any drug is still scheduled
- Publicly declaring an end to the failed and ineffective War on Drugs

The next President can use federal dollars to incentivize or encourage reforms to end the War on Drugs in states and localities by:

- Supporting federal legislation that incentivizes states to decriminalize drug possession and reduce penalties for other drug offenses while:
 - Expunging people’s records of state drug convictions
 - Making those changes apply retroactively so those in state prison for drug-related convictions can be resentenced
 - Eliminating barriers to state and local public benefits for those who have previous drug arrests or convictions
 - Allowing full participation by those directly impacted by the drug war in the industry created by legalization
 - Offering treatment rather than arresting people when substance use care would be more beneficial than incarceration, and provide early screenings for those who are arrested to determine if they too should have the opportunity to divert into treatment rather than proceeding through the criminal legal system
 - Investing in building and improving community-based treatment to ensure there are sufficient, quality services for people outside the criminal legal system to receive drug treatment

Sentencing

Why we need Sentencing Reform

Extreme sentencing laws and practices are keeping people incarcerated for far longer than ever before. The National Research Council reported that [half of the 222 percent growth](#) in state prison populations between 1980 and 2010 was due to an increase of time served in prison for all offenses. [One in nine](#) people in prison is now serving a life sentence, nearly a third of whom are sentenced to life without parole.

These sentencing trends have resulted in prison overcrowding and fiscal burdens on states to accommodate a rapidly expanding system. The country now spends \$80 billion per year on state and federal corrections. All this, despite increasing evidence that large-scale incarceration is not an effective means of achieving public safety.

Impact of Reforms

If enacted, the policies below would cut the [1.6 million person population](#) currently serving time for a conviction in jails and prisons across the country in half, allowing 813,000 people to return home to their communities and families.

Indeed, enacting just two of the federal policies below, eliminating border crossing crimes and eliminating mandatory minimums, would cut the federal jail and prison population by [20 percent](#).

Solutions

Ending mass incarceration requires significant sentencing reform. Criminal legal policies and practices must consider incarceration the very last resort, rather than the first response to crime. Sentencing reform is the key to both slowing down the flow of people going into our prisons and removing obstacles to release after an appropriate amount of time. These changes would address mass incarceration, prison overcrowding, and the exorbitant costs of incarceration simultaneously.

The next President can take federal action to reform sentencing practices by:

- Supporting sentencing reforms and retroactivity in federal legislation that eliminates mandatory minimums for drug crimes, and applies those changes retroactively
- Supporting federal legislation to create a “Second Look” process that allows anyone who has served 10 years or more to apply for resentencing before a decision-making body
- Supporting federal legislation that limits life sentences, ends mandatory life in prison without parole sentences, implements the second look process outlined above, and eliminates juvenile life without parole sentences by allowing children to petition the original sentencing
- Opposing federal legislation that expands or increases penalties for crimes involving

synthetic drugs or increases mandatory minimums for fentanyl distribution

- Supporting fixing the trial penalty by supporting federal legislation that repeals mandatory minimums, modifies aspects of the Sentencing Guidelines that discourage trials, requires pre-plea disclosures, prohibits surrendering appeal rights, and requires judicial oversight of plea discussions
- Supporting federal legislation that reforms the drug conspiracy statute, raises the bar for the type of evidence necessary to establish conspiracy, and limits liability for conduct that a co-conspirator did not actually commit
- Supporting federal legislation that creates an informant registry, requires corroborating evidence for warrants and convictions based on informant testimony, requires reliability hearings, and enhances disclosure requirements
- Ending “zero tolerance” prosecutions and family separations and support federal legislation that ends criminal sanction on entry and re-entry
- Defelonize offenses that do not involve a specific and harmed victim
- Shorten sentencing lengths by eliminating laws that increase prison time to exorbitant stays, such as mandatory minimums, truth-in-sentencing, life (including life without parole) and nearly-life sentences
- Shorten sentencing ranges broadly and impose mandatory maximums, with a 20-year cap on any prison sentences
- Enact a second look process for anyone serving 10 years or more to apply for resentencing before a court
- Ensure all sentencing reforms apply retroactively, so those already serving harsh sentences or living with burdensome records for the same offenses may seek similar relief

The next President can use federal dollars to incentivize or encourage reform in state sentencing practices by:

- Decriminalize behaviors and activities that do not require criminal law investigation and interference, such as addiction, mental illness, truancy, and lack of fee and fine payment
- Create and expand alternatives to incarceration options for judges to consider when sentencing, including offering treatment and health care, housing and employment services, restorative justice programs (which focuses on repairing harm cooperatively rather than punishment), community service, and probation
- Require non-incarceration for all misdemeanor sentences, and treat incarceration as a last resort for felonies

Probation and Parole Supervision

Why we need Probation and Parole Supervision Reform

Probation and parole are both alternatives to incarceration, though probation occurs instead of serving a sentence in jail or prison while parole occurs after serving time in prison. Thus, probation and parole supervision reform is key to addressing both correctional control in communities and actual prison populations. In 2016, [4.5 million people were on probation or parole](#) – more than twice as many people as are incarcerated in jails and prisons.

