



The Wisconsin Community Corrections Story

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Introduction

Increasing scholarship and advocacy points to probation and parole (collectively known as “community corrections”) as a contributor, rather than an alternative, to mass incarceration (Executive Session on Community Corrections 2017; Columbia University Justice Lab 2018; Columbia University Justice Lab 2017). Rules that individuals under supervision must abide by are extensive, often unclear and can be arbitrarily enforced (Corbett 2015; Doherty 2016), contributing to the high numbers of people incarcerated in state prisons and local jails for technical violations of those rules (Phelps 2018). Fines and fees add a burden to people under community corrections supervision and can drive a wedge between probation and parole officers (known as “agents” in Wisconsin) and people under supervision, turning community supervision agents into collection agents (Martin, Smith and Still 2017). Furthermore, as the number of people under community supervision has swelled over the past several decades, funding has not kept pace, creating massive caseloads and inadequate resources to assist in community integration (Pew Public Safety Performance Project 2018; Columbia University Justice Lab 2018).

Wisconsin serves as a good example of a place where parole² and probation supervision are contributing to a prison population that is highly racially disparate and growing. The number of people under parole supervision

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² Throughout this paper, for comparability to other states, we will follow the Bureau of Justice Statistics’ conventions for describing types of community corrections supervision. We will use the term “parole” to describe the condition of being supervised following release from prison under any of three types of supervision available in Wisconsin: “parole,” “mandatory release,” and “extended supervision.” Most people who are supervised after being released from prison in Wisconsin are under “extended supervision” – a

in Wisconsin exceeds the national average, and lengths of stay on parole are estimated at nearly twice (1.7 times) the national average (Justice Lab analysis of Kaebler 2018, Appendix Table 5). Failure rates under supervision in Wisconsin are also higher than average for other states, both nationally and in the Great Lakes Region (Alper 2016; Herberman and Bonczar 2014, Appendix Table 7). Nationally, Black people are disproportionately supervised and disproportionately reincarcerated for supervision violations (Horowitz and Utada 2018; Jannetta et al. 2014). Wisconsin rates of supervision and reincarceration for Black people are also higher than these already-inflated national numbers (Herberman and Bonczar 2014, Appendix Table 7).

Ironically, then, these community-based mechanisms, which originated as alternatives to incarceration, are actually contributing to its rise in Wisconsin and elsewhere in the United States at the very time when the foundations of mass incarceration have been rejected by many on both sides of the aisle.

The good news is that states around the country have begun to safely and effectively reduce their rates of both supervision and revocation, as well as return to prison for violations. In this report, we will examine the state of community corrections in Wisconsin, concluding with recommendations for reducing the scope and negative impact of parole and probation supervision.

Community Corrections in the United States

In the United States, community corrections supervision largely consists of probation and parole. Probation originated in Boston as a voluntary program in 1841, followed by the creation of the first government-employed probation officers in Massachusetts in 1891 (Klinge 2013). By 1910, 34 states had created some form of probation system, and the federal government followed suit in 1925. Probation was created both to investigate the cases of individuals before the court for sentencing and to supervise people in lieu of incarceration.

Parole was developed by British penologist Alexander Maconochie during the 1840s before spreading to New York in 1876 (Klinge 2013). By 1942, every state and the federal government had implemented some iteration of parole. The term “parole” often describes two activities. Parole was designed as an early release mechanism to alleviate overcrowded prisons and move people from prison to the community to improve the possibility of rehabilitation. “Parole supervision” is the supervision of people who have been “paroled” – released early from

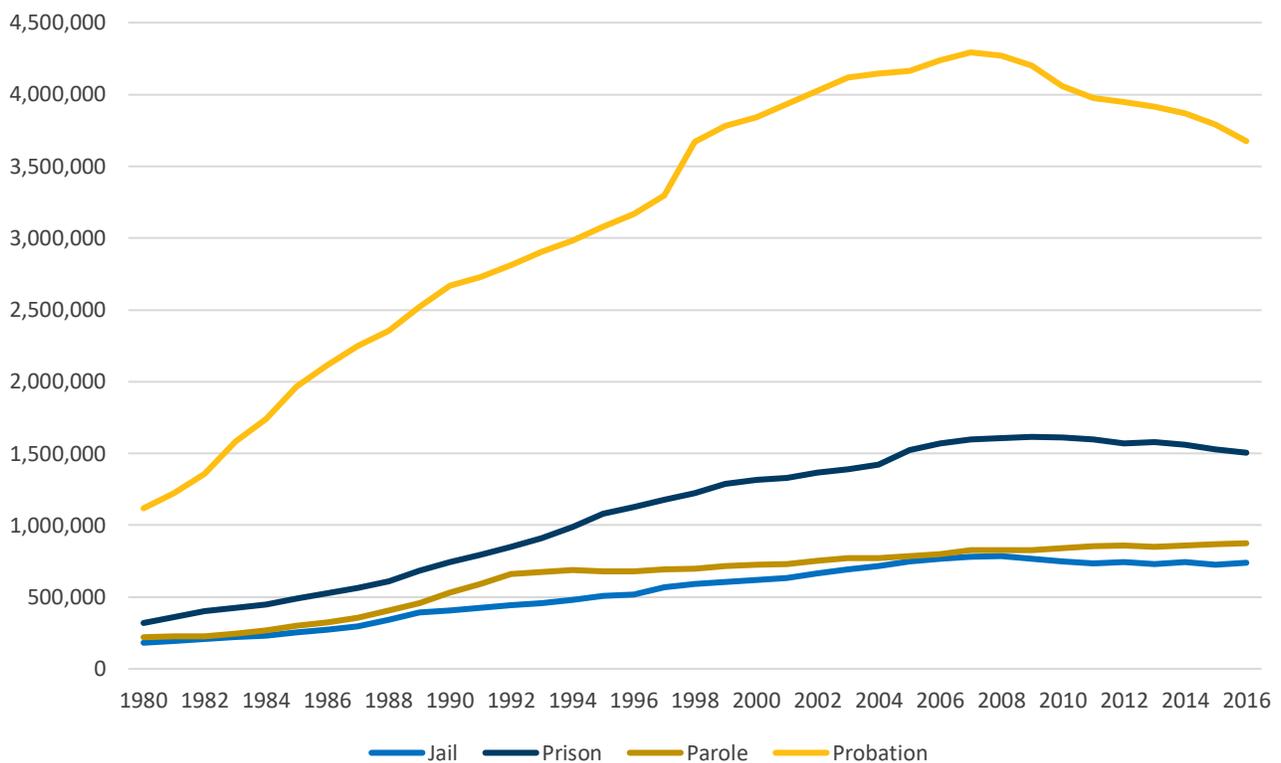
period of supervision that follows release from prison not by the parole board, but after serving a definite, or determinate, prison sentence. The length of extended supervision is set by a judge at the time of sentencing (see Wisconsin Statute § 973.01). People released on “mandatory release” or “parole” in Wisconsin are those whose crimes were committed prior to December 31, 1999 (for felonies) or before February 1, 2003 (for misdemeanors), and who are released after serving either two-thirds of their sentence (in the case of mandatory release) or an indefinite, or indeterminate, period of imprisonment and being found suitable for release by the state’s Parole Commission (in the case of parole), and serve the remainder of their sentence under community supervision. Since parole is the much more common parlance for people under community supervision following release from imprisonment, we will use that term to describe people under supervision by the Wisconsin Division of Community Corrections who were released from a period of incarceration to parole, mandatory release, or extended supervision. Probation supervision can also occur after a period of incarceration, if a person is sentenced to “consecutive probation.” However, since Wisconsin (like other states) does not distinguish between people under probation supervision in lieu of incarceration and people with consecutive probation sentences in its reporting to the Bureau of Justice Statistics, we will treat these types of probation supervision together.

prison due to good behavior and/or program completion – and now is often used as a catch-all phrase for all post-prison supervision, whether the individual was released early or not.³

Despite their original intent, Figure 1 shows how the number of people under probation and parole supervision has grown alongside the number of people in prisons and jails. Essentially, mass supervision has functioned as a net widener and a driver of mass incarceration, rather than serving as a true alternative to incarceration (Phelps 2013).

The apex of community corrections populations in 2007 saw nearly 4.3 million people on probation and over 800,000 on parole (Glaze and Bonczar 2009, Tables 2,3). These 5.1 million people under community supervision dwarfed prison and jail populations, which peaked at 2.3 million in 2008 (Kaeble and Cowhig 2018, Table 1). As of 2016, the most recent year for which data are available, there were still over 4.5 million adults under probation or parole supervision (3,673,100 and 874,800 respectively), which equates to one out of every 55 adults in the United States (Kaeble 2018). This represents a more than three-fold increase since 1980 (Maxwell 1982). The recent decline in the overall number of people under community corrections supervision has been driven by probation populations, which fell 14.4% between 2007 and 2016 (Kaeble 2018, Table 1). Over this same period, the number of people under parole supervision has actually increased by 5.9%.

Figure 1: Number of people under U.S. correctional supervision (1980-2016)



Sources: 1980-2004: Maguire, n.d., Table 6.1.11; 2005-2014: Kaeble and Glaze 2016, Table 1; 2015-2016: Kaeble and Cowhig 2018, Table 1.

³ See Footnote 2 for a discussion of types of supervision discussed as “parole” for the purposes of this paper.

In addition to its parallel growth with incarceration, community corrections can also serve as a pipeline to prison by way of the large number of rules, called “conditions,” that are mandated as part of probation or parole supervision. Jurisdictions typically have a list of standard conditions that a person must adhere to while on probation or parole, in addition to any specialized conditions that may be sought by that jurisdiction (Klinge 2013). Community supervision conditions vary from case to case and state to state; however, they generally include rules about abiding by residency requirements and reporting for regularly scheduled appointments with supervision officers. While it is often clear-cut as to whether an individual’s residency conditions are met and mandatory appointments kept, there are some requirements of probation and parole that are less straightforward and are left up to the discretion of supervision officers. For example, another common condition specified by probation and parole departments across the country is to “[a]void persons and places of disreputable or harmful character” (Doherty 2016, 295). Breaking any of these rules can be grounds for a probation or parole officer to “violate” or “revoke” a person’s supervision, a process that often results in incarceration.

Revocations are a key way that community corrections supervision can drive up incarcerated populations. Research published by the National Academies of Sciences found that being under parole supervision may actually be causally related to reincarceration (Harding et al. 2017). Using the random assignment of judges as a natural experiment, the researchers found that post-prison parole supervision increases imprisonment through the detection and punishment of low-level criminal or violation behavior.

According to research by Phelps (2018), 33% of people in jail and 23% of people in prison in the mid-2000s were on probation at the time of their arrest, a quarter of whom were reincarcerated for nothing more than a technical violation (excluding new arrests). Likewise, 12% of the people in jail at that point were on parole at the time of arrest, as were 18% of the people in prison. About one in five of those were incarcerated for technical violations of parole.

In addition, people on probation or parole are often saddled with fees. Many jurisdictions impose a monthly fee for being under community corrections supervision, with additional conditions such as drug and alcohol tests or electronic monitoring carrying their own monthly fees. The amount and extent of fees charged varies by jurisdiction, and ability to pay is not universally considered. Failure to pay can also be grounds for reincarceration or extension of supervision, a practice that is currently being litigated in several states (Harris et al. 2016; Civil Rights Corps 2018).

