

Blueprint for Smart Justice

Wisconsin



Blueprint *for* Smart Justice Wisconsin

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Executive Summary

Over the past five decades, the United States has dramatically increased its reliance on the criminal justice system as a way to respond to drug addiction, mental illness, poverty, and underfunded schools. As a result, the United States today incarcerates more people, in both absolute numbers and per capita, than any other nation in the world. Millions of lives have been upended and families torn apart. This mass incarceration crisis has fractured American society, damaged families and communities, and wasted trillions of taxpayer dollars. Mass incarceration is a result of many systems failing to support our communities. To end it, we must develop policies that better address inadequacies throughout our education, health care, and economic systems — to name a few.

This report proposes a path forward. If Wisconsin were to adopt the changes outlined in this Smart Justice 50-State Blueprint's forecaster chart and achieve a 50 percent reduction in its prison population, the state could save a staggering \$886,459,483 by 2025 — money that could be better spent on schools, infrastructure, and services for people in Wisconsin.

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

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

To advance these goals, the Campaign partnered with the Urban Institute to conduct a two-year research project to analyze the kinds of changes needed to cut the number of people in prison in each state by half and reduce racial disparities in incarceration. In every state, Urban Institute researchers identified primary drivers of incarceration. They then predicted the impact of reducing prison admissions and length of stay on state prison populations, state budgets, and the racial disparity of those imprisoned.

The analysis was eye-opening.

In every state, we found that reducing the prison population by itself does little to diminish racial disparities in incarceration — and in some cases would worsen them. In Wisconsin — where, as of 2017, the per capita imprisonment rate of Black adults is nearly 12 times higher than that of white adults¹ — reducing the number of people imprisoned will not on its own reduce racial disparities within the prison system. This finding confirms for the Campaign that urgent work remains for advocates, policymakers, and communities across the nation to focus on efforts like policing and prosecutorial reform that are specific to combating these disparities.

As in states across the country, Wisconsin's prison population has experienced astronomical growth in recent years. Between 1980 and 2016, Wisconsin's prison population increased more than fivefold (456 percent) to more than 22,000 people.² As of December 2018, more than 23,000 people were imprisoned in the state.³ As of 2018, the Wisconsin Department of Corrections predicts that the prison population will continue to grow in the near future, surpassing 25,000 people by 2021.⁴

Between 2000 and 2016, the number of people who were admitted to Wisconsin prisons with any drug conviction⁵ increased 18 percent, from 2,072 to 2,448.

Over that same period, the number of people admitted to prison with an opioid offense increased nearly 13-fold, growing from 78 people (4 percent of all drug offenses) to 998 people (41 percent of all drug offenses).⁶ Overall, people with a drug offense as their most serious offense made up one in five (20 percent) new court commitments⁷ to Wisconsin prisons in 2018.⁸

Crimeless revocations of community supervision – the imprisonment of an individual for violating a rule of supervision that generally does not involve a new crime – are significant contributors to the growing Wisconsin prison population. These revocations, for violations of supervision rules that can be as minor as borrowing money or missing an appointment, made up a larger percentage of admissions than any other admission type in 2017, accounting for 37 percent of all admissions to Wisconsin prisons.⁹

A growing proportion of the Wisconsin prison population is serving longer prison sentences due in part to the state’s tough truth-in-sentencing law, which is considered one of the most punitive truth-in-sentencing statutes in the country.¹⁰ With little to no possibility of early release, people behind bars in Wisconsin are often required to serve 100 percent of their sentence, followed by an additional mandatory period of community supervision.¹¹ Additionally, the number of people in Wisconsin prisons serving a life sentence increased 68 percent between 2000 and 2016.¹²

These trends in incarceration come at a high cost to the people of Wisconsin. Between 1985 and 2017, as the prison population increased significantly,¹³ spending on corrections from the state’s general fund skyrocketed, growing 302 percent and far outpacing growth in other state spending priority areas such as education.¹⁴ The forecasted continued growth in Wisconsin’s prison population could require nearly \$150 million in additional corrections funds for the 2019-2021 budget.¹⁵

So, what’s the path forward?

To start, Wisconsin legislators must put an end to crimeless supervision revocations, which have greatly and needlessly increased the prison population. In

particular, for people with disabilities, this reform must be coupled with intensive case management, disability-competent training for police officers on alternatives to incarceration and reasonable modifications to requirements of supervision, and no return to incarceration for first and second technical violations.

The state should also increase investment in alternatives to incarceration, particularly for people in need of mental health treatment or those who could benefit from substance use treatment programs. Wisconsin lawmakers took a vital step in the right direction in 2018 by allocating \$6 million annually for the Treatment Alternatives and Diversion (TAD) program.¹⁶ However, the Legislature must now amend the TAD statute to permit individuals convicted of violent offenses to participate in TAD’s robust programming and to implement the program equitably across all counties to meet existing needs.

Wisconsin can also reduce its prison population by limiting the circumstances and severity of its truth-in-sentencing law, which contributes to excessively long sentences followed by years of unnecessary community supervision. All of these reforms must be coupled with intentional efforts to eliminate racial disparities throughout Wisconsin’s criminal justice system, including requiring data transparency from police and prosecutors on how their decisions impact Black people and other communities of color.

Ultimately, achieving these improvements – in public safety and in the use of state resources – will depend on Wisconsin’s voters, policymakers, communities, and criminal justice advocates moving forward with the urgent work of ending Wisconsin’s obsession with mass incarceration.

