

Treatment Instead of Prisons



A Roadmap for Sentencing and Correctional Policy Reform in Wisconsin

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**JUSTICE
STRATEGIES**

Commissioned by the Drug Policy Alliance

Executive Summary

A broad-based movement is building to overhaul Wisconsin's sentencing practices. The Treatment Instead of Prison (TIP) campaign – a dynamic statewide coalition of 24 organizations – has launched a coordinated effort to call attention to the many benefits of using substance abuse treatment as an alternative to incarceration for people charged with low-level, nonviolent offenses.

Many of Wisconsin's leading policymakers indicate they are ready to consider new approaches. As he signed a record \$1 billion corrections budget for fiscal years 2003-2005, Gov. Jim Doyle promised that no further prison expansions would take place on his watch. The Republican leadership of the legislature also signaled that it is ready to take the state in a new direction by establishing a grant program for counties seeking to treat, rather than incarcerate, nonviolent substance abusers.

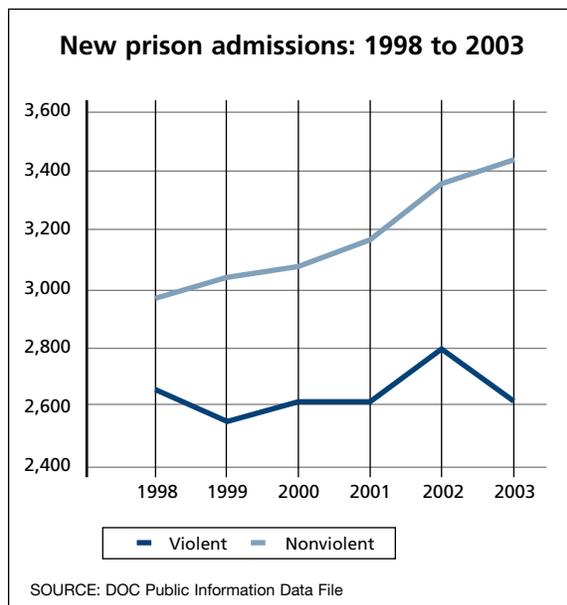
At the request of legislative leaders, the Justice Strategies research team examined the potential impact of expanding the availability of quality treatment, supervision and “wrap-around” services. We determined that such an initiative could, if fully funded, reduce the nonviolent prison population by as many as 1,500 prisoners and generate annual savings of up to \$43 million. Absent a major investment of tax dollars in treatment services, however, we found that the state is likely to face mounting prison populations pressures in coming years due to growth in nonviolent admissions and revocations of post-release supervision.

Sentencing and correctional policy trends in Wisconsin

Wisconsin's prison population has grown five-fold in the space of a single generation and doubled – from 11,000 to nearly 23,000 – during the past decade. In recent years, this trend has been driven by growth in the number of people incarcerated for nonviolent offenses, which far outpaced the rise in the number serving time for violent or sex offenses over the last five years.

The rapid rise in incarceration has imposed enormous fiscal and social burdens on state residents – a problem that has been exacerbated by poor plan-

ning and a haphazard approach to sentencing and correctional policy. Since 1994, Wisconsin has acquired nine new prisons and added hundreds of beds to existing facilities. State officials have paid to guard empty facilities while housing thousands of prisoners outside Wisconsin; bailed out a private prison developer by purchasing a facility built on speculation; and spent tens of millions of dollars on a “supermax” prison that has been the subject of multiple lawsuits.



The common wisdom is that Wisconsin's prison population has risen as a consequence of the elimination of parole and “good time” credits, together with dramatic increases in maximum sentences that accompanied truth in sentencing (TIS). However our analysis found that, after an initial spike, the length of time prisoners are expected to serve before their first release has returned to pre-TIS levels. Instead, it appears that other factors such as declining use of probation and a rising tide of admissions for drug- and alcohol-related offenses are driving population growth.

