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CRIMINAL JUSTICE REFORM RECOMMENDATIONS

for Wisconsin Policymakers

2021 EDITION

*Policy ideas from the Wisconsin
Criminal Justice Coalition*



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Introduction: The Justice System in Wisconsin

Wisconsin currently incarcerates 20,000 individuals in its state prison system and supervises over 63,000 in some form of community supervision. The state has seen its prison population steadily increase since the turn of the century, even though crime rates have decreased since 2000. Every day of imprisonment costs the state \$90 for each male inmate and \$103 for each female inmate.

The Department of Corrections' budget called for \$1.35 billion in taxpayer spending in 2020, eight times more than 25 years ago. This sum is only expected to increase as the state's prison population continues to grow and age at a time when corrections costs are rising rapidly.

Racial disparities in Wisconsin's criminal justice system are among the worst in the country. In 2019, 42% of the state's prison population was black — six times higher than black representation in the state's population as a whole. In some instances, it's difficult to determine whether these disparities are a result of the system itself — police, prosecutors, courts or corrections — or whether they reflect disparities that exist elsewhere.

Wisconsin can decrease taxpayer expenditures and increase public safety concurrently by adopting the simple recommendations offered in this publication. The main areas where the state should consider implementing reform are:

1. Community Supervision
2. Conditions of Court Supervision
3. Data
4. Expungement
5. Police Reform
6. Sentence Adjustment Petitions
7. Collateral Consequences
8. Reentry Services
9. Over-criminalization
10. Bail Jumping

Community Supervision

The Problem

Wisconsin is an outlier on two fronts in the way it imposes and calculates extended supervision. The first is the length of the supervision term. The second is how time is calculated in the event of a revocation. Truth in sentencing requires every prison sentence to be bifurcated into periods of initial confinement and extended supervision. The latter must equal at least 25% of the total period of initial confinement and, with few exceptions, may be as long as the maximum sentence minus the period of initial confinement.

Example: Substantial battery (under Section 940.19(4)) carries a six-year maximum sentence. If a judge orders a two-year term of initial confinement, the term of extended supervision can range from a minimum of six months (25% of the initial confinement) up to a maximum of four years (total maximum sentence minus the initial confinement).

Wisconsin also calculates extended supervision in a way that can extend it further still. Time spent following rules of supervision in the community does not count against

extended supervision in the same way that days spent in custody count against initial confinement. As a result, there is a potential for people to spend more time on extended supervision than originally ordered by the court. This is often referred to as “doing life on the installment plan.”

Example: Same sentence, two different systems.

Under Wisconsin’s old parole system, a person given a maximum prison sentence of 10 years might be paroled after five years of confinement. If, in the eighth year of the sentence, the person was revoked, he would face up to two more years in prison. Under Wisconsin’s current truth-in-sentencing system, if a person sentenced to 10 years’ imprisonment (five years initial confinement and five years extended supervision) is revoked in the eighth year of the sentence, he faces up to five years in prison. With no credit for any of the time spent successfully following rules of supervision in the community, the person faces the possibility of cycling repeatedly in and out of prison. This is a particularly significant risk for individuals who struggle with substance abuse or untreated mental illness, for whom compliance with supervision rules is often more challenging.

The result is the potential of being under DOC supervision for a significantly longer period than the sentencing judge envisioned. Currently, 38.8% of all Wisconsin prison admissions are for revocations only, in the absence of a conviction for a new criminal offense. This is costing Wisconsin millions in tax dollars with little to show for it in terms of public safety.

Reforms from Other States

Unlike Wisconsin, many states with truth-in-sentencing laws strictly limit the time a person can spend on post-release supervision. Ohio requires that all individuals sentenced to prison for serious felonies be given a period of post-release control that may not exceed five years. Kansas has similar laws, requiring individuals serving determinate sentences to

