



# Policy Recommendations for a More Prosperous Wisconsin



**BADGER  
INSTITUTE**

Free Markets ▪ Opportunity ▪ Prosperity

**2022-23 • Volume 1**





# **Policy Recommendations for a More Prosperous Wisconsin**



## About the Badger Institute

The Badger Institute, formerly the Wisconsin Policy Research Institute, is a nonpartisan, not-for-profit institute established in 1987 to engage Wisconsinites and others in discussion and timely action on public policy issues critical to the future of our state.

The Institute is guided by a belief that competitive free markets, limited government, private initiative and personal responsibility are essential to our democratic way of life. Our in-depth research and journalism help ensure opportunity and promote the growth necessary for widespread prosperity.

We have been instrumental in successes ranging from implementation of school choice to the passage of right-to-work legislation to the repeal of the prevailing wage and overly onerous occupational licensure laws. With a strong presence in Madison, we are at the forefront of many pivotal debates on such issues as taxation, transportation, education, crime and overregulation.

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## PRESIDENT'S NOTE

# Time to Act

The bad news is that most Americans have lost faith in our national leaders. Only 32%, according to a 2022 Pew Research survey, have a favorable opinion of the “federal government in Washington.”

The better news is that 54% have a favorable opinion of their state government, and even more — 66% — have a favorable opinion of their local government.

If our democracy is going to be reinvigorated, if we can once again become civil toward each other and discuss real solutions to engrained problems, it will have to happen in the states. Wisconsin can lead the way in that.

There is always mudslinging during any campaign — and the state song here in Wisconsin has never been “Kumbaya.” (It’s “On, Wisconsin!”) But the state Capitols, perhaps most Americans realize, are where citizens and their representatives can at the right time still get stuff done.

We put this compilation of policy recommendations together with the belief that in Wisconsin that time is now.

I often tell people that what we do at the Badger Institute is simple. We find the smartest people in America and ask them to tell us how we can do better — how we can ensure opportunity and enable prosperity for all. Many of them have written for us for years, and the chapters and recommendations contained in this “Mandate for Madison” reflect that experience and wisdom. Please read what they have to say, and encourage your elected officials to read it as well — then act.

We will make sure they all have copies — and will be actively advocating for passage of all the recommendations.

I am grateful to the researchers and writers who helped us compile this book. Please read their bios as well as their analyses. I know you’ll be impressed. I am also immensely grateful for our board of directors — unpaid volunteers who donate their time out of love and concern for this state.

If you are a donor to the Institute, thank you. This book is the product of your hard work as much as ours. If you are not a donor, please consider becoming one. Your legacy will be a better state for your children and grandchildren.

Finally, I want to thank Patrick McIlheran, our erudite policy director who edited the lion’s share of the “Mandate” and wrote a chunk of it as well; Michael Jahr, our self-effacing vice president of communications and government relations who wrote several of the chapters without bylines; Mabel Wong, the best copy editor in Wisconsin; and Robert Helf, our uber-talented graphic designer. They all put in countless hours, and the Institute is lucky to have them.



McIlheran

Mike Nichols, Badger Institute President

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## PREFACE

# Toward a More Prosperous Wisconsin

*By Patrick McIlheran and Mike Nichols*

To start with, let's stipulate that Wisconsin's doing OK. Not terrible. Sort of all right. Some high, some low.

But "doing OK" takes you only so far and only for so long. Consider some truly great Wisconsin inventions.

The typewriter was invented in Milwaukee, for example, making the world far more legible. "Nice," replies most everyone under age 40, probably by text message. "What's a typewriter?"

All right, take the solid-body electric guitar, perfected by Waukesha's own Les Paul and which changed the sound of music ever since. Except that Waukesha's own Les Paul by then was working in New York.

Not to deprecate great things from Wisconsin — vitamin D genuinely makes humanity healthier — but we must bear two things in mind:

First, what worked yesterday might not suffice tomorrow. Best to keep improving.

And while it's nice to see Wisconsinites going on to fame and fortune elsewhere, how wonderful it would be if more Wisconsinites — long-timers and new arrivals — could find fame and fortune here.

That doesn't happen often enough right now. You'll read in this book's chapter on the economy that Wisconsin is only the 29th most productive state as measured by gross domestic product per capita and second lowest among seven Midwestern states.

Our population is growing faster than the populations in Ohio, Michigan and certainly Illinois, but we're far outpaced by Minnesota, Indiana and even Iowa. Even more troubling, trends foretell a decline in the coming years in the share of prime-age workers.

We know free-market reforms will help us thrive, and we've made a little progress. The Badger State is 27th in economic freedom, according to the Fraser Institute and 19th according to the Cato Institute. But we have a long way to go in order to truly compete.

The good news is that there is a lot to compete for. Reshoring and foreign investments, you'll read, are revitalizing the American manufacturing sector, and corporate relocations from places such as Illinois are on the upswing.

Luckily, we can put ourselves in a position to capitalize.

What follows is a book full of ideas about public policy centered on how to improve Wisconsin. We are proud to present the research and recommendations of a remarkable set of scholars and authors who bring extraordinary insight into Wisconsin's situation.

One of the most essential ingredients in a greater prosperity is faster economic growth. Everyone has his or her own idea about the good life, but everyone is more likely to reach it in conditions of growth. That is why our first chapters address faster growth specifically and why so many of the scholars in later chapters measure their ideas by the effect they would have on our economy.

Our economy — the daily voluntary interaction of millions of us with each other for mutual benefit — is one of the central things we have in common. This common good also

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has been subject, decade after decade, to fiddling and worrying by policymakers. Much of what our scholars recommend amounts to the careful work of undoing mistakes and restoring the conditions under which that shared good thing, our economy, will flourish to the benefit of all.

We need pro-growth tax reform, you'll see, and more options for parents in search of better schools. We're currently only 27th in the Tax Foundation's *State Business Tax Climate Index*. There are far too many schools, particularly in Milwaukee, where the vast majority of kids can't read or write.

We need to lessen harmful government overregulation of everything from early child-care and learning to occupational licensure. We also need to encourage our elected leaders to make necessary investments in criminal justice — that is, more cops in places such as Milwaukee and more money for prosecutors and defense attorneys. And we need to focus on making sure there is a path toward work. Government can provide a necessary safety net, but we need to do more in Wisconsin, you'll see, to encourage upward mobility.

Jobs, education and family structure are key.

In the pages ahead, you'll find practical options for thorny problems such as the impending decline of gas tax revenue and high healthcare costs. Wisconsin right now ranks fourth highest in the United States for hospital commercial prices relative to Medicare. We can do something about that, things such as direct primary care, price transparency and dental therapy.

One of our premises is that government cannot be the central institution in society, not if we hope for a free and prosperous Wisconsin. We are blessed to be part of an America founded on that understanding — that government has a place, but a limited place, next to a civil society centered on other more organic institutions such as families, communities, associations and congregations.

We propose no panaceas here. We bear in mind what the great Thomas Sowell said — that we humans are “flawed from day one, and there are no solutions, only trade-offs.” That said, we think our scholars are pointing Wisconsin toward some epochally better trade-offs. The options outlined here can trigger a sharp bend for the better on so many of the old, glum graphs about Wisconsin.

This list isn't all-encompassing — we don't duplicate what others already have said well, and our scholars have more to say. We will offer it as time ripens.

But for policymakers who want to make systemic change at the crucial nodes of problems holding back our state from greater prosperity, these options offer a fast start. Let's go.

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**ECONOMY**





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## A PREFACE TO

# Wisconsin's Economy: A Comparative Study

**W**hy should Wisconsinites mandate anything out of Madison anyhow? Why call for far-reaching change? Isn't the Badger Institute, like others in Wisconsin's broad conservative movement, about conserving things rather than changing them?

There is much about Wisconsin that we want to conserve. It's a great place to live our lives, and here Andrew Hanson, an economist who long has measured Wisconsin and its place in the world, presents evidence that we're attractive to people in neighboring states, especially Illinois and, increasingly, Minnesota.

But Wisconsin also has imperfections. In some things, we're standing still as the rest of the world advances. In other things, we're worsening and should change course. The book that follows is filled with the work of scholars laying out the details, issue by issue.

But first, Hanson looks at where Wisconsin stands, assessing the state primarily against its Mid-western neighbors. He measures not just the economy in which we hope young Wisconsinites will find a place but other metrics of well-being, too.

— *Badger Institute*

## ABOUT THE AUTHOR



**Andrew Hanson**, a Badger Institute visiting fellow, is an associate professor in the Real Estate Department at the University of Illinois at Chicago. Before joining the UIC faculty, he was an associate professor at Marquette University in Milwaukee and an assistant professor at Georgia State University in Atlanta. From 2005 to 2006, Hanson served as a staff economist for the President's Council of Economic Advisers in Washington, D.C. His primary fields of interest are public finance and urban economics.

# Wisconsin's Economy: A Comparative Study

*By Andrew Hanson*

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## Summary

Nationally, Wisconsin ranks as the 29th most productive state (including the District of Columbia) as measured by gross domestic product per capita and the second lowest among seven Midwestern states (only Michigan is lower). This is a marked change from 2011, when Wisconsin was the fourth most productive Midwestern state per capita. Dane County and Waukesha County are the most productive counties in the state; Milwaukee County is the ninth most productive on a per capita basis.

Wisconsin experienced large inflows of taxpayers and income throughout the decade from other Midwestern states, especially from Illinois and more recently from Minnesota. For the 2011-2020 period, residents moving into Wisconsin from other Midwestern states brought \$2.7 billion in income.

Wisconsin has a low unemployment rate and a high employment to population rate relative to other Midwestern states. The employment to population rate has shown relative improvement and is currently close to the Midwest's leaders, Minnesota and Iowa. Wisconsin is in the middle of the pack among the Midwestern states in business establishment growth.

## Introduction

As we move through 2022 and 2023, the national economy is in what might best be described as a strange state. With two consecutive quarters of negative gross domestic product growth, many would say we have entered a mild recession. Inflation continues to erode earnings at a rate not seen in 40 years. However, the labor market remains strong, with payroll and unemployment at pre-pandemic or better levels.

As policymakers and the business community continue to struggle with the best course forward, now is an opportune time for a closer look at where Wisconsin's economy has been, where it is and where it may be headed. Understanding the economy at the more local level may illuminate a way forward for the Badger State regardless of the national situation.

To that end, this chapter will examine how the Wisconsin economy has fared over the past decade on several key measures: gross domestic product, population and migration, employment and business activity. Each of these measures offers a unique way to view the state's economy. Taken in isolation, each measure is revealing but incomplete. Taken

together, these measures paint a more complex, nuanced picture of Wisconsin's economy and the prospects for future growth.

Of course, any local economy does not exist in a vacuum — Wisconsin's economy is integrated with other states and other nations. To examine both how the state's economy compares and how it competes, this chapter puts Wisconsin in a national context and compares the fortunes of Wisconsinites with people in other Midwestern states: Illinois, Indiana, Iowa, Michigan, Minnesota and Ohio.

## Measures

### ***Gross Domestic Product***

Gross domestic product (GDP) is the go-to, top-line statistic to measure the health of an economy. It measures the market value of all goods and services produced within an area in a given period. To offer a proper comparison through time, and across states, there are two changes to GDP that are appropriate.

First is measuring GDP in real terms to account for price changes over time. If we want a measure that correctly accounts for changes in productivity, this should be independent of price changes and focused on actual output. For this reason, GDP is shown as a “chained” value here — that is, holding price levels constant in 2012 dollars, so that it reveals how productivity changes independent of price changes.

Second, because areas have various levels of economic activity (and their population changes over time), I measure GDP on a per capita basis. This allows for a measure of productivity that is comparable across states. I use data on GDP from the Federal Bureau of Economic Analysis Regional Economic Accounts to consider how Wisconsin and its peers have evolved.

Wisconsin started the decade as the 28th best state in GDP per capita (2011) and ended 2021 ranked 29th, showing both a low level of production relative to other states and little relative growth.<sup>1</sup> The middle part of the decade showed relative promise as Wisconsin moved up to 26th, but that momentum was reversed later, especially with a smaller bounce-back since lifting COVID-19 restrictions.

The Badger State is no outlier in relative productivity changes throughout the decade. The states with the largest improvements in ranking between 2011 and 2021 were Utah (33 to 23), Oregon (35 to 25) and Georgia (34 to 26). The states with the largest declines in ranking were Louisiana (20 to 34), Vermont (30 to 41) and Hawaii (21 to 30).

Comparing Wisconsin's economy to all other states offers a view of how the state stands nationally. But given the vast differences in natural resources, levels of human capital, infrastructure, tourism potential and geography that may drive both level differences and changes in relative productivity, a fairer comparison would be to see how Wisconsin measures against other Midwestern states: Illinois, Indiana, Iowa, Michigan, Minnesota and Ohio.

Figure 1 shows GDP per capita for Midwestern states between 2011 and 2021. Wisconsin's economy produced \$47,813 per person in 2011 — making it the fourth most productive economy in the Midwest. By the end of the period in 2021, per capita productivity increased to \$51,355 per person in Wisconsin, but despite growth, the relative position of Wisconsin fell to sixth among Midwestern states.

Figure 1

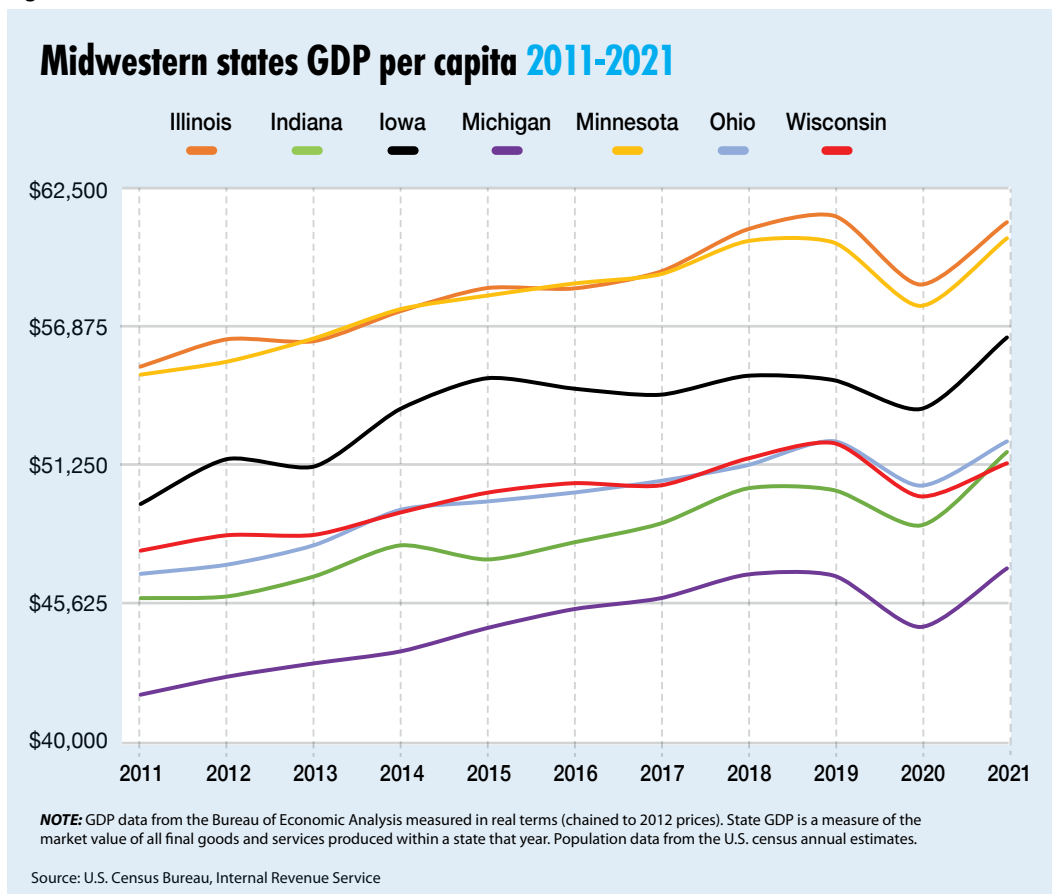


Figure 1 demonstrates several other noteworthy facts about GDP in Wisconsin relative to its Midwestern peers. Both Illinois and Minnesota start the decade with substantially higher GDP per capita than Wisconsin, approximately \$7,250 more per person, and this difference grows to about \$9,500 per person by the end of the decade. Iowa starts the decade with a modest \$1,900 per person GDP advantage over Wisconsin, but this grows to \$5,100 by the end of the decade. These trends are troubling considering what these states have in common in terms of geographic location, natural resources, culture and the like.

Perhaps more troubling, and instructive for Wisconsin's competitiveness, is how Wisconsin has fared throughout the decade relative to Ohio and Indiana. In 2011, Wisconsin posts a small GDP per person advantage over both Ohio (about \$1,000 per person) and Indiana (about \$2,000 per person). By the end of 2021, both Ohio (about \$900 per person) and Indiana (about \$500 per person) have more productive economies than Wis-

consin. In fact, Wisconsin is the only Midwestern state to be passed by one of its peers during the period.

As Figure 1 also demonstrates, Ohio and Wisconsin have diverged only since the start of the pandemic, with Ohio showing a smaller decline in productivity in 2020 and a faster recovery in 2021. A similar pattern is true of Indiana. The Hoosier State did not experience as big a fall in productivity during the pandemic but still had a larger leap forward during the recovery than the Badger State.<sup>2</sup>

Across Wisconsin, GDP per capita at the county level varies widely. Table 1 shows the 10 most productive counties in Wisconsin for 2020 (the most recent county-level data available). Dane County consistently ranks as the most productive county in the state on a per capita basis, producing about \$70,800 per person in 2020.<sup>3</sup> If Dane County were its own state, it would rank among the highest per capita producing areas in the country, but even Dane County's GDP fell between 2019 and 2020. The next most productive county, Waukesha, has a GDP per capita of about \$66,800, much higher than the state as a whole. If Waukesha were its own state, it would be the eighth most productive economy in the country on a per capita basis.<sup>4</sup>

All of Wisconsin's 10 most productive counties raise state-level GDP per capita, despite being more populous, as the least productive counties in the state have less than half of the productivity level of even Sheboygan County. This is not merely a function of population, as there are several more populous counties that have low productivity per capita despite a relatively high overall level of productivity.

Among the less productive counties, Racine and Kenosha stand out. Racine County produced more than \$7 billion in 2020, ranking it the eighth most productive in terms of total output, but on a per capita basis that only amounts to \$35,800, ranking it 48th among Wisconsin's 72 counties. Kenosha County presents a similar case: It produced \$6.3 billion in 2020, ranking it the 11th most productive in terms of total output, but on a per capita basis that amounts to \$37,600, ranking it only the 38th most productive county in Wisconsin.

Despite some bright spots in the form of highly productive counties, measuring Wisconsin's economy through GDP per capita largely shows a disappointing performance over the past decade, especially relative to other Midwestern states. Although GDP is *the* measure, it is not the only way to think about Wisconsin's economy. There are a few major considerations that looking at GDP in isolation leaves out. First among them is that GDP

Table 1

### Gross domestic product of Wisconsin counties (Top 10)

County	2020 GDP per capita
<b>Dane</b>	\$70,814
<b>Waukesha</b>	\$66,789
<b>Brown</b>	\$60,088
<b>Outagamie</b>	\$59,419
<b>Marathon</b>	\$56,330
<b>La Crosse</b>	\$54,431
<b>Winnebago</b>	\$54,167
<b>Eau Claire</b>	\$53,685
<b>Milwaukee</b>	\$53,262
<b>Sheboygan</b>	\$53,183

**NOTE:** GDP per capita calculated using county-level GDP in chained 2012 dollars from the U.S. Bureau of Economic Analysis combined with county population data from the U.S. census.

Source: U.S. Census Bureau, Internal Revenue Service

is not a measure of overall well-being. GDP does not account for the majority of home production — things like in-home childcare and the value added of Grandma's chicken soup recipe. GDP does not account for external effects of production on the environment or human health. Finally, GDP is an overall measure and does not consider the distribution of productive capacity or income across individuals, or how job availability and security may be changing.

There may not be a neat summary statistic to help determine the value of Grandma's chicken soup recipe, but there are a few other ways of thinking about the Wisconsin economy that go beyond economic production.

### ***Population, Migration and Income***

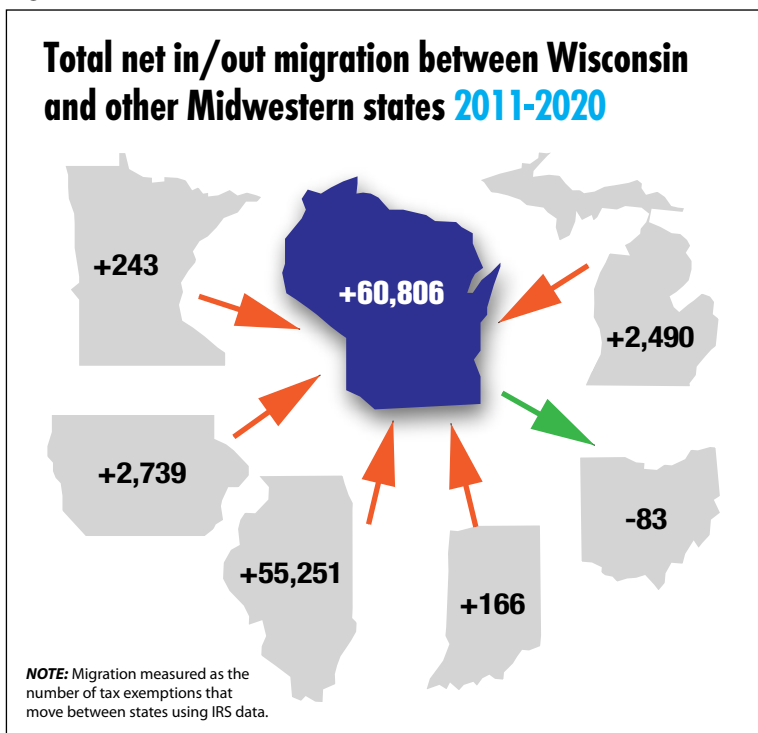
As part of a broader view of Wisconsin's economy, examining migration patterns to and from the state is important. GDP measures productive capacity per person, but what if Wisconsin is gaining or losing population with its Midwestern peers? Sharp losses to peer states likely would be an indicator of economic troubles. Migration flows between states also point to areas that are becoming more or less attractive when considering the entire bundle of what a state has to offer its residents — this includes how the state balances between amenities, house prices, the public sector and other factors.

To examine state-to-state migration patterns, I use Internal Revenue Service (IRS) migration data. The IRS data has a few advantages over Census Bureau data when measuring migration.

First, it is based on the full sample of tax returns filed with the agency and is not a survey-based sample like annual census estimates. Second, the IRS data comes from tax returns, making it likely that it is accurate, given the penalties that exist for providing misleading information. Third, the data can track the movement of income between states.

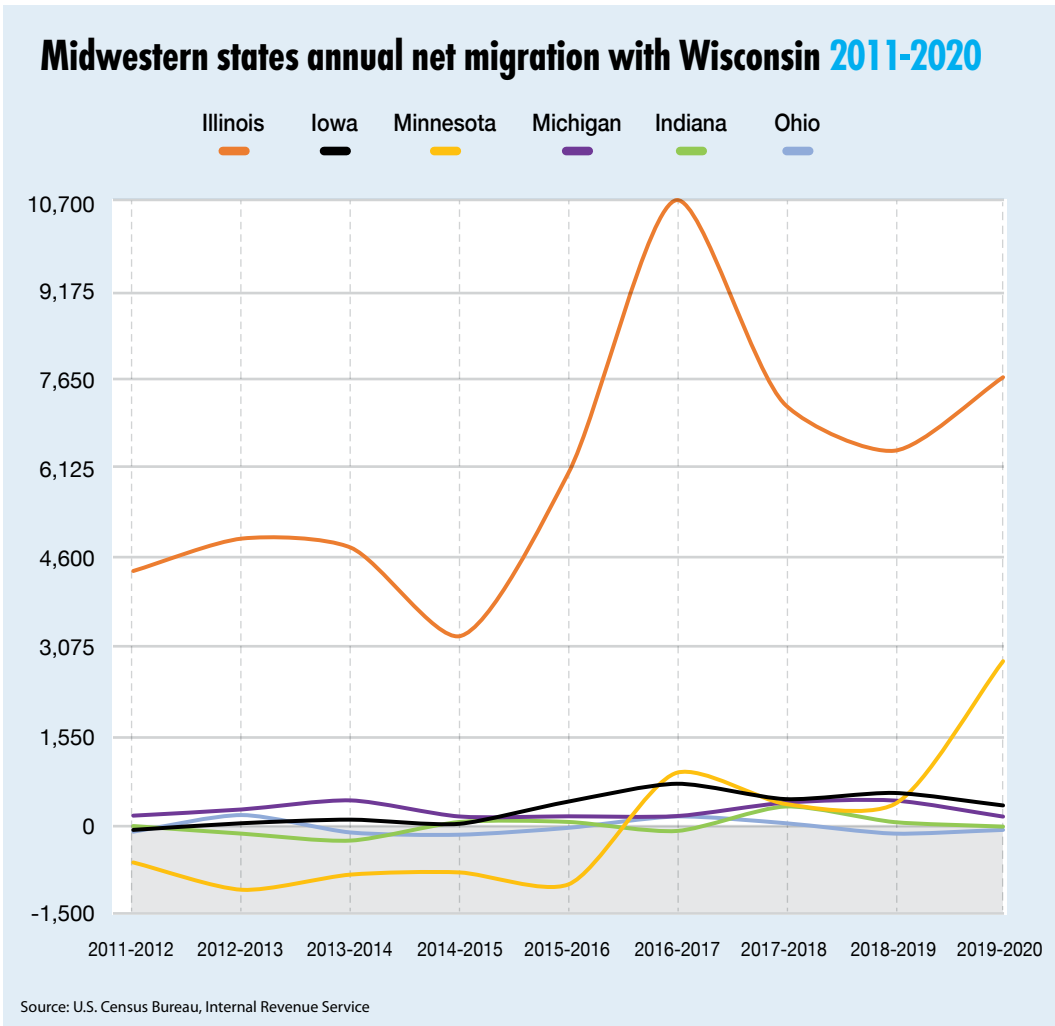
The IRS data does have a few disadvantages: Rather than counting people, it counts tax filers and their

Figure 2



Source: U.S. Census Bureau, Internal Revenue Service

Figure 3

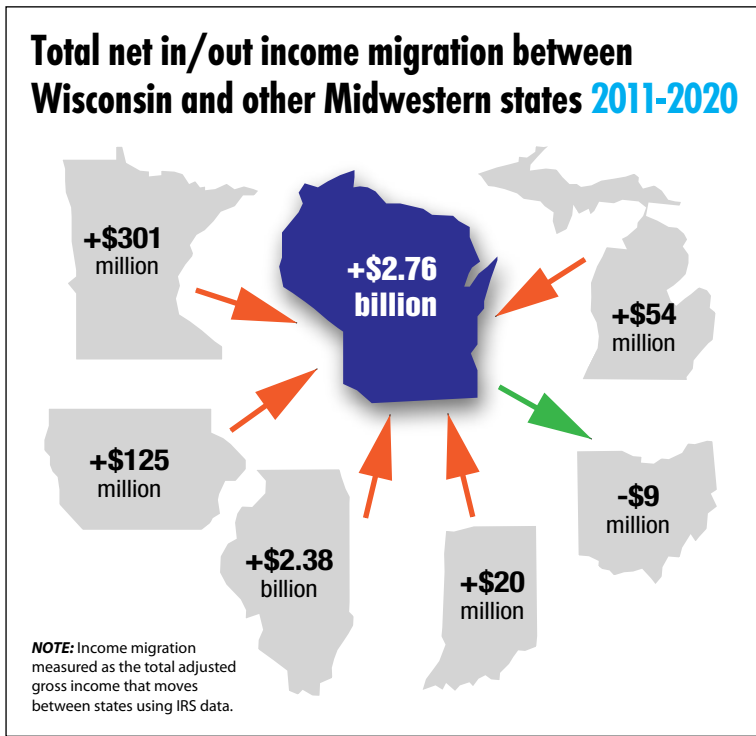


“exemptions.” Exemptions are most commonly dependent children who live in the same household as the filer, so this is close to a population estimate. Because the IRS data is tax-return based, it is also notoriously slow to be compiled. Estimates for 2020 have only recently been released.

