A historical policy dilemma

Wisconsin cannot afford to stay the course on its corrections strategy
The costs of locking up criminals in Wisconsin are enormous — close to $40,000 per inmate per year for males and over $32,000 per year for females, who make up just 6 percent of the state’s prison population.

The Wisconsin Department of Corrections budget this year calls for $1.08 billion from state taxpayers, and that doesn’t include the cost of police, prosecutors, defense attorneys and the court system, let alone county jails. Nor does it come close to fully capturing the repercussions of incarcerating nearly 23,000 adults in 37 corrections facilities and supervising some 65,000 more who are on probation or parole.

The corrections budget — seven times bigger than it was just a quarter-century ago — is larger than taxpayer support of the entire University of Wisconsin System. At a time when many of the state’s businesses are desperate for workers of all skill levels, we spend more money locking up Wisconsinites than helping them earn college degrees.

All of this is worth it if it makes us safer. But there is increasing evidence that Wisconsin can more effectively and more cheaply
accomplish that goal while simultaneously helping our businesses find the labor they need.

How did we get to this point? Who are all these people we lock up, and what did they do? Why do we spend so much money on them when we have so many other needs? How do we compare to other states? Why do we spend so much money on them when we have so many other needs? How do we compare to other states? Is there anything Wisconsin can do to remain safe but rein in expenditures and also find a way to help former inmates re-enter their families and society instead of a prison cell, thereby benefiting all of us?

How we got here: The 19th and 20th centuries

The debate over the treatment of Wisconsin’s convicted criminals is as old as the state — almost literally. Only three years after Wisconsin was admitted to the union, the Legislature faced a growing crime problem, so it formed a commission to investigate the construction of a prison. That was in 1851.

The next year, Wisconsin opened its first maximum-security prison in Waupun. In the century following, the state added a workhouse in Green Bay (later to become Green Bay Correctional) and the Taycheedah “home for women” in Fond du Lac. But for many years, that was the extent of Wisconsin’s prison system. By 1970, there were still fewer than 4,000 people behind bars here. In 1990, that number crept up to about 7,300.

Then, in the last decade of the 20th century, incarceration in Wisconsin exploded. By the end of 1999, the number of state prisoners had nearly tripled to 20,112. Almost all of the growth in Wisconsin’s prison system in recent decades, as is illustrated in the accompanying chart, took place in the 1990s. In the 15 years that followed, the prison population grew by 2,100 inmates, at about the same 10% rate as the state’s population growth.¹

The 1990s boom in imprisonment in Wisconsin was in no way anomalous. Violent crime in America had started rising following the civil unrest of the late 1960s and then exploded in the 1970s and 1980s. Addressing public safety and the public’s fear of crime — real and perceived — were national political and policy priorities beginning in the 1970s and lasting for decades.

Every president from Richard Nixon through Bill Clinton mentioned getting “tough on crime” at least once in their State of the Union addresses to Congress, and each took tough federal action to imprison criminals. Nixon launched his “war on crime” in the late 1960s and early 1970s. In the 1980s, Ronald Reagan waged a “war on drugs.” In 1994, Clinton signed the Violent Crime Control and Law Enforcement Act, which poured $30 billion into tough-on-crime measures, including federal aid to hire 100,000 new police officers, $9.7 billion for new state and federal prisons, mandatory life sentences for some repeat offenders, tough new federal drug laws and federal sentencing reforms such as “three-strikes-and-you’re-out.”

Significantly, the act also provided federal incentives for states to pass tough-on-crime laws, including federal money to help build new prisons for those convicted under the new tougher sentences. Federal policies and incentives drove state-level policy and spending all across America.

The tough-on-crime milieu infused Wisconsin as well. Here in the Badger State, violent crimes more than doubled from 3,792 in 1970 to 8,546 in 1980 and then rose to 12,948 by the end of 1990. Legislators, meanwhile, had passed myriad crime-fighting laws with varying penalties over the prior decades that resulted in a disorganized and uneven criminal code.² At least some judges thought that mandatory and presumptive minimum sentences tied their hands and created inequities. Very different crimes such as robbery, burglary and forgery all had the same maximum penalty of 10 years.³

Prison populations soared — more than doubling just from 1993 to 1999. Wisconsin politicians quite literally
couldn’t build prison cells fast enough, and by the late 1990s, nearly a quarter of all Wisconsin inmates were housed in county jails and other facilities outside the state prison system, many of them in other states. Since the early 2000s, the number of Wisconsin prisoners held in jails or elsewhere has dramatically declined — from a high of 4,997 in 2000 to just 29 in 2015.