The State of the Wisconsin Prison System

Between 1980 and 2016, Wisconsin's prison population increased more than fivefold (456 percent) to more than 22,000 people.¹⁷ As of December 2018, 23,413 people were imprisoned in Wisconsin.¹⁸ When people on community supervision¹⁹ and in local jails are included, the reach of the criminal justice system is even greater: In 2016, approximately one out of every 45 Wisconsin adults was under some form of correctional control.²⁰

Although the overall U.S. state imprisonment rate decreased by 7 percent between 2000 and 2016, Wisconsin's imprisonment rate actually increased slightly (1 percent) over the same time period. In 2016, Wisconsin imprisoned 383 out of every 100,000 of its citizens.²¹ As of 2018, the Wisconsin Department of Corrections predicted that the prison population would continue to grow in the near future, surpassing 25,000 people by 2021.²²

AT A GLANCE

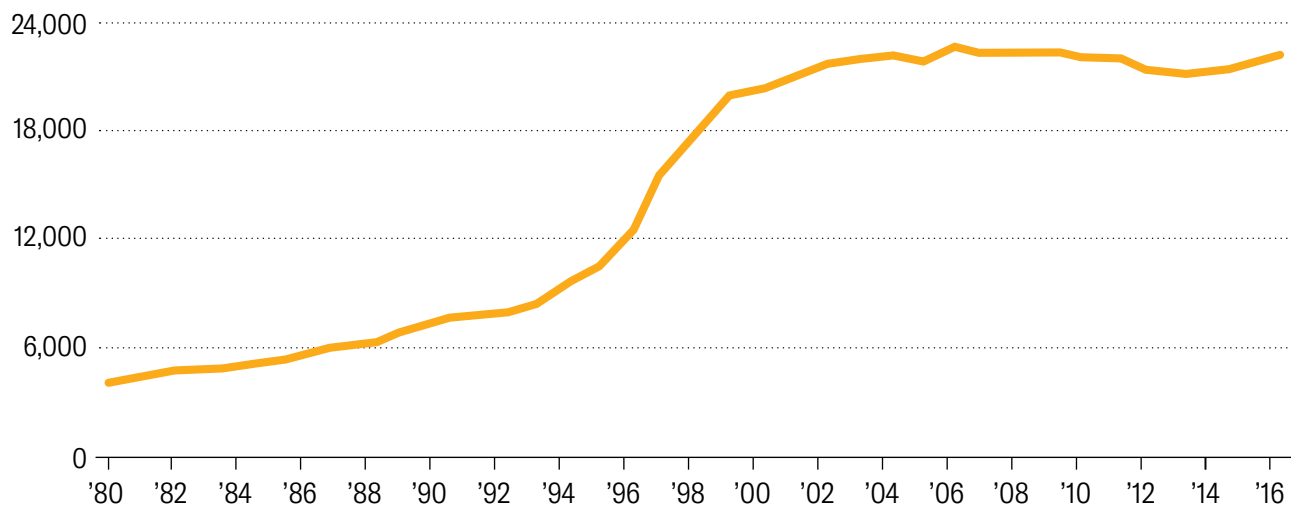
WISCONSIN PRISONS

Wisconsin's prison population **grew more than fivefold** between 1980 and 2016.

In 2016, roughly **1 out of every 45** adults in Wisconsin was under some form of correctional control.

The number of people imprisoned in Wisconsin is projected to surpass **25,000** by 2021.

WISCONSIN PRISON POPULATION



What Is Driving People Into Prison?

The number of people admitted to Wisconsin prisons each year increased 13 percent between 2000 and 2017, from 8,343 to 9,421.²³ In 2017, admissions for new prison sentences (not including people revoked from community supervision) accounted for 30 percent of admissions to Wisconsin prisons. An additional 60 percent of 2017 admissions were for revocations from community supervision, including people admitted for technical violations and for new crimes. The remaining 10 percent were a variety of other admission types, including individuals admitted to prison to complete a treatment program.²⁴

A litany of offenses contributes to Wisconsin's prison population. People with a drug offense as their most serious offense made up one in five new court commitments²⁵ (20 percent) to Wisconsin prisons in 2018.²⁶

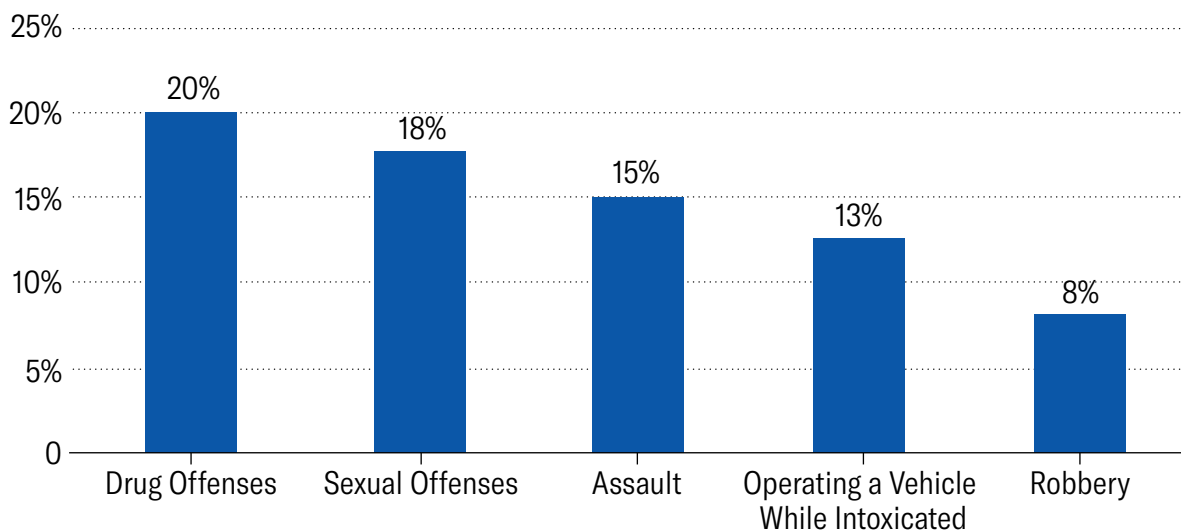
Within those new drug admissions, approximately one-fifth (21 percent) were for drug possession as the most serious offense, 41 percent were for possession with the intent to deliver, and 34 percent were for manufacturing and delivering drugs. After drug offenses, sexual offenses were the second most common offense category among new court commitments, accounting for 18 percent of admissions, and assault

accounted for an additional 15 percent of new admissions. Other common offenses included operating a motor vehicle while intoxicated (13 percent), robbery (8 percent), and homicide (6 percent).²⁷