Perhaps surprisingly, probation and parole supervision also drive prison admissions. Extended periods of supervision with unnecessarily burdensome conditions can interfere with a person's ability to successfully re-enter society, increasing the risk of re-incarceration, often for minor and technical violations of a person's terms of parole or probation.

Impact of Reforms

By the end of 2016, [3.7 million people were on probation and 874,800 on parole](#). If enacted, the policies outlined below could cut that in half, allowing nearly 2.3 million people out of scrutinized supervision and in their communities.

Ending the practice of sending people back to prison for technical violations of probation and supervised release could reduce the federal prison and jail population by [5 percent](#).

Solutions

The next President can take federal action to reform supervision practices by:

- Supporting federal efforts that would prohibit imprisonment for technical violations of probation and supervised release, including failure to pay fines and fees
- Opposing federal legislation that expands arrest authority and other police powers for federal probation officers
- Measuring federal probation officer success on successful reentry and lowered recidivism rates and encouraging states to use similar metrics

The next President can use federal dollars to incentivize or encourage reform to state and local probation and parole supervision practices that would:

- Ensure probation is being used as an alternative to prison, rather than applied to people who should not remain in the criminal legal system
- Reduce initial probation lengths at sentencing, with three-year caps and opportunities for early discharge
- Ban incarceration as a response to technical violations

- Eliminate the use of probation and parole revocations and short-term incarceration for violations that do not involve a new offense, establishing a system of graduated sanctions with incentives for compliance and swift, certain and proportional responses to violations
- Provide oversight over decisions to revoke supervision, tracking racial and geographic disparities
- Remove blanket probation and parole conditions and require any condition imposed by a judge have an articulable nexus to a risk or need of that particular individual
- End wealth-based probation and parole practices, such as allowing probation terms to be extended as a result of nonpayment of fines, fees, restitution or other court costs
- Support earned compliance credit programs that shorten probation terms by granting 30 days credit for each month of compliance
- Discharge people early when they are successful in probation and no longer pose a risk
- Institute early presumptive termination opportunities for parolees, lowering parole rolls and rewarding compliance
- Eliminate private probation

Release

Why we need Release Reform

In the United States, prison sentences are long and getting longer, and our swelling prison systems are a humanitarian and financial catastrophe. Today, people are spending longer in prison than ever before—in part, because the criminal legal system fails to release people at the back end. Long after people have served substantial time in prison, been rehabilitated, and are ready to return to their communities, tens of thousands of people remain incarcerated as release mechanisms remain under-utilized, broken, or non-existent.

Release opportunities do not guarantee release - rather they provide moments of consideration for release. Examples include: parole release (as opposed to parole supervision, described above, which occurs post-release) where a person is given the opportunity to demonstrate their rehabilitation and request release to their community, medical release for people with medical conditions, geriatric release for people who are at least 50 years old, and earned time release where people can attend rehabilitative courses while incarcerated to earn a limited amount of time off their sentence. Clemency - a similar opportunity, which allows an individual to receive a shorter sentence or a pardon is described separately below.

Impact of Reforms

In 2017, state and federal facilities [released 622,400 people](#) from prison, while over 600,000 people were simultaneously admitted into prison. If enacted, the policies outlined below could increase releases

by 50 percent – allowing an additional 311,000 people to return to their communities sooner.

Allowing people over 50 and those who are seriously ill to be released from prison under compassionate release policies could reduce the federal jail and prison population by [more than 16 percent](#).