Still, census population totals can offer some perspective. Between 2010 and 2021, Wisconsin’s total population grew from 5.68 million to 5.89 million, an increase of about 3.6%. Among the seven Midwestern comparison states, this ranks as the fourth largest increase, ahead of Ohio (2.1%), Michigan (1.7%) and Illinois, which is the only Midwestern state to lose population during the period (down 1.2%). The largest population increase during the period was in Minnesota (7.6%), followed by Indiana (4.9%) and Iowa (4.8%). In terms of total population changes among Midwestern states, Wisconsin is quite solidly in the middle.

However, the IRS migration data offers reason to believe that Wisconsin is becoming a relatively more attractive destination for movers between these states. Over the entire 2011-2020 period, Wisconsin has positive net migration from all Midwestern states except Ohio, and even the Buckeye State took only 83 tax migrants from the Badger State on net for the entire decade. Counting across the decade, Wisconsin netted small inflows from both Indiana (+166) and Minnesota (+243), with more substantial net gains from Michigan (+2,490) and Iowa (+2,739). Most notably, there was an enormous net inflow to Wisconsin from Illinois of 55,251 over the period.

Figure 4



Source: U.S. Census Bureau, Internal Revenue Service

The positive net migration of taxpayers and their exemptions (which can be read as families) paints a more positive picture of Wisconsin's economic prospects than the GDP data indicated. The migration data suggests that among its Midwestern peers across the past decade, taxpayers are choosing Wisconsin. Further examination of the IRS data is also encouraging for the Badger State, as shown in Figure 3, which plots the annual flow of net migration between Wisconsin and its Midwestern peers.

There are a few notable trends in Figure 3. First, the sheer scale of annual net inflows to Wisconsin from Illinois dwarfs nearly everything else. On average, there are about 6,100 net annual migrants into Wisconsin from the Land of Lincoln, with peak net migration occurring between 2016 and 2017 at 10,685. The second notable trend is the reversal in net migration between Minnesota and Wisconsin. For most of the past decade, Wisconsin lost taxpayers to Minnesota — an average year saw a net 854 going to the Gopher State.

This trend reversed starting in 2016 to 2017 and has gained substantial momentum — between 2019 and 2020, Wisconsin netted 2,822 migrants from Minnesota. While annual net migration between Wisconsin and other Midwestern states is generally small

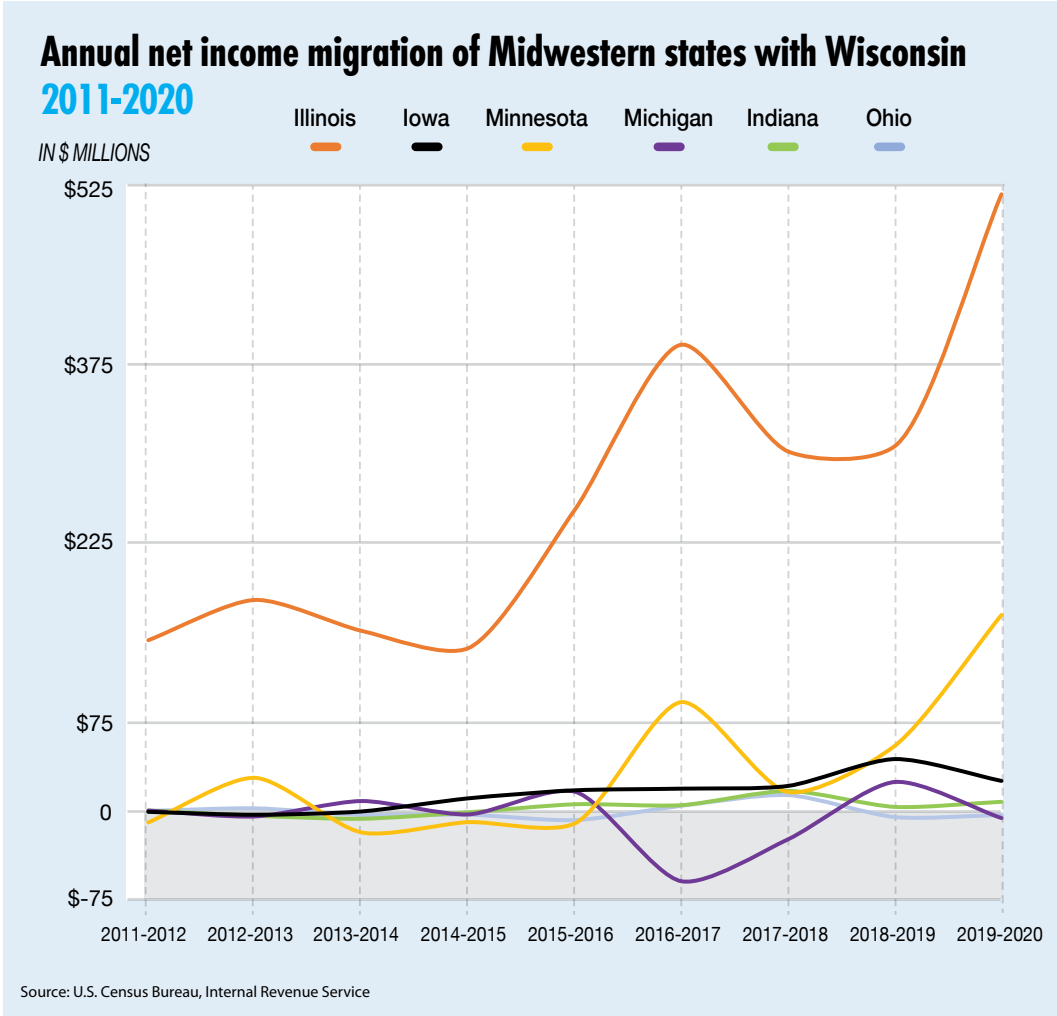


and favors Wisconsin, it is worth watching that increases in net migration from Iowa, Michigan and especially Indiana have slowed in recent years.

Besides an accurate annual accounting of migration between states, the IRS data shows how income is moving between states. The IRS data comes in the form of adjusted gross income (AGI) and includes all wages, business income, retirement income, dividends and capital gains.<sup>5</sup> Between 2011 and the end of 2020, net AGI migration into Wisconsin totaled over \$2.7 billion from the Midwestern states. This figure is largely driven by massive net gains from Illinois — a total of \$2.4 billion in AGI moving from the Land of Lincoln into the Badger State. There were smaller net gains throughout the decade from Minnesota (\$301 million), Iowa (\$125 million) and Indiana (\$20 million), while Wisconsin sent AGI to Michigan (\$54 million) and Ohio (\$9 million) throughout the decade.

As with the tax filer migration, looking at the decade’s totals masks some important trends that the annual data reveals in Figure 5. The dominant trend with income migration is the

Figure 5



massive flow of net annual incomes into Wisconsin from Illinois. On net, Illinois averages sending over \$264 million annually into Wisconsin, with a low of \$136 million and a high of \$519 million. Encouragingly for Wisconsin, the most recent data reports the highest net annual income migration from Illinois.

The data also shows an encouraging trend with net income migration from Minnesota: For many years, this was a small flow, or even a net outflow from Wisconsin, but recently it shows a large flow of net income into Wisconsin, topping \$164 million annually between 2019 and 2020. Most other Midwestern states have a relatively small net positive inflow of income into Wisconsin, with the primary exception being a few years from Michigan that have since reversed trend.

Migration of tax filers and income into Wisconsin from Midwestern states shows a positive picture for the Badger State. This is true for the past decade as a whole and also for noticeable recent changes in the trend with both Illinois and Minnesota. These positive trends run counter to the trends in GDP, especially since 2019. To dig deeper into Wisconsin's economy, it is necessary to look at what the data says about employment and where employers — businesses — are locating.

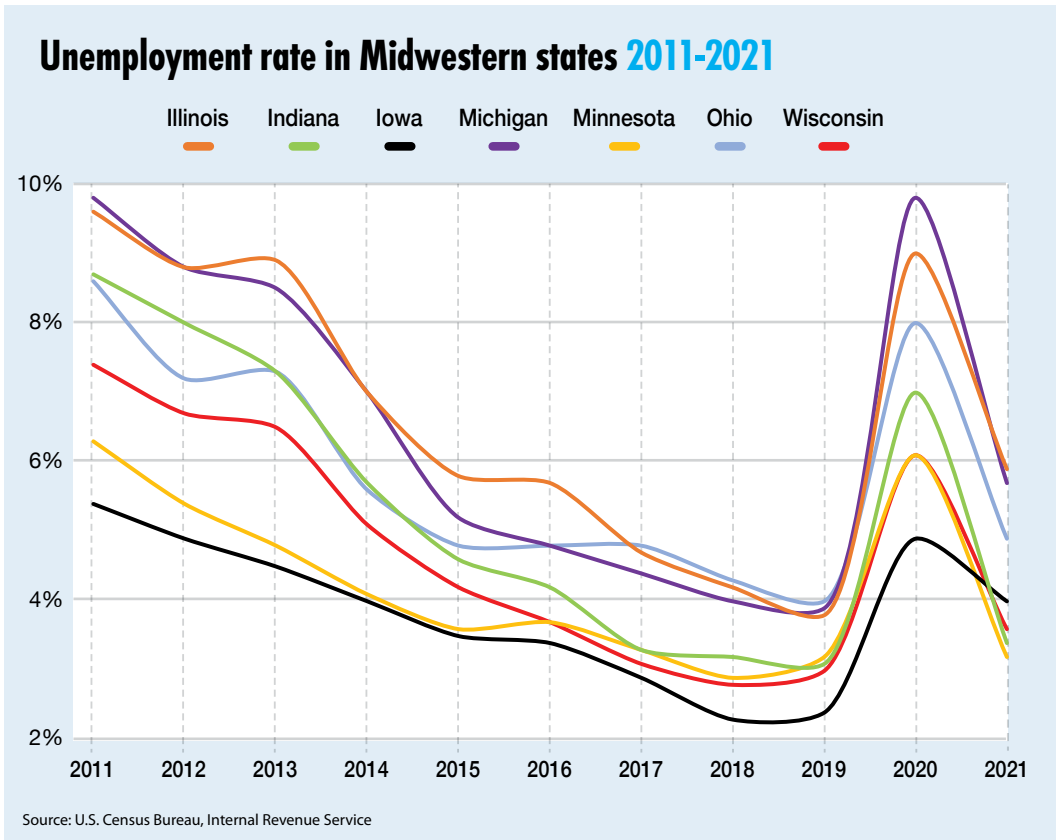
### ***Employment and Business Establishments***

Employment and business location data will help round out the picture of Wisconsin's economy over the past decade. Wisconsin has major net inflows of taxpayers from Illinois, and numbers from Minnesota have been on the rise recently. While migration depicts something positive about Wisconsin, it is unclear how that relates to the productive capacity in the state. These migrations could be retirees. They could be residents who continue to work in another state or could represent owners of second homes looking to avoid another state's taxes. Examining employment and business establishment location will help clarify what economic activity is taking place in Wisconsin.

The unemployment rate is the most talked about statistic when discussing the health of a labor market, and for good reason: A high unemployment rate is a sign of serious dysfunction. The unemployment rate is the percentage of people in the labor force who are actively looking for work, while the labor force is defined as those 16 or older who are working or looking for work. For the last full year, 2021, Wisconsin had an unemployment rate of 3.8%, with the monthly numbers for 2022 even better, ranging from 2.8% to 3%. Both numbers are lower than national rates and compare well with other Midwestern states. Only Indiana (3.6%) and Minnesota (3.4%) had lower unemployment rates in 2021, and both states continue to have remarkably low unemployment rates (Indiana at 2.6% in July, Minnesota at 1.8% in July). Illinois (6.1%), Michigan (5.9%), Ohio (5.1%) and Iowa (4.2%) all had higher rates of unemployment than Wisconsin in 2021, and all except Iowa continue to have higher rates than Wisconsin for the monthly data released in 2022.

One trend worth keeping an eye on is that between 2016 and 2019, Wisconsin had the second lowest unemployment rate among Midwestern states — only Iowa maintained a lower unemployment rate. This changed during pandemic restrictions as the unem-

Figure 6

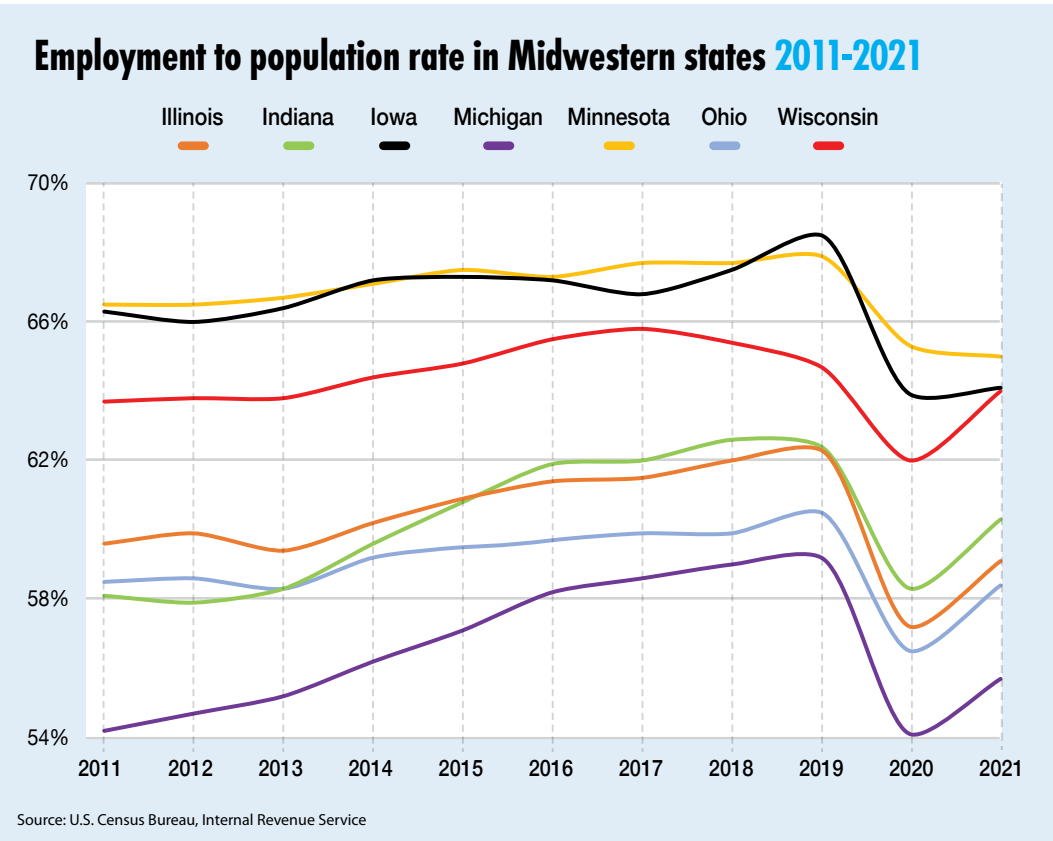


employment rate in Wisconsin peaked, and it was slightly higher in 2021 than it was in both Indiana and Minnesota. Notably, unemployment in Iowa peaked at a lower rate than in Wisconsin and did not fall as much in 2021 as a result (although the monthly 2022 unemployment rates in Iowa have fallen lower than in Wisconsin). The worry for Wisconsin's competitiveness seems to be that, again, Indiana is passing us on important economic indicators.

There are at least two concerns with examining the unemployment rate and extrapolating to the entire labor market. First, the unemployment rate does not account for those who have left the labor force, either voluntarily or otherwise. Second, the unemployment rate is not useful for thinking about what level of support for society falls on workers relative to the population. To get a broader view of the health of the labor market, we can examine the employment to population ratio, defined as the percentage of the population that is currently working.<sup>6</sup>

Wisconsin's employment to population rate compares quite favorably with Midwestern peers, both in trend and in level. Currently, Wisconsin has a 64% employment to population rate, just one-tenth of a percentage point below Iowa and only a percentage point behind Minnesota. This represents relative improvement from the beginning of

Figure 7



the 2011-2021 period, when Wisconsin was nearly three percentage points behind both Minnesota and Iowa. Throughout the past decade, Wisconsin has had an employment to population rate far above other Midwestern states — in most years, at least three percentage points higher than the next closest state. Unlike state GDP, the employment to population rate in Wisconsin suggests a faster bounce-back from COVID-19 lockdown restrictions, as Wisconsin now has a rate much closer to Iowa and Minnesota than it did in 2019.

In 2020, Wisconsin had roughly 141,000 business establishments.<sup>7</sup> Headlines often go to new, large-scale employers such as Foxconn and Haribo, but almost exactly half of business establishments in the state have fewer than five employees, while another 27,000 have fewer than 10 employees. These businesses provide Wisconsinites with jobs and are the backbone of the state’s productive capacity. Having a large number of employers, as opposed to a concentration of employment among a few, also insulates workers from company-specific challenges, as they can more easily switch jobs. Table 2 shows the change in the number of business establishments for Wisconsin and other Midwestern states between 2012 and 2020.

The number of business establishments in Wisconsin increased by 3,281 during the peri-

od, which represents a 2.38% change. This change places Wisconsin squarely in the middle of other Midwestern states — above Illinois, Michigan and Ohio but below Minnesota, Indiana and Iowa. Annually, the flow of business establishments is quite noisy, with the 2015-2017 period representing the largest gains to Wisconsin and the 2018-2020 period representing the largest losses (on a percentage basis from the previous year).

Figure 8 shows the annual percentage change in business establishments for Wisconsin compared to other Midwestern states. Although there are some differences between Wisconsin and the group, for the most part these states follow a similar pattern: peak increases occurring in 2017, followed by declines in 2018-2020. The exception is Indiana, which shows a relatively large boom in business establishments in 2019. It is also notable that Ohio and Illinois peak much lower than other states.

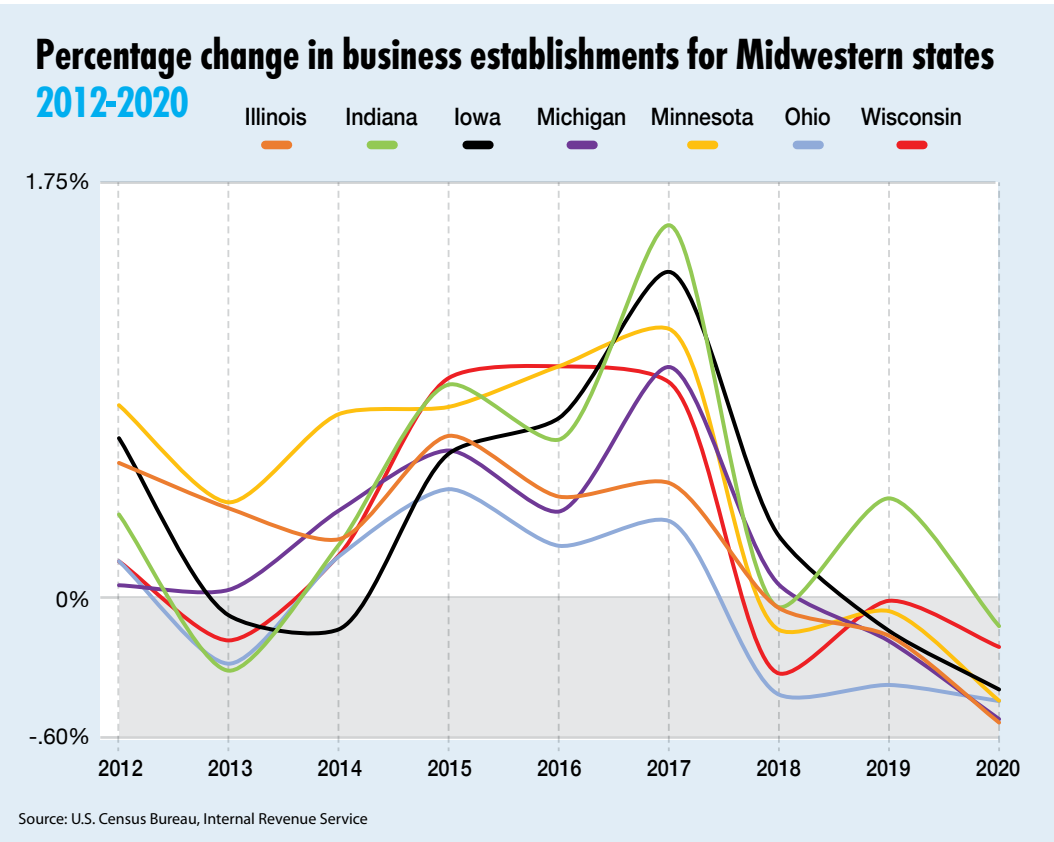
Table 2

Business establishment growth/decline 2012-2020		
	Change in number of businesses	Percentage change
Minnesota	6213	4.30%
Indiana	5245	3.66%
Iowa	2327	2.90%
Wisconsin	3281	2.38%
Illinois	6252	2.00%
Michigan	3716	1.71%
Ohio	-619	-0.25%

NOTE: Business establishment totals from Census County Business Patterns data annual release and aggregated for 2012-2020.

Source: U.S. Census Bureau, Internal Revenue Service

Figure 8



## Final Thoughts

While Wisconsin's economy shows some worrisome signs in top-line economic output, there are several positive trends to point to throughout the past decade, especially in comparison to other Midwestern states. Notably, Wisconsin has a fairly large net migration from other Midwestern states both in people and in income — this is especially true from Illinois and to a growing extent from Minnesota. The employment picture in Wisconsin is also strong, and the number of businesses is growing in line with comparison areas.

Still, Wisconsin's economy clearly has room for growth, as evidenced by the middling national ranking of its economic output, which raises the question: What can be done to promote economic growth in Wisconsin?

The chapters ahead will include specific policy proposals in a variety of areas, but a few general principles should be used to guide Wisconsin's economy through the next decade. Pro-growth policy should focus on at least one of the following:

- Allowing resources to be allocated more efficiently. Generally, this means moving resources into the hands of the private sector and removing barriers to private enterprise.
- Making smart investments in infrastructure, institutions and technology that promote productivity of existing capital and labor or incentivize the improvement or invention of these technologies.
- Attracting more productive capital and labor to the state, especially capital and labor that will improve productivity of the existing capital and labor base.

Of course, the benefits of policies that work toward growing Wisconsin's economy should be weighed against any current or future costs they impose on the state's citizens, be these monetary, social, environmental or otherwise.



### **Badger Institute takeaways**

Wisconsin's economy is mediocre in productivity nationally and the second lowest out of seven Midwestern states. We are attracting taxpayers from neighboring states, especially Illinois.

The Badger State performs well on the share of the population that holds a job but is in the middle of the pack among Midwestern states for business formation. Wisconsin should favor policies that:

- Put resources in private-sector hands rather than the government and that reduce barriers to private enterprise.
- Promote productivity of existing capital and labor.
- Attract more productive capital and labor to our state.

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## Endnotes

<sup>1</sup> This ranking includes the District of Columbia, which ranks higher than Wisconsin in both 2011 and 2021.

<sup>2</sup> GDP statistics for the 2017-2021 period are still subject to revision by the Bureau of Economic Analysis, so these numbers may change. They are, however, currently the most accurate data available. It is also worth noting that quarter 1 of 2022 GDP released at the end of June 2022 shows declining GDP for all Midwestern states besides Michigan. It also shows that Wisconsin experienced the smallest decline among the other Midwestern states with an annual rate decline of just 0.2%, while Ohio declined at an annual rate of 1.8% and Indiana at an annual rate of 1.6%. This report uses annual data because it is less likely to be subject to a major revision than the more recent quarterly data.

<sup>3</sup> Milwaukee County has the highest overall level of GDP, producing about \$50 billion in 2020, compared to Dane County producing about \$40 billion in 2020. Of course, Milwaukee County has a much higher population than Dane, so on a per capita basis, Dane is more productive.

<sup>4</sup> The top GDP per capita states in 2020 are Washington, D.C. (about \$182,000 per person), Massachusetts (about \$71,000 per person), New York (about \$70,000 per person), North Dakota (about \$70,000 per person) and Washington (about \$68,000 per person). North Dakota falls out of the top five in 2021, replaced by California.

<sup>5</sup> AGI subtracts a few deductions from these income sources, notably alimony payments and interest paid on a qualified student loan.

<sup>6</sup> Here the population is the civilian non-institutional population that is 16 or older. It does not include active-duty military, prisoners or those in residential care facilities.

<sup>7</sup> A business establishment, counted by the U.S. census, is defined as “a single physical location at which business is conducted or where services or industrial operations are performed.” To be counted, the business establishment must also have a payroll.





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## A PREFACE TO

# Free-Market Reforms Will Make Wisconsin Thrive

**E**veryone has his or her own idea about the good life, but everyone is more likely to reach it in conditions of prosperity. Here, economist James Bohn looks at what a wide body of research has determined that we generally need to do to make that prosperity attainable for all.

— *Badger Institute*

## ABOUT THE AUTHOR



**James Bohn** is an economist with over 30 years of experience in government, business and academics. Most recently, he served as an assistant vice president and senior professional with the Federal Reserve Bank of Boston. Bohn holds a doctorate in business economics from Harvard University and is a CFA charterholder. He resides in the Milwaukee area.

# Free-Market Reforms Will Make Wisconsin Thrive

*By James Bohn*

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## Introduction

State and local governments in the United States have wide latitude in setting economic policy. In the first half of the 20th century, the progressives chose an economic model for Wisconsin that called for high levels of taxation and government expenditure coupled with extensive regulation of business and labor. The progressives did so because they considered capitalism and market processes as morally unsound and obsolete.<sup>1</sup>

The progressives were wrong. Experience and research show that states in which individuals, businesses and entrepreneurs have greater freedom to work and invest grow more rapidly, have better labor market outcomes and attract more people than states that follow the progressives' economic model.

Wisconsin has moved away from the progressives' economic model during the past few decades. Still, there is a long way to go.

## Economic Freedom and State Growth

The concept of economic freedom provides a convenient way to express where states stand on a continuum between those whose economic policies are the most market-oriented and those that are the least. States with less economic freedom are those that more actively use instruments of government power — taxation, expenditures, law and regulation — to determine economic outcomes. In states with greater economic freedom, voluntary action and market processes are relatively more important; individuals, entrepreneurs and businesses have greater discretion to use their money, talents and resources as they see fit.