The number of people admitted to Wisconsin prisons with any drug conviction²⁸ increased 18 percent between 2000 and 2016, from 2,072 to 2,448. Over that same time period, the number of people admitted to prison with an opioid offense increased nearly 13-fold, growing from 78 people (4 percent of all drug offenses) to 998 people (41 percent of all drug offenses). Marijuana offenses accounted for one-quarter (24 percent) of all people admitted to prison with a drug offense in 2016.²⁹

Crimeless revocations of community supervision are a significant contributor to the growing Wisconsin prison population. Violations of supervision rules can be as minor as borrowing money, missing an appointment, or accepting employment without prior approval.³⁰ The number of crimeless revocations to prison increased 25 percent between 2000 and 2017 (from 2,748 to 3,442) – representing the greatest increase of any admission type³¹ over that time period. Crimeless revocations also made up a larger percentage of admissions than any other admission type in 2017, accounting for 37 percent of all admissions to Wisconsin prisons.³²

WISCONSIN NEW COURT COMMITMENTS BY TOP OFFENSE TYPES (FY 2018)



A number of people are admitted to Wisconsin prisons each year with convictions for multiple offenses. The number of people who are admitted to Wisconsin prisons with any drug conviction,³³ even if it is not their most serious offense, increased 18 percent between 2000 and 2016.³⁴

Nearly one in three people (31 percent) released from Wisconsin prisons in 2011 had been convicted of a new offense within three years.³⁵

The Current Prison and Jail Population

As of July 2018, there were approximately 24,000 people in Wisconsin prisons, nearly half (49 percent) of whom were imprisoned for a revocation of community supervision. Forty-five percent of people imprisoned for a revocation, or 5,367 people, were imprisoned for a crimeless revocation.³⁶

In 2018, more than half of all people who were imprisoned in Wisconsin for a new crime³⁷ were serving time for either a sexual offense (30 percent) or for homicide (21 percent). Ten percent were serving time for drug offenses, including 4 percent of all new crime admissions for drug possession with intent to deliver and 2 percent for drug possession. Additionally,

AT A GLANCE

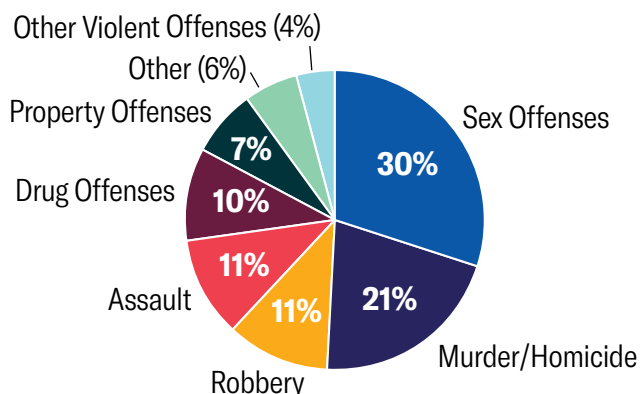
WISCONSIN JAIL AND PRISON POPULATION

People with a drug offense as their most serious offense accounted for **1 in 5** new admissions to Wisconsin prisons in 2018.

17 percent of people imprisoned in Wisconsin for new crimes in 2018 were serving time for a drug or property offense.

49 percent of people held in Wisconsin jails in 2015 had not been convicted of a crime.

WISCONSIN PRISON POPULATION BY OFFENSE TYPE (2018)



7 percent of people imprisoned for a new crime were serving time for property offenses, including 3 percent for burglary and 3 percent for theft. Other common offenses included robbery (11 percent), assault (11 percent), and operating a vehicle while intoxicated (4 percent).³⁸

In 2017, 30 percent of men and 25 percent of women in Wisconsin prisons reported that they had less than a high school education. Nearly half (48 percent) of people in prison had never been incarcerated in a Wisconsin prison before.³⁹

Additionally, as of 2015, there were 12,227 people incarcerated in local jails in Wisconsin, 49 percent of whom were being held pretrial and had not been convicted of a crime.⁴⁰ The Wisconsin Department of Corrections contracts with local jails to house a number of people temporarily locked up for reasons such as a violation of extended supervision. On any given day in fiscal year 2018, an average of 408 people under Department of Corrections jurisdiction were held in Wisconsin county jails.⁴¹

Why Do People Stay in Prison for So Long?

A growing proportion of the Wisconsin prison population is serving longer prison terms. Between 2000 and 2016, the number of people with five or more

years of their sentence left to serve in prison increased by 48 percent, from 4,889 to 7,226.⁴² As of December 31, 2017, more than one-third of the Wisconsin prison population (36 percent) had five or more years left to serve in prison.⁴³

The number of people in Wisconsin prisons serving life sentences increased 68 percent between 2000 and 2016. Over the same time period, the average age of people serving life sentences in Wisconsin increased by 34 percent, from 35 in 2000 to 47 in 2016. In 2016, 5 percent of the Wisconsin prison population was serving a life sentence.⁴⁴

One significant contributor to the lengthy time individuals spend in Wisconsin prisons is the state's harsh truth-in-sentencing law. Enacted in 1998, the law is one of the most punitive truth-in-sentencing statutes in the country.⁴⁵ The law included mandatory minimum sentences and sentencing enhancements for "persistent repeaters," abolished parole, and eliminated "good time" credit, or the ability to earn time against a sentence for good behavior in prison, for anyone convicted of a felony offense and sentenced to at least one year in prison on or after December 31, 1999.⁴⁶ Although various forms of early release were reinstated in 2009, these changes were largely repealed in 2011.⁴⁷

