



MASS INCARCERATION

in Delaware

I. DELAWARE IMPRISONS TOO MANY PEOPLE

The United States locks up more of its people than any other nation.¹ We have 4.4% of the world's population, but 23% of the world's prisoners. Delaware imprisons at a rate even higher than the extreme U.S. average—a rate that is 81% higher than New Jersey's.²

Delaware's story is similar to what happened across the country. In the final three decades of the twentieth century, our criminal justice culture moved toward maximizing the number of people sent to prison. In part because of rising crime rates, prosecutors began to charge more people with more crimes, to charge felonies instead of misdemeanors, and to negotiate longer sentences for those crimes. Legislators enabled this with mandatory minimum sentences, the elimination of parole and other forms of early release, and reduced investment into alternatives to prison. Programs focused on reducing economic and racial inequality were sidelined in favor of misnamed “tough on crime” approaches. The result was a 500% increase in incarceration nationwide and in Delaware.

But long before the shift to maximum punishment had reached its crescendo, crime rates had already begun to fall. Indeed, there has been an extraordinary drop in crime in Delaware and most of the rest of the United States since the mid-1990s. We now know that the crime decline had little to do with the culture of maximum punishment.³ Instead, crime rates dropped because of improved policing, changing economic and environmental circumstances, and the hard work of local community organizations.⁴

The culture of maximum punishment was created and sustained in part because of the identity of its victims. African Americans are 22% of the population in Delaware, but they are 51% of prisoners.⁵ Ending the era of mass incarceration means dismantling the approaches that came to define criminal justice in the 1980s. But it also means ending the structural racism that has influenced policymaking in America for much longer.

Delaware chose mass incarceration. Delaware must make a different choice. Each day that a person spends in prison unnecessarily is a social, fiscal, and moral failing of our policy. We must do better.

II. DELAWARE’S CHOICES ABOUT WHO TO SEND TO PRISON AND FOR HOW LONG ARE WHAT CAUSE OUR EXTREME RATE OF INCARCERATION

In the last 20 years, crime rates in Delaware have dropped. But the incarceration rate has not—in fact, it is slightly higher.

By contrast, from 2008-2016, 35 states cut both their imprisonment rate and their crime rate.⁶ New Jersey’s prison population has declined by 37% since 1999. Rates of both violent and property crimes also fell about 30% over the same period in New Jersey, exceeding the national reduction in crime rates.

Maryland and Delaware have similar levels of violent crime and both states have seen declines in crime, but while Maryland’s incarceration rate has also declined, Delaware’s has not. Delaware incarcerates 48% more per capita than Maryland does.⁷

Putting fewer people in prison does not hurt public safety, and in fact can create much more stable and healthier communities. These trends in incarceration and crime show that Delaware’s rate of incarceration is a destructive choice. Delaware can make a different and better choice.

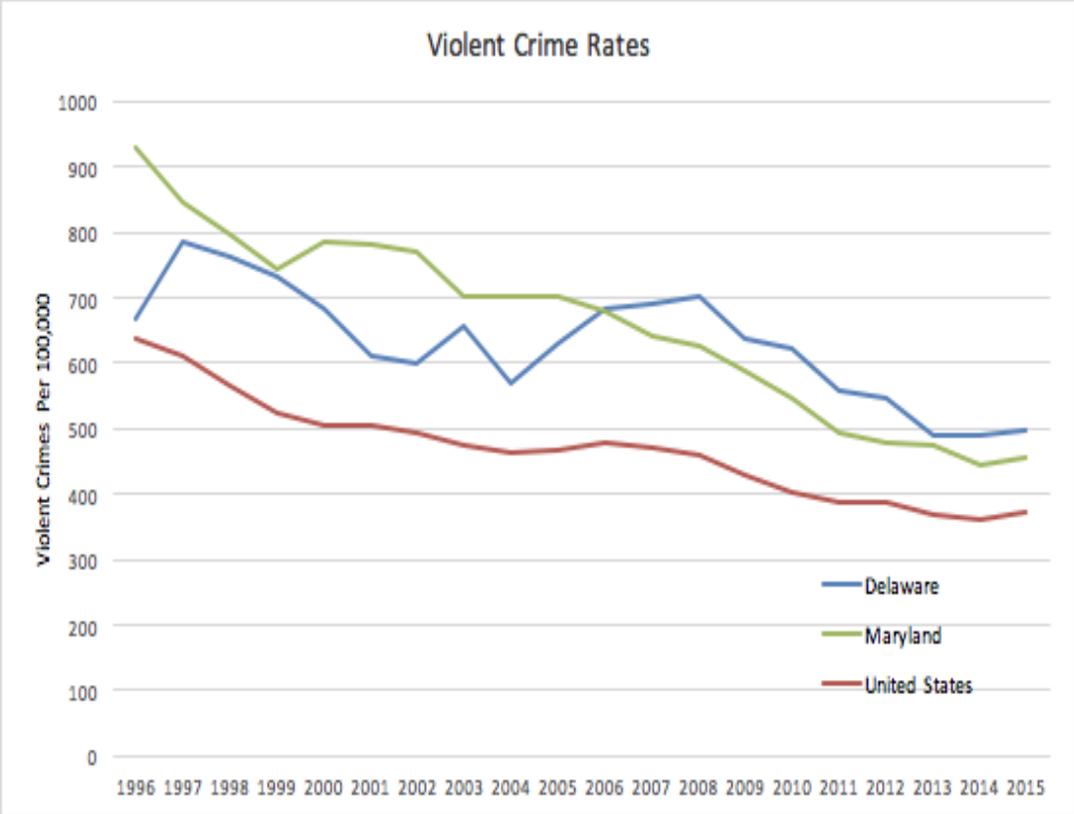
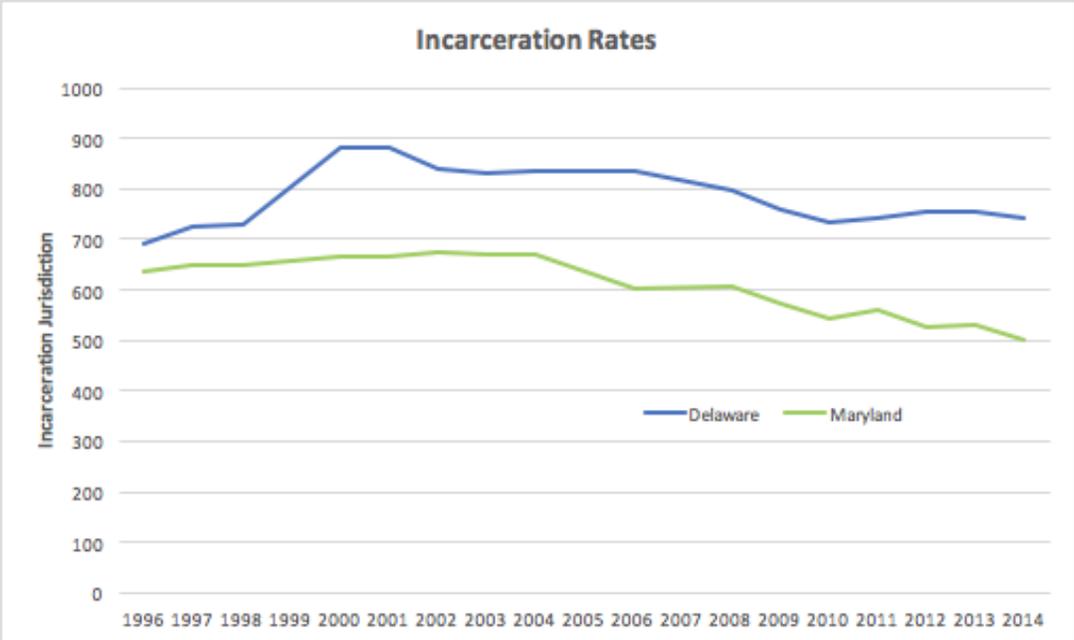