### ***Economic Freedom Indices***

Economists have developed several measures of economic freedom at the state level. The two most widely used are the economic freedom indices developed by the Fraser Institute and the Cato Institute.<sup>2</sup> Though the methodologies and data used to compute the two indices differ, both consider a state's fiscal policies as well as its legal and regulatory framework.

Economic theory suggests that greater economic freedom should result in higher rates of economic growth. Free and competitive markets provide individuals and businesses with the ability and incentive to apply their skills and capital in the most profitable and productive manner. Competition and market processes also reduce the prevalence of unproductive activities. Empirical research confirms these predictions.

A large body of research has addressed the connection between economic freedom and growth as well as other measures of state economic performance, including unemployment rates, wage growth, entrepreneurship and investment.<sup>3</sup> A 2018 survey of 235 research papers on the connection between economic freedom and economic performance found that two-thirds associated greater economic freedom with better economic outcomes. Only one of the 235 papers associated greater economic freedom with worse results.<sup>4</sup>

Figure 1

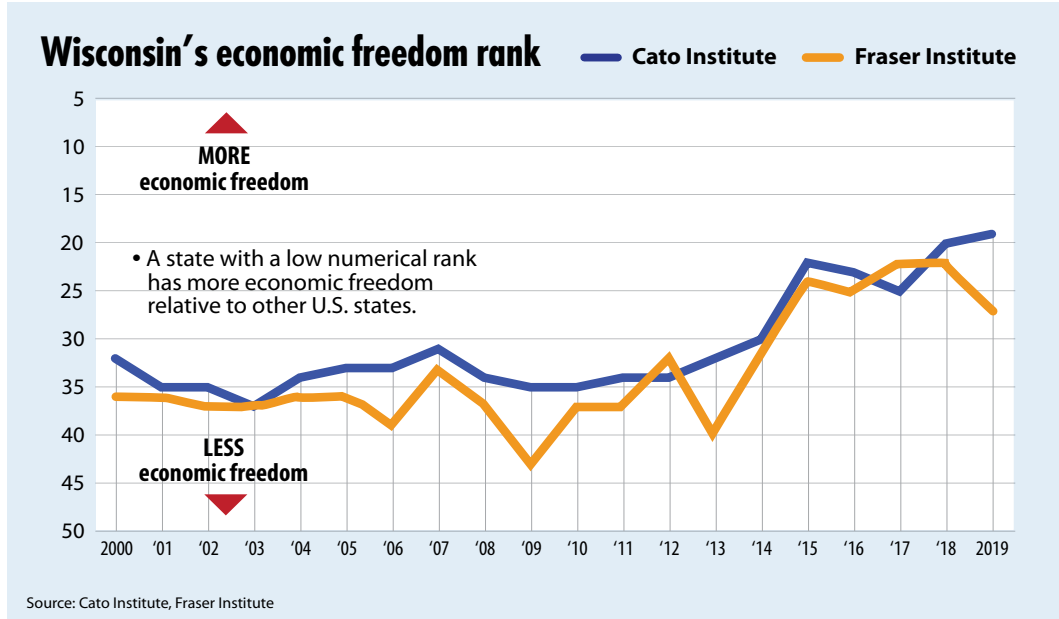


Figure 1 shows Wisconsin's economic freedom ranking from 2000 to 2019, the latest year for which rankings are available.<sup>5</sup> Wisconsin was ranked 27th in economic freedom by the Fraser Institute in 2019 and 19th by the Cato Institute. New Hampshire is the top state in terms of economic freedom in the index constructed by the Fraser Institute, while Florida received the top ranking by the Cato Institute.<sup>6</sup> New York State was ranked 50th in economic freedom by both Fraser and Cato.

The rise in Wisconsin's economic freedom ranking from 2010 through 2018 coincided with the administration of Gov. Scott Walker. Wisconsin's state and local tax burden as a share of personal income dropped from fifth highest in 2010 to 14th highest in 2018, according to data from the Tax Foundation.<sup>7</sup> Labor freedom increased with the 2015 enactment of right-to-work legislation and the decline in union density in the state. Research shows that right-to-work states grow more rapidly and attract greater investment by firms in the manufacturing sector than forced unionization states.<sup>8</sup>

The Badger State has moved a long way from the progressive economic model. Wisconsin's economic freedom ranking near the middle of the states indicates that its fiscal and regulatory policies are closer to the norm than they were 20 years ago. Still, Wisconsin's middling ranking suggests that opportunities exist to implement additional reforms to state tax and regulatory policies to make it more competitive and boost economic growth.

## Catching Macroeconomic Tailwinds

### *Reshoring and Headquarter Moves*

Wisconsin can benefit from two trends that are reshaping the American economy. One is the movement of production activities from overseas to locations in the U.S. This includes both reshoring of activities that American companies had previously sent overseas and investments by foreign companies in the U.S. The other trend is the movement of company headquarters and operations from high-tax and high-cost states to states that have more business-friendly systems for taxation and regulation.

Interest in reshoring has surged in the past two years. Bloomberg reports that references to reshoring in company presentations during the second quarter of 2022 was 1,000% higher than in the first quarter of 2020.<sup>9</sup> A 2021 survey by Thomas, an industrial data and publishing company, found that 83% of manufacturers reported that they were “likely” or “extremely likely” to reshore, up from 54% in 2020.<sup>10</sup>

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**No state exists in a vacuum. Business is mobile. State and local tax and regulatory policies weigh heavily in location decisions. With so much commercial activity on the move, now is a good time for Wisconsin lawmakers to enact measures to make Wisconsin more competitive.**

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The surge in interest in reshoring and foreign investments in the U.S. is driven by several factors, including increased trade and political tensions with China, the war in Ukraine, increased difficulties in managing complex supply chains and reductions in the cost advantage of low-wage countries due to automation. Reshoring and foreign investments are revitalizing the American manufacturing sector. The Reshoring Initiative reports that reshoring or foreign direct investment projects announced in 2021 will create a record 262,000 new manufacturing jobs in the U.S.<sup>11</sup>

Corporate relocations are also on the upswing. States with low levels of economic freedom are hemorrhaging corporate headquarters and operations; those with high economic freedom are gaining. Researchers Joseph Vranich and Lee Ohanian examined the exodus of corporations from California (ranked 48th in economic freedom by Cato and 49th by Fraser). They find that the frequency of corporate exits is increasing and that moves are motivated by California’s high tax rates, poor regulatory climate and declining standard of living. Major manufacturing and financial companies have announced moves out of New York and Illinois (ranked 37th in economic freedom by Cato, 33rd by Fraser).<sup>12</sup> Within the past year, both Boeing and Caterpillar announced exits from Illinois, as did Citadel, the state’s largest hedge fund.<sup>13</sup>

### *Tax Policy and Regulation*

Research indicates that tax and regulatory policy strongly influences business location decisions.<sup>14</sup> The literature shows that high personal and corporate tax rates depress a wide range of measures of state economic performance, including employment growth, output, wage levels and investment.

An important recent study by professors Xavier Giroud and Joshua Rauh complements the works that examine economic activity at the aggregate level. Giroud and Rauh use establishment-level microdata to examine how high corporate and personal tax rates cause companies that operate in multiple states to reshuffle employment between operations in high- and low-tax states.<sup>15</sup> For C-corporations, which are taxed at the entity level via the corporate income tax, they find that an increase in a state's corporate tax rate or a decline in corporate tax rates in other states in which the firm already does business causes companies to reduce employment and investment in higher tax states and increase employment at existing operations in lower tax states.

They find that the top personal tax rate has the same effect for S-corporations, for which business income is taxed on owners' personal tax returns. Their study provides further evidence of the importance of tax competition between states and how firms hire and fire workers in response to state tax policy.

Tax policy also plays into location decisions for corporate headquarters. Research shows that companies tend to migrate to locations with low corporate tax rates and away from those with high corporate tax rates.<sup>16</sup> The arrival of a corporate headquarters brings many benefits to the host city and state. Headquarters staff tend to be highly compensated, which increases the state and local tax base. Corporate relocations also typically result in increased demand and opportunities for local providers of professional services and real estate and may bring additional philanthropic resources to the host community.

No state exists in a vacuum. Business is mobile. State and local tax and regulatory policies weigh heavily in location decisions. With so much commercial activity on the move, now is a good time for Wisconsin lawmakers to enact measures to make Wisconsin more competitive.

## Wisconsin's Demographic Challenges

Market-oriented economic reforms would also help address Wisconsin's longer-term demographic challenges. As shown in Table 1, Wisconsin's population is expected to grow very slowly over the next two decades. Moreover, the share of Wisconsinites between the

Table 1

Prime working age population of Wisconsin and the U.S. 2020-2040						
	Wisconsin			U.S.		
	Total population	Population age 25-54	Percentage age 25-54	Total population	Population age 25-54	Percentage age 25-54
2020	5,837,176	2,183,264	37.40%	332,527,548	128,246,873	38.57%
2040	5,997,137	2,218,810	37.00%	379,392,779	146,179,539	38.53%
Growth 2020-2040 (percent)	2.74%	1.63%		14.09%	13.98%	

**NOTE:** Projections based on 2018 population estimates

Source: University of Virginia, Weldon Cooper Center for Public Service, Demographics Research Group, [www.demographics.coopercenter.org](http://www.demographics.coopercenter.org)

ages of 25 and 54, typically considered one's prime working years, is already below the national average and is expected to decline further by 2040.

The decline in the share of prime-age workers will be a drag on Wisconsin's economy. Those workers have higher rates of labor force participation than older or younger adults. Adults in their prime working years also tend to be net taxpayers: They pay more in taxes than they consume in services, thus their presence strengthens state and local government finances. The prime working years are also the period in life in which entrepreneurship peaks.<sup>17</sup>

Studies of interstate migration patterns in the U.S. show that states with higher levels of net in-migration have better employment opportunities, lower living costs, lower taxes, a warmer climate and, in general, more economic freedom.<sup>18</sup> With the exception of the Wisconsin winter, all of these drivers of interstate migration are within the control of state policymakers.

The expansion of the recognition of occupational licenses issued by other states would help attract more adults in their prime working years to Wisconsin. The cost to obtain a license in another state and potential breaks in employment from administrative delays is a significant deterrent to interstate moves by adults in licensed occupations.

Recent research by professors Janna Johnson and Morris Kleiner shows that workers in occupations that are subject to state-specific licensing exams are 36% less likely to move across state borders than workers in occupations that are either licensed on a national basis or do not require a license.<sup>19</sup> The Badger Institute's work on occupational licensing illustrates the benefits to Wisconsin from universal licensure recognition and other licensing reforms.<sup>20</sup>

## Conclusion

The evidence is clear: Free-market economic policies at the state level work. States that allow individuals and firms greater ability to work, invest and spend their money as they see fit experience more rapid output growth, have better labor market outcomes and attract more investment than states where government has a larger role in determining economic outcomes. Free-market economic policies and the results they produce draw migrants from other states.

Wisconsin has come a long way toward shedding the legacy of its progressive past. Wisconsin's fiscal and regulatory policy mix is closer to the norm among the 50 states than even a decade ago, but there is a clear need for additional reforms. Indeed, the case for market-oriented reforms now is made stronger by forces that are reshaping the world and national economy. States that are best positioned to benefit from the rise in reshoring, foreign investment and corporate relocations are the ones that have more sound fiscal and regulatory policies in place.



## Badger Institute takeaways

States with more economic freedom (lower taxes and less onerous regulatory policies) grow more rapidly than states with less economic freedom. During the past decade, Wisconsin moved from the bottom third to the middle third of the 50 states in terms of economic freedom. Still, additional reforms are necessary to make Wisconsin more competitive and increase economic growth. These include:

- **Implementing tax reform to attract more business investment, including investment by domestic companies that are reshoring foreign operations and foreign direct investment.**
- **Keeping the regulatory reforms of the previous decade in place, including the right-to-work statute, and implementing additional measures to reduce the costs of doing business in Wisconsin.**
- **Reducing barriers to in-migration to Wisconsin, including through reforms to occupational licensing requirements.**

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<sup>5</sup> Rankings use an as of date in the past due to the time necessary to collect and analyze economic and policy data in each jurisdiction covered by the studies.

<sup>6</sup> The Cato Institute ranks New Hampshire as having the third highest level of economic freedom among the 50 states. Florida is in third place in the Fraser Institute's ranking.

<sup>7</sup> Tax Foundation, "State and Local Tax Burdens, Calendar Year 2022," [taxfoundation.org/publications/state-local-tax-burden-rankings/](https://taxfoundation.org/publications/state-local-tax-burden-rankings/). Wisconsin's state and local tax burden as a share of personal income in 2000 was the second highest in the nation. Only New York's was higher.

<sup>8</sup> Richard Vedder, Joseph Hartge and Christopher Denhart, "The Economic Impact of a Right-to-Work Law on the Wisconsin Economy," *Badger Institute*, 28:1 (February 2015); Thomas J. Holmes, "The Effect of State Policies on the Location of Manufacturing: Evidence from State Borders," *Journal of Political Economy* 106:4 (1998) 667-705.

<sup>9</sup> Ryan Beene, "U.S. Factory Boom Heats Up as CEOs Yank Production Out of China," Bloomberg Business, July 5, 2022, [bloomberg.com/news/articles/2022-07-05/us-factory-boom-heats-up-as-ceos-yank-production-out-of-china](https://www.bloomberg.com/news/articles/2022-07-05/us-factory-boom-heats-up-as-ceos-yank-production-out-of-china)

<sup>10</sup> Thomas, "State of North America Manufacturing: 2021 Annual Report," [business.thomasnet.com/state-of-north-american-manufacturing-2021-ualp](https://business.thomasnet.com/state-of-north-american-manufacturing-2021-ualp)

<sup>11</sup> Reshoring Initiative, "2021 Data Report: Essential Product Industries Drive Job Announcements to Record High," <https://www.reshorennow.org/>

<sup>12</sup> David Roeder, "Ken Griffin Pulling Citadel Out of Chicago," Chicago Sun-Times, June 23, 2022, [chicago.suntimes.com/business/2022/6/23/23180173/ken-griffin-citadel-leave-chicago-miami](https://chicago.suntimes.com/business/2022/6/23/23180173/ken-griffin-citadel-leave-chicago-miami); Jack Kelly, "Wall Street Banks and Tech Companies are Fleeing New York and California," Forbes, Dec. 14, 2020, [forbes.com/sites/jackkelly/2020/12/14/wall-street-banks-and-tech-companies-are-fleeing-new-york-and-california/?sh=86a9b29661a9](https://forbes.com/sites/jackkelly/2020/12/14/wall-street-banks-and-tech-companies-are-fleeing-new-york-and-california/?sh=86a9b29661a9)

<sup>13</sup> Dylan Sharkey, "Citadel 3rd Major Company to Leave Illinois in 2 Months," Illinois Policy Institute, June 23, 2022, [illinoispolicy.org/citadel-3rd-major-company-to-leave-illinois-in-2-months/](https://illinoispolicy.org/citadel-3rd-major-company-to-leave-illinois-in-2-months/)

<sup>14</sup> The report by the Badger Institute and Tax Foundation outlining tax reform options for Wisconsin contains a review of the literature on the effects of high state corporate rates and top state personal tax rates on economic activity.

<sup>15</sup> Xavier Giroud and Joshua Rauh, "State Taxation and the Reallocation of Business Activity: Evidence from Establishment-Level Data," *Journal of Political Economy*, 127:3 (2019) 1262-1316.

<sup>16</sup> Vanessa Strauss-Kahn and Xavier Vives, "Why and Where do Headquarters Move?" *Regional Science and Urban Economics*, 39:2 (2009) 168-186.

<sup>17</sup> Dane Stanger and Daniel Spulber, *The Age of the Entrepreneur: Demographics and Entrepreneurship*, Ewing Marion Kauffman Foundation, (2013) [i4j.info/wp-content/uploads/2013/05/i4jDaneStanglerDemographicsandEntrepreneurship-1.pdf](https://www.i4j.info/wp-content/uploads/2013/05/i4jDaneStanglerDemographicsandEntrepreneurship-1.pdf)

<sup>18</sup> Nathan Ashby, "Economic Freedom and Migration Between U.S. States," *Southern Economic Journal*, 73:3 (2007) 677-697; Richard J. Cebula, Maggie Foley and Joshua C. Hall, "Freedom and Gross In-migration: An Empirical Study of the Post-Great Recession Experience," *Journal of economics and finance*, 40:2 (2016) 402-420; Chris Edwards, *Tax Reform and Interstate Migration*, Cato Institute Tax and Budget Bulletin, 84, Sept. 6, 2018.

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**TAXES/REVENUE**



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A PREFACE TO

# Tax Reform to Help Wisconsin Prosper

**W**isconsin's century-old progressive income tax served its purpose but is now holding us back.

When it was adopted in 1911, it was a logical remedy to an obvious problem. At the time, Wisconsin raised revenue almost exclusively through property taxes — a system that was inherently unfair to farmers, one that was inefficient and wasteful. Sales taxes in Wisconsin wouldn't be adopted for another 50 years. They weren't even on the radar. Progressive income taxes were a feasible alternative.

Today is a very different time. Individuals and companies can quickly relocate in ways unimaginable 100 years ago. States are in direct competition for companies, jobs and productive residents. It's no coincidence that 13 states have already or are in the process of moving toward a flat tax that is less harmful to business and less disdained by high-net-worth individuals who can easily move elsewhere. (Another nine states have no individual income tax at all.)

It's unrealistic — even over the course of numerous budget cycles — to think that Wisconsin can completely eliminate its individual income tax, which raises between \$8 billion and \$9 billion per year. Moving to a flat tax, on the other hand, is not only possible — especially given a very large projected budget surplus at the beginning of the next budget cycle — it's essential if Wisconsin is to provide opportunity for its poorest residents and prosperity for all.

This chapter offers five sample comprehensive tax reform options to enhance Wisconsin's tax competitiveness with a focus on reducing economically harmful taxes on labor and investment.

— *Badger Institute*

## ABOUT THE AUTHOR



**Katherine Loughhead** is a senior policy analyst with the Center for State Tax Policy at the Tax Foundation, the nation's leading independent tax policy research organization based in Washington, D.C.



# Tax Reform to Help Wisconsin Prosper

By Katherine Loughead

## Introduction

Over the past two years, a wave of tax reform has swept the country. And while Wisconsin has not been dormant — in 2019, 2020 and 2021, we reduced the second-highest individual income tax rate once and the lowest two rates twice — the state is quickly falling behind on income tax competitiveness. Our top marginal individual income tax rate, which applies to approximately two-thirds of pass-through business income, has been left unchanged for a decade.

When Iowa's top rate drops to 6%,<sup>1</sup> Minnesota and Wisconsin will be left with the highest top marginal individual income tax rates of all the non-coastal states stretching from

Figure 1

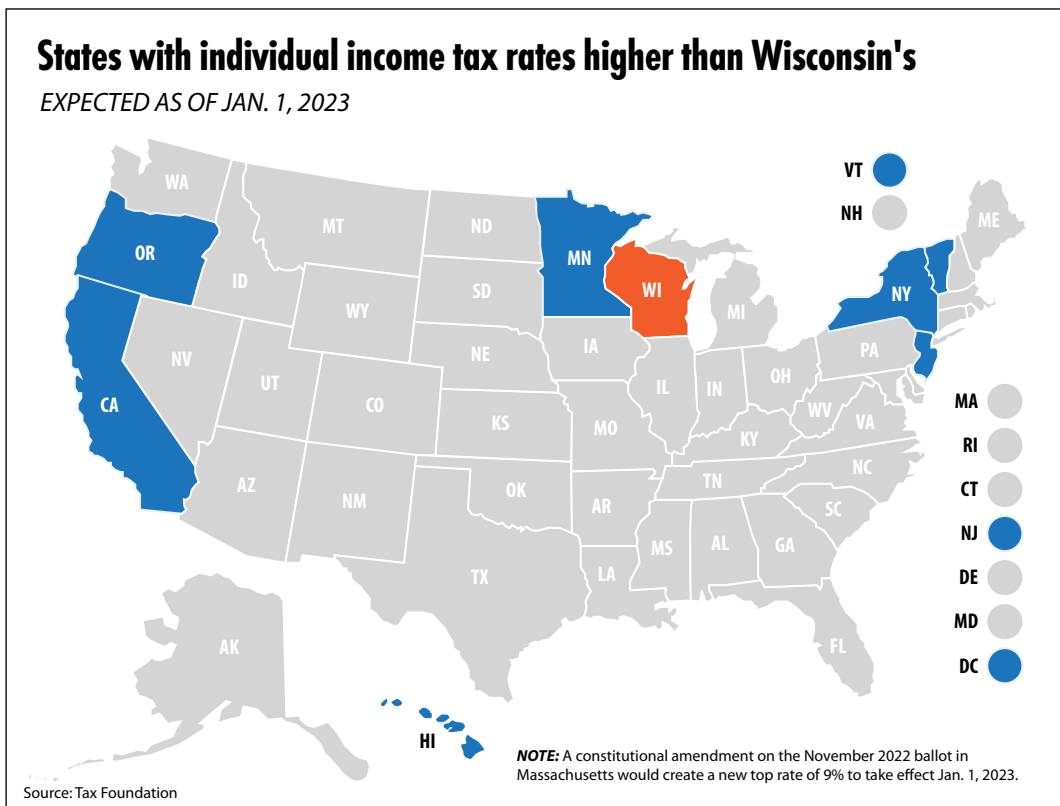
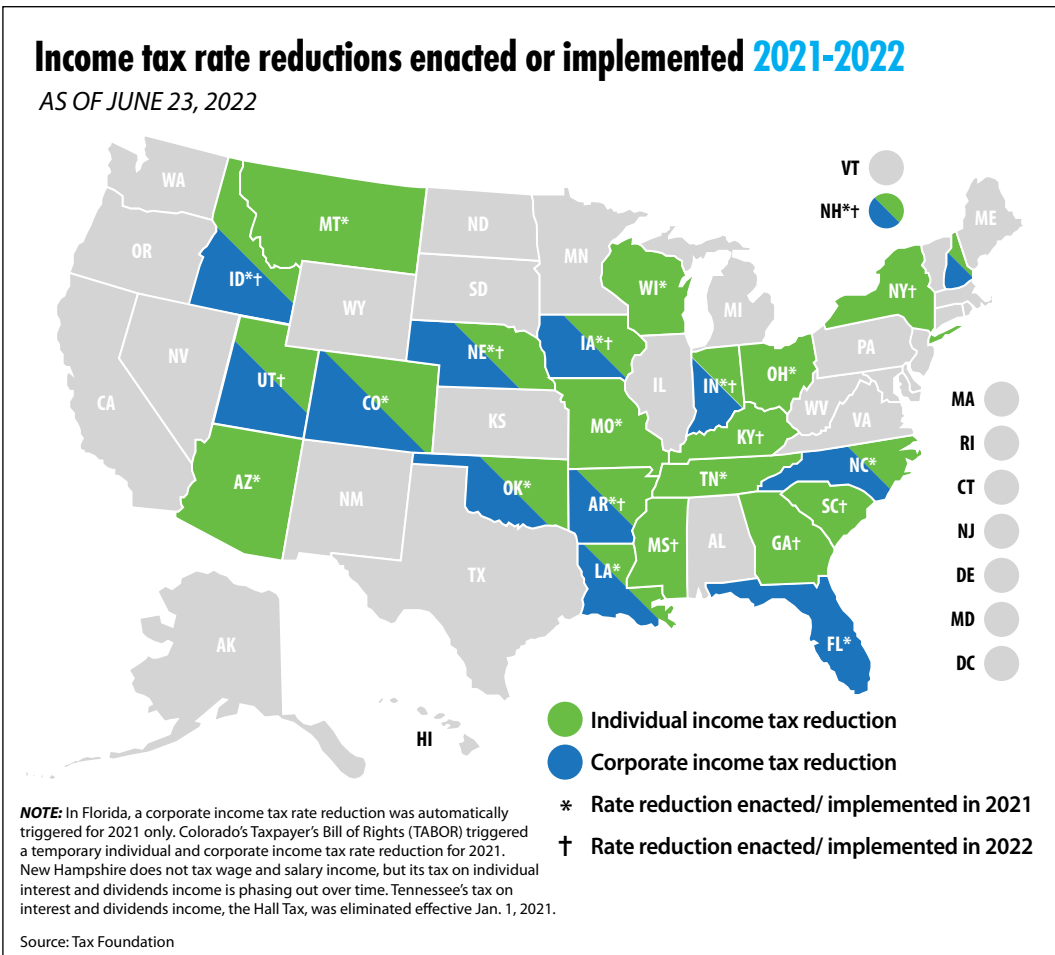


Figure 2



California to New York.<sup>2</sup>

Other states are not content to sit still. Twenty-five states have lower top marginal individual income tax rates now than they did in 2012.<sup>3</sup>

Meanwhile, we remain uncompetitive and mediocre. Wisconsin ranks 27th overall, slightly below average, on the Tax Foundation's 2022 *State Business Tax Climate Index*.<sup>4</sup>

Our scores on the individual, corporate and unemployment insurance tax components drag us down, although the state performs in the top 10 on sales and excise taxes and in the top 20 on property and wealth taxes.

Not all taxes are equal: Economic research overwhelmingly finds corporate and individual income taxes — the ones on which Wisconsin is unusually reliant — to be more harmful to economic growth than well-structured sales and property taxes.

Table 1

Wisconsin's State Business Tax Climate Index rankings			
Component	2019 rankings (Backcast)	2022 rankings	Change
Overall ranking	33	27	+6
Corporate taxes	31	31	–
Individual taxes	39	37	+2
Sales and excise taxes	7	7	–
Property and wealth taxes	20	16	+4
Unemployment insurance taxes	40	28	+12

Source: Tax Foundation, 2022 State Business Tax Climate Index

**NOTE:** The State Business Tax Climate Index measures how each state's tax laws affect economic performance. A rank of 1 means the state's tax system is more favorable for business; a rank of 50 means the state's tax system is less favorable for business. Some 2019 rankings referenced here differ from rankings as originally published in the 2019 Index due to enactment of retroactive statutes and backcasting of methodological changes.

In fiscal year 2019, the most recent year of data available, 28.6% of Wisconsin’s state and local tax collections came from individual income taxes compared to 24.1% of total state and local tax collections nationally. Wisconsin generates 4.5% of state and local tax collections from its corporate income tax compared to a national figure of 3.5%. While 23.3% of total state and local tax collections nationwide come from general sales and use taxes, only 20.1% of Wisconsin’s collections come from that tax.

The good news is that Wisconsin has a historic opportunity to reform. Aided by a strong budget surplus and projected continued revenue growth, Wisconsin can rebalance its tax structure to better promote long-term economic growth and opportunity.

Wisconsin's Taxes

Individual Income Taxes

Wisconsin’s top marginal rate has stood at 7.65% since 2013, when it was reduced slightly from 7.75%.<sup>5</sup> At 7.65%, Wisconsin’s top rate is higher than the top rates in all but eight states and the District of Columbia.<sup>6</sup> Soon, only seven states and D.C. will have a higher top rate. (Iowa’s top marginal rate is set to decrease from 8.53% in 2022 to 6% in 2023, with further reductions scheduled each year until a flat rate of 3.9% is achieved in 2026.<sup>7</sup>)

High individual income tax rates reduce returns to labor, putting a damper on hours worked and workforce participation rates.