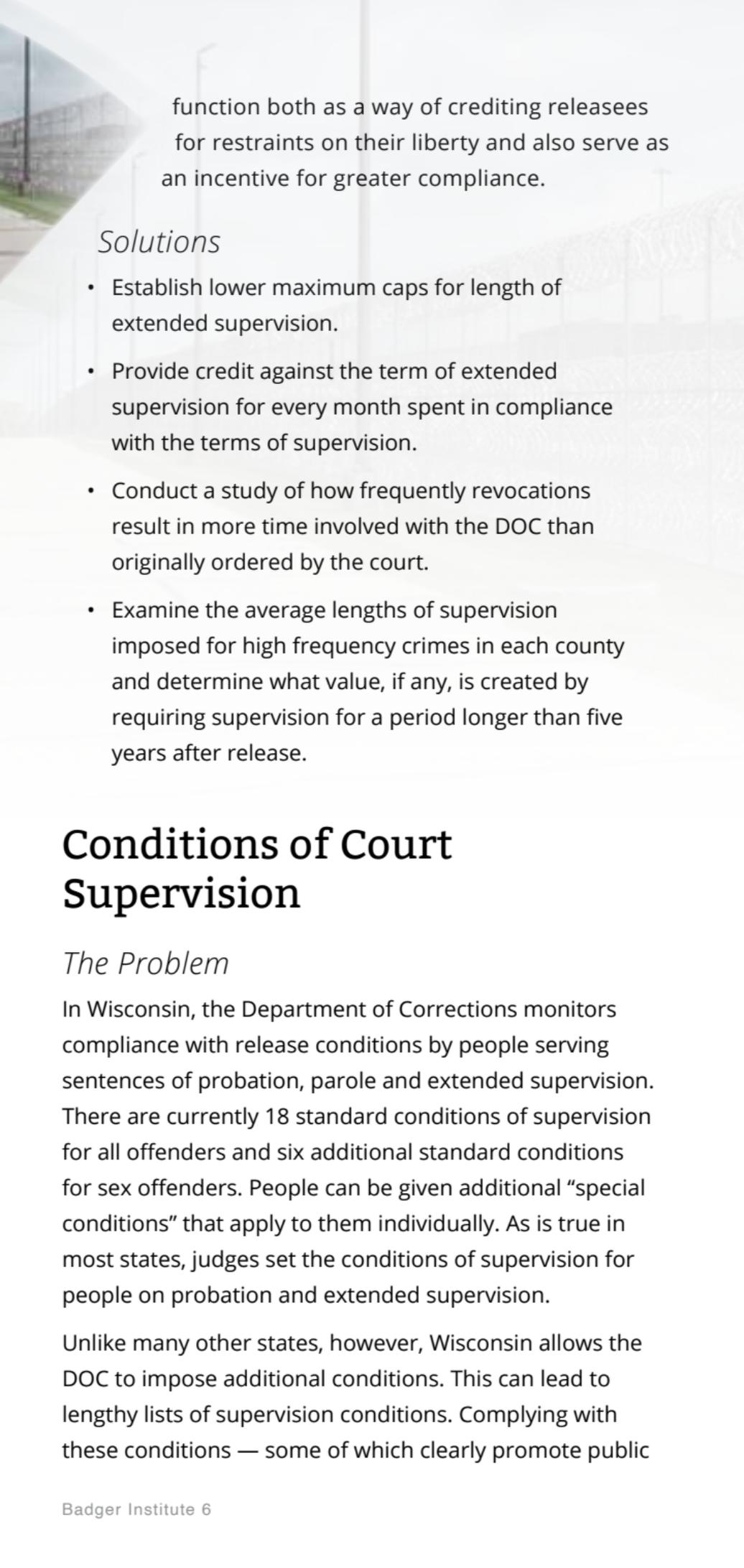
receive periods of post-release supervision ranging from 12 to 60 months. The federal system caps federal probation at five years.

Research has shown that shorter periods of supervision have been linked to lower recidivism and that the likelihood of additional crimes decreases dramatically over time. In the Badger Institute's *Ex-offenders under watch* report, 90% of the revocation cases studied occurred within the first two years of supervision. Probation and parole agents ideally should focus on offenders who were recently released since they're more likely to violate the rules of supervision. But in 2018, 4,554 offenders in the state were sentenced to supervision terms of three years or longer.

These long periods of supervision after release from prison lessen the probability of successful reentry by continuing to impose limitations that impede an individual's ability to secure meaningful employment and acceptable housing conditions. Long supervision terms are also costly to taxpayers, with little to show for public safety.

In many states, individuals serving terms of post-release supervision are given credit for time spent in compliance with the rules of supervision.

In Kentucky, for example, after serving a minimum term of 12 to 24 months on supervision, certain categories of offenders can receive "compliance credit" for every month spent in compliance with the terms of their parole release. In Louisiana, earned compliance credits are available for all nonviolent, non-sex offender parolees not participating in a specialized court program for each month spent in compliance with the conditions of release. In Alaska, all parolees are eligible for earned compliance credits, at a day-for-day rate, awarded on a monthly basis. Similarly, all Mississippi offenders on probation, parole and post-release supervision who are in compliance with the terms and conditions of supervision earn day-for-day sentence credit against the length of their supervision terms. In theory, these laws



function both as a way of crediting releasees for restraints on their liberty and also serve as an incentive for greater compliance.