The drug war drives up correctional costs and racial disparity

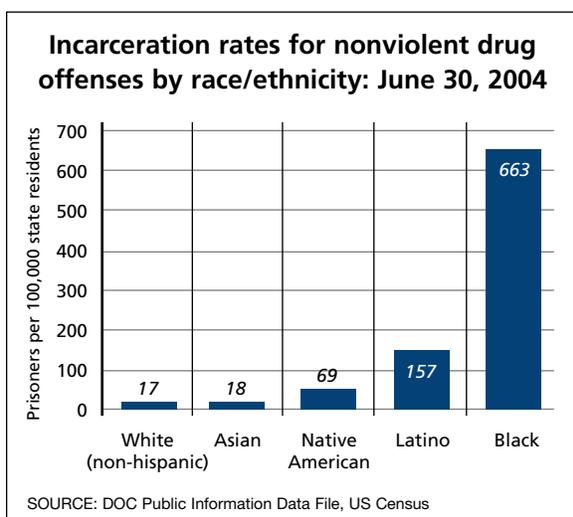
Much of the sharp increase in the use of incarceration can be attributed to the “war on drugs”

which has packed state prisons with individuals convicted of selling or possessing very small quantities of a controlled substance. Nowhere is this more true than in Milwaukee. The number of non-violent prisoners sentenced for a drug offense in the Milwaukee Circuit Court grew ten-fold between 1990 and 2004, from 200 to nearly 2,000.

While Milwaukee’s drug prisoner population continues to rise at a breakneck pace, increasing by 50 percent during the past five years, the number of drug prisoners sentenced in counties with fewer than 100,000 residents doubled over the five-year period. Overall, the number of drug prisoners sentenced outside Milwaukee doubled over a ten-year period, from under 700 in 1994 to around 1,500 in 2004.

Wisconsin is not the only state to confront an exploding drug prisoner population. But the state is unusual in the high proportion of drug prisoners who have little to no prior criminal history: close to half of the prisoners serving time for non-violent drug offenses in Wisconsin have no prior felony record.

The war on drugs has contributed to unusually high rates of racial and ethnic disparity in Wisconsin. African Americans – who are incarcerated at a higher rate in Wisconsin than in any other state – are imprisoned at nearly forty times the rate of non-Hispanic whites for nonviolent drug offenses. Latinos are nine times more likely than non-Hispanic whites to be serving time for a drug offense, while the risk for Native Americans is four times greater.



Substance abuse, addiction and crime

Much of the behavior that packs Wisconsin’s prisons is rooted in drug and alcohol abuse. As one judge put it, “Drugs drive all our crime, the whole caseload. The economics of the whole criminal justice system here is driven by addiction.”

The data support this contention. Substance-related crimes (drunk driving included) account for three of the top four commitment offenses and fully 60 percent of the growth in the prison population over the past five years. And DOC records indicate that 83 percent of state prisoners need substance abuse treatment.

Viewed from both an economic and public safety standpoint, substance abuse treatment is clearly the preferred response to nonviolent drug- and alcohol-related crime. A landmark RAND Corporation study estimated that money spent on treatment for people prosecuted on federal cocaine charges should reduce serious crimes about 15 times more effectively than incarceration.

A U.S. Department of Health and Human Services evaluation of clients in publicly-funded treatment programs found that the proportion of selling drugs dropped by 78 percent and the proportion arrested on any charge dropped by 64 percent. Other studies have shown that outpatient treatment can be effective for methamphetamine users, and that even “hard-core” addicts with long criminal histories are much less likely to re-offend if treated.

Yet, while spending to confine individuals convicted of nonviolent drug offenses has skyrocketed, funding for Wisconsin’s substance abuse treatment infrastructure falls far short of meeting the needs of state residents. For years, resources for combating substance abuse have been invested disproportionately in law enforcement, generating thousands of arrests and prison admissions without addressing the root problem.

Total treatment expenditures in Wisconsin amount to just a tenth of the \$1 billion annual DOC budget. Further, growth in nonviolent drug prisoner admissions, which shot up 20 percent between 1998 and 2003, has far exceeded growth in the use of treatment, which crept up by less than two percent over the same period.