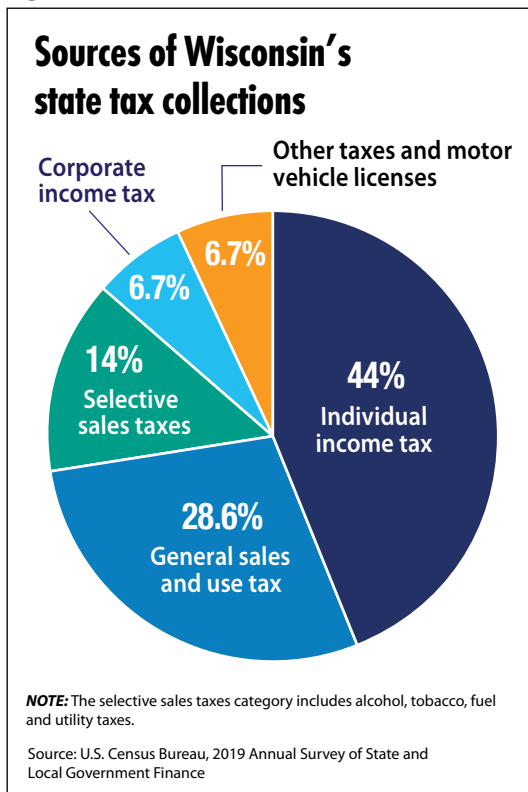
(Go to [badgerinstitute.org](https://badgerinstitute.org) for a complete recitation of relevant economic literature in the full version of the Tax Foundation/Badger Institute report from which this chapter was adapted.)

High individual income tax rates also affect Wisconsin’s businesses, 95% of which are structured as pass-throughs, where business profits “pass through” to the owners’ individual income tax returns. In Wisconsin, sole proprietorships, partnerships, limited liability companies (LLCs) and S corporations are all taxed under the individual income tax code rather than the corporate income tax code. Approximately two-thirds of pass-through business income is exposed to the 7.65% top personal income tax rate. Subject to high

rates, business owners have less money to reinvest in their businesses, and this results in less hiring, less capital investment and less economic output.

From an economic growth standpoint, the top marginal rate is the most important rate for policymakers to reduce because it has a far greater negative impact on economic growth than do the lower marginal-rate brackets. Under Wisconsin's current system, the top marginal rate of 7.65% is 2.35 percentage points higher than the next-highest rate of 5.3%, meaning taxpayers with income exposed to the top rate see a significant reduction

Figure 3



to the benefit they receive from engaging in additional work. When the marginal benefit of additional labor is reduced, taxpayers work fewer hours, and some withdraw from the workforce altogether. This reduces economic output over time.

Moving to a single-rate structure would yield many benefits for Wisconsin and its taxpayers, the most notable being that single-rate structures are better than graduated-rate structures at promoting growth-inducing economic activities. Under a flat tax structure, Wisconsinites would bring home the same amount of income for every dollar of taxable income earned, whether their first dollar of taxable income, their latest dollar of income or any future dollars of income. This approach is far more neutral and pro-growth, and it creates an environment that is much friendlier to innovation and upward mobility.

Single-rate structures better embody the principles of sound tax policy, including simplicity, transparency and neutrality. Because all income-tax payers would be affected by a rate change, policymakers likely would work harder to justify any proposed rate increase, as it would affect a larger share of their constituents. Over time, this can help stave off unnecessary tax increases and promote the more efficient stewardship of taxpayers' resources.

Proponents of graduated-rate income tax systems tend to view them as a way to address income inequality, but research — including a study by Feldstein and Wrobel (1998) — shows that higher marginal rates lead to a relocation of capital and higher earners to more favorable tax environments.<sup>8</sup> This not only undercuts the state's efforts to expose high earners to higher taxes, it also reduces the earnings of lower-income individuals who remain, due to reduced opportunities and a less competitive economic environment.

It is worth noting that even with a single-rate structure, Wisconsin's income tax code would contain elements of progressivity through various deductions, exemptions and credits that exclude certain income from taxation altogether or reduce effective rates for lower-income taxpayers. These provisions include the standard deduction as well as the refundable earned income credit and refundable homestead credit.

It is also important to remember that when it comes to questions of progressivity and equity, taxes tell only one side of the story. Even with a less progressive income tax structure, Wisconsin's tax and transfer system would continue to be progressive, given state and local spending on food and nutrition assistance programs such as the Supplemental Nutrition Assistance Program (SNAP) and Women, Infants and Children (WIC); affordable housing; healthcare, childcare and utilities payment assistance; vocational education and training; and other income-tested programs providing financial support to lower-income individuals and families. The tax code is not always — or even often — the best way to provide income supports or other varieties of low-income assistance.

### ***Corporate Income Taxes***

As of Jan. 1, 2022, Wisconsin's corporate income tax rate of 7.9% was higher than the top rates in all but 12 states and the District of Columbia.<sup>9</sup> One of those 12 states — neighboring Iowa — is on track to grow substantially more competitive under recent reforms that will broaden the corporate income tax base while reducing the rate from 9.8% to 5.5% over time as specified revenue targets are met.<sup>10</sup>

Taxes matter to businesses, and numerous economic studies show corporate income taxes are among the most harmful to economic growth.

*(See the full report at [badgerinstitute.org](https://badgerinstitute.org))*

It is also important to remember that while corporations are legally responsible for paying the corporate income tax, the economic burden of the corporate income tax falls on workers in the form of lower wages, consumers in the form of higher prices and investors in the form of lower returns.<sup>11</sup> As such, everyone is affected by corporate income taxes, even if they are not aware of it.

### ***Sales Taxes***

While Wisconsin's individual and corporate income tax rates are high compared to the rest of the country, Wisconsin's sales tax rate is among the lowest in the nation. Our combined state and average local sales tax rate of 5.43% is the third-lowest in the country, behind only Wyoming (5.22%) and Alaska (1.76%).

Wisconsin's sales tax base, the basket of goods and services to which the sales tax applies,

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**Our high top individual income tax rate affects more than just employees; it affects Wisconsin's small businesses as well. Reducing the state's high 7.65% tax on entrepreneurial activity would be a game changer, yielding positive effects on business investment and job growth for years to come.**

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is slightly broader than the national median, but many notable categories of consumer goods and services that ought to be taxed remain exempt. The economic literature on consumption taxes consistently finds they are less harmful than income taxes, especially when the sales tax is destination-based, as Wisconsin's is, and when the tax is applied to final retail consumption only, not business-to-business purchases.<sup>12</sup>

Policymakers can use sales tax base broadening, sales tax rate increases or both, to offset income tax rate reductions, but of those two options, base broadening ought to be considered first. Specifically, Wisconsin's sales tax base could be expanded to a variety of consumer services that never have been taxed as well as to various consumer goods that were carved out of the sales tax base over time.

Sales taxes should *not*, however, be newly applied to business-to-business transactions. Taxing business inputs leads to tax pyramiding, where taxes often get embedded in the prices of final goods and services multiple times over and in a nontransparent manner. Taxing business-to-business purchases is also nonneutral in that it harms some industries more than others and encourages vertical integration of supply chains to avoid the tax.

Table 2 lists some of the currently untaxed consumer services and goods that could be included in the sales tax base to generate revenue to offset income tax reforms. Using data

Table 2

<b>Sales tax base broadening options</b>	
<b>Consumer good or service</b>	<b>Estimated fiscal effect (FY23)</b>
Repair of real property	\$72,467,355
Beauty, barber, nail and other personal care services	\$56,233,428
Veterinary services for pets	\$39,516,387
Accounting services*	\$21,590,317
Health clubs	\$20,439,510
Funeral services, excluding caskets and vaults	\$16,970,987
Dues and fees paid to business associations and fraternal organizations	\$16,351,608
Newspapers, periodicals and shoppers guides	\$13,378,589
Admissions to educational events and places	\$10,157,817
Disinfecting and exterminating	\$7,184,798
Interior design*	\$3,096,896
Caskets and burial vaults	\$5,822,164
Auto and travel clubs	\$4,707,281
Tax preparation services*	\$3,406,585
<b>TOTAL</b>	<b>\$291,323,720†</b>
† Total does not add up due to rounding.	
* The estimated fiscal effects for accounting, interior design and tax preparation services assume the sales tax is applied only when those services are purchased by individuals, not businesses.	
Source: Wisconsin Department of Revenue, "State of Wisconsin Tax Exemption Devices, 2021-23"; Wisconsin Legislative Fiscal Bureau, "Revenue Estimates January 25, 2022"; Council on State Taxation, "Sales Taxation of Business Inputs"; author's calculations	

from the Wisconsin Department of Revenue's 2021 Summary of Tax Exemption Devices and the Wisconsin Legislative Fiscal Bureau's January 2022 revenues forecasts, we estimate broadening the sales tax base to the household consumption (not business-to-business purchases) of the listed services would increase revenue by over \$291 million in FY 2022-'23.<sup>13</sup>

Extending the sales tax to consumer services also would capture a larger share of personal consumption expenditures that tend to be more discretionary in nature and therefore are more often purchased by higher-income consumers. This would right an accidental wrong in the tax code that currently favors higher-income consumers by leaving many of their discretionary purchases untaxed.

In addition to broadening the sales tax base, policymakers could consider raising the sales tax rate. On a static basis and assuming no other economic effects, each percentage point of Wisconsin's current 5% state sales tax generates approximately \$1.45 billion, for a total of \$7.23 billion in sales and use tax revenue expected to be collected in FY 2022-'23.<sup>14</sup>

Large sales tax rate differentials among neighboring states can lead to cross-border shopping, but all of Wisconsin's immediate neighbors have state and average local sales tax rates in the 6% to 8% range, leaving plenty of room for Wisconsin to raise sales tax rates while still maintaining a rate at or below the levels of its neighbors.<sup>15</sup>

It is also important to keep in mind that because Wisconsin has a uniform state and local sales tax base, any expansion of the state sales tax base would extend to the local base as well, yielding increased revenue for counties.

### ***Property Taxes***

Like its sales tax system, Wisconsin's property tax system is relatively well-structured in that its property taxes are simple and neutral in their application across different types of real property. As Wisconsinites are well aware, property taxes are indeed high in Wisconsin; homeowners face an effective property tax rate of 1.63% when considering property tax collections as a share of owner-occupied home value.<sup>16</sup> But real property is the least economically harmful of the major tax bases, so real property taxes are an appropriate source of local revenue to fund local government services.

Unlike labor or capital, real property is immobile, so tax avoidance options are limited. Real property taxes are also highly transparent and adhere well to the benefit principle in public finance that says taxes paid should relate closely with benefits received.

## **Realistic Reform Options**

We present five sample comprehensive tax reform options for Wisconsin and explain how each of the proposed policy changes would help us become more economically competitive. These sample tax reform options are similar to the options that were presented in our 2019 publication *Wisconsin Tax Options: A Guide to Fair, Simple, Pro-Growth Reform*,<sup>17</sup>

Table 3

Five sample tax reform options for Wisconsin								
NET TAX CUT OF \$1.2 BILLION								
TAX YEAR 2022	Current structure		Opt. A	Opt. B	Opt. C	Opt. D	Opt. E	
Rate(s)	Single	Married filing jointly	All filers	All filers	All filers	All filers	Single	Married filing jointly
• Individual income tax	3.54% – \$0	3.54% – \$0	4.15%	4.5%	4.5%	5.1%	3.3% – \$0	3.3% – \$0
	4.65% – \$12,760	4.65% – \$17,010					4.4% – \$12,760	4.4% – \$17,010
	5.30% – \$25,520	5.30% – \$34,030					5.0% – \$25,520	5.0% – \$34,030
	7.65% – \$280,950	7.65% – \$374,600					7.2% – \$280,950	7.2% – \$374,600
	Enhanced standard deduction		✓	✓	✓	✓	✓	
• Corporate income tax	Rate	7.9%	7%	5.5%	6.5%	7.9%	7%	
	Throwback rule repealed		✓	✓	✓	✓	✓	
	Economic development surcharge repealed		✓	✓	✓	✓	✓	
• Sales tax	Rate	5%	6%	6%	6%	5%	5%	
	Modest base broadening		✓	✓				
• Property tax	Personal property tax repealed		✓	✓	✓	✓	✓	
• Results of proposed changes								
State Business Tax Climate Index ranking								
	27th		8th	8th	9th	9th	21st	
NOTE: See text for description of enhanced standard deduction and Table 2 for components included in sales tax base broadening. The State Business Tax Climate Index ranking line shows what Wisconsin's overall ranking on the 2022 Index would have been if sample options had been in effect on July 1, 2021.								
Source: Tax Foundation calculations based on data from the Wisconsin Legislative Fiscal Bureau and the Wisconsin Department of Revenue								

but they have been updated to reflect recent tax policy changes as well as current tax collections and revenue forecasts.

Wisconsin has plenty of extra revenue to return to taxpayers in the form of permanent rate reductions and other structural improvements. As such, each of our sample comprehensive tax reform options would return approximately \$1.2 billion of this revenue growth to taxpayers. Options A, B and C would use sales tax base broadening, rate increases or both to offset the additional cost of income tax reductions above \$1.2 billion, while Options D and E each would provide a sustainable net tax cut of approximately \$1.2 billion without sales tax base broadening or rate increases, meaning the income tax cuts in Options D and E are smaller than in Options A, B and C.

### Option A

The primary goal of Option A is to create a more competitive individual income tax

structure by consolidating four brackets into one and reducing the rate substantially, to a flat 4.15%. This option also includes a modest reduction to the corporate income tax rate, bringing it down nearly a percentage point, to 7%. To partially offset these reforms (above the \$1.2 billion in assumed reductions against higher revenues), Option A would modestly broaden the sales tax base while increasing the sales tax rate to 6%.

With a state sales tax rate of 6%, Wisconsin's combined state and average local sales tax rate would be 6.43%, which would still be lower than the combined rates in 31 of the 45 states with statewide sales taxes.<sup>18</sup>

### ***Option B***

Option B prioritizes making both the individual and corporate income tax rates substantially more competitive, bringing the individual income tax rate to a flat 4.5% and the corporate income tax rate to 5.5%. To partially offset these reforms, Option B would modestly broaden the sales tax base while increasing the sales tax rate to 6%.

This option gives greater priority to enhancing the competitiveness of Wisconsin's corporate income tax, a tax which falls on — and thus discourages — capital investment. Corporate income taxes are a small and declining share of state tax revenue across the country, as states acknowledge the taxes are an impediment to investment and confront the revenue volatility they add to state tax codes.

### ***Option C***

Option C's individual income and sales tax rates are identical to those of Option B, but instead of achieving a substantially lower corporate income tax rate, Option C trims the corporate income tax rate to 6.5% while leaving the sales tax base unchanged.

Like Option B, by substantially reducing both individual and corporate income taxes, Option C would make Wisconsin more attractive to all types of businesses, regardless of their legal structure. Even with a full percentage-point increase in Wisconsin's sales tax rate, the combined state and average local sales tax rate would still be lower than the rates in 31 of the 45 sales tax-levying states.

### ***Option D***

This option achieves a flat individual income tax rate of 5.1% while making no changes to the corporate income tax or the sales tax.

### ***Option E***

Option E trims the corporate income tax rate to 7% and reduces each of Wisconsin's four marginal individual income tax rates while retaining the current graduated-rate structure. While this approach would not improve the state's tax competitiveness as much as Options A through D, Option E is nevertheless a step in the right direction and

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**Wisconsin's top marginal individual income tax rate is higher than the top rates in all but eight states and the District of Columbia. Soon, only seven states and D.C. will have a higher top rate. Except for Minnesota, all will be on the East or West coasts.**

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could be enacted along with tax triggers that dedicate a certain amount of future revenue growth to reducing the top marginal individual income tax rate, consolidating four brackets into one and reducing the corporate income tax rate, similar to the ongoing reforms in Iowa. A downside of this approach is that it would take longer for Wisconsin to achieve truly competitive income tax rates.

Table 4

**Sample flat individual income tax rates under alternative net tax cut scenarios**

Net tax cut	Option A	Options B & C	Option D
\$1 billion	4.30%	4.60%	5.20%
\$1.2 billion	4.15%	4.50%	5.10%
\$1.4 billion	4.00%	4.40%	5.00%
\$1.6 billion	3.90%	4.25%	4.85%
\$2 billion	3.80%	4.10%	4.70%

Source: Tax Foundation calculations based on data from the Wisconsin Legislative Fiscal Bureau and the Wisconsin Department of Revenue

**Dialing Up and Down**

It is important to note that rates could be dialed down even further if policymakers want to provide more than \$1.2 billion in net tax relief, and rates could be dialed up slightly if policymakers want to dedicate less of the state’s revenue growth to tax relief.

Table 3 shows a summary of the provisions includ-

ed in each comprehensive tax reform option, and Table 4 shows how the flat individual income tax rates in Options A through D could be dialed down or up depending on the amount of revenue growth lawmakers choose to return to taxpayers.

**Tax Changes Included in All or Several Options**

In addition to the provisions described above, there are a number of policy changes included in all or several options, and their revenue effects were accounted for when calculating the amount by which rates could be reduced. Each of these structural changes would make Wisconsin’s tax code simpler and more neutral.

**Increase Standard Deduction — Options A, B, C, D and E**

Wisconsin’s current sliding scale standard deduction is income-tested, with the amount taxpayers are eligible to claim decreasing as income increases. In tax year 2022, the maximum standard deduction a single filer can claim is \$11,790. That amount phases down for single filers with Wisconsin income exceeding \$16,990 and reaches zero for taxpayers with income exceeding \$115,240.<sup>19</sup> The maximum standard deduction for married couples filing jointly is \$21,820, and that amount phases down for those with income exceeding \$24,520, phasing down to zero at \$134,845 in Wisconsin income.

To provide targeted tax relief to those at the lower end of the income spectrum, all sample tax reform options increase both the maximum standard deduction and the amount of income at which the deduction phases down. Specifically, the single filer standard deduction and phaseout thresholds are each increased by \$5,000, such that the maximum single filer deduction is \$16,790, the phaseout begins at \$21,990 in income and the deduction phases out to zero at \$120,240 in income. The standard deduction for other filers is increased by a proportionate amount as shown in Table 5.

Table 5

Proposed increase to sliding scale standard deduction									
	Single		Married filing jointly		Head of household		Married filing separately		
	Current	Proposed	Current	Proposed	Current	Proposed	Current	Proposed	
Maximum deduction amount	\$11,790	\$16,790	\$21,820	\$31,074	\$15,230	\$21,689	\$10,370	\$14,768	
Beginning of phasedown	\$16,990	\$21,990	\$24,520	\$31,736	\$16,990	\$21,990	\$11,640	\$15,066	
Phaseout to zero	\$115,240	\$120,240	\$134,845	\$140,696	\$115,240	\$120,240	\$64,072	\$66,852	

Source: Wisconsin Department of Revenue; Tax Foundation calculations

**Repeal Economic Development Surcharge — Options A, B, C and E**

In addition to corporate or individual income tax liability, C corporations (which pay the corporate income tax) and S corporations (which are “pass-throughs”) with gross receipts of \$4 million or more must pay an economic development surcharge.<sup>20</sup> For C corporations, the surcharge is 3% of Wisconsin gross tax liability, with a minimum tax of \$25 and a maximum tax of \$9,800. Revenue from this tax is earmarked to fund the Wisconsin Economic Development Corp. (WEDC). Compared to the current surcharge that is levied only on select businesses, the general fund would be a more neutral and stable source of revenue for WEDC. As such, each of the options that reduce the corporate income tax rate also repeal the economic development surcharge, instead funding WEDC through the general fund.

**Repeal Throwback Rule — Options A, B, C and E**

The throwback rule in Wisconsin’s corporate income tax code taxes the so-called nowhere income of Wisconsin-based corporations — income not taxable in Wisconsin because it is earned elsewhere but not taxable in the states in which it is earned, either. An example is some manufacturers’ sales to out-of-state customers. This reduces Wisconsin’s tax competitiveness, adds unnecessary complexity and creates the potential for double taxation. Repealing the throwback rule would make Wisconsin more attractive to prospective employers, enhancing Wisconsin’s future growth prospects. Each of the options that reduce the corporate income tax rate also repeal the throwback rule (Options A, B, C and E).

**Repeal Tangible Personal Property Tax — Options A, B, C, D and E**

While commendable progress has been made to reduce reliance on tangible personal property taxes over time, some property remains taxable, such as office furniture, fixtures and equipment as well as boats and other watercraft. Wisconsin policymakers have already set aside revenue to repeal this tax, but the tax will continue to be collected until lawmakers enact legislation removing it from the books.

**Conclusion**

Wisconsin’s top marginal rate has stood at 7.65% since 2013, when it was reduced slightly from 7.75%.<sup>21</sup> At 7.65%, Wisconsin’s top rate is higher than the top rates in all but eight states and the District of Columbia.<sup>22</sup> Soon, only seven states and D.C. will have a higher

top rate, as Iowa's top marginal rate is set to decrease from 8.53% in 2022 to 6% in 2023, with further reductions scheduled each year until a flat rate of 3.9% is achieved in 2026.<sup>23</sup> Iowa's progress is especially remarkable given the top rate was 8.98% (with a state deduction for federal taxes paid) as recently as 2018.

Since 2019, the only Wisconsin income tax rate that has been left unchanged, therefore, is the one that has the most detrimental impact on labor and investment in Wisconsin: the top marginal rate.

When considering reductions to Wisconsin's top marginal individual income tax rate, it is important to keep in mind that the state's high top rate directly affects more than just employees across the state; it affects Wisconsin's small businesses as well. Approximately 95% of all businesses in Wisconsin are structured as pass-throughs, where business income is taxed under the individual income tax code rather than the corporate income tax code.<sup>24</sup>

In tax year 2019, 75% of Wisconsin pass-through business income was reported on tax returns with more than \$200,000 in adjusted gross income (AGI), and 55% of Wisconsin pass-through business income was reported on returns with more than \$500,000 in AGI.<sup>25</sup> Under Wisconsin's rate schedules (for single, joint and head of household filers), we estimate that 67% of pass-through business income is subject to the top marginal rate, a high 7.65% tax on entrepreneurial activity.

Reductions to Wisconsin's top marginal individual income tax rate would be a game changer for many of the state's small businesses, yielding positive effects on entrepreneurship, business investment and job growth for years to come.

Economic research also shows that the benefits of reductions to the top rate affect more than just those whose income tax liability is directly reduced. The rate reductions benefit those with lower incomes as well, through positive effects on wages, employment and overall economic conditions.

While reducing Wisconsin's top marginal individual income tax rate would yield benefits for the state and its taxpayers, an even better option would be for the state to consolidate its four brackets into one.

Our comprehensive tax reform options present five ways the Badger State's tax code could be rebalanced to promote economic growth and competitiveness by relying more heavily on the sales tax, which currently is among the lowest in the country. Increasing the sales tax would be a less destructive way to raise revenue, and modernizing it to include a wider range of consumption, particularly from higher earners, would inject progressivity while making it more neutral in its application to both goods and services.

Given the state's strong budget surplus and projected continued revenue growth, Wisconsin is in a prime position to enact pro-growth reforms to improve the state's competitive standing for decades to come.



## Badger Institute takeaways

- Minnesota and Wisconsin will be left with the highest top marginal individual income tax rates of all the non-coastal states stretching from California to New York. Wisconsin remains uncompetitive and mediocre, 27th overall, slightly below average, on the Tax Foundation's 2022 *State Business Tax Climate Index*.
- Aided by a strong budget surplus and projected continued revenue growth, Wisconsin can and should rebalance its tax structure to better promote long-term economic growth and opportunity.
- We present five realistic ways to enact pro-growth tax reform while.
- Increasing Wisconsin's income-tested sliding scale standard deduction ensures that under every option presented here, taxpayers across the income spectrum see lower effective income tax rates. We should use such an increase to ensure broad support for a single-rate structure.
- Wisconsin should consider cutting its corporate income tax rate, as four of our options do, since that rate is now higher than the top rates in all but 12 states.
- Policymakers can use sales tax base broadening, sales tax rate increases or both to offset income tax rate reductions. All of Wisconsin's immediate neighbors have state and average local sales tax rates in the 6% to 8% range, leaving plenty of room for Wisconsin to raise sales tax rates while remaining at or below the levels of its neighbors.

## Endnotes

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<sup>2</sup> Timothy Vermeer and Katherine Loughead, "State Individual Income Tax Rates and Brackets for 2022," Tax Foundation, Feb. 15, 2022, <https://www.taxfoundation.org/publications/state-individual-income-tax-rates-and-brackets/>

<sup>3</sup> Jared Walczak, "Two Dozen States Show Why the Kansas Critique of Income Tax Cuts Is Mistaken," Tax Foundation, May 24, 2022, <https://www.taxfoundation.org/kansas-experiment-kansas-tax-cuts-critique/>

<sup>4</sup> Janelle Cammenga and Jared Walczak, 2022 *State Business Tax Climate Index*, Tax Foundation, Dec. 16, 2021, <https://www.taxfoundation.org/2022-state-business-tax-climate-index/>

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<sup>6</sup> Vermeer and Loughead, "State Individual Income Tax Rates and Brackets for 2022."

<sup>7</sup> Walczak, "Iowa Enacts Sweeping Tax Reform."

<sup>8</sup> Martin Feldstein and Marian V. Wrobel, "Can State Taxes Redistribute Income?" *Journal of Public Economics* 68:3 (1998), 369-96.

<sup>9</sup> Janelle Cammenga, "State Corporate Income Tax Rates and Brackets for 2022," Tax Foundation, Jan. 18, 2022, <https://www.taxfoundation.org/publications/state-corporate-income-tax-rates-and-brackets/>



<sup>10</sup> Jens Arnold, Bert Brys, Christopher Heady, Asa Johannsson, Cyrille Schwellnus and Laura Vartia, “Tax Policy for Economic Recovery and Growth,” *The Economic Journal* 121:550 (February 2011).

<sup>11</sup> Erica York, “New OECD Study Quantifies Crucial Role of Businesses in the Tax System,” Tax Foundation, Jan. 9, 2018, <https://www.taxfoundation.org/oecd-study-quantifies-business-role-tax-system/>

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<sup>13</sup> Wisconsin Department of Revenue, “2021 Summary of Tax Exemption Devices,” <https://www.revenue.wi.gov/dorreports/21sumrpt.pdf>, and Wisconsin Legislative Fiscal Bureau, “Revenue Estimates January 25, 2022,” [https://www.docs.legis.wisconsin.gov/misc/lfb/revenue\\_estimates/185\\_january\\_25\\_2022.pdf](https://www.docs.legis.wisconsin.gov/misc/lfb/revenue_estimates/185_january_25_2022.pdf)

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## A PREFACE TO

# Unaccountable Entanglement: How “Free” Federal Money Costs Wisconsinites Control Over Their Government

**A**pproximately 30% of the revenue in Wisconsin’s current two-year budget comes from the federal government — and that doesn’t include billions and billions of dollars sent to the Badger State to ostensibly get us through the pandemic.

There are multiple problems that arise from that fact. Over 10,000 “state” employees are actually paid by the federal government and in many instances are bound by federal rules and requirements. A massive bureaucracy has arisen just to manage the relationship between the federal government and the state. It is difficult for federal officials to manage the money from afar, and state leaders are naturally less interested in making sure it is spent wisely (or at all) given the fact that voters often see it as “free” cash.

It isn’t. In fact, as we’ve argued over the years, all of that federal support results in a loss of local control and accountability, time, innovation and transparency. There’s also just a lot of waste of tax dollars, nonsensical spending or lack of focus. Years after the start of the COVID-19 pandemic, for instance, Wisconsin officials by the fall of 2022 still hadn’t spent billions of dollars of federal pandemic aid meant to ensure our health and economic rejuvenation. Rest assured, they will spend it somehow.