Community Corrections in Wisconsin

Wisconsin stands out for its use of community corrections in comparison to both the nation and nearby states. As of 2016, there were 64,900 people under either probation or parole supervision in the state, just shy of the population of Oshkosh, WI (Kaeble 2018, Appendix Table 1; U.S. Census Bureau 2018c).^{4,5} That represents

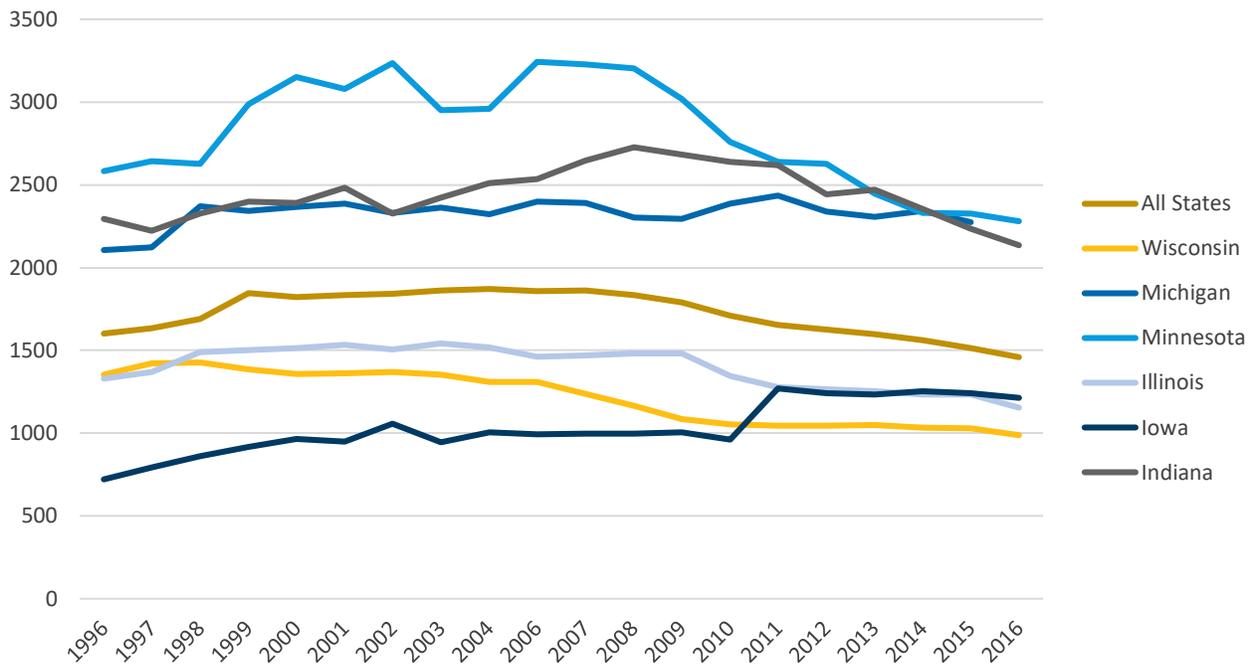
⁴ Note: See Footnote 2: “parole” includes people released on “mandatory release” and “extended supervision,” as well.

⁵ As state Departments of Corrections often employ varying methodologies to calculate criminal justice statistics, the Justice Lab chose to utilize statistics reported by Wisconsin to the Bureau of Justice Statistics for this paper (unless otherwise noted) in order to make comparisons across states, and to state and national averages. The most recent Bureau of Justice Statistics data are from 2016.

5000 more people under community corrections supervision in Wisconsin than in Alaska, Maine, Montana, New Hampshire, North Dakota, South Dakota, Vermont and Wyoming *combined* (Kaeble 2018, Appendix Table 1).

In 2016, 988 of every 100,000 adults in Wisconsin were under probation supervision, and another 453 adults in that 100,000 were under parole supervision (Kaeble 2018, Appendix Tables 2, 5). Wisconsin’s probation supervision rate is 25% higher than the state’s incarceration rate (including prison and jail), although it remains below the national average across all U.S. states (1,459 per 100,000 adults). Probation supervision rates in Wisconsin have roughly followed the national trend, declining slightly over the past two decades (See Figure 2).

Figure 2: Rates of probation supervision per 100,000 adults, select jurisdictions (1996-2016)



Source: Bureau of Justice Statistics, *Probation and Parole Populations* series, 1996-2016. Note: Probation supervision rate data are reported by the Bureau of Justice Statistics for Michigan in 2016; this missing data point is shown as a gap in the chart.

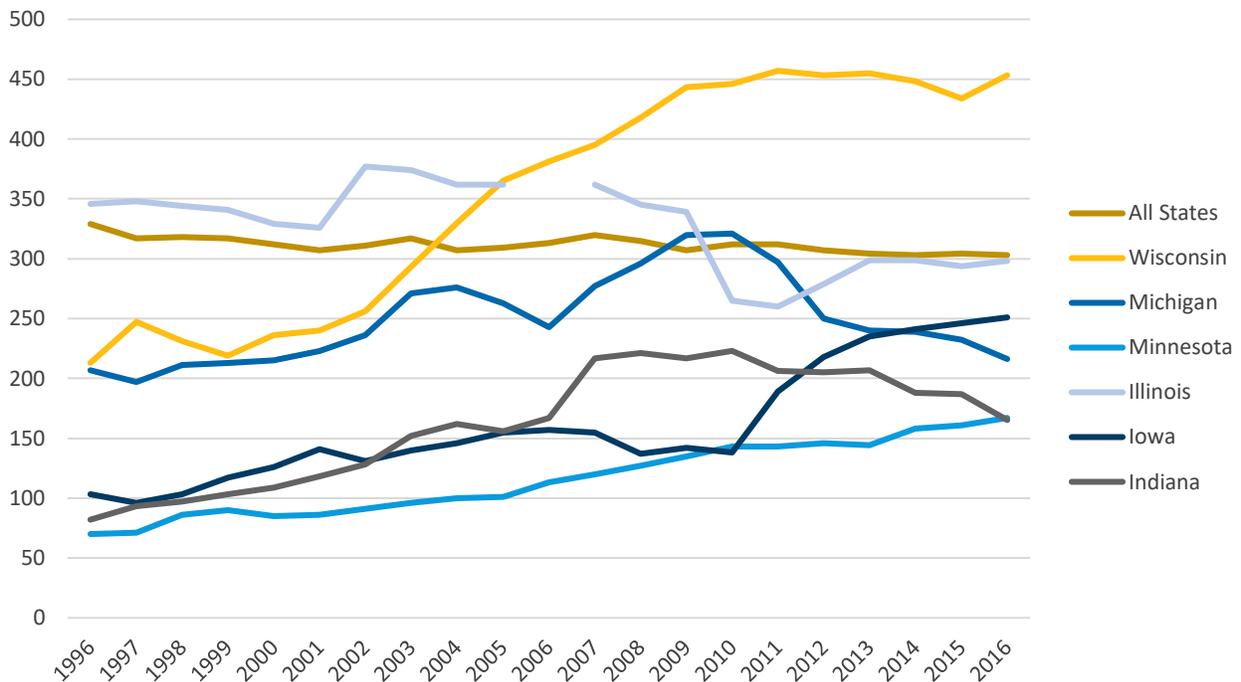
In contrast, Wisconsin’s parole supervision rate departs sharply from both regional and national trends. When compared to neighboring states (Illinois, Indiana, Iowa, Michigan, and Minnesota), Wisconsin ranks first in parole supervision rates (Kaeble 2018, Appendix Table 5). It is about 1.5 times higher than both its next-highest neighbor (Illinois, at 298 per 100,000 adults), and the national state average (303 per 100,000 adults). Nationally, Wisconsin has the seventh highest parole supervision rate.⁶

As reported by the Wisconsin Department of Corrections (WI DOC), since 2016, the absolute number of people under probation supervision by the Wisconsin Division of Community Corrections has continued to decline, while the number of people under parole supervision (which WI DOC calls “post-institution-release”) has continued to increase (Wisconsin Division of Community Corrections 2018a; Wisconsin Division of Community Corrections 2018b).

⁶ First through sixth are Pennsylvania, Arkansas, Louisiana, Oregon, Washington DC, and Texas.

Wisconsin is an outlier not only in terms of today's rate, but also in how that rate has changed over time. After remaining relatively flat through the late 1990s, the parole supervision rate in Wisconsin started rising sharply in the early 2000s, and is still trending upward, according to the most recent available data (See Figure 3). This is markedly different than the national trend, in which state parole rates have remained relatively flat since the 1990s, declining slightly since 2011. While some of its neighboring states have also seen increases in their parole supervision rates, Wisconsin's increase has been both steeper and more prolonged.

Figure 3: Rates of parole supervision per 100,000 adults, select jurisdictions (1996-2016)



Source: Bureau of Justice Statistics, *Probation and Parole Populations* series, 1996-2016. Note: Parole supervision rate is not reported by the Bureau of Justice Statistics for Illinois in 2006; this missing data point is shown as a gap in the chart.

How did Wisconsin get here?

A significant contributor to the large number of people under community corrections supervision in Wisconsin is its Truth in Sentencing statute, which passed in 1998 and was fully implemented on December 31, 1999. Prior to 2000, people in prison were eligible for release after serving 25% of their sentences as determined by the state Parole Commission (Wisconsin Statute § 304.06(1)(b)). Moreover, assuming good conduct while incarcerated, an imprisoned person could usually not be incarcerated for more than two-thirds of their sentence

without being granted parole (Wisconsin Statute § 302.11(1)).⁷ The remainder of their sentence would be spent under parole supervision.

However, all of this changed when Wisconsin implemented its Truth in Sentencing (TIS) statute, known as one of the most punitive TIS statutes in the country (Sabol et al. 2002). Among other policy changes, including mandatory-minimum sentences and “persistent repeater” provisions (Wisconsin’s version of a three-strikes law), Wisconsin’s TIS statute eliminated the ability of an incarcerated person to earn time off their sentence due to good behavior (also known as “good time”) (Wisconsin Statute § 939.62; Sabol et al. 2002). It also eliminated parole release in the traditional sense. Only people who were incarcerated for crimes committed prior to December 31, 1999 (for felonies) or February 1, 2003 (for misdemeanors) are eligible for parole in the traditional sense, with possibility of release determined by the Parole Commission (Wisconsin Statute § 973.01). Since TIS implementation, people sentenced to incarceration are mandated to serve 100% of their sentence, with very little possibility of early release.⁸

Not only was traditional parole release abandoned, resulting in longer prison terms, but a new system of bifurcated sentencing created a new form of community corrections called *extended supervision*. In this new system, when judges impose a sentence that includes incarceration of at least one year, it must be followed by a period of extended supervision to be completed after an individual is released from prison. Now, people who are convicted must serve 100% of their prison sentences plus a period of extended supervision that must be *at least 25%* of the original prison sentence (Wisconsin Statute § 973.01(2)(d)). Moreover, people who violate the terms of extended supervision and are returned to prison must serve the entirety of the original sentence with no credit for time successfully served while released (Wisconsin Statute § 302.113).

These parole and extended supervision criteria contributed to a rate of parole supervision in Wisconsin that increased from below the national average throughout the late 1990s to a rate that was nearly 50% higher than the national average in 2016 (Alper 2016; see Figure 3).