After building six new correctional facilities in the 1980s, including a maximum-security prison in Portage, Wisconsin went on to build 18 more between 1990 and 2004 — more than one per year.

Truth-in-sentencing

The facts and timeline regarding so-called truth-in-sentencing legislation in Wisconsin belie a common belief and refrain that it was primarily responsible for the increase in prisoners and spending here.

It is true that in the 1990s, prominent lawmakers from both sides of the aisle did push for and eventually pass truth-in-sentencing, which would give victims and society in general certainty that offenders weren’t being released after serving small fractions of their sentences.4

Legislators also recognized the need to revise the disorganized criminal code that hadn’t had a systematic overhaul since the 1970s.5

In 1996, it was Attorney General Jim Doyle, the future Democratic governor, who said Wisconsin should adopt a truth-in-sentencing initiative that would require criminals to serve fixed sentences set by judges instead of becoming eligible for discretionary parole after serving as little as 25 percent of their terms behind bars.6

In 1997, it was Republican Gov. Tommy Thompson’s turn to propose ending parole.7 In the late 1990s, a young Republican state representative by the name of Scott Walker also pushed tough-on-crime legislation.

Finally, in May 1998, the Legislature passed a bill, commonly referred to as truth-in-sentencing, mandating that felons serve their entire sentence behind bars and eliminating parole and early release for good behavior. Once again, Wisconsin was far from alone. At least 29 other states had or would pass legislation that required offenders to serve a set term of confinement followed by supervised release.

As Thomas Barland, a widely respected reserve judge in Eau Claire County, noted a few years later, “The purpose was not necessarily to send people to prison for longer periods of time than before.” The goal was to provide some certainty that inmates would serve the sentence imposed by the court.8
Critics didn’t see it that way. Rep. Frank Boyle, a Democrat from Superior, predicted the bill signed by Thompson would cause the state’s prison population to triple in 10 years.

In fact, deficiencies in the initial legislation may indeed have resulted in a larger prison population, at least for a time. But history proves that Boyle’s fear was unfounded. By the time truth-in-sentencing became law in Wisconsin on the very last day of 1999, there were already 20,112 state prisoners behind bars. Most of the meteoric growth in Wisconsin’s prisons already had occurred before truth-in-sentencing legislation became a reality.

The 21st century

Wisconsin’s prison population did continue to increase for a time in the new millennium — albeit at a much slower rate. The total prison population would rise to 23,183 by the end of 2007, higher than it had ever been before or has been since, before decreasing to where it is today, 22,823 as of September 2016.

Less clear is whether truth-in-sentencing — an umbrella term, actually, for a series of sentencing modifications stretching over many years — played a significant role. The nexus is most plausible for the period of time after the initial legislation resulted in felons serving complete sentences but before the Legislature, a few years later, got around to enacting the long-awaited and always-intended second part of truth-in-sentencing that revamped a disorganized criminal code.

It wasn’t until July 2002 that legislators, finally passing what some came to call Truth-In-Sentencing II, adopted the recommendations of a Criminal Penalty Study Committee that altered felony classifications to better match crimes to time. The committee reduced the maximum penalties on many crimes so that the new maximums did not exceed what previously had been the mandatory release dates. It reduced the number of penalty enhancers, and it removed both mandatory and presumptive minimum sentences.9

At the same time, the Legislature allowed inmates convicted of less serious crimes — beginning in February 2003 — to directly petition courts for sentence reductions after serving 75 percent or 85 percent of their time, depending on the offense classification.

Since then, there have been additional truth-in-sentencing modifications — some of which have canceled each other out. In 2009, Act 28 included a variety of earned-release programs and gave the state DOC and the Earned Release Review Commission considerable discretion.

From the beginning, Act 28 had strong critics. Then-Rep. Scott Suder, a Republican from Abbotsford, called it a “dangerous social experiment,” noting that two of the first inmates released under the program were already back in prison.10

Suder’s comment was a harbinger of things to come. In 2011, the tide turned again, and much of Act 28 was erased. The Republican-controlled Legislature and Gov. Scott Walker passed Act 38, which essentially ended most of the early-release provisions of Act 28.11 At the same time, the provision allowing sentence adjustments that was passed in 2002 — and that had been phased out in 2009 — was reinserted in 2011.12

Whether that provision is an adequate or realistic way of allowing some prisoners to earn their way back to society and a job is an important issue that Wisconsin legislators should continue to address.

Early-release mechanisms, proponents argue, can be effective incentives for inmates to participate in counseling, treatment, education, job training and work programs — and, proponents add, they can result in lower prison populations, lower recidivism and lower prison costs. But, of course, such mechanisms must be balanced against public safety, a goal best achieved perhaps by making sure released inmates are likely to get jobs and find meaning in lives focused on something other than crime.

