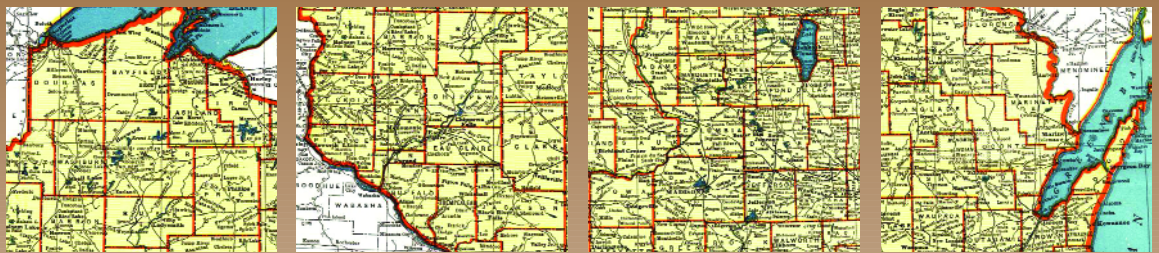


# Treatment Instead of Prisons



## A Roadmap for Sentencing and Correctional Policy Reform in Wisconsin

January 2006

**JUSTICE  
STRATEGIES**

Commissioned by the Drug Policy Alliance

## ***About Justice Strategies***

**Justice Strategies** is an organization founded by veteran researchers Judith Greene and Kevin Pranis. Our mission is to provide high quality “action research” to advocates and policymakers pursuing more humane and cost-effective approaches to criminal justice and immigration detention.

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## Preface

For over 30 years, the United States has been waging a war on drugs, and in this time the country has come to an almost universal—if often unspoken—conclusion: that this war hasn’t worked. Nationwide, hundreds of billions of tax dollars have been spent on this war, yet we are nowhere near winning it. Drug use and abuse continue almost unabated, and heroin, cocaine, methamphetamine and other illicit drugs are cheaper, purer and easier to get than ever before. Nearly half a million people are behind bars on drug charges. To appreciate the gravity of this number, consider this: the number of people behind bars in the United States for drug offenses is greater than the number of people who are incarcerated in Western Europe for *all* offenses—and Western Europe has a bigger population. Perhaps most troubling is that our drug policies, under even the most casual scrutiny, reflect embarrassing racial disparities unfit for any nation, especially a democratic one. In short, the war on drugs, whatever its stated intent, has become a war on families, a war on public health and a war on our constitutional rights. Indeed, there is perhaps no other public policy in the United States which continues to be funded at ever higher levels despite a track record of failures. But if the drug war has failed, then what is our exit strategy? What is the effective alternative?

As states across the country wrestle with devastating budget shortfalls, policy-makers from every political persuasion are asking these questions with greater urgency. The Drug Policy Alliance has become the nation’s leader in answering such calls with sensible policy recommendations that not only address the collateral damages of the failed war on drugs, but that set a new standard for evaluating existing drug policies. Through rigorous research, information sharing, and capacity building, the Alliance is sharply focused on creating a *new bottom line*, whereby drug policies are measured by their

ability to promote public safety, reduce substance abuse, and save lives – all while saving limited tax dollars. The Alliance has been at the forefront of some of the most effective drug policy reforms in the country, including but not limited to Proposition 36 in California, Treatment Not Incarceration in Maryland and Rockefeller Drug Law reform in New York. Here, we turn our attention to Wisconsin, a state whose over-use of incarceration for African-American, nonviolent *and* first-time offenders has alarmed advocates and policy analysts nationwide. In an effort to examine why this disturbing trend exists, and what we can do about it, the Drug Policy Alliance has commissioned this important study.

We understand that in order for Wisconsin to move from an excessive punitive standard of practice to a public health approach in dealing with substance abuse, there must be a foundation of sound, evidence-based research and ideas for realistic alternatives. Toward that end, the Alliance has enlisted the expertise of Justice Strategies to produce this report. The study that follows examines the current sentencing and corrections practices in the state of Wisconsin, providing an in-depth look at the drug policy terrain and laying a comprehensive road map for effective recovery.

With a concrete plan of action, informed by evidence-based research, Wisconsin can reduce the death, disease, harm and suffering that is inherent in the war on drugs and create effective drug policies based in reason, compassion, and justice. The release of TREATMENT INSTEAD OF PRISONS is just one of the constructive contributions the Drug Policy Alliance is making to this effort.

Asha Bandele  
Deputy Director of Public Policy  
Drug Policy Alliance

## Acknowledgments

**T**his report would not have been possible without the assistance of many people, organizations and state and local agencies. We want to begin by thanking State Sen. Carol Roessler and Rep. Gary Bies for their unwavering commitment to finding better solutions to the problems of crime and addiction, as well as the encouragement they provided to our research efforts. We also want to acknowledge Gov. Jim Doyle, Department of Corrections Secretary Matt Frank and the DOC staff, without whose help production of this report would not have been possible. We are particularly grateful for the assistance of DOC Policy Initiatives Advisor Anthony Streveler, who went well above and beyond the call of duty to provide us with information and insights into the workings of the state’s criminal justice system. Finally, we want to express our appreciation to Chief Justice Shirley S. Abrahamson and Director of State Courts John Voelker for the contributions they and other members of the state’s judiciary made to our understanding of sentencing and correctional policy and practice in Wisconsin.

In addition to the DOC, Justice Strategies received assistance from the staff of other state agencies, including the Department of Health and Family Services and its Bureau of Mental Health and Substance Abuse Services; the Office of Justice Assistance and OJA’s Statistical Analysis Center; and the State Public Defender. Special thanks are owed to Michael Connelly, Director of the Wisconsin Sentencing Commission along with Deputy Director Kristi Waits and the commission’s chair Dr. Susan Steingass. In addition to organizing a groundbreaking series of judicial focus groups, the Sentencing Commission staff provided information and feedback that proved critical to our investigations. Our appreciation is also extended to Chief Judge Joseph Troy of the Eighth Judicial District and Chief Judge Edward Brunner of the Tenth Judicial District for facilitating the convening of judicial focus groups in their respective districts.

In Milwaukee, Justice Strategies received extraordinary cooperation from a wide range of criminal justice stakeholders. District Attorney E. Michael McCann provided not only his time and that of deputies Carol White and Steve Licata, but also ac-

cess to his office’s drug case database. The Milwaukee Courts were equally generous with the time of members of the judiciary and their staff, including Chief Judge Kitty Brennan, former Chief Judge Michael Sullivan, Judge Marshall Murray, Judge Timothy Dugan, Pretrial Services Coordinator Holly Szablewski and the judges who participated in the Sentencing Commission focus group. Thanks are also due to the Milwaukee Police Department, the Milwaukee office of the State Public Defender, Milwaukee County’s Behavioral Health Division, and the nonprofit agencies that provide services to court-involved individuals in the county – including Justice 2000 and Wisconsin Community Services.

Acknowledgments are due to the people and organizations that were the impetus for our report. The list includes community-based nonprofits like The Benedict Center and grassroots advocacy organizations such as WISDOM and Money, Education and Prisons, who were raising important questions about the humanity and effectiveness of the state’s sentencing policies long before it was fashionable to do so. The list also includes the staff of the Drug Policy Alliance – especially Executive Director Ethan Nadelmann, and Asha Bandele and Gabriel Sayegh of DPA’s Office of Public Policy – who work tirelessly to educate the public about the costs of, and alternatives to, the war on drugs. Finally, the list would be incomplete without two University of Wisconsin scholars – Professor Walter Dickey and Dr. Pamela Oliver – whose critiques of current sentencing and correctional policy and resulting racial disparity informed our own research.

Last, but not least, we want to express our appreciation for the financial assistance of the Open Society Institute, which underwrote our research, and offer our thanks to the OSI staff – especially Raquiba LaBrie, Susan Tucker, Nidia Vasquez, William Johnston, Nicole Kief and Christina Voight – for their hard work and moral support.

# 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 planning 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 nonviolent 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 nonviolent drug of-

fenses 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 corrections. 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 case-loads 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 up-front 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, law-

makers 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.

## Introduction

**A** broad-based movement is building in Wisconsin for overhauling the state’s sentencing and correctional system. With support from the Drug Policy Alliance, 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 redirecting people charged with low-level, nonviolent offenses from costly imprisonment to effective treatment alternatives.

Over-reliance on imprisonment has placed a huge burden on Wisconsin taxpayers. On average, spending on adult corrections increased by more than ten percent each year between 1992 and 2005, with the number of people incarcerated for nonviolent offenses rising more quickly than the number incarcerated for violent and sex offenses.

Much of the nonviolent prison population growth can be attributed to the “war on drugs.” This is particularly true in Milwaukee, where people convicted of nonviolent drug offenses account for over a third of recent growth of the city’s share of the state prison population. 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.

Yet from both an economic and public safety standpoint, the advantages of employing substance-abuse treatment instead of prison for such cases are clear. A research team at the RAND Corporation has estimated that treatment of cocaine addicts reduces serious crime 15 times more effectively than imprisonment. A U.S. Department of Health and Human Services study of clients in publicly-funded programs found very significant decreases in drug use, drug sales and arrests for other crimes following completion of treatment.

Expansion of funding for effective substance abuse treatment would be welcomed by Wisconsin judges. In focus groups conducted in 2005 by staff of the Wisconsin Sentencing Commission, judges from diverse areas of the state said that drug and alcohol abuse underlies most of the low-level nonviolent offense behavior they deal with in court every day. In all three focus groups, judges indicated that

expanding access to treatment would substantially reduce recidivism, and many indicated that they would redirect prison-bound defendants to probation if quality treatment and supervision were more widely available.

Currently, however, problems with access to treatment are endemic. Treatment programs have long waiting lists for admission, and there is no coordinated system for assessing defendants’ treatment needs or for placing them in appropriate treatment programs. Further, judges say many defendants need not just treatment but also more effective community supervision and “wrap-around” services such as basic education and job training.

Many of Wisconsin’s top policymakers have shown they are ready to consider new approaches that can safeguard the public while reigning in correctional costs. At the request of legislative leaders, the Justice Strategies research team conducted an analysis of the prison population. Supplemented by interviews with criminal justice professionals and focus-group research, we determined how many prison-bound defendants could be redirected to community-based treatment and supervision without compromising public safety.

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

We also found that expanding Wisconsin’s network of substance abuse treatment programs, as well as other services designed to stabilize offenders in the community, would make a significant impact on the willingness of judges to redirect “prison-bound” defendants to treatment, and would improve the success rates of those normally placed on probation. Finally, we estimate that each dollar invested in treatment and supervision for these defendants would return roughly four dollars in corrections cost-savings.

With these findings in hand, legislative leaders took an important step toward a more humane and cost-effective criminal justice system by establishing

a state funding mechanism for counties seeking to expand the use of treatment as an alternative to incarceration. The proposal – which was put forward by Sen. Carol Roessler (R – Oshkosh) and Rep. Gary Bies (R – Sister Bay) and enacted during the 2005 legislative session – created a grant program administered by the state Office of Justice Assistance that can be used by local officials to launch programs designed to redirect defendants from county jails and state prisons into community-based substance abuse and mental health treatment.

Unfortunately, despite the potential of the program to generate significant correctional savings, the legislature declined to appropriate general fund revenues, leaving the initiative dependent on the collection of surcharges tacked onto existing fines and fees levied on those convicted of drug and property offenses. Without additional funding from the legislature, it is unclear whether the surcharge revenue will be sufficient to seed effective local programs. As a consequence, advocates of “treatment instead of prison” have begun to call on their elected representatives to put tax dollars in the treatment grant pot so the state can begin to reap the rewards of a more enlightened approach to combating addiction.

Our report describes the research that underlies our conclusions and makes the case for fully funding substance abuse treatment as an alternative to

incarceration as well as other changes that would enhance the effectiveness of the state’s criminal justice system. In Chapter I we have examined the evolution of Wisconsin’s sentencing laws and correctional policies, evaluating their impact on prison population levels and state budgets. Chapter II gives findings from our analysis of prison data and identifies the key factors that will shape future correctional trends. Chapter III describes the current system of treatment services and the “treatment gap” that results in over-reliance on incarceration, and includes a review of recent research on treatment efficacy. Chapter IV presents results from the judicial focus groups. Chapter V describes programs and innovations in Milwaukee and across the state that provide services to people processed through the criminal justice system. Chapter VI reports on national trends in sentencing and correctional policy reform and public opinion, detailing recent developments in three states where expanded use of treatment and community-based corrections options is producing very positive results. Chapter VII makes the case that investments made to expand access to treatment for the offender population would yield very significant correctional cost savings. The final chapter summarizes our conclusions and makes recommendations for pragmatic reforms that can bring prison population growth under control while enhancing public safety.

## Methodology

### Data

To better understand the use of incarceration in Wisconsin, Justice Strategies requested data on both the prison population and case disposition from the state Department of Corrections (DOC). DOC staff generously provided two datasets: a prison episodes file for all prisoners incarcerated between January 1, 1990 and June 30, 2004 (the Prison Information Data File); and a file of cases sentenced to prison or probation between January 1, 1990 and December 7, 2004 (the Cases at Admission Data File).

Each record in the Public Information Data File (PIDF) begins at admission (or the file begin-date for episodes that were ongoing on January 1, 1990) and ends at release (or the file end-date for episodes that were ongoing on June 30, 2004). The records contain a wealth of information on Wisconsin prisoners, including data on personal characteristics (birthdate, gender, race, ethnicity, substance abuse and educational programming needs), criminal record (number of prior felonies, number of past prison commitments), current convictions (offense, statute and court of commitment), sentences (length, parole eligibility, expected release dates) and other facts related to the episode of incarceration (admission date and type, release date and type, parole status). Separate fields record data on current convictions, sentences, admission and parole status at the time of release (or the file end-date) which permits identification of any changes that have taken place in the prisoner's status since admission.

Records in the Cases at Admission Data File (CADF) contain information on felony cases sentenced between January 1, 1990 and December 7, 2004, along with misdemeanor cases sentenced to probation during the same period. Like the prison episodes records, each case record contains information on personal characteristics, criminal record, current convictions and sentences, however there are some differences. CADF records contain more detailed criminal record information (i.e. misdemeanor convictions and past probation

sentences) but include only Wisconsin convictions. Further, CADF records contain total sentence length, but do not break out confinement and extended supervision terms.

Except where noted, admissions, release and standing population figures – along with average prison and extended supervision terms – were derived from the prison episodes file. Except where noted, figures on case disposition and probation terms were derived from the case disposition file. A unique identifier assigned to each person admitted to probation or prison allowed individual records to be matched within and between the two data files. This made it possible to link the data files to track success and failure rates for probation and extended supervision, and to determine what proportion of those serving time for nonviolent offenses had prior violent felony convictions.

Analysis of DOC data was supplemented with data from other sources. The Milwaukee District Attorney's office provided a data file on felony drug cases filed between April 30, 1990 and March 3, 2005. The Milwaukee DA's data was used to fill gaps (i.e. comparison of initial and final charges, complete information on drug weights) and test findings from DOC data. The Wisconsin Statistical Analysis Center provided data on arrests – broken down by jurisdiction, offense and race – between 2001 and 2003 that was used to examine drug enforcement activity.

Where possible, quantitative findings derived from DOC and other data were checked against qualitative feedback from criminal justice professionals as well as related research and reports. Justice Strategies researchers also drew on the expertise of Tony Streveler and other DOC staff, who generously took time from their busy schedules to discuss the DOC data and proposed methods of analysis.

### **Focus groups and interviews**

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 Senator Carol Roessler, who sought the commission’s help in determining “the size of a pool of potential candidates who, if diverted from incarceration to treatment, would free up a significant number of prison beds, thereby providing fiscal savings that can be used to fund the expansion of treatment services.”

The focus groups were convened at locations within three diverse areas of the state: in Appleton, to draw from courts in Judicial District Eight, located in the Fox River Valley area; in Milwaukee, to draw from District One, the state’s largest urban court; and in Barron, to draw from courts in District Ten, the mostly rural north-western and west-central part of the state. Sentencing Commission staff requested that district court officials ensure that participants reflect the range of experience and philosophical approaches to sentencing within the jurisdiction. Each session involved ten judges, including the district

chief judge from that jurisdiction. The Barron group was joined by the district chief judge from neighboring District Seven.

The 90-minute sessions were structured with a set of specific pre-determined questions, although the discussions were allowed to evolve as judges raised issues and posed questions to each other. The sessions were not tape-recorded, but detailed notes were taken by at least two non-participant observers in all three groups, and by three in two of the groups. The notes were transcribed and compared for concurrence among Sentencing Commission staff and Justice Strategies researchers.

In order to supplement the data analysis and focus groups, and gain a better understanding of the day-to-day functioning of the state’s criminal justice system, Justice Strategies researchers also interviewed more than 30 Wisconsin criminal justice and other professionals – including judges, prosecutors, defense attorneys, law enforcement and corrections officials, legal scholars, academics and researchers. Finally, we conducted a survey of relevant national and state-specific academic and policy literature.







## History of sentencing and correctional policy in Wisconsin

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**W**ith incarceration rates at an all-time high, and with state budgets facing severe constraints, policymakers across the U.S. have been re-thinking many of the costly “tough on crime” measures that were embraced in the last quarter of the 20th Century. Legislators in many states have voted to roll back harsh sentencing laws and to revise standards for responding to minor technical violations of probation and parole, reducing reliance on incarceration and increasing diversion to treatment instead of prison. Recently policymakers in Wisconsin have also begun to look seriously at the roots of the state’s prison crisis, which include historic underinvestment in community corrections and a failed “war on drugs.”

The state’s prison population has grown from less than 4,000 to over 23,000 in the space of a single generation. The rapid rise in incarceration has imposed enormous fiscal and social costs on state residents. These costs, which include the near-quadrupling of corrections spending over the last 15 years, have been exacerbated by poor planning and a haphazard approach to sentencing and correctional policy.

At a time when many state policymakers were beginning to reconsider the wisdom of harsh sentencing laws, Wisconsin’s elected officials enacted one of the nation’s toughest “truth in sentencing” statutes and then failed to agree on criminal code reforms that were supposed to accompany the new system. Judges were left without guidance on how to implement the law for three years and sentences shot up across the board.

On the corrections side, Wisconsin has paid to guard empty facilities while housing thousands of prisoners outside the state; 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 remains partly empty and

must be retrofitted with air conditioning. Meanwhile, the state has allowed the probation and parole system to become more and more overburdened.

### ***The prison population boom***

Over the last 25 years, Wisconsin’s prison population has grown by leaps and bounds. In 1980, Wisconsin incarcerated fewer than 4,000 people. Today the figure stands at nearly 23,000.<sup>1</sup> Wisconsin’s incarceration rate has grown from just 85 prisoners for every 100,000 state residents in 1980 to 390 per 100,000 at the end of 2004, a nearly five-fold increase.<sup>2</sup>

Wisconsin’s growth in incarceration ranked 10th in the nation during the 1980s and 1990s according to Bureau of Justice Statistics data compiled by *Mother Jones* magazine.<sup>3</sup> During the late 1990s the rise in Wisconsin’s incarceration rate far-outstripped neighboring states as well as the nation as a whole.<sup>4</sup>

Wisconsin saw the fastest prison population growth at the end of the 1990s and its prison population has continued to rise, albeit more slowly, since 2000. Between June 30, 1994 and June 30, 2004, the number of prisoners more than doubled, while the number of state residents increased by less than 10 percent.<sup>5</sup>

The prison population rose by 19 percent between 1999 and 2004. Close to half of the growth took place in the first year of the period, when the number of prisoners shot up by seven percent. Over the next three years – from mid-year 2000 to mid-year 2003 – the prison population increased by an average of two-and-a-half percent per year. And between 2003 and 2004, the sentenced prison population actually fell by one percent, although the total number of prisoners grew due to an increase in the number of probationers and parolees detained in DOC facilities on holds.<sup>6</sup>

### **Rent, build, buy**

Wisconsin's correctional managers have struggled to accommodate the exploding prison population. For many years, the state led the nation in the practice of "exporting" prisoners to out-of-state prison beds. Since 1994, Wisconsin has built eight new prisons, purchased a ninth and added hundreds of beds to existing facilities, all at a tremendous cost to taxpayers. But it was not until 2004 that the state added enough prison capacity to bring all but a handful of its prisoners home.

In the mid- to late-1990s, the state's prison building program could not keep pace with population growth. By 1998, DOC was shipping prisoners to private prison beds operated by the Corrections Corporation of America (CCA) in other states. At the high water mark, there were over 4,300 Wisconsin prisoners housed in CCA facilities, accounting for roughly half of *all* prisoners housed in out-of-state private prisons nationwide.

The state's foray into exporting prisoners is widely viewed as a failed experiment. Civil rights and community groups objected to the conditions in CCA prisons and the burden the practice placed

on families. Others expressed concern over the flow of tax dollars out of the state.

After truth in sentencing was enacted, the administration of former Governor Tommy Thompson (R) turned up the volume on its multi-year prison expansion program. While the DOC built new public prisons in Boscobel and Redgranite, the Dominion Venture Group, a private prison construction outfit based in Edmund, Oklahoma, built a 1,500-bed private prison in Stanley on speculation.

Even though Wisconsin law did not authorize private operation of prisons, Dominion executives said they thought they had a go-ahead agreement with the governor's staff. Construction work on the Stanley prison was completed in April 2000, but legislators resisted efforts to enact authorization for private prison operation.

In 2001, after the company had invested more than \$145,000 in lobbying and campaign contributions, state officials agreed to buy the empty prison from Dominion for \$82.5 million. But as state revenues began to sink, officials discovered that prison construction had out-paced the capacity to fund operation of new prison beds. Once the facility was

**The Wisconsin Secure Program Facility (WSPF)** in Boscobel, originally known as the "Supermax" prison, is a perfect example of the kind of costly mistake that has plagued the state as it has sought to handle growth in the prison population. Opened in 1999, the facility – a structure of windowless concrete cells where prisoners spend most of their days in isolation – was designed to hold the system's "most dangerous and disruptive inmates."

The \$47 million prison has been the object of controversy since it opened. In 2002, the DOC settled a class action lawsuit by prisoners by agreeing to cut back on the use of total isolation and allow some face-to-face visits. The following year, the courts ruled that the facility must be retrofitted with air conditioning so prisoners would not be exposed to dangerous temperatures that could reach as high as 125 degrees Fahrenheit. In 2004, a prisoner won a \$1.25 million jury award after being denied food for nine days at WSPF for refusing to comply with institution rules that required him to wear pants, keep his cell light on and stand near the cell window when his meals were delivered.

Along with problems over unconstitutional conditions, it has become clear that there were never enough highly "dangerous and disruptive" prisoners in the state system to justify the cost of building and operating a 500-bed supermaximum-security prison. In a deposition given during the "Supermax" conditions lawsuit, former Corrections Secretary Michael J. Sullivan testified that the legislature's decision to build the Boscobel facility began with a request by corrections officials for just 200 additional segregation beds spread among the four major maximum security prisons. According to the most recent institutional population report available on the DOC website, on January 6, 2006, there were just 335 prisoners housed in the facility, which was built to hold 500.

The legislature approved language, vetoed by then-Governor Scott McCallum (R) which would have authorized a study of alternative uses for the facility. Shortly after he was elected, Governor Doyle suggested that he might consider turning WSPF into a standard maximum-security prison.

purchased, the state spent \$352,000 each month to keep it mothballed. The Stanley prison eventually opened in 2002 but was not funded to operate at full capacity until May 2003.

Construction of a \$48.2 million, 750-bed medium-security prison at New Lisbon was completed in February 2002 but activation delayed to January 2004. New Lisbon's 1,500 residents footed a bill for more than \$2.2 million to buy land and extend utilities to the prison site. Once built, the empty prison acquired a skeleton crew to guard it and flush the toilets once a week to keep the plumbing working.

Local officials in New Lisbon were furious that the legislature bought the Stanley facility while leaving their prison in the lurch, and they clamored for funds to activate it. Instead, at the beginning of 2003, lawmakers approved a new CCA contract worth \$56 million a year to house up to 5,500 prisoners out of state.

Finally, in its 2003-2005 corrections budget, the joint finance committee authorized the activation of new prisons in New Lisbon and Chippewa Falls. They also authorized expansion of Redgranite Correctional Institution from 750 to 990 beds. The final corrections budget signed by the Governor included some 1,400 new public prison beds and brought total corrections spending up to \$1 billion – 270 percent above fiscal year 1991-92 levels.<sup>7</sup>

### **Truth in sentencing**

In 2000, policymakers in many states – motivated largely by budget shortfalls – began taking steps to reign in uncontrolled prison growth and restore balance to sentencing and corrections policy. Wisconsin was headed in the opposite direction as one of the nation's most punitive “truth-in-sentencing” laws took effect.

Wisconsin's truth-in-sentencing statute had been enacted two years earlier, in 1998. The measure was a response to concerns that prisoners were being paroled after completing just a fraction of their sentences, often as a means to ease prison crowding. In other states, truth-in-sentencing statutes typically required that prisoners convicted of serious offenses serve 85 percent of their sentences behind bars before release.

Wisconsin went further by requiring *all* prisoners whose offenses were committed after December

30, 1999 to serve *100 percent* of their prison terms behind bars. Discretionary parole release was abolished for prisoners sentenced under truth in sentencing. In place of awarding “good time” for good conduct in prison, correctional officials now hand out “bad time” for violations of prison rules.

The notion that prisoners would no longer be “released early” was politically appealing, but there was a catch. Requiring prisoners to serve their entire sentence before release would have meant discharging thousands each year with no supervision at all.

This problem was resolved with some sleight-of-hand: lawmakers required that individuals sentenced under truth in sentencing receive a “bifurcated” sentence including both a “term of confinement” and a term of “extended supervision”. The entire bifurcated sentence was defined as a “term of imprisonment” in order to permit the courts to put an individual back in prison for failing to comply with extended supervision conditions, and to permit DOC to hold a prisoner beyond his or her term of confinement for violating prison rules. Statutory maximum sentences were raised in order to accommodate the term of extended supervision, which could not be less than 25 percent of the term of confinement.

In order to address concerns that truth in sentencing would unduly lengthen sentences and exacerbate existing inequities in the criminal code, a code-revision companion bill was to be provided to help guide judges' sentencing decisions under the new system. Truth in sentencing was scheduled to go into effect at the end of 1999, in order to give a Criminal Penalties Study Committee (CPSC) established under the bill time to reclassify the criminal code and to develop temporary advisory sentencing guidelines for approval by the legislature. The bill also authorized establishment of a permanent sentencing commission to develop more comprehensive advisory sentencing guidelines.

But members of the Wisconsin legislature failed to agree on how the new sentencing provisions should be structured. Truth in sentencing took effect in 2000 without *any* guidelines, and legislators remained deadlocked in partisan wrangling over their differences for the next three years. Many policymakers assumed that even without guidelines judges would adjust sentences down to account for the change, but this did not happen with any consistency.

**“TIS II”**

The deadlock finally broke in 2002 when the state’s fiscal crisis forced legislators to come to terms with rising correctional costs by adopting many of the CPSC recommendations. Most statutes restricting judicial discretion were repealed, and many penalty enhancements were recast as aggravating factors to be considered in sentencing.<sup>8</sup> The legislature also repealed statutes establishing minimum sentences or mandatory consecutive sentences, leaving only those that applied to Class A felonies, violations of the “two-strikes” and “three-strikes” laws, or repeat drunk-driving offenses.

The existing felony classification scheme, which pre-dated truth in sentencing, was replaced with a new system commonly known as “TIS II.” The maximum sentences and terms of confinement established under TIS II were substantially shorter, in most cases, than those imposed under “TIS I.” TIS II also capped extended supervision at roughly half to a third of the maximum total “term of imprisonment” as shown on the chart below.<sup>9</sup>

**Sentencing guidelines**

Temporary advisory guidelines developed by the CPSC to give judges guidance in imposing the new sentences went into effect on February 1, 2003. The guidelines structure covered 11 major crimes that consume 72 percent of correctional resources: burglary, first-degree sexual assault of a child, second-degree sexual assault of a child, armed robbery, forgery, possession of cocaine

with intent to deliver, possession of marijuana with intent to deliver, robbery, and theft. Judges are asked to place a defendant into one of nine grid boxes that recommend sentence ranges based on an assessment of offense severity and risk of re-offending.

The sentencing guidelines worksheets require judges to consider a wide range of factors relevant to deciding whether incarceration is necessary for the protection of public safety. However, when it comes to choosing whether a defendant convicted of a nonviolent offense should be incarcerated or placed on probation, the grids provide relatively little guidance. Most drug, property and public order cases covered by the guidelines land in cells where the recommended sentences range from probation to short prison terms. As a consequence, it is possible for judges to take the same set of cases, consider the same set of factors and, using the guidelines, produce very different results.

In his 2003-2005 budget, Gov. Doyle had proposed that mandatory sentencing guidelines be developed to govern sentencing if the new advisory guidelines are found to be inadequate. But the idea of mandatory sentencing guidelines immediately met opposition. State Supreme Court justice Shirley S. Abrahamson said that judges were gravely concerned at the prospect. The state bar’s criminal justice section indicated strong opposition from prosecutors and defenders alike. The provision was dropped from the budget bill.

<i>Felony class</i>	<i>Maximum term of confinement</i>	<i>Maximum extended supervision</i>	<i>Maximum term of imprisonment</i>
A	Life	Eligibility date set by sentencing court	Life
B	40 years	20 years	60 years
C	25 years	15 years	40 years
D	15 years	10 years	25 years
E	10 years	5 years	15 years
F	7.5 years	5 years	12.5 years
G	5 years	5 years	10 years
H	3 years	3 years	6 years
I	1.5 years	2 years	3.5 years

SOURCE: “TIS Act 109.” Wisconsin Department of Corrections. February 1, 2003.

## Safety valves

Aside from reclassifying felonies and lowering penalties for many offenses, lawmakers have also taken other steps to curtail the impact of truth in sentencing on the state's prison population. As part of the revisions to truth in sentencing, the legislature created a mechanism for prisoners who have served the better part of their confinement time – 75 percent for Class F to I felonies or 85 percent for Class C to E felonies – to petition the sentencing court for an adjustment of the sentence. If the petition is successful, the petitioner's confinement term is shortened and the extra time is added to his or her term of extended supervision.

Grounds for a petition may include efforts and progress at rehabilitation, education and treatment; changes in law or procedure that would have resulted in a shorter term of confinement; and the interests of justice. The impact of this provision is limited, however, by the fact that district attorneys have the power to block any prisoner's petition and do so routinely according to many who work in the system.<sup>10</sup>

The legislature has also authorized DOC to operate two programs that provide some prisoners an opportunity to "earn" their way out of prison. The first, the Challenge Incarceration Program (CIP) or "boot camp," is designed for young prisoner not convicted of serious violent offenses or offenses against children. Those who complete the demanding program are eligible for early release to extended supervision.

The second, the Earned Release Program, is designed for prisoners in need of substance abuse treatment. A 244-bed program housed at DOC's Drug Abuse Correctional Center in Winnebago and a 24-bed female program at the Robert E. Ellsworth Correctional Center were approved by the legislature as part of the 2003-2005 budget.

Under TIS II, eligible individuals must be designated by the judge at sentencing. However DOC personnel make a further determination of which prisoners are suitable for the program based on offense, criminal history and other relevant criteria. Those who graduate from six months of "high-intensity, evidence-based residential alcohol and drug treatment" earn release to extended supervision, which is lengthened to make up for any portion of the term of confinement not served.

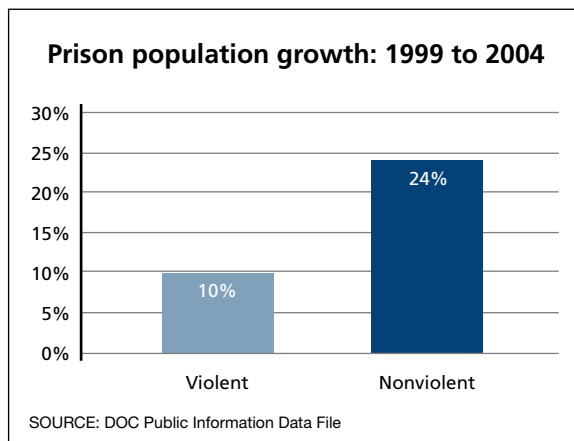
TIS prisoners sentenced before the effective date of the Earned Release Act (July 26, 2003) are eligible for the program if they successfully petition the court, as are "old law" prisoners who are parole-eligible. Those convicted of serious violent offenses or crimes against children are ineligible by statute. Prisoners must have served 25 percent of their TIS confinement time before entering the program. Priority is given to those with confinement terms up to five years.

According to an April 2005 program report, 324 prisoners entered the Earned Release Program in its first year.<sup>11</sup> Three-fourths of those who had left the program completed it successfully (114), while one in four failed (36). DOC estimates that graduates were released to extended supervision 264 days early, on average. The typical waiting period to enter the program was just under nine months. Most participants were sentenced to prison for felony drunk driving or drug distribution.

## Increased use of prison for people convicted of nonviolent offenses

As Wisconsin's policymakers struggled with sentencing policy reform issues, the state's prison population increased. Over the past decade, the number of individuals incarcerated for nonviolent offenses rose more quickly than the number incarcerated for violent and sex offenses.<sup>12</sup> This trend has accelerated in the last five years, when the number of prisoners serving a sentence for a violent or sex offense increased by 10 percent, while the number serving time for drug, property and public order offenses grew by 24 percent.

As a consequence, the proportion of prison space devoted to housing those convicted of violent and



sex offenses fell from 70 percent in 1994 to 65 percent today. Individuals convicted of nonviolent offenses have also risen as a proportion of new prison admissions: from 51 percent in 1994 to 57 percent in 2003.<sup>13</sup>

**The drug war drives up the population, increasing costs**

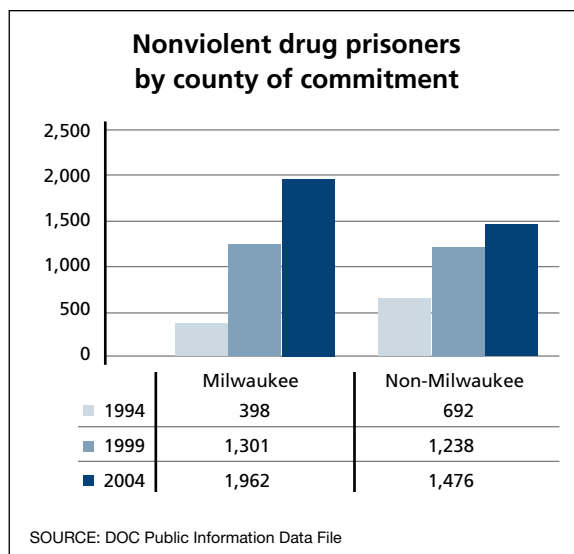
The rise in the number incarcerated for nonviolent offenses is largely a product of the “war on drugs,” which has been waged fiercely in Milwaukee. Milwaukee’s drug war began in earnest in 1990, when the District Attorney’s office created a special unit to focus solely on drug prosecutions.