Chart: Showing declining violent crime in DE, MD, and the US, and divergent change in incarceration rates.²⁹



II.A. We should not imprison people who have not been convicted of a crime.

Almost a quarter of people in prison in Delaware are there without having been convicted of any crime because they are detained until their trial.⁸ Most of those people are detained simply because they cannot afford bail. This punishes people for lacking the resources to pay, causing them to lose jobs and face other consequences even if they are never convicted of a crime. Determining whether to release someone based on how wealthy they are is fundamentally unjust and bad policy.⁹

People detained pretrial are more likely to be convicted, plead guilty, and face longer sentences than defendants released pending trial—and this is true even when controlling for factors such as case characteristics, type and level of charge, and criminal history.¹⁰ This is, at least in part, because people in jail are more willing to accept a guilty plea.¹¹ This means that high rates of pretrial detention contribute to high rates of incarceration both directly (people are held before trial) and indirectly (they are more likely to plead guilty).

Several states and cities have slashed rates of pretrial detention with bail reform. Washington, D.C. releases around 90% of its pretrial defendants.¹² Of those released, 91% stayed arrest-free during the release period, and 90% attended all scheduled court appearances in 2015.¹³ This supervised release program demonstrates that bail reform, if well-implemented, does not increase crime or failure-to-appear rates.¹⁴

Delaware has already begun to pursue similar reform. In January 2018, Gov. Carney signed a bill that prioritizes non-money conditions of release and the use of risk assessment instruments designed to narrow the scope of who is detained. There is more work to do, both inside the legislature and inside the judiciary, to ensure that the small number of people who must be detained are, and the rest of the people are released with appropriate conditions. Ultimately, pre-trial detention is and will always be highly discretionary. This means that no matter what we change the law to say, whether we detain fewer people will depend on what police and prosecutors ask for and whether judges decide to move away from mass incarceration.

II.B. Delaware's prosecutors should shift to a model focused on justice and communities.

Only 4% of criminal convictions in Delaware result from a criminal trial. The rest of the cases end in plea bargains. Prosecutors have enormous power in that negotiation. They control the charges. They recommend a sentence that is often followed by judges. Prosecutors could unilaterally end mass incarceration in Delaware.

Four reforms would encourage prosecutors to end mass incarceration:

(1) Publicize charging and plea bargaining guidelines for all prosecutors. Charging guidelines instruct prosecutors in the presumptive way to charge common criminal scenarios. Well-crafted guidelines would reduce overcharging and also reduce racial disparities.

(2) Streamline the criminal code to ensure that single crimes cannot be charged as many offenses. For example, it should merge the crimes of burglary and carrying burglary tools. This would rein in overcharging while making our criminal laws easier to understand. Such reform can also reclassify some offenses to lower categories.

(3) Empower indigent representation with adequate funding. Because of extremely limited resources, indigent defendants are often not able to speak with an attorney early enough in the criminal process.¹⁵ As a result, many defendants are without representation at important stages in the Court of Common Pleas and face pressure to discuss potential plea arrangements with the prosecution or to waive due process rights. No person should make important legal decisions in a criminal case without the chance to talk to a lawyer.

(4) Reduce prosecutors' ability to threaten extreme sentences that are not justified by abolishing mandatory minimums and requiring more concurrent sentencing. Until 2014, Delaware was the only state that still required all sentences be served consecutively.¹⁶ Now, a limited subset of crimes can be sentenced concurrently, but it is not enough.¹⁷ The continued existence of mandatory minimum sentences also greatly empowers prosecutors.

None of those reforms will be necessary if the culture of prosecution changes. Prosecutors can choose not to overcharge and negotiate the maximum sentences possible. The best catalyst for this change is the election of an Attorney General who is committed to making this change happen.

II.C. Delaware should invest in alternatives to prison.

Often, the best response to someone committing a crime is not prison. It is treatment, or some other direct intervention in the person's life. Delaware has some diversion programs operated by specialized courts with that idea in mind. For example, drug treatment courts offer treatment programs as an alternative to prison.¹⁸ But these diversion programs are underused. They should be expanded and fully funded.