With little to no possibility of early release, people behind bars in Wisconsin usually serve 100 percent of their sentences,⁴⁸ followed by additional mandatory periods of community supervision. The Department of Corrections may not discharge a person from custody before the end of their sentence, although the sentencing court has limited release authority under certain circumstances, such as for people with terminal illnesses.⁴⁹ Research has documented adverse effects of these long and rigid sentences, especially for people convicted of low-level drug offenses.⁵⁰

The average time served for people released from Wisconsin prisons is increasing as well, partly due to the truth-in-sentencing law. People released in 2015 spent an average of 2.4 years in prison, 33 percent more time than people released in 2000 (who spent an average of 1.8 years in prison). Over the same time period, time served for drug, property, and violent offenses all increased, although the greatest increase

AT A GLANCE

LENGTH OF IMPRISONMENT AT A GLANCE

People in Wisconsin released from prison in 2015 spent **33 percent** more time in prison, on average, than those released in 2000.

The majority of people in Wisconsin prisons must serve **100 percent** of their sentence in prison, with no chance of early release.

The number of people serving life sentences in Wisconsin increased **68 percent** between 2000 and 2016.

was for violent offenses. People serving time for violent offenses who were released in 2015 spent an average of 3.7 years in prison, compared to 2.5 years in 2000.⁵¹

Correctional Control in Wisconsin

In addition to increasing prison time served requirements, Wisconsin's truth-in-sentencing statute also created a new form of community supervision called "extended supervision," which lengthened the amount of time people remain under correctional supervision overall. This system requires extended supervision for people who receive a prison sentence of at least one year.⁵² Therefore, individuals typically serve their complete prison sentences and then must be supervised in the community for periods at least 25 percent of the length of their prison sentences.⁵³ These often lengthy supervision periods added on to already lengthy prison terms contribute to the growing number of people under some form of correctional control in Wisconsin.

Since the implementation of the truth-in-sentencing statute, the number of people on post-release supervision⁵⁴ and the average time they spend being supervised have increased significantly.⁵⁵ Although Wisconsin's probation population decreased by 18

percent between 2000 and 2016, the post-release supervision population more than doubled (a 116 percent increase).⁵⁶ And, in 2016, the average length of post-release supervision in Wisconsin was an estimated 38 months – 1.7 times greater than the average across all states.⁵⁷ As of June 30, 2018, 21,412 people were under post-release supervision in Wisconsin, making up approximately one-third (32 percent) of Wisconsin’s community corrections population.⁵⁸ Community corrections in Wisconsin disproportionately impacts people of color. In 2017, one in eight Black men between ages 18 and 64 was under community supervision in Wisconsin – a rate more than five times that of white men. In the same year, one in 11 Native American men in the same age group was under community supervision.⁵⁹

Disproportionate Impact of Imprisonment

Black people: Incarceration in Wisconsin has a profoundly disparate impact on Black communities. In 2017, the imprisonment rate of Black adults in Wisconsin (3,694 per 100,000) was nearly 12 times that of white adults.⁶⁰ In 2014, Wisconsin had the second-highest rate of disparity between Black and white imprisonment rates in the country.⁶¹ Although they made up just 6 percent of the state’s adult population, Black people made up 41 percent of the prison population in Wisconsin in 2017.⁶² In 2017, approximately one in every 14 adult Black men in Wisconsin was in prison.⁶³

American Indians/Alaskan Natives: The number of American Indian/Alaskan Native people imprisoned in Wisconsin increased from 649 people in 2000 to 954 people in 2017, representing a 47 percent increase and nearly triple the rate of the total population growth over the same time period (16 percent).⁶⁴ In 2017, American Indian/Alaskan Native people made up 1 percent of Wisconsin’s adult population but 4 percent of the prison population. In the same year, the imprisonment rate of American Indian/Alaskan Native adults in Wisconsin (2,089 per 100,000) was nearly 7 times that of white adults.⁶⁵

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DEMOGRAPHICS AT A GLANCE

In 2017, Black adults in Wisconsin were imprisoned at nearly **12 times** the rate of white adults.

The number of American Indian/Alaskan Native adults in Wisconsin prisons increased by **47 percent** between 2000 and 2017.

The number of people over 50 years old in Wisconsin prisons increased **232 percent** between 2000 and 2016.

Women: Between 1980 and 2016, the number of women in Wisconsin prisons grew more than nine-fold (816 percent), from 154 to 1,410. This rate of increase is nearly double the increase in the male prison population, which grew from 3,826 to 20,734 men (442 percent) over the same time period.⁶⁶

Older people: The number of people over the age of 50 in Wisconsin prisons, a population generally considered to pose a negligible risk to public safety,⁶⁷ more than tripled (232 percent increase) between 2000 and 2016, growing from 1,320 people to 4,384 people.⁶⁸ As of December 2016, nearly one in every five people (19 percent) imprisoned in Wisconsin was age 50 or older. Twenty-eight percent of people age 50 or older in Wisconsin prisons in 2017 were serving time for nonviolent offenses.⁶⁹

People With Mental Health and Substance Use Disorders

Mental health needs are widespread among Wisconsin’s prison population. In 2018, the Wisconsin Department of Corrections reported that 38 percent of men and 85 percent of women in Wisconsin prisons had a mental health condition.⁷⁰ Additionally, the Department of Corrections reported that in 2016, 69

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MENTAL HEALTH AND SUBSTANCE USE DISORDERS

85 percent of women in Wisconsin prisons in 2018 had a mental health condition.