Solutions

- Establish lower maximum caps for length of extended supervision.
- Provide credit against the term of extended supervision for every month spent in compliance with the terms of supervision.
- Conduct a study of how frequently revocations result in more time involved with the DOC than originally ordered by the court.
- Examine the average lengths of supervision imposed for high frequency crimes in each county and determine what value, if any, is created by requiring supervision for a period longer than five years after release.

Conditions of Court Supervision

The Problem

In Wisconsin, the Department of Corrections monitors compliance with release conditions by people serving sentences of probation, parole and extended supervision. There are currently 18 standard conditions of supervision for all offenders and six additional standard conditions for sex offenders. People can be given additional “special conditions” that apply to them individually. As is true in most states, judges set the conditions of supervision for people on probation and extended supervision.

Unlike many other states, however, Wisconsin allows the DOC to impose additional conditions. This can lead to lengthy lists of supervision conditions. Complying with these conditions — some of which clearly promote public

safety and some of which do not — can create practical and financial challenges for people on supervision.

Badger Institute research found that an overwhelming majority of individuals (81%) had a substance abuse problem that contributed to their revocation. This indicates the importance of focusing on the specific needs of individuals on supervision and targeting rules and conditions to fit them.

Both judges and the DOC serve an important role in monitoring those on supervision and ensuring they comply with their conditions. Many rules doled out by judges and the DOC are justifiable and necessary to ensure public safety, but imposing and enforcing too many rules — particularly those that restrict otherwise legal behavior that has no nexus to the individual's underlying offense — can make it more difficult for people to successfully complete the terms of their supervision. A more streamlined approach where judges and the DOC work together on creating conditions commensurate with the underlying offense and tailored to the monitored individual will allow for more successful supervision without sacrificing public safety.

Reforms from Other States

Several states such as Utah, Maryland, Alabama, Mississippi, Tennessee, Arizona, Missouri, Ohio, Pennsylvania and South Carolina have implemented incentivized funding at the adult and/or juvenile level that awards community corrections departments with a percentage of savings to the state by reducing revocations to prison by implementing recidivism-reducing strategies such as electronic monitoring, specialized caseloads, lower caseloads for supervision officers, increased drug treatment, etc. Results generally have been successful. For example, Arizona was able to decrease revocations and avoid millions of dollars in prison spending after implementing incentivized funding.

Additionally, states such as Alaska, Maryland, Utah, Alabama, Mississippi, South Dakota, West Virginia, Kansas,

Georgia, Delaware, Pennsylvania, Arkansas, Kentucky, Louisiana, North Carolina, South Carolina and Texas have authorized in statute graduated sanctions for technical violations. Michigan's Swift and Sure Sanctions Probation Program (SSSPP) targets and closely monitors high-risk felony offenders. It imposes graduated sanctions, including jail stays, for violating terms of supervision. Jurisdictions that have implemented swift and certain sanctions for technical violations, along with rewards for compliance, have been shown to be more effective in reducing reoffending, particularly for drug offenders, than ordinary probation.

Solutions

- Clarify the standards for imposing rules of supervision. Require all conditions to have an articulable connection to the crime of conviction or to risks posed by an individual at the time of the current offense.
- Require judicial oversight on conditions of supervision imposed by the DOC and require that the conditions must meet the same standards as above.
- Increase the array of incentives available for those on extended supervision (including credit for time spent in compliance with the rules of supervision) to help incentivize good behavior.
- Implement incentivized funding to the DOC in order to increase the number of people successfully completing terms of supervision and to reduce revocations.

Data

The Problem

In many ways, Wisconsin has long been a leader in making data about criminal cases transparent and available to the public. Our Circuit Court Automated Program (CCAP) allows

people to obtain data about specific cases easily online. Analyzing larger data sets is more difficult, in part because CCAP lacks a publicly accessible interface. Data about other stages of the justice system is not as readily available and is not aggregated. Because of this, policymakers and the public lack important information needed to make informed decisions about the state's criminal justice system.

Some states, such as Florida, gather data about the criminal justice system throughout the process in hopes of identifying systemic and geographic anomalies that could provide insight into bottlenecks. Wisconsin should consider collecting data to see whether different approaches cause disparate impacts.

There are a number of areas where information about Wisconsin's justice system is lacking transparency and consistency from county to county. One involves criminal charges that are brought against defendants or those on supervision. For example, district attorneys' charging practices differ greatly for each jurisdiction for similar conduct. Additionally, the Department of Corrections' handling of violations of supervision varies greatly from case to case. Without accurate and consistent data, these critically important components of the criminal justice system cannot be accurately assessed.