Delaware once lead the nation in developing innovative Drug Treatment Courts. But those courts are now “shells of what they once were” because of decline in the collaborations and services that made them possible.¹⁹ In 2014, the Superior Court’s Drug Court program reported only 512 entries.²⁰ This is largely a function of how many spots the treatment providers offer.²¹ Additionally, the program operates at the discretion of prosecutors, and unnecessarily requires the individual to plead guilty or stipulate to the facts in the criminal complaint.

Other specialized courts have similar problems. The mental health court program faces underfunding and inconsistent treatment from state contractors, and also excludes people charged with most violent crimes. As a result, even though more than a quarter of all people convicted of crimes suffer from mental health problems, there were only 570 participants in 2014. The Veterans Treatment Court suffers from similarly narrow eligibility.²²

In 2016, the Criminal Justice Council of the Judiciary completed a review of the pretrial diversion courts. The report’s final recommendations include consolidating the Drug Court, Mental Health Court, and Veterans Court into one treatment court for efficiency and since many people are eligible for multiple courts; creating core standards and “bench books” to ensure consistent treatment in each case; and implementing better coordination with treatment providers.²³ These suggestions are worthy of support, along with urging the courts and legislature to expand their jurisdiction to include more of the kinds of crimes that are driving Delaware’s high incarceration rate.

These programs need consistent funding. But that does not mean they are costly. These programs are often cheaper than incarceration.²⁴ Delaware should include such assessments of costs for legislators contemplating how to spend criminal justice money.

II.D. Delaware should shorten sentences.

Delaware’s prison sentences can be reduced without increasing crime. A wealth of empirical evidence shows that harsh punishments do not effectively deter offenders.²⁵ The certainty of being caught is what deters crime, regardless of the sentence imposed.²⁶ People released early are less likely to re-offend than those who serve their full sentences, and many people age out of criminal behavior before their sentences are complete.²⁷ Indeed, longer sentences make it harder to establish a stable life upon release, leading to higher recidivism.²⁸

In addition to prosecutors simply negotiating shorter sentences, Delaware can shorten sentences in two ways. First, Delaware should continue to reform the parts of the criminal code that mandate overly long sentences. Arbitrarily harsh sentences that result from mandatory minimums should be abolished.²⁹ They serve only to grow prison populations without effectively deterring crime or serving any other valid policy purpose.³⁰

Second, Delaware can shorten sentences by increasing opportunities for “good time”—earned sentence reductions from good behavior—and allowing more sentence modifications. Delaware policy makes it an anomaly in the United States: the average sentence served by Delaware prisoners is 50% longer than the national average.³¹ This is not primarily because initial sentences are longer.³² Instead, it is because Delaware prisoners serve a larger proportion of their sentence because of lack of “good time” credits and early release programs.

Delaware’s “good time” credits and early release programs both need substantial reform. Since 2012, inmates in Delaware can earn good time credits to reduce a sentence by almost half. But few inmates are able to earn such credit. The problem stems from some combination of lack of programs, a wildly discretionary prison discipline system, and incorrectly calculated sentences. Delaware inmates can also seek sentence modification in order to be released early. But the system is designed to make this process more bureaucratic and complex than is necessary. The prison must certify that release will not constitute a risk to the community and that good cause for release exists. A committee must unanimously approve the application. And the Board of Parole must certify it before it is even sent to a Superior Court judge for consideration. Unsurprisingly, only a handful of prisoners receive sentence modifications each year even though hundreds are eligible and could be released without harm.³³