Defense attorneys in Milwaukee say that prior to the early 1990s it was common for individuals convicted of small, first-time drug sales to be convicted of misdemeanors and placed on probation. When the drug unit was formed, there were around 200 prisoners under DOC supervision who had been sentenced in Milwaukee Circuit Courts for nonviolent drug offenses. Four years later, however, the number had doubled to nearly 400.

By 1998, when Milwaukee joined the Justice Department’s High Intensity Drug Trafficking Area (HIDTA) program, the population had doubled again to more than 800. With increased federal resources, the number of new drug cases and prison admissions continued to grow at a break-neck pace.

On October 24, 1999, the *Milwaukee Journal-Sentinel* reported that the county’s “drug court” (a special docket set up to streamline disposition of drug cases – not a therapeutic drug treatment court) was inundated with defendants in their late teens or early 20s charged with selling less than a gram of cocaine.<sup>14</sup> Defenders interviewed by the reporter questioned the wisdom of throwing hundreds of young user/sellers in prison but Assistant DA Patrick J. Kenney, who headed the drug unit, defended his office’s approach: “Our office takes the position that there is no such thing as the non-violent, small-time drug dealer”.

By mid-year 2002, there were more people locked up for nonviolent drug offenses prosecuted in Milwaukee (1,520) than the remaining 71 counties combined (1,370). On June 30, 2004, the number of Milwaukee drug prisoners reached a high-water mark of 1,962 – nearly *five times* the 1994 total and *ten times* the 1990 total. Judges and



other court officials say that the overwhelming majority of cases involve low-level street sales or “possession with intent” (PWI),<sup>15</sup> and that virtually all major drug trafficking cases are prosecuted in the federal court.

The impact of the drug war on prison populations is not limited to Milwaukee, although it has been prosecuted more vigorously there than elsewhere in Wisconsin. The number of drug prisoners sentenced in the rest of the state has doubled, from 692 at mid-year 1994 to 1,476 on June 30, 2004.

Nonviolent drug prisoners account for more than a fifth of the growth in the sentenced prison population over the last ten years, and close to a *third* of the growth of prisoners coming from Milwaukee. Yet the state has little to show for its investment when it comes to reducing illegal drug use. In his dissent to the report of the Criminal Penalties Study Committee, Walter Dickey, Director of the Remington Center for Research, Education and Service in Criminal Justice at the University of Wisconsin Law School, pointed out that years of “tough” drug law enforcement have failed to achieve the desired results:

Testimony to this committee from the dedicated public servant who has long had responsibility for drug prosecutions in Milwaukee made it clear that, despite years of effort and thousands of prison sentences, the price of crack continues to fall.<sup>16</sup>

Illegal drug use actually appears to have gone up

in the state over the past decade. For example, according to national survey data from the Center for Disease Control and Prevention, between 1993 and 2003, the percentage of Wisconsin students who said they used marijuana in the previous 30 days doubled from 11% to 22%.<sup>17</sup>

### Overuse of prisons, underuse of community corrections

Wisconsin is not the only state to confront an exploding drug prisoner population. But Wisconsin is unusual in the high proportion of drug prisoners who have little to no prior criminal history. In New York, Maryland, and even “tough-on-crime” Arizona, it is uncommon for those convicted of low-

level drug sales to be sent to prison unless they have a prior felony conviction.

In Wisconsin, however, close to half of the prisoners serving time for nonviolent drug offenses have no prior felony record. The overwhelming majority of their cases involved very small amounts of drugs. Further, nearly half of drug sale cases involving individuals that were facing their first Wisconsin felony convictions resulted in prison sentences.<sup>18</sup>

### The Milwaukee Probation Problem

When the case data are examined by jurisdiction, it becomes clear that the great majority of those incarcerated for first-time, nonviolent drug felonies

### Wrong place, wrong time

Individuals convicted of drug felonies in Milwaukee are far more likely to be sentenced to prison than those prosecuted for the same charges elsewhere, even after controlling for offense seriousness and the offender’s prior record. Between July 1, 2003, and June 30, 2004, 1,403 cases were disposed in which the major offense was delivery of – or possession with intent to deliver – five grams or less of cocaine. Roughly two-thirds of the cases were sentenced in Milwaukee (892 cases), while the remainder were sentenced in other jurisdictions (511 cases).

Analysis of the cases shows that individuals convicted of selling or possessing small amounts of cocaine were more than twice as likely to be sentenced to prison if the crime was committed in Milwaukee. Of the cases sentenced in Milwaukee, 71 percent (631) resulted in a prison sentence. Elsewhere, the opposite was true: 69 percent (350) of the cases sentenced outside Milwaukee resulted in a probation sentence.

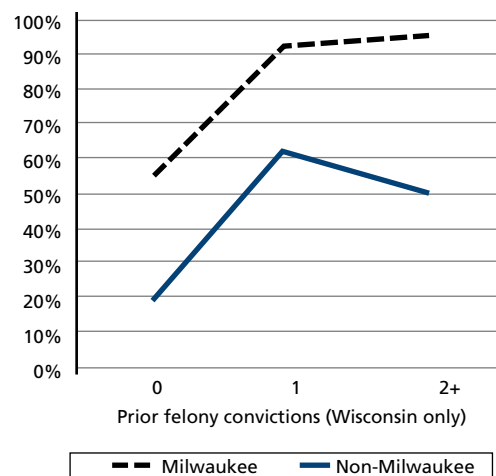
The disparity is even more pronounced for individuals with no prior Wisconsin felony convictions, who account for the majority of the cases in question (856 cases). These offenders are nearly three times more likely to be incarcerated by Milwaukee courts than similarly situated individuals sentenced elsewhere. More than half (55 percent) of Milwaukee cocaine delivery/PWI cases involving five grams or less resulted in a prison sentence, while in other jurisdictions fewer than one in five such cases (19 percent) resulted in incarceration.<sup>21</sup>

Although the disparity is greatest for individuals with no prior felony convictions, it also remains significant for those with short criminal records. Outside of Milwaukee, for example, just under half (49 percent) of all delivery/PWI cases (any substance) involving individuals with one prior felony conviction resulted in a prison

sentence; in Milwaukee, 90 percent of such cases were sentenced to prison.

Disparity in use of incarceration is not limited to drug cases. In nearly every category, those prosecuted in Milwaukee for nonviolent offenses face a substantially greater likelihood of prison than those prosecuted elsewhere. For example, over half of Milwaukee burglary cases result in a prison sentence, including nearly a third of cases in which the offender has no prior felony record. Elsewhere, under a third of all burglary cases, and one in six cases involving individuals with no prior felonies, result in prison.

**Proportion of cocaine distribution cases sentenced to prison (up to five grams)**



SOURCE: DOC Cases At Admission Data File

were sentenced in the Milwaukee courts. Wisconsin policymakers have long been aware that probation is underused in Milwaukee, in part because judges lack confidence that individuals placed on probation will receive adequate supervision and services. In fact, the CPSC devoted a section of its final report to “The Milwaukee Probation Problem”:

The issue of prison overcrowding is intertwined with another topic of much discussion – lack of confidence in probation supervision, especially in Milwaukee... After the Committee’s study, it strongly concludes that an important element in reducing the increase in flow of prisoners into the prison system is to strengthen the effectiveness of probation and parole services in the Milwaukee area.<sup>19</sup>

In January of 2000, a task force appointed to address the problem reported that reasons for the lack of confidence in probation included the absence of familiar relationships between judges and the county’s 370 probation-parole agents; high agent turnover; high rates of absconding; and limited funds for substance abuse treatment. Judge Elsa Lamelas, a task force member, told the *Milwaukee Journal-Sentinel* that, “My perception of it (drug treatment for probationers) is it’s kind of catch as catch can.”<sup>20</sup>

The problem may have worsened since the task force completed its work. Wisconsin Department of Corrections (DOC) data show that, in 1999, Milwaukee judges sentenced 49 percent of felony cases to probation, compared to a rate of 70 percent in the rest of the state. By 2003, judges outside Milwaukee were still sending 68 percent of their cases to probation, but the proportion of Milwaukee cases resulting in probation had fallen to just 41 percent. The difference is greatest for drug offenses: 76 percent of felony drug cases sentenced outside Milwaukee result in probation compared to just 38 percent of those sentenced in the county.

### *Community corrections in crisis*

Although under-utilization of community corrections is starkly visible in Milwaukee, it has become a growing problem elsewhere. As will be described later in this report, Fox River Valley judges say that they, too, are losing confidence in probation as caseloads climb. The rapid increase in the

number of prisoners serving time for felony drunk driving and the rise in methamphetamine use in the western part of the state have highlighted the difficulty of supervising and treating individuals with serious substance abuse problems when both staff and treatment dollars are scarce.

In fiscal year 2004-2005, DOC’s Division of Community Corrections (DCC) had an annual budget of just \$19 million to pay for services needed by probationers and parolees – including housing, day-reporting, transportation, drug testing, substance abuse and other treatment, and educational programs. Halfway houses and transitional-living programs absorbed 70 percent of the total, leaving DOC with roughly \$5.5 million, or \$82 per person under supervision, to fund all other services. The total DCC budget for substance abuse treatment in fiscal year 2004-05 was a paltry \$1.2 million.

Over the years, community corrections has been starved to feed the expanding prison budget. In fiscal year 1998-99, a little over half (53.8 percent) of DOC expenditures went to adult institutions while 18.3 percent went to community corrections.<sup>22</sup> By fiscal year 2004-05, however, adult institutions accounted for 63.6 percent of the total DOC budget, with community corrections slated to receive just 13.7 percent.<sup>23</sup>

The result of underinvestment in community corrections is 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 further. By extending post-release supervision, the truth-in-sentencing statute further taxes the capacity of community corrections and risks diluting the quality of supervision and services.

Despite high caseloads and funding limitations, however, there is evidence that a large majority of those sentenced to probation for low-level, nonviolent felonies succeed. Examination of case records for 6,420 individuals who were placed on felony probation in 2000 for low-level drug, property and drunk-driving offenses found that most had not been revoked or sentenced to prison for a subsequent conviction during an average four-year period following sentencing.<sup>24</sup> Individuals sentenced to probation for drug offenses had the highest success rates (69 percent), while property offenders had the



second-highest success rate (63 percent), and those placed on probation for felony drunk driving had the lowest (59 percent).

Community corrections capacity will be enhanced in Milwaukee as a result of the “Access to Recovery” grant that Wisconsin received in March 2004 from the federal Substance Abuse and Mental Health Services Administration (SAMHSA). The grant will provide \$26 million over three years to fund Milwaukee’s “Wiser Choice” initiative. Developed by the DOC, the state Department of Health and Family Services (DHFS) and the Milwaukee County Behavioral Health Division, Wiser Choice will significantly expand access to substance abuse treatment, case management and wraparound services in the county.

The beneficiaries of Wiser Choice will include people released from prison; probationers and parolees who risk being sent to prison for violations of supervision requirements; and the larger substance-addicted population in the county. A newly-centralized case-management system created by the Milwaukee County Behavioral Health Division should increase the efficiency with which probationers and parolees are connected to treatment and other needed services, and could also reduce the workload of agents, allowing them to focus on providing effective supervision.

### **Positive steps to reign in prison population growth**

Clearly the state’s current elected leaders are looking for ways to gain more control over the state’s growing prison population and spiraling correctional costs. As he signed the 2003-2005 \$1 billion biennial corrections budget, Gov. Doyle promised that no further prison expansions would take place on his watch. These sentiments were echoed in 2005 by DOC deputy secretary Rick Raemisch, who told legislators, “Let’s stop building our way out of this problem, because we can’t.”<sup>25</sup>

The Republican leadership of the legislature also signaled that it was ready to consider sensible approaches that ensure public safety without bankrupting the state or increasing the burden on taxpayers. There was little enthusiasm among Republicans last session for the suggestion made by one of their colleagues that the state should consider building another prison. Dean Kaufert (R – Neenah),

who co-chairs the Joint Finance Committee, described the idea as “probably a pretty big leap for me right now.”<sup>26</sup>

Gov. Doyle’s proposed 2005-2007 budget would have added 200 slots to the Earned Release Program – which currently has a waiting list of over 600 prisoners – and allowed DOC to implement the program at any correctional facility. The proposed budget also provided funding for community-based alternatives to revocation – including halfway houses, day reporting centers and electronic monitoring – as well as re-entry services for mentally ill prisoners in order to increase the odds of successful transitions back into the community. Finally, the Governor proposed directing the Wisconsin Sentencing Commission to review sentences imposed on individuals convicted of nonviolent offenses and recommend possible alternatives to incarceration, and he proposed limiting misdemeanor probation terms to one year.

Republican legislators, often at odds with the Governor, gave his criminal justice proposals a measured response. Rep. Gary Bies told the *Wisconsin State Journal*, “I would take a real good, hard look at these and see if we can make them work... because we just can’t keep building prisons.”<sup>27</sup> In the end, the legislature went along with some, but not all, of the Governor’s proposals, including the establishment of three new day-reporting centers for probationers and parolees; funding re-entry planning and services to the tune of nearly \$1 million a year; raising the amount allocated for treating substance-addicted supervisees by \$1 million annually; expanding the availability of prison-based treatment; and reducing the maximum misdemeanor probation term from two years to one year.

Lawmakers did not approve the governor’s request to expand the Earned Release Program, indicating that they first wanted more information about program outcomes. They also stripped the provision directing the Sentencing Commission to review sentencing of individuals convicted of nonviolent offenses from the budget bill.

The legislature put forward its own initiative to reduce correctional costs while improving outcomes. The legislation, which was introduced by Sen. Roessler and Rep. Bies created a grant program administered by the state Office of Justice Assistance that can be used by local officials to launch

programs designed to redirect defendants from county jails and state prisons into community-based substance abuse and mental health treatment.

The Roessler-Bies initiative represents an important step toward a more humane and cost-effective criminal justice system. Unfortunately, the legislature declined to put any general fund revenues in the grant pot, leaving just the revenues collected from surcharges imposed on individuals convicted of drug and property offenses to fund the local programs. Advocates of “treatment instead of prison” have begun to call on their elected representatives to fully fund the program so the state and its residents can begin to reap the rewards of a more enlightened approach to combating addiction.



## The current prison population and key trends

### Demographic disparity

African Americans and other people of color are incarcerated at disproportionate rates relative to their share of the Wisconsin state population.<sup>28</sup> African Americans make up just six percent of Wisconsin residents but nearly half (47 percent) of the state's prisoners and close to two-thirds (64 percent) of those incarcerated for drug offenses. Whites make up 89 percent of state residents but only half of state prisoners.

When ethnicity is factored in, non-Hispanic whites make up 87 percent of residents and just 43 percent of prisoners. Latinos, who account for five percent of the state population, make up eight per-

cent of all sentenced prisoners and 12 percent of drug prisoners.

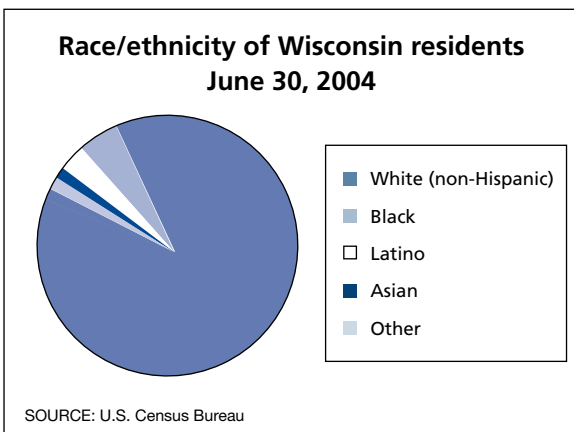
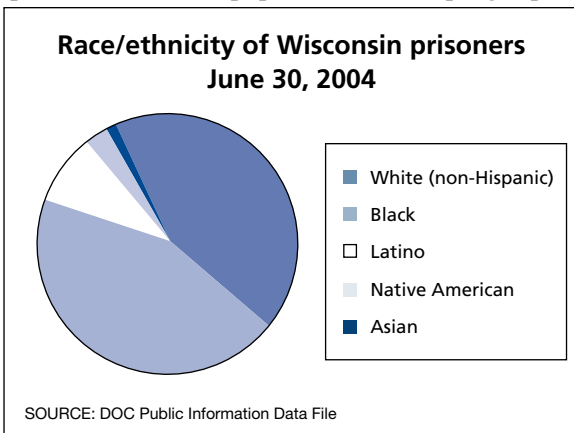
African Americans are more likely than whites to be arrested for drug offenses, but the difference is not enough to account for the disparity in incarceration rates. Arrest data collected by the Office of Justice Assistance's Statistical Analysis Center (SAC) show that African Americans accounted for 27 percent of all drug arrests in 2003 and 48 percent of drug sale arrests.

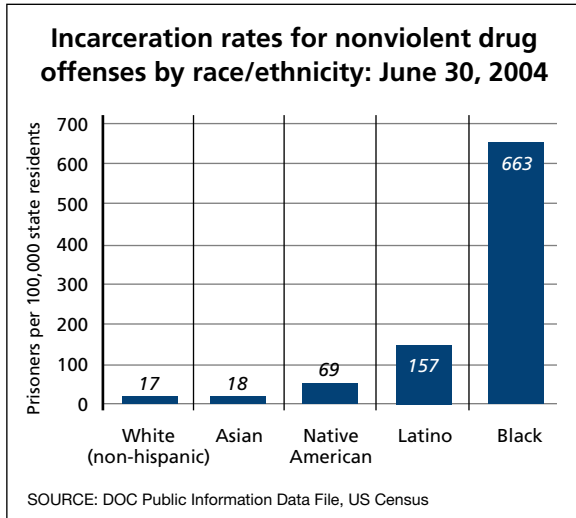
A 2004 report by The Sentencing Project found that Wisconsin ranked sixth in a national index of racial disparity in incarceration.<sup>29</sup> The report also found that Wisconsin had the nation's highest prison and jail incarceration rate for African Americans – 4,058 per 100,000 residents.

According to the Bureau of Justice Statistics, on December 31, 2004, Wisconsin imprisoned 390 people for every 100,000 residents.<sup>30</sup> However, the state's current incarceration rates – excluding jail populations – vary widely by race and ethnicity.<sup>31</sup>

On the bottom are non-Hispanic whites, who are imprisoned at a rate of 196 per 100,000; on the top are Latinos, Native Americans and African Americans who are incarcerated at rates of 647 per 100,000, 1,251 per 100,000 and 3,012 per 100,000, respectively.<sup>32</sup> African Americans in Wisconsin are fifteen times more likely to be incarcerated than non-Hispanic whites.

The disparity is even greater among those serving time for nonviolent drug offenses. Non-Hispanic whites are incarcerated for nonviolent drug offenses at a rate of just 17 per 100,000. The odds of being incarcerated grow four-fold for Native Americans, who are incarcerated at a rate of 69 per 100,000. They increase nine-fold for Latinos, who are incarcerated for drug offenses at a rate of 157 per 100,000. Finally, the odds of being incarcerated grow nearly *forty-fold* for African Americans, who are imprisoned for drug offenses at a rate of 663 per





100,000. Close to one percent of the state’s African American population is currently serving time in prison for a nonviolent drug offense.

University of Wisconsin sociologist Pamela Oliver has done extensive research on the issue of racial disparity in incarceration. Oliver found that the rate of prison admissions for blacks in the state climbed rapidly during the 1990s – from 600 per 100,000 residents to over 1,200 per 100,000 – while the rate of white prison admissions climbed only slightly.<sup>33</sup> According to Oliver, racial disparity in incarceration is not being driven primarily by serious offenses, but by the war on drugs.

Women make up six percent of the total prison population, but eight percent of drug prisoners and 11 percent of those incarcerated for property and public order offenses. Women account for one in seven prisoners serving time for theft (15 percent) and over a quarter (28 percent) of those incarcerated for forgery. Just 42 percent of women were serving time for a violent or sex offense compared to 65 percent of men.

**Jurisdictional differences**

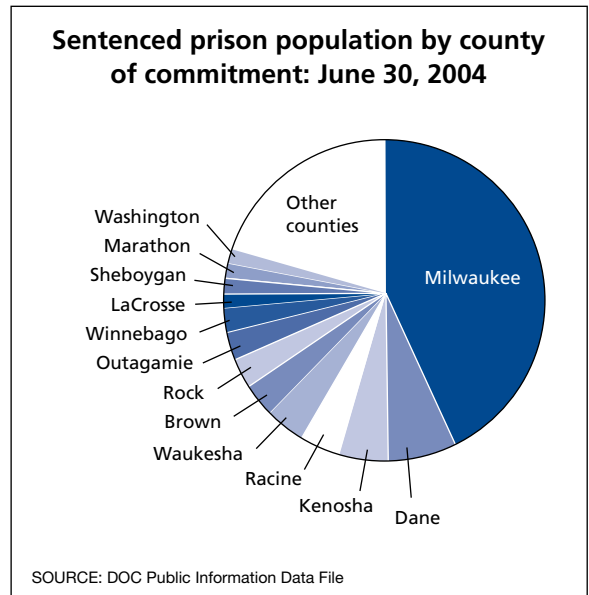
Milwaukee County, which contains the state’s largest city, accounted for more than 40 percent of the total prison population on June 30, 2004 (9,224 prisoners). Between 1999 and 2004, the number of Milwaukee-sentenced prisoners grew at a slightly higher rate than the number sentenced elsewhere (16 percent and 14 percent, respectively).

Another 25 percent (5,847) of the state’s prison population comes from a handful of populous mid-

urban counties (Dane, Kenosha, Racine, Waukesha, Brown and Rock). Just one in five prisoners (4,717) was committed from one of the 59 counties with populations under 100,000, although that number has jumped 36 percent since 1999.

While the use of incarceration is on the rise in Milwaukee and many rural counties, the trend runs in the opposite direction in several large jurisdictions that account for a large share of the prison population. The number of prisoners serving sentences imposed in Kenosha, Racine and Walworth (the Second Judicial District), has declined for the last four years, falling 10 percent between June 30, 1999 and June 30, 2004.

Racine led the way with a 22-percent, 286-person reduction in its sentenced prison population. Kenosha saw a more modest four-percent, 52-person decline driven by a 10-percent reduction in its nonviolent prisoner population. The number of prisoners sentenced in Walworth grew by 19-percent (53 prisoners) over the five-year period but the growth was offset by the declines in the larger counties.



Wisconsin’s Fifth Judicial District, which includes Madison’s Dane County along with Lafayette, Green and Rock counties, also saw a net decline in its sentenced prison population between 1999 and 2004. The three-percent reduction was largely attributable to a 22-percent, 155-person drop in the number of prisoners sentenced in Rock County. In fact, Rock County had a third fewer

people serving state prison time for nonviolent offenses in 2004 than in 1999 – the largest nonviolent prison population drop in the state.<sup>34</sup>

The number of prisoners sentenced in Dane County, the second-largest consumer of prison beds after Milwaukee, rose between 1999 and 2004, but growth in the nonviolent prisoner population was held down to just three percent. Lafayette and Green both saw a 20-percent growth in their respective prison populations, but the impact was negligible since together the counties account for just 60 prisoners.

The trend in Dane, Kenosha, Racine and Rock stands in sharp contrast to several large counties where the use of prison beds has increased sharply, especially for those convicted of nonviolent offenses. Waukesha’s sentenced prison population jumped by over a third (35 percent or 213 prisoners) between 1999 and 2004, largely due to 55-percent growth in the county’s nonviolent prisoner population.

Brown County saw 29 percent, 163-person growth over the period, fueled by a 49-percent increase in the nonviolent prisoner population. Neighboring Outagamie and Winnebago also saw significant increases in their sentenced prison populations – 53 percent and 40 percent, respectively, totaling 260 beds. That growth was the result of a sharp increase in their nonviolent prisoner populations (100 percent and 78 percent, respectively).

Finally, Wisconsin’s less populous counties expe-

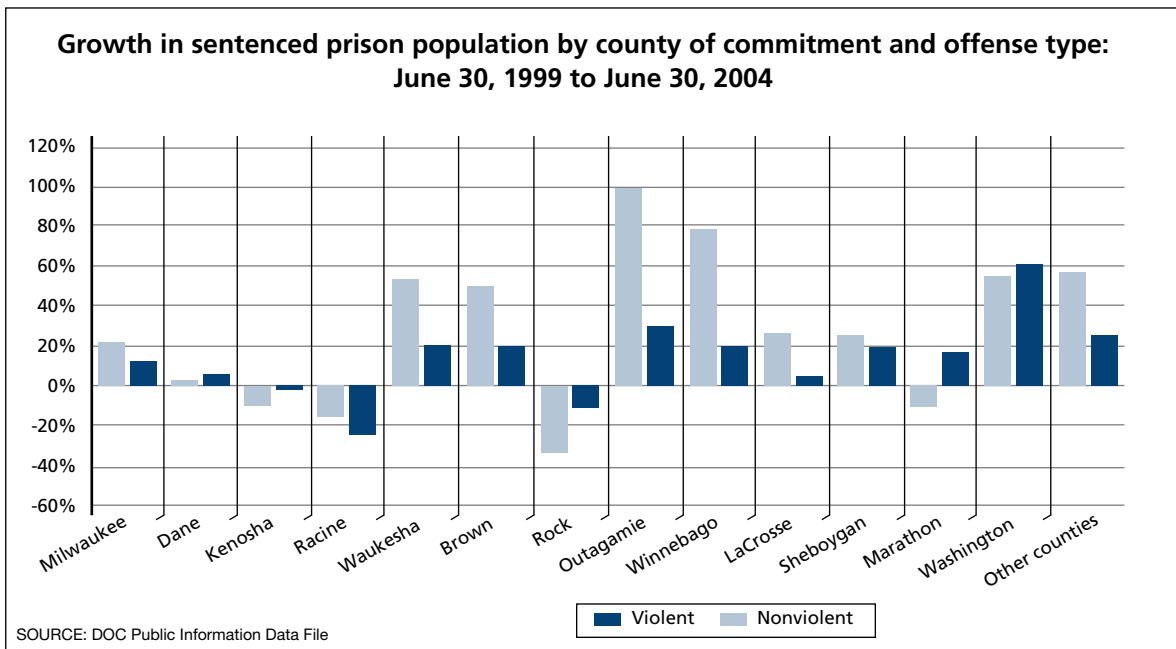
rienced rapid growth in the numbers committed to prison. Overall, the counties with resident populations under 100,000 saw 36-percent, 1,259-person growth in the number of prisoners they put behind state bars. Most of the growth came from a 58-percent rise in the number incarcerated for drug, property and public order offenses.

### Factors driving prison population increases

#### Truth in sentencing?...

The common wisdom is that growth in Wisconsin’s prison population is being driven by the elimination of parole and “good time,” as well as the dramatic increases in maximum sentences that accompanied truth in sentencing. A comparison of DOC data for new sentence-only prison admissions before and after January 1, 2000 shows that the length of time prisoners are projected to serve before their first release did spike after truth in sentencing was implemented, rising 17 percent between 1999 and 2002.<sup>35 36</sup>

It is not difficult to understand why initial confinement time shot up. Under the indeterminate system, most offenses were classified as A, B, BC, C, D or E felonies. The maximum sentence for a Class A felony, including first-degree murder, was life in prison, while the maximum for a Class E felony,



Penalties for most common offenses resulting in prison admission								
Rank	Offense	Maximum total sentence			Parole & mandatory release eligibility (pre-TIS)		Maximum term of confinement	
		pre-TIS	TIS I	TIS II	Parole	Mand. rls.	TIS I	TIS II
1	Cocaine delivery/PWI up to one gram	10	15	10	2.5	6.6	11.25	5
2	Operating Under the Influence	5	5	6	0.5	3.3	3.75	3
3	Burglary	10	15	12.5	2.5	6.6	10	7.5
4	Cocaine delivery/PWI (1-5g)	10	15	12.5	2.5	6.6	11.25	7.5
5	Armed robbery	40	60	40	10	26.6	40	25
6	Bail jumping (felony)	2	5	10	0.5	1.3	2	5
7	Felon in possession of firearm	2	3	3	0.5	1.3	2.25	1.5
8	Fleeing an officer	5	10	6	1.25	3.3	5	3
9	Forgery/uttering	10	15	6	2.5	6.6	10	3
10	Marijuana delivery/PWI	3	4.5	3.5	0.75	2	3.4	1.5

SOURCE: Wisconsin Legislative Fiscal Bureau, Wisconsin Sentencing Commission

such as operating a vehicle without the owner’s consent, was two years in prison. Other felonies, including most drug offenses, remained unclassified and carried penalties prescribed by statute.

When truth in sentencing was first enacted, the old classification system was retained, and the previous statutory maximum prison terms became the maximum terms of confinement that could be imposed. The total maximum bifurcated sentences (including both confinement in prison and post-release supervision) were raised by anywhere from 25 percent (for unclassified offenses) to 150 percent (for Class E felonies) so judges could sentence defendants to serve up to 100 percent of the old maximum prison sentence *and* impose an additional term of extended supervision.

For example, under the indeterminate system, a person convicted of selling five grams or less of cocaine faced a prison term of up to 10 years. He or she would be parole-eligible after serving 25 percent of the prison term (up to 2.5 years) and reach mandatory release after serving two-thirds of the prison term (up to 6.6 years). When truth in sentencing went into effect, the maximum sentence was raised to 15 years and the maximum term of confinement set at 10 years. A person sentenced to the maximum term of confinement would have to serve *all* 10 years before being released to a term of extended supervision that might range from a minimum of two-and-a-half years to a maximum of five years.

In 2003, however, a new schedule of penalties took effect under TIS II. Most felonies, including many that were formerly unclassified, received new designations ranging from Class A to Class I. The new system substantially reduced the maximum sentences for many offenses.

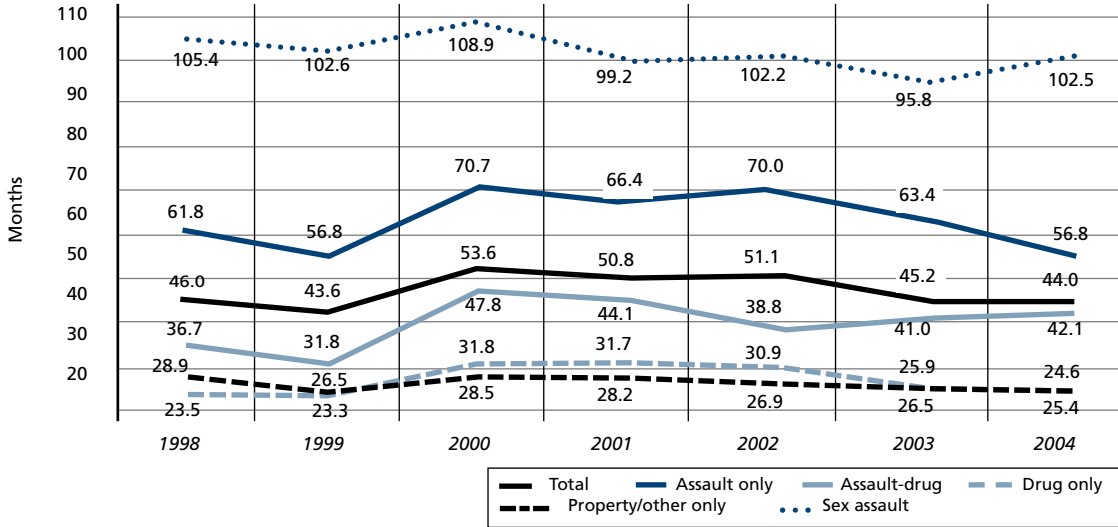
For example, under the indeterminate system, burglary, forgery and theft (over \$2,500) were Class C felonies carrying a maximum 10-year prison term (2.5 years to parole eligibility or 6.6 years to mandatory release). Under TIS I, 10 years became the maximum term of confinement, while the maximum sentence was raised to 15 years.

When TIS II took effect, however, burglary became a Class F felony with a 7.5-year maximum term of confinement and a 12.5-year maximum sentence. Forgery became a Class H felony with a three-year maximum term of confinement and a six-year maximum sentence. Theft of \$2,500 to \$5,000 became a Class I felony with a 1.5-year maximum term of confinement and a 3.5-year maximum sentence.

The results of the TIS II reform have been dramatic, as shown on the charts below. In 2003, the year TIS II took effect, projected time to first release dropped by 12 percent. By the first six months of 2004, average time to first release was just one percent above the average for those sentenced in 1999 and four percent *below* the average for those sentenced in 1998.