Wisconsin has gaps and inconsistencies in other important data points related to corrections. For example, county jails and state community corrections offices do not have a uniform and easy way of collecting information about many aspects of their work that are relevant to public policy. The state does not report the number of revocations recommended and approved statewide and by region, the reasons for revocation, the number of successful completions of community supervision and other important measures.

These data points, plus others like the average amount of time probationers spend incarcerated on "holds," and the available programs, program capacities and



waiting list numbers for correctional programs in jails, prisons and in the community, all would be valuable information for the public and for policymakers. Currently, much of that information is unavailable or inaccessible, hampering efforts to assess the efficacy of existing policies and practices. Effective data gathering also could identify where racial disparities exist within the criminal justice system.

Making data collection more robust and uniform would allow policymakers to have a clearer understanding of how tax dollars are being spent, how and when custody is being used and how effective our interventions are in the lives of people involved in the criminal justice system.

Reforms from Other States

Tennessee requires that monthly average data from county jails be collected and reported.

Florida enacted the Criminal Justice Data Transparency (CJDT) initiative, a law that requires the collection of a whole range of criminal justice data, including how courts resolve cases on a statewide and county-by-county basis and detailed information on convictions down to the specific crime committed. Wisconsin's DOC reports only four types of crimes — violent, property, drug and public order — while Florida reports more than 100. Wisconsin should look at establishing a more nuanced and uniform definition of violent crime among state statute and the DOC.

Solutions

- Create a statewide system for uniform and robust data reporting pertaining to county jails, community supervision, juvenile detention and supervision, and police use of force to augment our already robust prison and court operations data. Permit the state Criminal Justice Coordinating Council, policymakers and researchers access to the data for regular review.

Expungement

The Problem

As is true in many states, the situations in which a criminal conviction can be expunged in Wisconsin are limited by both the age of the defendant and the level of offense. Typically, expungement is available to young, lower-level offenders as a means of helping them avoid the ongoing stigma and collateral consequences of past indiscretions.

What makes Wisconsin's law unique is that it requires judges to order relief at the time of sentencing, with the actual expungement (if approved) occurring at a later date, contingent on the defendant's successful completion of his sentence.

In other words, judges are asked to decide whether expungement is appropriate very soon after the crime has been committed, rather than a year or more later, when the defendant's rehabilitation (or lack thereof) is more readily apparent. That oddity of timing, combined with a lack of statutory clarity about when it is appropriate to grant expungement, means that the mechanism is underutilized for people who go on to live law-abiding lives following a criminal conviction.

As our research shows, this has led to disparities by class, race and geography over who receives an expungement. "The disparities by race and county are troubling," the Badger Institute concluded. "Whatever the reason — economics and the related lack of legal representation, bias, differences in prior criminal records, differing attitudes among judges — it is clear that the defendants in the one place with the highest widespread levels of unemployment and poverty in the state, the city of Milwaukee, have much less likelihood of securing an expungement than most other Wisconsinites."

Changes that might improve the law would include allowing judges to rule on expungements at the completion of a sentence, raising the eligibility age and expanding the

categories of offenses for which expungement is potentially available. Reports on this topic were published by the Badger Institute and the Wisconsin Policy Forum.

Reforms from Other States

Many states including Tennessee, Montana, Indiana and Illinois allow an individual to seek expungement of multiple convictions after a prescribed period of time if the offenses are independently eligible and the person has no subsequent convictions. This saves both the court system and the ex-offenders significant money and time by not requiring expungement of each conviction separately and provides relief to those who may have been guilty of multiple crimes but later became productive citizens.

In 2020, Michigan passed a bipartisan package of expungement bills that will automatically expunge misdemeanors after seven years and nonviolent felonies after 10 years. Certain crimes are exempt, and the state can expunge only up to two felony and four misdemeanor convictions per offender. The package also allows for most traffic crimes to be expunged and makes it easier for offenders to receive an expungement for marijuana offenses.

Tennessee, North Carolina, Illinois and Pennsylvania allow for partial expungement that removes from digital court data any records of past arrests, dismissed charges, indictments or dropped charges related to a successful conviction that may or may not itself be eligible for expungement. This process allows individuals to remove items from their criminal record that did not actually relate to the conduct for which they were convicted.

States like Texas allow for a record to be sealed from the public for certain first-time convictions but allow law enforcement and sensitive industries such as health care and education to see through the sealing.

California, Colorado, Idaho, North Dakota and West Virginia have enacted mechanisms that allow individuals to ask courts to reduce their (mostly nonviolent) felony convictions

to misdemeanors after a certain waiting period without another conviction.