III. DELAWARE CRIME

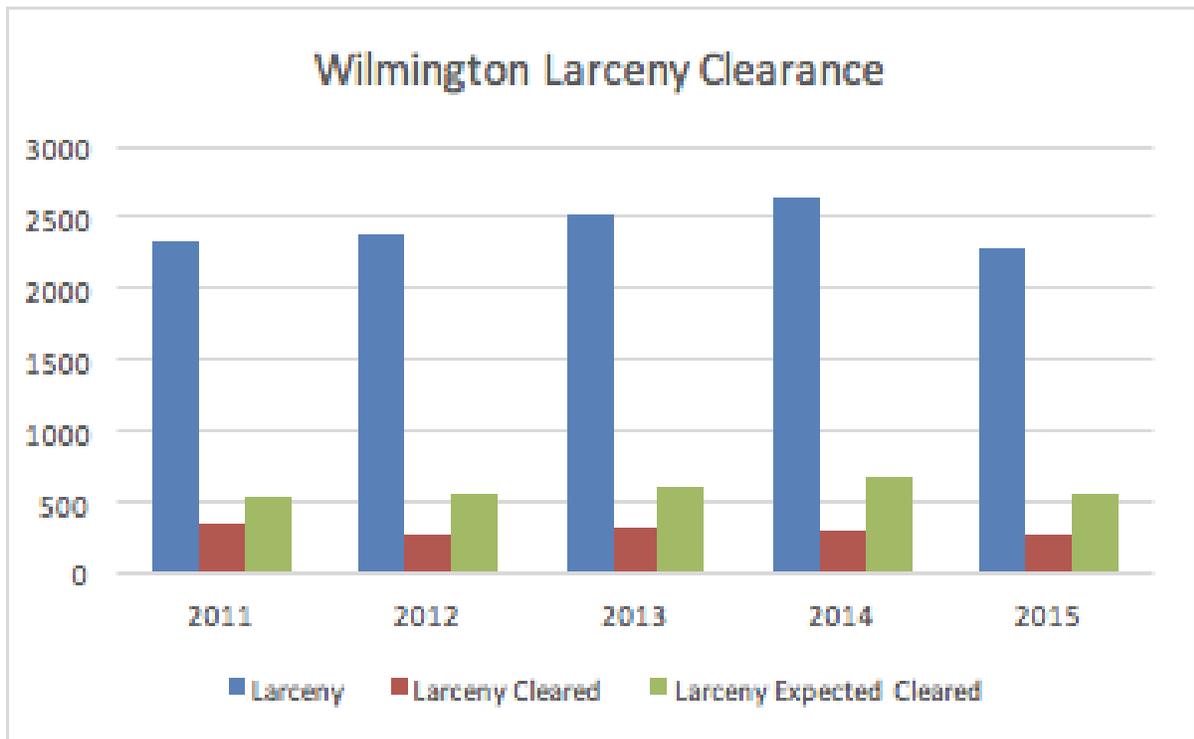
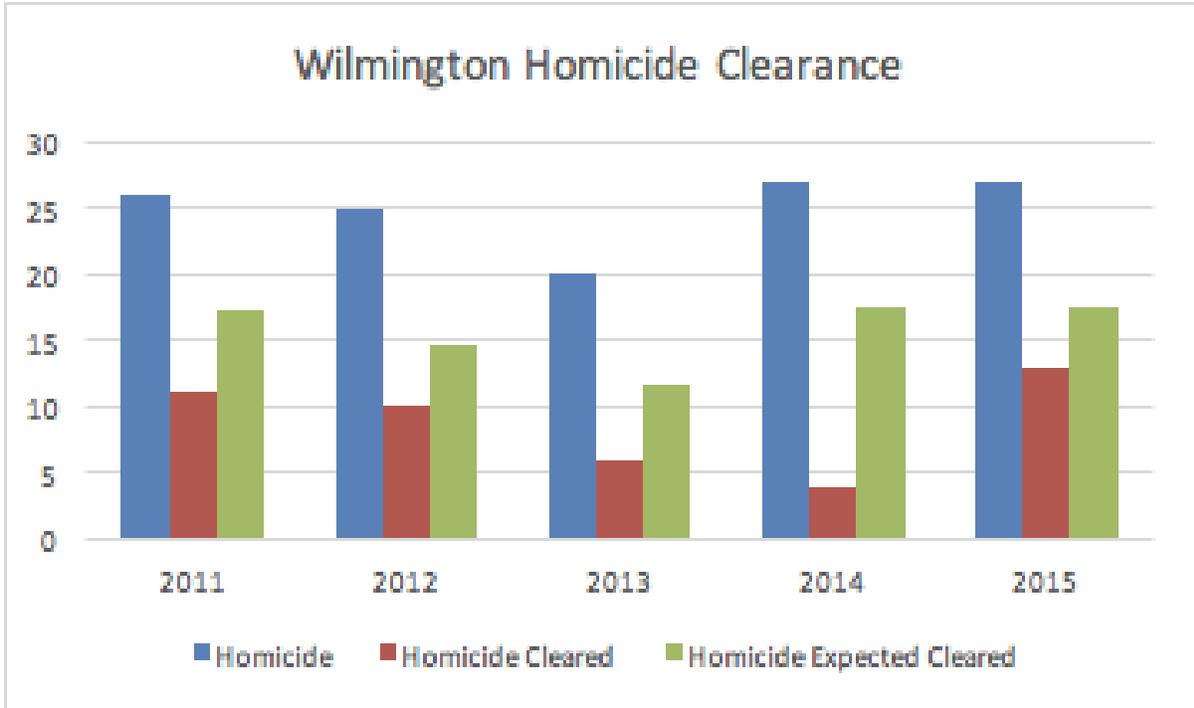
Even though violent crime rates have fallen substantially from the mid-1990s, it is still possible to have less crime. Keeping crime low provides substantial benefits to the communities most harshly impacted by mass incarceration policies, and is also a key tactic in reducing the incarceration rate and keeping it low. Crime can be lowered by further investment in the approaches that led to the crime drop, including improved policing and support for communities in preventing crime and so that people returning from prison are supported and rehabilitated.³⁴

III.A. Delaware should support effective policing

The City of Wilmington accounts for roughly 25% of Delaware's violent crime and an even higher percentage of shootings.³⁵ A 2015 study showed that Wilmington at that time ranked 3rd in violence among 450 cities of its size and 6th among cities over 50,000, despite having more police per capita than nearly any other city of that size.³⁶ Even though violent crime is down in Delaware from historic highs, there is still much work to do.

Higher rates of violent crime in Wilmington are driven by a complicated mix of policy and history, but one factor is a police department badly in need of reform.³⁷ The 2015 expert report concluded that the Wilmington Police Department needed to change. Most fundamentally, Wilmington residents do not trust the police, resulting in catastrophically low clearance rates for serious crimes.³⁸ Wilmington Police clear a below average rate of crimes compared to cities with similar populations,³⁹ and have particularly struggled to clear homicide and theft cases.⁴⁰ Over the period from 2011-2015, the city only cleared 35.2% of homicides, while the national average in comparably sized cities was 62.4%.⁴¹ Similarly, the city only cleared 12.2% of thefts over the same period, when one would expect the city to clear 24.3% of those crimes based on other cities of similar size.

Chart: Showing low clearance rates in key crimes in Wilmington compared to similar-sized cities.



The 2015 Report called for a better system for citizen complaints about the police, greater investment in witness and victim services, and to renew and support a focus on community policing.⁴² In July 2016, the experts from the Police Foundation returned to Wilmington to assess the City's efforts to implement the recommendations in the public safety report. They found that only 63% of the high-priority recommendations had been implemented, and that was without any assessment of the "quality of implementation."⁴³ The City claimed that all police would adopt community policing strategies, but without the sort of detailed policy and specific training called for in the Report. The City also rejected the use of nationally-recognized police accountability measures and did not implement some of the changes to the citizen complaint system—two elements central to restoring and tracking public trust.

It remains to be seen whether the change in leadership in both the Mayor's Office and the Chief of Police will improve the community relations and clearance rates. Supporting their efforts at reform is a key aspect of reducing the incarceration rate and improving criminal justice in Delaware.

III.B Delaware should support community organizations focused on crime, community life, and re-entry.

According to the groundbreaking work by sociologist Patrick Sharkey, every 10 additional organizations focusing on crime and community life in a city with 100,000 residents leads to a 9 percent reduction in the murder rate, a 6 percent reduction in the violent crime rate, and a 4 percent reduction in the property crime rate.⁴⁴

Unfortunately, recent trends in Delaware have been moving in the wrong direction, as the state has cut money for community organizations like the Achievement Center. That is a costly mistake that should be reversed. Money invested in preventing crime has enormous social benefits.