Community corrections in crisis

Overuse of prison for substance abusers is also a direct result of underinvestment in community cor-

rections. Wisconsin has fallen into a vicious cycle in which declining confidence in probation leads judges to sentence more people to prison, driving up correctional costs and squeezing the budget for community supervision even harder.

The problem has reached crisis proportions in Milwaukee, where probation is underused because judges lack confidence in the system. Outside Milwaukee, two-thirds of felony cases result in probation compared to less than half of felony cases sentenced in Milwaukee – a picture that has worsened in recent years. As a consequence, those prosecuted in Milwaukee for nonviolent offenses face a substantially greater likelihood of prison than those prosecuted elsewhere. People convicted of selling or possessing small amounts of cocaine who had no prior Wisconsin felony convictions were nearly three times more likely to be sentenced to prison if the crime was committed in Milwaukee.

Under-utilization of community corrections is a growing problem elsewhere as well according to judges who say that community resources for addressing problems like drunk driving and methamphetamine use are scarce. The shift from probation to prison sentences is especially tragic because, despite high caseloads and funding limitations, most nonviolent felons placed on probation succeed. Examination of case records for individuals who were placed on felony probation for low-level drug, property and drunk-driving offenses found that 60 to 70

percent were not revoked or sentenced to prison for a subsequent conviction during an average four-year period following sentencing.

The extended supervision “time-bomb”

Declining confidence in community corrections and untreated addictions are not the only factors exerting pressure on the state’s prison population. It is likely that Wisconsin’s taxpayers will soon have to carry an increased burden due as the full effect of the lengthening of post-release supervision under truth in sentencing is realized. Since 1999, the amount of time prisoners are expected to spend on supervision after release has ballooned from 31 months to 55 months – a 77-percent increase.

Preliminary analysis of extended supervision outcomes shows a disturbing pattern that could have a tremendous impact on the state’s prison population. Among the cases examined, 40 percent of individuals released to extended supervision were revoked before completing their sentences.

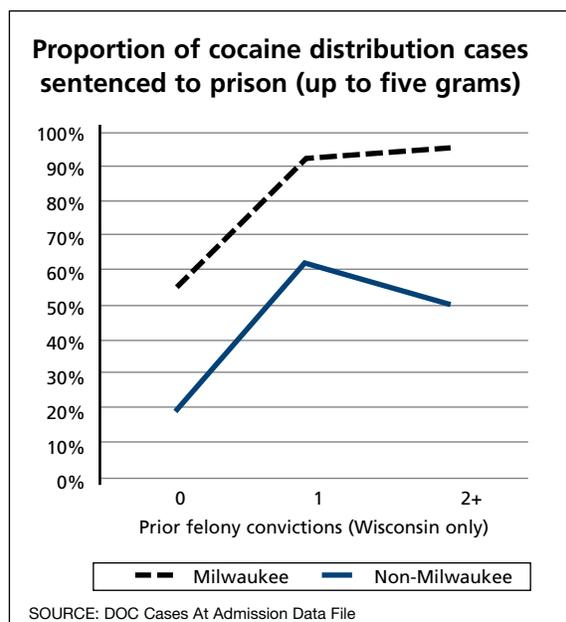
If the pattern holds, one in five incarcerated under truth in sentencing will spend their entire extended supervision term behind bars, and another one in five will serve close to half of the time behind bars. Because no credit is awarded for time served in the community prior to revocation, these long terms of post-release supervision and high failure rates could push prison populations and supervision caseloads to the breaking point.

What judges say about the problem

In February and March of 2005 the Justice Strategies research team assisted the Wisconsin Sentencing Commission in designing, conducting and documenting a series of focus groups involving judges representing three different regions of the state. The focus groups were convened at the request of Sen. Carol Roessler (R – Oshkosh).

The judges represented a broad cross-section of views and experience, yet they expressed substantial agreement on three points:

- A greater number of effective substance abuse treatment options are needed and would be well utilized by Wisconsin’s judges;
- Provision of more treatment options must go hand-in-hand with efforts to build more systematic and comprehensive approaches to identify defendants with substance abuse problems and provide



them with more effective supervision in the community; and

- Increasing the supply of treatment options and upgrading community supervision could substantially reduce correctional costs and enhance community safety.