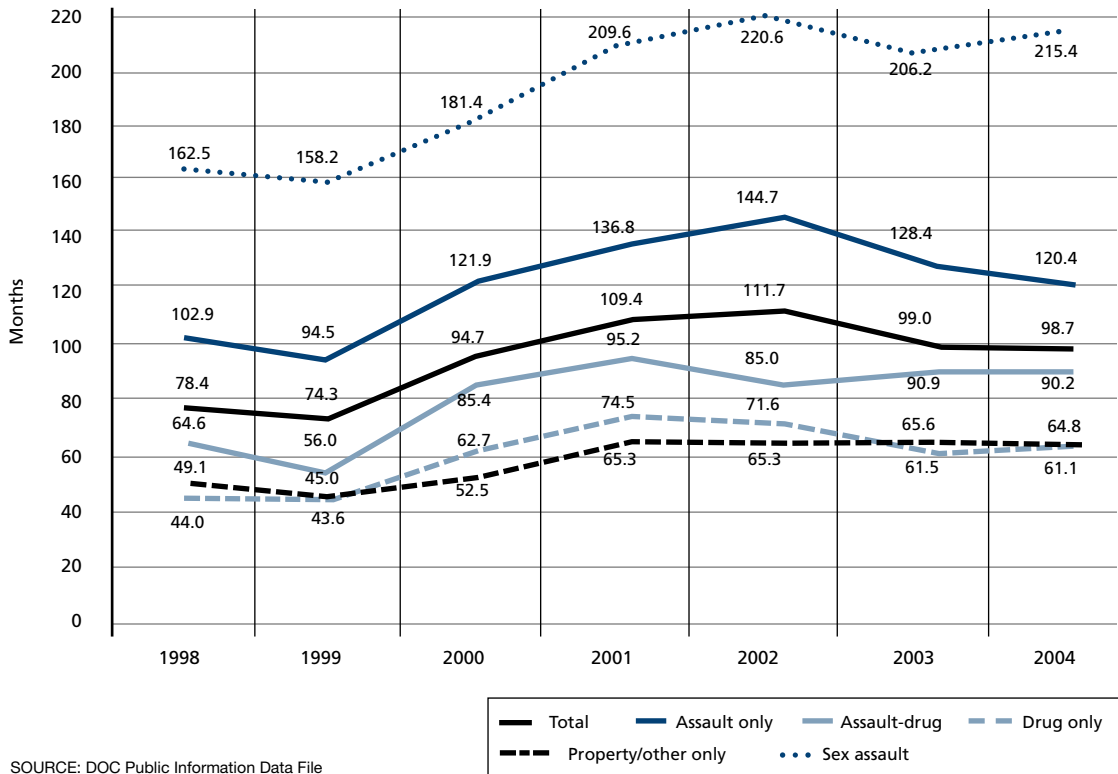
The only groups that saw average time to first re-

### Average confinement time (projected): New sentence-only prison admissions



SOURCE: DOC Public Information Data File

### Average post-release supervision (projected): New sentence-only prison admissions



SOURCE: DOC Public Information Data File

lease increase between 1999 and the first half of 2004 were those incarcerated for nonviolent drug offenses and those incarcerated for a combination of drug and assaultive offenses. Over the period, projected time to first release grew six percent for nonviolent drug prisoners, from 23 to 25 months. Individuals incarcerated for both drug and assaultive convictions, whose major offense was most likely to be a drug offense, saw 32-percent growth in time to first release, from 32 to 42 months.

By contrast, between 1999 and 2004, the projected time to first release remained unchanged for those convicted of sexual assault (103 months) and other assaultive offenses (57 months), and fell four percent for those convicted of property and public order offenses (from 27 to 25 months).

In fact, what has ballooned under truth in sentencing is not the initial period of confinement, but the time prisoners are required to spend on supervision after release. Between 1999 and 2002, the average projected period of post-release supervision nearly doubled before falling by 11 percent in 2003 under TIS II. During the first six months of 2004, the average anticipated period of post-release supervision was 55 months compared to just 31 months in 1999.

Post-release supervision time has doubled for those convicted of sexual assault (from 57 to 113 months); drug and assaultive offenses (from 24 to 48 months); and property and public order offenses

(from 19 to 39 months). Those incarcerated for nonviolent drug offenses saw their post-release supervision time rise by 90 percent (from 20 to 39 months) and those serving time for other assaultive offenses faced nearly 70 percent more time on supervision after release (from 38 to 64 months).

The near doubling of post-release supervision under truth in sentencing has created a potential time-bomb for the state. Nonviolent offenders with substance abuse problems, who are at risk of relapse, may be especially vulnerable to being revoked. As will be discussed later, there is evidence that close to half of those released to extended supervision will spend some or all of their supervision time behind bars.

The results of truth in sentencing appear to run contrary to expectations. Rather than lengthening prison terms, as some had expected, the law seems likely to have little long-term impact on the amount of time prisoners serve before they are released, thanks in large part to the TIS II criminal code revisions.

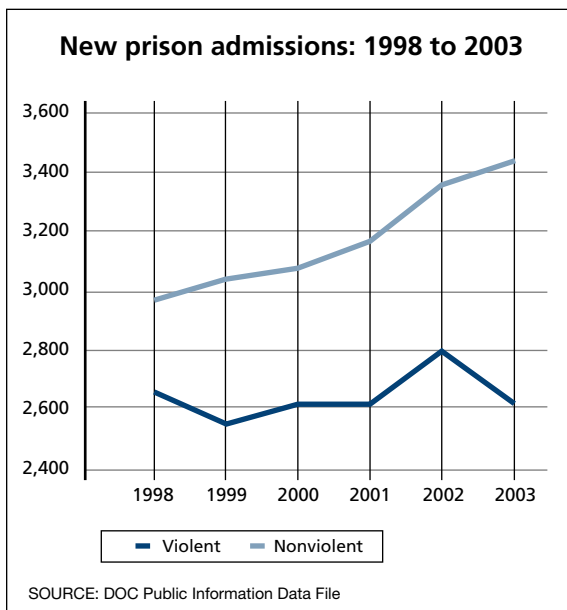
Instead, truth in sentencing has driven up the length of time prisoners must serve on supervision after release. One ironic consequence is a *reduction* in the proportion of the total sentence prisoners are likely to serve before first release, from 59 percent for those released in 1999 and 2000 to 55 percent for those sentenced in 2004.

**...Or growth in nonviolent admissions?**

The focus on truth in sentencing has distracted attention from other factors that may have a far greater impact on the prison population. Analysis of DOC data shows that growth in nonviolent prison admissions may be doing more to crowd state prisons than truth in sentencing.

Between 1998 and 2003, the annual number of new prison admissions – including revocations of probation – of individuals convicted of violent or sex offenses fell by one percent, from 2,659 to 2,627. During the same period, however, the number admitted for new drug, property and public order offenses grew by 17 percent. Beginning with a record 2,964 admissions in 1998, the number of new nonviolent prison admissions hit new highs in each subsequent year before reaching 3,452 admissions in 2003.

The number admitted annually for nonviolent





### Drug distribution/PWI felony classification (TIS II)

Statutory amount code			1g	1 or 1r	2	3	4	5 (old law)
Felony class	I	H	G	F	E	D	C	
Maximum sentence/ confinement term	3.5/1.5	6/3	10/5	12.5/ 7.5	15/10	25/15	40/25	
Drug weights	Amphetamines			up to 3g	3-10g	10-50g	over 50g	(200-400g)
	Cocaine		Up to 1g	1-5g	5-15g	15-40g	over 40g	(over 100g)
	Heroin			up to 3g	3-10g	10-50g	over 50g	(200-400g)
	LSD		Up to 1g	1-5g	over 5g			
	Psilocybin		up to 100g	100-500g	over 500g			
	THC (Marijuana)	up to 200g	200g-1kg	1-2.5kg	2.5-10kg	over 10kg		
Stat. amount code (THC)	1	2	3	4	5			

SOURCE: Wisconsin Legislative Fiscal Bureau

### Drug prisoner population : Delivery/PWI by substance and amount (June 30, 2004, estimated)

Statutory amount code	All	1	2	3	4	5
Amphetamines	38	17	7	5	7	2
Cocaine	2,053	1,329	275	163	120	167
Heroin	111	89	12	9	0	0
LSD	4	4	0	0	0	0
Narcotic	15	10	2	1	1	1
Non-Narcotic	13	9	2	1	1	1
Psilocybin	8	8	0	0	0	0
Schedule IV	1	1				
THC	385	290	47	44	4	0
Unknown	185	123	24	16	10	12
<b>Total</b>	<b>2,813</b>	<b>1,868</b>	<b>371</b>	<b>238</b>	<b>146</b>	<b>190</b>

SOURCE: DOC Public Information File

offenses with new sentences who were not revoked from supervision also set records in 2002 (1,567) and 2003 (1,617), while the proportion sentenced for violent offenses reached a low of 43 percent. The greatest growth in new sentence-only prison admissions was among those convicted of drug offenses, whose numbers increased by 20 percent over the five-year period.

While Milwaukee accounted for nearly half of growth in nonviolent admissions between 1998 and 2003, the fastest growth took place in other parts of the state. Drug, property, OWI and other nonviolent admissions from central and south-west Wisconsin (the Sixth and Seventh Judicial Districts) nearly doubled, while admissions from the north-

west, Fox River Valley and Milwaukee's northern neighbors (the Tenth, Eighth and Third Judicial Districts, respectively) increased by over 60 percent.

### The Drug War

The role played by the drug war in Wisconsin's out-of-control prison growth cannot be overstated. Wisconsin law prescribes stiff maximum penalties for selling, or possessing with intent to sell, very small quantities of most controlled substances other than marijuana. Although drug arrest patterns show that illicit substances are used and sold throughout the state, the drug war has been prosecuted most vigorously in Milwaukee, where prison terms are handed down on a daily basis to young men and women convicted of selling a gram or less of cocaine.

### Wisconsin's drug statutes

Under Wisconsin law, possession of marijuana or cocaine for personal use is a misdemeanor on the first offense and a felony on the second or subsequent offense. Possession of a Schedule I and II narcotic drugs (including heroin) and possession of methamphetamine are Class I felonies on the first offense. The law allows the court to defer judgment and dismiss charges for those who successfully complete probation, including any treatment or other conditions imposed, and who have no prior drug convictions (Chapter 961.47 of the Wisconsin Statutes).

Under 961.472, individuals convicted of drug possession are supposed to be assessed for possible treatment needs if no current assessment is available. The court may then, at its discretion, defer sentencing and allow the individual to enter a treatment program. If the program is completed successfully, the court has the option of releasing the defendant from his or her sentence.

Manufacture or delivery of a controlled substance and possession of the substance with intent to deliver (PWI) are separate criminal offenses, but the offenses carry the same penalties and elicit similar treatment by the criminal justice system. Conspiracy to manufacture, deliver or possess with intent also carries the same penalties.

Manufacture, delivery or possession with intent to deliver any amount of a controlled substance is a felony whose class is determined by the weight of the drugs in question. Delivery/PWI of 200 grams or less of marijuana is classified at the lowest felony level (Class I), while weights over 10 kilograms make the offense a Class E felony.

Delivery/PWI of one gram or less of cocaine (including cocaine base or “crack”) is a Class G felony, while weights over 40 grams make the offense a Class C felony. The classification of offenses involving heroin and methamphetamine is similar to cocaine, although the lowest designation for heroin and methamphetamine delivery/PWI is Class F (up to three grams).

Several enhancements can increase the sentence length for drug offenses. The maximum term of imprisonment for drug felonies other than possession for personal use increases by four to six years – depending on the classification of the current offense – if the defendant has a prior misdemeanor or felony drug conviction. The maximum for delivery/PWI increases by five years if the offense takes place on the premises of a scattered-site public housing project or within 1,000 feet of a park, correctional facility, multiunit public housing project, public pool, community center, school, school bus or treatment facility – an enhancement that is more likely to impact defendants in densely-populated urban areas than defendants in suburban and rural areas.

Any conviction for a drug law violation – including a misdemeanor – results in a minimum six-month suspension of the defendant’s motor vehicle operating privileges (up to five years). Under the

law, those convicted of a first drug offense are immediately eligible for an occupational license, while second- and third-time drug offenders must wait for 60 and 90 days, respectively, before obtaining an occupational license. Driving privileges are suspended immediately, but court officials say that the clock does not start on the suspension period until an individual has filed the necessary paperwork and cleared up fines and a \$50 license reinstatement fee.

### *Low-level sales predominate*

While a handful of drug prisoners are serving time for selling or possessing significant quantities of a controlled substance, the overwhelming majority were convicted of offenses involving very small amounts. Nearly two-thirds (65 percent) of prisoners sentenced for cocaine charges where information on weight was available were convicted of offenses involving five grams or less. Another 13 percent of cases involved between five and 15 grams.<sup>37</sup>

By contrast, just 14 percent of incarcerated cocaine offenders were convicted of offenses involving more than 40 grams. Similarly, three-fourths of those sentenced for possession with intent or delivery of THC were convicted of charges involving 200 grams or less, while just 12 percent were convicted of charges involving more than a kilogram. The preceding table shows a breakdown of prisoners serving time for delivery/PWI by substance and drug amount, using the statutory amount codes. Just six percent of drug prisoners are serving time for simple possession or other low-level drug offenses (i.e. possession of paraphernalia, keeping a drug house).

Despite the fact that the overwhelming majority of drug delivery/PWI cases involve small amounts of drugs, most defendants end up in prison. The Sentencing Commission found that 61 percent of cocaine delivery/PWI cases involving a gram or less resulted in a prison sentence.<sup>38</sup> By contrast, in Michigan, sentencing guidelines for drugs make probation presumptive for a defendant convicted for sale of up to 50 grams of cocaine, unless the person has a very significant prior record or there were serious aggravating factors involved.

### *Milwaukee’s drug war*

In recent years, many criminal justice policy makers have begun trying to reduce their reliance on

## Employment discrimination: Another collateral consequence the drug war?

In Milwaukee, judges, prosecutors and defenders agree that the lack of job opportunities for young men is one of the top problems facing the criminal justice system. Caseworkers say that even their most motivated clients find it difficult to secure employment, and nearly impossible to obtain a stable job that pays enough to feed a family and meet other obligations such as restitution and fines.

While part of the problem is attributable to lack of skills and experience among the criminal justice population, research conducted in Milwaukee by Northwestern University sociologist Devah Pager found that individuals with drug convictions are likely to face widespread employment discrimination, especially if they are African American.<sup>39</sup>

Wisconsin law bars public employers, private employers and occupational licensing authorities from considering criminal records unless the crimes closely relate to the specific duties of the job.<sup>40</sup> Nonetheless, when Pager sent matched pairs of trained “tester” applicants with identical qualifications to apply for entry-level jobs, those who indi-

cated that they had previously been convicted of a drug offense were far less likely to be called back or offered a job than those who said they had no criminal record.<sup>41</sup>

After auditing 350 Milwaukee-area employers, Pager found that white applicants who admitted to drug convictions were half as likely to succeed as white counterparts without convictions – 17 percent vs. 34 percent.<sup>42</sup> Black applicants who disclosed a past drug conviction were nearly three times less likely to succeed than black applicants without a criminal record – five percent vs. 14 percent – and over six times less successful than white applicants with no criminal record.

Pager’s research suggests that drug convictions not only hurt an individual’s long-term chances of being able to support him or herself, but they may also reinforce existing racial bias in hiring. These findings have profound implications for a city where thousands of young African Americans are arrested and sentenced each year for low-level drug offenses.

policing and prisons, and emphasizing prevention and treatment as the most effective responses to substance abuse. In Milwaukee, by contrast, officials have continued to pursue drug enforcement strategies that drive up the prison population without resolving the problem.

The rise in Wisconsin’s drug prisoner population has been driven largely by Milwaukee County. The number of nonviolent drug prisoners with a governing conviction from Milwaukee shot up 51 percent (661 prisoners) between 1999 and 2004, compared to 19 percent (248) for the rest of the state. Milwaukee, which sentenced 51 percent of those incarcerated for drug offenses in 1999, now accounts for nearly 57 percent of the state’s drug prisoners.

The lengthening of prison terms under TIS I may account for some of this growth. However, a rising tide of drug admissions from Milwaukee appears to play a greater role. Between 2000 and 2003, the annual number of new drug prisoner admissions from Milwaukee jumped 48 percent, from 642 to 952. The number of admissions of individuals sentenced directly to prison who were not under supervision at the time of the offense also shot up 62 percent, from 385 to 622.

The growth in admissions cannot be directly attributed to truth in sentencing. Not only did the law not restrict the ability of judges to place defendants on probation, but the revisions to the criminal code that followed truth in sentencing also repealed

many laws that made a minimum prison term presumptive for certain drug offenses.

One explanation for growth in Milwaukee drug admissions is a sharp jump in arrests for drug sales. Data from Wisconsin’s Statistical Analysis Center show that, between 2001 and 2003, drug sale arrests jumped 66 percent in Milwaukee County. The increase in drug sale arrests far exceeded total growth in Milwaukee arrests over the two-year period (16 percent), and clearly separated Milwaukee from the rest of the state, where drug sale arrests fell very slightly over the same period.

Drug arrests, in turn, are driving record numbers of felony drug cases that have overloaded the courts. DOC data show that the annual number of felony drug cases (possession and sales) disposed to prison or probation rose 22 percent in Milwaukee between 2000 and 2003.

More significant than the growth in cases, however, was a harsh shift in sentencing patterns. In Milwaukee, even as the number of drug cases grew, the number sentenced to probation actually fell by nine percent (from 719 to 654) over the three-year period, while the number of drug cases sentenced to prison spiked by 53 percent (from 771 to 1,074). The proportion of drug cases sentenced to prison in Milwaukee increased from just under half (49 percent) in 2000 to over three in five (62 percent) in 2003.

There are different theories about who is responsible for recent, dramatic growth in Milwau-

kee's drug admissions. Some observers charge that the Milwaukee Police Department is sweeping up hundreds of low-level user/sellers, overwhelming the system. Others say that hard-line policies adopted by the DA's office during the early years of the crack epidemic are still driving the disposition of drug cases, with Assistant DAs continuing to recommend prison even in second-time possession cases. Still others say that the county's judges – who turned down funds for a drug treatment court several years ago out of concern that it would strain judicial resources already worn too thin – are not interested in finding alternative dispositions for substance-addicted defendants.

But interviews with top officials in the Milwaukee police department and the DA's office, as well as focus groups conducted with Milwaukee judges, paint a more hopeful picture. Many close observers say that the new head of the DA's drug unit, Steve Licata, has been a breath of fresh air. Under Licata's leadership, individuals who "facilitate" drug sales – often addicts who tell undercover police where they can buy drugs hoping to get drugs in return – are no longer being charged as felons. Defenders also say that the DA's office has become somewhat more receptive to considering the individual circumstances of defendants. Judging by the numbers, the impact of these policy changes does not appear to be large, but they may signal a new willingness to rethink the current approach to drug prosecutions.

As will be discussed below, Milwaukee judges who participated in a focus group convened by the Sentencing Commission went even further in suggesting that they are tired of "business as usual." These judges indicated that they would redirect a third or more of their prison-bound drug, property and public order cases to community treatment if adequate resources were available.

### **Outside Milwaukee**

Elsewhere in the state, the picture is more mixed. Overall, sentencing patterns in drug cases have moved in the opposite direction from Milwaukee. Between 2000 and 2003, the number of drug probation cases disposed in other counties grew by 17 percent, from 1,451 to 1,696, while the number of drug cases sentenced to prison crept up by just three percent. The proportion of drug cases sentenced to prison during this period declined from 26 percent

to 24 percent.

Yet buried within these overall trends were some jurisdictions – including parts of central and western Wisconsin and the Fox River Valley – that saw their drug prisoner populations grow even more quickly than Milwaukee's. The number of drug prisoners sentenced in the Seventh, Eighth and Tenth Judicial Districts nearly doubled between 1999 and 2004, while the number sentenced in the Sixth Judicial District shot up by 170 percent.

One factor contributing to growth in the number of drug prisoners committed from some jurisdictions outside Milwaukee is a rise in methamphetamine use and the response being mounted by law enforcement. DOC analysts report that the number of people convicted of, and incarcerated for, methamphetamine crimes has risen sharply over the past seven years.<sup>43</sup>

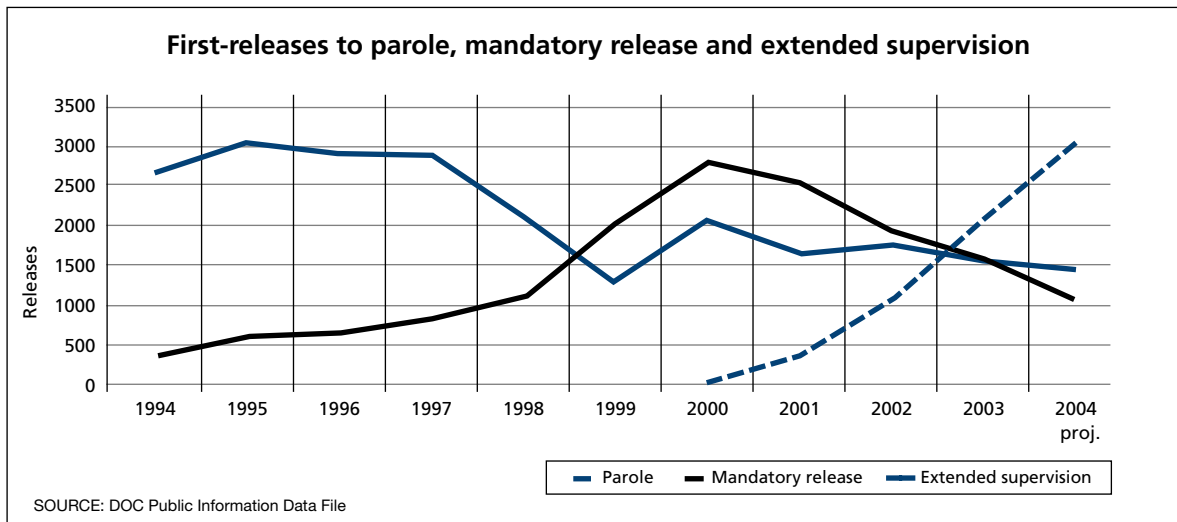
In 1997, just five people were sentenced to probation or prison for manufacturing or possessing methamphetamine, possessing paraphernalia or disposing of methamphetamine waste. By 2004, the annual number of convictions had grown to 120, with just over a third receiving prison sentences. Despite the rapid growth, however, convictions and prison admissions for methamphetamine continue to be dwarfed by those involving cocaine, marijuana and even heroin.

The western Seventh Judicial District led the way in growth of drug prisoner admissions, which tripled from 19 to 58 admissions per year between 1998 and 2003, while the northwestern Tenth Judicial District saw drug prisoner admissions more than double. But DOC data show that even the drug prisoners committed from the part of the state hit hardest by methamphetamine were more likely to have been convicted of possessing or selling cocaine or marijuana, rather than methamphetamine.

### **Other nonviolent offenses**

The drug war is not the only factor pushing up the number of prisoners serving time for nonviolent offenses. Outside Milwaukee, there was 29-percent growth in the number incarcerated for property and public order offenses between 1999 and 2004, compared to 19 percent for drug offenses and 13 percent for those convicted of violent or sex offenses.

In the northeast parts of the state and in the



counties just north of Milwaukee (the Fourth, Eighth and Third Judicial Districts), the number of property and public order prisoners has grown by more than half since 1999.

Much of the growth is attributable to the legislature’s decision to make the fifth conviction for drunk-driving a felony. The number of new prison admissions for drunk driving shot up from 26 in 1998 to 428 in 2003. During the first half of 2004, the number of new OWI admissions (223) nearly equaled the number of new burglary admissions (224). The Fox River Valley has experienced some of the fastest growth – a 64 percent increase between 2000 and 2003.

According to an analysis produced by staff at the DOC, by October 15, 2004, there were over 1,000 prisoners with felony OWI convictions, of which half had no other current convictions.<sup>44</sup> Prisoners with OWI convictions accounted for ten percent of prisoners sentenced in Waukesha, 13 percent of those sentenced in Winnebago and 19 percent of those sentenced in Washington County.

### Factors likely to drive future prison population increases

Despite a temporary spike in the length of prison sentences and record-breaking admissions, Wisconsin’s prison population growth has been relatively modest since truth in sentencing took effect in 2000. Two factors make it unlikely that this trend will continue, however, without further changes to sentencing and correctional policy and practice.

First, the parole of “old law” prisoners has played

a critical role in containing population growth during the first years of truth in sentencing, but the impact of parole is declining alongside the number of parole-eligible prisoners. Second, the average term of post-release supervision has greatly lengthened. As a result, the state is likely to face a flood of extended supervision revocations and a growing population of revokees who would already have served out their sentences under the old parole system.

### Diminishing parole release

Historically, the overwhelming majority of people released from prison have been granted parole. In 1996, for example there were over four times as many paroles (2,889) as mandatory releases (690).<sup>45</sup> Over the next three years, however, the number of parole releases fell sharply, while the number of prisoners held until their mandatory release dates rose. By 1999, there were nearly 50 percent *more* mandatory releases (2,041) than parole grants (1,385).

After truth in sentencing took effect, the pendulum swung back toward parole for the “old law” prisoners. Although the proportion of parole-eligible releasees among *all* those released has fallen sharply – from 98 percent in 2000 to 48 percent in the first months of 2004 – more of those who are parole eligible are being granted parole, and fewer held until their mandatory release dates.

By 2003, there were nearly as many paroles (1,522) as mandatory releases (1,579) of “old law” prisoners. And in the first half of 2004, parole releases (703) exceeded mandatory releases (545) for the first time since 1998. Nevertheless, the total

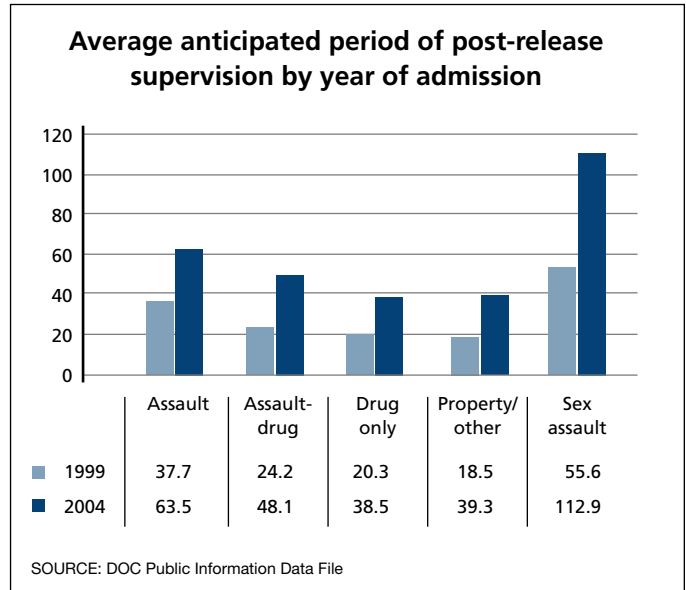
number of parole releases is declining steadily as the pool of parole-eligible prisoners shrinks. As of June 30, 2004, 55 percent of prisoners were ineligible for parole according to DOC data.

**The extended supervision time-bomb**

The truth-in-sentencing statute requires that an individual who is revoked from extended supervision be “resentenced” to serve some or all of the original extended supervision term in prison. No credit is awarded for time served in the community on supervision.

As a consequence, the time it takes to serve an extended supervision sentence can far exceed the original term. For example, in one case DOC records show that it took a person who was sentenced to prison in 2001 possession of up to five grams of cocaine with intent to distribute 29 months to complete an 18-month term of extended supervision. The individual in question – who was revoked from supervision after serving a year of his 18-month sentence in the community – ended up spending five additional months in prison and a total of 24 months on post-release supervision before finishing his sentence.

In 2001, DOC released an average of 26 TIS prisoners to extended supervision each month. By early 2004, the monthly average had climbed to 256. Releases to extended supervision did not begin until 2001 and the median term of extended supervision – even after the TIS II reforms took effect – is three years. This means that just a fraction of those placed on extended supervision have reached

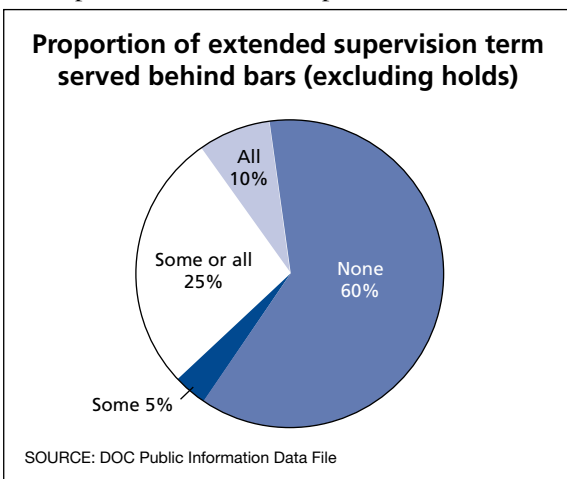


their original maximum discharge dates, much less completed their sentences. As of June 30, 2004, 5,217 prisoners had been released to extended supervision for the first time. Of those released, just 760 (15 percent) were scheduled to have completed their full sentences on or before June 30, 2004.

With so few cases available for analysis, the evidence is not sufficient to predict with any certainty how many TIS releasees will succeed on extended supervision, or how much time those who fail will spend behind bars. But preliminary data for the initial 760 cases show a disturbing pattern which could, if it continues, have a tremendous impact on the state’s prison population. Just 58 percent (439) of those scheduled to serve their sentences by June 30, 2004, managed to reach their maximum discharge dates without being revoked from extended supervision.

Among the 296 that were revoked, most were either in prison awaiting re-release (108) or back on extended supervision (79) on June 30, 2004. Nearly a quarter were “maxed out” (re-sentenced to serve their entire remaining term of extended supervision behind bars), with 32 still incarcerated and 38 out after serving the full sentence.<sup>46</sup> One in eight (39) completed their supervision term after being re-released (having served, on average, 40 percent of their extended supervision term in DOC custody).

Put another way, of 735 people released on extended supervision (excluding 25 individuals in custody on June 30, 2004 whose status could not be



determined):<sup>47</sup>

- 439 served no extended supervision time behind bars
- 39 served some supervision time behind bars
- 187 will have served some or all of their time behind bars
- 70 will have served all of their time behind bars

The number of cases examined is too small to confidently predict outcomes for the thousands who will be released in the coming years. However, if current patterns were to hold into the future, one in five incarcerated under truth in sentencing would do all of their extended supervision time behind bars (80 percent in DOC facilities), and another one in five would serve 40 percent of the time behind bars.<sup>48</sup>

As a result, we might expect to see those revoked from extended supervision serving, on average, 60 percent of the time in prison.<sup>49</sup> Even if just a quarter of individuals revoked from extended supervision served the full term behind bars and the remaining three-quarters served only part of the time in prison, those revoked would end up spending, on average, 50 percent of their extended supervision time in prison.<sup>50</sup> In other words, 20 percent to 24 percent of *all* extended supervision time could turn into prison time.

Prisoners admitted with a new prison sentence and no violations in early 2004 were likely to serve an average of 44 months in prison prior to their first release, followed by 55 months of extended supervision. If just 20 percent of the extended supervision term were spent behind bars, then prisoners admitted in 2004 would spend, on average, 55 months incarcerated and 44 months on extended supervision – probably much more, since when revoked they receive no credit for the time they already served under supervision. At an estimated annual cost of \$28,622 per prisoner, 11 extra months of incarceration would cost the state more than \$26,000 for each person admitted to prison.

Moreover, these figures probably understate the future likelihood of failure on extended supervision since the 760 cases available for our examination involved individuals sentenced to comparatively short terms of prison and extended supervision during the early years of truth in sentencing. While the average term of extended supervision for this group was just 16 months, the median term of extended supervi-

sion for those currently being sentenced to prison under TIS is 36 months, which greatly increases their risk of being revoked and having to start all over again.<sup>51</sup>

Obviously, before truth in sentencing, individuals on mandatory release or parole supervision were also at risk of being revoked and spending more time in prison. But prisoners admitted in the first half of 2004 faced terms of post-release supervision that were 77-percent longer, on average, than were imposed on prisoners admitted in 1999.

Unless something is done to substantially reduce revocation rates, and/or to shorten the extended supervision terms imposed, the lengthening of post-release supervision under truth in sentencing is likely to translate into significant future prison population growth.



## Substance abuse, addiction and crime

**S**ubstance abuse and addiction are serious problems that impose huge human and economic costs on Wisconsin residents. According to figures released by SAMHSA, Wisconsin has the second-highest rate of binge-drinking in the nation and ranks ninth in alcohol consumption.<sup>52</sup> Wisconsin also ranks seventh in alcohol dependence or abuse and eighth in the proportion of state residents who needed, but did not receive, treatment for alcohol abuse in the past year.

Although alcohol is the leading substance abuse problem in Wisconsin, the state ranks in the top half for cocaine use for all ages (just above Illinois), and twentieth in cocaine use by 12 to 17 year-olds. It is estimated that 7.5 percent of all residents, and 19 percent of 18 to 25 year-olds, have used illicit drugs in the past month.

For too many years, Wisconsin policymakers have relied heavily on law enforcement and corrections to address the state's substance abuse problem and have allowed treatment to remain underfunded. According to the state's Bureau of Mental Health and Substance Abuse Services (BMHSAS) roughly 450,000 adults and adolescents in Wisconsin have substance abuse disorders, with just 13 percent of that number (58,320) receiving treatment in 2003.<sup>53</sup> BMHSAS estimated that, in 2000, there were over 43,000 uninsured state residents whose substance abuse problems could not be treated because of a lack of public treatment dollars.<sup>54</sup>

### **Treatment capacity**

Constrained by tight budgets, Wisconsin's substance abuse treatment infrastructure falls far short of meeting the needs of state residents. Public substance abuse treatment admissions grew by less than two percent over the most recent five-year period for which data is available: from 29,126 in 1998 to 29,596 in 2003.<sup>55</sup> By comparison, new nonviolent

drug prisoner admissions rose by 20 percent over the five-year span. In 2003, the state had 606 certified substance abuse treatment facilities, just 22 more than in 2001.<sup>56</sup>

A 2003 survey of county substance abuse treatment services found that 1,189 treatment applicants were placed on waiting lists for at least two weeks, most for outpatient treatment.<sup>57</sup> Another 940 patients were discharged early from treatment because county funds were insufficient. These figures do not include Milwaukee, which had not fully reported 2003 treatment services data. According to the director of one agency that provides services to the criminal justice population in Milwaukee, very few treatment slots are available for court-involved individuals, and waiting lists are as long as six months.

An analysis of gaps in the state's substance abuse treatment capacity published by the University of Wisconsin Medical School in August 2002 estimated that a third of those in need of publicly-funded treatment actually received it.<sup>58</sup> The report projected the annual cost of closing the gap at \$40 million a year.

According to BMHSAS, total spending on treatment in Wisconsin – including federal, state and county government funds as well as private insurance and out-of-pocket expenditures by patients – was nearly \$100 million in 2002.<sup>59</sup> While significant, that figure is dwarfed by the \$1 billion annual DOC budget, not to mention the hundreds of millions of dollars spent on law enforcement in the state.

The average cost of publicly-funded treatment in 2003 ranged from \$4,256 for residential treatment (an average 38 days) and \$4,312 for halfway house care (56 days) on the high end; to \$1,121 for intensive outpatient treatment (30 hours) and \$732 for outpatient group treatment (22.2 hours) on the low end.<sup>60</sup> The typical term of outpatient treatment in Wisconsin – 158 to 194 days between



admission and discharge – exceeded the national 120-day benchmark in 2003.