Significantly longer periods of supervision

The Truth in Sentencing (TIS) statute seems to have led to significantly longer periods of parole supervision in Wisconsin. In 2016, the average length of stay for parole in Wisconsin was estimated at 38 months, or over 3 years (Justice Lab analysis of Kaeble 2018, Appendix Table 5; see Figure 4). This is 1.7 times greater than the

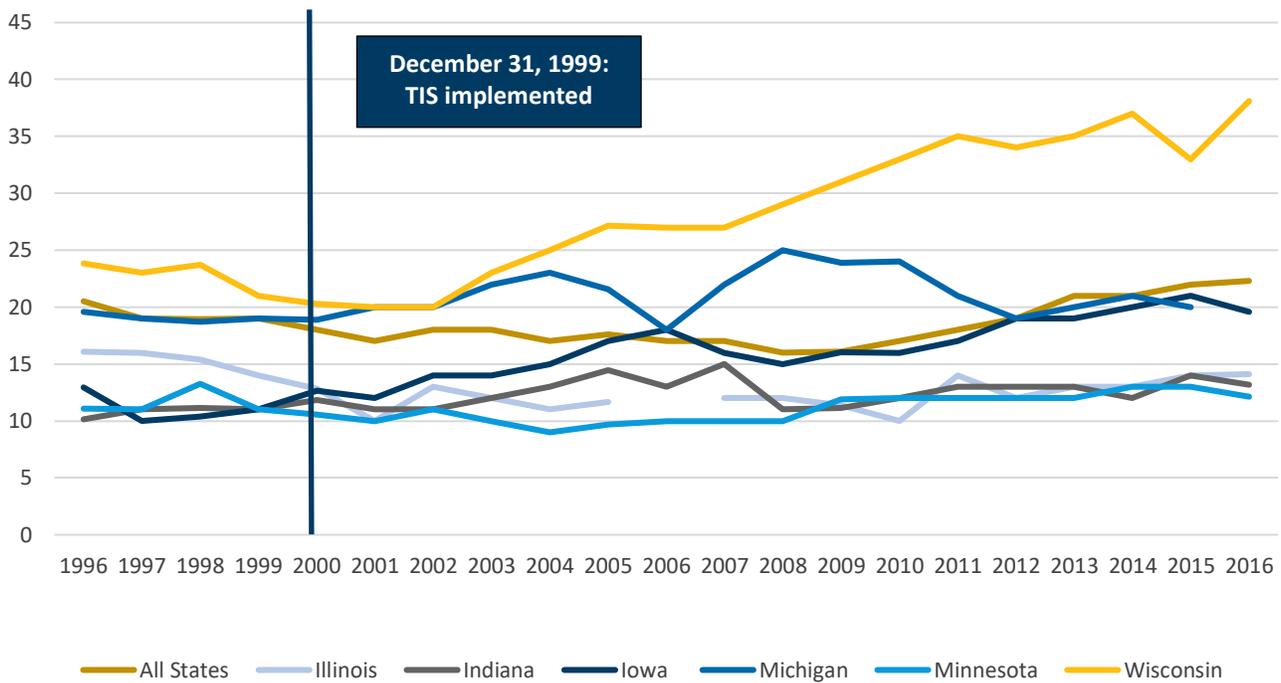
⁷ This describes a “mandatory release date.” Some of those incarcerated were sentenced with only a “presumptive” mandatory release date. This means for anyone convicted of a “serious felony” between April 21, 1994 and December 31, 1999, the Parole Commission can deny release even if the person has served two-thirds of their sentence. See Wisconsin Statute § 302.11(1g)(am).

⁸ There were some limited provisions enacted after the original TIS legislation. Wisconsin Statute § 973.195 allowed for some discretionary sentence adjustment by circuit courts. Wisconsin Statutes § 302.045 and 302.05 implemented the Challenge Incarceration Program and Substance Abuse Program, respectively, and both allowed for early release for participation in substance abuse treatment.

average across all states (22 months), ranking Wisconsin third nationally in terms of expected length of time people spend under parole supervision. Only Alabama (48 months) and Oklahoma (40 months) rank higher.⁹

Wisconsin’s status as an outlier for length of parole supervision is particularly striking compared to its neighboring states. The estimated average length of parole in Wisconsin is over three times longer than in Minnesota, which ranks lowest in the region. Similar to rates of parole supervision overall, length of stay for parole in Wisconsin has sharply diverged from both national and regional trends. As further evidence of TIS being a critical inflection point in Wisconsin, parole length of stay estimates had been declining prior to TIS implementation on December 31, 1999.¹⁰ Since 2002, however, there has been a steep upward trajectory that appears to be ongoing (see Figure 4).

Figure 4: Estimated average length of stay under parole supervision in months, select jurisdictions (1996-2016)



Source: Justice Lab analysis of Kaeble 2018, Appendix Table 5. Following Bureau of Justice Statistics methodology (described in Maruschak and Bonczar 2013), average length of stay is calculated as the inverse of the exit rate. Note: Data on parole exits are not available for Illinois in 2006 or Michigan in 2016; the corresponding missing data points are shown as gaps in the graph.

⁹ The Justice Lab excluded Maine from this analysis as an outlier due to the very low number of people on parole in that state (21 in 2016). Michigan was also excluded for 2016, as they did not provide the Bureau of Justice Statistics with a count of the number of people exiting parole supervision in 2016.

¹⁰ While very long and increasing periods of parole supervision are problematic because of the burden they place on people’s lives and because of the declining utility of supervision beyond 1 or 2 years, having very short or declining periods of parole supervision can *also* be problematic from a policy standpoint, since it can indicate that rates of discretionary parole are low.

Burdensome conditions

Once a person is sentenced to a long period of community corrections supervision, complying with various rules can be challenging. Like most other states, Wisconsin requires people under probation or parole supervision to adhere to certain conditions. Community supervision in Wisconsin requires strict compliance with at least 18 rules that include regulations such as reporting to a supervision agent at regularly scheduled times, a blanket-consent to have person and property searched, and a prohibition from voting if convicted of a felony (Wisconsin Division of Community Corrections 2018c).¹¹

Some rules can be confusing or open to interpretation. For instance, Rule 1 states “Avoid all conduct which is in violation of federal or state statute, municipal or county ordinances, tribal law or which is not in the best interest of the public welfare or your rehabilitation” (Wisconsin Division of Community Corrections 2018c). Exactly what is “not in the best interest of public welfare or your rehabilitation” is left to the supervision agent to interpret.

In addition, people under community corrections supervision pay an array of fees. Supervision fees, for example, range from \$240-\$720 per year based on income (Wisconsin Division of Community Corrections 2016). These figures do not include costs for other potential requirements of supervision, such as urine tests or electronic monitoring, which carry their own additional fees. As noted by Satinsky and colleagues (2016), electronic monitoring fees may vary and can add up to an additional \$700 in supervision costs *per month*. Failure to pay these fees violates rule 12 of the Wisconsin supervision mandates and can lead to extension of supervision (Wisconsin Statute § 973.09(3)) or incarceration (Wisconsin Division of Community Corrections 2016).

Mass supervision drives mass incarceration

In Wisconsin, mass supervision drives mass incarceration. There are several ways we can examine the impact of community corrections on incarceration. One way is to look at the outcomes for people exiting parole supervision in a given year. The Bureau of Justice Statistics collects and reports data on the number of people who exit parole supervision in various ways. Types of exits reported include successful completion, returning to incarceration (with or without a new sentence), absconding, and death.

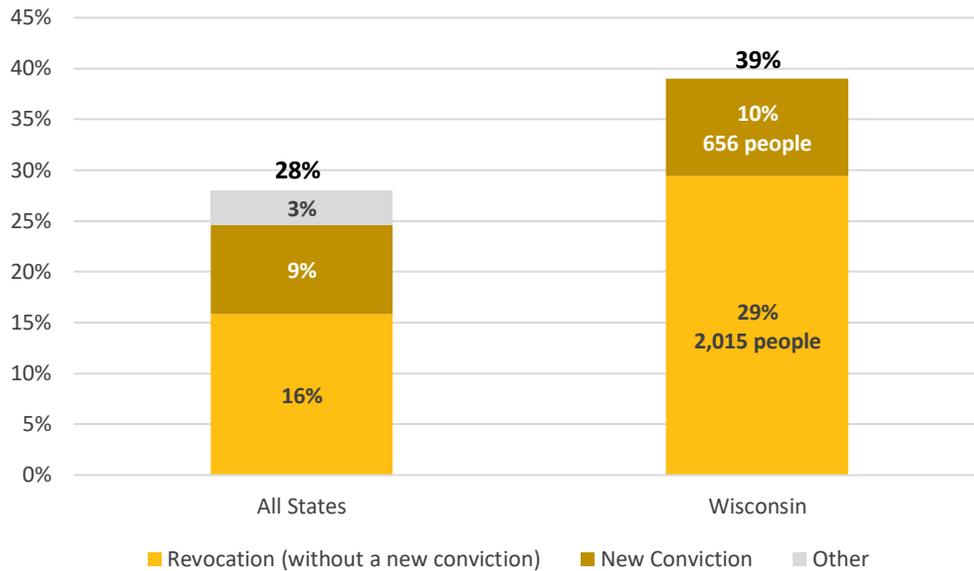
In 2013, the most recent year for which Wisconsin reported these data to the Bureau of Justice Statistics, the proportion of people who ended their parole term by being incarcerated without a new conviction in Wisconsin was almost double the national average.¹² Overall, thirty-nine percent of the exits from parole in Wisconsin were to incarceration, while nationally only 28% of state parole exits were to incarceration that year (Alper 2016; Herberman and Bonczar 2014, Appendix Table 7; see Figure 5). Among those who exited parole to incarceration in Wisconsin, the vast majority (75%) were due to revocations *without* a new conviction, also called “technical revocations” or “crimeless revocations” (the average across all U.S. states in that year was

¹¹ In 2016, 1.5% of all adults, and 8.8% of Black adults, in Wisconsin were unable to vote because they were either incarcerated or on probation or parole (Uggen, Larson, and Shannon 2016).

¹² 2013 is the last year for which Wisconsin reported a detailed breakdown of parole exits to the Bureau of Justice Statistics. More recent report years include figures for only 4 categories: total exits, total completions, deaths, and absconders. The Justice Lab requested updated versions of these data from the Wisconsin Department of Corrections (WI DOC). In WI DOC’s response, they indicated that they do not have a “final, validated data set” for this information for any subsequent year.

57%) (Herberman and Bonczar 2014, Appendix Table 7). This placed Wisconsin twelfth nationally in parole exits due to technical revocations that year, with nearly twice the percentage as the average for all states (29.5% vs. 15.7%). People reincarcerated without a new offense in Wisconsin will spend an average of 1.5 years in prison, costing taxpayers \$147.5 million (Satinsky et al. 2016).

Figure 5: Parole exits to incarceration as a percentage of all parole exits, Wisconsin vs. all U.S. states, 2013

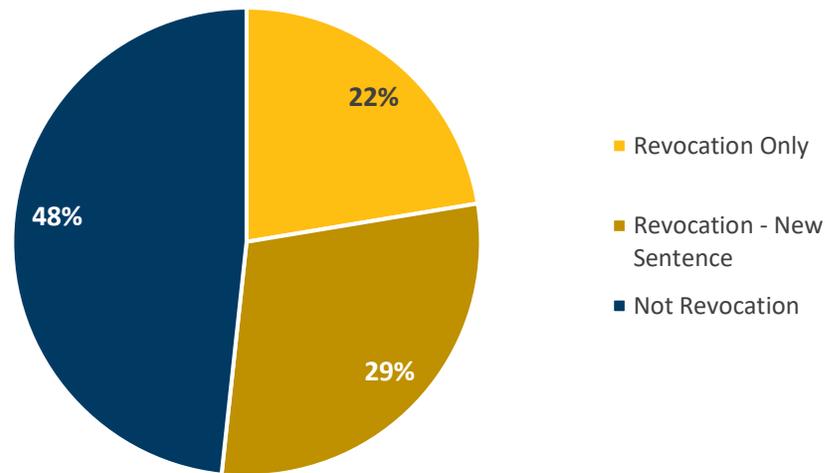


Source: Justice Lab Analysis of Herberman and Bonczar 2014, Appendix Table 7.