Judges in all three focus groups expressed frustration with the limited options now available to them. Most expressed a conviction that incarceration is not the most constructive route to address the substance abuse that underlies the relatively low-level criminal behavior they see in their courts.

Judges in every group said that Wisconsin's community supervision capacity is overwhelmed, and needs to be bolstered with additional resources – especially in Milwaukee. Feedback from judges also made clear that a system for screening defendants for treatment needs and supplying judges with timely information about appropriate, available treatment options should be established upfront so that assessments are conducted as early as possible – avoiding delays in the initiation of treatment and reducing the risk of more offending.

What “treatment instead of prisons” could mean for Wisconsin

At the request of Senator Roessler, the Justice Strategies research team also conducted an analysis of DOC prison population and case data – supplemented by interviews with criminal justice professionals – to determine how many prison-bound defendants could be redirected to community-based treatment and supervision without compromising public safety.

Our analysis found that Wisconsin's prisons hold roughly 2,900 prisoners serving time for low-level, nonviolent offenses who have limited criminal histories and substance abuse programming needs. This population can be said to consume \$83 million a year in correctional resources, based on average annual costs of \$28,622 per prisoner.

For an estimated cost of \$6,100 per person, Wisconsin could provide quality substance abuse treatment, case management and supportive services to individuals whose criminal behavior is driven by addiction. Even when the annual cost of probation supervision – currently below \$2,000 per person – is included, community-based treatment is far more economical than incarceration.

Judges indicate that if more substance abuse treatment and wrap-around services were available, they would be eager to use them as a sentencing option for nonviolent defendants, including many who are currently being sentenced to prison. Community-based treatment could also serve as an alternative to revocation for probationers and parolees whose substance abuse problems have put them at risk of being revoked. Finally, expanding access to treatment would improve the success rates of those currently on probation and parole, and reduce recidivism overall, bringing down both revocations and new prison commitments over the long-term.

Based on our research, we determined that the state could substantially improve outcomes and eventually reduce annual prison expenditures by an estimated \$30 million to \$40 million if roughly \$10 million were dedicated each year to providing comprehensive, community-based substance abuse treatment and supervision for individuals who would otherwise have been incarcerated.

Extending treatment services to a larger pool of defendants would benefit not only prison-bound individuals but also many who are currently being sentenced to probation as well as terms in county jail. If services were extended to cover half of the more than 5,000 individuals sentenced to felony probation each year for low-level drug, property and drunk-driving offenses, the annual cost of the program would reach \$22 million in the first years, while the eventual savings would grow to between \$33 million and \$43 million annually.

Recommendations

Wisconsin already has many of the tools that are needed to enhance public safety and improve outcomes. With support from the state, Milwaukee could not only sustain and expand models such as the Community Justice Resource Center but also revive pioneering pretrial release and diversion projects that – years ago – made Milwaukee a national model of criminal justice innovation. Similarly, programs such as Dane County's successful drug treatment court could also be expanded and replicated in other counties if state funds were available.

Wisconsin should invest in high-quality, community-based substance abuse and mental health

treatment for the criminal justice population. There is growing recognition that the state's current approach does little to reduce substance use or to enhance public safety because it asks the impossible of law enforcement and corrections: compel addicts to clean up without offering them adequate treatment.

Last year, the legislature adopted a proposal by Sen. Roessler and Rep. Gary Bies (R – Sister Bay) and established a grant program to enable counties and regional consortia to expand treatment-based alternatives to incarceration. Unfortunately, lawmakers declined to put any general fund revenues in the grant pot, relying instead on surcharges imposed on people convicted of drug and property offenses. An infusion of tax dollars will be required if the program is to have a meaningful impact on addiction, crime and correctional costs.