### **Criminal justice treatment needs**

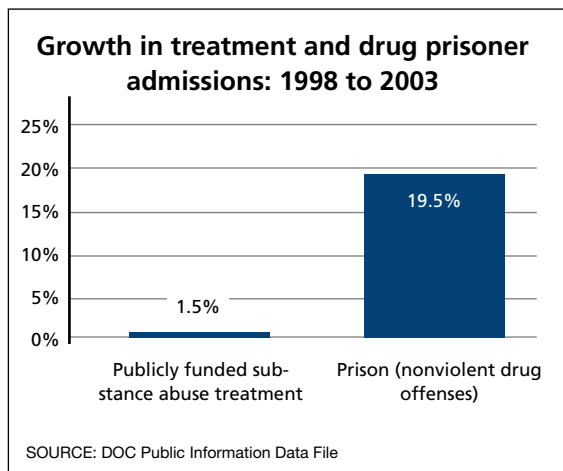
DOC data show that OWI and drug offenses accounted for 60 percent of all prison population growth over the last five years. Further, of the top four offenses that drive prison admissions according to the state’s Sentencing Commission, three are directly connected to substance abuse (cocaine delivery/possession with intent up to one gram, operating under the influence and cocaine delivery/PWI of one to five grams), and the fourth, burglary, is often driven by addiction according to judges and other criminal justice professionals.<sup>61</sup>

Many of those caught up in the state’s criminal justice system have substance abuse problems. A 1998 study conducted by researchers at the University of Wisconsin - Milwaukee found that nearly two in five arrestees tested positive for illicit substances, while a third were diagnosed with an alcohol or drug dependency disorder.<sup>62</sup> The study consisted of interviews and voluntary drug tests conducted with arrestees from Milwaukee and a cross-section of counties with medium-sized and small cities, including Dane, Racine, Outagamie, Brown, Marathon, Wood, Manitowoc and Portage.

The researchers found that alcohol was the most commonly abused substance statewide, but that in Milwaukee County, the majority of arrestees tested positive for one or more controlled substances, most often cocaine (33 percent) and marijuana (27 percent).<sup>63</sup>

Just one in ten study participants with substance abuse problems were in treatment at the time of arrest, although most had received treatment at some time in their lives. Half of those interviewed (51 percent) expressed a desire to enter treatment. The research team estimated that 65,000 arrestees were in need of substance abuse treatment statewide, a figure that does not include individuals in need of drug education (those who did not meet clinical criteria for dependency disorders).

The researchers recommended that alcohol and drug abuse screening be provided for all persons entering the criminal and juvenile justice systems. They also recommended that community-based treatment should be pursued as an alternative to jail or prison, both pretrial and post-adjudication, and that



relapse prevention support be provided to those re-entering the community from prison.

DOC data, which identify prisoners who require clinical substance abuse treatment and/or drug education, show that 83 percent of the standing prison population has an alcohol and other drug abuse (AODA) programming need. Among individuals incarcerated for drug offenses, those whose convictions involved the smallest amounts of drugs were most likely to have substance abuse problems. Four in five prisoners (81 percent) serving time for delivery/PWI of cocaine up to five grams had identified AODA needs, compared to 71 percent of those whose offenses involved more than 40 grams.

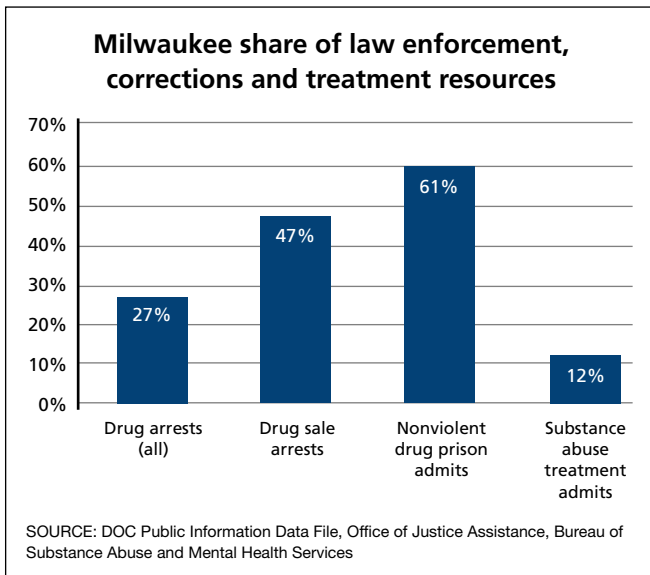
Many prisoners with substance abuse problems are not receiving AODA services while they are incarcerated. Figures provided by DOC for 2004 show that, of 1,955 prisoners with AODA needs who were released after two or more years of incarceration, nearly 400 had not received substance abuse treatment because services were unavailable. Supporting documents that accompanied the Governor’s proposed 2005-2007 budget show that the proportion of prisoners on waiting lists for AODA services – 13.4 percent – has remained virtually unchanged since 2000.

### **County-specific treatment gaps**

In 1999, researchers and public health officials conducted a comprehensive assessment of substance abuse treatment needs and capacity at the county level.<sup>64</sup> Using the estimated prevalence of substance abuse disorders, combined with other indicia such as drug arrests, substance-related hospitalizations and alcohol-related crashes, the study team assessed

the severity of each county’s substance abuse problem as well as the gap between the need and the level of services provided.

The authors determined that, with the exception of rural Florence County, Milwaukee had the largest “treatment gap” in the state. Milwaukee residents were no more likely to have substance abuse disorders than other state residents, and the county actually treated a higher percentage of those in need (27 percent vs. 21 percent statewide). But the researchers concluded that the severity of Milwaukee’s



substance problem was much greater, as indicated by high levels of substance-related law enforcement activity.

The research leads to two conclusions. First, substance abuse has even more serious consequences in Milwaukee than elsewhere, a result that was linked to the lack of employment and educational opportunities by nearly every judge, prosecutor, defender and social service provider interviewed.

Second, resources for combating substance abuse have been invested disproportionately in law enforcement, generating thousands of arrests and prison admissions without addressing the root problem. Milwaukee County, which comprises 17 percent of the state population, accounted for 27 percent of all drug arrests, 47 percent of drug sale arrests, and 61 percent of new prison admissions of drug offenders in 2003.

When it comes to treatment, however, the most recent available data show that Milwaukee accounted for just 12 percent of publicly-funded admissions (2000).<sup>65</sup> With the number of substance-related arrests and criminal cases far outstripping treatment capacity, it is not surprising that Milwaukee court officials say waiting lists are too long for treatment to be a realistic sentencing option.

Milwaukee was not the only county with a large treatment gap. Several rural and mid-urban counties

### Substance Abuse and Mental Illness – Overlapping Treatment Needs

If substance abuse is the number one problem in the state’s criminal justice system, then mental illness comes in a close second. The relationship between mental health and incarceration is receiving greater attention as both corrections and mental health professionals become increasingly aware of a growing population of mentally ill prisoners and detainees. According to a 2000 investigative report by the *Milwaukee Journal Sentinel*, there were between 3,000 and 4,000 chronically mentally ill prisoners in the state system – 15 to 20 percent of the population.<sup>67</sup>

Prisons and jails are generally ill-equipped to handle the mentally ill, who have trouble conforming to rules and are disproportionately likely to be confined in segregation units for disciplinary violations that stem from an illness over which they have no control. On the other hand, the harshness and isolation of prison life, combined with a lack of appropriate medical and psychiatric care, can cause the condition of

mentally ill individuals to worsen.

A 2003 report by Human Rights Watch and the National Alliance for the Mentally Ill found that, nationally, the mentally ill were under-treated and subject to frequent abuse in prisons and jails.<sup>68</sup> The incarceration of mentally ill prisoners in near-total isolation at Wisconsin’s “Supermax” facility, which ended as a result of a lawsuit brought on behalf of prisoners by the American Civil Liberties Union’s National Prison Project, is a case in point.

Co-occurring substance abuse and mental health disorders are a common phenomenon and a difficult problem to treat. Most substance abuse treatment providers surveyed by BMHSAS in 2003 indicate that they screen for mental illness (89 percent), and over two-thirds said they provide co-occurring treatment.<sup>69</sup> However, some social service professionals that work with the criminal justice population report great difficulty finding co-occurring treatment for their clients.

had much lower levels of controlled substance-related law enforcement activity but higher levels of alcohol-related problems such as drunken-driving accidents and alcohol poisoning deaths. Adams, Buffalo, Florence, Iron, Kenosha, Menominee, Walworth and Washburn all received high “alcohol problem” scores and were found to have large treatment gaps. Aside from alcohol, criminal justice professionals say methamphetamine use is putting increasing strain on both local law enforcement and treatment resources in western Wisconsin.

In rural areas, where treatment professionals and specialized programs can be hard to come by, people with substance abuse disorders were least likely to receive treatment. Of 27 counties that treated less than 10 percent of the estimated population in need, all but one had populations under 100,000.<sup>66</sup>

### ***Evidence of substance abuse treatment efficacy***

Viewed from both an economic and public safety standpoint, the choice between prison and substance-abuse treatment for most individuals convicted of nonviolent offenses should be an easy one. A growing body of research completed since the start of the “war on drugs” indicates that a rational cost-benefit calculation favors treatment hands-down.

The landmark RAND Corporation study comparing the impacts of different law enforcement strategies to treatment for heavy users of cocaine found that treatment is far more effective than mandatory minimum prison sentences. The RAND research team estimated that money spent on treatment for people prosecuted on federal cocaine charges should reduce serious crimes against both property and persons about 15 times more effectively than incarceration.<sup>70</sup>

The U.S. Department of Health and Human Services evaluation of clients in publicly-funded treatment programs found that drug use dropped by 41 percent in the year after treatment. The proportion of clients selling drugs dropped by 78 percent and the proportion arrested on any charge dropped by 64 percent.<sup>71</sup>

The “CALDATA” study in California found that for every tax dollar invested in substance abuse treatment, taxpayers saved seven dollars in future crime-and health-related costs.<sup>72</sup>

Staff at the Washington State Institute for Public Policy conducted extensive research on the costs and benefits of program interventions that might be expected to reduce crime. Findings released in 2003 show that for those convicted of drug offenses, a dollar invested in imprisonment produces just \$0.37 in crime reduction benefits, while Washington’s drug courts produce \$1.74 in benefits for each dollar spent.<sup>73</sup>

A recent study of the Drug Treatment Alternative to Prison (DTAP) program conducted by the Center on Addiction and Substance Abuse at Columbia University (CASA) found that treatment is effective, even for individuals with very significant criminal histories. DTAP, which is run by the office of the District Attorney in Brooklyn, NY, treats repeat felony offenders addicted to heroin, crack and powder cocaine who have already spent an average four years behind bars. Despite the obstacles, more than half graduate from the program.

CASA researchers found that DTAP participants, who receive 15 to 24 months of residential drug treatment, were less likely to be re-arrested or re-incarcerated than members of a matched comparison group who were sentenced to prison. After two years, those placed in DTAP were 26-percent less likely to be arrested, 36-percent less likely to be re-convicted and 67-percent less likely to return to prison than the matched comparison group.

Research conducted in Wisconsin by staff at the Department of Health and Family Services also supports the conclusion that substance abuse treatment “works.”<sup>74</sup> According to the most recent DHFS figures (2003), nearly half (47 percent) of patients who entered outpatient treatment – and 63 percent of patients who entered residential treatment – completed successfully and saw moderate or major improvements.<sup>75</sup> Wisconsin’s outpatient treatment completion rate compares favorably to the nation as a whole and the inpatient completion rate is similar.

A statewide study of outcomes at ten treatment agencies commissioned by DHFS found substantial reductions in substance use and arrest rates. The research findings are based on agency records and interviews conducted with 409 treatment program participants at admission, as well as follow-up interviews conducted with 190 participants four to six months after discharge.

Alcohol was the primary substance abused by the

large majority of all participants (77 percent), followed by marijuana (eight percent) and cocaine (seven percent). Just under half had been arrested in the year preceding treatment and two in five had a co-occurring mental health diagnosis.

Among patients who participated in follow-up interviews, the proportion abstaining from alcohol more than doubled – from 23 percent reporting no alcohol use in the month before treatment to 55 percent in the month before follow-up – even after adjusting for self-report and response bias.<sup>76</sup> Further, the proportion with stable living situations had increased from 72 percent to 88 percent at follow-up.

While nearly half (46 percent) of participants had been arrested in the year preceding treatment, fewer than one in five (18 percent) reported being arrested between treatment admission and follow-up. The average number of arrests dropped from 0.7 in the year before admission to 0.3 by the time of the follow-up interview.

### ***Treatment for methamphetamine addiction***

The spread of methamphetamine across western Wisconsin has raised questions about whether, and under what conditions, methamphetamine users can be treated successfully. As indicated by comments in the focus group discussed below in Chapter IV, some judges in the region worry that methamphetamine addiction is an intractable problem.

Although methamphetamine has emerged as a relatively new problem in Wisconsin, public health agencies and treatment providers in the western United States have been dealing with the drug for more than a decade. Their work has provided convincing evidence that methamphetamine users can be treated successfully in an outpatient setting.

In 2004, researchers published the results of the largest randomized clinical trial of treatments for methamphetamine to date, funded by SAMHSA's Center for Substance Abuse Treatment (CSAT), in the journal *Addiction*.<sup>77</sup> The research project compared outcomes for 978 methamphetamine users in eight sites who received intensive outpatient treatment. Half received treatment based on a model developed by the Los Angeles-based Matrix Institute, while the other half received "treatment-as-usual" (including one drug treatment court program).

Investigators found substantial reductions in

methamphetamine use as well as gains in other life areas, both during treatment and at the six-month follow-up, for Matrix Model and treatment-as-usual participants. In the month preceding treatment, the subjects – a racially, ethnically and socio-economically diverse group whose history with the drug averaged 7.5 years – used methamphetamine an average of 11.5 days. By the time participants left treatment, average use had fallen by nearly two-thirds to four days per month.

The gains, which occurred for both Matrix Model and treatment-as-usual patients, were sustained six months after the end of treatment, with 69 percent testing negative for methamphetamine. Participants also showed significant improvements across the drug, alcohol, psychiatric and family domains of the Addiction Severity Index. While both groups made significant progress, Matrix Model and drug court participants were most likely to complete treatment, test negative for methamphetamine and remain abstinent during treatment.

Previous research also demonstrates the effectiveness of Matrix Model outpatient treatment for methamphetamine users.<sup>78</sup> In 1997, Matrix staff compared the records of 500 methamphetamine-abusing patients and 224 cocaine-abusing patients who were treated at the organization's Rancho Cucamonga, California office over a seven-year period ending in 1995. They found that methamphetamine and cocaine users had similar, and positive, responses to treatment.

Matrix staff also conducted follow-up interviews and drug testing with a sample of the 500 methamphetamine users. Results for 114 patients who were located, and who agreed to participate, were very positive. The proportion reporting methamphetamine use had declined from 86 percent in the month before treatment to just 17.5 percent two to five years later. Further, just 6.5 percent of 46 individuals who participated in follow-up urinalysis tested positive for methamphetamine.



## What judges say about the problem

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Unlike many states, where judges' hands are tied by mandatory minimum sentencing laws, Wisconsin's judges enjoy broad discretion in deciding whether, and for how long, an individual should be sentenced to prison.

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 Senator Carol Roessler, who sought the commission's help in determining "the size of a pool of potential candidates who, if diverted from incarceration to treatment, would free up a significant number of prison beds, thereby providing fiscal savings that can be used to fund the expansion of treatment services."<sup>79</sup>

The focus groups were convened at locations within three diverse areas of the state: in Appleton, to draw from courts in Judicial District Eight, located in the Fox River Valley area; in Milwaukee, to draw from District One, the state's largest urban courts; and in Barron, to draw from courts in District Ten, the mostly rural northwestern and west-central part of the state. Sentencing Commission staff requested that district court officials ensure that participants reflect the range of experience and philosophical approaches to sentencing within the jurisdiction. Each session involved ten judges, including the district chief judge from that jurisdiction. The Barron group was joined by the district chief judge from neighboring District Seven.

The 90-minute sessions were structured with a set of specific pre-determined questions, although the discussions were allowed to evolve as judges raised issues and posed questions to each other. The sessions were not tape-recorded, but detailed notes were taken by at least two non-participant observers in all three groups, and by three in two of the groups. The notes were transcribed and compared

for concurrence among Sentencing Commission staff and Justice Strategies researchers.

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

- That a greater number of effective substance abuse treatment options are needed and would be well utilized by Wisconsin's judges;
- That 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
- That increasing the supply of treatment options and upgrading community supervision could substantially reduce correctional costs and enhance community safety.

The focus group discussions revealed that there are major differences in drug-related crime patterns, as well as in judicial concerns about the problem of substance abuse, in different localities across the state. Judges from the Fox River Valley courts were primarily concerned about the need for better tools to address the alcohol problems of defendants in drunk-driving cases. In Milwaukee, judges said that nearly all of the defendants who come before them need basic social supports – education and employment opportunities – in addition to treatment, and that the lack of strong community supervision and the limited capacity of existing programs were the primary problems they have to wrestle with. Judges in the Barron group indicated that while marijuana offenses are still the most common, methamphetamine abuse has emerged as the most difficult problem they must address.

### ***Reviewing current sentencing practices:***

Asked about their current sentencing practices, and about the characteristics of individual defen-

dants that may shape the choice between probation or prison, most judges in the Appleton and Barron groups said that they are reluctant to use prison as the first option with people charged with low-level, nonviolent crimes.

“I consider prison a limited resource and try to use it really sparingly, for violent, assaultive crimes. I presumptively look at cases with drugs and try to divert.”

Many judges said they saw motivation as the primary factor in drug cases.

“I put drug offenders into two categories: 1) dealers for profit and 2) dealers for habit/survival. In my court a user/dealer might get a break. But if you’re a dealer doing it for profit, I’ll send you to prison the very first time. We’ve got dealers bringing crack in from Milwaukee and Chicago, making massive profits. For them, probation is no deterrent and they’re going straight to Waupun.”

“Generally speaking, I don’t use prison as a sanction unless the case involves serious violence – or with drug cases, unless the defendant is a *real* dealer: someone who is out there selling just to make money, and probably using other people to conduct their business. The small-scale guys... just dealing to have enough for their own use – I don’t put them in prison. I view treatment as a good option unless there’s an issue of violence, or a real need to protect the community.”

Defendants with education, jobs, steady home lives, and good support networks were considered good risks for probation and treatment. Some thought women were better risks than men – some thought that risk factors are more “gender-neutral.”

“I look at factors like where the defendant has a good job... whether they’re on probation at the time of the offense...”

“Women are more amenable to treatment options because they’re more willing to talk openly about their problems, while men are not. Gender doesn’t affect the sentence, but it is taken into account.”

“And because they’re more likely to be care-providers – and we know they’re less likely to

be violent.”

Some said that a person’s prior criminal record or their treatment history mattered most.

“How I handle these kinds of defendants depends on their past record. If it’s minor, no more than one or two prior burglaries – no armed robberies – I’ll use a treatment alternative.”

“Or if they’re on probation with treatment but I hear their attendance is spotty – they show up for the first session, miss the next two, turn up for the fourth – they’re going to prison. I usually don’t give second chances if they fail treatment.”

“I use probation for guys with, maybe, one prior – where the amount of drugs involved is small, maybe a quarter-ounce of marijuana – and the guy is young... what matters to me is the quantity of drugs; the number of times they’ve been before the court before; the number of times they’ve been through treatment. If they’ve completed treatment but are out getting high again...”

Others said that relapse was to be expected, and were somewhat more willing to try treatment more than once if there were reasons to expect success.

“I don’t have a strict rule about whether they’ve been through treatment before or not. They might have been sent to treatment several times before and failed – but *this* time it might be the exception. Also, if the agent has a positive response. I’ll go out on a limb...”

Some judges in the Fox River Valley group advocated that alcohol treatment interventions be targeted for people *before* they commit the fifth drunk-driving offense that boosts them to the felony level.

“The ‘on the bubble’ cases that are hardest for me are the 5th-time OWIs. Supposedly they’ve gone through treatment, but how do I know if they really did it? I’m wanting to give them another chance – yet what if they go out next time and kills somebody? It’s hard to justify sending them to prison, but there could be huge consequences if I put someone on probation and they get in trouble.”

I think the 5th OWI's *need* to go to prison. The guy's got lots of priors and had *every* chance — but the agent says, "We've gotta program for this guy..." I say "Where were you four or five offenses ago... 2... 3... 4... 5... offenses ago?"

Yeah... where were they at the 3rd alcohol offense? There has to be earlier intervention. A defendant can't even be put on probation until the 4th offense.

There was little consensus about the effectiveness of coerced treatment. Some judges said that people have to be ready and willing to participate before they would impose a treatment alternative.

"There is a *certain* group of people who should definitely have drug treatment, but I wouldn't give it to them because they haven't exhibited the readiness for change."

"There should be a component where the defendant asks to get put into a program rather than be forced into one. Most of them don't realize how bad they have it. They need to want to get treatment in order for it to be effective."

Others disagreed.

"We just had a meeting with our providers and they indicated otherwise. They say that people ordered to treatment can get as much out of it as those who seek it out themselves. The providers don't care how or why the defendants are there. What matters is the quality of the treatment, not whether they want to be there. It's like in drunk-driving cases where they don't think they need treatment — but treatment can still make a difference. They all have the same chance at success."

Judges from the northwest/west-central area courts described their efforts to cope with the recent influx of cases involving methamphetamine.

"Of course meth is not the most *prevalent* drug problem in this region. Pot still ranks number one around here, by far. Marijuana cuts into every social strata. We see a lot of high-school students. And the middle-aged hippies — they grow their own and they're gonna keep using no matter *what* we do. But

meth is really making inroads with the middle-class folks."

"These days I'm seeing more and more middle-class people involved with meth. They get hauled over in a traffic stop, and the cop says there was meth on the console. Or it's a domestic violence call, and the cop finds meth on the bureau drawers. It's invading the ranks of our middle-class home-owners: people with jobs; people who are otherwise upstanding citizens."

Judges' assessments of the methamphetamine problem ranged widely. Some judges believe that the drug has a unique power over addicts.

"Meth is the most powerful drug there is. I've talked to some of these guys — "You've just got out of prison — what are you going to do now?" "Well... to be honest, judge, if I get the opportunity to get high, I probably will."

Others expressed a more moderate point of view.

"We need to really focus on *treatment*. It's not like meth is some scary, sneaky *new* drug, some secret scheme cooked up by Dr. No. Meth has been around since the 60s and 70s. These things come and go in phases. The point is that these kinds of things follow a pretty uniform pattern. A tiny percentage — maybe one percent — will fall into real addiction, whether it's coke, crack, or alcohol. Most folks will just try it and get out. That 'use it one time, and you're hooked for life' story... that's just ridiculous."

There was no consensus about what constitutes effective treatment for people addicted to the drug. Some judges expressed a belief that it is necessary to impose a period of sobriety by jailing addicts for many weeks before treatment could begin.

"To get through to any of these folks with effective treatment takes getting them sober for at *least* four to six months. Right now there's only one place I can use for that purpose: jail. They have such an *appetite* for it... will go to any lengths to get it... It takes four months before they can even start to deal with treatment. But that's a *huge* upfront cost."

But other judges were confident about using other approaches effectively.

“It’s not just what you hear from law enforcement – that there’s no effective treatment. If you listen to the folks at Hazelton, they’ll tell you that treatment might just take a *little* longer...”

“I may not want to put them in jail to enforce abstinence. I’d rather have them drop a urine sample every day.”

### ***The need for more treatment options and stronger community supervision:***

Judges in all three focus groups expressed some level of frustration with the current options available to them in handling low-level, nonviolent drug abusers. They pointed out that most people involved in serious drug trafficking end up in the federal courts. Most judges indicated a belief 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.

“Prison is a total waste – and the economic impact on the families the – dependant mom, the kids – can be horrendous.”

“Everyone will do their time, get out, and get wasted... They’re back before us regardless.”

“Yeah... It’s like, “We’re going to teach you to swim by throwing you into seven feet of water. If that doesn’t work, we’ll try 20 feet. If you *still* can’t swim we’ll haul you out to the middle of Lake Michigan and dump you in...”

“You can’t even be *sure* they’re clean in prison. I hear that even in our local jail there’s some availability of drugs.”

Some judges complained about the length of time people have to spend in prison before they are admitted to treatment.

“We’ve been told that if you’ve put them in for less than two years they can’t get treatment.”

“My understanding is if they need drug treatment, I’ve got to send them to prison for 5? years. That’s just wasting 4-1/2 years!

And some coupled this with a complaint that once a prisoner is released, there’s little done to help them stay drug-free, and that in the absence of

good aftercare, whatever benefit was accomplished with treatment in prison is lost.

“We understand it takes at *least* two years to get them treated in prison. But here’s the problem: they come out clean and then there’s *nothing*. At best they get a one-month stay in a local hotel.”

“I sentence them to two years plus extended supervision. Extended supervision is horrible is my county. When they get out after two years in prison with treatment, they get out with no help.”

Judges in all three focus groups said that a substantial majority of the people who come before them on criminal charges in their courts have alcohol and substance abuse problems, and that substance abuse underlies or contributes to their criminal behavior. In Milwaukee, judges described the problem as pervasive.

“Drugs drive *all* our crime, the whole case-load. The economics of the whole criminal justice system here is driven by addiction.”

“Burglary; robbery; drug sales – it’s all about how they finance their habits.”

“There are some cases where *dealing* is the main thing. But for most of the cases in drug court, *addiction* is the main problem.”<sup>80</sup>

Access to programs for court-ordered treatment was described as problematic by judges in all three focus groups. In rural areas this problem is exacerbated by the distance people have to travel to receive treatment.

“We should be providing treatment in every community. Some people are ordered to go to programs 40-45 miles from their homes that can’t even *drive* – people who’ve had their licenses suspended because of a drug arrest.”

Waiting lists are endemic and discourage judges from making greater use of these options.

“We have no expectation that they’ll *get* treatment. There’s a long waiting list.”

“There are treatment programs out there... and halfway houses... maybe six different options, but none of them offer more than a 21-



day program. The problem is the *cost* of treatment. It's expensive. If probation *can* pay, you're looking at a 1-2-3-month waiting list."

Many judges expressed a lack of confidence that the probation system makes the necessary arrangements to secure appropriate treatment placements or to gain compliance from probationers when treatment is ordered.

"I've got no confidence in treatment at all. If I put them on probation supervision, what do I know about what happens? Maybe if they were followed more closely... I have more faith that something is happening in prison. But on the other hand, prison is just a black hole."

"As it is now, I've been led to understand that I have to put them on probation for 14 months if I want to be sure there's enough time to have their AODA need addressed."

"The PSI recommendations for treatment are good – but then you don't know if people get what's been recommended. The agents who conduct the investigations and fill out the reports are guessing just like me."

Milwaukee judges were particularly concerned about the need for a more reliable system to secure appropriate treatment placements and more effective supervision of those in treatment.

"When you talk to people about what happens on probation, you find out that they've never *had* treatment. Maybe they never even had an AODA assessment, or got a referral. Sometimes they've been stuck on a long waiting list. Sometimes they were referred to go check it out – but they didn't go."

"I'm seeing a lot of people going into that cycle. Treatment was ordered the first time around, but they never got any. They only get it when they screw up."

"Even when they're using – when urine tests are positive – it's a fluke that they get caught. There are no *consequences* when guys test dirty, even if we've granted probation blanket authority. Most important: they're not actively putting people into treatment... not putting something in their lives that constructively occupies the space..."

"We've been looking at putting more alternatives on the front-end – more pre-trial services. But state officials tell us that even though we just got a new \$21 million Access to Recovery grant, the waiting lists aren't going to be eliminated. I don't understand why – but that's what they're telling us."

While the judges who met in Barron expressed a good degree of confidence in the community supervision agents that work in their jurisdictions, it is clear that on the whole, judges believe that Wisconsin's community supervision capacity is overwhelmed, and needs to be bolstered with additional resources – especially in Milwaukee, where the need for more effective supervision is greatest, and probation caseloads are greatly overloaded. Supervision caseloads for probationers placed in treatment need to be low enough to make oversight meaningful.

"I'm very happy with our agents. We have a very good relationship with them."

"I don't want to trash the front-line supervision agents because they've got a lot of very serious, violent people to deal with. They just don't have the time to look closely at everybody – and they've got to let *some* folks slide. For the most part they're overtaxed. If we don't put money into the front end, it can't work on the back end."

"If probation was able to offer the things that really work, we wouldn't have to talk about setting up special treatment courts or day-reporting centers... Problem is, we don't have enough resources, enough money to even do what we're trying to do *now*. What we should really be talking about is how to get more money and resources in the community instead of in the courts."

While the extended supervision provisions of Wisconsin's truth-in-sentencing policy are still too new for much to be known about the impact of this new type of post-prison community supervision, some judges expressed concern that the system is suffering from similar problems, and that the length of the terms being imposed in many cases is far too long.

"I just had two extended supervision cases this morning – and they both had drug issues. All of us in the felony arena are getting *tons* of

them back. I don't want to call it re-sentencing. I've been starting to gauge how long it takes them to come back to us. It's within a year – usually it's just three to six months – after their release.”

“When the study committee conceived of extended supervision they anticipated a change – they anticipated resources that didn't exist. Ultimately, it's just the same as parole.”

“You order conditions – no alcohol; no drug use – but you don't know if they are enforced.”

“The thing is, you put them on for a heck of a long period of time. I was giving out a lot of ES at the beginning of TIS, but I kept seeing the offenders come back because they failed once they were on it. It's very unlikely that someone can be perfect when they are on ES; the longer the time on ES, the greater likelihood that they will fail. So, I started changing my strategy. I now give less ES time.”

“We're dealing with a moral imperative here: a person can do well for almost the entire period of ES, but then they might make a mistake in the last month and have to go back in prison for the whole time! I've seen ES terms set as long as seven or eight years. Is it fair to keep them on ES that long with that kind of hammer hanging over them?”

There were many comments about the counterproductive consequences of some current policies – such as the law that requires suspension of driving privileges for six months when people are convicted of drug offenses – and about the need for more flexible use of judicial discretion to ameliorate some of the collateral consequences of criminal convictions.

“A kid gets caught with drug paraphernalia, and we are required to revoke his driver's license for six months. You *know* he's got to drive to keep his job, and you know he's gonna *do* it. But once he's back on their third OAR, he's really behind the 8-ball, and the DA wants some time. Or, if he loses his job, what do you think he's going to do? You can guess what else he knows how to do to get by... Or the single mom who forges a prescription – and now it's six months with no

driver's license and her life is shot. I don't know what kind of program offers an option for these folks.”

“The state needs to look at how the law treats the lowest-level drug offenses. There's got to be some way of dealing with cases involving miniscule amounts of residue without the offender ending up with a felony record. 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.”

“An agent told me that they have more treatment options with felonies than misdemeanors. That's why it would be so helpful to provide judges with authority for reducing felonies to misdemeanors at the end of successful supervision. There's so much more supervision agents can do when the case is at the felony level.”

Judges in all three focus groups maintained that more treatment options were needed, and would be welcomed by their colleagues on the bench.

“It's not surprising that you have an addicted person in drug court that comes back with a positive test. They aren't just going to go away and sin no more. But are we just going to keep locking them up? We need some tools to divert them from the system.”

“We're don't have that prison mentality – we *do* diversion. But we need to do it with a treatment component up front to increase the chances it won't just bring them back into the system.”

“What's really important is making treatment more available. There needs to be treatment facilities available for offenders in their own communities.”

“The state needs to make a *huge* commitment to treatment – just like they're willing to make

to law enforcement. And that's got to dovetail with mental health services too."

Some judges urged that policymakers develop a more coordinated state-wide strategy and work to create a spirit of collaborative partnership with counties and regions.

"Right now there is a lack of cooperation. Things are way too fragmented here. We need a state-level treatment strategy... a coordinated drug court strategy. But it can't be another unfunded *mandate*. The counties have to get some funding to do this. And the funding has to be sustained. In my jurisdiction, we'll get a three-year federal grant for a program, but when the three years are up, and we go to the county board, it's "No way, Jose!" If what's being planned is done like that, it will all be gone in five years."

Judges in one district had already tried to convince lawmakers that funding for treatment should be scaled-up to match the level of resources provided for drug enforcement.

We talked to Senator Feingold and Senator Kohl back when they were working on a new federal appropriation for Wisconsin's drug task forces. We said, "Give us an equal amount of money for treatment as for law enforcement." They got the state another half-million for extra drug enforcement officers, but no extra resources for treatment. It all depends on where the resources get pointed."

Asked to describe program models that inspire confidence, judges expressed a need for treatment programs of sufficient intensity (daily treatment sessions for many clients, at least in the initial stage of treatment), and adequate duration (a regimen lasting months, not weeks), that should include a range of services designed to return the offender to a productive, tax-paying role in their communities. In Milwaukee the Community Justice Resource Center and the Benedict Center's program for women are very highly regarded, but judges say the small capacity of the programs restricts their use to a mere handful of the potential candidates.

"I've been very impressed with the Community Justice Resource Center. They have to be there every day. They're signed out to go to

treatment. There's follow-up supervision – and if they're not there, if they screw up, something happens. If I want them to be supervised, I'll send them there."

In every focus group judges expressed the belief that to be successful with many of the people they see before them in court every day, substance abuse treatment needs to be bolstered by effective supervision and provision of other vital "wrap-around" services. Milwaukee judges, whose dockets are loaded with people from impoverished urban neighborhoods, were particularly emphatic on this point.

"What I understand from my experience with the FDOATP program is that these people are so incredibly *needy*. They don't have the education... only a 3rd or 4th grade reading level... they don't have any family support – so to say you can turn their lives around in eight or twelve weeks... It's an unrealistic expectation that four months of treatment will work."

"Treatment isn't going to work in a vacuum. The approach has to be multidisciplinary. We need to look into other parameters in *addition* to treatment... do something about the inadequacy of probation supervision."

"It's really just common sense: Cut the waiting lists for treatment. And you'd have to offer some real alternatives... some *jobs*. There's got to be *something* at the end of the rainbow."

"Another problem is that after they've come out of a treatment program, some of the halfway houses are in areas where the drug dealers are just a block or two away, pulling them back into their old life... I don't know *how* we address that."

"People have to get comprehensive wrap-around services. It has to be a whole package: We're talking about hygiene, about motivating them; really basic things – lifeskills; literacy; health education – the things that they'd get if they were in an intact family, with supportive parents. The people going into these program lack nurturing. What's needed is a one-stop shopping program – it's got to *all* be there."