Here, Mike Nichols and Mark Lisher provide an overview of the problems and tell us what state and federal leaders can do to restore the original vision of James Madison.

— *Badger Institute*

## ABOUT THE AUTHORS



**Mike Nichols**  
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# Unaccountable Entanglement: How “Free” Federal Money Costs Wisconsinites Control Over Their Government

*By Mike Nichols and Mark Lisher*

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## Introduction

**T**he man for whom Wisconsin’s capital was named would be aghast at the ever-growing dependence of the state and virtually all of its agencies on the federal government and federal tax revenue.

James Madison, as we pointed out in our “Federal Grant\$anding” book, had barely been buried in 1836 when territorial leaders named the place that would become the capital of Wisconsin after him.

Were the “Father of the Constitution” to rise from his Virginia grave and walk the streets of the city that honored him, he would, in fact, recognize the names of virtually all of the main avenues and roads. Dozens of them around the state Capitol building — including Hamilton and Washington, Langdon and Mifflin, Morris and Wilson and Carroll and King — were named after the men who attended the Constitutional Convention alongside Madison in 1787.

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**National and state governments are too often completely intertwined — and it is the state that has in so many ways lost its power and purpose.**

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Were he, on the other hand, to walk inside the state Capitol and witness the workings of the budget, to see how policy is made and ascertain just how deeply the state has become intertwined with the federal government, he might just ask that the city change its name.

Our latter-day political leaders’ handiwork fundamentally contravenes so much of what Madison the man — and the rest of the framers of the Constitution — believed about the delineation of state and national governments.

Madison, like Alexander Hamilton, was a nationalist, at least in the context of the times. They concluded that America was doomed under the Articles of Confederation. But Madison, in particular, was careful to ensure extensive safeguards for the states.

Writing as Publius in the Federalist Papers, Madison countered very real fears of national

overreach with unmitigated assurances that the states would have powers that were later codified in the 10th Amendment: “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”

In Federalist 45, he was more specific:

“The power delegated by the proposed Constitution to the Federal Government are few and defined. Those which are to remain in the State Governments are numerous and indefinite. The former will be exercised principally on external objects, as war, peace, negotiation and foreign commerce” ... The powers reserved to the states “will extend to all the objects which, in the ordinary course of affairs, concern the lives, liberties and properties of the people, and the internal order, improvement and prosperity of the State.”

The two governments were envisioned as distinct.

“In the compound republic of America, the power surrendered by the people is first divided between two distinct governments,” Madison wrote in Federalist 51, “and then the portion allotted to each subdivided among distinct and separate departments. Hence a double security arises to the rights of the people. The different governments will control each other at the same time that each will be controlled by itself.”

In Federalist 46, he was even more explicit: “The federal and State governments are in fact but different agents of trustees of the people, constituted with different powers and designed for different purposes.”

The federal government, he stated in Federalist 45, would be “nowise essential to the operation or organization” of the states.

Some 235 years later, national and state governments are too often completely intertwined — and it is the state that has in so many ways lost its power and purpose. A look at Wisconsin’s budget alone shows the extent to which we have defiled Madison’s vision.

### **Wisconsin Spending**

The last two-year budget passed by Wisconsin’s Legislature and signed by the governor in 2021 included about \$44 billion in annual spending — approximately \$20 billion of which is “general purpose revenue” raised each year from what we discussed in the previous chapter: taxes (mainly individual income taxes) levied by the state’s political leaders on the state’s residents.

But those aren’t the only taxpayer-funded revenues being spent by Wisconsin politicians. Tax revenue raised by the federal government and passed along to Wisconsin (and all of the other states) was initially expected to total \$12.7 billion in the fiscal year that will end in the summer of 2023 — the second largest source of funds in the Badger State’s budget.

We say “initially” because when the budget was put together in early 2021, the world had not yet borne the brunt of COVID-19. State bureaucrats and agency heads were basically guessing how much additional grant money Washington would shower on them. That figure is typically about 30% of all revenue — enough to fund over 10,000 positions in “state” government.

### ***“State” Employees Paid with Federal Dollars***

In 2017, we analyzed just how pervasive federal control was in various state departments. We found that nearly half of Wisconsin Department of Public Instruction (DPI) employees were paid to execute 59 federal education-related programs.

The departments of Children and Families, Transportation, Health Services and Natural Resources also have large numbers of “state” employees paid with federal money. In the Department of Workforce Development, fully 72% of employees were essentially on the federal payroll.

With the federal dollars come a mountain of federal regulations, paperwork and collateral state spending in the form of matching funds and so-called maintenance-of-effort costs, which force state and local entities to continue operating programs even if the federal dollars run out.

These commitments raise concerns about the amount of time and money spent on administration and bureaucracy. Most federally paid state and local government workers are required to keep time sheets for the federal work they do, in addition to keeping time records for their local employers.

Those time sheets, whether in Madison or locally, are reviewed by supervisors and filed away until they are audited, sometimes annually, other times not quite as often. The Badger Institute reviewed many of them and discovered yet another problem.

The Department of Public Instruction is, as its name suggests, supposed to be focused on instruction. But approximately 45% of federally paid DPI staffers appear to have little or no direct impact on educating children.

Among this group of 135 administrators, accountants, attorneys, grants specialists, budget analysts, auditors, operations management, clerical assistants and others were eight grant accountants and specialists earning a combined \$464,736 in 2014-’15, according to state records.

That does not include anyone processing or tracking federal money or keeping track of grant requirements in either Washington, D.C., or at the local school level throughout Wisconsin. Many districts employ people whose primary job is to manage federal grant dollars and make sure they don’t run afoul of federal rules.

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**With the federal dollars come a mountain of federal regulations, paperwork and collateral state spending in the form of matching funds and so-called maintenance-of-effort costs.**

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And because federal money is seen as “free,” there is often a lack of accountability.

Federal officials are too far away to effectively monitor the use of federal dollars. State officials are naturally more concerned about how state tax revenue is used because they set the state tax rates and have to answer to state residents.

A fundamental tenet of conservatism is that government is best when it is closest to the people, but conservatives are not the only ones who feel that way. Research shows that voters generally have more faith in local officials to solve problems, including in their schools, than they do in the federal government.

The most recent Gallup polling shows that only 6% of Americans have a “great deal” of trust and confidence in the federal government when it comes to handling domestic problems; another 33% have a “fair amount” of trust and confidence.

Asked the same thing about local government, over three times as many, 21%, said they had a “great deal of trust and confidence,” while 45% said they had a fair amount — still troubling levels but much higher.

The influence and reach of the federal government are only getting worse. We noted above the state budget typically relies on the federal government for 30% of its revenue. That was before the massive infusion of federal COVID money.

### ***The Damage Caused***

We are in the midst of a paroxysm of federal spending — at the very least \$6 trillion worth — unlike any in our nation’s history. As the Badger Institute reported in the spring, we are only beginning to realize the damage of such frenetic spending.

Academics at the University of Texas estimate the value of questionable loans made through the emergency Paycheck Protection Program (PPP) at \$69 billion. An inspector general for the Small Business Administration (SBA) identified at least 55,000 PPP loans had gone to small businesses that were not eligible.

As we have reported, prosecutions for federal spending fraud are now in the thousands. Fraud cases awaiting investigation are in the tens of thousands. The SBA so far has referred nearly 850,000 identity theft cases from the Economic Injury Disaster Loan program to its inspector general.

Although the American Rescue Plan Act (ARPA) was passed as a pandemic emergency measure more than 18 months ago, most of the \$2.5 billion earmarked for Wisconsin has not yet been spent by the fall of 2022. The state Department of Administration has been unable or unwilling to say how much remains to be spent.

As it has tracked the disbursements at the local level and uncovered waste, the Badger Institute has called on the state Assembly to try to wrest sole authority for the federal billions of dollars from Gov. Tony Evers.

The Legislative Audit Bureau under pressure from the Joint Legislative Audit Committee and Legislative Fiscal Bureau staff is months into an audit of the billions of dollars Wisconsin received from the CARES Act and ARPA.

Frustrated by Evers' refusal to share decision-making on the spending with legislators, the Assembly earlier this year voted to put the issue to state voters in the form of an amendment to the state constitution.

In the meantime, the Badger Institute continues to use state open records laws to gather data at the local level to shine a light on what has been entirely top-down spending plans that are, at least in the case of ARPA, often only ephemerally tied to the actual pandemic.

As the Badger Institute has chronicled since it launched its Project for 21st Century Federalism in September 2016, this inverted power relationship exacts a tremendous cost in local control, transparency, accountability, time and money.

To cite just one of numerous examples is the panic among federal government adherents over the fate of Medicaid should President Joe Biden unilaterally lift his repeatedly extended public health emergency declaration.

Biden has seen fit to bind all state Medicaid programs to an “emergency” matching grant increase that is contingent upon a state not trimming its Medicaid rolls regardless of eligibility regulations.

The inability of states to shed ineligible Medicaid recipients because of presidential fiat has cost billions of dollars. As the Badger Institute began reporting in April 2021, total enrollment in BadgerCare Plus, which includes Medicaid in Wisconsin, is up 45.1%, from 777,312 when the pandemic began in March 2020 to 1,128,101 in August 2022, according to the Wisconsin Department of Health Services. That's up 8.8% since last August and 4.7% since January. There hasn't been a month with an enrollment decrease since the pandemic started.

The cheesecloth of federal spending requirements and loopholes has made it simultaneously difficult for states, counties and cities to spend pandemic funding and relatively easy to spend money foolishly, like the more than \$2.2 million that at least 55 Wisconsin counties spent on “disinfection robots” to clean their jails while still continuing to manually sanitize, as we reported in January.

And it has made it at the same time nearly impossible for the average taxpayer to track the spending.

## Conclusion

All of this gloom belies the paramount importance a broad swath of Americans places on striking the proper balance between the federal government and the states.



Leaders from both major political parties have made proposals in reaction to tectonic shifts: a pandemic that prompted a Republican president and a Democratic one to claim emergency powers to win congressional approval for a transfer of trillions of federal tax dollars to the states and their local governments, two major rulings by a new U.S. Supreme Court majority signaling a deference to states' rights, and a pitched battle between the two parties framed at times by each side as a struggle for no less than the future of the Republic.

James Madison clearly underestimated the propensity of the federal government to “divest the States of (their) authorities,” as he wrote in Federalist 17. The new national government would be “disinclined to invade the rights of the individual states, or the prerogatives of their governments,” he opined in Federalist 46.

At the end of the 18th century, at the time of the Articles of Confederation, Madison had good reason to believe that that states would “have the advantage” over the national government in everything from “immediate dependence of the one on the other; to the weight of personal influence which each side will possess; to the powers respectively vested in them; to the predilection and probable support of the people; to the disposition and faculty of resisting and frustrating the measures of each other.”

Madison also allowed for the possibility that he might be wrong.

He was quite certain that the states would push back in concert if the federal government tried to “extend its power beyond the due limits.” He was confident that “ambitious encroachments of the federal government” on the states would alarm more than just a single state. He envisioned a “general alarm.”

Our belief at the Badger Institute is that time is getting short. The national and state governments already have become so intermingled that many of the people who work in them don't even know the difference.

We hope this serves as a rallying cry for Wisconsin and all of the states to a “common cause” built around the following recommendations, many of which were contained in the aforementioned “Federal Grant\$anding” book (read it at [badgerinstitute.org](http://badgerinstitute.org)).

### Recommendations

At the federal level:

- Cut federal spending on grants-in-aid.
- Scale back the Department of Education.
- Increase the use of block grants with fewer strings attached.

At the state level:

- Increase transparency.
- Demand metrics that measure outcomes
- Use the bully pulpit to sound the alarms and organize support in other states.



**EDUCATION**



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## A PREFACE TO

# Give Every Wisconsin Family the Power to Choose the Best Education

One of the few things that all Americans agree on about education is that it must improve. How, specifically? There we differ.

Wisconsin was a pioneer in a drive to find an improvement — the school choice movement. Milwaukee's program to let parents direct state aid to the school of their choice is now more than three decades old and has produced remarkable results for the tens of thousands of families that have taken part. More recent expansions are spreading those benefits across Wisconsin.

Meanwhile, other states are embracing even more far-reaching visions of parental empowerment by choice, and new exposure of the flaws in the traditional district public school model means it's time to see how Wisconsin can move forward as well.

We should enrich the environment in which millions of parents, and the myriad educators who want to work with them, find what is right for each child. They know the children. They know the job. We should empower them. That only happens by making Wisconsin's promise of school choice available for all families. Here is how to do that.

— *Badger Institute*

## ABOUT THE AUTHORS



**Jim Bender** is a longtime school choice advocate and the Badger Institute's daily, influential presence in the state Capitol advancing meaningful, common-sense policy reforms. He was president of School Choice Wisconsin from 2011 to 2020 and a member of the design team for the Wisconsin statewide school report card. He previously worked as a chief of

staff to leadership in the Wisconsin Assembly and liaison to the Capitol press corps, ran a communications firm and has served on numerous nonprofit boards in southeastern Wisconsin over the past 30 years.



**Patrick McIlheran** is director of policy at the Badger Institute. He previously did policy and communications work on the staff of the U.S. Senate and had a long career with the *Milwaukee Journal*

*Sentinel*, including seven years as a columnist, where one of his primary focuses was Milwaukee's complex environment of school reform.

# Give Every Wisconsin Family the Power to Choose the Best Education

*By Jim Bender and Patrick McIlheran*

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## The Issue

**W**isconsin is a mandatory attendance state: All parents are required by law to send their children to school.<sup>1</sup> They may use a district school run by a local government. They may use charter schools — public schools often given some measure of independence from a district. They may use virtual charter schools or, since a 1983 Wisconsin Supreme Court ruling,<sup>2</sup> homeschool children themselves. They may also use a private school. Failure to use one of the options can result in prosecution and even jail.

All Wisconsinites who earn income, own real estate or buy things — including those who send their children to private schools — pay a variety of taxes to fund education. That includes local property taxes that are required to stay with the public school district that levies them.<sup>3</sup>

Those two elements, attendance and taxation, involve citizens' obligation to the state. What about the state's obligation to families? Even though all taxpaying families must live by mandatory attendance laws, not all of the options for meeting that requirement are made available to all families.

That should change.

All families should be given the ability to direct the education dollars the state has designated for their children to the school that works best for them.

This isn't an argument over religion. In 1925, the U.S. Supreme Court ruled in *Pierce vs. Society of Sisters* that states can't prohibit parents from choosing a religious school. In 1998, the Wisconsin Supreme Court ruled in *Jackson vs. Benson* that Milwaukee's Parental Choice Program was legal. In 2002, the U.S. Supreme Court in *Zelman vs. Simmons-Harris* upheld the constitutionality of school choice programs that include religious schools. It is now indisputable that the U.S. and Wisconsin constitutions permit parents to choose religious schooling, even with state aid.

In light of recent U.S. Supreme Court rulings<sup>4</sup> vindicating the Free Exercise Clause, not only do states have the option to include private religious schools in their choice programs, they now are required to include such schools if other options are offered.

The debate today is, instead, over whether all parents who are required to send their children to school have the same right to choose which kind of school is best for their children.

While all families currently have access to traditional district schools, only some families have access to parental choice programs. There are restrictions on income, caps on enrollment, limits on enrollment windows and various other ways the state has limited the ability for most families to exercise choice.

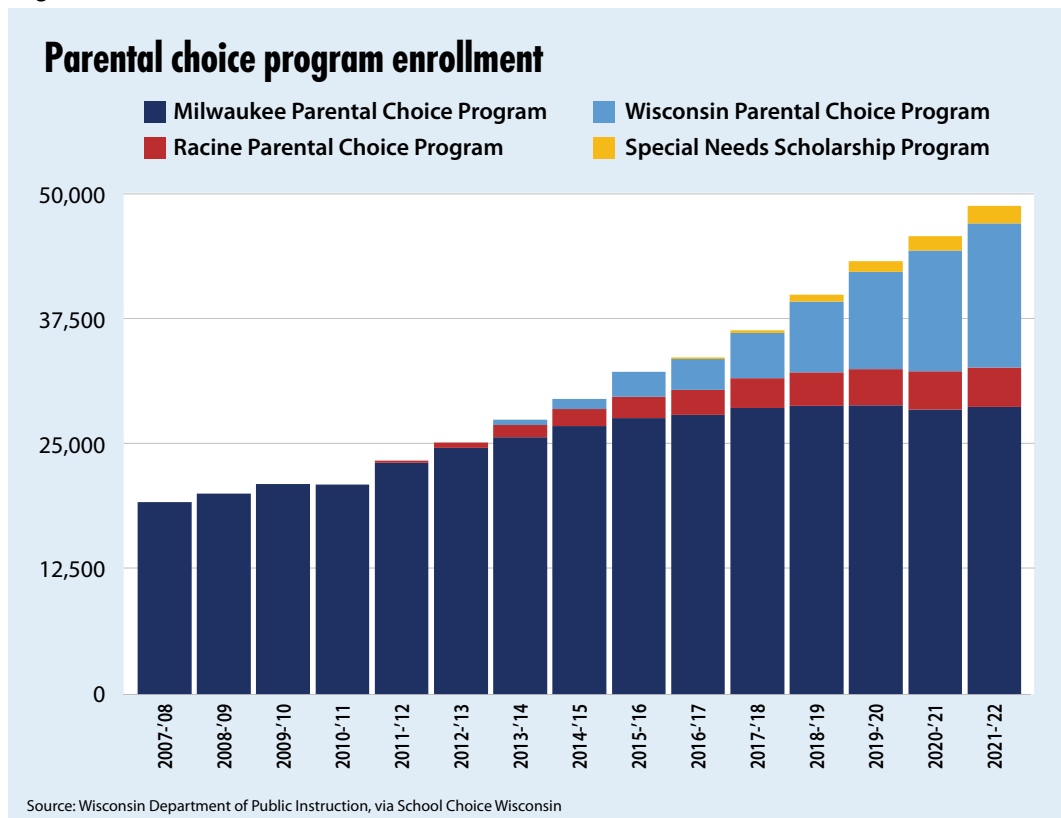
Even the option that simply lets families move their children to a more suitable traditional district school — public school open enrollment — includes no right to a transfer. If the district that a parent prefers decides to make some seats available for such transfers, some families can get access, while others are denied. About 20% to 30% of such open enrollment requests were denied by school districts in the five most recent school years, according to the Wisconsin Department of Public Instruction<sup>5</sup> (DPI).

Yet even with all these restrictions, the choice programs have grown steadily every year.

### *Parents Want Better Results*

Parents who are engaged and eager for options seem driven by multiple motives.

Figure 1



One is poor outcomes in traditional public school districts. Wisconsin's fourth-grade reading scores on the NAEP "nation's report card" test are down from sixth-best nationally in 1998 to 27th in 2019, the latest year available. Only 36% of Wisconsin fourth-graders were proficient or better in reading, while 39% of Wisconsin eighth-graders were. In math, fourth-grade scores were down from fourth-best nationally in 1998 to 13th in 2019. In math, 45% of Wisconsin fourth-graders were proficient or better, and 41% of eighth-graders were.<sup>6</sup>

DPI's own test, the Forward Exam, shows similarly poor results.<sup>7</sup> Only 43% of fourth-graders statewide, for example, were proficient at "English language arts" — that is, reading — in 2018-'19, before the disruptions stemming from COVID-19 school shutdowns.

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**Even though all taxpaying families must live by mandatory attendance laws, not all the options for meeting that requirement are available to all families. That should change.**

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The figure for eighth-graders statewide was only 37% proficient. It was lower in some places: 16% in the Racine Unified School District. It was higher in others: 58% proficient at reading in Maple Dale-Indian Hill in Milwaukee's North Shore suburbs.

And in Milwaukee Public Schools (MPS), again in the last pre-pandemic year of 2018-'19, only 18.6% of eighth-graders tested as proficient in reading. At some schools, dismayingly fewer children could read proficiently: 7% at Fifty-Third Street Elementary, 6% at Lincoln Middle School, 4% at Auer Avenue Elementary and zero at Cass Street Elementary.

Families that are using Wisconsin's choice programs to access private schools are opting for better results. The results are long since in, starting with the School Choice Demonstration

Project, in which researchers at the University of Arkansas were tasked by the Wisconsin Legislature to measure the performance of choice schools in Milwaukee's pioneering program starting in 2006.<sup>8</sup> After years of following students carefully matched on their backgrounds, researchers found that attending a choice school rather than MPS meant significantly higher proficiency rates in reading, a markedly higher likelihood of graduating from high school and of getting into college, and a lower likelihood of becoming involved in criminal activity as a young adult.

Similarly, the annual Apples to Apples study conducted by the Wisconsin Institute for Law & Liberty (WILL) finds that students in private schools accessible through Milwaukee's choice program are more proficient in math and reading than similar students in traditional public schools in Milwaukee.<sup>9</sup>

Sometimes, the results simply have to do with safety. The news that in the 2021-'22 school year, MPS called police an average of 7.2 times every school day, as the Badger Institute's Mark Lisheron reported<sup>10</sup> in August 2022, illustrates why educators at choice schools say that many parents cite worries about safety as a chief concern. So do the ongoing systemic problems that result from intentionally lax discipline policies, such as those in some Madison public schools, as reported by Dave Daley for the Badger Institute in July 2020.<sup>11</sup>

Evident from the news are other factors driving engaged parents to seek alternatives: Par-



ents are balking, sometimes rebelling, at the rise of political and cultural indoctrination in traditional district schools.

There is an ongoing debate across the country about both the academic and non-academic curricula in public schools, how pervasive it is and the age at which children should be exposed to some subjects, or whether it is appropriate at all. But there is also common ground.

Parents, regardless of where they fall on the political spectrum, want the ability to choose schools that reflect their values and teach the basics — reading, writing and math.

Six hundred Wisconsinites were asked in a recent poll conducted by OnMessage Inc. to state which of four issues was “most important right now”: increasing teacher pay and overall funding for our public schools; focusing on teaching reading, writing and math instead of focusing on critical race theory and gender theory; focusing on reducing crime in our schools and improving overall student safety; or ensuring parents have a greater say and influence over what their children learn in school.

The largest percentage — a plurality of 39% — want a focus on reading, writing and math.

### **Funding Choice for All**

A vision of equality in resources is a longtime part of Wisconsin school finance: It has been a principle since 1949, for example, that Wisconsin school districts levying equal tax rates should be able to fund equal per-pupil expenditures.<sup>12</sup> Funding for a child’s education should not be determined by the riches or poverty of her town’s tax base.

Yet Wisconsin right now funds individual children based on what sort of school her parents choose. If they choose to send her either to a private school using a parental choice program, or if they choose a public charter school, less will be available for her education than if she were sent to a traditional district school.

#### ***Inequity in Funding***

Traditional public school districts spent between \$11,000 and \$22,000 per pupil, all-in, according to DPI figures for the 2020-’21 school year (with the exception of a few higher-figure oddities). The statewide average was \$15,329 per pupil.<sup>13</sup>

Schools in Wisconsin’s three choice programs open to all students, by contrast, received \$8,946 per pupil in high school and \$8,300 per pupil in K-8. The figures have increased slightly, and this school year they are \$8,399 for K-8 students and \$9,045 for high schoolers. While charter school funding is more complex, charter schools fare little better than choice schools on a per-pupil basis.

Nor is this a one-year anomaly. For at least two decades, per-pupil funding for choice students has lagged far behind the sum that taxpayers would spend if the very same students instead attended a local district school. The amount of the average choice per-pupil grant

has ranged from 49% and 59% of the average per-pupil cost in district schools since 2005. The most recent figure: 56%.

The funding gap is more acute at the high school level. While the choice grant for grades nine through 12 is higher than for lower grades, it pales next to the per-pupil costs that DPI reports for the 10 school districts providing only high school education. Those figures in 2020-'21 ranged from \$13,700 a student at Arrowhead Union High School in Hartland to \$22,400 at Lakeland Union High School in Minocqua. The districts spent, on average, \$17,922 per pupil providing a high school education — just over 100% more than choice schools were paid to provide a high school education.

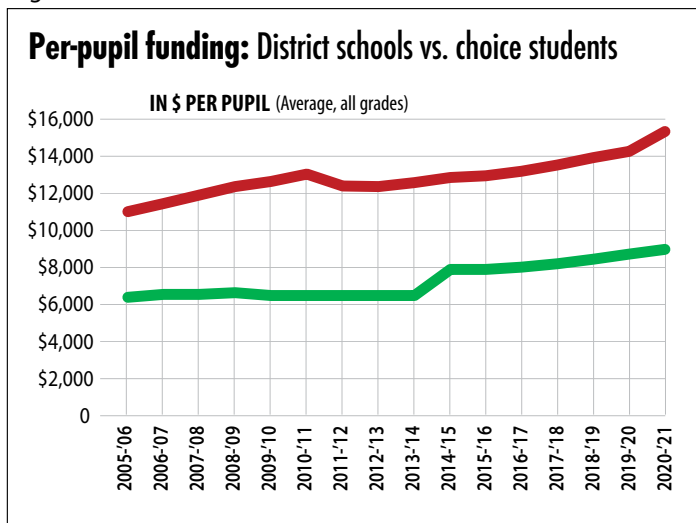
This inequity in funding harms the state's children by foreclosing the choices their families have, breaking the promise of Wisconsin law that parents should be able to choose the school they see as best.

The reason is that when parents elect to take their child's state school aid to a private school under the choice program, by law that aid must be accepted as full payment. No additional tuition may be charged, in nearly every case. The choice voucher is all a school has to work with.

While the current elementary level choice grant, \$8,399 per pupil, is short of the corresponding per-pupil cost in school districts, it does not fall as short as the current grant of \$9,045 per pupil at the high school level. As a result, most seats available for families using the choice program are in high schools that also accept tuition-paying families, and the tuitions charged are usually higher than the choice grant. Most private high schools must do additional fundraising, tapping donors to cover the share of operating costs that cannot be borne by tuition-paying families and that are not covered by the choice grant.

The amount that a school can fundraise depends on the capacity of its donors and functions as a cap on how many choice students it can accept. A school that accepts students via the choice program must, by law, accept all the students who apply if the school has space, and if it does not have enough space, it may not pick and choose — it must admit students by lottery, giving preference only to existing students and their siblings. But *how*

Figure 2



Source: Legislative Fiscal Bureau and Wisconsin Department of Public Instruction

many choice students a school accepts is within that school's discretion, and at the high school level, most schools are limited in how many choice students they can accept by their capacity to raise money from donors to cover the gap between the choice per-pupil grant and the cost of educating a child.

### ***Schools Face Difficulties***

This limit is illustrated by the closure of a high school in Milwaukee, the high school affiliated with the HOPE Christian Schools network of, now, seven elementary schools. The 3,400-student network, with 95% of its students from low-income families, had included a high school through the 2021-'22 school year. But in January 2022, it announced it was closing the 256-student high school, saying it was "driven by two primary causes, funding and teacher shortages."<sup>14</sup>

"State funding has been significantly inadequate to support long-term high-quality outcomes at HOPE Christian High School," read a statement from the school, "and over time, this challenge has only gotten worse with no end in sight."

The school for seven years running had graduated every one of its students, and all graduates of the high school for 12 years had been accepted into colleges.<sup>15</sup> "Now it's like where do I go from here?" one mother of two boys in the school told a reporter. If the answer is to MPS, her sons would be entering a system that manages to graduate less than 64% of its high schoolers in four years and that fails to graduate one in four even after seven years of high school.