Solutions

The next President can take federal action to reform federal release by:

- Supporting federal legislation that establishes a second look process that automatically brings people up for resentencing after 10 years served for a federal crime
- Supporting federal legislation and Bureau of Prison policies that allow people to file for elderly release after age 50 and compassionate release directly with the courts, cutting out the additional roadblocks that prevent people from attaining these types of release

The next President can use federal dollars to incentivize or encourage reforming state and local release that would:

- Expand release eligibility for all offenses
- Set a fair, holistic criteria for release decision-making

- Increase transparency and fairness in release hearings and decisions
- Ensure petitioners for release who are denied are able to reapply immediately for reconsideration
- Create presumptive release policies, triggered by the number of years served, so applicants would be released at their release eligibility dates unless the parole board objects, in consultation with corrections agencies and having reviewed the individual's record while incarcerated
- Increase the number of parole hearings and parole grants nationally, and establish a right to counsel at these hearings
- Limit parole board's ability to use the nature/severity of the crime to deny parole to otherwise deserving applicants; and require documentation of the board's rationale for parole grants or denials in the record
- Create or increase use of medical release for individuals with medical conditions, which lowers incarceration costs of providing expensive care for those individuals and allows them to be released to the care of medical professionals and their family
- Address the aging prison population by supporting geriatric release eligibility for people age 50 and older
- Implement more programming inside prisons where people are able to earn time off of their sentence

Clemency

Why we need Clemency Reform

Federal prisons are overcrowded with people serving long, draconian sentences. In a good number of these cases, the law has been changed and people would serve significantly less time in prison if sentenced today.

[Thousands of people](#) are serving life without parole sentences for nonviolent offenses. Blacks are disproportionately represented in the nationwide prison and jail population, but the disparities are even worse among the nationwide life without parole population and worse still among the nonviolent life without parole population. Based on data provided by the United States Sentencing Commission and state Departments of Corrections, the ACLU estimates that nationwide, 65.4 percent of prisoners serving life without parole for nonviolent offenses are Black, 17.8 percent are white, and 15.7 percent are Latino.

The power of clemency - the opportunity to pardon a person convicted of a crime or shorten their sentence through commutation - allows the U.S. President and state Governors to correct these unjust sentences, scaling them back to more appropriate levels.

Impact of Reforms

Clemency is one of the most impactful unilateral actions a president can make to reduce the prison population. The ACLU has asked the next president to commit to a goal of granting clemency to 25,000 people during their first term. Encouraging state governors to do the same would result in a similar reduction across the country.

Solutions

The next President can take federal action to reform federal clemency by:

- Committing to an expansive clemency process that regularly reviews cases of individuals in federal prison, similar to Pres. Obama's Clemency Initiative, that would include:
 - Across-the-board, proactive review of entire categories of persons incarcerated in federal prisons, including those incarcerated for drug possession, the elderly, the sick, and people serving extraordinarily long sentences.
 - A presumption of release for certain categories of persons; for example, people still serving time for drug-related offenses where there has been a subsequent change in the law reducing or eliminating incarceration for those offenses.

The next President can use federal dollars to incentivize or encourage reforms to state clemency that would:

- Encourage state governors to similarly develop a process to regularly review thousands of individual cases in state prisons and determine whether they deserve to have their sentences commuted or pardoned, and should include:
 - A review of applications from those serving sentences where current sentencing laws would lower
 - A review of applications from those applying for elderly and compassionate release, as well as those who have already served long sentences

Re-Entry

Why we need Re-entry Reform

There are at least [70 million people](#) in America who are [living with an arrest record or a criminal conviction](#). In fact, one in three adults in America has a criminal record. People with arrest and conviction records are [routinely blocked](#) from truly re-entering society with nearly 50,000 such [legal restrictions](#).

Pervasive discrimination exists against people with a criminal record in employment decisions. [Nearly 75 percent](#) of formerly incarcerated people are still unemployed a year after release. A lack of stable employment increases the likelihood that an individual will return to jail or prison. The impact on Black and Latino communities has been particularly destructive. Pervasive racial disparities in the criminal justice system exacerbate bias in the employment arena. Education can also provide people with more employment opportunities. Yet, about 40 percent of people incarcerated in federal and state prisons [did not graduate from high school](#). A criminal record further imposes new barriers to higher education, such as elimination from consideration for federal financial aid assistance and college admission inquiries into records. Further, having a means of transportation is key to fulfilling the conditions of one's release, including making mandatory appointments and holding employment. Yet, driving on a suspended or revoked license is a common cause of rearrest after release.

Lack of basic needs, like housing and food, too often plagues returning individuals. Not having secured housing is often the reason people are held past their release dates, resulting in people spending more

time behind bars. People with felony convictions are often banned from accessing subsidized housing. Moreover, the Supplemental Nutrition Assistance Program (SNAP) and Temporary Assistance for Needy Families (TANF), which help people who cannot afford food, do not guarantee timely access for people released from incarceration, regardless of their food insecurity.