Another frame with which to examine the impact of community corrections on incarceration is to look at the proportion of people in prison who had previously been under community corrections supervision – meaning probation and parole, taken together. According to Wisconsin Department of Corrections (WI DOC) data from the end of 2017, it appears that Wisconsin is still incarcerating a large portion of people under community corrections supervision. On December 31, 2017, there were 12,013 people incarcerated in Wisconsin state prisons who had previously been under community corrections supervision (Wisconsin Department of Corrections 2018a). Of those, 5,200 people – or 43% – were incarcerated *without* having been convicted of a new crime. In that same week (on December 29, 2017), Wisconsin Department of Corrections reported having 23,234 people incarcerated across *all* Division of Adult Institutions facilities (Wisconsin Department of Corrections 2017b).¹³ That means that people who had previously been under community supervision made up approximately *half* of the total adult population incarcerated in Wisconsin state prisons, and that people incarcerated for technical revocations made up over one-fifth of the state prison population at that time (see Figure 6).

¹³ This number does not include people incarcerated in state facilities who are under the jurisdiction of the Division of Community Corrections (such as for probation or parole “holds”), nor does it include people incarcerated in Wisconsin county jails for probation or parole holds or sanctions.

Figure 6: Estimated proportion of people incarcerated in Wisconsin state prisons, December 2017

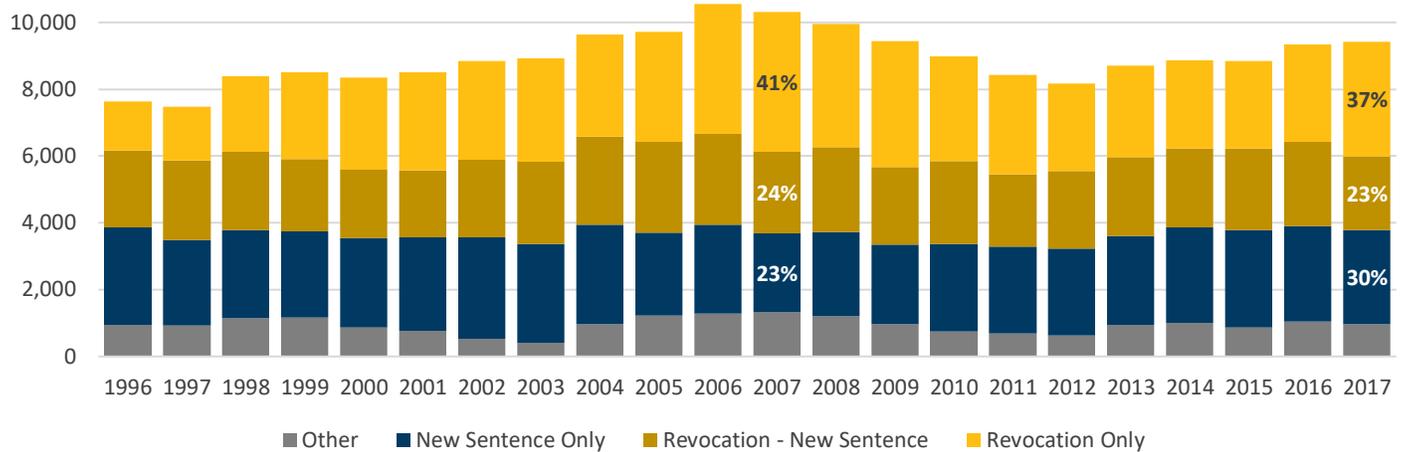


Sources: Justice Lab analysis of Wisconsin Department of Corrections 2017b; 2018a.

Yet another way to examine how mass supervision drives mass incarceration is to look at admissions to prison (rather than static counts of people in prison at a point in time). Since people incarcerated for technical violations serve prison sentences that are shorter than the average across the whole prison population, they tend to be underrepresented in static counts. Looking at admissions gives us a better sense of the scale of impact on individuals and communities, since it captures the number of people churning into the prison system in the course of a year. According to WI DOC data, people incarcerated for revocations (both with and without a new conviction) have comprised a significant segment of prison admissions, going back to the 1990s (see Figure 7). Overall prison admissions peaked in 2006, and the number of people admitted for technical revocations peaked one year later in 2007 (at 4,187), making up a full 41% of admissions in that year (Wisconsin Department of Corrections 2018b).¹⁴ These numbers have declined only slightly since the peak, with admissions for revocation without a new sentence reaching 3,442 people in 2017, or 37% of admissions in that year. Taken together, people who had previously been under community supervision made up 60% of all admissions to Wisconsin prisons in 2017 (Wisconsin Department of Corrections 2018b).

¹⁴ These figures represent a count of admissions to WI DOC prisons in a calendar year, rather than a count of unique people admitted in a year. A person may be counted more than once in a year if they were admitted multiple times in the course of that year.

Figure 7: People admitted to Wisconsin prisons, by reason for admission, 1996-2017



Sources: Wisconsin Department of Corrections 2017c; 2018b. Note: These data represent a count of admissions to Wisconsin prisons in a calendar year, rather than a count of unique people admitted in that year. A person may be counted more than once in a year if they were admitted multiple times in the course of that year. These data do not include people admitted to Wisconsin prisons on probation or parole “holds” (see Figure 10).

As large as these proportions might seem, they still do not account for all people incarcerated as a result of their community corrections supervision in Wisconsin. Another way that community corrections supervision drives mass incarceration is through the use of what are colloquially called probation or parole “holds.” Without revoking someone’s supervision, and sometimes without any intent to revoke, Division of Community Corrections agents can incarcerate someone on a hold. These holds do not require judicial review or approval, and can extend for up to 21 business days (not including weekends or holidays) without initiating a revocation process (Satinsky et al. 2016). This period can be extended with the approval of an administrator. Once a revocation process is initiated, a person can remain incarcerated while the revocation hearing process unfolds. While someone is incarcerated on a probation or parole hold, they are not eligible to be released on bail. Many people incarcerated for probation and parole holds are held in county jails, and there are not good data available to indicate how many people are held there, for how long, or how these numbers may have changed over time. Some people detained on probation or parole holds are held at WI DOC-run facilities, and those data are available. Holds in WI DOC-run facilities increased sharply following the opening of the Milwaukee Secure Detention Facility (MSDF) in 2001 (see Figure 10), and accounted for an *additional* 3,727 people admitted to WDOC facilities in 2017 (Wisconsin Department of Corrections 2017c; 2018a).

The Growth of Wisconsin’s Prisons

Wisconsin’s community supervision numbers and the impact they are having on incarceration are best understood in the context of the overall growth of Wisconsin’s prison system. Wisconsin’s prison population has more than tripled since 1990, when there were 6,788 people incarcerated (Cohen 1991, Table 2). By 2000, there were 20,612, and by 2016 there were 22,975 people incarcerated in Wisconsin, a state with only 17,742

total prison beds (Beck and Harrison 2001, Table 3; Carson 2018, Tables 4,16). As a result, people incarcerated in Wisconsin serve their time in prisons that are overcrowded to 129% of design capacity.

Wisconsin is bucking the national trend in this respect. Since 2009, the absolute number of people incarcerated in the United States has declined by 5.9%, or 135,300 people, while the rate of U.S. incarceration has declined by 12.2% (Kaeble and Cowhig 2018, Tables 1,4). Even conservative states like Texas and Mississippi have seen their imprisonment numbers decline by 13% and 11%, respectively (Carson 2018, Table 7; West and Sabol 2010, Appendix Table 9). Although Wisconsin's incarceration rate of 790 per 100,000 adults is lower than the national rate (850 per 100,000 adults),¹⁵ when compared to nearby states, it is tied for second with Ohio (and just behind Indiana), but is more than twice as high as Minnesota (380 per 100,000) (Kaeble and Cowhig 2018, Appendix Table 1).

This prison growth is not the result of an increase in crime. In 2017, Wisconsin's property crime rate of 1,808 per 100,000 was 27% lower than the United States average of 2,362 and had decreased every year since 2013 (Federal Bureau of Investigation 2018). Also in 2017, the violent crime rate in Wisconsin (320 per 100,000) was 21% lower than the national average (394), even though it has increased slightly in recent years (Federal Bureau of Investigation 2018).

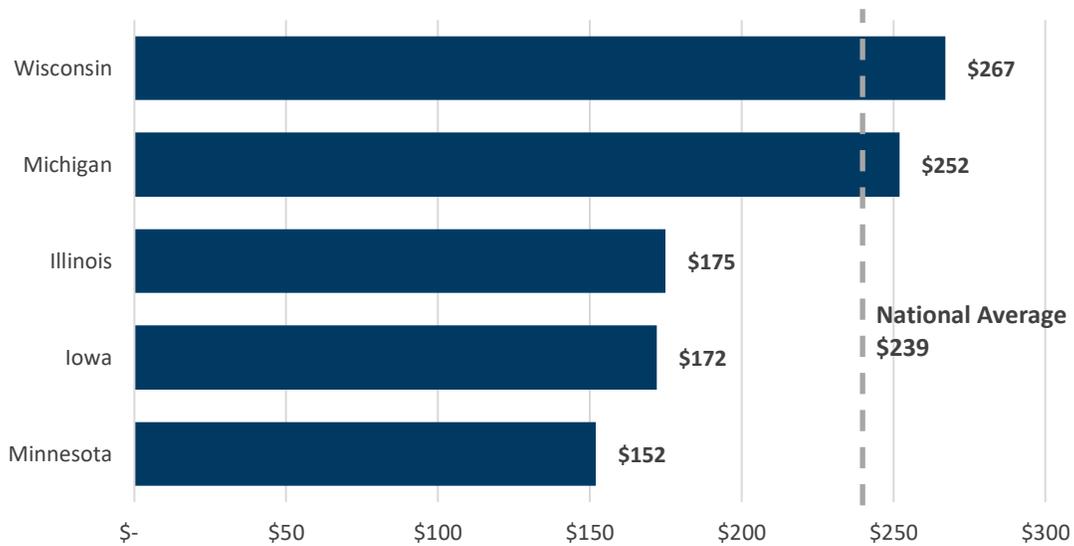
Further evidence that Wisconsin's incarceration woes are the result of policy choices rather than crime is evident by a comparison to nearby Minnesota. As mentioned above, Wisconsin's incarceration rate is nearly double (790 vs. 380 per 100,000) that of Minnesota, despite the two states having similar population demographics and comparable crime rates (Kaeble and Cowhig 2018, Appendix Table 1; O'Hear 2017). In addition to policy choices about incarcerating people for technical violations and holds, recent legislative policy choices relating to crime and punishment, in general, are contributing to the increased imprisonment of Wisconsin residents. In just the past six years, Wisconsin policymakers have enacted nearly 70 bills that increase penalties for already existing crimes or create new penalties for criminal behavior (Collins and De Torre 2018).

One significant factor that has increased prison populations in Wisconsin is the average length of time incarcerated. According to the Wisconsin Department of Corrections, between 2000 and 2016, the average length of stay in prison has grown substantially from 1.9 to 2.3 years – or 26.5% (Wisconsin Department of Corrections 2017d).