The inadequate per-pupil funding for choice students also makes it difficult to set up a high school, limiting options for families in the broad swaths of Wisconsin that are not near pre-existing private high schools. Nonprofit groups seeking to open a school not only would have to fundraise to cover the costs of operation that aren't covered by the choice grant, they would have to find money to obtain a school building even as they worked to recruit students.

That's before taking into account the difficulties such groups may encounter in obtaining a suitable building. A community group in Mattoon in Shawano County, for example, sought in 2018 to buy a school building that had been vacant for two years after it was closed by a consolidated school district based in Antigo, a 15-mile drive away. The group intended to open a choice school, serving parents who wanted a local educational option.

The group, Shepherd's Watch, along with governments in the Village of Mattoon and the Town of Hutchins, had to sue the school district to obtain the building, which opposed plans for a school in Mattoon on the grounds that the "establishment of any sort of private charter school at Mattoon could further drain students and damage district coffers," as a district official told the *Antigo Journal*.<sup>16</sup> The school is on track to open in 2023 after six years of effort.

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**Inequities in funding harm the state's children by foreclosing the choices their families have, breaking the promise of Wisconsin law that parents should be able to choose the school they see as best.**

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Potential choice schools have encountered similar resistance from incumbent school district officials in obtaining disused buildings in Milwaukee and elsewhere. The inadequacy of the choice grant in this way restricts new schools' options for facilities — and, so, restricts the options available to families across Wisconsin.

The remedy is parity in funding for all children regardless of what type of school they attend. Reform should start from the principle that students all have an equal value in the eyes of the law and that where a child receives a publicly funded education should not determine the amount of that funding.

### ***Needless Complexity***

Wisconsin's school choice program is actually four different programs.

The Special Needs Scholarship Program (SNSP) is the smallest, serving about 1,800 students in the most recent year and offering a higher per-pupil funding for students with disabilities or other special education needs, analogous to how traditional public schools are given extra funding for such students.

The other three programs, serving the bulk of choice families, differ by geography and age. The Milwaukee Parental Choice Program (MPCP) covers families who live in Milwaukee and is the oldest, dating to 1990. The Racine Parental Choice Program (RPCP) covers families living in the Racine Unified School District and has operated since 2011. The statewide Wisconsin Parental Choice Program (WPCP) covers families living anywhere else in Wisconsin and has operated since 2013.

The three main programs all offer the same grant and operate under the same enrollment rules: Schools cannot select students, nor generally can they charge families any additional tuition, nor place any religious requirements of any sort on students.

They differ, however, in the income limits on family participation, which this discussion treats later, and in how the programs are funded. The complexity is needless, and the funding mechanism needs improvement.

Currently, the Milwaukee choice program is funded mostly with a state appropriation from general purpose revenue — the nonspecific pot of money from which most state programs are funded. About 10.7% of the cost of the program in 2020-'21 was covered by a reduction in state aid to MPS, a \$25 million net reduction that the school district made up for via its property tax levy. State law is phasing out this reduction in state aid to MPS, and the Milwaukee choice program is due to be funded wholly by state appropriation, with no effect on MPS' funding, in the 2024-'25 school year.

In the programs covering Racine and the rest of Wisconsin, the state funds the per-child grant through general purpose revenue, then it withholds an equal amount of money, per child, from the aid it sends to the school district in which a particular child lives. The district is compensated by the state by being allowed to raise its revenue limit — the cap on the total amount of money, both state aid and property taxes, it may take in — by the same

amount that its aid is reduced.

In effect, the district rejected by a family using the choice program loses about \$8,500 per child in state aid but can raise its tax levy by the same amount. As the Legislative Fiscal Bureau puts it, “If a school district chooses to levy to the maximum, its total resources are unaffected by the choice aid reduction, because it replaced the aid reduction with local levy.”<sup>17</sup> The cost of educating children in the school choice program outside of Milwaukee thus is shifted to the property tax.

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**Every middle-class family now paying tuition at all of the parochial or private schools across Wisconsin could, tomorrow, decide to move their children to a traditional district school and those children’s education would become an added burden on taxpayers.**

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The difference in funding methods is a legacy of the legislation that separately, over the years, established the programs, as is the fact that there even are separate programs for Milwaukee, for Racine and for the rest of Wisconsin. The distinction serves no purpose but to make school choice finance complex.

The reduction in aid, similarly, has no purpose but as a legacy of long-past legislative battles. Politically, however, it serves the opponents of school choice by letting them tell taxpayers in a school district that they bear the cost of families using the program on their property taxes, a particularly disliked tax. In total, the choice-related reduction of state aid to school districts amounted to about 2.3% of the \$6.3 billion that Wisconsin sent to school districts in 2020-’21, but that it is anything opens the program to attack.

Wisconsin could eliminate the unnecessary complexity and reduce the local political conflicts over the school finance pie by funding all choice students from general purpose revenue, as Milwaukee students already will be starting in 2024. This would mean no portion of school funding for families who opt for a choice school would be borne by property taxes. The only effect of such families’ choices on public school districts’ finances would be those associated with change in enrollment, no different than if a family moved from one public school district into a neighboring one. Additionally, lawmakers should simplify and consolidate programs to increase efficiency for both parents and schools.

## Opening Choice to All

### *Income Limits*

Although Wisconsin legislators extended to families in the rest of our state by 2015 the option that had previously been available in Milwaukee since 1990 and in Racine since 2011, sending a child to the school that is best for her remains a practical option only for some families — generally, those with lower to middle incomes and the well-off.

That is because Wisconsin’s school choice program imposes family income limits. In this, it differs from public charter schools or the option to choose a different traditional school district, both of which are open to all families regardless of income. But if Milwaukee or

Racine families choose a private school, they can take their state aid with them only if they earn less than 300% of the federal poverty line. If a family in the rest of Wisconsin chooses a private school, they lose their state aid if they earn more than 220% of the poverty level.

That means a family of four in Wausau loses access to the choice program if parents earn any more than \$58,300. In Milwaukee or Racine, a family of four is cut out if parents earn more than \$79,500. The limits are \$7,000 higher if parents are married.

Families above the limits have some options. They could try to access a public charter school, with all the cost borne by taxpayers, although the number of seats available in charter schools is limited and charter schools face inadequate per-pupil financing. Alternatively, a family could try to use the state's open enrollment option to access another district, although, as noted earlier, districts deny 20% to 30% of such requests. If a family is well-off enough, it can pay tuition at a private school. If the school the family chooses has enough generous donors, it can offer help with tuition, as many private schools do.

Or a well-off family can move to a better district. For example, a family dissatisfied with the Madison Metropolitan School District, where in the last pre-pandemic year of 2018-'19, 35% of all students were proficient in reading, could choose to attend the schools in the neighboring Middleton-Cross Plains Area School District, where 59% of students that year were proficient in reading. However, the median home sale price in Middleton, according to real estate brokerage Redfin, is \$591,000, about 57% more than the median home sale price in Madison.

If the family moves, it makes little difference to taxpayers. Middleton spent about \$15,200 per pupil in 2020-'21, the most recent figures available from DPI, while Madison spent about \$17,150. The cost to a family, both in money and disruption, would be great.

And these options are less available, or not available at all, to middle-income families above the cutoff for school choice but below the prosperity needed to afford a house in Middleton.

It is important to note as well that in either case, the family would cost taxpayers far more than if their child attended a private school using a choice grant, which this year is \$8,399 per student in elementary grades and \$9,045 in high school.

### ***Fallacious Cost Claims***

In response to proposed legislation that would allow all families of any income to access school choice, DPI in early 2022 produced a misleading claim that such a measure would cost property taxpayers \$577.3 million. The figure is at best a gross exaggeration, as explained in a Badger Institute policy brief, "School Choice and Property Taxes,"<sup>18</sup>

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**At the high school level, most schools are limited in how many choice students they can accept by their capacity to raise money from donors to cover the gap between the choice per-pupil grant and the actual cost of educating a child.**

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published in February 2022.

DPI assumed for its estimate that all 67,870 students now in Wisconsin private schools outside Milwaukee whose parents pay their tuition would receive choice grants. As the policy brief explained, existing choice schools couldn't accommodate such a surge because the choice grant is inadequate to fund a child, especially at the high school level, meaning schools that accept students in the choice program cannot afford to open enough seats without a herculean fundraising effort.

We point out above why the state should increase the per-pupil funding for choice schools to eliminate this de facto cap on enrollment, granting middle-income families the same access to the program as they now have to public charter schools and traditional district schools. We also point out why the state's method of funding choice should be simplified so that its funding has no effect on school districts — a change that would alter DPI's figure for property tax impact to zero.

Even so, critics will note that opening choice to all families will add to taxpayer costs as tuition-paying families access the program. However, every middle-class family now paying tuition at all of the parochial or private schools across Wisconsin could, tomorrow, decide to move their children to a traditional district school and those children's education would become an added burden on taxpayers.

The pathway forward is clear: Eligibility for the publicly funded education options should be uniform. All Wisconsin residents who must abide by mandatory attendance laws and pay taxes should be eligible.

## Conclusion

There are many things about Wisconsin education on the whole that must be improved. Some, such as reforming and diversifying pathways into the teaching profession, are complex enough to require a paper all their own, and the Badger Institute intends to continue producing such research. Others, such as requirements for classroom transparency or measures to preserve parental rights, are beyond the scope of this chapter. Many such reforms are part of providing a rich environment of options for families.

But the fundamental mechanism of choice already is in place in Wisconsin. It has been tested over decades and found to offer families vital access to options closely suited to children's needs. It can empower many more Wisconsin parents and the educators who want to serve their children in innovative ways with some reforms that give families the power to choose what they need.



## **Badger Institute takeaways**

The lag of per-pupil funding amounts for school choice compared to traditional district schools limits the availability of choice. The complexity of choice funding and its entanglement with funding for district schools lead to confusion and conflict. The limits on which families can access choice are unjust.

Lawmakers should:

- **Make sure all students have the same value in the eyes of the law and that where one receives a publicly funded education should not determine the amount of funding available.**
- **Decouple funding from local district sources, and fund children in the choice program directly from state general purpose revenue.**
- **Simplify and consolidate choice programs to increase efficiency for both parents and schools.**
- **Make eligibility uniform for publicly funded education options. All Wisconsin residents who must abide by mandatory attendance laws and pay taxes should be eligible.**

## **Endnotes**

<sup>1</sup> [law.justia.com/codes/wisconsin/2015/chapter-118/section-118.15/](http://law.justia.com/codes/wisconsin/2015/chapter-118/section-118.15/)

<sup>2</sup> [homeschooling-wpa.org/about-us/history/](http://homeschooling-wpa.org/about-us/history/)

<sup>3</sup> The Wisconsin Constitution requires “the support and maintenance of common schools, in each school district.” The districts should be as uniform as possible, says the constitution, be free to attend and offer no sectarian instruction. The Wisconsin Supreme Court has found that only local public schools are “common” schools and that local dollars levied for schools must remain with the local district.

In the case that challenged the Milwaukee Parental Choice Program, the Wisconsin Supreme Court found that the program did not violate the constitutional requirement for “common schools.” The Legislature was free, as long as it met its financial duty to district schools, to provide options to families beyond the traditional public school system.

<sup>4</sup> [nationalreview.com/bench-memos/carson-v-makin-scores-another-victory-for-religious-liberty/](http://nationalreview.com/bench-memos/carson-v-makin-scores-another-victory-for-religious-liberty/)

<sup>5</sup> [dpi.wi.gov/open-enrollment/data](http://dpi.wi.gov/open-enrollment/data)

<sup>6</sup> [nationsreportcard.gov/](http://nationsreportcard.gov/)

<sup>7</sup> [wisedash.dpi.wi.gov/Dashboard/dashboard/22275](http://wisedash.dpi.wi.gov/Dashboard/dashboard/22275)

<sup>8</sup> School Choice Demonstration Project homepage: [uaedreform.org/category/department-of-education-reform/scdp/milwaukee-evaluation/](http://uaedreform.org/category/department-of-education-reform/scdp/milwaukee-evaluation/)

<sup>9</sup> Flanders, Will. 2022. “Apples to Apples IV” WILL Policy Report. [will-law.org/wp-content/uploads/2022/05/ApplesToApplesII.pdf](http://will-law.org/wp-content/uploads/2022/05/ApplesToApplesII.pdf)

<sup>10</sup> [badgerinstitute.org/News/2022-2023/Police-banned-crime-a-daily-occurrence-in-MPS-schools.htm](http://badgerinstitute.org/News/2022-2023/Police-banned-crime-a-daily-occurrence-in-MPS-schools.htm)

<sup>11</sup> [badgerinstitute.org/News/2019-2020/Analysis-Madison-school-districts-lenient-discipline-policy-is-a-dismal-failure.htm](http://badgerinstitute.org/News/2019-2020/Analysis-Madison-school-districts-lenient-discipline-policy-is-a-dismal-failure.htm)



<sup>12</sup> Legislative Fiscal Bureau, information paper 27, “State Aid to School Districts,” January 2021, [docs.legis.wisconsin.gov/misc/lfb/informational\\_papers/january\\_2021/0027\\_state\\_aid\\_to\\_school\\_districts\\_informational\\_paper\\_27.pdf](https://docs.legis.wisconsin.gov/misc/lfb/informational_papers/january_2021/0027_state_aid_to_school_districts_informational_paper_27.pdf)

<sup>13</sup> To be clear: This number includes federal money for poor and disabled students, some of which — the percent varies by district — benefits private school pupils. In 2018–’19, the last school year before unprecedented pandemic-related federal aid, about 6.8% of all revenue to Wisconsin school districts came from all kinds of federal aid combined; the amount going to private school pupils would be a fraction of that. The number also includes school districts’ spending on transportation, some of which benefits private school pupils, since districts by constitutional requirement cannot bar such students from school buses. In total, about 3% of school districts’ spending statewide was related to transportation of every kind of student, public school or private.

<sup>14</sup> [tmj4.com/news/coronavirus/hope-christian-schools-closing-high-school-in-milwaukee-citing-funding-and-staff-shortage](https://tmj4.com/news/coronavirus/hope-christian-schools-closing-high-school-in-milwaukee-citing-funding-and-staff-shortage)

<sup>15</sup> [jsonline.com/story/news/education/2022/01/21/milwaukeees-hope-christian-high-school-voucher-program-close/6599269001/](https://jsonline.com/story/news/education/2022/01/21/milwaukeees-hope-christian-high-school-voucher-program-close/6599269001/)

<sup>16</sup> [realcleareducation.com/articles/2019/07/03/school\\_choice\\_could\\_help\\_a\\_rural\\_communityif\\_given\\_the\\_chance\\_110343.html](https://realcleareducation.com/articles/2019/07/03/school_choice_could_help_a_rural_communityif_given_the_chance_110343.html)

<sup>17</sup> [docs.legis.wisconsin.gov/misc/lfb/informational\\_papers/january\\_2021/0028\\_private\\_school\\_choice\\_and\\_special\\_needs\\_scholarship\\_programs\\_informational\\_paper\\_28.pdf](https://docs.legis.wisconsin.gov/misc/lfb/informational_papers/january_2021/0028_private_school_choice_and_special_needs_scholarship_programs_informational_paper_28.pdf)

<sup>18</sup> [badgerinstitute.org/Reports/A-Badger-Institute-Policy-Brief--School-Choice-and-Property-Taxes.htm](https://badgerinstitute.org/Reports/A-Badger-Institute-Policy-Brief--School-Choice-and-Property-Taxes.htm)



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## A PREFACE TO

# Off Track: An Assessment of Wisconsin's Early Care and Learning System for Young Children

**R**aising children, as can be fully appreciated only after you've done it, takes place in real time. They eat, sleep and grow whether you're ready or not. So as parents supply children with the most crucial material treasure they ever will receive — a stable, loving home — many rely on some outside help in caring for their children while earning a living. Wisconsin long ago decided to assist low-income parents in finding good help.

How is Wisconsin doing at this? Not so well.

Here, an eminent Wisconsin-based scholar and Badger Institute visiting fellow, Angela Rachidi, examines the current landscape, looking at how Wisconsin spends about \$400 million a year in federal and state taxpayer money to subsidize childcare and early learning. Crucially, she looks at how the government's efforts to improve the quality of childcare has increased costs, diminished parents' options and resulted in fewer children accessing the help that taxpayers offer.

And Rachidi lays out steps that Wisconsin policymakers can take to fix things — specifically how they can reduce the deadening weight of the state's hand and, instead, give more authority to parents and childcare providers.

Her recommendations are urgent: Wisconsin's future adults are growing and learning in real time, whether their parents — and the state's assistance — are ready or not.

— *Badger Institute*

## ABOUT THE AUTHOR



**Angela Rachidi** is a senior fellow and the Rowe Scholar in poverty studies at the Washington, D.C.-based American Enterprise Institute. She is the founder and principal of Rachidi Research and Consulting, LLC. Before joining AEI, she was the deputy commissioner for policy research at the New York City Department of Social Services. Rachidi holds a doctorate in public policy from The New School in New York City, a master's degree in public administration from Northern Illinois University and a bachelor's degree from the University of Wisconsin-Whitewater. Rachidi, a Badger Institute visiting fellow, lives and works in Middleton, Wisconsin.

# Off Track: An Assessment of Wisconsin's Early Care and Learning System for Young Children

*By Angela Rachidi*

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## Introduction

A recent report by a bipartisan group of experts on economic and family policy stated, “The research evidence indicates that, on average, children who have a) two parents who are committed to one another, b) a stable home life, c) more economic resources, and d) the advantage of being intended or welcomed by their parents are more likely to flourish.”<sup>1</sup> This underscores the conventional wisdom that parents and family form the foundation for early childhood development.

Fortunately, the majority of young children in the United States grow up in an environment that lends itself to healthy development, mainly through their relationship with their parents and other loving adults. However, not all children have the same advantages. Certain circumstances, often outside the control of parents, can make healthy development more challenging — circumstances such as poverty, stressful work schedules and other home and life challenges.

The government can play an important role in early childhood development by helping children and families when they face instability and economic insecurity. The government has a long history of providing resources to help close the development gap between low-income and other young children, with programs dating back to the Great Depression.<sup>2</sup> However, it was not until 1965, with the implementation of Head Start, that the federal government began to assume greater responsibility for assisting disadvantaged children.<sup>3</sup>

By 1990, the federal government created the Child Care and Development Block Grant (CCDBG) to help low-income families afford childcare so that parents could work.<sup>4</sup> Welfare reform in 1996 transformed the provision of childcare assistance to low-income families even more by consolidating funding streams into the Child Care and Development Fund (CCDF), and expansions to the Child Tax Credit (CTC) and Earned Income Tax Credit (EITC) also helped low-income families offset childcare expenses.

Scientists have consistently shown that healthy brain development in the first few years of life profoundly improves future outcomes for children.<sup>5</sup> The Center on the Developing Child describes the importance of early brain development in this way: “Healthy development in the early years provides the building blocks for educational achievement, economic productivity, responsible citizenship, lifelong health, strong communities and suc-

cessful parenting of the next generation.” Scientists also recognize that adverse experiences or trauma early in life can impede brain development in ways that make the achievement of positive outcomes more challenging. For this reason, childhood experts argue in favor of publicly supporting early care and learning to ensure that all children have similar opportunities for healthy development.

Early care and learning is a general term that incorporates childcare with education and development activities and typically refers to programs involving children before they enter kindergarten. Most commonly, we think of children attending an outside facility with other children, supervised by unrelated adults. However, early care and learning can encompass a wide variety of settings where young children (birth to age 5) spend their time when they are not with their parents. It includes children cared for by relatives or friends, family childcare (sometimes called in-home childcare because it takes place in the provider’s home) or church-based nursery schools.

In recent decades, arguments in favor of publicly supported early care and learning opportunities for young children have merged with the desire for policies that help parents find safe and affordable childcare while they work. Today, early care and learning is largely synonymous with childcare, and government policies seek to both support the development of children at an early age and support the employment of parents. Additionally, some policymakers have moved beyond advocating for public support to close the development gap or to support employment for low-income parents — instead favoring universal publicly funded programs.

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**While not unique to Wisconsin, the structure of early care and learning and childcare programs within the state creates a disjointed system that can be challenging to coordinate.**

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This chapter explains the current early care and learning policy landscape at the federal level and in Wisconsin and assesses the effectiveness of the system. The evidence suggests that an overemphasis on quality regulation likely has driven some childcare providers out of the market, resulting in fewer low-income children served by Wisconsin Shares (the state’s subsidized childcare program) and less overall parental choice and higher costs, without measurable improvements in outcomes.

Recommendations include consolidating leadership and organization for early care and learning at the state level, reforming the regulatory framework for early care and learning, improving the data infrastructure, developing a new “Birth to Age 5” strategic plan for Wisconsin and exploring education savings accounts to help families offset child-related costs.

## **Evidence Base for Early Care and Learning**

The emphasis on early care and learning in U.S. policymaking stems from the proliferation of brain science in the past several decades pointing to the outsize importance of the early years for cognitive development.<sup>6</sup> Nobel laureate and economist James Heckman has spent the bulk of his career researching early childhood education programs, and he argues for focusing public policy on early childhood development:

*“A critical time to shape productivity is from birth to age five, when the brain develops rapidly to build the foundation of cognitive and character skills necessary for success in school, health, career and life. Early childhood education fosters cognitive skills along with attentiveness, motivation, self-control and sociability — the character skills that turn knowledge into know-how and people into productive citizens.”<sup>7</sup>*

However, Heckman’s work is often misunderstood, and people mistakenly use it to argue for placing every child away from their parents into a childcare setting at an early age. In truth, Heckman believes strong families are crucial for positive child development, though he also acknowledges the importance of early childhood investments for vulnerable children when their family life places them at a disadvantage, arguing:

*“Every child needs effective early childhood supports — and at-risk children from disadvantaged environments are least likely to get them. They come from families who lack the education, social and economic resources to provide the early developmental stimulation that is so helpful for success in school, college, career and life. Poor health, dropout rates, poverty and crime — we can address these problems and substantially reduce their costs to taxpayers by investing in developmental opportunities for at-risk children.”*

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**The results point to a highly regulated system, likely overburdening providers, while serving a declining number of families and limiting childcare choice for families, with very little evidence of effectiveness for children.**

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One question is whether the government should be involved in the early care and education of young children at all. State and local governments play a large role in K-12 public education, and some people believe that responsibility should extend to younger children. However, the care of young children rightfully falls primarily to the family, with questions around the government’s role largely falling to the licensing and regulating of childcare providers and assisting families in paying for it. Although debate remains over the proper role for government in the early care and learning of children, the preponderance of evidence suggests that an important role for the government is to help disadvantaged children with targeted public investments at an early age.<sup>8</sup>

Research also shows that children do better when they experience environments conducive to healthy development. Most important is the time that young children spend with their parents and families, but when children must be away from their parents, settings should be conducive to early childhood development and make children better off. Regrettably, the record of achievement for large-scale, government-funded pre-kindergarten programs in this regard is lacking.

Children who participate in universal pre-kindergarten programs may be more kindergarten-ready than children who do not participate, but academic gains quickly fade after entering kindergarten.<sup>9</sup> Yet, the research also shows that these programs can be effective when they target disadvantaged children, operate on a small scale and offer children stable and consistent interactions with caring adults. When programs do not meet these criteria,

they often produce weak or negative results.

When referring to the evidence in 2014, the former head of the Institute of Education Sciences in the U.S. Department of Education, Grover J. (Russ) Whitehurst, expressed skepticism about universal government programs, stating, “I conclude that the best available evidence raises serious doubts that a large public investment in the expansion of pre-K for four-year-olds will have the long-term effects that advocates tout.”<sup>10</sup>

One of the best examples, and perhaps the most rigorously studied statewide pre-kindergarten program, comes from Tennessee. That program actually showed that participants in pre-K did worse on academic outcomes over time than those in the control group.<sup>11</sup> Relying on the results from Tennessee and other statewide pre-K programs, authors of a consensus report wrote:

*“There is persuasive evidence from earlier small-scale programs like the Perry Preschool and Abecedarian programs that long-term impacts are possible under some circumstances. But the evidence that contemporary scaled up state or district pre-K programs can produce such impacts is not conclusive. The path ahead must combine well-documented program innovations at the state and district level with evaluation research of broader scope and greater rigor.”<sup>12</sup>*

One notable exception is for children from disadvantaged backgrounds who participate in early care and learning programs. A 2017 report from a group of early childhood experts stated, “Researchers who study pre-K education often find that children who have had early experiences of economic scarcity and insecurity gain more from these programs than their more advantaged peers.” The authors posited that the positive effects of early care and learning programs for children facing adversity stem from brain science — that is, the programs make up for challenges to their cognitive development in the home.<sup>13</sup>

There is ample evidence to support the claim that early care and learning programs benefit disadvantaged children the most. For example, in the 1960s and ’70s, two evaluations of service-intense early education programs have provided researchers with a wealth of information on the advantages of early education for disadvantaged children. Research using data from the Perry Preschool Project found that positive changes to behaviors resulting from the program led to better lifelong outcomes for participating children.<sup>14</sup> Evidence from the Abecedarian Project in Chapel Hill, North Carolina, found similar long-term benefits for children who participated. Both programs, however, targeted children from disadvantaged backgrounds, were very well-resourced and offered intense full-day programs.

However, few programs since then have been able to replicate their results, whether it be for disadvantaged children or those from more affluent families. Attempts to implement universal childcare programs without attention to the intensity and quality of the program largely have failed. A government-funded universal childcare program in Quebec that was started in the 1990s, for example, resulted in worse behavioral and health outcomes for participating children.<sup>15</sup> Another study exploring longitudinal survey data found that

being in nonrelative childcare resulted in worse externalizing behaviors for children, such as acting out or harming oneself or others.<sup>16</sup>

This leads to the conclusion that in order for publicly funded early care and learning to work, it should target the least advantaged children and replicate aspects of successful programs. Though the scientific literature is still progressing, development science describes the importance of “serve and return” interactions that occur between caregivers and children — for example, a caregiver making eye contact, smiling or cooing and enticing a response from the child. According to the Center on the Developing Child, “When caregivers are sensitive and responsive to a young child’s signals and needs, they provide an environment rich in serve and return experiences.”<sup>17</sup> The question is how does government regulate early care and learning programs to maximize these serve and return experiences?

Regrettably, many states answer this question by imposing excessive regulations in an attempt to improve quality of care. Though well-intentioned, this often reduces childcare supply and drives up costs, making it harder for low-income families to access high-quality care in the end. One reason for this unintended consequence is the government is not well-equipped to regulate “quality” early care and learning opportunities for children. Even the early childhood experts who summarized the scientific knowledge on pre-kindergarten effects in 2017 struggled to offer concrete actionable guidance, instead identifying:

*“several factors that together seem to be ‘good bets’ for supporting strong early care and learning in pre-K and other settings: the use of 1) curricula that are known to build foundational skills and knowledge, coupled with 2) professional development and coaching that enable teachers 3) to create organized and engaging classrooms.”<sup>18</sup>*

A summary of the evidence from my American Enterprise Institute colleague Max Eden suggests that the federal government’s record in trying to produce quality early care and learning programming is not good. He notes the mixed evidence on Head Start, acknowledging that while research showed that an early cohort of Head Start participants experienced positive results, later cohorts did not.<sup>19</sup> Eden also notes the mixed evidence on the federal government’s childcare assistance program for low-income families. Research has shown that childcare subsidies for low-income families increase maternal employment, but the outcomes for children who receive a subsidy appeared worse than those who do not receive a subsidy.<sup>20</sup>

One potential reason for the poor outcomes associated with certain early care and learn-

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**There has always been a flaw in the belief that states, with support from the federal government, could regulate childcare into high quality. Although the YoungStar rating system is well-intentioned, it likely has had a negative effect on the number of children receiving childcare subsidies in Wisconsin by pushing providers out of the subsidy system altogether.**

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ing programs involves the poor quality of childcare it funded. This became a particular concern during the early 2010s when policymakers perceived the childcare funded by CCDBG to be poor quality.<sup>21</sup> Coupled with the push to expand early care and learning opportunities during President George W. Bush's and President Barack Obama's administrations, this led to a bipartisan compromise and focus on quality during the reauthorization of the CCDBG in 2014, including increased funding to achieve higher-quality childcare.