In 2016, **69 percent** of the Wisconsin prison population had “a substance abuse need.”

percent of the Wisconsin prison population had “a substance abuse need.”⁷¹

Budget Strains

As Wisconsin’s imprisoned population has risen, so has the cost burden. In 2017, Wisconsin spent more than \$1 billion of its general fund on corrections, accounting for 6.8 percent of the state’s total general fund⁷² spending. Between 1985 and 2017, corrections general fund spending skyrocketed, growing 302 percent and far outpacing growth for other priorities like education.⁷³ The forecasted increase in Wisconsin’s prison population could require nearly \$150 million in additional corrections funds for the 2019-2021 budget.⁷⁴

AT A GLANCE

BUDGET

Wisconsin spent more than **\$1 billion** of its general fund on corrections in 2017.

General fund corrections spending increased **302 percent** between 1985 and 2017.

Ending Mass Incarceration in Wisconsin: A Path Forward

Mass incarceration is a result of many systems failing to support our communities. To end it, we must develop policies that better address inadequacies throughout our education, health care, and economic systems — to name a few. There are many potential policy changes that can help Wisconsin end its mass incarceration crisis, but it will be up to the people and policymakers of Wisconsin to decide which changes to pursue. To reach a 50 percent reduction, policy reforms will need to reduce the amount of time people serve in prisons and/or reduce the number of people entering jail and prison in the first place.

Reducing Admissions

To end mass incarceration, Wisconsin must break its overreliance on jails and prisons as a means to address societal problems. Evidence indicates that prisons seldom offer adequate solutions to wrongful behavior. In fact, imprisonment can be counterproductive — increasing cycles of harm and violence, and failing to provide rehabilitation for incarcerated people or adequate accountability to the survivors of crime.⁷⁵ Here are some strategies:

- **End crimeless revocations:** As a result of Wisconsin's current extended supervision system, roughly 65,000 people are under either probation or parole supervision — 5,000 more people than are under community corrections supervision in Alaska, Maine, Montana, New Hampshire, North Dakota, South Dakota, Vermont, and Wyoming *combined*, as of 2016.⁷⁶ Unfortunately, too often those on community supervision end up serving time behind bars due to revocation without any new convictions.⁷⁷

These revocations are a large driver of Wisconsin's overpopulated prisons, forcing the Department of Corrections to, among other things, rent out beds in ill-equipped county jails for individuals serving state sentences.⁷⁸ Moving forward, the Legislature should eliminate incarceration as a response to crimeless violations of supervision rules.

- **Provide alternatives to incarceration:** The good news is that alternatives exist. Several types of alternative-to-incarceration programs have shown great success in reducing both violent and nonviolent criminal activity. Programs offering support services such as substance use treatment, mental health care, employment, housing, health care, and vocational training — often with a community service requirement — have significantly reduced recidivism rates for participants.⁷⁹ For crimes involving violence, restorative justice programs — which are designed to hold responsible people accountable and support those who were harmed — can be particularly promising. When they are rigorous and well implemented, these processes have not only been demonstrated to reduce recidivism for defendants,⁸⁰ but they have also been shown to decrease symptoms of post-traumatic stress in victims of crime.⁸¹ Criminal legal stakeholders who embrace these solutions can fulfill their responsibilities to public safety and to supporting victims in their healing — and can often generate far better results than imprisonment can deliver. Other successful models include diverting people to treatment and support services before arrest

and prosecutor-led programs that divert people before they are charged. Lawmakers can explore such interventions at multiple phases in the system, whether through decriminalization or alternatives to arrest, charging, or incarceration.

- **Provide expanded mental health treatment:** Mental health diversion is an effective way to redirect people out of the criminal legal system and into supportive community treatment. Diversion programs have been shown to be effective for people charged with both nonviolent and violent offenses.⁸² When implemented effectively, diversion reduces arrests, encourages voluntary treatment in the community, and saves money.⁸³ Effective diversion programs coordinate with community services that provide a wide range of substantial, quality wraparound treatment and support for people with mental health care needs to access housing, employment, and intensive, individualized supports in the community. After an initial investment in community supports, diversion programs have the potential to save jurisdictions large amounts of money.⁸⁴ Expanding Medicaid would provide Wisconsin residents with greater access to mental health treatment before arrest, while under supervision, and after separation from the criminal justice system.
- **Provide expanded substance abuse treatment:** Substance use disorders are often underlying drivers of a substantial number of crimes, including and especially more serious offenses like burglaries, robberies, and assaults. Addressing substance abuse through evidence-based responses (policies and practices whose effectiveness has been demonstrated by causal evidence) instead of prison time.⁸⁵ In recognition of these valuable alternatives to incarceration, Wisconsin’s Legislature has allocated \$6 million annually for its Treatment Alternatives and Diversion (TAD) program, providing drug treatment and diversion programs for adults convicted of nonviolent offenses related to their substance abuse.⁸⁶ However, the Legislature

“Merely reducing sentence lengths, by itself, does not disturb the basic architecture of the New Jim Crow. So long as large numbers of African Americans continue to be arrested and labeled drug criminals, they will continue to be relegated to a permanent second-class status upon their release, no matter how much (or how little) time they spend behind bars. The system of mass incarceration is based on the prison label, not prison time.”¹⁰⁴

— From *The New Jim Crow*, Michelle Alexander

must amend the TAD statute to permit individuals convicted of violent offenses to participate in TAD’s robust programming and implement the program equitably across all counties to meet existing needs.

- **Ensure prosecutorial reform:** Prosecutors are the most powerful actors in the criminal justice system, with the ability to wield the power of the state against an individual to deprive that person of life, liberty, and property. The initial decisions of whether to charge someone with a crime and, if so, what and how many charges, have a major impact on every aspect of a person’s experience with the system, not least of which is the amount of time someone faces and eventually serves incarcerated. There should be some mechanism for the state and counties to review and assess those decisions overall. Moreover, because some persons are wrongfully convicted, legislation that supports Conviction Integrity Units in each county prosecutor’s office can address wrongful convictions and prosecutorial misconduct.⁸⁷ Conviction Integrity Units add oversight to a prosecutor’s decisions, which encourages prosecutors to use greater scrutiny when reviewing and charging cases. Further, district attorneys in Wisconsin must be elected. Elections keep

district attorneys accountable, encourage public transparency, and ensure that the prosecutor's office reflects the criminal justice priorities of the people it serves.