Without criminal justice reform in Wisconsin, there will continue to be significant prison costs to taxpayers at the expense of other government services. In 2010, Wisconsin spent 12% more on corrections per resident (\$267) than the national average (\$239), and more than 40 other states (Cornelius 2017; see Figure 8). When compared to neighboring states, Wisconsin spent 6% more on corrections per state resident than Michigan and 90% more per resident than Iowa. If spending on corrections per resident in Wisconsin were equal to that of Iowa, Wisconsin would spend \$728 million less on corrections each year (Cornelius 2017).

¹⁵ The national incarceration rate of 850 per 100,000 adults includes people incarcerated in the Federal prison system. Wisconsin's rate is just above the rate across all states, 780 per 100,000 adults.

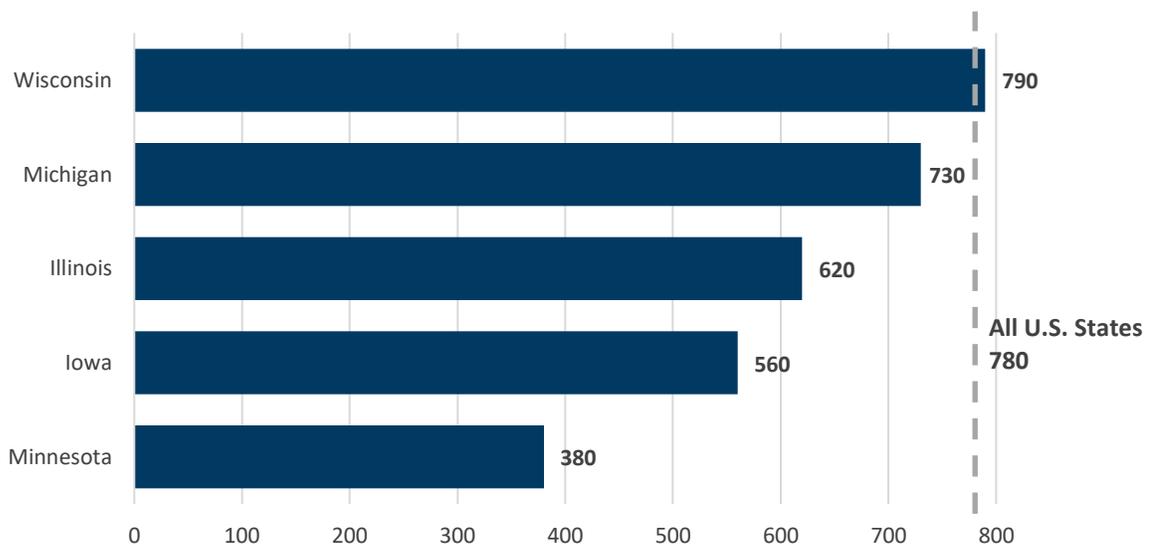
Figure 8: Corrections spending per resident, Wisconsin vs. neighboring states, FY2015



Source: Cornelius 2018.

Since the \$32,000 that it costs to imprison one person in Wisconsin for one year is comparable to other Great Lake states, the increased corrections budget is due to the fact that Wisconsin incarcerates a greater proportion of its residents (Cornelius 2018; see Figure 9). When compared to Minnesota, which has a similarly sized overall population, Wisconsin incarcerated its residents at twice the rate in 2015, and spent \$95 million – or 55% – more to do so.

Figure 9: Number of people in prison or local jail on December 31, 2016 per 100,000 residents ages 18 or older, Wisconsin vs. neighboring states



Source: Kaeble and Cowhig 2018, Appendix Table 1.

The Milwaukee Secure Detention Facility

The Milwaukee Secure Detention Facility is a prime example of how community corrections can impact prison populations and cost. Opened in 2001 (one year after the implementation of Wisconsin’s Truth in Sentencing statute), the Milwaukee Secure Detention Facility (MSDF) is a medium-security correctional facility in downtown Milwaukee (Wisconsin Department of Corrections 2017a). The primary purpose of the 1040-person capacity at MSDF is to incarcerate people who were under community corrections supervision – the first state facility in the United States constructed for such a purpose (Correctional News 2005).

People can be incarcerated at MSDF for a new sentence, revocation without a new sentence, as they are pending revocation, for probation or parole preadjudication “holds,” or for sanctions of 30, 60, or 90 days (the latter two statuses require no judicial review). The facility also houses “Alternatives to Revocation” programs, in which people are incarcerated an average of 60 to 90 days (Wisconsin Department of Corrections n.d.).

According to data from the Wisconsin Department of Corrections, MSDF primarily incarcerates people who have not committed a crime. As of the end of 2017, there were more than six times as many people incarcerated at MSDF for technical revocations as for revocations with a new conviction (529 people vs. 83 people), and the number of people incarcerated on probation and parole holds (222) was 2.7 times the number of people incarcerated for a new conviction (Wisconsin Department of Corrections 2018a; see Figure 10).

The opening of MSDF greatly expanded WI DOC’s capacity to incarcerate people for probation or parole holds. Typically, such holds would incarcerate people in county jails. Between 2001 and 2006, total prison admissions increased by 62% (Wisconsin Department of Corrections 2017c; see Figure 11). Nearly two-thirds (65%) of that increase was due to increased holds, which after a downtick in 2007 continued to rise, peaking in 2010 at 5,787. People incarcerated on holds comprised 39% of total WI DOC admissions in that year.

Although the number of WI DOC admissions for probation and parole holds has declined in recent years, the impact of such holds remains large. In 2017, there were 3,727 people admitted to WI DOC on probation or parole holds statewide, more than for any other reason for admission (Wisconsin Department of Corrections 2018a).

Incarceration at MSDF overwhelmingly impacts people of color. According to the most recent data from the Bureau of Justice Statistics that reports the race of all people in state and federal prisons, 45% of people incarcerated in Wisconsin self-identify as white and 41% identify as Black (Carson 2018, Table 21). In contrast, 33% of people incarcerated at MSDF identify as white and 65% identify as Black (Wisconsin Department of Corrections 2017a).

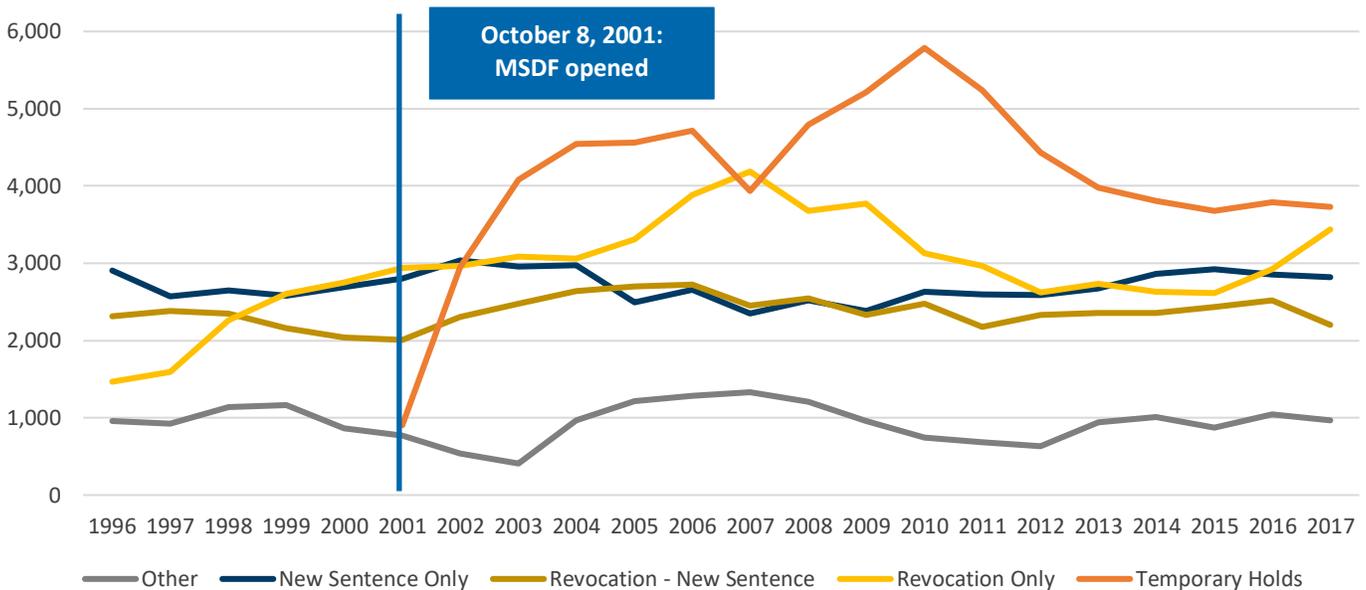
In Milwaukee, Black people make up 64% of all people under community corrections supervision (Wisconsin Department of Corrections 2018a). Yet, Black people made up 76% of all people incarcerated at MSDF for revocations at the end of 2017, and of those, 88% were incarcerated *without* a new conviction (Wisconsin Department of Corrections 2018a; see Figure 12).

Figure 10: Number of people incarcerated at MSDF, by reason for admission, December 31, 2017



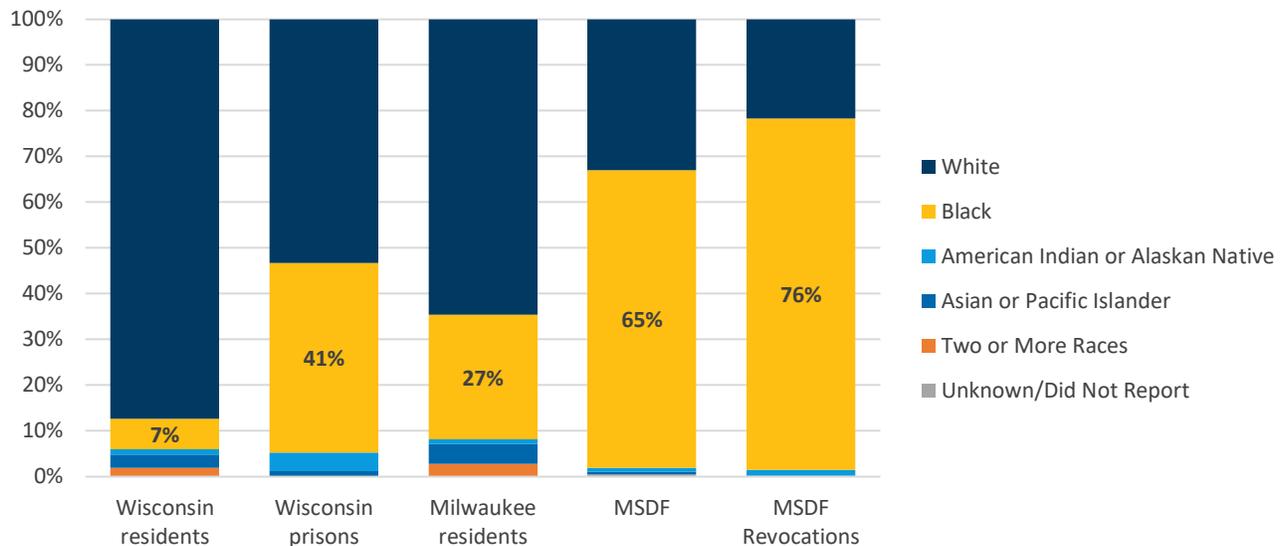
Source: Wisconsin Department of Corrections 2018a. Note: this excludes people incarcerated at MSDF for other reasons, including short-term sanctions and Alternatives to Revocation programs.