The majority of people released from prison suffer from chronic health conditions that require treatment. About 4 in 10 men and 6 in 10 women reported a combination of physical health, mental health, and substance use disorder conditions. Without specific support, [these individuals are more likely to face housing insecurity and an inability to maintain employment](#).

Lastly, over 5 million people are unable to vote because they are incarcerated, completing probation or parole, or are precluded from voting for having a felony conviction in their past.

Some 650,000 Americans return to their communities from prison each year. [About three-quarters of them will return to prison within a few years](#). To disrupt this cycle, we must reform re-entry policies to build stability and find success following release from incarceration.

Impact of Reforms

If enacted, the policies outlined below would eliminate obstacles for [all 70 million people](#) living with a record. They would further help the 650,000 Americans returning to their communities from

prison each year to re-enter successfully. If the [annual return to incarceration rate](#) dropped in half, then about 244,000 people would potentially avoid incarceration in the future.

Solutions

Preparing for successful re-entry must begin before a person is released from prison. Removing punitive restrictions and creating programs that support people with arrest and conviction records as they reintegrate into society will lower recidivism rates and reduce the prison population as a whole. It is both the sensible and just thing to do.

The next President can take federal action to reform re-entry practices by:

- Support federal funding for state and local reentry resources through Second Chance Act and other policies
- “Banning the box” or eliminating questions regarding criminal histories from federal agency and contract hiring
- Removing federal barriers to occupational licenses for those with criminal records
- Ensuring accuracy in FBI background checks
- Removing federal barriers to higher education, including barriers to PELL grants and other financial assistance, for currently and formerly incarcerated persons and those with drug convictions
- Eliminating federal barriers to public housing for those with criminal records
- Eliminating prohibitions and barriers to nutrition assistance, temporary assistance, Social Security, and other federally administered public benefits based on incarceration or criminal history
- Providing voting rights to those currently and formerly incarcerated in federal prison

The next President can use federal dollars to incentivize or encourage reform to state and local re-entry practices that would:

- Remove questions regarding criminal history from job applications
- Incentivize private sector employers to hire people with a record
- Expand access to occupational licensing
- Increase access to education for people while they are incarcerated and returning to communities
- Eliminate barriers to higher education, ensuring all formerly incarcerated people will have access to all available financial aid assistance and college admissions applications do not inquire into criminal history
- Remove legal and financial barriers to acquiring a driver’s license for formerly incarcerated people
- Invest in housing, such as halfway houses and other transitional housing options, to support successful reentry
- Repeal state laws that prohibit people with a record from living in subsidized or publicly owned housing
- Provide thorough assessments of health needs during the reentry planning process, and ensure immediate access to Medicaid, disability and other forms of public assistance prior to release
- Restore all citizens’ fundamental right to vote including those with criminal convictions and those who are currently incarcerated

Americans Overwhelmingly Support Reform

A majority of Americans from across the political spectrum agree that our current system [does not work and want change](#). A 2018 nationwide survey showed that [59 percent](#) of likely voters prefer a federal candidate who supports reducing the number of people in jails and prisons, and [75 percent](#) of candidates prefer a candidate who supports reducing racial disparities in the criminal legal system.

This strong support should not be surprising considering that [1 out of every 2 Americans](#) has had an immediate family member incarcerated. That equals [113 million Americans](#) who have personally experienced the failures and harms of mass incarceration up close, and who are desperate to vote for change.

Voter support similarly carries over into policies that would drastically reform specific areas of the criminal legal system.

Voter Support for Policing Reform: 90%

Polling by the Pew Research Center in 2016 [shows](#) that very few voters actually support police focusing on pursuing drug-related crimes. Only 30 percent of Americans believe enforcing drug laws should be a top priority. The public also widely supports the legalization of marijuana for personal and medical use (49 percent are in favor of legalization).

A 2017 poll by Kaiser Permanente [found](#) that 73 percent of the public believes mental health conditions should be treated no differently than physical ones. This, combined with the large number of police chiefs who recognize that mental health professionals would be better equipped to respond to mental health crises than officers, suggests that there is an opportunity to advocate for alternatives to police in mental health crisis response.

A 2019 Pew Research Center Poll [shows](#) that a majority of both black and white voters believe that black people are treated more unfairly than white people in their interactions with police. Another poll [indicated](#) that 90 percent of Americans would support candidate who supports policies to ensure that all police officers respect the constitution and treat people of all races fairly, and ensuring that police officers are held accountable for misconduct.