Wisconsin lawmakers should increase funding for community-based substance abuse treatment by \$22 million annually. Such an investment would allow the state to make quality treatment available to 3,000 people convicted of felony drug, property and drunk-driving offenses each year, including over 1,100 who would otherwise be prison-bound.

The funds would allow counties to establish or expand problem-solving courts, probation review hearing programs and other initiatives designed to improve supervision and delivery of treatment to individuals with severe drug, alcohol and/or mental health problems. The savings that could result from an anticipated 1,150- to 1,500-person reduction in the state's prison population would be significant, permitting the initiative to not only fund itself but also generate millions of dollars in savings for taxpayers.

Policymakers and judges should be provided the information needed to deliver better, more cost-effective outcomes for defendants, victims and communities. Wisconsin's courts need an Early Case Assessment and Referral system that puts information regarding defendants' need for treatment and associated services – along with referrals to appropriate programs – in the hands of judges, prosecutors, defenders and correctional officials at the earliest possible point in the criminal justice process.

State policymakers also need better information about sentencing outcomes. Improving data collection at all levels of the criminal justice system and

expanding the Sentencing Commission's capacity to conduct research on sentencing and correctional trends would ensure the most effective and efficient use of correctional resources. Such research might illuminate how several populous counties – Dane, Kenosha, Racine and Rock – have managed to buck the statewide trend by reducing their use of prison beds for nonviolent offenses.

Fiscal incentives should be created to support local innovations that enhance public safety while reducing costly reliance on incarceration. The current system of criminal justice funding encourages local jurisdictions to send people to prison and let the state pick up the tab, rather than spend limited local funds on effective alternatives that would do more to protect public safety over the long term.

A "community justice incentive" should be created to spur community-based alternatives to incarceration. Policymakers should consider a cost-sharing program designed to improve community supervision and expand program services. Counties that volunteer to participate could be reimbursed in proportion to the number of cases they keep in the community and out of state institutions. The rate of payment could be set to reflect a substantial share of the cost of maintaining prisoners in state custody.

Lawmakers should adjust sentencing statutes and correctional policies that have the potential to impose huge costs on the state with little benefit to the public. Solving these problems does not require repeal of truth in sentencing. Lawmakers could defuse the extended supervision "time bomb" by limiting terms to no more than 50 percent of the term of confinement, encouraging judges to reward compliance with early discharge and allowing credit for any time successfully served in the community prior to revocation. Such steps could generate bed-savings and cut caseloads in half, permitting more effective community supervision.

The state could also free up correctional resources and improve outcomes by allowing prisoners sentenced under truth in sentencing to accrue a modest amount of "good-time" credits; restructuring release criteria and reentry policies to facilitate parole of "old-law" prisoners; and reducing penalties for first-time distribution of very small amounts of cocaine by individuals with no prior felony convictions.

Policymakers should redesign sentencing and correctional policies to facilitate and reward success rather than simply punishing failure. One judge described Wisconsin's current practice succinctly:

“Between the felony-level convictions, the suspension of driving privileges, and the various the mandatory rules we’ve attached to drug offenses, we’re creating a whole class of social outcasts. They need to give us some room to deal more constructively with folks like this: Let us allow people to drive if they need to. Help them with employment... with housing. Let us expunge their conviction record if they succeed.”Policymakers could start by lowering some of the barriers to success that confront individuals with drug and other felony convictions in areas such as employment, education and housing. The practice of suspending of the driving privileges of individuals convicted of drug offenses, which is seen as wasteful and counterproductive by most court officials, should be ended. State officials should take pro-active steps to open up employment and educational opportunities that court-involved individuals need in order to become law-abiding, tax-paying state residents. The state should enforce laws barring unwarranted employment discrimination against individuals with criminal convictions, take other steps to improve employment prospects for those with criminal and prison records, and expand educational opportunities for prisoners and court-involved youth.

Finally, legislators should encourage court officials to reduce the number of individuals with misdemeanor and felony conviction records. This could be done by diverting cases from prosecution. They should amend the offense code to reduce minor criminal offenses to civil offenses, and permit deserving individuals to have their conviction records expunged.

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