In addition to the kind of community-building work that reduces crime, community organizations can also be empowered to help people returning from prison. Delaware is less successful than other states at ensuring that people who leave prison do not re-offend. Delaware rearrests 77% of those individuals released from prison within 3 years of their release, whereas a 30-state report found that the average rearrest rate was 68% after 3 years.⁴⁵ Even starker, the Delaware reconviction rate is 72% within 3 years compared to an average of 45% in other states.⁴⁶

There is a strong link between the quality of correctional rehabilitation programming and recidivism rates.⁴⁷ Delaware's rehabilitation programming is underfunded and poorly structured.⁴⁸ Delaware also has a web of laws making it unnecessarily more difficult to return to society after serving a prison sentence.⁴⁹ Delaware should make reentry for

released individuals smoother, and ensure that people who have committed felonies have economic opportunities and are not stigmatized in their communities.

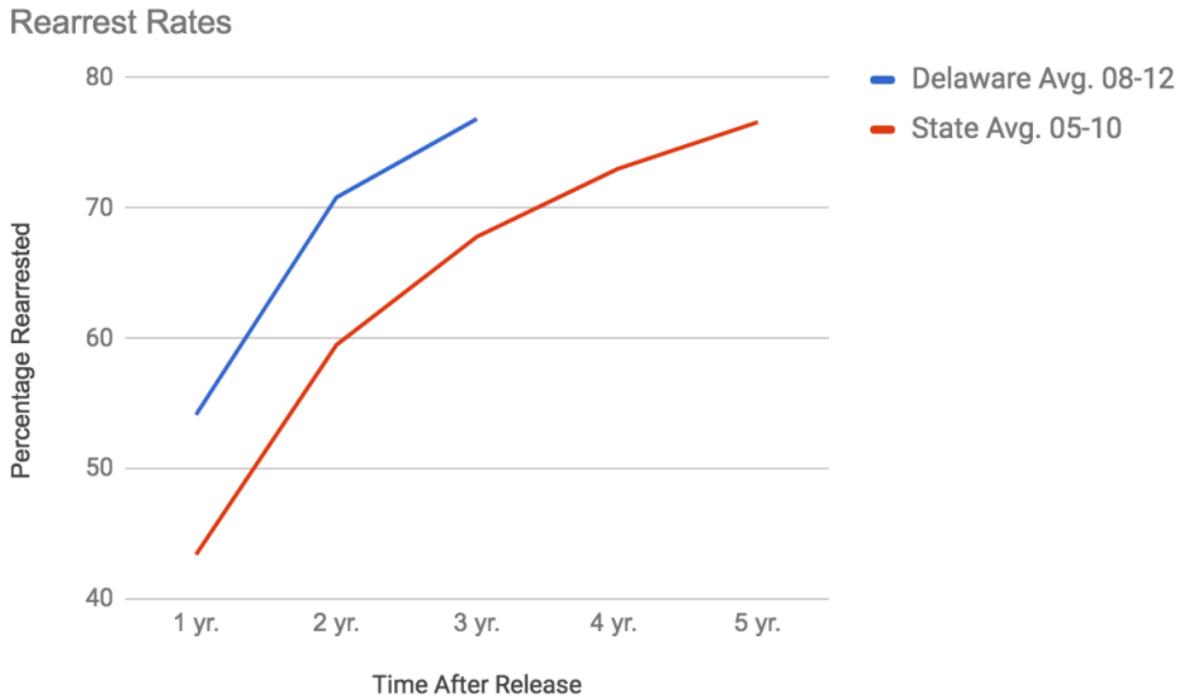


Chart: Showing elevated rearrest rate in DE compared to average.

IV. DELAWARE SHOULD PUBLISH MORE DATA ABOUT ITS CRIMINAL JUSTICE SYSTEM

There are many gaps in the public data about Delaware's criminal justice system. These gaps make it harder to hold public bodies accountable. The lack of data also makes it harder to select the reforms that are most effective.⁵⁰ Three areas of data would be especially helpful:

- (1) Prosecutorial data. The National District Attorneys Association publishes best practices for assessing prosecutorial performance.⁵¹ The *Prosecution in the 21st Century* guidelines consider the work of the prosecutor in several dimensions. They include charging decisions, workloads, and victim satisfaction with the criminal justice experience. They also include the traditional metrics of convictions and crime rates. Tracking and disclosing this information helps prosecutors do their jobs better.
- (2) Criminal case data. Delaware has comprehensive data on criminal cases from arrest to sentencing. But it is not available to the public and is only rarely made available to researchers. Studies using this data often lack enough transparency to assess, verify, and replicate them. When Delaware hires people to perform statistical analysis, it should require this transparency. Delaware should also make anonymized case data public.
- (3) Prison programming and good time credit data. Delaware's prisoners can lower their own sentences by participating in prison programs. But few prisoners earn much reduction in their sentence this way, due to a combination of lack of programs and prison discipline resulting in forfeiture of good time. There may also be errors in calculating sentences. This data should be collected and publicized so we can better assess the problem.

CONCLUSION

Delaware's prosecutors, legislators, judges, police, and community organizations must work together to send fewer people to prison, promote alternatives to incarceration, and shorten prison sentences.

Delaware's prosecutors should send fewer people to prison, and negotiate shorter sentences. Delaware's prosecutors have the power to transform the criminal justice system. They can decline more cases when criminal punishment is not appropriate, or divert cases to treatment options. They can apply more scrutiny to police charging decisions earlier in the process. They can move away from forcing people into plea bargains because of overcharging. And they can negotiate shorter sentences. Delaware should track and disclose data on these subjects. And Delaware should elect an Attorney General who will make these changes happen.

Delaware's legislators should shorten sentences and support alternatives to prison. Legislators can amend the law to permit more concurrent sentences, and continue to eliminate mandatory minimum sentences. They can require the prisons to offer programming for "good time" credits. They can limit the forfeiture of that credit. They can reform the law to ensure that people who deserve sentence modification get it. They can support pre-trial diversion options for people who need help not punishment. They can fund programs that strengthen communities impacted by crime with the money saved on the cost of jailing so many people.