Solutions

- Authorize judges to rule on petitions for expungement after a sentence has been served, as well as at the time of sentencing.
- Eliminate the age restriction for expungement.
- Allow partial expungement of past arrests, dismissed or dropped charges, and indictments.
- Allow judges, as an alternative to expungement, to reduce the classification of a criminal conviction from a felony to a misdemeanor (without altering the crime of conviction) after a certain waiting period without another criminal conviction.

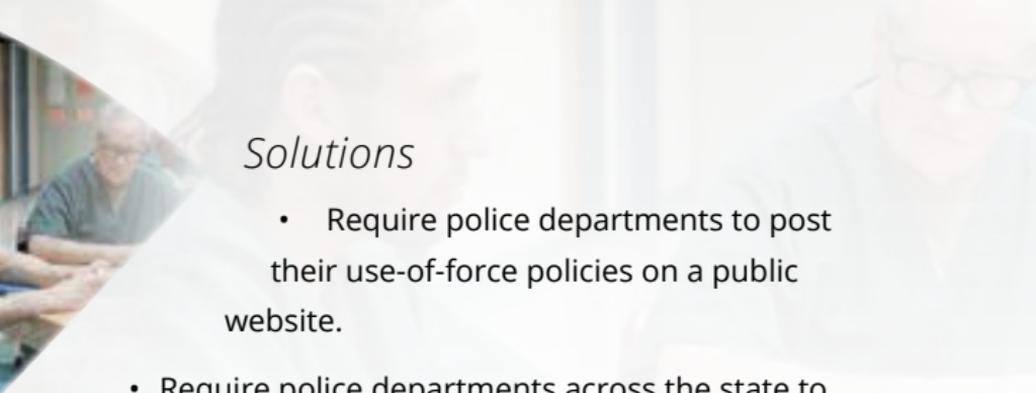
Police Reform

The Problem

Use of force by police officers making arrests is rare. The Badger Institute found that in Wisconsin's two largest cities, police officers used force in only 3.3% and 3.5% of arrests (though certain officers use force at much higher rates).

When there is police misconduct, however, policies in state law and union contracts can make it difficult to get rid of bad officers. For example, in 2007, Gov. Jim Doyle extended arbitration to disciplinary actions — even minor ones — involving police. A review of a cross section of police contracts in 10 Wisconsin cities and counties reveals that, while there is variation, many of those departments did subsequently negotiate some type of arbitration process that to this day applies to at least some disciplinary matters.

The state also lacks uniform, statewide data on use-of-force incidents. Without this information, it's difficult to evaluate how a community is being treated by its police force and ultimately undermines public trust.



Solutions

- Require police departments to post their use-of-force policies on a public website.
- Require police departments across the state to annually report all use-of-force incidents and to standardize how they define use of force to ensure uniform reporting methods.
- Publish regular reports on employee discipline or hearings that result in reductions in discipline.
- Act 10, the legislation that limited most public-sector collective bargaining to wages, should be extended to police and fire contracts in order to give police chiefs more latitude in quickly and effectively rooting out misconduct in the ranks.
- Absent extension of Act 10 to police and fire, the Legislature should pass a law reversing Doyle's decision to grant police unions the ability to ask for arbitration in disciplinary cases.

Sentence Adjustment Petitions

The Problem

Passed by both Republican and Democratic lawmakers in Wisconsin in 2002 as part of truth-in-sentencing laws, sentence adjustment petitions are meant to allow for the early release of nonviolent offenders who proved they are ready to reenter their community. Lawmakers reaffirmed their interest in the policy when they included it in another version of truth-in-sentencing in 2011.

But sentence adjustment petitions are rarely approved, Badger Institute research reveals, indicating that the law might not be working as intended. In a three-year analysis, only 821 of the 6,886 petitions filed were granted, and only about 10% of people incarcerated in Wisconsin filed

a petition. Their usage differs by county as well, with some granting many more petitions than others.

To qualify for a sentence adjustment, one must have committed a nonviolent offense and have a record of good behavior in prison. Those convicted of a Class C, D or E felony may petition for a sentence adjustment after serving 85% of their prison term, and those convicted of a lower-level felony may petition after serving 75% of their prison time. Petitions are filed with the sentencing judge, who then refers them to the prosecuting district attorney, although judges ultimately decide whether or not to grant the petition.

Importantly, sentence adjustments do not reduce the overall length of a sentence but, rather, add the reduced prison time to the offender's extended supervision period. Still, granting an early release for those who have proved they're ready to reenter society saves taxpayers money and allows individuals to obtain employment while serving the rest of their sentence in the community.

