

April 1, 2025

Chair Wanggaard, Vice-Chair James, and Honorable Members of the Senate Committee on Judiciary and Public Safety:

The American Civil Liberties Union of Wisconsin appreciates the opportunity to provide testimony in opposition to Senate Bill 93.

We cannot continue to double down on harmful policies that have pushed our correctional system to a breaking point and failed to actually improve safety and material conditions in Wisconsin communities. As a reminder, we have over 23,000 people incarcerated in state prisons, about 12,000 in county jails, and over 63,000 people on probation, parole, and extended supervision.

Devastatingly, Wisconsin has the highest Black incarceration rate in the country. Data shows that 1 in 36 Black Wisconsinites are currently incarcerated, meaning Black people are nearly 12 times more likely to be incarcerated than white people.¹ According to a study by the Wisconsin Court System, Native American men are 34% more likely and Black men are 28% more likely to be sentenced to prison than their white counterparts,² Wisconsin also has a higher percentage of people incarcerated for crimes committed as youth than any state in the country except Louisiana.³ We all want to live in safe and healthy communities, and legislation proposing changes to the criminal legal system should be focused on the most effective approaches to achieving that goal. SB-93/AB-85 would take us several enormous steps in the wrong direction.

This bill would require DOC to recommend revoking a person's probation, parole, or extended supervision for just being charged with—and not convicted of—a crime. In Wisconsin, the number of people on extended supervision exceeds the national average, and the typical length of supervision is nearly twice the national average.⁴ As a report from the Badger Institute notes, "There is little evidence that society benefits from such lengthy periods of supervision."⁵

¹ Clare Amari, *Wisconsin imprisons 1 in 36 Black adults. No state has a higher rate.*, Wisconsin Watch (Oct. 13, 2021), <https://wisconsinwatch.org/2021/10/wisconsin-imprisons-1-in-36-black-adults-no-state-has-a-higher-rate/>

² DRAFT: *Race and Prison Sentencing in Wisconsin: Initial Outcomes of Felony Convictions, 2009-2018* (Jan. 2020), https://s3.documentcloud.org/documents/20478391/race-prison-sentence-felony-report-draft_2020_02_05.pdf.

³ Alexander Shur, *Wisconsin has 2nd highest percentage of prisoners locked up for crimes committed as youth*, Wisconsin State Journal (May 23, 2023), https://madison.com/news/state-regional/government-politics/wisconsin-has-2nd-highest-percentage-of-prisoners-locked-up-for-crimes-committed-as-youth/article_4a6c1600-f5b7-11ed-9186-ffd641c2443d.html.

⁴ "The Wisconsin Community Corrections Story," Columbia University Justice Lab (January 2019), [https://justicelab.columbia.edu/sites/default/files/content/Wisconsin Community Corrections Story final online copy.pdf](https://justicelab.columbia.edu/sites/default/files/content/Wisconsin%20Community%20Corrections%20Story%20final%20online%20copy.pdf).

⁵ "Ex-Offenders Under Watch," Badger Institute (July 2019), <https://www.badgerinstitute.org/wp-content/uploads/2022/08/RevocationPDF.pdf>.

Revocations are already the primary driver of incarceration in Wisconsin—revocations for rule violations and revocations resulting in new convictions accounted for an extraordinary 60% of the total 8,155 new prison admissions in 2024.⁶

Lowering the Constitutional Burden for Conviction

Taking away discretion from DOC agents and automatically initiating an administrative revocation to send a person to prison for being charged with a crime raises constitutional concerns. If an individual on supervision is charged with a new crime, and as a result of this bill, the new crime is handled as an administrative revocation rather than a new circuit court case, the practical burden of proof required for a period of incarceration on a new charge would essentially become “probable cause” (the standard for issuing the charge itself) rather than “beyond a reasonable doubt.”

The reality is the overwhelming majority of revocation proceedings decided by an administrative law judge result in re-incarceration. While SB-93 would mandate a revocation *recommendation*, in light of the conditions of release and the lower burdens and standards of the administrative revocation process, this functionally means mandatory revocation in most cases.

Based on a study sample from the aforementioned Badger Institute report, 49% of revocation conduct later led to a criminal conviction while 51% did not result in an additional criminal conviction.⁷ SB-93 takes away the current discretion on the 51% of alleged criminal activity that does not result in a criminal conviction, functionally bypassing the due process afforded in a criminal prosecution to instead use an administrative process with far fewer rights.

Over Two Billion Dollar Price Tag

According to the Fiscal Estimate completed by the Department of Corrections, this proposal would cost a fortune:

- **Over \$1.7 million annually** for increased revocation cases adjudicated by the Department of Administration’s Division of Hearings and Appeals;
- **\$2 billion** for the construction of two new prisons to accommodate the significant increase in the incarcerated population;
- **Over \$85.2 million** in increased operations costs during the first year of enactment
- **Over \$245.7 million** in a permanent increased operations costs after the population is annualized during the second year of enactment.

Rather than spending billions in taxpayer dollars to trap people in a revolving door of incarceration and supervision, people on parole, probation, or extended supervision should be given the support and opportunities they need to thrive in their community. The ACLU of Wisconsin strongly urges committee members to vote against SB-93.

⁶ <https://doc.wi.gov/Pages/DataResearch/PrisonAdmissions.aspx>

⁷ “Ex-Offenders Under Watch,” Badger Institute (July 2019), <https://www.badgerinstitute.org/wp-content/uploads/2022/08/RevocationPDF.pdf>.