Delaware's judges should send more people to treatment and detain fewer people before trial. With legislative support, the judiciary can expand pre-trial diversion and re-entry programs. Delaware's courts can also aim for pre-trial detention rates like Washington D.C. or New Jersey. Both changes require legislative action and financial support. But both are ultimately about decisions made by judges.

Delaware's police and local communities should be smart on crime. Community policing and community organizations were key factors in the crime drop since the 1990s. Both need support to further lower crime rates.

¹ The next highest country, Russia, has a rate only two-thirds that of the US. This rate is the result of a 500% increase in the number of incarcerated people between 1985 and 2015, even though much of that same period involved falling crime rates. See The Sentencing Project, *Fact Sheet: Trends in US Corrections*, <http://sentencingproject.org/wp-content/uploads/2016/01/Trends-in-US-Corrections.pdf> (June 2017).

² There are many ways to measure incarceration rates. When comparing states, the most accurate is to compare the total correctional populations in all facilities—local, state, or private—and include all people in those facilities, including pre-trial detainees or people detained on short sentences. (Ideally, such statistics exclude any large populations governed by separate criminal justice systems, such as Indian Tribes.) When possible, the statistics in this paper use the most holistic possible data on incarceration, rather than statistics that omit local or pretrial populations, as happens in the Bureau of Justice Statistics datasets. We use data from the Prison Policy Initiative: <https://www.prisonpolicy.org/reports/50statepie.html>. Delaware prisons and jails form one integrated system. As such, comparisons to other states need to include both state prison and local jail populations. New Jersey has a combined rate of 409 persons per 100,000 residents, as compared to Delaware's rate of 739. Prison Policy Initiative, https://www.prisonpolicy.org/reports/50statepie_data_appendix.html.

³ Brennan Center, *What Caused the Crime Decline?*, https://www.brennancenter.org/sites/default/files/publications/What_Caused_The_Crime_Decline.pdf (2015).

⁴ There is debate about what factors contributed most to the crime decline, but widespread consensus that mass imprisonment was not a primary cause. *Id.*; see also Sharkey, Patrick. *Uneasy Peace: The Great Crime Decline, the Renewal of City Life, and the Next War on Violence* (2017).

⁵ John M. MacDonald & Ellen A. Donnelly, *Evaluating the Role of Race in Criminal Justice Adjudications in Delaware: Final Report*, http://courts.delaware.gov/supreme/docs/DE_DisparityReport.pdf (2015). Not only were African Americans more likely to be incarcerated at sentencing, but on average, African Americans were held 125 days longer than the average length of imprisonment for Whites. Even when the arrestee had no criminal history, African Americans were 32% more likely to receive an incarceration sentence at first contact with the criminal justice system than Whites. *Id.*

⁶ <http://www.pewtrusts.org/en/research-and-analysis/analysis/2018/01/16/national-prison-rate-continues-to-decline-amid-sentencing-re-entry-reforms>

⁷ Prison Policy Initiative, *Correctional Control: Incarceration and Supervision by State* (2016) https://www.prisonpolicy.org/reports/50statepie_data_appendix.html. Delaware incarcerates 739 individuals per 100,000 residents, and Maryland only incarcerates 499 individuals per 100,000. Overall, 2014 Violent crime rates have an R-square value of .288 and 2014 property crime rates have an R-square value of .288, when compared to state incarceration rates.

⁸ In 2015, there were 1314 detentioners of 5,745 total incarcerated in level 5 and 82 detentioners of 959 total incarcerated in level 4. This translates 23% of the incarcerated population. See Delaware Department of Corrections, *Annual Report 2015*, 5,

⁹ Equal Justice Initiative, *A Report on Bail & Pretrial Detention*, 2, http://courts.delaware.gov/supreme/docs/EJI_Delaware-Bail-Paper.pdf (2015).

¹⁰ Donnelly and MacDonald, *Extension of Delaware Disparity Study: Assessing Bail Processes and Pretrial Decision-making*, 7, (Sept. 2016).

¹¹ See Will Dobbie et al, *The Effects of Pre-Trial Detention on Conviction, Future Crime, and Employment: Evidence from Randomly Assigned Judges*, https://scholar.princeton.edu/sites/default/files/wdobbie/files/dgy_bail_0.pdf (July 2016).

¹² Anne Marimow, *When it comes to pretrial release, few other jurisdictions do it DC's Way*, July 4, 2016, https://www.washingtonpost.com/local/public-safety/when-it-comes-to-pretrial-release-few-other-jurisdictionsdo-it-dcs-way/2016/07/04/8eb52134-e7d3-11e5-b0fd-073d5930a7b7_story.html?utm_term=.b46940f7df85.

¹³ Pretrial Services Agency for the District of Columbia, *Performance Measures*, https://www.psa.gov/?q=data/performance_measures.