- **Expand judicial discretion:** The Legislature can also limit the circumstances in which a judge is required to impose a prison sentence instead of community supervision, especially for drug offenses and in situations when the mandatory prison sentence is triggered by a prior felony. Judges must also have a variety of options at their disposal besides imprisonment, allowing them to require treatment, mental health care, restorative justice, or other evidence-based alternatives to incarceration. These programs should be available to the court in all or most cases, regardless of the severity of the offense or someone's prior criminal history. The court, not the Legislature, should be in a position to decide whether such an option is appropriate in individual cases.

Reducing Time Served

Reducing the amount of time people serve, even by just a few months, can lead to thousands of fewer people in Wisconsin's prisons. Here's how:

- **Parole reform:** Improving parole and release policies and practices to ensure that eligible people are paroled more quickly is a key way to reduce the amount of time people spend in prison.
- **Earned time/earned credit reform:** Wisconsin can also consider expanding the availability of earned credits against a prison sentence through participation in educational, vocational, and other opportunities.
- **Sentencing reform:** The Legislature should amend Wisconsin's criminal code to reduce sentencing ranges, including and especially for drug offenses, burglary and other property offenses, robbery, public order offenses, and assault. In particular, the Legislature should

limit the circumstances and the severity of Wisconsin's sentencing enhancements, including the truth-in-sentencing law that enacted mandatory minimums and requires extended community supervision after release.⁸⁸

- **Compassionate release:** The Wisconsin Legislature should expand access to compassionate release from prison, a process by which people in prison may be eligible for immediate early release due to particularly extraordinary or compelling circumstances. The state's prison population is rapidly aging, in large part due to longer average sentence lengths and curtailed opportunities for parole. Keeping aging and seriously injured or ill people incarcerated significantly taxes prison resources. Studies have shown that incarcerating an older person (50 and above) costs double what it costs to incarcerate a younger person.⁸⁹ What is more, keeping older people behind bars does not serve the goal of incapacitation, particularly as studies have clearly shown that as people age their propensity to commit crime significantly declines.⁹⁰ There is also clear evidence showing that older persons have much lower rates of recidivism than their younger counterparts.⁹¹

Eliminating Racial Disparities

Reducing the number of people who are imprisoned in Wisconsin will not, on its own, significantly reduce racial disparities in the prison system.

People of color (especially Black, Latino, and Native American people) are at a higher risk of becoming involved in the justice system, including living under heightened police surveillance and being at higher risk for arrest.

This imbalance is not the result of disparate rates of involvement in illegal activity, and it grows at each stage in the justice system, beginning with initial law enforcement contact and increasing at subsequent stages, such as pretrial detention, conviction, sentencing, and post-release opportunity.⁹²

Racial disparity is so ingrained in the system that it cannot be eliminated solely by reducing the scale of mass incarceration. Shrinking the prison population across the board will likely result in lowering imprisonment rates for all racial and ethnic populations, but it will not address comparative disproportionality across populations. For example, focusing on reductions to prison admissions and length of stay in prison is critically important, but those reforms do not address the policies and practices among police, prosecutors, and judges that contribute greatly to the racial disparities that plague the criminal legal system.

New Jersey, for example, is often heralded as one of the most successful examples of reversing mass incarceration, passing justice reforms that led to a 26 percent decline in the state prison population between 1999 and 2012.⁹³ However, the state did not target racial disparities in incarceration and, in 2014, Black people in New Jersey were still more than 12 times as likely to be imprisoned as white people — the highest disparity of any state in the nation.⁹⁴

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

Some examples include:

- Reducing exposure to reincarceration due to revocations from supervision
- Ending overpolicing in communities of color
- Evaluating prosecutors' charging and plea-bargaining practices to identify and eliminate bias
- Requiring data transparency from police and prosecutors on how their decisions impact Black and Hispanic people
- Investing in diversion/alternatives to detention in communities of color

- Reducing the use of pretrial detention and eliminating wealth-based incarceration
- Ending sentencing enhancements based on location (drug-free school zones)
- Requiring racial impact statements before any new criminal law or regulation is passed and requiring legislation to proactively rectify any potential disparities that may result with new laws or rules
- Eliminating discriminatory gang sentencing enhancements that disproportionately target people of color
- Encouraging judges to use their power to dismiss cases that originate with school officials or on school grounds when the matter may be adequately addressed through school disciplinary or regulatory process to avoid incarcerating children during their most formative years
- Eliminating fines and fees, which effectively criminalize poverty when incarceration is used to punish those who do not — or cannot — afford to pay
- Shifting funding from law enforcement and corrections to community organizations, job creation, schools, drug and mental health treatment, and other social service providers

Reducing Disparities on the Basis of Disability

The rates of people with disabilities in the U.S. criminal system are two to six times those of the general population.⁹⁵ In particular, people with psychiatric disabilities are dramatically overrepresented in jails and prisons across the country.⁹⁶

- People showing signs of mental illness are twice as likely to be arrested as people without mental illness for the same behavior.⁹⁷

- People with mental illness are sentenced to prison terms that are, on average, 12 percent longer than those of other people.⁹⁸
- People with mental illness stay in prison longer because they frequently face disciplinary action from conduct that arises due to their illness — such as attempted suicide — and they seldom qualify for early release because they are not able to participate in rehabilitative programming, such as educational or vocational classes.⁹⁹

Furthermore, sentencing reforms appear to leave people in prison with psychiatric disabilities behind. In recent years in California, for example, the prison population has decreased by more than 25 percent following a court order, but the number of people with a serious mental disorder has increased by 150 percent — an increase in both the rate and the absolute number of incarcerated people with psychiatric disabilities.¹⁰⁰

Screening tools to evaluate psychiatric disabilities vary by state and jurisdiction, but the most reliable data indicates that more than half of jail populations and close to half of prison populations have mental health disabilities.¹⁰¹ The fact that people with mental health disabilities are arrested more frequently, stay incarcerated longer, and return to prisons faster is not due to any inherent criminality related to psychiatric disabilities. It arises in part because of the lack of accessible and appropriate mental health treatment in the community; in part because of a perception of dangerousness by police, prosecutors, and judges; and in part because prison staff and probation officers fail to recognize and accommodate disability.