Figure 11: Number of people admitted to Wisconsin state prisons, by reason for admission, 1996-2017



Sources: Wisconsin Department of Corrections 2017c; 2018a; 2018b. Note: data on admissions for temporary holds in state prisons are not included for years prior to 2001. Data in this figure represent a count of admissions to Wisconsin prisons in a calendar year, rather than a count of unique people admitted in that year. A person may be counted more than once if they were admitted multiple times in the course of one year.

Figure 12: Wisconsin populations, disaggregated by race



Sources: Carson 2018, Table 21; Wisconsin Department of Corrections 2018a; U.S. Census Bureau 2018a; 2018b. Note: Figures for Wisconsin and Milwaukee residents represent the estimated number of residents of all ages on July 1, 2017. Wisconsin prison demographics are as of December 31, 2016. MSDF and MSDF Revocations demographics are as of December 31, 2017.

The cost to imprison someone at MSDF for one day (\$100.16) is 11% greater than the average cost to incarcerate someone in a medium-security prison in Wisconsin (\$89.00) (Wisconsin Department of Corrections 2017a; 2018c). This increased average cost contributes to the nearly \$40 million per year it costs Wisconsin taxpayers to keep MSDF open.

Operating a facility whose primary purpose is to incarcerate people in violation of conditions of community supervision – rather than for committing a crime – is not only fiscally costly, but exacts a human toll as well. The Milwaukee Secure Detention Facility has been plagued with accusations of human rights abuses and frequent overcrowding. Conditions can include three people confined to 1-person, 11x3-foot cells for at least 20 hours a day with no fresh air or direct sunlight, no air-conditioning, poor ventilation, no outdoor exercise time and no in-person visitation (Casey 2018; Miner 2018). These conditions have been blamed for some of the 17 in-custody deaths there that have been reported since MSDF first opened (Casey 2018).

Additionally, these conditions are imposed upon an already-vulnerable population. In August 2018, the Wisconsin Department of Corrections reported that 38% of all incarcerated men and 83% of all incarcerated women under their control had been diagnosed with a mental health condition. Of those, 8% of men and 28% of women had a serious condition such as bipolar disorder, schizophrenia, personality disorder, or severe depression (Wisconsin Department of Corrections 2018c). The most recent MSDF-specific report from July 2017 indicates that 62% of the total population had been diagnosed with a mental health condition (Wisconsin Department of Corrections 2017a).

Racial Inequities in Wisconsin

Beyond MSDF, racial inequities are pervasive in Wisconsin and impact all facets of daily life. From racially charged community realities, to day-to-day interactions with police, to jail, prison and community supervision populations, it seems evident that structural racism¹⁶ has profound impacts on Wisconsin's incarceration and community corrections outcomes.

Community corrections

The extent and conditions of parole and probation in Wisconsin have significant impacts for people serving supervision sentences. Conditions are a constraint on their liberty, and serve as trip wires to incarceration. Lengths of stay on parole supervision are substantially greater than national or regional averages.

More importantly, however, these impacts are unevenly distributed. According to Wisconsin Department of Corrections data, rates of community corrections supervision in Wisconsin are especially high for Black people and Native Americans. An astonishing one in eight Black men between the ages of 18 and 64 were under community corrections supervision at the end of 2017, over five times the rate for white men (Justice Lab analysis of Wisconsin Department of Corrections 2018a; U.S. Census Bureau 2018a).¹⁷ Among Native American men of the same ages, one in 11 were under community corrections supervision in 2017, a rate four times that of white men. Black women in Wisconsin are supervised at over three times the rate of white women, and Native American women are supervised at over six times the rate of white women. Wisconsin's disparities are substantially higher than national disparities in supervision rates.¹⁸

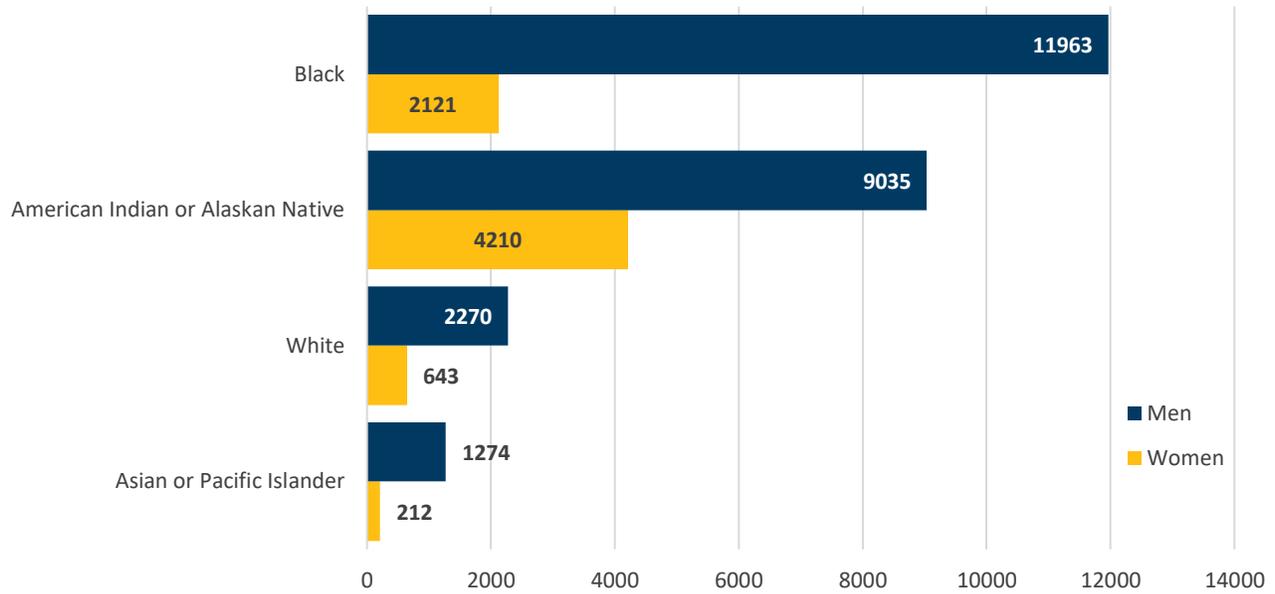
These disparities permeate revocations as well. According to data from the Wisconsin Department of Corrections, at the end of 2017, Black people made up 42% of all people incarcerated for revocations in Wisconsin (43% of whom were for technical violations) even though Black people made up only 25% of people supervised by the Division of Community Corrections statewide (Wisconsin Department of Corrections 2018a). Black people were incarcerated for technical violations of supervision at a rate more than two times greater than that for white people. Revocation rates were similarly high for Native Americans, who had their supervision revoked at a rate 1.7 times higher than the rate among white people under community corrections supervision.

¹⁶ The term *structural racism* “emphasizes the interaction of multiple institutions in an ongoing process of producing racialized outcomes... A systems approach helps illuminate the ways in which individual and institutional behavior interact across domains and over time to produce unintended consequences with clear racialized effects” (Powell 2008, 791). In other words, it does not require racist actions or intent of individual people, and “even if interpersonal discrimination were completely eliminated, racial inequities would likely remain unchanged due to the persistence of structural racism” (Gee and Ford 2001, 3; Bonilla-Silva 1997; Jones 2000).

¹⁷ This includes people who were under supervision by the Division of Community Corrections on December 31, 2017 in any of nine categories of community supervision cases: Chapter 980, mental health conditional release, extended supervision, mandatory release, parole, probation, interstate compact probation, and “Other (Chapter 975).” The vast majority of people represented in the data provided to the Justice Lab by the Wisconsin Department of Corrections (93%) had either probation or extended supervision cases.

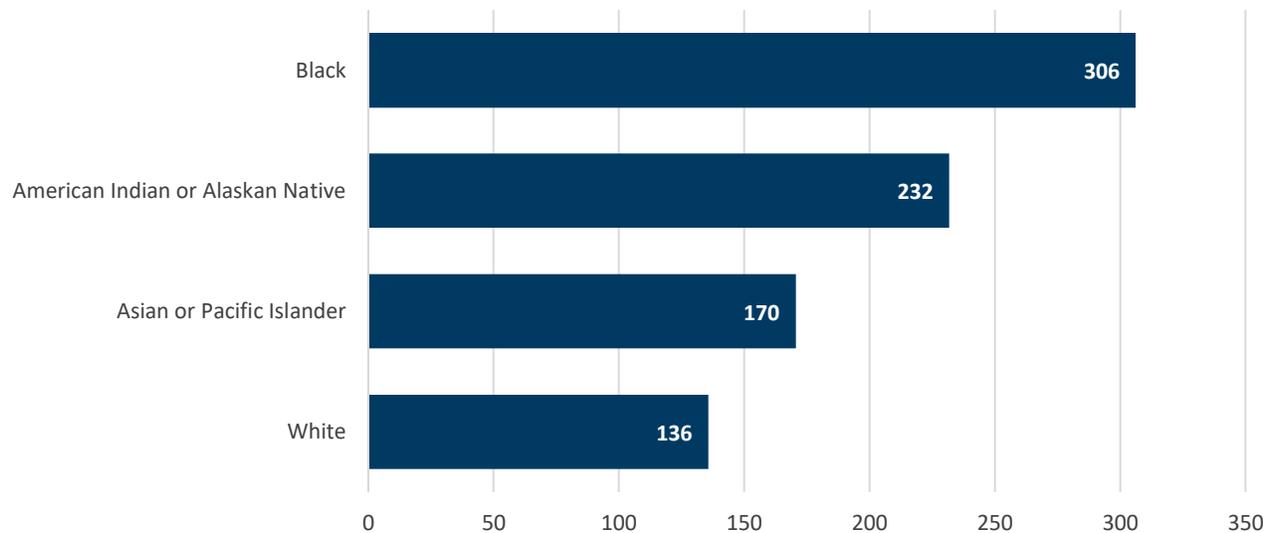
¹⁸ Taken together, Black men and women in Wisconsin are supervised at 4.75 times the rate of white people, whereas nationally, Black people are supervised at 3.5 times the rate of white people (Horowitz and Utada 2018). This means Wisconsin has a 35% larger disparity in supervision rates between Black people and white people. Nationally, Native Americans are supervised at rate roughly 20% higher than white people; the disparity for Native Americans in Wisconsin is more than 3.5 times larger (Kaeble 2018; U.S. Census Bureau 2018a).

Figure 13: Wisconsin rates of community corrections supervision per 100,000 residents age 18-64, 2017



Sources: Justice Lab analysis of Wisconsin Department of Corrections 2018a and U.S. Census Bureau 2018a. Note: Latinx ethnicity is self-reported to WI DOC by people who are incarcerated, and the vast majority of people under community corrections supervision (74%) did not answer a question about Latinx ethnicity in 2017. In order to avoid misrepresentation, the authors chose not to report rates of community corrections supervision for people of Latinx ethnicity based on this incomplete data.

Figure 14: Wisconsin rates of revocation per 1,000 people under community corrections supervision, 2017



Source: Justice Lab analysis of Wisconsin Department of Corrections 2018a. Note: Revocations include people incarcerated with a new conviction as well as people incarcerated without a new conviction.

Other system interactions

While these disparities are stark, they may be unsurprising given the context of racial inequality in other areas of the criminal justice system. Racial disparities in Wisconsin imprisonment date back at least 50 years. During the 1970s when the Wisconsin prison population was just 2,500, Black people comprised only 3% of the total population, but accounted for 30% of the prison population (Forward 2017). By 2016, the overall Black population in Wisconsin increased to 7%, the prison population increased to nearly 23,000, and Black people made up 41% of all people in Wisconsin prisons (Carson 2018, Table 21).