"What's imperative for the type of individual

we're dealing with in the drug arena is a one-stop shopping approach... It should be like going to high school. They need to have a schedule from 8:30 to 4:30: First, AODA treatment. After that, GED... then vocational skills... In a setting that offers it all, across the board. I would definitely like to see more day-reporting centers."

"That's where the Community Justice Resource Center comes in. They can provide them with something really substantive – jobs; education; treatment; parenting skills..."

Many judges had examined therapeutic treatment court models in other jurisdictions. Some judges expressed enthusiasm about establishing a drug court in their jurisdiction, and some are now experimenting with features of a treatment-court approach in their own practice. Yet many other judges – especially those in Milwaukee – were skeptical that large-scale replication of these models would be cost-effective.

"Minnesota had a 17 percent decrease using a drug diversion program. We've visited the drug court in Hastings, Minnesota to see how judges are using treatment options, probation, and jail to keep these kinds of defendants out of prison altogether. We've looked at the drug/alcohol court in La Crosse."

"Sometimes we don't get a lot of useful feedback with what works and what doesn't. Drug court offers the most direct feedback I can think of."

"Instead of having it for the many, via the probation department, you have it for the few, via the drug treatment court. There're a lot of social services – that's why it's so costly, with all those services. And it's very time-consuming and resource-consuming for the courts."

"In my court the agent decides where they go. What I do is impose a nine-month sentence but stay it. That way I can make a quick response for every dirty urine – imposing 30 days for each – and I can put some teeth into the requirement that they attend their meetings. But it's the probation agent who moves for a revocation – it's not my decision."

Judges said they would welcome accurate information about treatment outcomes, on both individual and program levels, in a timely fashion so that they can utilize the available options with greater confidence, and respond appropriately to individual successes and failures.

"It's critical to have that kind of information. Our whole thinking about sentencing pedophiles has shifted because we've learned about what's effective and what's not effective. We have to stay current on these issues. Even *more* important is having professionals to assist us with doing assessment and making referrals to treatment programs."

"And we need feedback to understand how people actually do in treatment. Take 10 cases and track them closely – give us computer printouts that detail their performance"

One suggestion was to hold focus groups with people who had experienced treatment to learn more about program quality.

"Actually we're serving *them* – they're our clients – so why don't we ask them, 'are these programs effective?' We need to hear from them."

Another judge pointed out that gauging the success or failure of a treatment initiative requires setting realistic goals, bearing in mind that addictions are difficult to break.

"It depends on how you define failure. What *is* 'success' or 'failure'? Relapse in 95 percent of cases? In 50 percent? In 10 percent?"

Judges in every group maintained that provision of effective treatment options for substance-abusing offenders would require a more coordinated, systematic approach. A system for screening defendants for treatment needs and supplying judges with timely information about appropriate, available treatment options should be established up-front – so that assessments are conducted as early as possible after a case is commenced to avoid delays in addressing treatment needs, and to reduce the risk of more offending.

"We're missing the boat when we have them under supervision pre-trial. That's the point when they're the *most* motivated. But it's a year-and-a-half to two years later by the time

we get around to doing something with them. And then we stick them on a waiting list that's eight months long.”

“We really need assistance from someone who understands the range of options and can advise us about which program this person fits into – a liaison like that is really the missing piece. Months can go by before we hear anything helpful from the probation agents.”

Asked what impact might result from an early screening system to provide judges with a quick assessment of AODA needs and a recommendation for an appropriate program, judges responded with enthusiasm.

“It would be wonderful – it would have a *big* impact, provided there'd also be real follow-through.”

“It'd be as valuable as the good housekeeping seal of approval... someone has gone out and seen that there's a program for this guy...”

Most judges agreed that increasing the supply of substance abuse treatment options available to the courts and up-grading the Department of Correction's community supervision capacity could have a very substantial impact in saving correctional resources, and preserving community safety. Judges in each focus group tended to differ in their analysis of how these savings might be achieved, however, largely mirroring variations in sentencing patterns among the regions represented.

Judges in both the Appleton and Barron focus groups maintained that it is not their usual practice to send low-level nonviolent substance abusers to prison (a contention that is well-supported in data that portray sentencing patterns in the different regions).

When judges from the Fox River Valley area were asked whether there was a range of offenders they now incarcerate who might be diverted from prison if there were more effective treatment options, their responses were relatively conservative. They predicted that adding more treatment options and strengthening community supervision capacity would primarily impact local jail population levels in the short run, but could also impact prison admissions by reducing the probation failure rate (averting revocations), and the rate of recidivism.

“It's hard to say. I'm really reticent to put anybody in prison. If we had effective, affordable treatment you'd see a de-escalation in use of prison over time.”

“I'd like *not* to rely so much on prison because I *believed* that probation was the better alternative, and that when that's not working we'd find *another* program. I've seen the drug court in New York. But I *know* we're not going to get that kind of money here. I'd rather be able to send them to prison with expanded earned-release... boot camps and that sort of thing.”

A few judges saw themselves using treatment “up-front” more frequently in felony (5th-time or higher) drunk-driving cases, or with people convicted of drug offenses.

“Drug cases won't be affected one bit. Yet, OWI cases would be affected by treatment. Give us a program for OWI and we'll use it.”

It's those 5th-time OWI's – I'd send 75 percent fewer to prison if the programs were really there! No one would get prison for 5th and 6th OWI's.

“I would segregate the OWI and drug cases. For me, it's not the 5th-time OWI's I'd put in treatment – they're going to prison. But I don't consider *drug* cases to be such a serious public safety issue.”

Judges who participated in the Barron focus group also said they don't normally use prison for the low-level nonviolent offenses that comprise the bulk of their caseload.

“We don't see very many *real* dealers up here. What we see are the five-and-dime users... folks who're sharing what they have with other users. By *definition* these are folks I consider for probation.”

“Even in cases involving meth or cocaine, we don't use prison at the front end. Maybe we'll use a little jail with probation supervision. If they come back again, maybe a more lengthy term of jail... They've got to come through on their third or fourth ticket before we'll send them off to prison.”

Still, some judges in the Barron group pointed to

obvious cost-benefit advantages of using treatment as a sentencing tool.

“If you used treatment in all the cases where it is appropriate, just think how much money you’d save! Even using it in 25-30 percent of the cases, the money you’d invest in treatment would be returned seven-fold. You could cut recidivism from two-thirds to one-fourth.”

Others in the Barron group seemed convinced that there is significant potential for savings by diverting some people from prison or jail, since the cost for treatment is so small, compared to the cost of incarceration.

“Back when we approached Senator Kohl about a grant we asked him to give us money for treatment in relation to what he was trying to provide for law enforcement. We calculated what could be done with just a quarter of a million dollars: \$250,000 would have paid for 60 days of in-patient treatment for 40 addicts (20 people addicted to meth and 20 alcoholics convicted with DUI); and for six-to-nine months of supervision with nearly daily urine analysis, followed with less intensive supervision. For an 18-month package of different levels of treatment and supervision, the cost came to just \$6,100 per person – definitely a *bargain* from a correctional standpoint, if you’re talking about people you’d otherwise have incarcerated.”

“Given services and supervision with sufficient intensity, I could count on one hand the number of people I’d send to prison.

Milwaukee judges, working in the court jurisdiction that makes the largest contribution of substance abusers to the state prison system, indicated that given a more effective, expanded sanctioning system – more treatment and day reporting programs coupled with stronger community supervision – substantial redirection of low-level drug and property defendants from prison sentences to treatment programs could occur.

“The first-offense burglary cases, the second-offense possession cases, etc. – almost all of these get probation. But with these same kinds of offenses – low-level drug-dealing or burglary – defendants who have a somewhat

longer rap sheet do *not* get probation. With more services available, they might *also* be considered for an alternative... maybe with a little time up-front in jail.”

“I have no doubt that we could save more money with wraparound services... I don’t know the figure... the only question is whether we’re willing to spend the money up-front. We’re spending at the end of the road, not at the beginning... If we don’t put the resources up front, it’s like we’re trying to drain Lake Michigan.”

“We could shutter two medium-security prisons to pay for this program – let’s say 2,000 prisoners. 30 to 40 percent of people could benefit from day reporting centers.”

“Is 33 to 45 percent too high?”

“They have justified the day-reporting center based on number of jail beds it would save. I think 30 to 40 percent, I would agree with that.”

“If I was on the drug bench and I had confidence in what was available, I would refer over *half* of my calendar.”

Additional savings would result from lower rates of revocation and recidivism.

“The people we already put on probation – they get revoked because of all the things we’ve been talking about. We could save a lot of prison space because we could avoid a lot of revocations.”



## Program interventions and innovations

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**D**ecades ago, Milwaukee was considered a national model of criminal justice innovation. Millions of federal and foundation dollars poured into the county to support pioneering pre-trial release and diversion projects for those with substance abuse and mental health problems. Unfortunately, many of the county's model programs vanished over the years as funding streams – and political will – ran dry.

At one time, Milwaukee screened every defendant prior to the first court appearance to determine whether he or she could safely be released before trial, and to determine what type of supervision and services the defendant required. The screening system provided critical information to judges who set bail and helped to identify defendants with substance abuse and other treatment needs early in the process. Today, however, defendants are no longer screened before their first appearance and those who work in the system say many who pose little public or flight risk await trial in jail because they cannot afford to post money bail.

Milwaukee District Attorney E. Michael McCann earned a national reputation by introducing new practices to improve the prosecution process such as “charging conferences” – meetings where charging decisions are made by teams of prosecutors. In the 1980s, McCann's office ran diversion programs that allowed eligible defendants to avoid criminal charges by turning their lives around. Over a decade ago, however, the programs were dismantled, and diversion is now limited to a handful of young defendants who participate in a community conferencing program.

The Community Support Program (CSP), launched by Wisconsin Community Services (formerly Wisconsin Correctional Services), was highlighted in 1992 by the National Institute of Justice as an example of best-practices in the management of mentally ill offenders in the community. Three

years ago, the county won a SAMHSA grant to build on the success of CSP with Project AIM, an initiative to divert the mentally ill from prosecution into community-based treatment. Dozens of mentally-ill individuals were successfully diverted, saving jail beds and significantly improving outcomes for participants.<sup>81</sup> But when federal funding ended last year, officials failed to come up with resources to keep Project AIM going.

There have been other lost opportunities as well. In 1995 Milwaukee turned down a \$500,000 Federal grant to launch a drug treatment court because the funds would have covered treatment for participants but not the extra court time the program would have required. As a consequence, Milwaukee's “drug court” is not a therapeutic court designed to keep addicts in treatment, but a speedy-disposition docket where young defendants are quickly charged, convicted and – in many cases – sentenced to prison.

Milwaukee does operate a few innovative and highly-regarded programs, such as the Community Justice Resource Center (formerly known as the Day Reporting Center) and probation review hearings for domestic violence cases. But advocates say these programs are often one grant away from closing their doors, leaving the county with nothing but police, prisons and an overloaded probation system.

### ***A tale of two programs***

A comparison of two programs that were established in Milwaukee to address the rising tide of nonviolent admissions to state prisons and county jails illustrates both the problem with current approaches and the potential for Milwaukee to resume its place as a leader in criminal justice innovation. The first, an “alternative to incarceration” for young drug defendants that begins with four-and-a-half to six months in prison, has experienced operational problems and produced low graduation rates de-

spite success in some areas. The second, a community-based day reporting center that provides supervision and services in lieu of incarceration, is a showcase that has increased enthusiasm among elected officials and judges for community-based sentencing options.

### *The Felony Drug Offender Alternative to Prison*

The Felony Drug Offender Alternative to Prison (FDOATP) program was established in March 2000 as a sentencing option for young men convicted of drug delivery or possession with intent to deliver involving cocaine or marijuana. Over time, the maximum age was raised from 25 to 31, and eligibility broadened to include all controlled substances.<sup>82</sup> Participants must have a substance abuse treatment need and cannot have a prison record, a past firearm conviction or a serious mental health problem. A separate program for women – the Treatment Alternative Program – was launched in October 2004.

FDOATP participants must be recommended by a pre-sentence investigator and sentenced to the program by a judge. Although it is considered an alternative to incarceration, participants are required to spend at least four-and-a-half months in a high-security correctional facility before graduating to a DOC pre-release center placement. Once they leave the Milwaukee Secure Detention Facility and begin Phase II of the program, participants must obtain employment and continue to participate in treatment and educational programming.

Those who graduate to Phase III are allowed to move to a pre-approved residence or transitional living apartment, where they must maintain employment, perform 50 hours of community service, participate in aftercare programming, and attend community/victim speaker panels. Compliance with program conditions is monitored through the use of electronic ankle bracelets (60 days), random weekly urinalysis, and after-hours visits by police and probation agents.

According to an early evaluation of FDOATP conducted by researchers at the University of Wisconsin – Milwaukee, 222 youth were ordered into the program from March 2000 through September 2002.<sup>83</sup> The evaluators found that most participants graduated successfully from the first two phases of the program. Four in five of those that exited Phase I (178) completed successfully (143), while one in

five was revoked (35). Similarly, four of five participants that exited Phase II (123) graduated to Phase III (100), while just one in five was revoked (23).

In other words, nearly twice as many participants graduated from Phase I and II as were revoked. But the results are very different for Phase III. While two-thirds of Phase III participants were still enrolled at the time the data was extracted (66), among those who left the program, just two graduated while 32 were revoked.

Despite a high failure rate in the final phase, many positive outcomes were observed. The evaluators reported that most participants completed substance abuse treatment and that the overwhelming majority tested negative for drugs. They also found that two-thirds of Phase II participants and close to 90 percent of Phase III participants obtained employment. Further, most of those who found jobs were still employed when they left the program (or when the data was extracted, for those still enrolled).

The evaluators noted that breakdowns and problems in program execution during its early years may have left participants ill-prepared for re-entry into the community. The most serious of these was a move in 2001 from the county-operated House of Correction (HOC) to the DOC-operated Milwaukee Secure Detention Facility (MSDF). The move disrupted program management, case management and service delivery, which undoubtedly affected outcomes.

Data obtained from the Milwaukee DA's office show that since the period covered in the evaluation an additional 170 youth have been sentenced to FDOATP (October 2002 through December 2004).<sup>84</sup> Just over a third of these participants had prior criminal records (including misdemeanor convictions) and another nine percent had juvenile records, while a solid majority had no criminal or juvenile record whatsoever. Although no more recent program data are available, DOC officials say changes have been made to the program to improve outcomes.

### *The Community Justice Resource Center*

Milwaukee's Community Justice Resource Center (CJRC), launched in 2000 as a collaborative effort of V.E. Carter Development Services, the Benedict Center and the county House of Corrections,



is based on a different model. CJRC is designed as an alternative to incarceration, providing supervision and services – including electronic monitoring, substance abuse treatment and relapse prevention, GED preparation, job training, counseling, parenting classes and opportunities to do restorative community service – to an average of 75 men and women on probation or parole supervision.<sup>85</sup>

CJRC operates a day-reporting program. Most participants are referred by judges, but the program also accepts referrals from the DOC Division of Community Corrections of people who face revocation. Of 261 people enrolled in the first half of 2004, 78 percent were African American and another seven percent were Latino.

CJRC participants are subject to random urine screening to detect drug use. The rate of negative drug tests for those enrolled in the program during the first half of 2004 was 89 percent. The number of arrests reported for people under CJRC supervision is negligible, with 99 percent remaining arrest-free. Among those who successfully complete CJRC, 75 percent have remained arrest-free over a one-year tracking period. Just 16 percent were convicted of “a like or more serious offense” in the year following successful completion of the program.

Of 1,233 people who went through CJRC since the program’s inception in 2000, 755 (61 percent) completed successfully. Program managers say that, by diverting people from incarceration, CJRC has emptied two housing units at the Milwaukee County Jail and the House of Correction, yielding tangible fiscal savings. And, according to former Executive Director John Givens, the CJRC costs half as much as a day in county jail.<sup>86</sup>

Kit McNally, Executive Director of the Benedict Center, sees CJRC as the first step in a long-term strategy of putting problem-solving resources into the hands of the communities hardest hit by *both* crime and incarceration. McNally worked with local leaders to design and site a new community justice center on Milwaukee’s South Side where youth and returning prisoners access services and community support.

McNally is one of the leading advocates of a more balanced and restorative approach to criminal justice in Milwaukee, and her organization operates several well-regarded programs in the community, including gender-specific programs for women.

## **Other Milwaukee initiatives**

### ***Domestic violence court***

Another program that receives overwhelmingly positive reviews is the use of probation review hearings for domestic violence cases. The hearings are a middle ground between traditional courts, where probationers receive little personal attention from the court and only see a judge after sentencing if they are about to be revoked, and therapeutic courts such as drug treatment courts, where participants often appear before the judge on a weekly basis.

In Milwaukee’s domestic violence court, probation agents make appearances before the sentencing judge every two to three months to report on a probationer’s compliance with supervision conditions and progress in batterer’s treatment or other programming. The probationer may be required to appear as well, and can be subject to immediate sanctions – including a weekend in jail – if he or she fails to meet requirements.

According to Judge Marshall Murray, the program allows him to closely monitor probationers and make sure that they are participating in batterer’s intervention. Through the use of the hearings, Murray is able keep a closer eye on probationers while continuing to carry a significant caseload (300 to 350 cases). Federal funding ensures immediate availability of slots in a batterer’s intervention program.

Judges from the Eighth Judicial District who participated in focus groups convened by the Sentencing Commission say that they, too, have been making greater use of probation review hearings to encourage participation in substance abuse treatment and compliance with supervision conditions. Chief Justice Shirley S. Abrahamson and Director of State Courts John Voelker visited Appleton last February to assess the potential of probation review hearings as a cost-effective alternative to traditional therapeutic courts, which require greater judicial resources.

### ***Community conferencing program***

The Milwaukee District Attorney’s office runs a small Community Conferencing program for defendants with no prior felony convictions who are charged with nonviolent offenses such as theft, fraud and burglary. Recently, the program has also begun to admit 17 year-olds charged with felony

marijuana offenses.

The Community Conferencing program uses restorative justice principles to engage offenders, victims and community members in a process that helps offenders understand and repair the harm caused by their actions. In some cases, defendants avoid prosecution through their participation in the program. Victims also find the process helpful, and appreciate the chance to participate in a meaningful way, according to Assistant DA David Lerman, who directs the program.

A June 2004 report by the Legislative Audit Bureau found that those who participated in the community conferences were two-thirds less likely than members of a control group to be re-arrested.<sup>87</sup> The program – which is funded by the DA’s office and by a federal grant that expires this year – serves roughly 50 offenders and an equal number of victims each year.

#### *Pretrial services*

Pretrial screening and services are offered in Milwaukee for individuals with mental health and substance abuse problems, albeit at lower levels than in the past. In addition to running the Community Support program described above, WCS, which has been an existence over a century, develops and monitors supervision plans for defendants with AODA needs.

Justice 2000, which began providing pretrial services to the Milwaukee Circuit Court in March 2002, creates release plans for mentally ill defendants and provides supervision and case management services if the court agrees to place them on pretrial supervision. The agency also establishes release plans and provides supervision to defendants who are undergoing competency hearings, and recently launched a pretrial release program that seeks to identify detainees who could safely be released with supportive services.

The defendants released by Milwaukee judges to case management in the Pretrial Mental Health Intervention Program show high rates of success under supervision. Program staff estimate that release of defendants from jail to the program saved almost 5,000 pretrial detention days during 2004.

Milwaukee’s two pretrial programs are small, but the track-record they have established is very encouraging. According to Holly Szablewski, the Pre-

trial Services Coordinator for the Milwaukee Circuit Court, there are roughly 150 detainees in the WCS AODA program and 130 detainees in the Justice 2000 mental health program at any given time. Szablewski says that just six to seven percent of supervised releases fail to appear in court, and that three to five percent are rearrested while awaiting trial. Milwaukee also has in-home detention and electronic monitoring programs which can accommodate roughly 70 participants.

#### *Alternatives to revocation*

Using treatment resources made available by the SAMHSA-funded Wiser Choice program, DOC is establishing an alternative to revocation (ATR) program in Milwaukee that will place individuals at risk of being revoked from supervision in community-based treatment. The Wiser Choice ATR will accept probationers and parolees who have AODA treatment needs, can be safely managed in the community, and have at least six months of supervision remaining.<sup>88</sup>

Under the Wiser Choice ATR program, a community “reach-in specialist” will screen candidates at the facility where they are being held (usually MSDF), identify a “care coordination” agency and help develop a “care plan.” Once the individual is released, the probation/parole agent, the care coordinator and the treatment provider will work together to ensure successful transition and effective aftercare.

DOC operates a 302-bed prison-based ATR program, but currently has no comprehensive, community-based option of the type envisioned by Wiser Choice. Most of the designated ATR prison beds are at MSDF (140 beds) and at the Sturtevant Treatment Facility (50 beds), with the remainder scattered at 14 other correctional facilities throughout the state.

The Office of the State Public Defender in Milwaukee has established its own ATR project, staffed by five attorneys, the client services unit and several interns. The Public Defender’s project seeks to prevent revocations by establishing formal ATR plans that address clients’ needs, including substance abuse treatment and other services. Because few resources have been available through the DOC, the program depends largely on persuading local programs to accept probationers and parolees.

## **Other county initiatives**

### ***Drug treatment courts***

Several Wisconsin counties have established drug treatment courts, which employ the criminal justice system as a lever to encourage participation in substance abuse treatment. Drug treatment courts have now been in use for more than a decade in the U.S. and generally get positive reviews from all of the stakeholders involved, including prosecutors, defenders, judges and probation agents.

Dane County's therapeutic drug treatment court has been in existence for close to a decade. The court offers both a treatment track for participants with chemical dependencies, and an education track for participants who are thought to need intensive intervention services but are not necessarily addicted. On June 30, 2004, there were 61 active participants in the Treatment Track and 12 in the Educational Track.<sup>89</sup> Between 1996 and mid-2004, 387 participants graduated, giving the program a 70 percent completion rate.

A comparison between graduates and individuals who were eligible but declined to participate in the program found significant differences in recidivism rates. Among those who graduated and had been out of the program for 12 to 48 months, just 39 percent had been rearrested. By comparison, 45 percent of those who declined the program had been rearrested within the same period.

Data on other outcomes also show significant gains by drug treatment court participants. As of June 30, 2004, 37 percent of graduates had obtained full- or part-time employment. A quarter had enrolled in, or graduated from, high school/GED, college or vocational educational programs.

While the program initially handled almost exclusively people charged with drug possession, its reach has since broadened to include individuals convicted of more serious offenses. In 1999, 88 percent of referrals were for drug possession, but by mid-year 2004 possession cases made up just 66 percent of referrals. Cases of fraud, theft, possession with intent to deliver, burglary, and forgery now make up a third of annual referrals.

The overwhelming majority (78 percent) of drug treatment court participants received outpatient treatment or education services. Fewer than one in five (17 percent) used residential treatment services and five percent participated in day treatment. The

average per diem cost of the program for 2003 was \$17.78, less than a third of the cost of a stay in the Dane County jail (\$60.41 per day) and a quarter of the cost of a stay in prison (\$78.36 per day).

In addition, La Crosse and Monroe counties currently operate drug treatment courts, as does the Menominee tribe. Eau Claire, Pierce and Wood counties are running pilot projects, and Waukesha and Winnebago are exploring launching alcohol treatment courts.<sup>90</sup>

### ***Criminal Justice Coordinating Councils***

Several counties have made efforts to improve coordination between agencies that work in the criminal justice system, in order to improve outcomes and avoid problems like jail crowding. La Crosse, Marathon, Monroe, Portage and Waukesha have established coordinating bodies – often called “criminal justice coordinating councils” – that bring together key stakeholders to discuss emerging issues.

While public attention has focused on expansion of the prison system, jail expansion is spurring discussions of criminal justice policy in several jurisdictions. According to an analysis of jail capacity data by staff at the Wisconsin Statistical Analysis Center, the number of jail beds shot up by 30 percent statewide between 2001 and 2003.<sup>91</sup> Jail expansion can place a heavy burden on local taxpayers who already struggle with high property taxes. The opening of state prison beds for individuals confined on probation and parole holds has eased the pressure this population had created in county jails in southeastern Wisconsin, however probation and parole holds continue to be an issue for other counties.



## Positive trends in state sentencing and correctional policies and what the public thinks

Over the past few years most states in the U.S. have struggled with a severe fiscal crisis. In the face of declining revenues, policymakers – both Republicans and Democrats – have been rethinking many of the costly correctional policies they had embraced when revenues were booming.

In 31 states, policymakers have introduced major reforms in their efforts to cut costs while improving the effectiveness of their sentencing and correctional systems. At least 20 states have rolled back mandatory minimum sentences or restructured other harsh penalties enacted in preceding years to “get tough” on low-level drug defendants or nonviolent lawbreakers. Legislators in at least 24 states have eased prison population pressures with mechanisms to shorten time served in prison, speed the release of prisoners who pose little risk to public safety, and penalize those who violate release conditions without returning them to prison.<sup>92</sup>

While state revenue performance improved somewhat in 2004, many state officials are continuing on a trajectory of reform. New initiatives in state after state are expanding and improving correctional supervision of people in the community instead of incarcerating them. These efforts have focused, in particular, on diverting those with substance abuse problems to treatment, and imposing alternative sanctions for those who violate conditions of probation or parole.<sup>93</sup>

### **Connecticut**

After finding their state ranked number one for prison population expansion in 2002, Connecticut policymakers began taking immediate steps to address the problem. By the end of 2003, Connecticut led the nation in prison population reductions – a remarkable one-year turnaround. Spurred by advocates pressing for reforms, legislative leaders restored previous cuts to probation and alternative sanctions programs that were needed in order to

provide tighter case management and greater access to treatment programs.

In 2004 Connecticut policymakers enacted H.B. 5211, the Prison Overcrowding Act, requiring development of a more comprehensive approach to re-entry for people released from prison, as well as a variety of new efforts to cut down on the number of people who are sent to prison for technical violations of both probation and parole. A 20-percent target was set for reducing admissions to prison in each violation category.

At the same time as they enacted the bill, legislators appropriated \$13.4 million to provide expanded supervision and program services. More than \$7 million was provided for contracts for new residential beds, including \$2.4 million to fund 130 drug treatment beds for people awaiting trial; \$500,000 to fund treatment beds for participants in alternative-to-incarceration programs run by the Judicial Branch’s Court Support Services Division (CSSD); and \$4.4 million for 310 new halfway house beds for people who are eligible for release from prison.

In addition to making a major investment in community-based treatment and halfway house beds, Connecticut lawmakers also gave CSSD \$4.2 million to hire 68 new probation officers and funded the DOC to hire 12 community release officers and a job development coordinator to work with people nearing release from prison (another \$450,000). More than \$1 million was earmarked for creation of “Building Bridges” pilot projects in New Haven and Hartford to aid re-entry for parolees, in keeping with the philosophy of “justice reinvestment.”

H.B. 5211 also spurred a number of administrative reforms intended to improve and streamline the parole system. The pardons board was merged with the parole board and the operation was placed under the administration of the DOC with full-time

### Summary of positive trends in sentencing and correctional policy – 2000-2005

	AL	AZ	AR	CO	CT	DE	HI	IN	IA	KS	KY	LA	ME	MD	MI	MS	MO	MT	NE	NV	NH	NM	NY	ND	OK	PA	TX	VA	WA	WI	WY
Revised sentencing laws and guidelines to reduce penalties				X		X			X	X			X				X													X	
Rolled back or eliminated mandatory minimum sentencing laws				X	X			X				X	X		X								X	X	X					X	
Rolled back harsh truth-in-sentencing laws and habitual offender statutes								X	X							X															
Diverted nonviolent drug defendants to treatment instead of incarceration					X	X	X							X			X	X								X					
Early-release time credits and programs		X						X		X		X				X							X						X	X	
Revised parole standards/increased parole rates	X	X	X		X	X				X	X	X				X		X	X	X	X				X	X	X	X			X
Improved responses to technical revocations			X	X	X					X	X								X	X										X	

professional board members. New parole standards now require that prisoners who become eligible for parole after serving 50 percent of their term must be granted a formal parole hearing when they reach 75 percent of their sentences. Prisoners who become eligible for parole after serving 85 percent of their sentences, those convicted of a crime involving use or threat of force, must receive a hearing when they become eligible.

The act also changed eligibility for administrative parole and authorized release of some prisoners to alternative facilities within 18 months of their parole release date. It increased the maximum period allowed for furloughs from prison, and it authorized compassionate release under particular circumstances.

The following year, the community groups that helped push through the prison overcrowding bill demanded that the state go further by addressing high levels of racial disparity in the use of incarceration for nonviolent drug offenses. Specifically, advocates targeted a mandatory minimum sentencing law that meted out harsher penalties for sellers of “crack” cocaine – who are more likely to be African American or latino – than sellers of powder cocaine – who are more likely to be white.

Led by Robert Rooks, now the national field organizer for the ACLU’s drug law reform project, and Lorenzo Jones, director of the Hartford-based A Better Way Foundation, a coalition of urban and suburban community groups campaigned to equal-

ize weight triggers for crack and powder cocaine, then 1/2 gram and 28 grams respectively. Spurred by an army of activists, Connecticut’s lawmakers were forced to acknowledge that, with Connecticut ranked number one for racial disparity in state incarceration rates, the current law could not be justified, and they responded by setting the threshold for both forms of the drug at 14 grams.

### Maryland

In 2004, Governor Robert Ehrlich signed S.B. 194, a bill designed to expand the options available to judges, prosecutors and the state’s Parole Commission for placing addicted defendants in community-based treatment rather than prison. The initiative was remarkable not only for the high degree of bipartisan consensus it achieved, but also because a broad-based coalition of community groups, treatment providers and civil rights advocates put the issue on the state’s agenda.

In addition to increasing funding for treatment and encouraging local planning for substance abuse treatment needs, the reform package introduces a defendant’s substance abuse problem as a consideration – and structures options for placing a defendant in treatment – at every stage of the criminal justice process. S.B. 194

- Encouraged prosecutors to divert defendants to treatment by creating a new class of case dismissals and suspensions with treatment conditions

- Permitted courts to strike the entry of judgment for individuals who successfully complete treatment ordered as a condition of probation
- Attempted to streamline the process through which substance-addicted defendants are committed to the Department of Health and Mental Hygiene for treatment
- Allowed the Parole Commission to parole most nonviolent prisoners to substance abuse treatment at any time during their terms of incarceration
- Required that an individual’s need for substance abuse treatment be considered before probation is revoked or parole is denied
- Required counties to establish local alcohol and drug abuse councils to coordinate identification of treatment needs and delivery of services

Although S.B. 194 represents an important step forward for Maryland, state lawmakers had already demonstrated their commitment to combating substance abuse several years earlier by approving an \$8 million increase in Baltimore’s fiscal year 2001 treatment funding – the largest single-year increase in the history of the state’s Alcohol and Drug Abuse Administration.

These investments have significantly increased the number of substance abusers receiving treatment in Maryland. In 2000, there were nearly 800 *fewer* admissions to publicly-funded treatment in Maryland than Wisconsin (28,498 vs. 29,279). By 2003, however, Maryland boasted 18 percent *more* admissions than Wisconsin (34,852 vs. 28,498).

## Ohio

One Midwestern state provides a remarkable example of how comprehensive policy reforms and substantial investments in community-based alternative programs can, over time, yield huge correctional cost savings. In 1996 Ohio legislators embraced “truth-in-sentencing” when they enacted Senate Bill 2. They abolished parole release and established a system of flat sentences. They also provided a system of sentencing guidance for judges grounded on basic principles which are developed and enforced by appellate review.

Ohio’s experience is particularly notable because, as they restructured the sentencing system, state policymakers rejected the numerical grid concept used by sentencing guidelines states to shape judicial discretion. Legislators established the overriding

purposes of felony sentencing (public protection and punishment) and provided basic guiding principles and presumptions that set limits on how the sentencing purposes may be achieved. Judges are required to give reasons for their sentencing decisions. The system is enforced by appellate review.<sup>94</sup>

The new sentencing structure was designed to steer more serious, chronic felons to prison while channeling the others to community sanctions. One important principle is conservation of public resources. Under S.B. 2 the most serious offenses (first- and second-degree felonies) carry a presumption of imprisonment, while for fourth- and fifth-degree felonies the presumption favors a community-based sanction. The structure was also designed to discourage unnecessarily lengthy prison terms. Accordingly, a first-time prison sentence will normally be set at the bottom of the sentence range set for the offense<sup>95</sup> – while the maximum term is to be reserved for the “worst form of the offense,” or for defendants that “pose the greatest likelihood of committing future crime.”<sup>96</sup>

S.B. 2 authorized a broad array of community-based sanctions that allow judges to tailor a sentence that may include residence in a community-based correctional facility or halfway house, or require participation in a day-reporting program, electronic monitoring, house arrest, or intensive probation supervision. The objectives of S.B. 2 have been strongly reinforced by provision of increased funding for community-based programs. More than \$9 million was added to the state correctional budget for these programs in 1996, the year S.B. 2 was enacted. Since then the community-based program budget has doubled, totaling more than \$111 million in the current fiscal year.

The new sentencing structure has helped to re-adjust the mix in Ohio’s prison, tilting the population toward individuals with long criminal records and those convicted of violent crimes. Since 1996 the proportion of people sentenced to prison with no convictions for violent crime (current or prior) has steadily declined. At the same time, the share of total prison admissions made up of African Americans has slowly – but consistently – declined.<sup>97</sup>

Prisoners are allowed a modest amount of “earned time” – one day per month – provided they are able to meet a prison program requirement. In the absence of parole, Ohio’s judges retain an extra margin

of discretionary jurisdiction over the prison sentences they impose. They are able to grant a prisoner's release from prison, typically within 18 months to two years of the end of their sentence. In fiscal year 2004 judges granted 1,740 release petitions.

In 1998 the Ohio Adult Parole Authority adopted new parole guidelines that dramatically changed the handling of prisoners sentenced before the guidelines reform took effect. The parole guidelines grid consists of 13 levels of offense severity and a criminal history/risk formula used to score the likelihood of recidivism at four levels of risk. At the intersection of the two scores, the grid provides a range of months for determining the amount of time a prisoner must serve before being released.

Once in place, the parole guidelines intensified the population shifts begun under the sentencing reform, with low-level, nonviolent prisoners gaining parole in record numbers. In December 2002 a decision rendered by the Ohio Supreme Court further stepped up parole eligibility for many "old law" prisoners.