Voter Support for Indigent Defense Reform: 85%

In a [poll](#) conducted in 2016, 66 percent of likely voters said they supported using tax dollars to provide public defenders to indigent accused. Eighty percent of those polled said they believed that public

defenders have too little time to devote to each case and 55 percent said they believe public defenders do not have the resources they need to adequately represent their clients. Eighty-five percent voiced support for establishing national standards for a minimum level of resources to be available to public defenders, including access to funding for expert witnesses and DNA testing.

Americans of all stripes support the idea of fundamental fairness in our criminal legal system. And although our experiences with the system may differ radically, most would agree that any person accused of a crime should not be penalized and deprived of their constitutional rights simply because they cannot afford to pay for an attorney. Support for public defense reform is simply support for leveling the playing field so that the quality of one's defense does not depend on the size of one's bank account.

Voter Support for Prosecutorial Reform: 89%

Current prosecutor practices and policies are out of line with voters' desires. A 2017 national poll found [89 percent of voters](#) want an elected prosecutor who will prioritize reducing incarceration, and 88 percent want one who will prioritize reducing racial disparities (88 percent). In recent years, voters are putting these priorities into action, electing prosecutors who ran on platforms of reforming the criminal legal system in cities like [St. Louis](#), [Chicago](#), [Philadelphia](#) and [Dallas](#).

Voter Support for Pretrial Reform: 91%

An overwhelming majority of Americans—across all partisan, regional, and demographic divides—would like the criminal justice system to become fairer and to reduce the use of incarceration, except when it is necessary to protect public safety. A 2018 nationwide poll found that [91 percent of registered voters support pretrial reform](#), with nearly one out of five specifically calling for a complete overhaul of the system.

Voter Support for Ending the War on Drugs: 71%

Voters strongly believe the War on Drugs isn't working. In fact, a 2018 Rasmussen Reports national survey found that [75 percent](#) of likely voters believe America is losing this war. Further, a 2014 Pew Research Center poll found that [67 percent](#) of Americans say that the government should focus more on providing treatment for those who use illegal drugs. A 2018 Gallup poll found [66 percent](#) of Americans now support legalizing marijuana, regardless of political party, age, and region. A 2018 nationwide survey showed [71 percent](#) of likely voters supported ending the War on Drugs.

Voter Support for Sentencing Reform: 61%

By a [3-to-1 margin](#), crime survivors prefer holding people accountable using alternatives to prison, such as rehabilitation, mental health treatment, drug treatment, or community service. Even among survivors of violence, [61 percent](#) prefer shorter prison sentences and more spending on prevention and rehabilitation. A 2018 nationwide survey showed [84 percent](#) of likely voters supported providing treatment instead of prison for people with mental health and substance abuse disabilities.

Voter Support for Probation and Parole Supervision Reform: 67%

Too often, community supervision is not brought into public limelight. However, with rapper [Meek Mill](#)'s reincarceration for popping a wheelie while under community supervision brought national attention to the issue, fueling more recent calls for reform. Early polls suggest the reform in this area is quite popular: A 2019 Arizona voter poll found that [67 percent](#) support banning probation revocation just for violating rules if a new crime has not been committed.

Voter Support for Release Reform: 88%

Similarly, release reform rarely gains national attention. However, a 2019 Arizona voter poll found that a whopping [88 percent](#) support in allowing most people sentenced to prison to earn an additional 25 percent off their time behind bars if they maintain good behavior and participate in rehabilitation programs.

Voter Support for Re-entry Reform: 85%

A 2018 nationwide survey showed [85 percent](#) of likely voters supported improving re-entry services. The same poll [suggested](#) that 64 percent of likely voters would support a candidate who supported restoring the right to vote to felons who have served their prison sentence, an important aspect of full re-entry.

Voter Support for Clemency Reform

Public support for the use of clemency in high-profile cases arises regularly. Last year, President Trump commuted the federal life sentence of [Alice Marie Johnson](#), a 63-year old grandmother convicted of drug charges after she served more than 20 years behind bars when both public and celebrity support reached his desk. In January 2019, Tennessee Governor Bill Haslam of Tennessee commuted [Cyntoia Brown](#)'s life sentence for killing a man who had picked her up for sex when she was a teenage trafficking victim after her case received widespread attention. Most cases, however, do not gain national attention and viral public outcry for clemency, but are equally deserving of eligibility and review.