-
- ¹⁴ Clifford T. Keenan, *It's About Results, Not Money*, <https://www.psa.gov/?q=node/499> (2014).
- ¹⁵ Sixth Amendment Center, *The Crucible of Adversarial Testing: Access to Counsel in Delaware's Criminal Courts*, iv, http://sixthamendment.org/6ac/6AC_delawarereport.pdf (2014).
- ¹⁶ Office of the Governor, *Governor Signs Criminal Justice Reforms into Law*, <http://news.delaware.gov/2014/07/09/governor-signs-criminal-justice-reforms-into-law/> (July 2014).
- ¹⁷ See 11 Del. C. 3901. In 2015, as many as 65% of inmates in Delaware were serving a sentence under one of the charges that is not permitted to be served concurrently according to public data about currently-serving prisoners and their charges.
- ¹⁸ Delaware's specialized courts include drug treatment courts, mental health courts, veterans' courts, truancy court, human trafficking court, gun court, reentry court, and DUI court.
- ¹⁹ Dennis Fuchs, et al., *Review of the Adult Drug, Mental Health, and Veterans Treatment Courts in Delaware: Observations and Recommendations*, <http://courts.delaware.gov/AOC/docs/AU-PSC-Report.pdf> (November 2015). In fact, the state-contracted treatment providers refused to even meet with the team hired by the Administrative Office of the Courts to investigate, and there are many questions about how that money has been spent. *Id.*
- ²⁰ Equal Justice Initiative, *A Report on Alternatives to Incarceration*, http://courts.delaware.gov/supreme/docs/EJI_DelawareAlternativesPaper.pdf (October 2015).
- ²¹ Criminal Justice Council of the Judiciary, *Report on Delaware's Problem-solving Courts* http://courts.delaware.gov/AOC/docs/CJCJ_Final_Report.pdf (July 2016).
- ²² Criminal Justice Council of the Judiciary, *Report on Delaware's Problem-solving Courts* http://courts.delaware.gov/AOC/docs/CJCJ_Final_Report.pdf (July 2016).
- ²³ Department of Corrections, *Annual Report* <http://courts.delaware.gov/aoc/AnnualReports/FY16/doc/AnnualReport2016.pdf> (2016)
- ²⁴ Criminal Justice Council of the Judiciary, *Report on Delaware's Problem-Solving Courts* (2016). http://courts.delaware.gov/AOC/docs/CJCJ_Final_Report.pdf.
- ²⁵ National Institute of Justice, *Five Things About Deterrence*, <https://www.ncjrs.gov/pdffiles1/nij/247350.pdf> (May 2016).
- ²⁶ David S. Nagin, *Deterrence in the Twenty-First Century*, 42 *Crime & Just.* 199, 201 (2013).
- ²⁷ David S. Nagin, *Deterrence in the Twenty-First Century*, 42 *Crime & Just.* 199, 201 (2013). The efficacy of deterrence is largely dependent on the perception of police's efficacy as community guardians. A "guardianship" function refers to the deterrent effect that police or security presence has on potential offenders. Indeed, studies indicate that the guardianship function of police have a more effective deterrent effect than their apprehension function. *Id.* at 241.
- ²⁸ Paul Gendreau and Claire Goggin, *The Effects of Prison Sentences on Recidivism*, <https://www.prisonpolicy.org/scans/e199912.htm> (1999).
- ²⁹ Substance abuse problems, and especially their connection to other crimes like larceny and DUI, play a significant role in Delaware's incarceration rate. And policies criminalizing drug possession may increase the problems associated with drug addiction and dependency. But the criminalization of drug possession does not directly play a major role in driving incarceration rates in Delaware. Drug offenses comprise 13.3% of the sentenced inmate population in 2015. Of this 13.3%, 1.8% was drug possession. Even far-reaching reforms in drug laws will have a

modest impact in improving mass incarceration in Delaware because of overall number of prisoners serving sentences for drug convictions is relatively small.

³⁰ Additionally, Delaware's school discipline and juvenile justice system contributes to the problem of crime and lengthy sentences. In 2013, only 2% of out-of-school suspensions were for serious offenses such as weapons, drugs, or serious violence. Moreover, African-American students made up only 32% of the student body, but accounted for 62% of out-of-school suspension. This discipline is, in turn, linked with juvenile crime. A 2014 study found that students are more than twice as likely to commit crimes during periods when they are removed from schools. Kathryn Monahan, et al., *From the School Yard to the Squad Car: School Discipline, Truancy, and Arrest*, <https://link.springer.com/article/10.1007%2Fs10964-014-0103-1> (2014). A juvenile record also increases sentence length.

³¹ Delaware Justice Reinvestment Oversight Group, 2014 Annual Report, 3, http://cjc.delaware.gov/wp-content/uploads/sites/61/2017/06/JRI_2014_Annual_Report_11415_min-min.pdf (Dec. 2014). This divergence may in fact be greater, given that we do not know whether these estimates exclude smaller sentences at the local or municipal level for states that do not have unified systems.

³² The average sentence lengths for drug, robbery, burglary, and weapons offenses in Delaware Superior Court were 47.4, 52.1, 41.3, and 50 months respectively in 2011. Delaware Statistical Analysis Center, CY2011 Superior Court Sentencing Report, 5, <http://sac.delaware.gov/wp-content/uploads/sites/64/2017/04/Superior-Court-Sentencing-Report-2011.pdf> (August, 2012). In 2004, the national average for sentences attached to such offenses were 51, 100, 56, and 47 months. Bureau of Justice Statistics, State Court Sentencing of Convicted Felons 2004 - Statistical Tables, Table 1.3, https://www.bjs.gov/content/pub/html/scscf04/scscf04_toc.cfm (July 2007).

³³ Delaware Statistical Analysis Center, SENTAC 11 § 4217 Early Release Process: An Outcome Evaluation, iii, http://cjc.delaware.gov/wp-content/uploads/sites/61/2017/06/recidivism_4217-min.pdf (June 2008).

³⁴ See Police Foundation, *Wilmington Public Safety Strategies Commission Final Report* <https://www.policefoundation.org/wilmington-public-safety-strategies-commission-final-report/> (April 2015) (explaining policing policy changes that will reduce crime in Wilmington); American Civil Liberties Union of Delaware, *Every Sentence Should Not Equal a Life Sentence: Collateral Consequences Reform in Delaware*, https://www.aclu-de.org/wp-content/uploads/2016/05/Collateral-Consequences-Reform-in-Delaware-booklet-April-2016_small2.pdf (2016) (identifying policies that unnecessarily increase recidivism).

³⁵ FBI Uniform Crime Reporting, *Table 8: Delaware*, 2015. https://ucr.fbi.gov/crime-in-the-u.s/2015/crime-in-the-u.s.-2015/tables/table-8/table-8-state-pieces/table_8_offenses_known_to_law_enforcement_delaware_by_city_2015.xls.

³⁶ Police Foundation, *Wilmington Public Safety Strategies Commission Final Report* <https://www.policefoundation.org/wilmington-public-safety-strategies-commission-final-report/> (April 2015) (explaining policing policy changes that will reduce crime in Wilmington).