Solutions

- Allow inmates to start the petition process much earlier — for instance, after serving 50% of their term — but still be required to serve 75% to 85%.
- Allow inmates to petition for a sentence adjustment after serving a smaller percentage of their time — for instance, 60%, and then be released whenever the judge has completed the review.
- Expedite the review of petitions by eliminating the veto power of prosecutors and victims. While victims should be notified and their comments should be considered, the ultimate decision should be made by the judge.
- Encourage more legal representation of prisoners who qualify for early release.

Collateral Consequences

The Problem

The collateral consequences of a criminal conviction in Wisconsin are wide and varied based on the offense. There are cases when barring people with certain past convictions from holding specific jobs makes sense. In many cases, though, collateral consequences can impose unnecessary hardships on people who already have paid their debts to society, making it difficult to obtain gainful, appropriate employment or to fully reintegrate into the community. According to the Federal Bureau of Prisons, ex-offenders who are employed are three to five times less likely to reoffend.

Wisconsin law is in many ways a leader in preventing private employment discrimination: Employers are generally permitted only to consider past convictions as a factor in hiring when a person's crime of conviction is "substantially related" to the job for which the person is applying. What it means to be "substantially related" is less clear: Many Wisconsin statutes require denial of employment licenses unless a person "(d)oes not have an arrest or conviction record subject to ss. 111.321, 111.322 and 111.335, Stats," without specifying how the laws interact. Licenses that fall under this category include first responders, landscape architects, chiropractors, funeral directors and nurses, among others. These ambiguities make Wisconsin law often unclear on the consequences of a conviction related to obtaining a state-issued occupational license.

Additionally, many occupational licenses act only as unnecessary barriers to good-paying jobs in vocations that are taught in prison. These obstacles to employment in turn affect the ability to secure housing and other key elements that increase the likelihood of successful reentry.

Wisconsin has done important work already to reduce unnecessary barriers, including the establishment of a legislative study commission in 2016 to study Reducing Recidivism and Removing Impediments to Ex-Offender

Employment. Wisconsin also has enacted substantial reforms aimed at ensuring second chances, including legislation that bars government agencies from denying an occupational license based solely on an individual's arrest or conviction record.

This type of reform could be paired with a liability limitation that bars or limits legal action against employers solely for hiring an individual with a criminal record.

Reforms from Other States

Ohio has had early success with its Certificate of Qualification for Employment (CQE), and other states have enacted similar provisions, such as Illinois' Certificate of Good Conduct and Connecticut's Certificate of Rehabilitation. While the effectiveness of these certificates is still in question, a 2016 University of South Carolina study showed that the certificates increase the "likelihood of receiving an interview invitation or job offer more than threefold." In addition, several model laws exist for such legislation, including the Model Penal Code's Certificate of Restoration of Rights and the Uniform Law Commission's certificate of the same name.

Texas has adopted limited liability provisions for hiring and/or housing individuals with certain criminal records to provide protections to employers and housing managers who want to give ex-offenders a second chance.

States such as Arizona, Texas and Louisiana have passed laws that authorize a provisional license to ex-offenders who, but for their criminal record, are qualified for the license. These probationary-style licenses strike a balance between getting ex-offenders back on their feet and the interests of public safety.

Solutions

- Provide clearer guidance to licensing agencies about how to decide when a conviction is "substantially related" to an occupation.



- Create a liability limitation for employers and housing managers who hire/house employees with criminal records.
- Implement a provisional licensing scheme for certain occupations.

Reentry Services

The Problem

Data about literacy, educational attainment and work experience of those who are incarcerated reveals a startling truth: They do not have the education, literacy and numeracy skills, and work experience necessary to acquire meaningful employment when they return to our communities. Studies clearly show that, while people with a criminal history face significant barriers to securing employment, providing educational and vocational classes is an effective way to assist them in overcoming these barriers and to increase public safety. Prison academic and vocational programs have been found to reduce recidivism by up to 13%, and trade or job training programs increase the likelihood of post-release employment by up to 21%.

Wisconsin's Department of Corrections provides a variety of educational and vocational programs for inmates, but the programs do not have enough capacity to meet the demand. Currently, these programs take the form of partnerships with local technical colleges or temporary work release programs. Wisconsin's 2016 Study Committee on Reducing Recidivism and Removing Impediments to Ex-Offender Employment recommends that the state expand the current evidence-based programming in prisons and adopt a new model allowing the DOC to secure funding for additional programming.