Many people of color in jails and prisons are also people with disabilities, and efforts to reduce racial disparities must go hand in hand with efforts to reduce disparities on the basis of disability.¹⁰² Not surprisingly, many of the strategies to reduce disparities on the basis of disability are similar to approaches that reduce racial disparities. Some examples include:

- Reducing reincarceration due to parole or probation revocations through intensive case management, disability-competent training for officers on alternatives to incarceration and reasonable modifications to requirements of

supervision, and no return to incarceration for first and second technical violations

- Investing in pre-arrest diversion:
 - Creating behavioral health centers, run by state departments of health, as alternatives to jails, or emergency rooms for people experiencing mental health crises or addiction issues
 - Training dispatchers and police to divert people with mental health issues who commit low-level nuisance crimes to these behavioral health centers. Jurisdictions that have followed this approach have significantly reduced their jail populations.¹⁰³
- Ending arrest and incarceration for low-level public order charges, such as being drunk in public, urinating in public, loitering, trespassing, vandalism, and sleeping on the street. If needed, refer people who commit these violations to behavioral health centers.
- Requiring prosecutors to offer diversion for people with mental health and substance abuse disabilities who are charged with low-level crimes
- Evaluating prosecutors' charging and plea-bargaining practices to identify and eliminate disability bias
- Requiring prosecutors' offices be transparent in their hiring practices, charging decisions, and plea deals
- Investing in diversion programs and alternatives to detention designed for people with disabilities, including programs that provide supportive housing, Assertive Community Treatment, wraparound services, and mental health supports
- Reducing the use of pretrial detention while increasing reminders of court dates and other supports to ensure compliance with pretrial requirements

- Shifting funding away from law enforcement and corrections into supportive housing, intensive case management, schools, drug and mental health treatment, community organizations, job creation, and other social service providers

TAKING THE LEAD

Public defenders: They carry a huge burden in zealously advocating on behalf of their clients. They can determine whether a case will go to trial or plea out, and what the conditions of those pleas will be. In order to effectively walk their clients through the criminal justice system, public defenders must meaningfully invest their limited resources in understanding their clients' unique needs. Public defenders will be best equipped to do this work through statutory case caps and increased funding.

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

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

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

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

Judges: They often have discretion over pretrial conditions imposed on defendants, which can make a difference. For example, individuals who are jailed while awaiting trial are more likely to plead guilty and accept longer prison sentences than people who are not held in jail pretrial. Judges can also have discretion in sentencing and should consider alternatives to incarceration when possible.

Forecaster Chart

There are many pathways to cutting the prison population in Wisconsin by 50 percent. To help end mass incarceration, communities and policymakers will need to determine the optimal strategy to do so. This table presents one potential matrix of reductions that can contribute to cutting the state prison population in

half by 2025. The reductions in admissions and length of stay for each offense category were selected based on potential to reduce the prison population, as well as other factors. To chart your own path to reducing mass incarceration in Wisconsin, visit the interactive online tool at <https://urbn.is/ppf>.

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

Impact Compared to 2025 Baseline*				
Offense category**	Policy outcome	Prison population impact	Impact on racial and ethnic makeup of prison population***	Cost savings****
Parole and probation revocations (both technical and new crime)	<ul style="list-style-type: none"> Reduce average time served by 50% (from 2.22 to 1.11 years) Institute alternatives that reduce admissions by 50% (2,508 fewer people admitted) 	34.01% reduction (8,275 fewer people)	White: No change Black: 1.8% decrease Hispanic/Latino: 11.4% increase Native American: 11.5% decrease Asian: 4.5% increase	\$411,653,442
Drug offenses	<ul style="list-style-type: none"> Reduce average time served by 60% (from 2.50 to 1.00 years) Institute alternatives that reduce admissions by 60% (42 fewer people admitted) 	4.80% reduction (1,168 fewer people)	White: 0.5% increase Black: No change Hispanic/Latino: 2.6% decrease Native American: 2.5% increase Asian: 4.9% decrease	\$28,690,572
Robbery	<ul style="list-style-type: none"> Reduce average time served by 40% (from 3.12 to 1.87 years) Institute alternatives that reduce admissions by 30% (137 fewer people admitted) 	3.05% reduction (741 fewer people)	White: 1.5% increase Black: 2.0% decrease Hispanic/Latino: 0.2% increase Native American: 1.8% increase Asian: 1.7% increase	\$15,424,531