For "new-law" prisoners (those sentenced under S.B. 2) the parole board retains discretion to impose "post-release control," typically three years of post-prison supervision. Of the 28,679 prisoners released in fiscal year 2004, 7,818 were slated for post-release control supervision. The parole board can also order "transitional control" of a prisoner for up to 180 days of pre-parole release, typically to a halfway house. In fiscal year 2004, 1,794 prisoners were granted a transitional-control release.

The combination of structured reforms at both the "front end" and the "back end" has worked to stabilize Ohio's correctional system and to reduce the state's prison population by more than 5,000, allowing closure of two prisons, and saving taxpayers more than \$65 million a year.

Comparing violent crime and incarceration trends in Ohio and Wisconsin since S.B. 2 was adopted provides an interesting contrast. In line with national trends, violent crime declined in *both* states over this period. Ohio has enjoyed a slightly larger measure of relief – a 19-percent reduction, compared to 17 percent in Wisconsin. Yet through the same period Wisconsin's incarceration rate increased by 70 percent, while Ohio man-

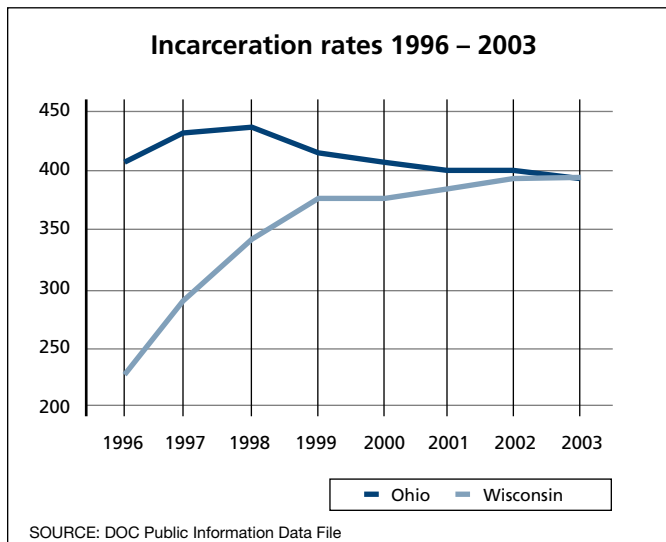
aged to reduce reliance on incarceration, winning substantial savings in prison costs.

### **Public opinion supports treatment over incarceration**

Recent national research on public preferences about crime and corrections also indicates strong support – by a two to one margin – for measures that address the causes of crime over strict sentencing.<sup>98</sup> Among the results,

- A majority of Americans (54 percent) believe that prevention or rehabilitation should be the primary goal for dealing with crime, compared to just 39 percent who favor punishment or enforcement.
- By two-to-one, poll respondents termed drug abuse a medical problem, preferring counseling and treatment over incarceration.
- Most respondents (71 percent) favored mandatory drug treatment and community service rather than prison for those who *sell* small amounts of drugs.
- A solid majority (56 percent) favor eliminating mandatory sentencing such as the so-called "three-strikes" law.
- More than three-quarters thought that investments in after-school programs and other crime prevention strategies would save money by reducing the need for prisons.
- Asked where legislators facing budget deficits should make cuts, they put prison budgets at the top of the list.

These findings are mirrored from coast to coast.



In 2001 four times as many Californians surveyed in a Field poll supported reducing the prison budget as those who supported cutting higher education. A 2003 Potomac poll conducted in Maryland also found prisons at the top of the budget “cut” list.

A Bendixen poll in California released early in 2004,<sup>99</sup> found that an overwhelming majority of those surveyed saw more benefit in funding education over prison construction. The poll also found overwhelming support for diverting a portion of prison expenditures to programs that provide child protective services. And a 2004 Bluegrass poll found that 73 percent of Kentuckians were willing to see funding cuts for the state’s courts and prisons to bring the budget into balance, compared to just 29 percent willing to cut funding for schools and medical care for the poor.

Closer to home, a poll conducted in 2000 in Wisconsin by the Milwaukee-based Public Policy Forum shows that public approval for rehabilitation and prevention strategies is strong.<sup>100</sup> Three-quarters of residents polled in Milwaukee, Ozaukee, Washington and Waukesha Counties said they favored spending tax dollars on preventive approaches over prison. A healthy majority said they would be willing to pay *higher* taxes to fund more drug and alcohol treatment for those who get in trouble with the law, with 65 percent willing to increase taxes to create more alternatives to jail and prison for nonviolent offenders

The poll also marked a shift in public opinion on prison expansion from an earlier survey conducted by the Public Policy Forum. In 1998, PPF reported that 59 percent of those surveyed favored spending tax dollars to expand prisons, but within just two years, the pollsters found that support for prison expansion had fallen to 44 percent.





## What “Treatment Instead of Prisons” could mean for Wisconsin

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There is no doubt that Wisconsin’s substance abuse treatment delivery system would need improvements to prepare it to handle a larger share of the court-involved, substance-addicted population. But the changes that are needed are well known to the state’s policymakers, and the benefits would be very substantial.

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.<sup>101</sup> 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, which costs the state \$28,622 per person per year.<sup>102</sup> Further, research has shown that treatment does far more than incarceration to reduce both recidivism and substance abuse.

### **Who could be sent to treatment instead of prison?**

At the request of Senator Carol Roessler, the Justice Strategies research team 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.

The process began with an extensive analysis of the standing prison population to determine not only how many people are serving time for low-level, nonviolent offenses, but also how and why they were incarcerated. The result was a detailed breakdown of the nonviolent prisoner population by offense, admission type, sentencing jurisdiction, prior criminal record and substance abuse programming need.

Our analysis found that there are roughly 2,900

prisoners serving time for low-level, nonviolent offenses that have limited criminal histories and AODA 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.

At the same time, Justice Strategies researchers interviewed dozens of criminal justice professionals and worked with the Sentencing Commission to design focus groups with judges in three distinct regions of the state. The interviews and focus groups provided a clearer picture of what resources would be needed to successfully redirect prison-bound defendants into community-based treatment, and the barriers that would have to be overcome.

We found that a program that addressed the high need for substance abuse treatment demonstrated by this population, as well as the need for other services designed to stabilize offenders in the community, would make a significant impact on the willingness of judges to redirect “prison-bound” cases to treatment. Such a program would also improve the success rates of those normally placed on probation.

Feedback from the judicial focus groups was integrated with DOC data to project the potential impact of expanding access to treatment on the state’s prison population and correctional resources. Our analysis shows that, if targeted narrowly toward prison-bound defendants – as a sentencing option or alternative to revocation – *the proposed initiative could ultimately generate correctional cost savings of as much as \$4.40 for each dollar invested.*

Even if resources were split evenly between prison-bound individuals and others unlikely to serve prison time, *each dollar spent on treatment and supervision would likely yield between one-and-a-half and two dollars in long-term correctional cost-savings* without counting any of the associated benefits of reduced crime and substance abuse.

**Identification process**

The estimate of 2,900 prisoners was developed by applying a set of screens to DOC data on the standing prison population on June 30, 2004.

First, the population was screened to eliminate prisoners who were serving time for an assaultive or sex offense, including individuals whose major offense was nonviolent but who were also convicted of a lesser violent offense. Further analysis of Wisconsin case data found that just 10 to 16 percent of prisoners whose current convictions were nonviolent had a prior assaultive felony conviction.

Second, the nonviolent population was screened to remove prisoners sentenced for serious offenses such as distribution of large quantities of a controlled substance, major property crimes and OWI resulting in injury.

Third, the low-level, nonviolent population was screened to eliminate prisoners who were unlikely to benefit from substance abuse treatment or drug education because they did not have identified AODA needs and their crimes were not drug-related.

Fourth, the low-level, nonviolent population in need of substance abuse services was screened to eliminate individuals with significant criminal histories, defined conservatively as more than one prior felony conviction.

The population that remained after applying all four screens is comprised of an estimated 2,900 low-level, nonviolent prisoners with limited criminal histories and substance abuse treatment or drug education needs. This group includes 1,400 individuals who were sentenced for drug offenses, 1,000 serving time for property offenses, and 500 incarcerated as a result of OWI convictions.

**Drug offenses**

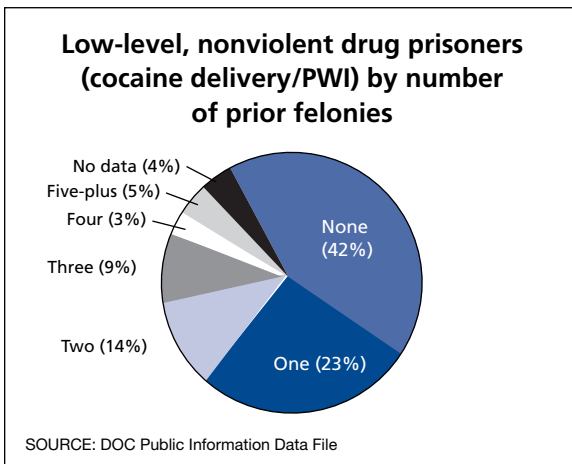
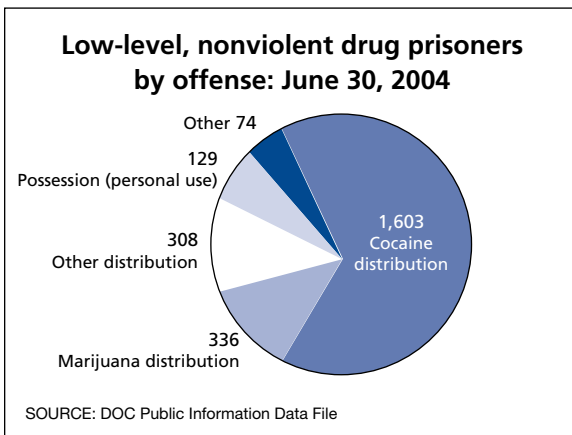
Using the amounts set out in the state’s controlled substance statutes, Justice Strategies researchers identified a set of low-level drug offenses that account for the bulk of drug admissions and prisoners. For the most common offense – cocaine delivery/possession with intent – the cutoff amount was set at 15 grams, less than a third of the 50-gram threshold that makes prison presumptive under Michigan’s sentencing guidelines.

The offenses include:

- Delivery/possession with intent of up to:
  - a) 15 grams of cocaine (Class E, F or G)
  - b) 10 grams of heroin or amphetamines (Class E or F)
  - c) 1 kilogram of marijuana (Class H or I)
  - d) equivalent amounts of other controlled substances
- Simple possession (Class I for a second or subsequent offense in most cases)
- Other (non-delivery/PWI) drug offenses except use of child (Class H or I)

On June 30, 2004, there were an estimated 2,451 Wisconsin prisoners sentenced for the offenses listed above who had no concurrent violent felony convictions.<sup>103</sup> Over half (53 percent) were incarcerated for delivery of a controlled substance. Another 39 percent were serving time for possession of a controlled substance with intent to deliver. Just eight percent were serving time for other drug offenses such as acquisition through a friend or keeping a drug house.

Cocaine offenses accounted for an overwhelming majority of delivery/PWI cases (74 percent), followed by marijuana (14 percent), heroin (four per-



cent) and amphetamines (one percent).<sup>104</sup> Among those sentenced for other drug offenses, three in five (61 percent) were serving time for simple drug possession, with possession of cocaine accounting for almost half (42 percent) of all possession cases.

Most of those incarcerated for low-level drug offenses were sentenced directly to prison (55 percent), although more than a quarter (29 percent) were sentenced to prison after being revoked from probation. The remainder was admitted after being revoked from post-release supervision (parole, mandatory release or extended supervision).

Two in five (39 percent) of those serving time for low-level delivery or possession with intent had no prior felony convictions, and another one in five (22 percent) had just one prior felony conviction. A third (34 percent) of those sentenced for other drug offenses had no prior felony convictions and one in five (19 percent) had one prior felony conviction.

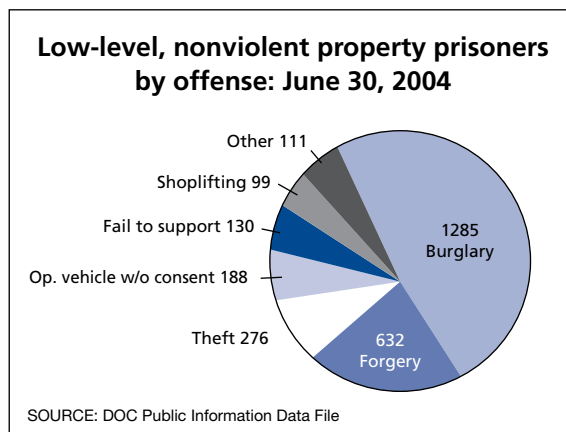
Among the other characteristics of the low-level, nonviolent drug prisoner population:

- Four in five had an identified substance abuse treatment (AODA) need
- Two-thirds were African American
- One in eight was a woman
- Three in five were sentenced in Milwaukee
- A quarter was sentenced in other counties with populations over 100,000
- One in eight was sentenced in counties with populations under 100,000
- One in five was 21 or younger at admission to prison

### Nonviolent property offenses

Justice Strategies researchers also identified a group of low-level property offenses that significantly drive Wisconsin's nonviolent prison population. These offense include:

- Burglary (excluding those involving weapons or injury)
- Theft (excluding fraud, embezzlement, pick-pocketing and amounts over \$10,000)
- Shoplifting/retail theft (excluding amounts over \$10,000)
- Operating a vehicle without consent (joyriding only)
- Forgery, forgery/uttering and worthless checks
- Misappropriation of personal identification

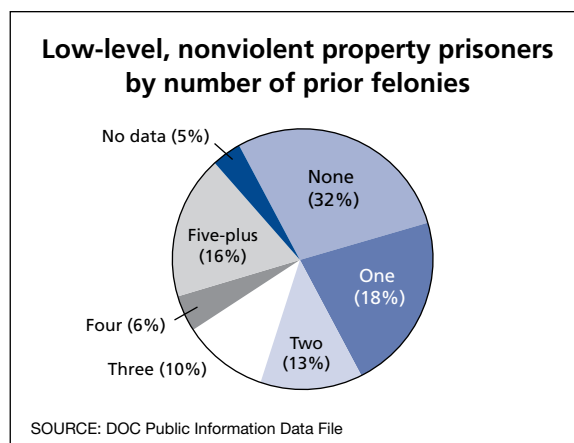


- Receiving stolen property (excluding amounts over \$10,000)
- Failure to support

On June 30, 2004, there were roughly 2,500 Wisconsin prisoners sentenced for the offenses listed above who had no concurrent violent felony convictions.<sup>105</sup> Analysis of case data going back to 1990 shows that just one in six (16 percent) had a past violent felony conviction.

Nearly half (47 percent) of the population were serving time for burglary, followed by forgery (23 percent), theft (10 percent), operating a vehicle without consent (seven percent) and failure to support (five percent).

Overall, three in four property prisoners (76 percent) had an identified substance abuse treatment need, with those convicted of burglary exhibiting the greatest need (82 percent). Nearly a third (32 percent) of property prisoners with substance abuse treatment needs had no prior felony convictions when they were admitted to prison, and 18 percent had only one conviction.



Among the other characteristics of those incarcerated for low-level, nonviolent property offenses:

- Three in five were white
- One in every nine was a woman
- Nearly two in five were sentenced in Milwaukee
- Over a third were sentenced in other counties with populations over 100,000
- Over a quarter were sentenced in counties with populations under 100,000
- One in five – two in five among first-felons – was 21 or younger at admission

**Operating While Intoxicated**

On June 30, 2004, there were 751 individuals incarcerated for OWI incidents not resulting in injury with no concurrent violent felony convictions. Just one in ten OWI prisoners had a past Wisconsin conviction for an assaultive felony. Virtually all had substance abuse problems. Half had no prior felony convictions, and less than a third (31 percent) had more than one prior felony.

Among the other characteristics of Wisconsin’s nonviolent OWI prisoner population:

- Nine in ten were white
- One in every twelve was a woman
- One in nine was sentenced in Milwaukee
- Half were sentenced in other counties with

- populations over 100,000
- Two in five were sentenced in counties with populations under 100,000

**Projected impact of expanding treatment as an alternative to incarceration**

Expanded provision of quality substance abuse treatment, in combination with other services designed to stabilize offenders in the community, could impact the state’s prison population in several ways.

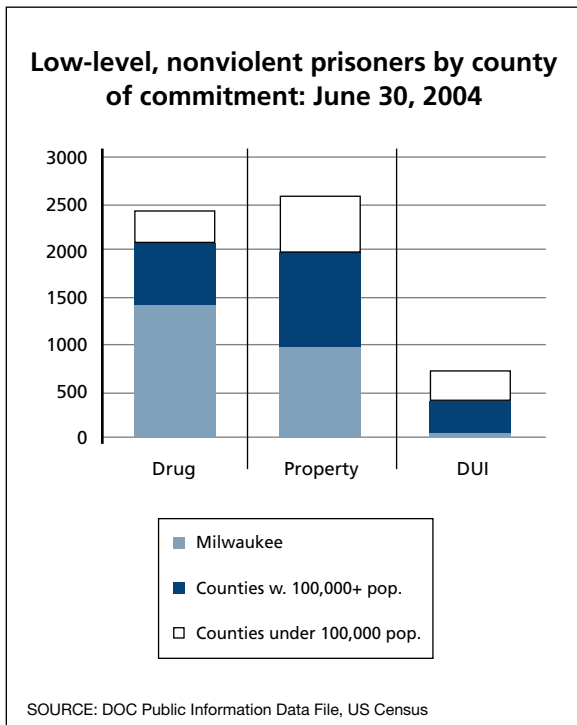
- First, judges indicate that, if more substance abuse treatment and “wrap-around” services were available, they would be eager to use them as a sentencing option for nonviolent defendants, including many who are currently being sentenced to prison.
- Second, expanded community-based treatment could serve as an alternative to revocation (ATR) for probationers and parolees whose substance abuse problems have put them of risk of being revoked.
- Third, expanding access to treatment and “wrap-around” services would improve the success rates of those currently on probation and parole, reducing the number at risk of revocation.
- Fourth, a wealth of research on the effectiveness of treatment interventions shows that substance abusers are significantly less likely to recidivate if treated, which reduces levels of crime and prison admissions over the long term.

The objectives of the current proposals to expand treatment programs in Wisconsin are to reduce levels of criminal behavior and addiction, and – as discussed above – there is ample evidence that these aims can be achieved.

Our estimate of the potential impact, however, focuses more narrowly on the direct effect on sentencing and revocation patterns in order to arrive at a conservative estimate of how investments in treatment and related services might impact prison populations, thereby reducing correctional costs. Any broader cost-savings or other benefits obtained by preventing crime and curing addiction are over and above the savings estimates presented here.

**Key assumptions**

*Between 10 percent and a third of nonviolent felony cases that currently result in a prison sentence would be redirected to community-based treatment if adequate resources and supervision were available.*



Aside from a small number of cases in which a prison term is mandatory, Wisconsin judges have sole discretion over whether an offender receives a prison or probation sentence. Milwaukee judges who participated in focus groups conducted by the Sentencing Commission indicated that they would grant probation in a large proportion of cases that currently result in a prison sentence – between 30 and 40 percent – if substance abuse treatment, “wrap-around” services and meaningful supervision were provided. Elsewhere, judges suggested that a small number of prison-bound drug and property cases, and a somewhat larger number of OWI cases, would be redirected to probation if quality treatment were made available.

The feedback from judges was used to estimate the proportion of admissions that would have been avoided under the proposed initiative. In Milwaukee, we projected that a third of the nonviolent prison-bound cases would be redirected – a figure from the low end of the range suggested by judges. Outside Milwaukee, the “redirection ratio” for drug and property cases was set at a modest 10 percent, and the ratio for drunk-driving cases was set at 25 percent based on strong statements made by several judges concerning their reluctance to incarcerate solid community members with no other criminal history.<sup>106</sup>

*Half of prisoners who were admitted after being revoked from probation or parole supervision, and who met DOC ATR program criteria, would have been given the opportunity to participate in treatment as an ATR if resources were available.*

Quality community-based treatment could be used not only as an up-front sentencing option for judges but also as an alternative to revocation of community supervision. Generally, ATR programs are not available to individuals who are revoked from supervision with new criminal convictions, but instead are used for “technical violators” – those who have difficulty complying with supervision requirements, often as a result of substance use.

The DOC recently launched a community-based ATR program as part of the federally-funded Wiser Choice initiative in Milwaukee. The program accepts felony probationers and parolees at risk of revocation who:

- Can be safely managed in the community with programming

- Have at least six months of supervision remaining
- Have identified AODA treatment needs that relate to their criminal behavior

*The success rates of individuals sentenced to treatment rather than prison under the proposed initiative would approximate those of current felony probationers. Somewhat lower success rates would be anticipated for individuals placed in treatment as an alternative to revocation.*

The success rates of individuals placed on probation in 2000 for low-level drug, property and OWI felonies previously discussed (Chapter 1) provide a baseline for estimating success rates under the proposed initiative. These success rates, which range from 69 percent for drug probationers to 59 percent for OWI probationers, are based on a somewhat different population than would be redirected from prison to community-based treatment under the proposed initiative.

If prison-bound defendants were simply redirected to probation without being provided the treatment and wraparound services contemplated under the proposed initiative, they would likely fail at a higher rate than current probationers, who make up the low-risk end of the criminal justice population. On the other hand, substance abuse treatment has been shown to substantially reduce recidivism, which could bring the failure rate for those redirected from prison below that of current probationers. Weighing these factors together for purposes of this analysis, we assumed that success rates might approximate current probation success rates.

We assume that individuals placed in a community-based treatment ATR would be more likely to fail than those sentenced to a treatment program by a judge, since ATR participants have not only already demonstrated difficulty complying with conditions of supervision, but also include a greater number of individuals re-entering the community from prison.

*The proposed initiative would reduce the prison population by allowing successful participants to avoid the prison term they would otherwise have had to serve under truth in sentencing. The initiative could further reduce the population further by allowing successful participants to avoid the portion of their extended supervision terms they would have spent behind bars after being revoked.*

Defendants sentenced to treatment as an alternative to incarceration who succeed would avoid not only 24 months of incarceration, but also 37 months of extended supervision – the average terms currently imposed on the target population. Since the confinement term imposed at sentencing is the absolute minimum any prisoner who does not graduate from an earned release or challenge incarceration program can serve, it provides a solid basis for projecting program impact.

The bed-savings achieved by successfully redirecting prison-bound individuals to community-based treatment go beyond the initial confinement time avoided, however, to include whatever extended supervision time these individuals might have served behind bars as a result of revocations. As discussed (see Chapter II), analysis of outcomes for individuals who were scheduled to have completed extended supervision by June 30, 2004 suggests that 40 percent of those placed on extended supervision could be revoked, and that between 20 and 24 percent of extended supervision time might be served in prison.

A separate analysis comparing outcomes for probationers and individuals on extended supervision suggests that the rate of failure on extended supervision, and the amount of extended supervision time served behind bars, could be even greater over a longer supervision period. The data show that individuals on extended supervision were more than twice as likely to be revoked as probationers over a 12- to 18-month period.

If this pattern continued, the proportion revoked from extended supervision could ultimately reach as high as two-thirds – twice the four-year probation failure rate – with over a third of extended supervision time becoming prison time. The information available is too limited to allow for reliable estimates of the prison-bed impact of avoiding extended supervision revocations, so we have set a conservative range, between 10 percent and a third, for the amount of extended supervision time that might become prison time.

### *Projected impact*

Using the assumptions described above and DOC data, it is possible to project the bed-savings and fiscal impact of expanding treatment services. DOC data show that, between June 30, 2003 and

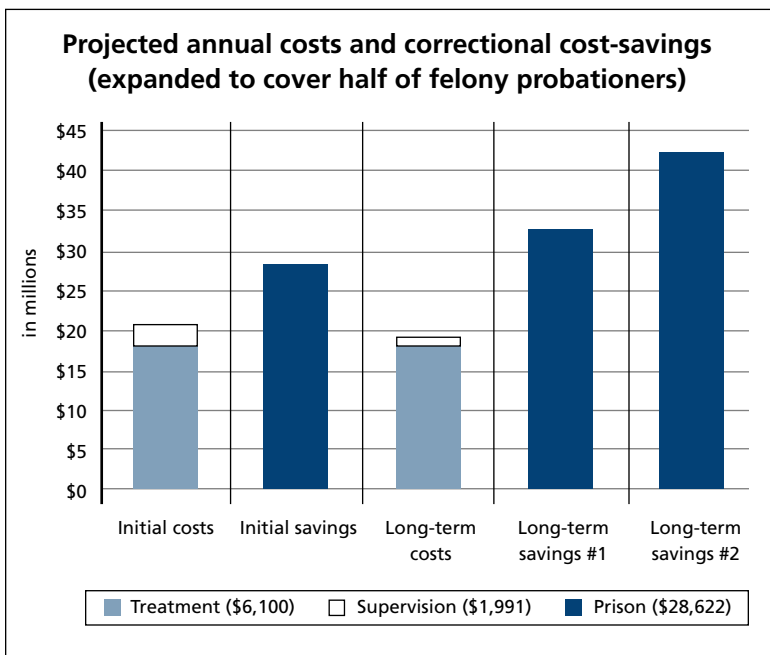
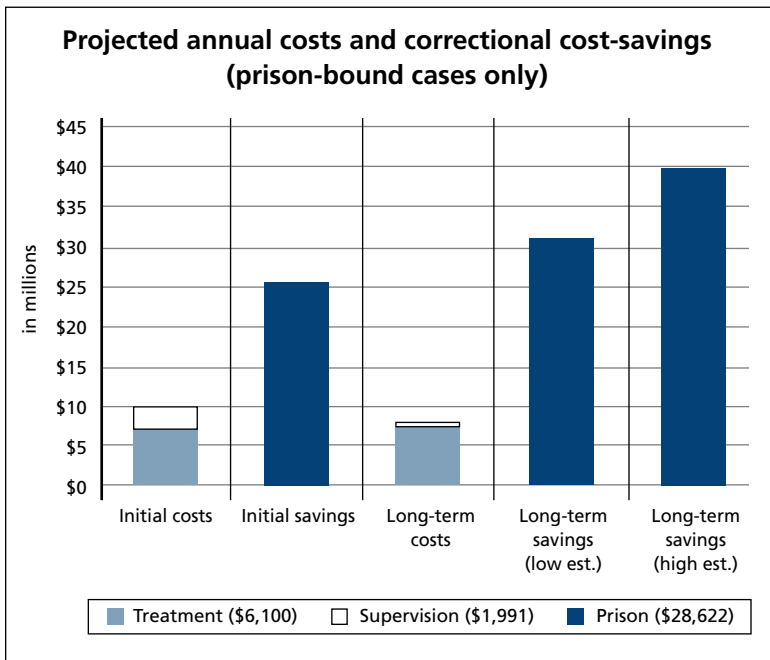
June 30, 2004, there were 1,818 prison admissions of individuals not revoked from supervision whose major offenses were nonviolent.<sup>107</sup> Just over half (951) were sentenced in Milwaukee and most (1,016) were convicted of drug offenses. It is estimated that, if quality services and supervision were available, judges would have redirected 440 prison-bound individuals to community-based treatment.

Of those who were redirected, it is assumed that 291 would complete both the treatment program and the term of probation supervision successfully, while 149 would fail and have their probation revoked. By avoiding an average 24-month term of confinement, successful treatment participants would be expected to free up nearly 600 prison beds that currently cost the state over \$16 million to operate annually.<sup>108</sup> Further, successful treatment participants would avoid serving, and being revoked from, extended supervision terms, which might save up to 300 additional beds over the long term.

Aside from those sentenced to community-based treatment as an alternative to incarceration, hundreds of probationers and parolees might benefit from the use of treatment as an alternative to revocation. On June 30, 2004, DOC data show that there were 1,391 prisoners serving time for low-level, nonviolent offenses who appeared to meet the ATR criteria established under the Wiser Choice initiative (i.e. revoked with no new convictions; had identified AODA programming needs).

Of this number, we estimate that at least half (696) could have been enrolled in a community-based treatment ATR, with roughly half of that number (340) succeeding and avoiding revocation. By freeing up 340 prison beds, the state could save up to \$10 million in annual correctional costs. Further, avoiding a prison sentence would also mean avoiding a term of extended supervision for probationers, who make up nearly two-thirds of the ATR target population. This, in turn, might result in saving an additional 60 to 190 beds each year over the long term – a potential annual savings of \$1.6 million to \$5.4 million.

If the proposed treatment initiative were narrowly targeted to redirect the prison-bound defendants described above, the new treatment programs would have to serve roughly 1,135 individuals each year. Using an estimated cost of \$6,100 for treatment, wraparound services and case management,



the cost of the program – excluding additional supervision costs – would be \$7 million.

Growth in supervision caseloads resulting from the redirection of individuals from prison to probation might increase annual supervision costs by as much as \$3.5 million during the first few years.<sup>109</sup> Once extended supervision savings kicked in, however, added supervision costs could drop to around \$1.6 million each year as the growth in probation caseloads is offset by reductions in extended super-

vision caseloads.

Employed exclusively as a sentencing option or ATR for prison-bound offenders, an \$11 million investment in treatment and supervision could yield direct savings of \$26 million annually. The figure would grow to between \$30 million and \$40 million over the long term if expected savings related to revocation of extended supervision are realized, while costs could fall to \$8.5 million due to declining extended supervision caseloads.

In other words, each dollar invested in treatment and supervision could return \$2.50 in direct correctional cost-savings within the first few years of full program operations, and might return as much as \$4.65 in correctional cost-savings over the long-term.

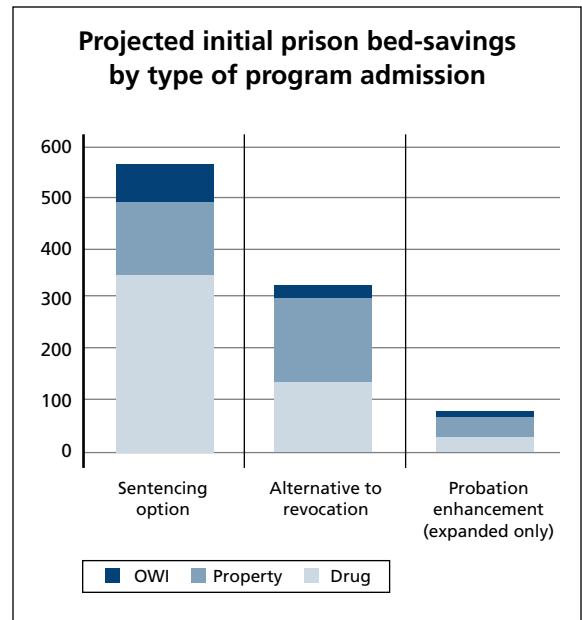
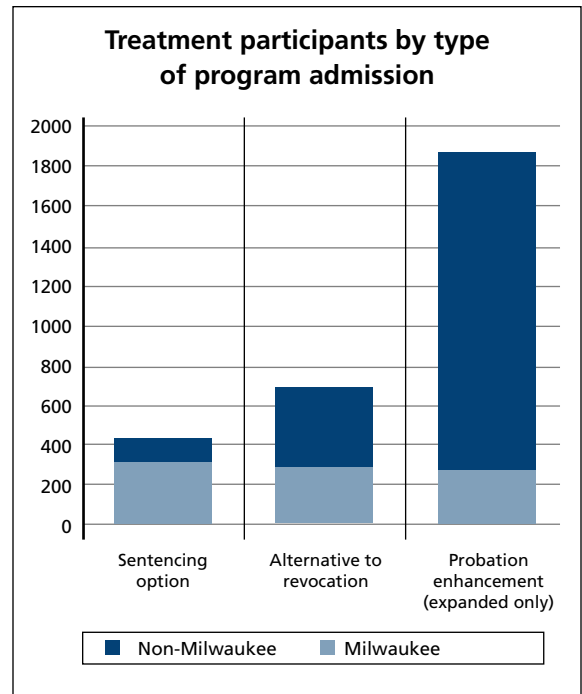
Extending treatment services to a larger pool of defendants in need of such services would benefit not only prison-bound individuals but also many who are currently being sentenced to probation or terms in county jail. If the initiative covered *half* of the more than 5,000 individuals sentenced to felony 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, and fall to \$20 million thereafter.

Although expanding the scope of the initiative would not greatly increase anticipated bed-savings, it could have some effect. If just 10 percent of prisoners that were revoked from supervision with a new conviction (a population not counted in the previous estimates) avoided revocation because they received treatment while under supervision, annual savings could grow by another \$2.6 million.

While \$22 million a year represents a major investment, it is still less than the \$29 million in annual correctional cost-savings that could be

achieved in the first few years of the program. Further, as the long-term extended supervision savings kick in, the cost of the initiative could fall to \$20 million a year while annual correctional savings could reach anywhere from \$33 million to \$43 million.

As a consequence, each dollar invested in an initiative that provided treatment to both prison-bound and non-prison-bound defendants could return \$1.30 in direct correctional cost-savings in the short term and up to \$2.15 over the long term. These savings do not include those that would accrue to counties through reductions in local jail populations, or other savings realized by reducing costs associated with crime and substance abuse.







## Recommendations

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### ***Invest in high-quality, community-based substance abuse and mental health treatment for the criminal justice population***

**Recommendation:** Increase funding for community-based substance abuse treatment – employed as an alternative to incarceration and as an enhancement of probation – by \$22 million annually.

Substance abuse is a major problem in Wisconsin. The state ranks second in the nation on self-reports of binge drinking and falls in the top half of states for reported cocaine use. Many judges say that substance abuse is the number one driver of criminal caseloads, and DOC data show that substance-related offenses – OWI and drug crimes – accounted for 60 percent of all prison population growth over the last five years.<sup>110</sup>

For two decades, Wisconsin policymakers have responded to the problem by pouring millions of dollars into police and prisons, while allowing the state's treatment infrastructure to remain woefully underfunded. A Bureau of Mental Health and Substance Abuse Services estimate indicates that just one in every seven state residents with a substance abuse disorder is receiving treatment. Yet prison admissions for nonviolent drug offenses grew ten times as fast as admissions to substance abuse treatment over the last five years.

There is growing recognition that the 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. Wisconsin is fortunate to be a recipient of a \$26 million Access to Recovery grant that will go a long way toward expanding access to treatment for Milwaukee parolees and other county residents. But

even in Milwaukee, there is no guarantee that the federally-funded Wiser Choice initiative will eliminate waiting lists or make treatment available to probationers before trial or at sentencing.