The state could also expand access to evidence-based programming in a cost-effective manner by providing community organizations with facility access to host such programs in prisons. Some examples of local nonprofits

providing programming in prisons include The Last Mile, Miles of Freedom, Prison Fellowship and Hudson Link.

Solutions

- Expand access to prisons for local and national nonprofit organizations that provide evidence-based, recidivism-reducing strategies.
- Examine how workforce development programs in prisons can be transitioned to more specific localities to which the prisoner will return upon release.

Over-criminalization

The Problem

Wisconsin law criminalizes roughly 1,000 different acts, some of which regulate identical conduct in overlapping ways. There are more than 20 different battery charges in Wisconsin statute, for instance, depending on the victim and the batterer. Many other offenses relate to occupational regulation, environmental or business activity that were never handled traditionally by the criminal justice system and are rarely charged criminally. Under a 1996 decision by the Wisconsin Court of Appeals, many of these regulatory crimes can be prosecuted even when defendants did not intend to violate the law or know they were doing so.

In 2014, the Legislature made a first effort to examine the problem of over-criminalization by establishing the Study Committee on the Review of Criminal Penalties. The committee was charged with reviewing the penalties for misdemeanor and low-level felony offenses within the state's criminal laws. It published a report in 2015 that provided substantial recommendations for reforms of the state's criminal code, which would classify unclassified misdemeanors, repeal obsolete criminal laws and change the penalties for certain misdemeanors to a more appropriate civil forfeiture.

None of these recommendations were adopted by the Legislature, however, leaving in place unnecessary, vague, duplicative and obsolete criminal penalties that can be exploited by the government as a means of exerting pressure on defendants charged with nonviolent, low-level crimes. Nor has the Legislature acted to clarify the traditional rule that, unless otherwise specified by statute, intent is a necessary element of criminal behavior. Curtailing the number and kind of activities that are deemed criminal in nature and moving them toward civil and administrative sanctions or, in the alternative, to more clearly defined crimes are necessary.

A portion of over-criminalization occurs when crimes lack a clear element of mens rea (literally, “guilty mind”). Without an established required criminal mentality, people acting in good faith may have no idea if they are subject to criminal penalties. For the most part, Wisconsin statutes within the criminal code are explicit as to the level of mens rea required for conviction. (The most common mens rea is intent, followed closely by criminal recklessness.) Many regulatory crimes outside the criminal code are silent on mens rea, however. For example, Wis. Stat. 442.11 cites a variety of behavior related to CPAs and impostor CPAs that can be punished by up to a year in the county jail. The law is silent on whether the penalties apply to honest mistakes that are promptly corrected.

One exception within the criminal code is the crime of disorderly conduct found at Wis. Stat. 947.01. One of the most-charged crimes, disorderly conduct does not make clear the level of intent the state needs to prove.

Reforms from Other States

Ohio and North Carolina in recent years have addressed over-criminalization.

Ohio’s Criminal Justice Recodification Committee, tasked by the legislature in 2014 to review and propose changes to the state’s entire criminal code, released a 4,000-page report in 2017 recommending reforms. The report sought to simplify

the code in a consistent manner, eliminate redundancy and ensure proportionality in the imposition of penalties. Ultimately, the committee proposed that 26 sections of the state's criminal code be eliminated or merged with other sections. In 2020, legislation was introduced that would adopt many of the recommendations.

North Carolina in 2018 passed legislation to begin its own recodification initiative, requiring all government agencies and the Administrative Office of the Courts to submit a complete list of conduct subject to criminal punishment under state law. The law also requires all counties, cities and towns to submit a list of ordinances that subject residents to criminal punishment. Once these lists are submitted to the legislature, a working group will use them to simplify and streamline the state's criminal code.

States such as Texas, Michigan and Ohio have implemented default mens rea standards that dictate what the level of criminal intent is when a statute is silent. This ensures that people are generally not criminally liable when they did not have the intent to break the law, unless the legislature is clear that negligence will suffice to commit the crime.

Solutions

- Require a default standard of intent when a statute is silent.
- Create a task force to analyze every criminal law within and outside the criminal code to determine whether it is duplicative, unnecessary, overly broad, unclear or otherwise insufficient to serve its intended purpose.
- Establish "safe harbor" provisions for crimes outside the penal code. A safe harbor provision is an element in a statute or regulation that affords protection from liability or penalty if certain conditions are met. Often these conditions require that no harm has occurred as a result of the violation and that the offender take prompt

steps to come into compliance with the statute or regulation that has been violated.