Childcare markets are still feeling the implications of decisions around CCDBG reauthorization. While the push for higher-quality childcare for low-income families in the subsidy program was consistent with the evidence showing that low-income children could benefit, states had to figure out how to implement quality requirements. How were states supposed to regulate individual childcare programs to ensure quality curricula, professional development and organized classrooms? The answer has become clear. Many states chose overly burdensome regulation and procedures that pushed many childcare providers out of the market, replaced by higher-cost center-based care.

In the next section, I provide background on early care and learning at the federal level and in Wisconsin, followed by a review of the data for Wisconsin over the past several years to illustrate trends in the overall childcare market and the subsidy program, Wisconsin Shares. The results point to a highly regulated system, likely overburdening providers, while serving a declining number of families and limiting childcare choice for families, with very little evidence of effectiveness for children.

## **Background on Early Care and Learning**

### ***Federal and State Financial Assistance for Early Care and Learning***

The federal government provides funding across several programs to help states offer early care and learning opportunities. These programs generally target low-income children, with the exception of the federal child and dependent care tax credit, which is available to families higher up the income scale. Combined federal and state funding for Head Start, childcare subsidies and home visiting programs alone totaled almost \$400 million for Wisconsin families in federal fiscal year 2019. The federal government provides millions more in tax credits and tax preferences for families with childcare expenses.

Table 1 details the major federally funded childcare and early care and learning programs.

### ***State Licensing, Regulation and Quality Ratings***

State governments are responsible for licensing and regulating early care and learning providers. In Wisconsin, the Department of Children and Families serves this function and publishes licensing rules and manuals to assist early care and learning providers with the process.<sup>22</sup> Different licensing rules apply to family childcare providers (when the provider cares for four to eight children, usually in the provider's home) and group childcare providers (when the provider cares for more than eight children, usually in a childcare center).

In general, rules cover things such as supervision, staff, operations, physical settings, pro-

Table 1

<b>Major federally funded early care learning programs</b>		
<b>Program</b>	<b>Description</b>	<b>FY 2019 expenditures in Wisconsin</b>
<b>Head Start</b>	<ul style="list-style-type: none"> <li>• Provides early childhood education and development activities for low-income children to promote school readiness.</li> <li>• Operates through grants from the federal government to the local level.</li> <li>• Serves children ages 3-4 and younger through Early Head Start.</li> <li>• Federal funds flow directly to Head Start programs, with the Wisconsin Department of Public Instruction and the Wisconsin Head Start Association offering support to local community programs.</li> <li>• The Wisconsin Department of Children and Families regulates Head Start programs similar to other childcare/preschool programs.</li> </ul>	Federal funding <sup>23</sup> \$155,322,531
<b>Child Care and Development Block Grant (CCDBG) / Child Care and Development Fund (CCDF)</b>	<ul style="list-style-type: none"> <li>• Federally funded childcare subsidies (with state matching requirements) to low-income families. Funded with discretionary funds through the CCDBG and mandatory funds through the Social Security Act — funds pooled together in the CCDF.</li> <li>• States administer the subsidy program with guidance from the federal Office of Child Care in the Administration for Children and Families. States must submit a CCDF state plan every three years.</li> <li>• Families must meet income eligibility criteria and participate in an approved childcare setting. They receive funds to help pay for childcare but must pay a co-payment and be reassessed for eligibility periodically.</li> </ul>	Federal and state funding <sup>24</sup> \$224,971,577
<b>Maternal, Infant and Early Childhood Home Visiting (MIECHV)</b>	<ul style="list-style-type: none"> <li>• Supports home visiting services by health professionals for families with young children who reside in communities with concentrations of poor child health and other risk indicators.</li> <li>• Provides federal grants to states to operate programs, supplemented by state funding. Provides regular in-home visits to participating families using evidence-based curriculum.</li> <li>• Wisconsin's MIECHV program operates in collaboration between the Department of Children and Families and the Department of Health Services.</li> </ul>	Federal funding <sup>25</sup> \$8,587,993 (FY 2020 award)

<b>Preschool Development Grant (PDG)</b>	<ul style="list-style-type: none"> <li>• Federal funding available to “build state capacity to develop, enhance or expand high-quality preschool programs, including comprehensive services and family engagement, for preschool-aged children from families at or below 200% of the federal poverty line.” Guidance later expanded to children birth to age 5.</li> <li>• Wisconsin received an initial Planning Grant and a Renewal Grant through the PDG. The PDG helped develop the Birth to 5 Statewide Strategic Plan for 2021-2023.</li> </ul>	Approximately \$10 million (\$30 million over three years) <sup>26</sup>
<b>Child and Dependent Care Credit</b>	<ul style="list-style-type: none"> <li>• Non-refundable federal tax credit ranging from 20% to 35% of childcare expenses up to \$3,000 for one child and \$6,000 for two or more children.</li> </ul>	N/A <sup>27</sup>
<b>Dependent Care Assistance Program (DCAP)</b>	<ul style="list-style-type: none"> <li>• Taxpayers can exclude from their income \$5,000 to cover childcare expenses. The DCAP operates through the employer.</li> <li>• DCAP lowers taxable income and is not a tax credit. It must be used for qualified employment and childcare expenses. Participants must select an annual amount during an open enrollment period and use it or lose it.</li> </ul>	N/A <sup>28</sup>

Source: Congressional Research Service, Early Childhood Care and Education Programs: Background and Funding, May 2016

gramming and transportation. Providers must apply for a license and pass an inspection, with licenses renewed every two years. Providers caring for fewer than four children can receive a certification, which is similar but with slightly fewer requirements than licensing.<sup>29</sup>

In Wisconsin, early care and learning providers that accept subsidies are also required to participate in YoungStar, the childcare quality rating system.<sup>30</sup> YoungStar involves a self-assessment and a one- to five-star rating system operated by contracted observers. Providers must renew their YoungStar rating every other year. Payments through the federal subsidy program depend on the quality rating, and parents can review quality ratings when making decisions about placements.

### ***What are the Implications for Wisconsin?***

While not unique to Wisconsin, the structure of early care and learning and childcare programs within the state creates a disjointed system that can be challenging to coordinate. This administrative complexity, combined with a desire to regulate quality at the state level, has led to dramatic changes in the availability of childcare slots in Wisconsin and the number of low-income children receiving a childcare subsidies.

State officials are well aware of the deficiencies in the current early care and learning environment. Wisconsin conducted a statewide needs assessment on early care and learning

in 2020 using funding from a federal Preschool Development Grant (PDG), followed by a more in-depth needs assessment in 2021. The report paints a concerning picture for families with young children in Wisconsin. According to the report, Wisconsin parents of young children struggle to access and afford quality childcare, while the early care and learning workforce perceives a lack of professional respect, adequate pay, benefits and diversity.<sup>31</sup>

One of the most glaring issues for Wisconsin leaders is the negative impact that state-level quality regulation has on the composition of childcare providers in the state and the availability of childcare slots. An analysis of total childcare slot capacity across Wisconsin's 72 counties by the University of Wisconsin-Madison Institute for Research on Poverty (IRP) showed that overall capacity in Wisconsin was largely unchanged from 2005 to 2019, but licensed and certified family childcare slots declined by 38% (i.e., care provided to children usually in the home of the provider).<sup>32</sup>

The reasons behind such a large decline in family childcare slots are likely many, and family childcare providers who were unable to provide a safe and developmentally appropriate childcare setting should have exited the system. However, overregulation and excessive government interference likely explains some of this decline, suggesting that an overhaul of the regulatory environment could help bring more family childcare providers back into the system.

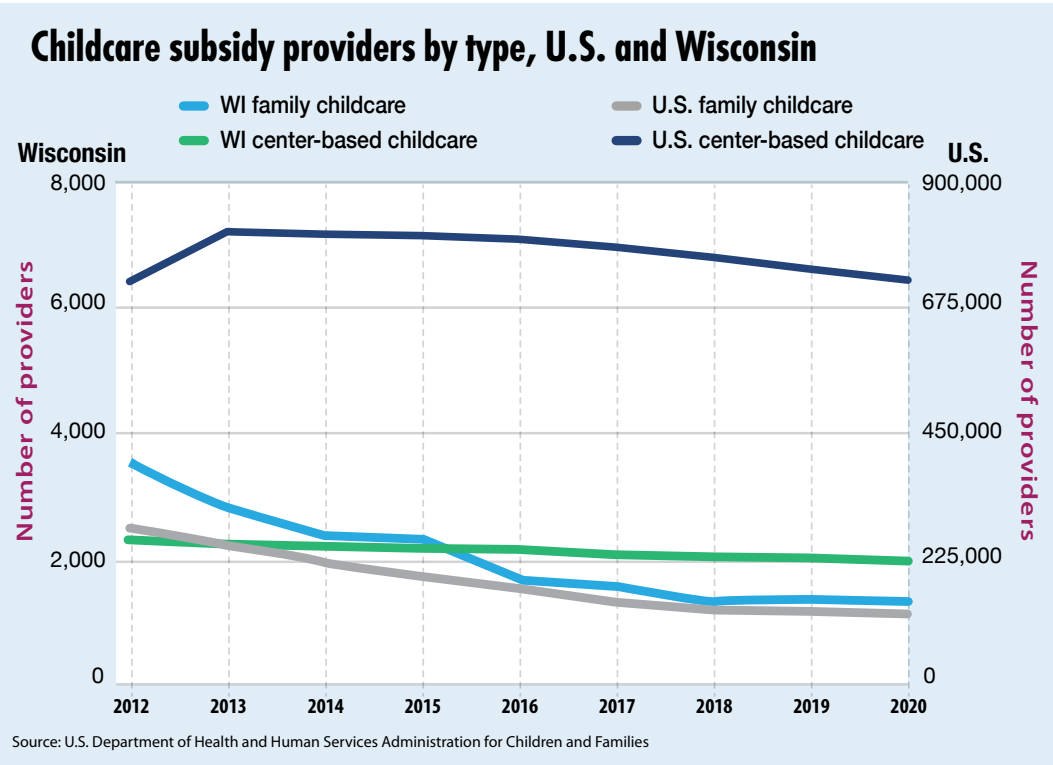
The shift in the composition of available childcare slots from family childcare slots to center-based childcare slots also affects average cost because family childcare is generally more affordable than center-based childcare. Notably, the IRP analysis was unable to assess childcare slot capacity by age of child, although it is highly likely that the decline in family childcare has affected the availability of childcare slots for infants and rural families, given that family childcare is generally more flexible than group childcare.

The decline in family childcare slots overall corresponds to a similar decline in family childcare providers who accept vouchers from Wisconsin's childcare subsidy program, Wisconsin Shares. According to federal data, family childcare providers that accept subsidies declined by 63% from 2012 to 2019, compared to 14% for center-based providers (Figure 1). The trend was similar for CCDF providers at the national level, suggesting that the shift away from family childcare providers in the subsidy program is a nationwide issue, not unique to Wisconsin, although Wisconsin's decline has been somewhat more pronounced.

This trend in declining CCDF providers also corresponded with a decline in the total number of low-income children served by Wisconsin Shares. According to an analysis by IRP, the number of children served by Wisconsin Shares declined by 35.4% between 2008 and 2018 (Figure 2). IRP found that the decline was steepest for children under age 2 and those in family childcare.<sup>33</sup> The reasons behind such a large decline are unclear, although the IRP report concludes, "It is very unlikely that they could be explained by changes in poverty rates or family income, childcare capacity or demographic changes in the state."

While changes in parental employment, income and the population of young children in

Figure 1



Wisconsin likely explain some of the fluctuations in total children receiving Wisconsin Shares, the consistent downward trend corresponds to changes in the administration of the program, including the introduction of YoungStar in 2012 and rule changes resulting from CCDBG reauthorization in 2014. More research and better data are needed to draw

Figure 2

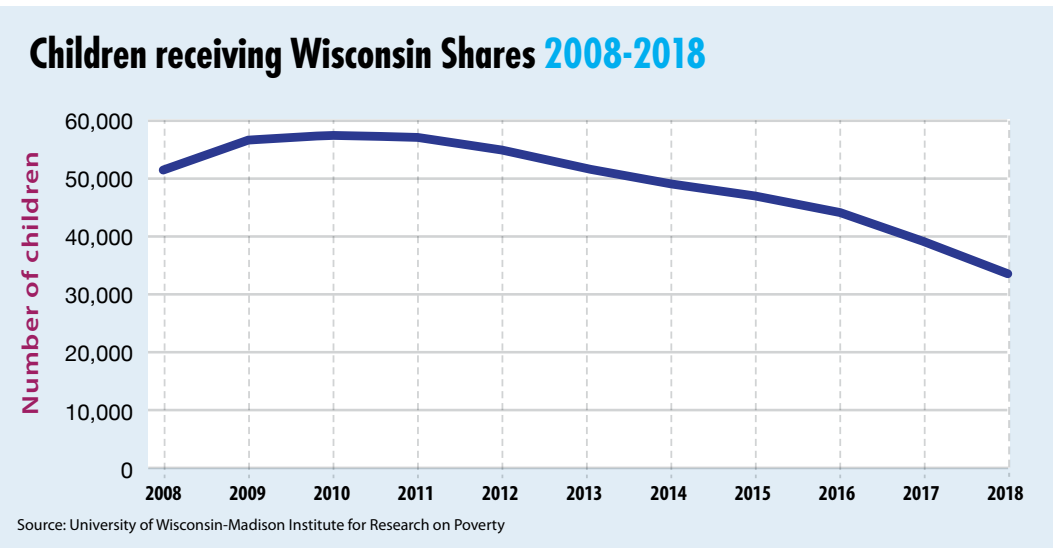
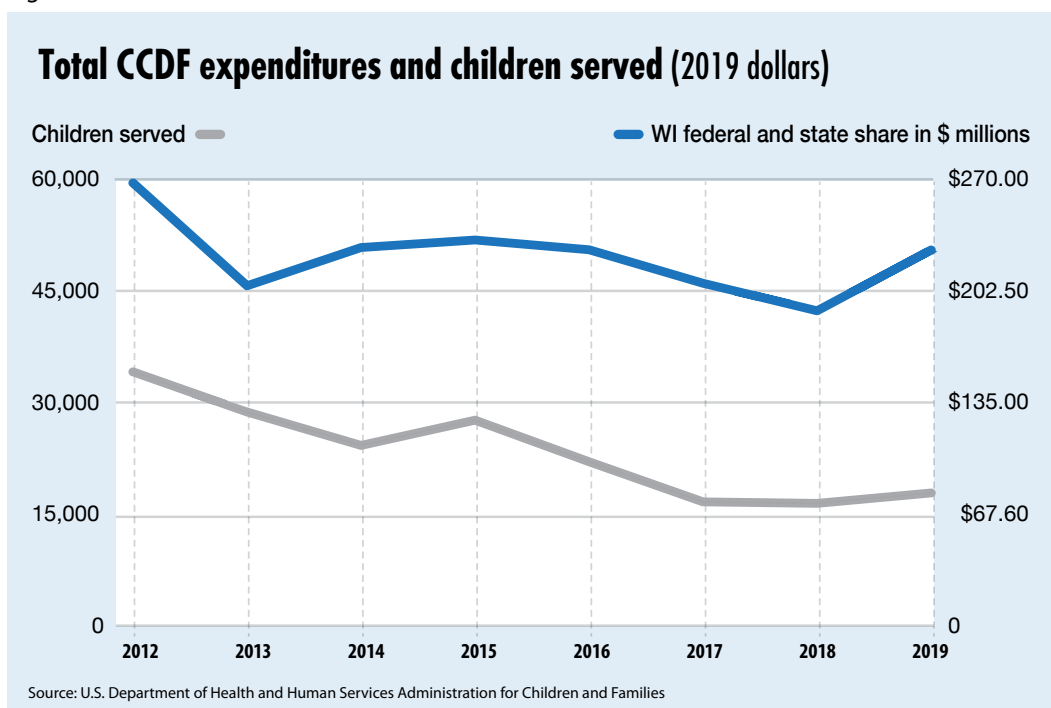


Figure 3



concrete conclusions, but the push toward higher-quality childcare through regulation likely has played a role in fewer low-income children receiving a childcare subsidy in Wisconsin over time.

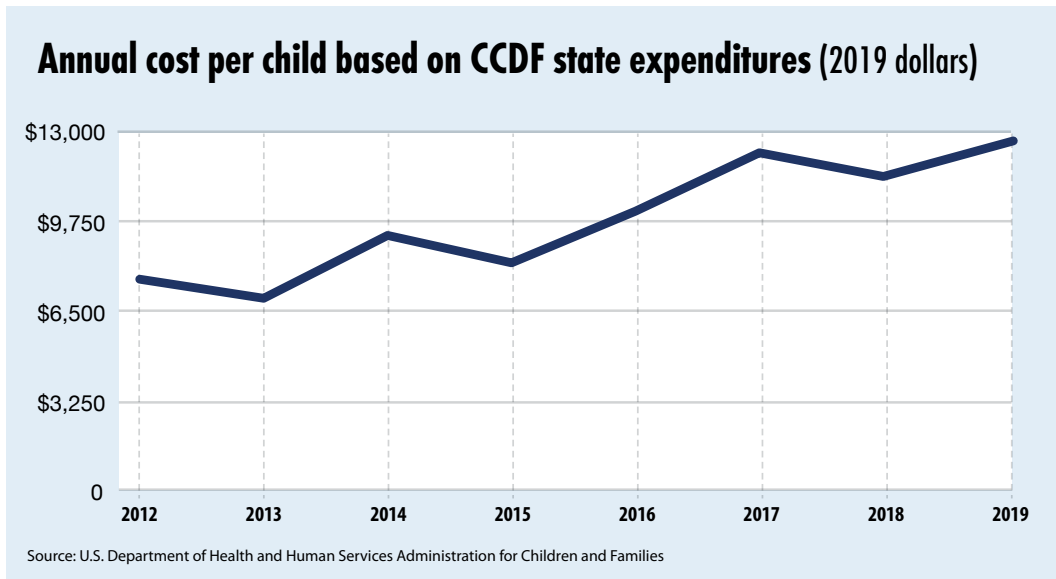
Total CCDF expenditures for Wisconsin, including the federal and state share, have remained relatively consistent since 2012 even though the number of children served has declined (Figure 3).

Although it is somewhat difficult to determine the precise cost per child served due to a lack of data on hours of care, these trends suggest the cost of care per child has increased (Figure 4). The increasing cost per child is consistent with reports from parents about the increasing cost of childcare through Wisconsin's 2021 PDG needs assessments.<sup>34</sup>

### ***What is Driving These Trends?***

Two major policy changes likely have affected the type of providers who participate in Wisconsin's childcare market as well as the number of children participating in Wisconsin Shares: the implementation of YoungStar and the 2014 reauthorization of CCDBG. These policy decisions were motivated by the desire to improve the quality of childcare, driven by the evidence that high-quality childcare is more effective than lower-quality care for child development. However, as in many states, officials in Wisconsin have overregulated childcare providers under the belief that it would result in better outcomes for children. Regrettably, there is no evidence that it has positively affected child outcomes, and it likely has harmed them by restricting the availability of childcare and driving up costs.

Figure 4



The decline in children receiving Wisconsin Shares subsidies coincides with the 2012 implementation of the YoungStar rating system for childcare providers in the state. YoungStar requires providers that accept Wisconsin Shares subsidies to participate in the program, which creates a disincentive to participate. This is evidenced by the declining trend of children served in Wisconsin Shares beginning in 2012 and accelerating after the reauthorization of CCDBG in 2014. This likely stems from the focus of CCDBG reauthorization on quality and a push at the state level to enroll children in high-quality childcare.

A review of the rating criteria reveals why a family provider might not want to participate in YoungStar and might choose to leave the childcare business entirely.<sup>35</sup> Providers must do a self-assessment and develop a quality improvement plan. They must develop a registry program profile and have their operations observed by raters. Raters give higher scores to providers with higher levels of education, even though research shows a weak relationship between education level and childcare quality. In addition, providers must verify their education level, adding another layer of administrative burden. The list of requirements and evaluation criteria rate every aspect of the childcare provider's operation, including but not limited to the number of books, specific time requirements for free play and parental communication requirements.<sup>36</sup> It is unsurprising that childcare providers might want to exit the system entirely.

There has always been a flaw in the belief that states, with support from the federal government, could regulate childcare into high quality. Although the YoungStar rating system is well-intentioned, it likely has had a negative effect on the number of children receiving childcare subsidies in Wisconsin by pushing providers out of the subsidy system altogether. All children receiving a Wisconsin Shares subsidy must use it at a YoungStar-rated

provider. If a family does not have access to a YoungStar-rated provider, that family cannot use a subsidy.

If the YoungStar system was producing positive results for children, the burden it places on providers might be justified. However, state officials acknowledge that they have little evidence that children are doing better after the implementation of YoungStar. In a 2021 needs assessment, state officials acknowledged that Wisconsin does not have data on kindergarten readiness, making the assessment of the effectiveness of YoungStar impossible. Additionally, UW-Madison's IRP conducted an analysis and validation of YoungStar in 2016, finding that the tiered rating system did not translate into better outcomes for children. Specifically, "analyses of the data did not support the conclusion that children in more highly rated YoungStar programs, whether measured by star level or total rating points, predicted children's school readiness in the spring of the study year."<sup>37</sup>

### ***A New Approach to Support Early Care and Learning***

Research shows that public investments in high-quality childcare for disadvantaged children can have positive long-term effects. It also shows that childcare assistance to low-income families increases employment, which offers poor families a path out of poverty. However, Wisconsin leaders have misapplied these two important research findings to the state's early care and learning infrastructure, resulting in higher-cost childcare, less parental choice and fewer children participating in Wisconsin Shares.

Regrettably, state leaders have reinforced this misguided approach issuing a Birth to 5 strategic plan in 2020 that doubles down on government regulation and seeks to increase childcare labor costs while illogically also promising to reduce the percentage of families' income spent on early care and learning.<sup>38</sup>

There are several missing pieces from the state's approach to early care and learning, mainly the importance of the role of parents, as both caregivers and decision-makers. Instead of more regulation and higher costs, the answer to Wisconsin's early care and learning problems is to reduce government regulations and place more authority into the hands of parents and childcare providers.

Here is how Wisconsin can get its early care and learning system back on track.

### **1. Streamline Wisconsin's early care and learning program oversight to ensure accountability.**

Wisconsin has a number of leadership bodies that oversee early care and learning programs at the state level, though childcare providers are scattered across the state. Additionally, Head Start programs operate at the local level but are licensed and regulated by the state Department of Children and Families. The DCF operates the YoungStar quality rating system through a contractor, and the state Department of Public Instruction oversees early care and learning model standards.

This complex governing structure lacks a formal accountability system and needs reform. As a starting point, a governor-appointed workgroup should review the existing struc-



ture, assess how other states organize their early care and learning programs, and suggest improvements to state policymakers. The goal of the workgroup would be to inform legislative and executive action to streamline Wisconsin's early care and learning program, including an emphasis on oversight and accountability.

## **2. Reduce the regulatory burden on childcare providers.**

A 2016 assessment of YoungStar suggested that the tiered rating system had not resulted in better outcomes for children. Additionally, YoungStar likely has contributed to a decline in family childcare providers that has limited parental choice and driven up costs. A quality rating system can be worthwhile to help parents make decisions about early care and learning programs, but officials should not use it to drive providers out of the market entirely, especially when the result is less childcare availability and minimal impact on child outcomes. Additionally, the evaluation criteria for YoungStar ratings are overly prescriptive and limit autonomy among childcare providers. A governor-appointed workgroup with public and private stakeholders should review YoungStar and the evaluation criteria.

To diversify the early care and learning options for families, Wisconsin must reduce the regulatory burden on childcare providers. A review of YoungStar and the state's overall childcare regulatory framework should identify key steps to reduce the burden on childcare providers while still ensuring the proper health, safety and development standards are in place. The goal should be to help Wisconsin children flourish while keeping flexibility for families.

## **3. Develop a performance evaluation system and data infrastructure that measures key outcomes related to early care and learning effectiveness.**

One of the most glaring deficiencies in Wisconsin's system is the lack of data. There is no Head Start data at the state level, no consistent data on childcare capacity or enrollment by type of provider and age of child, no pre-kindergarten data at the state level and no statewide kindergarten readiness data.<sup>39</sup> These limitations make any efforts by state leaders to operate an effective system impossible. Some efforts already have begun within the state bureaucracy to address these deficiencies, but state leaders must invest in a data infrastructure and develop a performance measurement system that assesses the effectiveness of the early care and learning system. The governor should appoint a data infrastructure workgroup to assess the technology and make recommendations to bring the system into compliance with 21st century expectations for data.

## **4. Develop a new Birth to 5 strategic plan that focuses on parents and providers.**

The current system in Wisconsin follows a pattern seen across the country — parents and education professionals desire high-quality childcare, so states try to regulate childcare toward quality. The problem is that quality is difficult to measure and often involves intangible factors such as the responsiveness of caregivers and their relationships with children. The evidence that YoungStar-defined quality does not lead to better school readiness for children supports this view. Because the evidence suggests that increased regulation has driven up costs and reduced the availability of childcare, especially subsidized childcare, the state needs a new approach.

One solution is to return more authority to parents and childcare providers to determine quality. Granted, state officials need to regulate certain health, safety and development requirements. However, parents are better equipped to determine quality than government officials who visit once per year or less. By improving competition among providers, parents will have more childcare options, lower costs and the ability to demand better quality.

A new Birth to 5 strategic plan for Wisconsin should incorporate the work mentioned above, including plans to streamline administration of the system, reducing the regulatory burden on providers and improving the data infrastructure. Generation of the strategic plan should stem from the governor's office or the leader of a newly created early care and learning governing structure rather than relegating it to the existing state bureaucracy. The intention is to avoid problems between state agencies around budget, authority and strategic direction.

### **5. Explore the creation of early education savings accounts to facilitate Head Start and Wisconsin Shares.**

As part of a new Birth to 5 strategic plan, state officials should explore the creation of education savings accounts. Policymakers can model these after Pell Grants for low-income families or other flexible savings accounts for health and education expenses. The government could fund the accounts for low-income families and phase out assistance at higher income levels. All parents could contribute to the accounts in a state income tax-deferred way. Parents could use the accounts for early care and learning opportunities or other development or recreation activities.

Savings accounts also could give parents more flexibility to determine the right program mix for their children as well as the right employment level for their family. For example, the availability of some financial assistance to cover recreation activities for young children might give parents the flexibility they need to pursue less than full-time employment opportunities. Availability of savings accounts would not necessarily be linked to parental employment, meaning that stay-at-home parents could also benefit from the accounts. However, the program would link government assistance to employment to avoid work disincentives.