If the state is to have any hope of reigning in prison population growth and making headway in the fight against addiction, lawmakers must make a major investment in quality community-based treatment, supervision and “wrap-around” services. The establishment of the grant program for local treatment-based alternative-to-incarceration programs is a step in the right direction. But it will remain a small step until the legislature funds the program at a level sufficient to make a meaningful impact on sentencing patterns.

Other state policymakers have recently increased funding for community-based substance abuse treatment. Lawmakers in Wyoming, which has a smaller population than the city of Milwaukee, have invested over \$35 million in early intervention, prevention and treatment since 1998 to combat methamphetamine use – including \$1.7 million for drug treatment courts. When Kansas legislators approved changes in the state's sentencing guidelines to divert drug offenders from prison to treatment in 2003, they also appropriated \$6 million to expand treatment services. In 2004 Hawaii legislators appropriated \$14.7 million for this purpose. And in June of last year, Oklahoma approved \$8 million for the expansion of drug treatment courts – a figure that will grow to \$16 million annually in fiscal year 2006-2007.

In order to assess the potential impact of expanding access to substance abuse treatment and wraparound services, Justice Strategies initiated a comprehensive research process that included analysis of data provided by DOC and other state and local agencies; extensive interviews with criminal justice professionals and social service providers; and observation of focus groups organized for judges by

the state’s Sentencing Commission. 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.<sup>111</sup>

A major investment in substance abuse treatment is a necessary, but not sufficient, condition for reducing correctional costs and enhancing public safety. In interviews and focus-group discussions, judges and other criminal justice professionals clearly articulated the need for a treatment system that provides timely, appropriate and comprehensive services which are closely coordinated with effective supervision.

A successful strategy for redirecting prison-bound defendants into community-based treatment must address other issues that directly impact an individual’s capacity to lead a crime- and addiction-free life. For example, in Milwaukee, those who work in the criminal justice system cite lack of job skills and opportunities as contributors to both crime and incarceration. Substance abuse treatment must be coupled with supportive services that meet the need for counseling, education, job training and placement, safe and substance-free housing, and aftercare – without which treatment may be rendered ineffective.

Wrap-around services increase the cost of treatment, but experts at Drug Strategies cite evidence that they are extremely cost-effective. Outpatient treatment enhanced with wrap-around services in Philadelphia delivers an estimated cost/benefit ratio of more than six to one.<sup>112</sup> The cost of such wrap-around services is built into the projections presented here and should be included in any program funded through the proposed initiative.

Redirecting nonviolent substance abusers from prison to community-based treatment requires not only increasing the availability of treatment but also improving the quality of probation and parole supervision. Wisconsin’s community corrections system, like the state’s treatment infrastructure, has been under-resourced and overburdened for many years. A portion of the \$20 million to \$30 million in annual net savings (correctional savings less treat-

ment and supervision costs) that could be achieved through the use of treatment as an alternative to incarceration should be redirected to reduce case-loads, improve training and make other changes necessary to restore the confidence of judges and other stakeholders in the community corrections system.

In some cases, the availability of quality treatment and case management will persuade judges to redirect prison-bound defendants into community-based programs. In other cases, however, improved probation supervision will be a precondition for judges to consider placing defendants in a community setting. For this reason, the legislature should consider providing increased funding or taking other steps to encourage the DOC to enhance probation supervision.

Third, the state should provide technical and financial assistance to help rural jurisdictions close the “treatment gap.” BMHSAS data show that substance abusers are less likely to receive treatment in rural areas than elsewhere. Many rural counties lack the capacity to handle serious problems with alcohol and, increasingly, with methamphetamine. Rural counties may need assistance from the state to attract and hold qualified treatment professionals.

**Recommendation: Increase funding for mental health services and support the establishment of diversion programs designed to keep the mentally ill out of the criminal justice system.**

The challenge of accommodating the mentally ill in the justice system has grown as some financially strapped counties have begun refusing to provide mental health care to probationers and parolees because they are legally “state clients”. Although caring for the mentally ill can be costly, especially for those who have been “dually-diagnosed” with both mental health and substance abuse disorders, the long-term fiscal and human costs of allowing mentally-ill individuals to cycle in and out of prisons and jails are even greater.

Policymakers should begin by re-establishing and expanding Project AIM, Milwaukee’s innovative mental health diversion program that was shut down in 2004 after federal funding lapsed. According to Jill Fuller, who ran Project AIM for Wisconsin Community Services, the diversion program

could cost as little as \$150,000 a year to operate in Milwaukee – enough for three “boundary-spanners” to screen arrestees before their first appearance – because case management and mental health treatment are already being provided through Justice 2000 and the county, respectively. Funding should also be made available to other counties that want to implement early screening and diversion programs for court-involved mentally ill individuals.

In addition to the Project AIM model, counties may want to consider establishing therapeutic mental health courts, similar in philosophy and practice to drug treatment courts, which have been launched in several jurisdictions including Brooklyn, New York, Baltimore, Maryland and Broward County, Florida. An evaluation of the Broward County court found that, when compared to similarly situated defendants, participants were twice as likely to receive mental health treatment and spent 75-percent fewer days in jail.<sup>113</sup>

***Arm policymakers and judges with information needed to deliver better, more cost-effective outcomes for defendants, victims and communities.***

In her 2005 address on the state of the judiciary, Chief Justice Shirley S. Abrahamson highlighted the importance of good information to achieving the goal of uniform justice that takes individual circumstances into account. Judges who participated in the Sentencing Commission’s focus groups also cited the need for better information about the defendants who appear before them, about interventions and programs that have been shown to be effective, and about the outcomes of the cases they have sentenced.

Justice Abrahamson talked about the need to “strive for a degree of uniformity in sentencing without losing sight of the fact that no one-size-fits-all solutions are available to resolve the complex problems we face.”<sup>114</sup> She suggests that the state’s Sentencing Commission can play a role in improving jurisprudence by helping judges examine sentencing outcomes and informing the larger policy discussion surrounding sentencing.

**Recommendation:** Establish an Early Case Assessment and Referral system that puts information regarding defendants’ need for treat-

ment 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.

Given the degree of chronic alcohol and substance abuse among the criminal justice population, identifying and addressing the treatment needs of defendants should be a high priority. Once identified, these needs too often go unaddressed for lack of a timely, appropriate referral. Many defendants with substance abuse disorders are placed on long waiting lists. Some are subjected to long and costly jail stays until a slot opens up, while others released on pretrial or probation supervision are at high risk of reoffending because of their addictions.

The perception that nothing is available discourages defendants, defense attorneys and prosecutors from exploring treatment options. That perception also encourages judges to impose prison terms in the hope that addicts will get the treatment they need behind the walls.

Assessment of treatment needs and referral to appropriate programs should be completed as early as possible in order to ensure that the placements are appropriate, and that opportunities are not lost to divert offenders from prosecution or have them placed on probation with treatment conditions.

More than a decade ago the Wisconsin Correctional Services agency in Milwaukee (now Wisconsin Community Services) operated an early screening center in the Public Safety Building where people were taken directly after arrest. In the course of interviewing arrestees to determine their suitability for pretrial release, WCS staff performed a quick assessment of their substance abuse and mental health needs. Relevant information about treatment needs and available programs was provided to court officials at the initial stage of each case. When treatment was ordered, the agency took responsibility for case management – making appropriate referrals for more in-depth, professional assessment of treatment needs, verifying program admissions, tracking progress in treatment, and providing reports detailing compliance (or noncompliance) to court officials. An early case screening, referral and case management system such as this is an essential tool for effective intervention and treatment.

**Recommendation:** Improve data collection at all levels of the criminal justice system and expand the Sentencing Commission’s capacity to conduct research on sentencing and correctional trends and outcomes.

The Sentencing Commission should be provided with adequate resources to support in-depth research on sentencing practices and outcomes for dissemination to judges and other criminal justice system stakeholders. As they make sentencing determinations, judges need up-to-date information about best practices and effective programs, including surveys of national research and evaluations of local programs, as well as information about outcomes for the defendants they have sentenced.

The causes of regional disparity in sentencing outcomes, as well as racial/ethnic disparity in incarceration rates, should be investigated in order to determine what policy changes or program resources are necessary to advance the goal of equal justice. For example, the vast disparity between sentences imposed for similarly situated defendants in Milwaukee and the rest of the state raises questions of equal justice and demands further study. By convening judicial focus groups, the Sentencing Commission has helped illuminate one contributing factor: Milwaukee judges indicated that they sentence a much higher proportion of defendants to prison each year, not because incarceration is the only or the best means of protecting the public, but because the existing alternatives to incarceration are inadequate.

Factors that have allowed some Wisconsin jurisdictions to reduce their reliance on incarceration should be identified in order to uncover successful strategies that could be replicated elsewhere. Some of Wisconsin’s most populous counties – Kenosha, Racine and Rock – are bucking the statewide trend by incarcerating *fewer* people than they did five years ago, while Dane County has succeeded in keeping growth far below the state average.

Between 1999 and 2004, the number of beds occupied by prisoners sentenced in Dane, Kenosha, Racine and Rock counties fell by nine percent, while the number of prisoners sentenced elsewhere rose by 24 percent. Collectively, the four counties can be said to have “saved” more than 1,100 prison beds and over \$30 million in state corrections spending that would have been necessary if their use of prison

beds had kept pace with the rest of the state.

Use of prison beds is determined by many factors, of which some – changes in population and crime rates, for example – are outside the control of local or even state officials. However, local and state officials do have control over such critical factors as policing, prosecution, sentencing, and supervision of probationers and parolees.

It may be, for example, that the nine million dollars legislators invested in 2000 to enhance probation services for Dane and Racine counties paid off. Similarly, Dane County’s drug treatment court could have played a role in a 17-percent reduction in the number of beds that county has used for non-violent drug prisoners over the last five years.

Whatever the answer, uncovering the factors driving the state’s incarceration trends could be enormously beneficial, since it might allow cost-effective practices and model programs to be replicated statewide. If the rest of the state had been able to mirror trends in Dane, Kenosha, Racine and Rock over the last five years, Wisconsin would have 4,500 fewer prisoners and be spending roughly \$120 million less on corrections each year.

If funding is provided to expand substance abuse treatment services, Wisconsin’s policymakers will need to know whether the investments they make meet their objectives – reducing use of illegal drugs, enhancing public safety and reducing reliance on incarceration.

***Support local innovations that enhance public safety while reducing costly reliance on incarceration.***

**Recommendation:** Support the expansion of local alternatives to incarceration using a mix of state grants, community corrections subsidies and state purchase of local services for the probation and parole population.

The current system of criminal justice funding encourages local jurisdictions to sentence defendants to prison and let the state pick up the tab, rather than spend limited local funds on effective community-based alternatives that would do more to protect public safety over the long term. Nevertheless, local jurisdictions have responded to the failure of traditional mechanisms to deliver desired outcomes with innovative programs that combine

the resources of the criminal justice system with other social services and community supports.

All too often, however, these local initiatives depend on grant funds that are exhausted within a few years, after which they must close their doors or limp along without sufficient resources. The state should fully support local efforts to develop and sustain community-based alternatives since they will ultimately reduce state corrections costs.

During the 2005 session, the legislature established a grant program that could be used by counties and regional consortia to fund alternatives to incarceration. The initiative represents an important step in the right direction although it is currently under-funded. Funds made available by the legislature to launch new day-reporting centers and fund re-entry planning and services will also help relieve some of the burden probation and parole populations place on county social services.

However lawmakers may want to consider a more comprehensive approach to funding community corrections at the local level. It is clear that the best results can be achieved by allowing each jurisdiction to develop strategies that best address local needs and maximizes the use of local resources. Yet given budget constraints, it is unlikely that the state could continue full funding for local treatment initiatives if anticipated reductions in prison commitments did not materialize. Realizing the full potential of an initiative that supports local justice innovation will require effective accountability mechanisms and incentives for reducing reliance on imprisonment.

State efforts to create incentives for greater reliance on locally-based community corrections are nothing new. Effective models can be traced back for decades. Seeking to better balance the state-county correctional relationship in California, lawmakers established a special probation supervision subsidy in 1966. Policymakers were concerned with the increased cost of incarceration in state prisons and juvenile institutions, and they were impressed with promising concepts for supervision and treatment in the community. Studies had established that substantial numbers of people could be safely re-directed from the state prison system to local community corrections if financial incentives for doing so were provided.

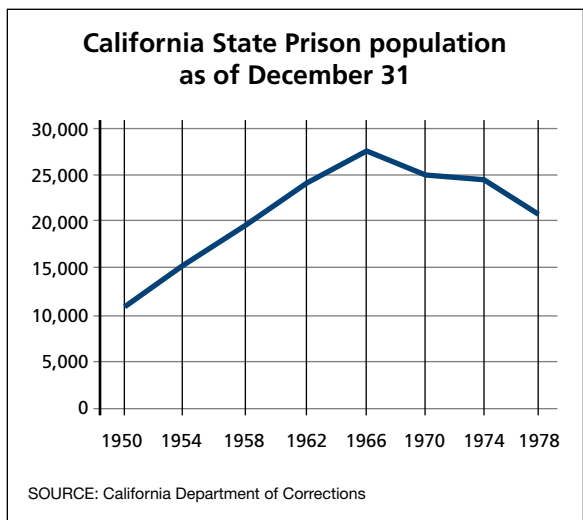
California's subsidy program was a cost-sharing

program designed to improve community supervision and expand program services. Counties that volunteered to participate were reimbursed in proportion to the number of cases they kept in the community and out of state institutions. The rate of payment was set to reflect a substantial share of the cost of maintaining prisoners in state custody. The amount paid to each county depended on the number of reduced commitments, measured against the yardstick of its average rate of commitment per hundred thousand residents during a prior five-year baseline period. The goal was to reduce commitments by 25 percent overall, but no individual county was held to this level of achievement.

The state encouraged counties to use the subsidy to fund a wide range of programs to strengthen probation supervision – from mental health services to educational and vocational programs, family services and job placement. The intent was to support local innovation and flexibility.

Changes in state commitment rates during Ronald Reagan's first gubernatorial term were dramatic. Adult commitments to prison leveled off almost immediately while juvenile commitments plummeted. The state's goal of a 25-percent reduction in commitments was achieved by the end of the second year. By 1969 the proportion of superior court commitments to prison had dropped to 10 percent from 23 percent just four years earlier.<sup>115</sup>

By the end of its first decade participating counties had received more than \$160 million and state officials deemed the program a resounding success, claiming a fiscal savings of over \$120 million.<sup>116</sup>



Evaluators of the subsidy program were quick to point out that not all of the decline could be attributed to the incentive structure. They cited a variety of other factors which likely were in play – from improved legal representation for indigent defendants to growing judicial disillusionment with the results of imprisonment. Analysts at the California Department of Finance offered a conservative assessment of the subsidy’s impact. They estimated that at least 46 percent of commitment reductions could be directly attributed to the subsidy program, an impact on both adult and juvenile commitments they termed “substantial.”<sup>117</sup>

In Los Angeles County, by far the state’s most populous and diverse urban area, the level of reduced commitments was well above that for the state as a whole. By 1972 the commitment rate had declined by 52 percent in Los Angeles, while the average decline for all counties was 38 percent.

Prior to introduction of the subsidy program California’s rate of commitments to state institutions had far exceeded the national average. In 1964 California’s rate was 64.8 per 100,000 residents, compared to the national rate of 39.4 (excluding California). Over the first five years of the subsidy program, while California’s rate declined to a low of 37.5, the national rate first stabilized and then began to increase, reaching 46.1 in 1971. By 1975 California’s commitment rate had risen again to 45.9 – but the national rate had soared to 54.7.<sup>118</sup>

The subsidy program played a substantial part in reducing state commitments of both adults and juveniles, and had kept many in the community who earlier might have been committed for some minor offense or a technical violation of probation:

“If something firm is to be learned from probation subsidy experience, it is that offenders previously thought to require incarceration can be kept in the community with increased surveillance, better methods of internal accountability, and more communication between probation officers and police.”<sup>119</sup>

California’s probation subsidy program continued throughout the 1970s, but introduction of California’s determinate sentencing law in 1976 marked a sea change in the state’s sentencing and correctional policies that eventually swamped the subsidy’s incentive power, sending prison population levels through the roof.

The concept of using fiscal incentives to reduce reliance on incarceration and to stimulate development of effective correctional alternatives and crime prevention programs in local communities has recently re-emerged. New efforts to build *community justice* and foster *justice reinvestment* are stirring interest again in ways to shift state funds from institutional corrections to strengthen the communities where crimes take place, in order to build local capacity for social control and enhance public safety.

These reforms have theoretical grounding in a new school of thinking – a “criminology of place” which holds that a policy of mass incarceration is itself a generator of the crime problems policymakers intend to eliminate. Since the scale of imprisonment has risen to the point where more than 700,000 people are released from our nation’s prisons back to their home communities each year, attention has been drawn to the high recidivism rates of releaseses. Less attention has been given to important research that traces the effect of sending so many young men to prison from those communities in the first place.

In ground-breaking research on this front, criminologists Dina Rose and Todd Clear examined crime statistics in Tallahassee and found that in the neighborhoods where incarceration rates shot up the most, crime rates also increased the most during the following year. And when crime dropped in Tallahassee overall, it fell the least in the high-incarceration zones.<sup>120</sup>

While low levels of incarceration may deliver the desired incapacitation effect, the same crime policy may backfire if incarceration rates rise too high. Dina Rose theorizes that when so many young people are pulled from their neighborhoods, incapacitation reaches a “tipping-point” that can send crime rates spiraling up. Simply churning large numbers of inner-city youths through the state prison system destabilizes communities already stressed by poverty and crime.

Community justice offers a different approach to address the problem of crime, supporting community action and involving community residents in a partnership with the formal criminal justice system. Milwaukee’s Community Justice Resource Center, developed collaboratively by the Benedict Center and the Milwaukee County Sheriff’s Department, offers a successful model that provides drug and alcohol counseling, anger management courses, GED

and job skills classes to people diverted from incarceration.

The new Community Justice Center on Milwaukee's south side has incorporated restorative justice practices, with community probation officers, community police officers and community prosecutors who all work onsite. A community public defender will soon join them. Half of the members of the governing board for the project are people who live and work within the boundaries of the CJC service area.

The head of Wisconsin's parole commission has established a community parole component. He has opened a direct line of communication to his office for members of prisoners' families from within the district. If a prisoner who is brought to his attention through the project is found to be parole-eligible, a neighborhood support circle is established and a CJC service plan is incorporated in the person's parole release agreement.

In Deschutes County, Oregon, community justice principles have guided development of the Department of Juvenile Community Justice. In 1997 community justice activists and county government leaders won state legislation (H.B. 3737) that established the Community Youth Investment Program.<sup>121</sup> Under CYIP, county efforts to reduce the number of juveniles committed to state juvenile facilities are rewarded by the state, which refunds 100 percent of the cost of incarceration to the county – roughly \$56,000 per youth. The bulk of the funds derived from CYIP (70 percent) are used to provide residential treatment and intensive aftercare for the diverted youths. The remaining funds are invested in primary prevention programs to reduce the risk of crime (i.e. home visits for at-risk families with newborns and behavioral assistance for kindergartners).

CYIP has resulted in a 72-percent reduction in use of state juvenile beds. CYIP youths pay nearly twice the amount of victim restitution compared to those sent to a state institution, and they perform 50 times more hours of community service.<sup>122</sup>

Advocates for justice reinvestment argue that targeted investments in community development efforts in those neighborhoods with a particular focus on job creation will produce long-term gains in reduced levels of crime and safer neighborhoods. Development of an incentive funding mechanism could provide the stimulus needed to put Wiscon-

sin at the forefront of the emerging trend toward community justice and justice reinvestment.

**Recommendation: Fund the establishment and expansion of problem-solving courts that target prison-bound individuals with severe drug, alcohol and/or mental health problems.**

#### *Drug treatment courts*

Several Wisconsin counties have established drug treatment courts which use the leverage of the criminal justice system to encourage defendants to participate in substance abuse treatment. Drug treatment courts have now been in use for more than a decade in many jurisdictions across the nation and generally get positive reviews from all of the stakeholders involved, including prosecutors, defenders, judges and probation agents.

While drug treatment courts follow a common set of practices – an emphasis on closely monitored treatment and use of graduated rewards and sanctions – they vary greatly in who they admit and how they encourage participation in the program. Some drug treatment courts focus on defendants who are unlikely to be sentenced to prison, but who may be motivated by the opportunity to avoid a felony conviction. Others target low-level defendants with serious substance abuse problems who pose little risk of committing a violent crime, but who are likely to re-offend unless they receive treatment.

Drug treatment courts and other problem-solving courts address an important need in the criminal justice system. Experience in Wisconsin and elsewhere shows that, if used correctly, problem-solving courts can be a highly efficient and effective means of handling problem cases.

For example, Baltimore's ten-year old drug treatment court program has shown that defendants with extensive criminal records and longstanding addictions can be ideal candidates for an intensive, therapeutic court intervention. Evaluation results published in 2004 found that participants were 31-percent less likely to be arrested over a three-year period than members of the control group.<sup>123</sup> An even more impressive 44-percent reduction in recidivism was achieved with Circuit Court participants, who are generally charged with the most serious offenses.

Dane County's drug treatment court, which started with simple drug possession cases, has suc-

cessfully broadened its scope to handle more serious drug and property offenses. Problem-solving courts that handle serious cases are more cost-effective, since there is a greater likelihood that participants will be diverted from a prison sentence. Further, drug treatment courts that enroll higher-risk defendants have been shown to achieve *greater* reductions in recidivism than courts that enroll low-risk defendants.<sup>124</sup>

In addition to Dane, La Crosse and Monroe counties have drug treatment courts in place, while Eau Claire, Pierce and Wood are currently exploring the idea.<sup>125</sup> Judges and other officials in Racine have also considered establishing a drug treatment court.<sup>126</sup> Further expansion of drug treatment courts could help slow growth in the state's drug prisoner population if they are targeted toward high-risk defendants.

#### *Drunk-driving/alcohol-treatment courts*

Driving while intoxicated is a serious problem in Wisconsin, contributing to over a third (38 percent) of all of traffic fatalities in 2003.<sup>127</sup> The imposition of tougher penalties for drunk driving has caused the number incarcerated for OWI to skyrocket – from 58 prisoners on June 30, 1994 to 839 prisoners on June 30, 2004 according to DOC data.

Many court officials are concerned about how best to deal with drunk drivers, who often pay taxes, raise families and contribute to their communities even as they continue to endanger themselves and the public by driving while intoxicated. Court officials in Waukesha County, which ranked second in use of prison beds for drunk drivers in a recent DOC analysis,<sup>128</sup> are considering launching an alcohol treatment court.<sup>129</sup> Winnebago County, which ranked third in use of prison beds for individuals with only OWI convictions, is also exploring the alcohol treatment court option.<sup>130</sup>

In Phoenix, Arizona court officials have found an approach that has proven to be effective. With funding from the National Highway Traffic Safety Administration (NHTSA), Maricopa County court officials have established a DUI court that operates along the same principles as drug and other therapeutic courts, using treatment, supervision and regular meetings with a judge to keep participants on track.

To test the program's effectiveness, eligible par-

ticipants were randomly assigned to the DUI court. NHTSA researchers found that the DUI court cut the recidivism rate of felony DUI probationers by half. After three years, just seven percent of DUI court participants with a prior alcohol-related traffic offense had been convicted of a subsequent offense.<sup>131</sup> Officials say that the DUI court's effectiveness has been further enhanced by the use of electronic bracelets that detect alcohol use during participants' first 90 days in the program, and by the addition of a Spanish-language DUI court. Establishment of drunk-driving courts or alcohol treatment courts in Wisconsin could help reduce both drunk-driving incidents and the number of prison commitments for felony OWI.

**Recommendation:** Fund the establishment and expansion of probation review hearings and other mechanisms designed to enhance supervision at less cost than traditional problem-solving courts.

Problem-solving courts can be an enormously useful tool when used to divert high-risk and high-needs individuals from prison and/or prosecution. But problem-solving courts are not a panacea, nor are they a substitute for an effective system of probation and parole supervision. Chief Justice Abrahamson observed in her annual address on the state of the judiciary that traditional problem-solving courts tax already thin judicial resources. As one Milwaukee judge put it, "Instead of having [substance abuse treatment] for the many, via the probation department, you have it for the few, via the drug treatment court."

Some counties have found a middle-ground between standard probation and resource-intensive problem-solving courts through the use of probation review hearings. Milwaukee's Domestic Violence Court — a five-year demonstration project funded by the U.S. Department of Justice, Office of Justice Programs' Office on Violence Against Women (OVW) and the National Institute of Justice — employs probation review hearings and is well regarded by court officials. Some judges who participated in the Fox River Valley focus group indicated that they, too, were making use of probation review hearings to ensure that probationers were meeting requirements, including participation in treatment, and receiving the support they needed



from probation agents..

Recognizing the need to improve outcomes with limited resources, the Chief Justice and the Director of State Courts are working with Outagamie Chief Judge Joe Troy to develop a comprehensive model for incorporating substance abuse and mental health treatment into the criminal justice process. The proposed initiative would serve a greater number of defendants than could be handled in traditional problem-solving courts, ensuring that defendants receive mental health and substance abuse assessments, making increased use of diversion and enhancing supervision of probationers to reduce recidivism.<sup>132</sup> If successful, the program should be replicated statewide.

***Adjust sentencing statutes and correctional policies that have the potential to impose huge costs on the state with little benefit to the public.***

Truth in sentencing has not yet produced the explosion of the prison population that some had anticipated. It has, however, increased levels of despair in prison, hurt efforts at rehabilitation and resulted in longer prison terms for those convicted of nonviolent drug offenses.<sup>133</sup> Further, unless steps are taken immediately, supervision and prison populations could skyrocket as the number serving – and failing – long terms of extended supervision increases.

Solving these problems does not require repeal of the truth-in-sentencing statutes. Modest adjustments to the state’s sentencing laws, combined with the proposed expansion of treatment, should allow the state to reign in prison population growth while enhancing public safety. Further, adoption of sensible parole reforms like those implemented in other states for “old law” prisoners in Wisconsin could also help ease immediate population pressures and free up resources needed to improve probation and parole supervision.

***Extended supervision***

There is no evidence that long periods of post-release supervision increase public safety. As currently structured, it is possible that Wisconsin’s system of extended supervision could *drive up* recidivism rates. Lengthy supervision terms will further stretch the already thin resources available for supervising and supporting probationers and parolees

in the community, and increase the risk that they will cycle in and out of prison for years as a result of technical violations.

Analysis of the available data suggests that problems associated with supervising and reincarcerating those released to extended supervision could soon reach crisis proportions. Many court and correctional officials worry that unless steps are taken to reduce supervision terms and improve outcomes, extended supervision could become a ticking time-bomb for the state.

In recent years, policymakers in many states have recognized the need for more efficient and effective approaches to correctional supervision. They have begun to target limited correctional resources toward high-risk individuals rather than spreading those resources thin by trying to supervise every probationer and parolee. Agents are being retrained not just to catch supervisees when they fail, but also to help them succeed. Finally, systems that were organized around making probationers and parolees go through the motions until their sentences expired is giving way to one that is focused on goals such as employment and education, and that provides incentives for those under supervision to make extra efforts to turn their lives around.

Several states have moved to reduce supervision terms for individuals convicted of minor offenses as well as those who have demonstrated through their behavior that they are unlikely to commit new crimes. Legislators in Kansas have reduced the length of community supervision for individuals convicted of low-level offenses, cutting supervision time by half in many cases. And in Washington state legislators have ended active post-release supervision for many low-level prisoners. Such reforms can generate millions of dollars in cost-savings while refocusing probation and parole resources on those who pose the greatest risk to public safety.

Lawmakers could begin by reducing extended supervision terms and encouraging judges to reward compliance with early discharge. They could allow credit for any time successfully served in the community prior to revocation. Many judges are keenly aware of the unforeseen consequences of imposing long terms of extended supervision on prison-bound defendants. Without the backing of lawmakers, however, it is unlikely that judges will unilaterally cut extended supervision terms. Nor can

judges recognize the efforts of parolees who relapse by crediting the time they spent going to appointments, maintaining employment and staying clean against their extended supervision sentence.

**Recommendation: Limit extended supervision to 50 percent of the term of confinement.**

One solution to the problem would be to limit the amount of extended supervision time that can be imposed at sentencing in proportion to the amount of confinement. Although current law only requires that the term of extended supervision be at least 25 percent of the term of confinement, the average period of post-release supervision is equal to 125 percent of the average confinement time.

Limiting extended supervision to half of the term of confinement would reduce the typical period of post-release supervision by 60 percent. Such a reform could cut extended supervision caseloads in half, allowing agents to spend more time supervising and assisting parolees during the critical months following release from prison. The reform could also save the state tens of millions of dollars by reducing the number and the duration of revocations from extended supervision.

Placing a 50-percent cap on extended supervision terms would still allow for a reasonable period of post-release supervision, with even those who receive the minimum term of confinement for the lowest-level felony remaining eligible for six months of supervision. In cases where an individual's performance on extended supervision demonstrates a compelling need for further monitoring, judges could be permitted to extend the term of supervision up to the current statutory maximum.

**Recommendation: Encourage early discharge of successful releasees from extended supervision**

In addition to limiting extended supervision terms, lawmakers could allow individuals who are meeting supervision requirements to earn early discharge from extended supervision. This provision would not only reward the efforts of parolees to turn their lives around, but would also permit parole agents to focus their energies on those who need the most help and pose the greatest risk to the public.

In order to earn an early discharge, releasees

could be required to meet standards and requirements set by the Department of Corrections or the sentencing judge, which might include completing a treatment or vocational program, and maintaining employment. Eligibility for early discharge could be designated by the court at or after sentencing, in order to ensure that the highest-risk individuals serve the full term of extended supervision.

If just a quarter of all individuals placed on extended supervision were discharged after serving half of their original supervision terms, the result could be a more than 10-percent reduction in extended supervision caseloads.

**Recommendation: Permit judges to award credit for time served successfully on extended supervision prior to revocation at resentencing.**

Under Wisconsin's current system, individuals who are revoked from extended supervision receive no credit for time they served successfully in the community. A person with a substance abuse problem might have completed a treatment program, obtained employment, found stable housing and kept all of his or her appointments during the first year or more of extended supervision. But if this individual experiences a relapse, starts using drugs again and gets revoked, he or she must start serving the extended supervision term all over again – first behind bars and then, if released again, back in the community. The result is a built-in disincentive for individuals who are battling addictions, since making the effort to succeed can extend the sentence, but not shorten it.

This problem could be fixed by allowing judges to determine at resentencing that some or all of the time served in the community prior to revocation should be credited as time served. Granting credit for time served in the community would let those on supervision know that efforts to succeed will be rewarded. It could also reduce both supervision caseloads and the number incarcerated for revocations of extended supervision.

Examination of prison records for those individuals revoked from extended supervision who completed their sentences by June 30, 2004 shows that uncredited time served on supervision lengthened average time spent on extended supervision term by 30 to 40 percent. If judges had awarded credit for just half of time served in the community prior to

revocation, total time served in custody might have been reduced by roughly 10 percent, while total supervision time might have declined by around seven percent.<sup>134</sup> As the numbers on extended supervision grow, the resulting savings could be significant.

### **Restoration of “good-time” credits**

**Recommendation:** Allow prisoners sentenced under truth in sentencing to accrue a modest amount of “good-time” credits – up to 15 percent of the term of confinement –to reward good behavior and efforts toward rehabilitation.)

Corrections officials interviewed by the *Milwaukee Journal-Sentinel* say that truth in sentencing has virtually eliminated incentives for prisoners to participate in programming or follow prison rules.<sup>135</sup> One warden told the paper that the number of prisoners refusing drug and alcohol programs had increased dramatically. Another said that disciplinary and psychological problems were growing as prisoners become more desperate.

Lawmakers did make some provision for rewarding good behavior by permitting prisoners to petition the court to adjust sentences by as much as 15 percent or 25 percent, depending on the nature of the offense. However, the process has failed to function as an effective safety-valve because petitions are routinely blocked by prosecutors.<sup>136</sup> One judge told *Milwaukee Journal-Sentinel* reporters that, even if prosecutors did not oppose sentence adjustments, few judges would grant them because they must stand for election.<sup>137</sup>

Revising truth in sentencing to restore a modest amount of good time could make state correctional facilities safer and encourage prisoners to take advantage of existing programs. Such a move would also ease population pressures. If Wisconsin adopted the truth-in-sentencing standard used in famously tough-on-crime Arizona, where prisoners must serve 85 percent of their sentence before release, the result could be an eventual 2,000-bed reduction in the prison population.<sup>138</sup> If those serving time for nonviolent offenses were allowed to earn up to 25 percent off their confinement terms, the savings might grow to 2,500 prison beds.

**Recommendation:** Reduce penalties for first-

**time distribution of very small amounts of cocaine by individuals with no prior felony convictions.**

When the TIS II reforms were enacted, lawmakers substantially scaled back penalties for some of the most common property offenses, including theft and forgery – sensible changes reflecting the principle that prison space should be reserved for those who pose the greatest danger to public safety. Yet offenses involving very small amounts of controlled substances continue to be ranked alongside crimes that are arguably much more serious.

For example, sale of a gram or less of cocaine is classified at the same level as third-degree sexual assault, abuse of vulnerable adults and felony intimidation of a witness. Possession of one to five grams of cocaine with intent to distribute is classified at the same level as bringing a firearm into a prison or jail, intentionally discharging a firearm from a vehicle on a highway and sexual exploitation of a child. Further, the maximum penalty for selling a gram or less of cocaine is over *three times* as long as the maximum prison term that can be imposed for “substantial battery” (causing substantial bodily harm to another).<sup>139</sup>

According to judges, substance abusers make up a great majority of those facing drug distribution charges. Locking up people who sell small amounts of drugs to feed their habits does little to reduce the availability of drugs or further public safety, since those incarcerated are quickly replaced by other drug addicts. Nor is there a clear rationale for exposing an addict who sells half a gram of cocaine on a street corner to a maximum prison term that is more than twice as long as the maximum sentence for a substance abuser who steals property or forges checks.