Bail Jumping

The Problem

Bail jumping is one of the most charged offenses in Wisconsin. The crime is defined as the intentional violation of a condition of bond. Whether bail jumping is a felony or a misdemeanor depends solely on the underlying charge: If the original charge is a misdemeanor, any bail jumping will be charged as a misdemeanor. If the original charge is a felony (even if the case is resolved with misdemeanor charges), any bail violation will be charged as a new felony offense.

It can be used by the state to secure a guilty plea on an underlying offense or bolster the number of felony offenses charged — a key data point for allocating the number of prosecutors to which counties are entitled. Bail jumping charges can remain even when the underlying charges have been dismissed.

Example: A defendant is charged with felony uttering (writing a bad check). When the defendant shows up to court 10 minutes late, the state adds a charge of felony bail jumping. Because most bail jumping charges are simple to prove, there is now increased pressure on the defendant to reach a plea deal even though the underlying charge may be worthy of a jury trial.

Bond conditions imposed on defendants may or may not be related to the underlying offense. Common conditions can include not only avoiding contact with putative victims but also curfews, restrictions on the consumption of alcohol (even for non-alcohol-related offenses) and other terms that unnecessarily restrict liberty broadly. Moreover, violations of these bond conditions range in seriousness. Even so, every single violation, however overlapping or unrelated to the underlying charges, can form the basis of a new misdemeanor or felony offense. Given these facts, it appears

that the current statutory classification may be more a means of securing plea deals than serving its original goal of preventing law violations by people awaiting trial.

Reforms from Other States

In other states, the penalty for failing to appear in court or otherwise violating bond conditions is usually the forfeiture or modification of bond. In many states, bail jumping — violating a condition of bond — is only punishable as a crime when a defendant intentionally fails to appear in court. Violation of other bond conditions may lead to forfeiture of the bond, and a potential return to custody, but does not create new criminal liability. When non-appearance (or any other violation) does form a basis for criminal charges, frequently — though not always — the violation is capped at the misdemeanor level (with the apparent expectation that serious violations, such as the commission of a new crime, will be charged separately).

Solutions

- Examine other states' charging schemes to see whether Wisconsin is in line with other states.
- Cap the crime of bail jumping at the misdemeanor level in most cases and limit it to non-appearance, with amendment of the bond amount or bond conditions as the consequences for violation of all other conditions of release.

As individuals and organizations that care about the future of Wisconsin, we recommend the solutions in this booklet as proven strategies for increasing public safety, saving taxpayer dollars, respecting human dignity, growing the labor force and ensuring stronger families.

Eric Bott, State Director, Americans for Prosperity
Wisconsin

Julie Grace, Policy Analyst, Badger Institute

Doug Kellogg, State Projects Director,
Americans for Tax Reform

Cecelia Klingele, Associate Professor, University of
Wisconsin Law School

David Safavian, Director, American Conservative Union
Foundation's Nolan Center for Justice



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Additional resources



Badger Institute: Ex-offenders under watch: Two studies look at Wisconsin's complex community corrections system and why many on supervision are failing

<https://www.badgerinstitute.org/BI-Files/Reports/RevocationPDF.pdf>



Badger Institute: Black Robes & Blue Collars: Problems with Wisconsin's expungement law and a look at whether sentence adjustment petitions are working

<https://www.badgerinstitute.org/BI-Files/Reports/BlackRobesBLueCollarpagesMay20171.pdf>



Badger Institute and Right on Crime: Why hiring the previously incarcerated is good business: An employer handbook

<https://www.badgerinstitute.org/BI-Files/Reports-Documents/Badger-employee-handbook.pdf>



Badger Institute: Just the Facts: A trilogy of reports looking at police use of force, police discipline and violent crime

https://www.badgerinstitute.org/BI-Files/Corrections-reform/BadgerReport_Triology_Nov2020Fnl-web.pdf



Badger Institute: Reforming community supervision: A review of proposed changes and recommendations

<https://www.badgerinstitute.org/BI-Files/Reports/ReformingCommunitySupervision.pdf>



Badger Institute: Racial disparities in the criminal justice system in Wisconsin: What we know thus far

<https://www.badgerinstitute.org/BI-Files/Reports/RacialDisparitiesBrief.pdf>



Badger Institute: Hope for America – A symposium on police-community relations (video)

<https://www.youtube.com/watch?v=emVAkC9voGQ&t>



Badger Institute: Partners in Hope: A Model for Reentry (video)

<https://www.youtube.com/watch?v=wJyqnhHdITs&t>



The Pew Charitable Trusts: States Can Shorten Probation and Protect Public Safety: Wide variations in policies and term lengths across states point to opportunities for reform

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