In 2014, 43 percent of adults entering prison in Wisconsin were sent back — not for any new crime but for violating their extended supervision or parole. Another 13 percent were sent back for a combination of a new sentence and revocation.
Who is in prison in Wisconsin?

Of the 22,215 inmates in Wisconsin prisons at the end of 2014:

- **Gender**: 94% male, 6% female
- **Have had mental health condition**: 33% of males, 77% of females
- **Have dependent children**: 40% of males, 43% of females
- **Average age**: 38 years old
- **Over 50**: 18% of inmates
- **Race**: 55% White, 41% Black, 4%
- **Other**

Why are they in prison?

The statistics run counter to the popular belief that Wisconsin’s inmate growth is the result of massive convictions for drug use or dealing, although the categories for incarceration are listed by their most serious offense. Many inmates have more than one.

- **Drug offenses**: 9%
- **Violent offenses**: 67%
- **Property offenses**: 14%
- **Public-order offenses**: 10%

*Such as operating a vehicle while intoxicated, possession of a firearm by a felon and failure to pay child support.

Trends in inmate population

Trends are not always readily apparent because many inmates have more than one conviction, but here are some trends as reported by the Wisconsin Department of Corrections as of the end of 2014:

- **Sex offenders**: +5% to 25%
- **OWI offenders**: +6% to 9%


Who’s in prison, and for how long?

Some inmates are lower-risk than others, of course — and effective risk-assessment tools are essential. But it can’t be ignored that a large, and growing, percentage of inmate have violent pasts. The spike in crime rates in the 1970s and 1980s precipitated the spike in the prison populations in the 1990s.

As previously noted, violent crimes in Wisconsin more than doubled from 1970 to 1980 and then grew by half again by 1990 — far exceeding population growth. Violent crime in the state remained static in the 1990s, then started rising again in the 2000s — a phenomena reflected in the prison population. Sixty-seven percent of inmates in 2014 committed violent crimes, up from 59 percent in 2000.13

The rest are guilty of property, public-order and drug offenses. Perhaps contrary to common perception, drug sentencings have not been the primary driver of incarceration levels in Wisconsin. About 10 percent of inmates committed drug-related crimes.14

Drugs do still play a large role in criminal activity in America. Minnesota, for instance, is considering building a new prison because its methamphetamine problem is resulting in a surge in violent crimes. But in Wisconsin, at least, the bigger picture with crime trends is nuanced: Since 1990, violent crime has increased even as total crime has decreased.

The increase in violent crimes, as well as some sentencing changes perhaps, would explain why Wisconsin’s prison population is older than it used to be. The number of inmates over age 50 more than tripled between 2000 and 2014, increasing from 6 percent to 18 percent of the total prison population.15
The cause is clear. Inmates, likely for a variety of reasons, are serving longer sentences than was once the case. Since 2000, inmates with four or fewer years left on their sentences have dropped 50 percent, while those with five or more years left have increased 25 percent.

Still, the fact is that almost everyone who is incarcerated in Wisconsin will get out — and most will get out relatively soon. Only 5 percent of males and 3 percent of females are “lifers.”

While the inmate profile is older than it once was, the average age is still only 38, and 37 percent of inmates will be released in less than two years. Sixty-five percent will be released in less than five years. These are, for the most part, relatively young men, many of whom have dependent children, who have long lives ahead of them and will spend at least a portion of those lives back in society. Many, unfortunately, won’t stay out for long if history is a good indication. Wisconsin sends a lot of people back to prison after they’ve served their sentences and have been out for a time. In 1990, the recidivism rate — criminals who return to prison within three years of being released — was 35 percent. The rate spiked to 47 percent in 2005 before dropping to 31 percent for inmates released in 2011.

The state’s revocation rate — violations of parole and probation rules in which offenders can be sent back to prison without having committed a new crime — is also slightly lower than it used to be. But it’s still high. In 2014, 43 percent of adults entering prison in Wisconsin were sent back — not for any new crime but for violating their extended supervision or parole. Another 13 percent were sent back for a combination of a new sentence and revocation.

Where we are today

The United States today leads the world in locking up more convicted criminals than any other nation. America’s incarceration rate of 693 prison inmates per 100,000 people is roughly four times higher than the rate in most European nations, including Britain (147 per 100,000), with roughly the same crime rates.