Finally, the harsh penalties prescribed for low-level drug offenses fall hard on youth, who make up a large share of those prosecuted for drug offenses. According to DOC data, a third of all felony drug cases involved defendants who were 21 or under at the time of the offense. In most of the cases, the defendant had no prior Wisconsin criminal record. Between July 1, 2003 and June 30, 2004 alone, 130 young people (21 and under) with no prior felony convictions were sentenced directly to prison for drug distribution.<sup>140</sup> Another 45 were admitted to prison for a first felony drug offense after being revoked from probation.

Scaling back penalties for low-level and first-time drug offenses would help the state deploy limited correctional resources more efficiently and reduce the devastating impact of incarceration on young defendants. Lawmakers could begin by designating delivery/PWI of a gram or less of cocaine by a person with no prior felony convictions as a Class I felony – the same level assigned to delivery or possession with intent of up to 200 grams of marijuana.

In the most recent year covered by DOC case data, there were at least 425 cases involving delivery/PWI of up to a gram of cocaine by a defendant with no Wisconsin felony convictions, with at least 185 resulting in a prison sentence.<sup>141</sup> In 179 of the 425 cases, the defendant was 21 or younger at the time of the offense, including 84 cases that resulted in a prison sentence.

It is impossible to know exactly how sentences would change if these offenses were reclassified, however there is some evidence suggesting that the number sentenced to prison might be reduced. A comparison between sentencing of the lowest-level marijuana and cocaine distribution cases shows that the Class I marijuana convictions were just half as likely to result in prison terms as the cocaine convictions that would be redesignated Class I offenses under the proposed reform.<sup>142</sup>

### **Parole release**

**Recommendation:** Restructure release criteria and reentry policies to facilitate parole of “old-law” prisoners who pose least risk to public safety.

Although the proportion of “old-law” prisoners being released to parole – rather than being held until mandatory release – has rebounded somewhat since 1999, thousands of parole applications are still being deferred or denied by the Parole Commission. On June 30, 2004, DOC data show that there were roughly 5,000 prisoners who had been held beyond their initial parole eligibility date.<sup>143</sup> Among those held beyond their initial eligibility date, 800 were deferred to their mandatory release or maximum discharge dates and nearly 3,200 were deferred to their next parole hearing.

Policymakers in Kentucky, Nevada and Texas have introduced or revised risk-assessment guidelines to increase the chances of parole-eligible prisoners being granted release. Legislators in Nevada

and Wyoming have authorized transfer of prisoners to community-based re-entry programs within two years of their expected release dates. In Missouri, prisoners convicted of nonviolent offenses with two years remaining on their terms may apply for release to home detention. In Connecticut, transfer to a halfway house is permitted within 18 months of parole release; in Arkansas, within a year. Early release to treatment programs has recently been authorized in Arizona, Delaware, New Mexico, and Pennsylvania.

### ***Redesign sentencing and correctional policies to facilitate and reward success rather than simply punishing failure.***

Experience with drug courts has shown that the “carrot and stick” approach can be effective, even with addicts who have long criminal records. For the most part, however, Wisconsin’s criminal justice system offers all stick and no carrot. Many probationers who complete treatment, meet supervision requirements and turn their lives around still struggle under the cloud of a felony conviction. With the exception of the Earned Release and Challenge Incarceration Programs, good behavior and participation in rehabilitative activities in prison count for little.

Finally, as discussed, individuals who manage to complete a year or two of their extended supervision successfully before relapsing can end up spending more time in DOC custody or under supervision than those who start breaking rules the day they get out of prison. In short, there are very few features of the state’s criminal justice system that promote success or reward effort.

The Governor has proposed expansion of the Earned Release Program, which allows nonviolent prisoners to earn time off of their sentences by completing an intensive substance abuse treatment program. This represents a step in the right direction, but much more could be done to promote successful outcomes. Lawmakers 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.

One participant in the Sentencing Commission’s judicial focus-groups put the case succinctly:

“The state needs to look at how the law treats the lowest-level drug offenses. There’s got to be

some way of dealing with cases involving miniscule amounts of residue without the offender ending up with a felony record. 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."

### ***Driving privileges***

**Recommendation:** Repeal the requirement that the driving privileges of individuals convicted of drug offenses be suspended.

One critical barrier to success is the state law requiring that individuals convicted of drug-related offenses have their driving privileges suspended for a minimum of six months. According to the Department of Administration, in 2004 the Department of Motor Vehicles processed 12,612 driver's license suspensions related to drug convictions.<sup>144</sup> A bill introduced in the Assembly by Rep. Scott Jensen (R – Waukesha), would have repealed the requirement that driving privileges be suspended upon conviction of a drug offense. AB 256 would also have made first-time "operating after revocation" (OAR) a civil offense rather than a misdemeanor.

Court officials and other criminal justice professionals interviewed say that the suspension of driving privileges not only clogs misdemeanor courts with OAR cases, but also makes it harder for those on supervision to maintain employment and meet other requirements such as participation in substance abuse treatment. One judge from the Fox River Valley, suggested that the likelihood of recidivism is increased by forcing individuals who are employed at the time of sentencing to either drive illegally or find another, often illicit, source of income. Not one official interviewed suggested that the law serves a useful public purpose.

### ***Employment***

**Recommendation:** Enforce laws barring unwarranted employment discrimination against individuals with criminal convictions and take

steps to improve employment prospects for those with criminal and prison records.

In order to build safe communities, state policymakers must do more to lower the employment barriers that confront formerly incarcerated people and others with criminal records. Many individuals caught up in the criminal justice system have limited work experience and educational histories, making it difficult for them to support themselves and their families. Further, employers are often reluctant to hire those with criminal records regardless of their qualifications.

Devah Pager's research, discussed in Chapter II, suggests that reintegrating individuals with criminal records into mainstream society will require more than simply improving access to education and job training. Mainstreaming will require stronger enforcement of laws that prohibit employment discrimination on the basis of past convictions that are not closely related to specific job requirements as well as discrimination on the basis of race. Finally, policymakers will need to take proactive steps to encourage hiring of ex-prisoners and others with criminal records.

New York City's Center for Alternative Sentencing and Employment Services (CASES) offers an example of a highly successful employment-oriented sentencing option for young people similar to those convicted of serious felonies in Milwaukee. CASES' Court Employment Program (CEP) admits 400 jail- and prison-bound young people each year, providing them with six months of intensive case management and youth development services. Along with a variety of educational, cultural and substance abuse prevention services, CEP offers a range of transitional job services – including internships – designed to reinforce the connection between school and employment, encouraging youths to plan for careers – not just dead-end jobs.

More than half of CEP participants are charged with violent felonies – assault; robbery; and weapons possession – while one-third are charged with felony drug possession and sale. A recent recidivism study that tracked CEP graduates over a period of two years after they left the program found that 80 percent had no new criminal convictions. Only four percent were convicted of a new violent crime.<sup>145</sup>

## **Education**

**Recommendation:** Expand educational opportunities for prisoners and court-involved youth.

Wisconsin criminal justice professionals say that educational deficits are common among individuals caught up in the criminal justice system, particularly in Milwaukee. Among the state's sentenced prisoners, close to half (47 percent) lack a high school or general education degree (GED) according to DOC data. The proportion is even higher for prisoners sentenced in Milwaukee, of which a solid majority (57 percent) have not graduated from high school or obtained a GED.

Officials in Indiana have developed an innovative approach that gives prisoners incentives to pursue basic literacy, GEDs and even college degrees, resulting in improved outcomes and millions of dollars in savings for the state. According to John Nally, who directs the state's correctional education program, prisoners can earn time off their sentences – six months for attaining basic literacy, six months for earning a GED, a year for earning an Associate's degree and two years for earning a Bachelor's degree. Nally reports annual savings to the state in the range of \$25 million.

Between July 1, 2003 and June 30, 2004, in Wisconsin there were over 2,700 new prison admissions of individuals who lacked high school or GED credentials. If just half were able to earn six months off their prison terms by attaining either basic literacy or a GED, the prison population could be reduced by roughly 900, generating annual savings of as much as \$25 million.<sup>146</sup>

For young people, a criminal conviction can close the doors to education even when it does not result in a prison sentence. Milwaukee caseworkers, in particular, say that there are few educational opportunities available for young people caught up in the criminal justice system because both schools and youth programs are reluctant to admit individuals with criminal records. Further, defenders say that some bright young people who might otherwise be college-bound are barred from receiving federal financial aid as a result of drug-related convictions.

With thousands of youth receiving felony convictions each year – in 2003 there were over 5,000 felony cases involving defendants who were 21 or under at the time of the offense – there is a pressing need to ensure that they have access to the educational opportunities that could help them succeed later in life. New

York's Court Employment Program, discussed above, is one example of a program that successfully addresses the educational needs of jail- and prison-bound youth with a variety of services: school placement; basic literacy classes; computer and multimedia skills training; and GED preparation.

## **Housing**

**Recommendation:** Relax restrictions on eligibility of individuals with past drug convictions to live in public housing.

Housing can also present a problem for individuals caught up in the criminal justice system, especially those returning home from prison. The Housing Authority of the City of Milwaukee bars individuals convicted of drug-related offenses from public housing for five years.<sup>147</sup>

By comparison, housing authorities in Des Moines and Detroit impose shorter three-year bans for drug-related convictions.<sup>148</sup> In Detroit, the ban can be shortened if there are mitigating circumstances, while the Des Moines Public Housing Authority will lift the ban once the individual in question has completed a rehabilitation program.

## **Expanding opportunities to avoid or remove criminal convictions**

Lawmakers should lower barriers to success by reducing the number of individuals with misdemeanor and felony conviction records by diverting cases from prosecution, reducing minor criminal offenses to civil offenses, and permitting deserving individuals to have conviction records expunged.

**Recommendation:** Expand opportunities for defendants to avoid criminal conviction through successful participation in pretrial diversion programs.

The Milwaukee District Attorney's Community Conferencing program is an excellent example of an alternative restorative justice approach designed to reduce recidivism while restoring the harm done to the victim, the offender and the community alike. Unfortunately, the program currently handles a small number of cases, and only a handful of these are true diversion cases while the rest result in criminal convictions even for successful participants. Expansion of the program to handle a larger number

of cases, and a greater proportion of diverted cases might reduce recidivism *and* improve outcomes.

Under the current system of funding District Attorney's offices, there is a financial disincentive to expanding diversion programs. Although diverted cases may require as much staff time as cases that are filed, they do not count in the "weighted caseload" statistics used to allocate state funds between counties. The legislature could solve this problem by giving prosecutors credit for diverting cases that would otherwise have been filed to treatment or other appropriate interventions.

**Recommendation: Make first-time possession of small amounts of marijuana a civil offense statewide**

Rep. Sue Jeskewitz (R – Menomonee) proposed legislation in the 2005 session that would have made first-time possession of 25 grams or less of marijuana a civil offense rather than a criminal offense. If prosecuted as a criminal offense, marijuana possession can result in jail stays, probation supervision and criminal records. In short, a misdemeanor marijuana possession charge can be a gateway into the criminal justice system for otherwise law-abiding state residents.

Under current law, municipalities have the option of designating first possessions up to 25 grams as civil offenses, resulting in disparate treatment of individuals facing marijuana possession charges. AB 255 would not only have equalized treatment of low-level marijuana possession but also reduced the number of people facing employment, education and housing barriers as a result of marijuana convictions.

In 2003, DOC case data show that more than 1,400 cases involving a top charge of misdemeanor marijuana possession were sentenced to probation, including over 800 cases in which marijuana possession was the sole charge. In two of every three cases, the defendant had no prior Wisconsin convictions, which suggests that the chances of success might improve for hundreds if the reform were enacted. The number who benefit could be much greater, since the DOC data do not include marijuana possession cases that resulted in a jail sentence and/or a fine without probation supervision.

**Recommendation: Allow the court to expunge misdemeanor convictions for individuals who successfully complete their sentences, and to**

**expunge or reduce certain felony convictions for those who demonstrate that they have turned their lives around.**

Many states recognize that individuals convicted of less serious offenses should be given the opportunity to start over with a clean slate once they have served their sentences and demonstrated readiness to lead law-abiding lives. According to the Legal Action Center, seventeen of the fifty states allow some conviction records to be expunged or sealed, often for first offenses.<sup>149</sup>

Michigan allows an individual convicted of no more than one offense to have the conviction record set aside five years after completing his or her sentence unless the crime was a traffic offense, a serious offense or a sex offense. Ohio permits those convicted of a first offense to apply for expungement three years after discharge for a felony conviction, or one year after discharge for a misdemeanor conviction.

In Wisconsin, by contrast, such opportunities are limited to individuals convicted of misdemeanors for crimes committed under the age of 21. Several Wisconsin judges suggested in focus group discussions that allowing people convicted of low-level drug and property offenses to earn a clean record or the reduction of a felony to a misdemeanor could improve long-term outcomes.

Rep. Curt Gielow (R – Mequon) introduced a bill that would have allowed the court to expunge the misdemeanor conviction of any individual who successfully completes his or her sentence by removing the existing age restriction. AB 280 would also have permitted the court to order expungement at any time, rather than at sentencing as is required under current law. In 2004, there were more than 50,000 misdemeanor convictions statewide.<sup>150</sup>

In addition to reconsidering Rep. Gielow's proposal, which was amended and adopted by the Assembly Committee on Corrections and the Courts but not enacted, the state should also consider creating provisions for those convicted of nonviolent and first-offense felonies to earn clean records, especially if they are addicts who participate in treatment. As part of a package of "treatment not incarceration" reforms enacted in 2004, Maryland lawmakers authorized judges to strike entry of judgment for any defendant who successfully completes treatment ordered as a condition of probation.

The defendant is eligible to have the record of the charge expunged after three years as long as he or she has not been convicted of a new crime and is not facing new criminal charges. The judge can offer to strike entry of judgment at sentencing – giving the probationer greater incentive to participate in treatment – or after the sentence has been served.

In a similar vein, authorities should relax restrictions on the eligibility of individuals with past drug convictions to live in public housing – restrictions that are tighter in Milwaukee than in cities such as Des Moines and Detroit.

## Notes

1 “Offenders Under Control on December 30, 2005.” Wisconsin Department of Corrections. December 30, 2005.

2 Harrison, Paige M. and Allen J. Beck. “Prisoners in 2004.” Washington, DC: Bureau of Justice Statistics. October 2005.

3 “Debt to Society.” *Mother Jones*. Available online at [http://www.motherjones.com/news/special\\_reports/prisons/index.html](http://www.motherjones.com/news/special_reports/prisons/index.html)

4 “Crime and Corrections.” *The Wisconsin Taxpayer*, September 2004, vol. 72, no. 9.

5 Except where otherwise noted, prison population, admission and release information comes from the Public Information Data File described previously in the Methodology section. The population growth figure is based on state resident population estimates published by the Wisconsin Department of Administration’s Demographic Services Center. Available online at

[http://www.doa.state.wi.us/pagesubtext\\_detail.asp?linksubcatid=96](http://www.doa.state.wi.us/pagesubtext_detail.asp?linksubcatid=96)).

6 In this report, “sentenced prisoners” refers to individuals serving a sentence of incarceration in a DOC facility, and excludes probationers and parolees who are being held temporarily in DOC custody.

7 “Crime and Corrections.” *The Wisconsin Taxpayer*, September 2004, vol. 72, no. 9.

8 Drug code enhancers and those pertaining to use of a dangerous weapon, violent crime in a school zone, certain domestic abuse offenses, and “hate crimes” were not included among the enhancements the CPSC proposed should become aggravating factors.

9 The “term of imprisonment” refers to the entire sentence since it is possible for an individual who violates prison rules and/or conditions of supervision to serve the full sentence behind bars. Violations of prison rules and conditions of supervision can extend an individual’s term of confinement but total time served can never exceed the term of imprisonment imposed at sentencing.

10 Zahn, Mary and Gina Barton. “Door on early release closes tightly.” *Milwaukee Journal-Sentinel*, November 21, 2004.

11 “Earned Release Program Status Update.” Wisconsin Department of Corrections. April 21, 2005.

12 In this report, a “violent offense” refers to a crime designated by DOC as an “assaultive” and/or “sex” offense. A “nonviolent offense” refers to a drug, property or public order

offense that is not designated as an assaultive or sex offense. When used to refer to the prison population, “nonviolent” includes prisoners with no concurrent violent felony convictions. As a result, while forgery is a nonviolent offense, a prisoner serving time for forgery who was also sentenced for a lesser conviction of battery would not be considered a nonviolent prisoner.

13 In this report, “new prison admissions” include individuals admitted with a new sentence only (not revoked from supervision); individuals admitted after being revoked from probation with or without a new conviction; and individuals revoked from post-release supervision (parole, mandatory release or extended supervision) with new convictions. Readmissions that result from revocations of post-release supervision without a new offense are excluded in order to avoid over-counting individuals who may be admitted and released several times for the same offense. Admissions for revocation hearings, alternative to revocation programs and temporary probation/parole holds that did not result in a prison sentence are also excluded.

14 Doege, David. “Small-time drug dealers flood court.” *Milwaukee Journal Sentinel*, October 23, 1999.

15 Possession of a controlled substance with intent to deliver is referred to in this report as “possession with intent” or “PWI”.

16 Criminal Penalties Study Committee. “Final Report.” August 1999.

17 Murphy, Bruce and Sarah Carr. “School drug policies differ.” *Milwaukee Journal Sentinel*, February 6, 2005

18 Records from the Prison Episode Data File provided by DOC contain information on all known prior convictions, however records in the Case Disposition File contain information about past Wisconsin convictions only.

19 Criminal Penalties Study Committee. “Final Report.” August 1999.

20 Doege, David. “Milwaukee County judges leery of probation, panel says.” *Milwaukee Journal Sentinel*. January 2, 2000.

21 As discussed, prior criminal record information from the DOC cases data file includes only Wisconsin convictions. In order to assess the significance of excluding non-Wisconsin convictions, results from analysis of DOC case data were compared with results from analysis of drug case data provided by the Milwaukee District Attorney’s office. The DA’s data identifies whether a defendant had a prior criminal, but not the type (i.e. felony or misdemeanor) or number of convictions, so comparisons can only be made between defendants who have a criminal record and those who have none. According to the DOC case data, between July 1, 2003 and June 30, 2004, 51 percent of cocaine delivery/PWI cases (up to five grams) in which the defendant had no prior Wisconsin felony or misdemeanor convictions resulted in a prison sentence. The DA’s data shows a somewhat lower figure, with 45 percent of such cases resulting in a prison sentence. The comparison suggests that the DOC case data understates the prior criminal history of offenders, but that the effect is small.

22 “Expenditures by Division For the Year 1998 – 1999.” Wisconsin Department of Corrections. <http://www.widoc.com/99%20fiscal/addstuff/Expend99.pdf>

23 Current budget figures from Carmichael, Christina. “Adult Corrections Program: Informational Paper.” Madison, WI: Wisconsin Legislative Fiscal Bureau. January 2005.

24 Subjects were tracked until June 30, 2004, a period of 3.5 to 4.5 years depending on the date in 2000 when they were placed on probation.



25 Simms, Patricia. "Joint Finance co-chairman: Consider new prison." *Wisconsin State Journal*. March 4, 2005.

26 Ibid.

27 Brinkman, Phil. "Doyle hopes treatment will slow inmate increase." *Wisconsin State Journal*. February 7, 2005.

28 "Black" and "African American" are used interchangeably in this report.

29 "State Rates of Incarceration by Race." Washington, DC: The Sentencing Project. 2004.

30 Harrison, Paige M. and Allen J. Beck. "Prisoners in 2004." Washington, DC: Bureau of Justice Statistics. October 2005.

31 The incarceration rates presented here were calculated using DOC data on the standing sentenced prison population on June 30, 2004 and resident population estimates extrapolated from 2000 U.S. Census data.

32 The incarceration rate shown here for African Americans appears significantly lower than the rate reported by The Sentencing Project because it does not include jail populations or individuals incarcerated on probation and parole holds, both of which were included in the earlier disparity study.

33 Oliver, Pamela. "Racial Disparities in Criminal Justice." <http://www.ssc.wisc.edu/~oliver/RACIAL/RacialDisparities.htm>

34 The nonviolent prison population sentenced in Rusk County fell by 58 percent, but the county incarcerates 30 prisoners – too few prisoners to determine if the change is more than a statistical anomaly.

35 New sentence-only prison admissions include individuals sentenced directly to prison who were not under supervision at the time of the offense, and excludes those violated from probation, parole, mandatory release or extended supervision.

36 Projected time served to first release for individuals sentenced before truth in sentencing is calculated by applying the average proportion of total sentence served prior to first release by prisoners released in 1999 and 2000 to the average total sentence imposed on prisoners admitted in 1998 and 1999. Projected time served to first release for individuals sentenced after December 31, 1999, is calculated by subtracting the prisoner's admission date from his or her mandatory release/extended supervision date. The method for projecting time to first release pre-TIS assumes that, absent truth in sentencing, prisoners would have continued to be released to parole, mandatory release and direct discharge at 1998/1999 rates. The method for projecting time to first release post-TIS does not account for sentence adjustments or earned release, which would reduce time to first release; nor does it account for the imposition of "bad time," which would extend time to first release. The projected period of post-release supervision is the difference between the total period of DOC supervision and the projected time to first release. The total period of DOC supervision does not include time served in jail before sentencing, which is credited as time served. Total sentences reported here may, therefore, be slightly shorter than the actual sentences imposed by the judges.

37 The governing statute identifies the amount of controlled substance in nearly half (47 percent) of all cases. The distribution of prisoners in the chart above has been extrapolated from the available weight information to the entire delivery/PWI population. A comparison of sentence lengths found little difference between cases where weights are known and cases where they are unknown.

38 Pingel, Jim and Melissa Schmidt. "TIS II Prison Sentences: Tracking The Most Common Offenses." Madison, WI:

Wisconsin Sentencing Commission. October 15, 2004.

39 Pager, Devah. "The Mark of a Criminal Record." *American Journal of Sociology*, vol. 108, no. 5 (March 2003).

40 Ibid.

41 The bulk of the positions posted were in food service, warehouse, production and delivery. None required experience or education beyond high school.

42 Ibid.

43 "Offenders Convicted of Methamphetamine Crimes: 1997 – 2004." Wisconsin Department of Corrections (unpublished data extract).

44 "Snap-shot Analysis of Inmates Convicted of An OWI 5+ Offense: Inmates Incarcerated on 10/30/04." Wisconsin Department of Corrections (unpublished report). October 15, 2004.

45 Re-releases to parole and mandatory release are excluded.

46 Not all extended time served behind bars is served in DOC facilities because individuals in custody on parole holds may be detained in local jails. For the 38 that had served their entire term of extended supervision behind bars by June 30, 2004, 80 percent of the time was served in DOC facilities.

47 The remaining 25 were being held in prison pending revocation hearings or other proceedings, leaving their status uncertain.

48 Of the 77 that were revoked and served their sentences, half (39) completed the extended supervision term in the community after serving 40 percent of their time in DOC facilities, while the other half (38) served the entire sentence behind bars.

49 Assuming that half of those revoked serve 80 percent of their time in a DOC facility and that the other half serve 40 percent of their time in a DOC facility.

50 Assuming that a quarter of those revoked serve 80 percent of their time in a DOC facility and that the other three quarters serve 40 percent of their time in a DOC facility.

51 While the average term of extended of supervision is 55 months, the median term is 36 months, which means that half of those sentenced received extended supervision terms of 36 months or less and half received sentences of 36 months or more.

52 "National Surveys on Drug Use and Health: 2003." Washington, DC: Substance Abuse and Mental Health Administration.

53 "Substance Abuse Treatment Needs, Capacity and Costs: 2003." Madison, WI: Wisconsin Department of Health and Family Services – Bureau of Mental Health and Substance Abuse Services. February 2005.

54 Welch, Kevin W. and Michael Quirke. "Substance Abuse Treatment Capacity Analysis: 2000." Madison, WI: Wisconsin Department of Health and Family Services – Bureau of Mental Health and Substance Abuse Services. August 2002.

55 Treatment admissions figures from: "Substance Abuse Treatment Needs, Capacity and Costs: 2003." Madison, WI: Wisconsin Department of Health and Family Services – Bureau of Mental Health and Substance Abuse Services. February 2005.; and Welch, Kevin W. and Michael Quirke. "Substance Abuse Treatment Capacity Analysis: 2000." Madison, WI: Wisconsin Department of Health and Family Services – Bureau of Mental Health and Substance Abuse Services. August 2002.

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- 57 Ibid.
- 58 Welch, Kevin W. and Michael Quirke. "Substance Abuse Treatment Capacity Analysis: 2000." Madison, WI: Wisconsin Department of Health and Family Services – Bureau of Mental Health and Substance Abuse Services. August 2002.
- 59 "Substance Abuse Treatment Needs, Capacity and Costs: 2003." Madison, WI: Wisconsin Department of Health and Family Services – Bureau of Mental Health and Substance Abuse Services. February 2005.
- 60 Ibid.
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- 62 Barlow, David et al. "Substance abuse and need for treatment among arrestees in Wisconsin." University of Wisconsin – Milwaukee. August 1998.
- 63 E-mail correspondence with Michael Quirke, Wisconsin Department of Health and Family Services – Bureau of Mental Health and Substance Abuse Services. April 19, 2005.
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- 65 Welch, Kevin W. and Michael Quirke. "Substance Abuse Treatment Capacity Analysis: 2000." Madison, WI: Wisconsin Department of Health and Family Services – Bureau of Mental Health and Substance Abuse Services. August 2002.
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- 67 Kissinger, Megan. "Trading one locked door for another." *Milwaukee Journal-Sentinel*, September 10, 2000.
- 68 "Ill-Equipped: U.S. Prisons and Offenders with Mental Illness." New York, NY: Human Rights Watch. September 2003.
- 69 Ibid.
- 70 Caulkins, Jonathan P. and C. Peter Rydell, William Schwabe, James R. Chiesa "Are Mandatory Minimum Sentences Cost-Effective?" Santa Monica, CA: RAND Drug Policy Research Center. 1998.
- 71 U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration. "The National Treatment Improvement Evaluation Study (NTIES) Preliminary Report: The Persistent Effects of Substance Abuse Treatment—One Year Later." Washington, DC: SAMHSA. 1996.
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- 73 Barnoski, Robert and Steve Aos. "Washington State's Drug Courts for Adult Defendants: Outcome Evaluation and Cost-Benefit Analysis." Olympia, WA: Washington State Institute of Public Policy. March 2003.
- 74 Although substance abuse treatment is sometimes viewed as a "hit or miss" proposition, DHFS cites national research showing that current addiction treatments "work" as well as "treatments for other chronic medical illnesses such as hypertension, diabetes, and asthma". (Welch, Kevin, Robert Rettammel and D. Paul Moberg. "Wisconsin Adult Addictions Treatment Outcomes Measurement Pilot Project." Madison, WI: Wisconsin Department of Health and Family Services – Bureau of Mental Health and Substance Abuse Services. October 2002.)
- 75 Ibid.
- 76 The study's authors note that relying on self-reports and following up only with those participants who could be located and agreed to participate introduce some bias into the results. Using past research on the impact of self-report and sample bias, the authors have adjusted estimates of alcohol use after treatment upward to account for these biases.
- 77 Rawson et al. "A multi-site comparison of psychosocial approaches for the treatment of methamphetamine dependence." *Addiction*, vol. 99, p. 708-717
- 78 Matrix Institute Program and Outcomes Summary (unpublished)
- 79 Letter addressed to the Wisconsin Sentencing Commission in January 2005
- 80 Milwaukee's special drug court is not a treatment court.
- 81 "Project AIM (Alternatives to Incarceration in Milwaukee): Project Overview and Summary Final Report." Milwaukee, WI: Wisconsin Community Services. January 1, 2002 to July 31, 2004.
- 82 "Felony Drug Offender Alternative to Prison Program." Wisconsin Department of Corrections. July 31, 2003.
- 83 Stojkovic, Stan, Rick Lovell and Steven Brandl. "Felony Drug Offender Alternative to Prison Program Final Report." March 28, 2003.
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- 85 "Mid-year Report: January 2004 – June 2004." Community Justice Resource Center.
- 86 Kane, Eugene. "Milwaukee center helps offenders better themselves." *Milwaukee Journal-Sentinel*, March 20, 2003.
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- 91 "Adult Jail Populations in Wisconsin – 2003." Madison, WI: Office of Justice Assistance Statistical Analysis Center. October 2004
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- 94 Griffin, Burt W. and Lewis R. Katz. "Sentencing Consistency: Basic Principles Instead of Numerical Grids: The Ohio Plan." *Case Western Reserve Law Review* Vol. 53:1 Fall 2002
- 95 Ohio Rev. Code Ann. § 2929.14(B)
- 96 Ohio Rev. Code Ann. § 2929.14(C)
- 97 Harris, Jeffrey and David Diroll. "Monitoring Sentenc-

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98 Peter D. Hart Research Associates, Inc. “Changing Public Attitudes toward the Criminal Justice System.” February 2002.

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101 The estimate of a \$6,100 cost per client for treatment was developed by a proposal planning group in Judicial District Ten (see Chapter IV).

102 Average annual cost of incarceration from “Crime and Corrections.” *The Wisconsin Taxpayer*, September 2004, vol. 72, no. 9.

103 A search of Wisconsin case data going back to 1990 found that just 13 percent of drug prisoners with no concurrent violent felony convictions had ever been convicted of a violent felony in the state.

104 Other substances accounted for less than one percent of nonviolent drug prisoners, and in seven percent of cases the substance was unknown.

105 The exact number could not be determined because statutes of conviction entered in the DOC database provide limited information on dollar values involved in forgery, theft and shoplifting offenses.

106 One judge suggested that he would place 75 percent of his felony OWI cases in such a program. Another judge said that individuals convicted of a drunk driving for the fifth time had already received enough opportunities, but that she would use the program for drug offenders.

107 The admissions base includes a small number of individuals whose major offense was low-level and nonviolent, but who also had a lesser assaultive conviction. Although feedback from judges indicates that they would not consider those with violent convictions suitable for the program, they are part of the larger universe of drug, property and OWI cases from which program participants would be selected. The base does not include any individuals whose major offense was violent; individuals with current sex offense convictions; or individuals convicted of both a serious nonviolent offense and a lesser violent offense.

108 Based on an average annual cost of \$28,622 per prisoner.

109 The \$3.6 million projected cost is based on the assumption that all of the projected 1,150 prison-bound defendants would be redirected each year. If fewer defendants were redirected from prison, the added cost of supervision would be less.

110 This figure does not include property offenses driven by drug addiction or injuries and deaths resulting from drunk driving incidents.

111 The projected annual cost of treatment and supervision for prison-bound defendants redirected into the community-based treatment would reach roughly \$11 million before declining to \$9 million as the number released from prison to extended supervision begins to fall. The resulting savings are projected to reach \$26 million annually during the first few years of the program and rise to between \$30 million and \$40 million annually in later years as extended supervision revocations are avoided. If the scope of the program were expanded to include defendants who are not prison-bound, savings could

grow by close to \$3 million, however costs would grow as well. We estimate that cost-savings levels achieved in the first few years of the program would be sufficient to make treatment available to half of low-level, nonviolent felony probationers and still generate savings for the state.

112 “Smart Steps: Treating Baltimore’s Drug Problem.” Washington DC: Drug Strategies 2000.

113 Boothroyd, R., Poythress, N., McGaha, A. and Petrila, J. “The Broward Mental Health Court: Process, outcomes and service utilization.” *International Journal of Law and Psychiatry*, vol. 26. Cited in “Mental Health Courts Program.” Washington, DC: Bureau of Justice Assistance.

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119 Lemert and Dill, *Offenders in the Community*

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126 Twohey, Megan. “Judges support concept of drug court.” *Milwaukee Journal-Sentinel*. April 27, 2004.

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128 “Snap-shot Analysis of Inmates Convicted of An OWI 5+ Offense: Inmates Incarcerated on 10/30/04.” Wisconsin Department of Corrections (unpublished report). October 15, 2004.

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130 Abrahamson, Hon. Shirley. “State of the Judiciary 2005: The Causes of Popular Satisfaction with the Administration of Justice.” May 3, 2005.

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133 Zahn, Mary. “Inmates less motivated, wardens find.” *Milwaukee Journal-Sentinel*. November 21, 2004.

134 It is assumed that time served on supervision or in custody would have been reduced by 15 to 20 percent (half of all uncredited “street time”), of which 60 percent would have been served in prison and 40 percent would have been served on supervision or in a local jail.

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136 Zahn, Mary and Gina Barton. “Door on early release closes tightly.” *Milwaukee Journal-Sentinel*, November 21, 2004.

137 Ibid.

138 On June 30, 2004, DOC data show that there were over 1,500 prisoners – admitted directly to prison with no violation or supervision or violated – who had served 85 percent or more of their prison terms. Even if two in five of those who received good time under the proposed reform ended up serving the time in prison after being revoked from extended supervision, the reform could free up 900 prison beds.

139 The maximum confinement term for sale of a gram or less of cocaine is five years, while the maximum for substantial battery is one-and-a-half years.

140 Including possession with intent to distribute.

141 Complete information on drug amounts is not available in all cases, so the total is understated in these figures.

142 The comparison was made between 425 cases involving defendants with no prior Wisconsin felony convictions and a top charge of cocaine delivery/PWI up to one gram; and 483 cases involving defendants with no prior Wisconsin felony convictions and a top charge of marijuana delivery/PWI up to 200 grams. In Milwaukee, 51 percent of the cocaine cases and 20 percent of the marijuana cases resulted in prison sentences. Outside Milwaukee, 12 percent of the cocaine cases and six percent of the marijuana cases resulted in prison sentences.

143 This figure excludes individuals who had been convicted of new offenses after being admitted to prison since new convictions – whether for crimes committed prior to admission or crimes committed in prison – could push a prisoner’s parole eligibility date forward.

144 Fiscal estimate for AB 256, March 23, 2005.

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146 It is assumed that 2,700 individuals would have their confinement terms shortened by six months, but that up to a third of the time saved would eventually be served as a result of extended supervision revocations.

147 “After Prison: Roadblocks to Reentry.” Legal Action Center. 2004. Available online at [www.lac.org/lac/](http://www.lac.org/lac/).

148 Ibid.

149 “After Prison: Roadblocks to Reentry.” Legal Action Center. 2004. [www.lac.org/lac/](http://www.lac.org/lac/)

150 “Yearend Disposition Summary: Statewide Report.” Wisconsin Court System. [www.courts.state.wi.us/about/pubs/circuit/docs/disposumstate04.pdf](http://www.courts.state.wi.us/about/pubs/circuit/docs/disposumstate04.pdf)



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