One mechanism that leads to racial inequities in incarceration starts in enforcement – namely, differential rates of contact with police officers. For example, several recent influential studies on traffic stops have highlighted the extent of racial inequity. In one analysis of 716,000 traffic stops between 2010-2017, Frasier (2018) found that Milwaukee police failed to show a reasonable suspicion of criminal activity required by the Fourth Amendment of the United States Constitution in 48% of traffic stops and in 59% of pedestrian stops. Furthermore, Abrams (2018) found that traffic stops were concentrated in predominantly Black and Latinx districts, which had more than three times the number of stops as a majority-white district. Moreover, Black people in Milwaukee were six times more likely to be stopped (both traffic and pedestrian) than white people. During these stops, Black people were far more likely to be searched even though white people were more likely to possess weapons or drugs. On average, Black people were 20% less likely to be discovered with illegal contraband than white people (Abrams 2018). Traffic stops and ensuing searches are one of the most common gateway interactions that can initiate further legal entanglements.

Unjustified traffic stops of people of color often lead to citations. Pawasarat and Walzak (2015) conducted an analysis of Milwaukee citations and found that the poorest zip codes (which are also neighborhoods inhabited primarily by people of color) are overrepresented in the number of citations issued by police. Between 2008-2013, 44% of arrests for citations were from five of Milwaukee's poorest zip codes. Furthermore, Black men had 7.3 times as many citations as white men, and Black women had 4.3 times as many citations as white women.

Racially disparate rates of traffic stops, and the monetary fines that follow, can be the beginning of a snowball effect creating structural disadvantages that make adhering to the requirements of community corrections more difficult for people of color. The Rules of Supervision in Wisconsin (see Appendix A) state that probation appointments must be kept, employment must be obtained and sustained, and participation in counseling is mandatory, among other requirements that are predicated on access to reliable transportation (Wisconsin Division of Community Corrections 2018c). However, Pawasarat and Walzak (2015) found that thousands of residents in impoverished communities in Milwaukee have suspended drivers licenses as a result of unpaid municipal fines. Of the 26,222 Black men incarcerated in WI DOC prisons over a six-year period, only 10% had a valid driver's license.

It is not just means of transportation that are compromised by this racially disparate allocation of citations. Other consequences of these citations also contribute significantly to the racially disparate experiences with the correctional system. Unwarranted municipal citations amount to adding financial burdens to community members who are likely to already be financially disadvantaged. Ordinarily these municipal warrants are not incarcerable offences. However, when they go unpaid, jail time is often the consequence.

Between 2008-2013, Black men comprised 80% of the men jailed for municipal warrants in Milwaukee, while Black women made up 79% of the women similarly jailed (Pawasarat and Walzak 2015). Sending people to jail for not paying their fines is costly for taxpayers. Between 2008 and 2013, Milwaukee residents paid in excess of \$10 million to incarcerate the 26,000 defendants who failed to pay just \$5.7 million in municipal citations (which amounts to less than \$220 owed per incarcerated person) (Pawasarat and Walzak 2015).

Black people are also overrepresented in Wisconsin jails and prisons generally. In 2015, the most recent year for which data are available, the jail incarceration rate in Wisconsin among Black people was 1,445 per 100,000 residents age 15-64 (Vera Institute of Justice 2016). At the same point in time, the jail incarceration rate among white people was 210 per 100,000 residents age 15-64. Put another way, Black people in Wisconsin are nearly 7 times more likely to be incarcerated in a jail than white people. The Sentencing Project found that Wisconsin had the second-highest disparities in prison incarceration, with Black people imprisoned at 11.5 times the rate of white people (the national average was a 5.1:1 ratio) (Nellis 2016).

Quinn and Pawasarat (2014) calculated the racialized cost of these disparities for Milwaukee specifically, finding that between 1990-2012, 26,222 Black men from Milwaukee had been incarcerated for a total of 42,675,397 days, or the equivalent of nearly 116,000 years. This equates to a cost to taxpayers of \$3.88 billion (in 2012 dollars) or more than \$500,000 a day. However, although the economic costs to taxpayers can be calculated, the social costs to Wisconsin communities are immeasurable.

Social Life

To fully understand how the criminal justice system disproportionately impacts people of color in Wisconsin, one should also look beyond the current state of correctional supervision and examine everyday challenges more closely.

In a measurement of household income, educational attainment and child poverty, among other statistics, Wisconsin ranks as the worst state for Black people (Frohlich and Sauter 2016).¹⁹ The median income for Black households is less than half (46.5%) that of white people (\$26,053 vs. \$56,083). While 29.9% of white adults have at least a bachelor's degree, the same can only be said for 12.8% of Black adults. The unemployment differential is even more dramatic. The unemployment rate among Black people in Wisconsin is nearly five times that of white people (4.4% vs. 20.8%). Currently, *four out of every five* of Wisconsin's Black children live in poverty.

More specifically, two cities in Wisconsin are also ranked third and fourth for the worst cities for Black people in the United States: Racine and Milwaukee (Comen and Sauter 2017).²⁰ In Racine, a Black resident can expect

¹⁹ To determine the worst states for Black people in the United States, Frohlich and Sauter created an index of ten measures to assess the gaps between Black and white residents. The index was standardized utilizing min-max normalization to prevent outliers from skewing these data. The measures include median household income, poverty, adult high school, bachelor's degree attainment, homeownership rates, unemployment rates, felony disenfranchisement estimates, incarceration rates, age-adjusted infant mortality estimates, and infant mortality rates. Their final determination is based on the outcome of the index *writ large* and not on any single measure.

²⁰ To determine the worst cities for Black people in the United States, Comen and Sauter created an index of eight measures to assess the gaps between Black and white residents. The index was standardized utilizing interdecile normalization to prevent outliers

to earn 35 cents for every dollar a white resident earns. Households led by Black people in Racine have median incomes that are less than 60% of the median household income among Black people nationally and are only 34% of the median household income among white people nationwide. Furthermore, only 7% of Black adults in Racine have at least a bachelor's degree. This is less than a third of the national college attainment rate among Black adults. It is also a quarter of the rate at which white adults in Racine attain bachelor's degrees (28%).

As staggering as the unemployment disparities are in Racine, the disparities are worse in Milwaukee, which ranked as the third worst city for Black people in 2017 (it was ranked as the worst nationally in 2015) (Comen and Sauter 2017). In Racine, the unemployment rate among Black people is 11%, while in Milwaukee it is 12%. Even if Black residents of Milwaukee are lucky enough to find gainful employment, they will only earn 42 cents for every dollar that a white resident does.

The stakes associated with these systemic issues of poverty are compounded when one is under community corrections supervision. Supervision requirements mandating stable employment are particularly problematic in communities that are already struggling with significant economic inequity. Everyday challenges of being a Black person in Wisconsin have become reasons the state uses to take away someone's freedom.

Where to go from here?

In August 2017, the nation's leading probation and parole administrators²¹ signed a *Statement on the Future of Community Corrections*, in which they noted that "community corrections has become a significant contributor to mass incarceration" but that "increasingly sophisticated research has shown that we can responsibly reduce probation and parole populations" and that "it is possible to both significantly reduce the footprint of probation and parole and improve outcomes and public safety" (Columbia University Justice Lab 2017). In February, 2018, 20 current and former probation and parole administrators collaborated on *Too Big to Succeed: The impact of the growth of community corrections and what should be done about it*, recommending that community corrections populations be cut in half in the United States and resources focused on those on probation and parole with the greatest need. The following recommendations are offered toward the goal of creating a more focused, safer, and more just and equitable community corrections system in Wisconsin.

- **Close the Milwaukee Secure Detention Facility.** Running a facility solely for the purpose of incarcerating people for supervision holds, revocation proceedings, and technical violations creates perverse incentives to incarcerate people under community corrections supervision. Furthermore, operating MSDF is a poor use of public funds that does not improve public safety. The state can and should take steps to close the facility immediately. Best practice indicates that Wisconsin should eschew incarcerating people for technical violations, and instead increase due process and alternatives to holding people preadjudication for suspected violations. This should be paired with incentives to improve compliance and rehabilitation, and alternative sanctions if a person is found to be in substantial

from skewing these data. The measures include median household income, poverty, adult high school, bachelor's degree attainment, homeownership rates, unemployment rates, incarceration rates, and age-adjusted infant mortality estimates. Their final determination is based on the outcome of the index *writ large* and not on any single measure.

²¹ On May 16, 2018, 45 current and former prosecutors, including Milwaukee District Attorney John Chisholm, added their signatures to the *Statement* (Fair and Just Prosecution 2018).

violation. Such best practice policies would eliminate a large percentage of the people incarcerated at MSDF – an astonishing 86% of people incarcerated for revocations at MSDF have had their supervision revoked without a new conviction.

The use of incarceration at MSDF for technical violations is highly racially disparate, exacerbating already intense racial disparities in the Milwaukee area. Black people make up 78% of people incarcerated for technical revocations at MSDF, despite making up only 27% of the general population and 64% of the community corrections population in Milwaukee (Justice Lab analysis of Wisconsin Department of Corrections 2018a; U.S. Census Bureau 2018b).

- **Locate Alternative to Revocation programs in the community, *not* within the Milwaukee Secure Detention Facility.** The main benefit of avoiding revocation lies in avoidance of incarceration, and requiring people to be incarcerated in MSDF in order to complete programs misses the point. Incarceration, even for short periods, is highly disruptive to people’s lives, jeopardizing the stability of their jobs, housing, family ties, and even their health – all things that promote positive social integration and well-being (Apel 2016; Andersen 2016; Kling 2006; Freudenberg et al. 2005). Programs that serve as alternatives to revocation should be community-based so as to protect and strengthen these vital community ties.
- **Reduce probation and parole terms to between 1 and 3 years, except in rare circumstances.** Probation should be a sentence granted in lieu of imprisonment, not an add-on, and length of parole should be determined by the progress of an individual, rather than determined by a formula at sentencing. Such terms should be only as long as is necessary to achieve the rehabilitative and accountability purposes of community supervision, and no longer. Most re-offenses under community supervision occur within the first year or two of supervision, after which the impact and utility of supervision wanes (Austin 2010; Klingele 2013). Lengthy probation and parole terms not only stretch out already-strained supervision resources, but they serve as unnecessary trip wires to technical revocations.

Lengths of stay on probation supervision in Wisconsin are currently around 2 years on average, and changes can be made administratively at the agency level. Adjusting parole lengths of stay will require revision of the Truth in Sentencing statute, and a reversal of the requirement that post-release supervision be at least 25% of the incarcerative sentence. Taken together, time incarcerated and time under post-release supervision should not exceed the statutory maximum length of incarceration.

At least eight states (AK, AL, GA, HI, LA, MT, TX, and VT) have shortened probation terms over the last decade (Gelb and Utada 2017). The Harvard Kennedy School Program in Criminal Justice Executive Session on Community Corrections recommends combining shortened supervision terms with the ability to earn time off supervision for meritorious behavior (see below) “Supervision periods should have a relatively short maximum term limit — generally not exceeding two years — but should be able to terminate short of that cap when people under supervision have achieved the specific goals mapped out in their individualized case plans, a milestone often marked by a special ceremony to highlight the significance of the event” (Executive Session on Community Corrections 2017, 4). The American Law Institutes’ Model Penal Code: Sentencing (MPCS) likewise recommends, “For a felony conviction, the term of probation shall not exceed three years. For a misdemeanor conviction, the term

shall not exceed one year. Consecutive sentences of probation may not be imposed” (American Law Institute 2017, 61).