Within America, at the same time, Wisconsin’s incarceration rate of 371 inmates per 100,000 residents in 2014 is about average among states at 28th, comparable to Illinois’ (377) and lower than Michigan’s (441), though far higher than Minnesota’s (194). (See related story on Page 12.)
With about one-tenth of the state’s population, Milwaukee reported 8,864 violent crimes in 2014, more than half of all violent crimes committed statewide. The city’s violent crime rate was the fifth-highest in the nation among cities with more than 250,000 people, according to the FBI’s 2014 Unified Crime Report.

Milwaukee’s violent crime rate of 1,476 per 100,000 residents in 2014 compared to a statewide rate of 291. It was more than 14 times higher than the rate in many other Wisconsin cities, and the numbers have only worsened since.

There were 153 homicides in Milwaukee in 2015, nearly double the 86 reported the year before. By November 2016, there were 131, according to the Milwaukee Journal Sentinel’s homicide database, which also tracks non-fatal shootings. Those rose from 400 in 2010 to 635 in 2015.

In Wisconsin, the debate over corrections costs and Milwaukee’s impact also includes — subtly or otherwise — the state’s treatment of African-Americans by law enforcement, the courts, judges and the parole/community treatment system.

For years, Wisconsin’s prison population included almost as many black males as it did white males despite the fact that blacks are less than 7 percent of the state population. While the percentage of blacks in the state’s prisons is dropping slightly, the fact remains that one in every eight working-age black males in Wisconsin is incarcerated — the highest in the nation and almost double the rate nationwide, according to a study last year by the Wisconsin Budget Project. That’s more than double Minnesota’s 6 percent rate and 80 percent higher than in Michigan or Illinois, both with large inner city communities similar to Milwaukee’s.

A 2013 University of Wisconsin-Milwaukee study found that almost two-thirds of Milwaukee County’s incarcerated black males come from the city’s six-poorest ZIP codes.

Prison reform advocates argue that blacks are arrested more frequently and sentenced more harshly for certain types of crimes. They also argue that Wisconsin could play a stronger role in reducing the black prison population by expanding job training and rehabilitation programs — and could increase funding to diversion programs that provide alternatives to prison for nonviolent criminals.

At the same time, defenders of current sentencing policies in Wisconsin note that, while it’s true that black incarceration rates are high, so are violent crime rates in largely black neighborhoods, where the victims are also black.

The homicide rate for whites in Milwaukee was about 10 per 100,000 residents in 2010 and only slightly higher in 2015. During that same period, the black homicide rate was triple that, hovering around 30 until 2014, then jumping to 53 last year.

In fact, of the homicides reported the last two years by the Journal Sentinel, all but a few of the victims were black.

— Michael Flaherty

Wisconsin’s prison population has leveled off in the past 10 years. It was actually lower in 2014 than it was in 2004. But costs are still exorbitant and are expected to continue increasing because the state’s prisons are nearly one-third over capacity today.

In Wisconsin, the last three legislative sessions have made minor tweaks in sentencing guidelines to help slightly reduce inmate numbers and costs with some success. Despite increases in some types of crime, Wisconsin’s prison population has remained fairly stable, which suggests that modest reforms, such as reducing penalties for drug use by nonviolent offenders, have been a factor in keeping inmate numbers from climbing.

But at the same time, those efforts haven’t resulted in significant reductions in the prison population or the cost of the state’s corrections system. Wisconsin’s history on these issues suggests that nibbling around the edges of corrections policies and sentencing rules won’t greatly change the course or the cost of the corrections system.

Regardless of the party in control, many strongly tough-on-crime states with high incarceration rates are experimenting with efforts to reduce inmate numbers, with 12...
In the early 1980s, Minnesota and Wisconsin — states with similar populations — took distinctly different policy paths in response to rising crime.

Minnesota’s 1981 sentencing reforms required prison only for offenders who posed a threat to public safety. As a result, 104,000 of its 114,000 convicts today are managed in community-based settings with roughly the same success in recidivism. That’s the primary reason — at first glance at least — Minnesota has only 10 state prisons and a corrections budget this year of $527 million, compared to Wisconsin’s $1.3 billion budget. Minnesota, meanwhile, is managing 24,000 more felons than Wisconsin.

Some of the dollar-for-dollar comparisons are misleading. Minnesota’s costs are calculated differently as the state shifts substantial community-based corrections costs to county and local governments for management, treatment and training. That’s one reason the national drug-abuse counseling group BlueLight calls Minnesota “The Land of 10,000 Treatment Centers.”

Other comparisons, however, are helpful. Minnesota’s treatment-based approach is much more cost-effective when dealing with offenders who have mental health issues. The Wisconsin Department of Corrections reports that in 2014, 33 percent of all male inmates and 77 percent of all female inmates — nearly 8,000 people — had mental health issues.