³⁷ Changes in policing did not play a major role in the overall decrease in crime rates in the United States since the 1990s. Brennan Center, *What Caused the Crime Decline?*, https://www.brennancenter.org/sites/default/files/publications/What_Caused_The_Crime_Decline.pdf (2015). But policing plays some role, and it may play a bigger role in jurisdictions with struggling departments, like Wilmington. More effective policing may reduce incarceration rates (even if it leads to more convictions) because solving crimes deters crime, and thereby lowers the overall rate of crime. Low clearance rates create a negative feedback loop because they lead to lack of cooperation with police which lowers clearance rates further. The lower the clearance rate, the lower the benefit of witness and victim cooperation (the suspect may not be arrested) while the higher the risk of cooperating (the police are unable to protect the witness from crimes of retaliation). This effect is even more pronounced when a jurisdiction does not devote significant resources to victim and witness protection, and when the police are perceived as being disrespectful or engaging in unfair tactics—problems identified in Wilmington. Police Foundation, *Wilmington Public Safety Strategies Commission Final Report*, 26, 131 <https://www.policefoundation.org/wilmington-public-safety-strategies-commission-final-report/> (April 2015) (explaining policing policy changes that will reduce crime in Wilmington). Moreover, when there is an absence of effective policing, communities resort to their own methods of retribution and order preservation, fueling the rise of gangs and retaliatory cycles of violence. The problem of low clearance rates and

lowered community trust is explored in some detail in the 2015 Public Safety Report. Police Foundation, *Wilmington Public Safety Strategies Commission Final Report* <https://www.policefoundation.org/wilmington-public-safety-strategies-commission-final-report/> (April 2015) (explaining policing policy changes that will reduce crime in Wilmington).

³⁸ Police Foundation, *Wilmington Public Safety Strategies Commission Final Report* <https://www.policefoundation.org/wilmington-public-safety-strategies-commission-final-report/> (April 2015) (explaining policing policy changes that will reduce crime in Wilmington).

³⁹ FBI Uniform Crime Reporting, *Table 25*, Group III- Cities Population 50,000 - 99,999 (2011-2015). <https://ucr.fbi.gov/crime-in-the-u.s/2015/crime-in-the-u.s.-2015/tables/table-25>

⁴⁰ Criminal Justice Council of Delaware: Statistical Analysis Center, *Crime in Delaware: 2011-2015 Wilmington Supplement*, (2016). <http://sac.delaware.gov/wp-content/uploads/sites/64/2017/04/Crime-in-Delaware-2011-2015-Wilmington-Supplement.pdf>. Clearance is the closing of a case by arrest or “exceptional means” (such as death of the suspect).

⁴¹ *Id.*; FBI Uniform Crime Reporting, *Table 25*, Group III- Cities Population 50,000 - 99,999 (2011-2015). <https://ucr.fbi.gov/crime-in-the-u.s/2015/crime-in-the-u.s.-2015/tables/table-25>

⁴² Police Foundation, *Wilmington Public Safety Strategies Commission Final Report* <https://www.policefoundation.org/wilmington-public-safety-strategies-commission-final-report/> (April 2015) (explaining policing policy changes that will reduce crime in Wilmington)

⁴³ Police Foundation, An Assessment of Wilmington’s Implementation of the Wilmington Public Safety Strategies Commission Recommendations, <https://www.wilmingtonde.gov/home/showdocument?id=1218> (July 2016).

⁴⁴ Patrick Sharkey, et al., *Community and the Crime Decline: The Causal Effect of Local Nonprofits on Violent Crime*, 82 *American Sociological Review* 1214, 1215 (Oct. 25, 2017).

⁴⁵ Because of the differing time frames and the years researched by Delaware and by Bureau of Justice Statistics, this compares recidivism from differing years of prisoners released. Further the definitions of recidivism might not be consistent across all states, and only 30 of 50 states were researched in the BJS report. See Delaware Criminal Justice Center, Statistical Analysis Center, *Recidivism in Delaware: An Analysis of Prisoners Released from 2008 through 2010*, pg. v (2014); Department of Justice, Bureau of Justice Statistics, *Recidivism of Prisoners Released in 30 states in 2005: Patterns from 2005 to 2010* (2014). It is also important to recognize that these statistics measure the number of people that re-offend in a given period—they do not mean that 77% of offenders re-offend. Instead, if a single person is frequently convicted for low-level crimes and serves short sentences, that individual will skew the rate of recidivism (for example, if two people serve sentences each year, and each year one is released and does fine and replaced by someone new, while the other is released and re-convicted, that would lead to a recidivism rate of 50% while the total number of people who were re-convicted might be very low).

⁴⁶ See Delaware Criminal Justice Center, Statistical Analysis Center, *Recidivism in Delaware: An Analysis of Prisoners Released from 2008 through 2010*, pg. v (2014).

⁴⁷ See, e.g., RAND Corporation, *Evaluating the Effectiveness of Correctional Education: A Meta-Analysis of Programs That Provide Education to Incarcerated Adults*, http://www.rand.org/pubs/research_reports/RR266.html (2013).

⁴⁸ See Preliminary Report: Independent Review of Security Issues at the James T. Vaughn Correctional Center.

⁴⁹ See https://www.aclu-de.org/wp-content/uploads/2016/05/Collateral-Consequences-Reform-in-Delaware-booklet-April-2016_small2.pdf

⁵⁰ For example, more data is needed to assess the role of probation in Delaware and potential reforms. Based on what we know, it appears this may be an area in need of reform. Among other measurement problems, because a large number of people detained on probation violations are held in special facilities not classified the same way as prisons, it is difficult to determine what percentage of the incarcerated population is people detained on probation violations. We do know that most of those violations were technical, not for committing new crimes. See Justice Reinvestment Oversight Group, Annual Report of the Justice Reinvestment Oversight Group, 3 (2014).

http://cjc.delaware.gov/wp-content/uploads/sites/61/2017/06/JRI_2014_Annual_Report_11415_min-min.pdf. By contrast, Oregon only revokes 26.9% of parole due to technical violations. *See* Justice Research and Statistics Association, *Multistate Study Examines Factors Related to Parole Violations and Revocations*, 10 (2011). http://www.jrsa.org/pubs/forum/forum_issues/for29_2.pdf.

⁵¹ http://www.ndaa.org/pdf/prosecution_21st_century.pdf