The MPCs provides the following list of states that have substantially shortened probation periods along with their code sections (82):

11 Del. C. § 4333(b) (2 year limit for violent felonies; 18-month or 12-month limits for all other offenses); Fla. Stat. § 948.04 (2-year maximum, with exceptions for crimes of sexual battery and abuse of children); Georgia Code § 42-8-34.1(g) (2 years “unless specially extended or reinstated by the sentencing court upon notice and hearing and for good cause shown”); Iowa Code § 907.7 (5 years for felonies, 2 years for misdemeanors); Ky. Rev. Stat. § 533.020(4) (5 years for felonies, 2 years for misdemeanors); La. Code Crim. P., Arts. 893 & 894 (5 years for felonies, 2 years for misdemeanors); Miss. Code § 47-7-37 (5 years); Mo. Rev. Stat. § 599.016 (5 years for felonies, 2 years for misdemeanors); Nev. Rev. Stat. § 176A.500 (5 years); N.H. Rev. Stat. § 651:2(V)(a) (5 years for felonies, 2 years for misdemeanors); N.J. Stat. § 2C:45-2 (maximum prison sentence for offense or 5 years, whichever is shorter); N.C. Gen. Stat. § 15A-1342 (5 years); Ohio Rev. Code § 2929.15(A)(1) (“The duration of all community control sanctions imposed upon an offender under this division shall not exceed five years.”); Utah Code § 77-18- 1(10) (3 years for felonies; 1 year for misdemeanors). In Connecticut, if a probation term is more than two years, the probation agent must submit a report after 18 months to the court concerning whether the probationer should be discharged at the two-year mark. See Conn. Public Act No. 08-102 (Substitute House Bill No. 5877).

Reducing community supervision terms would allow Wisconsin’s Division of Community Corrections to focus on individuals for the period of time they are at the greatest risk of offending, rather than exposing supervised people to the risk of technical violations long after they have committed their original offense while also increasing workloads for overburdened community supervision agents.

- **Eliminate or strictly limit incarceration as a response to technical violations, and increase due process protections for people under community corrections supervision.** Whether in the form of “holds” while a suspected violation is investigated or revocation of a person’s supervision, incarceration is an outsized and highly disruptive response to behavior that is not criminal. As research on pretrial detention has shown, even short periods of incarceration can be highly disruptive to housing, employment, and family ties (Apel 2016; Andersen 2016; Kling 2006; Freudenberg et al. 2005). Moreover, experience of technical revocations in Wisconsin is highly racially disparate, with Black people making up 41% of people incarcerated for technical revocations statewide and 78% of people incarcerated for technical revocations at MSDF, despite making up only 6% of the general population and only 25% of the community corrections population (Wisconsin Department of Corrections 2018a; U.S. Census Bureau 2018a).

People under community corrections supervision should not be incarcerated, even for short-term holds, unless criminal activity is suspected. In cases where criminal activity is suspected, Wisconsin should require judicial review *before* a person is incarcerated, with the same level of due process proceedings that would be expected for a member of the public who is not under community corrections supervision. Wisconsin should also require that revocation proceedings only follow *after*, not in place of, full criminal

proceedings and conviction. This ensures appropriate due process, and avoids unnecessary incarceration.

- **Provide for “merit time” or “earned compliance credit,” and allow for early termination for sustained compliance, for probation, parole, and incarceration.**

In at least 18 states (AK, AR, AZ, DE, GA, ID, KS, KY, LA, MD, MO, MS, MT, NH, OR, SC, SD, UT) people can shorten their supervision periods by up to 30 days for 30 days of compliance (Gelb and Utada 2017). Earned compliance credits both provide an incentive for people on probation and parole to perform well under supervision, and help focus scarce community supervision resources on those most in need of them.

In 2012, policymakers in Missouri granted 30 days of earned compliance credit for every 30 days of compliance while under supervision for certain people on probation and parole. As a result, 36,000 people under community corrections supervision were able to reduce their terms by 14 months, there was an overall 20% reduction in the number of people under supervision, and reconviction rates for those released early were the same as or lower than those discharged from supervision before the policy went into effect. When New York City Probation increased early discharges nearly six-fold from 2007 to 2013, only 3% of people discharged early were reconvicted of a felony within a year of discharge, compared to 4.3% of those who were on probation for their full term (New York City Department of Probation 2013).

The Harvard Executive Session on Community Corrections specifically recommended that the approach of community supervision should move “from time-based to goal-based” (Executive Session on Community Corrections 2017, 4). California Assembly Bill 1940 passed in 2017 with a goal of further incentivizing performance on community corrections supervision, granting “reintegration credits” off of supervision sentences for obtaining high school and college degrees, completing counseling programs, obtaining technical training, and performing volunteer work.

California Assembly member Kevin McCarty stated that the purpose of the legislation was to “...incentivize parolees to reach their full potential by rewarding good behavior, educational attainments and community service. This will encourage the parolee to be an active participant in their efforts to reintegrate into society and leave them with better tools at their disposal to help them rejoin their communities” (Uribe 2018, 3).

For prison sentences, the majority of U.S. states allow incarcerated people to earn time off their sentence, either through compliance with rules and/or through participation in specific activities such as education or work programs (National Conference of State Legislatures 2016). Research by a Stanford economist has shown that such programs decrease costs to society without increasing crime (Polinsky 2015).

An example of this is Proposition 57, which was passed into law by California voters in November of 2016. Proposition 57 allows for people incarcerated for nonviolent offenses to be eligible for early release after severing their full sentence for the primary offense. Additionally, Proposition 57 requires sentence credits for successful participation in evidenced-based rehabilitation programming, such as

education or substance abuse treatment and job training, and for good behavior (California Department of Finance 2017).

The number of sentence credits varies depending on the program. For completing a drug rehabilitation program, incarcerated people earn one week of credit for every 52 hours of participation. For earning a high school diploma, incarcerated people are awarded 90-days of credit. Receiving a higher education degree is rewarded with 180 credited days. The California Department of Finance estimated that Proposition 57 will reduce the number of people incarcerated in California prisons by 11,500 and save taxpayers \$186 million by 2021 (California Department of Finance 2017).

The Harvard Executive Session, the Model Penal Code and the Statement on the Future of Community Corrections all recommend allowing people to earn early discharge from community supervision, and numerous politically and geographically diverse states have experimented successfully with such earned credits for both community corrections supervision and terms of incarceration.

- **Realign savings to community programs.** If the above policies are enacted, the savings from reducing the number of people incarcerated and under parole and probation supervision should be funneled back into community supports like community development, micro-loans, housing, drug treatment, education and employment services and focused on the remaining population of those under community corrections supervision. Special attention should be placed on supports that can alleviate racialized harm and reduce racially disparate outcomes in criminal justice involvement, education, workforce participation, and other domains.

Communities with the largest criminal justice system footprint are often most in need of these resources (Petteruti et al. 2015). The cycles of supervision and incarceration discussed in this report are particularly disruptive to the processes that are necessary to produce healthy, stable communities – community engagement, ability to work toward shared goals, ability to access health, housing, and employment resources (Thompson et al. 2018; Rose and Clear 1998; Sampson, Raudenbush, and Earls 1997; Western 2018). Therefore, as mass supervision and its contribution to mass incarceration are reduced, the most effective reinvestments would directly target these harms in communities most impacted.

One particularly promising example of such reinvestment is the Work and Gain Education and Employment Skills (WAGEES) program in Colorado, which is built on the understanding that “local, community-based organizations play a key role in providing services and facilitating engagement that strengthens neighborhoods” (Thomson et al. 2018, 1). Yet, these same local organizations are “often under-resourced and excluded from public safety funding” (Thomson et al. 2018, 1). WAGEES targets this gap, by using state resources to make “grants to community-led organizations that provide direct services to a local client base of formerly incarcerated people” who are returning to the community following a period of incarceration (Thomson et al. 2018, 2). This represents a direct vehicle for investment in and partnership with community providers, many of which are led by people directly impacted by the justice system.

There are many community-based organizations in Wisconsin that would benefit greatly from reinvestment. Project RETURN (Returning Ex-incarcerated people To Urban Realities and

Neighborhoods) is an interfaith ministry that “exists to help men and women who have experienced incarceration, make a positive and permanent return to community, family, and friends” (Project RETURN 2018). Through their Re-Entry Employment Program, they work with men and women who are still incarcerated to search for jobs and contact employers. An additional program is the Fatherhood Initiative. This program facilitates employment/fatherhood groups where people learn the “soft skills” of employment while also focusing on values, goals and other issues affecting job searches (Project RETURN 2018).

Another example of a community-based model that would benefit from investment is Urban Underground, an organization that “promotes the next generation of leaders committed to building safe and sustainable communities” (Urban Underground 2018). Urban Underground runs life skills and leadership programs that are intertwined with youth-led social justice campaigns in the areas of health, education public safety and juvenile justice reform. With over 600 youth who have successfully completed their program, Urban Underground has achieved high rates of high school completion, college enrollment, and community engagement amongst their alumni.

These organizations, and many more like them, could use the money currently spent on the oversupervision and overincarceration of Wisconsin residents to strengthen communities and build a more equitable Wisconsin.

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Appendix A: Wisconsin Standard Rules of Supervision²²

1. Avoid all conduct which is in violation of federal or state statute, municipal or county ordinances, tribal law or which is not in the best interest of the public welfare or your rehabilitation.
2. Report all arrests or police contact to your agent within 72 hours.
3. Make every effort to accept the opportunities and cooperate with counseling offered during supervision to include addressing the identified case plan goals. This includes authorizing the exchange of information between the department and any court ordered or agent directed program for purposes of confirming treatment compliance; and subsequent disclosure to parties deemed necessary by the agent to achieve the purposes of Wisconsin Administrative Code Chapter DOC 328 and Chapter DOC 331. Refusal to authorize the exchange of information and subsequent disclosure shall be considered a violation of this rule.
4. Inform your agent of your whereabouts and activities as he/she directs.
5. Submit a written report monthly and any other such relevant information as directed by DCC staff.
6. Make yourself available for searches including but not limited to residence, property, computer, cell phone, or other electronic device under your control.
7. Make yourself available for tests and comply with ordered tests by your agent including but not limited to urinalysis, breathalyzer, DNA collection and blood samples.
8. Obtain approval from your agent prior to changing residence or employment. In the case of an emergency, notify your agent of the change within 72 hours.
9. Obtain approval and a travel permit from your agent prior to leaving the State of Wisconsin.
10. Obtain written approval from your agent prior to purchasing, trading, selling or operating a motor vehicle.
11. Obtain approval from your agent prior to borrowing money or purchasing on credit.
12. Pay court ordered obligations and monthly supervision fees as directed by your agent per Wisconsin Statutes, and Wisconsin Administrative Code; and comply with any department and/or vendor procedures regarding payment of fees.
13. Obtain permission from your agent prior to purchasing, possessing, owning or carrying a firearm or other weapon, or ammunition, including incapacitating agents. An offender may not be granted permission to possess a firearm if prohibited under federal or state law.
14. Not vote in any federal, state or local election as outlined in Wisconsin Statutes s.6.03(1)(b) if you are a convicted felon, until you have successfully completed the terms and conditions of your felony sentence and your civil rights have been restored.
15. Abide by all rules of any detention or correctional facility in which you may be confined.
16. Provide true, accurate, and complete information in response to inquiries by DOC staff.
17. Report as directed for scheduled and unscheduled appointments.
18. Comply with any court ordered conditions and/or any additional rules established by your agent. The additional rules established by your agent may be modified at any time as appropriate.

²² Source: Wisconsin Division of Community Corrections 2018b.