That makes the prison system by far the state’s largest mental health institution, a role for which it was not designed nor equipped and in which treatment is vastly more expensive and less effective. In fact, mental health experts note that prison can exacerbate mental health problems, making the inmates more difficult to manage for corrections officials and more expensive for taxpayers.

So while the two systems aren’t entirely comparable, the bottom line on differing approaches is real: Minnesota this year will spend $381 million on roughly 10,000 inmates, while Wisconsin will spend nearly $1 billion for nearly 23,000 inmates.

Meanwhile, Minnesota has a slightly higher crime rate and one-fourth more convicted felons, according to the Minnesota DOC.

— Michael Flaherty
Tough-on-crime Texas enacts reforms by necessity

When it comes to a “lock ‘em up” approach to criminal justice, no state had been more aggressive than Texas. The prison population in the nation’s second-most-populous state jumped from 19,000 in 1975 to over 172,000 in 2010. Inmates were housed in 114 state prisons and jails.

If Texas were a country, criminal justice experts used to say, it would lead the world in the number of people behind bars.

But in 2007, the state’s Republican lawmakers changed course. Faced with the reality that they were going to have to spend another $2 billion to build new prisons to handle an additional 17,000 inmates, they began looking for options that would be both cost-effective and that would protect public safety.

Under the Republican leadership in the Legislature and Republican Govs. Greg Abbott and Rick Perry, lawmakers responded with watershed legislation that would slowly but firmly reform the state’s criminal justice system, including its criminal code, courts and sentencing structure and how it manages and treats felons.

Since then, Texas has closed three prisons — a first in state history. It has seen its prison population drop by nearly 20,000 to just around 150,000 inmates. At the same time, its crime rate dropped 29 percent from 2005 to 2014, substantially faster than the nation’s drop in overall crime and violent crime rates.

What happened?

Instead of spending $2 billion to expand its prison system, lawmakers focused on greatly expanded treatment and education programs for low-risk, nonviolent offenders. They spent $241 million on new probation and rehabilitation programs, including drug courts and more than 3,000 slots for outpatient substance abuse, noted former GOP Rep. Jerry Madden, who helped author the reforms as chairman of the Texas House Corrections Committee.

“The results were lower recidivism and incarceration rates, not to mention billions saved for Texas taxpayers,” he wrote this year in a report as a senior fellow for the Texas Public Policy Foundation’s Right on Crime initiative. The reforms also included 2,700 new substance abuse in-prison treatment beds, 1,400 new intermediate sanctions beds (90-day programs for probation violations), halfway house beds and a cap on caseloads for parole officers, he noted.

“Policies in various states are finally catching up with what we know works,” said Marc Levin, director at the Austin-based Center for Effective Justice and a leader in the national Right on Crime campaign, which promotes community-justice solutions. “For most nonviolent offenders, community-based initiatives are much cheaper and have much better outcomes,” Levin told Texas News & Politics in an August 2012 interview. “In this time of tight budgets and programs that work, this is the conservative thing to do.”

The changes included a wide swath of other program reforms, such as:

• Specialty courts around the state to tailor sentencing and treatment for drug offenders, drunken drivers, veterans and prostitutes to push them to turn around their lives without going to prison.

• More parole officers to keep tabs on their charges with high-tech electronic monitoring technology and new risk-assessment tools to ensure public safety.

• Expanded community-based probation programs for low-level, nonviolent offenders designed to curb recidivism and probation revocations. In Texas, community-based programs are one-sixth the cost of a prison term, and the programs now serve an additional 11,000 people, according to Madden.

• Expanded in-prison treatment programs that now treat more than one-fifth of the state’s inmates.

— Michael Flaherty
According to U.S. census data, Wisconsin’s population increased from 5,250,446 in July 1999 to 5,771,337 in July 2015, a 10 percent increase.


The state’s “Intensive Sanctions” program was part of the 1991-’93 created as a prison alternative for certain offenders who could be effectively monitored while still meeting concerns for public safety. Prior to that, the state’s program was called "high risk supervision.” The state’s “Drug Intensive Supervision” program was funded with a federal grant as part of the nation’s war on drugs, which assigned one parole agent to a small group of 20 offenders. In 1989, the state created its Community Structured Supervision program. In 1990, the Department of Corrections implemented the Community Residential Confinement Program, including “Intensive Community Supervision.”

Ibid.


Inmate Profile 2014, Wisconsin Department of Corrections.


Inmate Profile 2014, Wisconsin Department of Corrections.

DOC "Recidivism after Release from Prison” report, August 2016.


Wisconsin Department of Corrections daily inmate population reports.