OWI	<ul style="list-style-type: none"> • Reduce average time served by 60% (from 1.45 to 0.58 years) • Institute alternatives that reduce admissions by 70% (354 fewer people admitted) 	2.64% reduction (643 fewer people)	White: 1.9% decrease Black: 2.2% increase Hispanic/Latino: 0.8% increase Native American: 2.5% decrease Asian: 0.5% increase	\$16,998,475
Public order offenses****	<ul style="list-style-type: none"> • Reduce average time served by 50% (from 1.68 to 0.84 years) • Institute alternatives that reduce admissions by 60% (239 fewer people admitted) 	2.16% reduction (525 fewer people)	White: 0.2% decrease Black: 0.3% increase Hispanic/Latino: 0.3% increase Native American: 0.9% decrease Asian: 1.3% increase	\$12,659,567
Burglary	<ul style="list-style-type: none"> • Reduce average time served by 50% (from 1.59 to 0.79 years) • Institute alternatives that reduce admissions by 40% (110 fewer people admitted) 	1.27% reduction (309 fewer people)	White: 0.3% decrease Black: 0.3% increase Hispanic/Latino: 0.2% increase Native American: 0.1% increase Asian: 0.4% increase	\$7,795,743
Assault	<ul style="list-style-type: none"> • Reduce average time served by 50% (from 2.44 to 1.22 years) • Institute alternatives that reduce admissions by 40% (63 fewer people admitted) 	1.04% reduction (254 fewer people)	White: 0.1% increase Black: No change Hispanic/Latino: 0.2% decrease Native American: No change Asian: 0.7% decrease	\$5,792,128
Theft	<ul style="list-style-type: none"> • Reduce average time served by 60% (from 1.41 to 0.56 years) • Institute alternatives that reduce admissions by 50% (74 fewer people admitted) 	0.68% reduction (165 fewer people)	White: 0.1% decrease Black: No change Hispanic/Latino: 0.2% increase Native American: 0.1% increase Asian: No change	\$4,199,036

Fraud	<ul style="list-style-type: none"> • Reduce average time served by 60% (from 1.45 to 0.58 years) • Institute alternatives that reduce admissions by 50% (39 fewer people admitted) 	0.37% reduction (91 fewer people)	White: No change Black: No change Hispanic/Latino: 0.2% increase Native American: 0.3% increase Asian: 0.4% increase	\$2,401,975
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* The baseline refers to the projected prison population based on historical trends, assuming that no significant policy or practice changes are made.

** The projections in this table are based on the offense that carries the longest sentence for any given prison term. People serving prison terms may be convicted of multiple offenses in addition to this primary offense, but this model categorizes the total prison term according to the primary offense only.

*** This column represents the percent change in the share of the prison population made up by each racial/ethnic group. It compares the proportion of the population made up by a group in the 2025 baseline prison population to the proportion of the population made up by that group when the reform scenario is applied. We then calculate the percent change between those two proportions. Racial and ethnic disproportionality is traditionally measured by comparing the number of people in prison – of a certain race – to the number of people in the state’s general population of that same race. For example, nationally, Black people comprise 13 percent of the population, while white people comprise 77 percent. Meanwhile, 35 percent of people in state or federal prison are Black, compared to 34 percent who are white. While the proportion of people in prison who are Black or white is equal, Black people are incarcerated at nearly three times their representation in the general population. This is evident in Wisconsin, where Black people make up 41 percent of the prison population but constitute only 6 percent of the state’s total adult population.

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

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

Total Fiscal Impact

If Wisconsin were to implement reforms leading to the changes above, 12,170 fewer people would be in prison in the state by 2025, a 50 percent decrease. This would lead to a total cost savings of \$886,459,483 by 2025.

Racial Impact

In general, we've found that even ambitious reform outcomes, such as cutting the prison population in half, barely move the needle on reducing disparities and in some cases can even increase them. This speaks to the importance of simultaneously prioritizing the Campaign's dual goals of reducing mass incarceration and intentionally targeting racial disparities. Because racial disparities are so pervasive within all offense categories in the chart, more targeted analysis is required to identify where exactly they're coming from in order to inform strategies to reduce them.

Methodology Overview

This analysis uses prison term record data from the National Corrections Reporting Program to estimate the impact of different policy outcomes on the size of Wisconsin's prison population, racial and ethnic representation in the prison population, and state corrections spending. First, trends in admissions and exit rates for each offense category in recent years are analyzed and projected out to estimate a baseline state prison population projection through 2025, assuming recent trends will continue. Then, a mathematical model is used to estimate how various offense-specific reform scenarios (for example, a 10 percent reduction in admissions for drug possession or a 15 percent reduction in length of stay for robbery) would change the 2025 baseline projected prison population. The model allows for reform scenarios to include changes to the number of people admitted to prison and/or the average length of time served for specific offenses. The model then estimates the effect that these changes would have by 2025 on the number of people in prison, the racial and ethnic makeup of the prison population, and spending on prison. The analysis assumes that the

changes outlined will occur incrementally and be fully realized by 2025.

All results are measured in terms of how outcomes under the reform scenario differ from the baseline projection for 2025. Prison population size impacts are measured as the difference between the 2025 prison population under the baseline scenario and the forecasted population in that year with the specified changes applied. Impacts on the racial and ethnic makeup of the 2025 prison population are measured by comparing the share of the prison population made up by a certain racial or ethnic group in the 2025 baseline population to that same statistic under the reform scenario and calculating the percent change between these two proportions. Cost savings are calculated by estimating the funds that would be saved each year based on prison population reductions relative to the baseline estimate, assuming that annual savings grow as less infrastructure is needed to maintain a shrinking prison population. Savings relative to baseline spending are calculated in each year between the last year of available data and 2025, and then added up to generate a measure of cumulative dollars saved over that time period.

Endnotes

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- 25 Note: This does not include people revoked to prison (for technical violations or new crimes), people being held temporarily pending revocation, or individuals for whom offense data is not available. In fiscal year 2018, 11,750 people were admitted to Wisconsin prisons, including 4,184 people labeled “No Data/Unsentenced,” meaning they were either incarcerated pending revocation or the DOC did not have offense data for them. Additionally, 5,548 people were admitted to prison from community supervision, either for a technical violation or a new crime. This paragraph includes only the remaining 2,888 people who were not included in the revocation admissions or the “No Data/Unsentenced” population.
- 26 Wisconsin Legislative Fiscal Bureau, Adult Corrections Program: Informational Paper 54 (January 2019). Note: Admissions data in this paragraph refers to fiscal year.
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- 28 Note: Some individuals admitted to prison have been convicted of multiple offenses. In this paragraph, offense breakdowns include anyone with any drug offense conviction and may not reflect the most serious offense for which that person may be serving time.
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