## **Conclusion**

Birth to age 5 are crucial years for child development. Research shows that public resources can effectively help low-income parents work by providing childcare assistance and help close the development gap between disadvantaged children and their higher-income peers. However, a push in the past several years toward high-quality early care and learning in Wisconsin and across the country, although well-intentioned, likely has overburdened many providers, driving family childcare providers out of business, reducing access and increasing costs.

Throwing more money at an inefficient and ineffective system is not the answer. Instead, Wisconsin's leaders should revisit and consider reforming a few key areas, including the state's governance structure, regulatory framework, data infrastructure and strategic plan.

Policymakers should think outside the box and organize the state's support for early care and learning to meet the demands of today's parents.

Rigid government programs and oversight cannot provide families the flexibility and help that they need when they need it. Policymakers could consider alternative ways to structure assistance for early care and learning programs through mechanisms such as education savings accounts or flexible spending plans.



### **Badger Institute takeaways**

A push to regulate our way to higher-quality childcare has resulted in fewer options and higher costs. Simply spending more will not be effective.

Wisconsin should:

- **Streamline Wisconsin's oversight of childcare and early learning, enabling now-absent accountability.**
- **Reform YoungStar to reduce the deterrent regulatory burden on providers.**
- **Begin collecting data on early childhood enrollment and outcomes.**
- **Reorient the state's strategy around granting more authority to parents and childcare providers to choose options they find best.**
- **Channel state subsidies through a parent-controlled mechanism such as education savings accounts. Allow unsubsidized parents to access such tax-deferred accounts, and make them independent of employment status to enable stay-at-home parents to benefit.**

### **Endnotes**

<sup>1</sup> [www.brookings.edu/wp-content/uploads/2022/02/ES\\_20220228\\_Rebalancing\\_Children\\_First.pdf](http://www.brookings.edu/wp-content/uploads/2022/02/ES_20220228_Rebalancing_Children_First.pdf)

<sup>2</sup> [bipartisanpolicy.org/download/?file=/wp-content/uploads/2019/10/WEB\\_BPC\\_ECH-History-Brief\\_R01.pdf](http://bipartisanpolicy.org/download/?file=/wp-content/uploads/2019/10/WEB_BPC_ECH-History-Brief_R01.pdf)

<sup>3</sup> [www.everycrsreport.com/files/20140102\\_RL30952\\_9de5df5a6c4debc9131eea76fb96ade27155c351.pdf](http://www.everycrsreport.com/files/20140102_RL30952_9de5df5a6c4debc9131eea76fb96ade27155c351.pdf)

<sup>4</sup> See the history of childcare funding: [greenbook-waysandmeans.house.gov/book/export/html/291](http://greenbook-waysandmeans.house.gov/book/export/html/291)

<sup>5</sup> Center on the Developing Child, Harvard University, "What is Early Childhood Development: A Guide to the Science," [developingchild.harvard.edu/guide/what-is-early-childhood-development-a-guide-to-the-science/](http://developingchild.harvard.edu/guide/what-is-early-childhood-development-a-guide-to-the-science/) and Center on the Developing Child (2007). The Science of Early Childhood Development (InBrief). Retrieved from [www.developingchild.harvard.edu](http://www.developingchild.harvard.edu)

<sup>6</sup> Ibid.

<sup>7</sup> [heckmanequation.org/resource/invest-in-early-childhood-development-reduce-deficits-strengthen-the-economy/](http://heckmanequation.org/resource/invest-in-early-childhood-development-reduce-deficits-strengthen-the-economy/)

<sup>8</sup> Weiland, Christina, et al. Puzzling It Out: The Current State of Scientific Knowledge on Pre-Kindergarten Effects — A Consensus Statement. Brookings Institution, 2017.

<sup>9</sup> Ibid.

<sup>10</sup> Grover J. (Russ) Whitehurst, "Does Pre-K Work? It Depends How Picky You Are," Brookings Institution, 2014.

<sup>11</sup> Lipsey, M.W., Farran, D.C., and Durkin, K. (2018). Effects of the Tennessee Prekindergarten Program on children's achievement and behavior through third grade. *Early Childhood Research Quarterly*, 45, 155–176. doi.org/10.1016/j.ecresq.2018.03.005 <https://psycnet.apa.org/record/2018-18398-001>

<sup>12</sup> Weiland, Christina, et al. *Puzzling It Out: The Current State of Scientific Knowledge on Pre-Kindergarten Effects — A Consensus Statement*. Brookings Institution, 2017.

<sup>13</sup> Ibid.

<sup>14</sup> See a summary of this research here: [heckmanequation.org/resource/research-summary-perry-preschool-and-character-skill-development/](https://heckmanequation.org/resource/research-summary-perry-preschool-and-character-skill-development/)

<sup>15</sup> Baker, Michael, Jonathan Gruber and Kevin Milligan. "Universal child care, maternal labor supply, and family well-being." *Journal of Political Economy* 116, no. 4 (2008): 709-745.

<sup>16</sup> Vandell, Deborah Lowe, Jay Belsky, Margaret Burchinal, Laurence Steinberg, Nathan Vandergrift and NICHD Early Child Care Research Network. "Do effects of early child care extend to age 15 years? Results from the NICHD study of early childcare and youth development." *Child development* 81, no. 3 (2010): 737-756.

<sup>17</sup> [developingchild.harvard.edu/science/key-concepts/serve-and-return/](https://developingchild.harvard.edu/science/key-concepts/serve-and-return/)

<sup>18</sup> Weiland, Christina, et al. *Puzzling It Out: The Current State of Scientific Knowledge on Pre-Kindergarten Effects — A Consensus Statement*. Brookings Institution, 2017.

<sup>19</sup> Eden, Max. "The Drawbacks of Universal Pre-K: A Review of the Evidence. Issue Brief." Manhattan Institute for Policy Research (2021).

<sup>20</sup> See Chris Herbst and Erdal Tekin, "Child Care Subsidies and Childhood Obesity," *Review of Economics of the Household* 9 (September 2011): 349–78; Chris Herbst and Erdal Tekin, "The Geographic Accessibility of Child Care Subsidies and Evidence on the Impact of Subsidy Receipt on Childhood Obesity," *Journal of Urban Economics* 71, no. 1 (January 2012): 37–52; and Chris Herbst and Erdal Tekin, "The Impact of Child-Care Subsidies on Child Development: Evidence from Geographic Variation in the Distance to Social Service Agencies," *Journal of Policy Analysis and Management* 35, no. 1 (Winter 2016): 94–116.

<sup>21</sup> See statement by Rep. Todd Rokita (R-Ind.) for the Committee on Education and Labor, Republicans, March 25, 2014, [republicans-edlabor.house.gov/news/documentsingle.aspx?DocumentID=373839](https://republicans-edlabor.house.gov/news/documentsingle.aspx?DocumentID=373839)

<sup>22</sup> See website for rules and manuals, <https://dcf.wisconsin.gov/cclicensing/rules>

<sup>23</sup> <https://eclkc.ohs.acf.hhs.gov/about-us/article/head-start-program-facts-fiscal-year-2019>

<sup>24</sup> <https://www.acf.hhs.gov/ofa/data/tanf-financial-data-fy-2019>

<sup>25</sup> <https://mchb.hrsa.gov/programs-impact/programs/maternal-infant-early-childhood-home-visiting-awards-fy20>

<sup>26</sup> <https://dcf.wisconsin.gov/childcare/pdg>

<sup>27</sup> The exact amount of child and dependent care tax credits for Wisconsin are not readily available.

<sup>28</sup> The exact amount of DCAP credits for Wisconsin are not readily available.

<sup>29</sup> See website for rules and manuals around certification, [dcf.wisconsin.gov/cccertification](https://dcf.wisconsin.gov/cccertification)

<sup>30</sup> See website for more details on YoungStar, [dcf.wisconsin.gov/youngstar](https://dcf.wisconsin.gov/youngstar)

<sup>31</sup> Statewide Needs Assessment Summary Preschool Development Grant Birth to 5, Wisconsin Department of Children and Families, October 2020, [dcf.wisconsin.gov/files/childcare/pdf/pdg/statewide-needs-assessment-summary.pdf](https://dcf.wisconsin.gov/files/childcare/pdf/pdg/statewide-needs-assessment-summary.pdf)

<sup>32</sup> Statewide Needs Assessment Summary Preschool Development Grant Birth to 5, Wisconsin Department of Children and Families, October 2020, [dcf.wisconsin.gov/files/childcare/pdf/pdg/2021-needs-assessment.pdf](https://dcf.wisconsin.gov/files/childcare/pdf/pdg/2021-needs-assessment.pdf) and Claessens, et al. Capacity Memo, [dcf.wisconsin.gov/files/childcare/pdf/pdg/pdg-regulated-cc-capacity-memo.pdf](https://dcf.wisconsin.gov/files/childcare/pdf/pdg/pdg-regulated-cc-capacity-memo.pdf). The 38% reflects a decrease in licensed family childcare combined with an increase in certified family childcare.

<sup>33</sup> [dcf.wisconsin.gov/files/childcare/pdf/pdg/pdg-wisconsin-shares-recipe-memo.pdf](https://dcf.wisconsin.gov/files/childcare/pdf/pdg/pdg-wisconsin-shares-recipe-memo.pdf)

<sup>34</sup> See the 2021 PDG needs assessment, [dcf.wisconsin.gov/files/childcare/pdf/pdg/2021-needs-assessment.pdf](https://dcf.wisconsin.gov/files/childcare/pdf/pdg/2021-needs-assessment.pdf)

<sup>35</sup> YoungStar Evaluation Criteria: Family Child Care 2021/2022, [dcf.wisconsin.gov/files/youngstar/pdf/ys-2021-22/evaluation-criteria/21-22-eval-criteria-family.pdf](https://dcf.wisconsin.gov/files/youngstar/pdf/ys-2021-22/evaluation-criteria/21-22-eval-criteria-family.pdf)

<sup>36</sup> Ibid.

<sup>37</sup> Katherine Magnuson and Ying-Chun Lin, "Wisconsin Early Child Care Study Findings on the Validity of YoungStar's Rating Scale: Executive Summary", May 9, 2016. See also [dcf.wisconsin.gov/files/youngstar/pdf/validationreport2.pdf](https://dcf.wisconsin.gov/files/youngstar/pdf/validationreport2.pdf) and [dcf.wisconsin.gov/files/youngstar/pdf/validationexecutivesummary.pdf](https://dcf.wisconsin.gov/files/youngstar/pdf/validationexecutivesummary.pdf)

<sup>38</sup> Preschool Development Grant, Birth to 5 Statewide Strategic Plan for 2021-2023, [dcf.wisconsin.gov/files/childcare/pdf/pdg/b5-strategic-plan.pdf](https://dcf.wisconsin.gov/files/childcare/pdf/pdg/b5-strategic-plan.pdf)

<sup>39</sup> See the 2021 PDG needs assessment, [dcf.wisconsin.gov/files/childcare/pdf/pdg/2021-needs-assessment.pdf](https://dcf.wisconsin.gov/files/childcare/pdf/pdg/2021-needs-assessment.pdf)



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## A PREFACE TO

# Why Milwaukee Needs to Get Cops Back in Schools

**M**ilwaukee, mired in serious, often violent crime unlike anywhere else in Wisconsin, doesn't have enough cops. That is the irrefutable takeaway from two chapters in the upcoming Crime section of this book.

But there is another problem as well — one born of political kowtowing to the social justice warriors more concerned with adhering to fashionable progressive narratives than keeping kids safe.

A chunk of the crime in Milwaukee is happening at high schools under control of a School Board that won't allow cops to regularly walk the hallways or grounds. This isn't principally a matter of hiring more police officers, although that could help. It's a matter of using common sense to allow Milwaukee Police Department leadership to appropriately deploy the officers the city already has.

Here, we lay out the facts regarding the lack of safety at schools in Milwaukee and what needs to be done about it to give the smart kids who strive for something better a fighting chance. We also propose a way of determining whether the problems in Milwaukee are unique or if other areas of the state also need to quickly redeploy officers into schools.

— *Badger Institute*

## ABOUT THE AUTHORS



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# Why Milwaukee Needs to Get Cops Back in Schools

*By Mike Nichols and Mark Lisher*

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**T**he Milwaukee Police Department responded to 1,310 calls for service at 34 Milwaukee Public Schools-controlled high schools in the 2021-'22 school year alone, an average of 7.2 calls every school day that raises anew questions about the School Board's decisions to stiff-arm law enforcement.

The School Board pulled officers out of schools in 2016 after parents and activists complained that police too often arrested and ticketed students rather than allowing the schools to discipline them.

For a time after that, the district partially funded a continuing presence outside of schools. But in the wake of George Floyd's death in Minneapolis, the School Board then voted unanimously in June 2020 to dissolve its contract for resource officers outside of school buildings as well.

Presented with the numbers, a spokesman for Milwaukee Mayor Cavalier Johnson said the mayor hasn't wavered in thinking "police inside schools is a matter that MPD and MPS need to work out together."

"To be clear, the mayor has talked about police assisting in creating safe environments around schools," spokesman Jeff Fleming told the Badger Institute. "And he believes that Milwaukee needs more police officers, not fewer, in order to make Milwaukee safer."

When he was Milwaukee Common Council president, Johnson took heat from activists leading the effort to get police officers out of MPS schools after he called for increased patrols in the wake of a high-speed reckless driving incident in October 2021 at Madison High School.

"It's only a matter of time before those sorts of actions result in somebody's unnecessary death," Johnson said at the time.

Asked to comment about the data provided by their own department to the Badger Institute, MPD wouldn't answer questions but issued a statement.

"Currently, MPD does not have a contract or agreement with MPS to provide school resource officers or extra-duty services for their special events," the statement read. "The safety at all of our schools is a high priority. MPD continues to work with MPS to find solutions to provide a safe environment for students. MPD remains committed to work-



ing with the community and system partners to build sustainable neighborhoods free of crime.”

The Badger Institute contacted MPS for comment and tried again after Jacqueline Mann, the director of its Office of Board Governance, left a message. Mann did not return that second call.

Nor did Cendi Trujillo Tena respond to an email when asked to comment on behalf of Leaders Igniting Transformation (LIT), the organization largely responsible for the drive to get police officers out of the schools. LIT was also a key player in the effort to defund the police in Milwaukee in the weeks and months following Floyd’s death while in Minneapolis police custody in May 2020.

### *The Calls for Service Data*

The Badger Institute requested calls for service data for the past school year based on the high schools listed on the MPS website. We did not include the Milwaukee County Youth Education Center because its students are exclusively Milwaukee County Jail inmates or Lad Lake’s Synergy because it is a residential campus.

**Students in Milwaukee’s public high schools who want a better life and know that school is their only way up are being battered, assaulted and exposed to gunfire or other reckless conduct on a daily basis.**

Marshall High School officials made 140 calls for service, far and away the most frequent caller. Washington, Madison and Riverside University high schools, with 91, 90 and 89 calls, respectively, were next. Bradley Tech, Vincent, Hamilton, Pulaski and North Division each made between 80 and 71 calls, according to the MPD data.

The list of schools for which the Badger Institute requested data included all MPS traditional schools as well as charter schools under the control of the School Board. The schools with the largest number of calls were all traditional rather than charter schools.

High schools reported “trouble with juvenile” more than 250 times, well over once a school day, by far the most frequent call for service in the past school year. There were more than 100 reports of “battery,” most frequently at Vincent, Bradley Tech, Riverside and Pulaski, according to the data.

There were 75 reports of a “reckless vehicle,” 39 of “sexual assault,” 39 of a “subject with gun” and 15 of “shots fired,” the data showed.

Nearly three-quarters of the 1,310 calls for service were disposed of by the filing of a report, the inability to locate a complainant, an advisory to school officials or a report of “assignment completed.”

Officers made 71 arrests based on the calls and issued 95 citations, according to the data.

In sum, students in Milwaukee's public high schools who want a better life and know that school is their only way up are being battered, assaulted and exposed to gunfire or other reckless conduct on a daily basis.

### ***Gun Incidents at Schools***

A few incidents make the news, including one incident at Rufus King International High School that started with a social media-fueled fight between a couple of girls outside the building during a basketball game. One of the children involved called an uncle, who showed up with a gun and shot four or five girls and women between the ages of 15 and 20.

Another incident at Bradley Tech didn't get the same attention because nobody got hit.

That incident — just one other example — started out as a fight inside the school between a couple of groups of kids. At least one of the kids told the cops that he and his friends were running around the school “wearing black ski masks” that day. Some members of the other group, he said, were wearing “black ski masks” as well.

Again, one of the students notified a relative. His mother, according to police reports, showed up with her fiancé, sister, daughter, niece and a friend of her daughter. The mother, who has a concealed carry permit, also brought a black 9mm handgun that she placed between the front seats of the car she came in.

Five members of that group, according to the reports, got out of cars and approached the school but weren't allowed inside. When her son came out, she told police, she saw a group of boys running out of a red car parked across the street from the school — at least several of whom were wearing black ski masks and two of whom had guns in their hands. She alleged that one of the boys fired a shot.

Somebody inside her car also fired, according to one police report, although it is unclear who it was. The group had at least one other gun as well, according to that report, but the mother said it was probably a fake and that it did not go off.

Another report filed by an officer who watched video footage stated that six kids in the red car pulled up at 12:48 p.m., got out and ran toward the school. Startled by something, they did an about-face and ran back to the car. One of those kids fired two rounds into the air.

Asked by police what led to the shooting, he stated, “It was a fight, and adults decided to get involved.”

While most of those closest to the problems in an array of schools have had little to say about the increased calls for service, the Milwaukee Police Association has said in the past that it supports putting MPD officers back in MPS schools.

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**While the survey canvassed 1,000 people statewide, not just in the city of Milwaukee, 63% said they thought having resource officers in schools would increase safety. Just 5% said safety would decrease.**

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In May, the Wisconsin Professional Police Association published its annual survey of public perception of law enforcement. And while the survey canvassed 1,000 people statewide, not just in the city of Milwaukee, 63% said they thought having resource officers in schools would increase safety. Just 5% said safety would decrease, a longstanding contention of groups such as LIT.

Responding to the survey, Milwaukee Police Association President Andrew Wagner said, “When you’re talking about kids and their safety and when lives are in danger, seconds and minutes matter, and it’s those response times that would really diminish if we could get those officers back.”

### **Recommendations**

Put police officers immediately back inside and around Milwaukee’s public schools, especially those with high crime levels.

If possible, make state funding contingent upon putting officers back in schools.

Improve access to and funding for public charter schools and private schools that are part of the Milwaukee Parental Choice Program.

Require all Wisconsin school districts to collect and report crime data for every school on their district report cards so that state and local leaders can assess where and whether there are problems elsewhere in the state similar to those in Milwaukee.



**CRIME**



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## A PREFACE TO

# A Tale of Two States

## *Wisconsin Crime Trends: 2017-2022*

A glance at the news is enough to tell you that the United States has been suffering a spike in crime, a reversal in a years-long trend toward peace. For many Wisconsinites, the 10 o'clock news brings a numbing stream of mayhem and disorder.

If we're going to do something about it other than being appalled, the picture needs higher resolution: Where exactly is crime worsening, and which crimes? Here, scholar Sean Kennedy dives into Wisconsin's data for answers.

The big picture is that Wisconsin remains, on the whole, a safe place that's been getting safer. But Wisconsinites who live and work in our largest city, Milwaukee, suffer worsening depredations from criminals, particularly in homicide, auto theft and aggravated assault, which includes shootings. And for some specific offenses, especially auto theft and homicide, other cities in Wisconsin are seeing a worsening trend, sometimes dramatically worse.

Arrests, meanwhile, are falling, meaning more offenders face little to no accountability. Kennedy, who has written widely on issues of crime and justice, points out that limitations to the data available to policymakers limit their ability to target a policy response.

But this is not a lost cause. Quite the opposite: We think this analysis offers hope — not by minimizing a grim and worsening reality but by pinpointing the trouble that afflicts Wisconsinites, so that known, proven remedies can be directed to where they have greatest effect. Our fellow citizens, especially those suffering in Milwaukee, need and deserve such protection. Providing it is the first duty of government.

— *Badger Institute*

## ABOUT THE AUTHOR



**Sean Kennedy** is a visiting fellow at the Maryland Public Policy Institute, where his work focuses on crime and justice issues. His research and writings have appeared in *The Wall Street Journal*, *The Washington Post*, the *New York Post*, *City Journal* and *The Baltimore Sun*, among other publications.

# A Tale of Two States

## *Wisconsin Crime Trends: 2017-2022*

*By Sean Kennedy*

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### Introduction

**L**ooked at as a whole — from the St. Croix and Mississippi rivers across the state to Lake Michigan, from Lake Superior and the Menominee River down to the Illinois line — Wisconsin appears safer than it was five years ago.

Overall crime (so-called Group A crimes, which include assault, robbery, rape, homicide, theft, arson and human trafficking) was down 11% from 2017 to 2021. There was a notable 17% decrease in property crime in the state over that period, while violent crime remained essentially unchanged, down a little under 1%.

But that big, general picture in this place of 5.8 million people masks dramatic differences between most parts of the state and its crime-ridden largest city, Milwaukee. It papers over the fact that, while there have been substantial decreases over that period in crimes such as burglary and larceny-theft, other crimes such as homicide, auto theft and aggravated assault are much more prevalent. Moreover, while the five-year overview shows some generally positive trends throughout Wisconsin as a whole, a swift, more recent spike in some serious crimes since 2020, particularly in Milwaukee, must be addressed if the city and state are to prosper.

The latter period, in short, is much more troubling than the longer five-year view. Those five-year trends do not tell the whole story. The advent of 2020 — with COVID-19 lockdowns and post-George Floyd unrest — reversed the trend as many offenses, especially in Milwaukee, have risen again well above or at least approaching 2017 levels.

Crimes such as homicide and car theft have increased dramatically in the past few years and, compounding the problem, arrests have dropped significantly. In Milwaukee in particular, this raises concern about both police staffing levels and failures of the criminal justice system to charge and incarcerate offenders.

Wisconsin's crime trends in essence reveal two different states: the city of Milwaukee (and other select urban areas) and the "Rest of Wisconsin." In short, while most of the state is relatively safe in comparison to five years ago when considering most crimes, troubling trends in Milwaukee — one of the primary economic engines of the Badger State and home to 10% of its citizens — are undermining the health and safety of the state in general.

The disparity between Milwaukee and most of the rest of the state is troubling almost



regardless of which set of data one peruses. Property crimes, for instance, have decreased 25% outside Milwaukee since 2017 and continue to drop. In the largest city, to the contrary, overall property crime has risen 10% since 2017 and a stunning 64% since 2019.

There are a few glimmers of good news in Milwaukee. The city, notably, reported a decline in simple assaults, down 6.8% from 2017 to 2021 and only a small uptick, 2.5%, since 2019. Statewide, simple assaults increased slightly over both the five- and two-year periods.

But that is a rare bit of good news for Milwaukee. For the most part, when crime trends were negative outside Milwaukee, they were even worse inside the city in recent years. And even when the trends in specific crimes were positive in Milwaukee, they were much more positive outstate. Robbery, for instance, dropped 25% in the rest of Wisconsin since 2019 but only 2% in Milwaukee over the same span.

In some instances, the trend in Milwaukee is completely counter to what transpired in the rest of the state. For example, larceny in the rest of Wisconsin fell 16% since 2019 but rose 20% in Milwaukee — a wide divergence.

The greatest changes in 2020 and 2021 were in three categories: homicide, aggravated assault (which includes shootings) and auto theft. Homicides increased 41% in the rest of Wisconsin but doubled in Milwaukee. Aggravated assaults increased 26% in Milwaukee but were unchanged elsewhere in the state. Auto thefts rose 255% in Milwaukee but only 46% in the rest of Wisconsin, and much of that increase was concentrated in suburbs adjacent to Milwaukee.

**While most of the state is relatively safe in comparison to five years ago when considering most crimes, troubling trends in Milwaukee — home to 10% of its citizens — are undermining the health and safety of the state in general.**

There are many ways to report crime data. This analysis gives a picture of the state as a whole but also parses the data to gain more local and time-specific views for a variety of crimes. In doing so, it will enable both state and local officials to make the decisions necessary to ensure everyone in every part of Wisconsin is safe and in a position to prosper.

## The Research

This study uses available data derived from the state Department of Justice's Wisconsin Incident-Based Reporting System (WIBRS) and supplemented, where applicable, by city agency and FBI data for greater context and granularity.<sup>1</sup>

### **Key Findings: 2017-2021**

1. Overall, between 2017 and 2019, Wisconsin witnessed a dip in most property, violent and disorder/society crimes before reporting a sustained increase across most categories of crime since 2020. Homicides, aggravated assaults and auto thefts have increased significantly.
2. Numerous quality-of-life crimes, including property and society offenses, have risen

since 2019. These nuisance crimes are becoming pervasive and are especially acute in Milwaukee and other large urban centers.

3. Proxy measures for violence (weapons violations and gunshot detection data) suggest that the volume of firearm-related violence is at record levels since the summer of 2020 and is continuing apace well into 2022, without interruption.

4. Arrests have fallen dramatically across almost all offense categories, especially for juvenile offenders, despite those offenses rising in volume over the past two years. As police make fewer arrests amid more crime, more offenders face little to no accountability and likely are free to commit more and future crimes, further accelerating crime totals.

5. While most offenses rose and fell across the state in tandem across the period, Milwaukee recorded larger percentage and volume increases in some offenses than most other jurisdictions. Conversely, Milwaukee's decline or rise in some crime categories bucks trendlines in other jurisdictions to such a degree that the city's reduction in offense totals actually obscures the trend elsewhere.

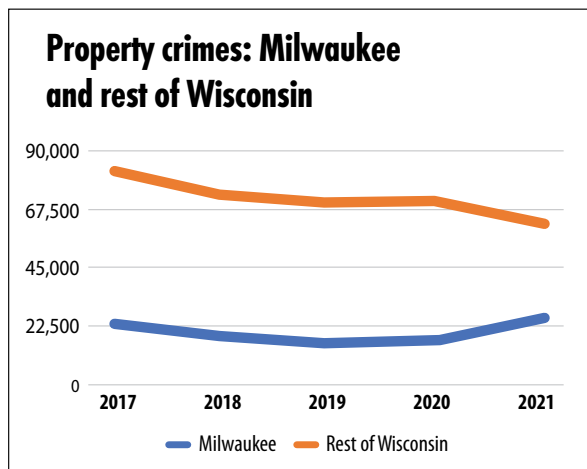
6. Reporting anomalies mar crime trend analysis in two critical ways:

- First, many jurisdictions (across diverse geographic and population profiles) were not fully compliant with the state's new Wisconsin Incident-Based Reporting System prior to 2019, some extending into 2020, making offense-level analysis by jurisdiction difficult or unreliable.
- Second, Milwaukee's reported offense-level figures appear to be incongruous with trends in the rest of the state. Since that city represents an outsized share of offenses across almost all categories of crime, reporting inconsistencies there would significantly alter statewide totals and render state-level trends incomparable.

## Statewide Crime Trends

### Property Crimes

Overall property crime fell 17% from 2017 to 2021 but rose 1.8% statewide from 2019 to 2021. Auto theft has increased significantly, while larceny-theft and burglary are trending downward. As with many categories of crime, property crimes have increased in Milwaukee in recent years but decreased elsewhere.



### Violent Crimes

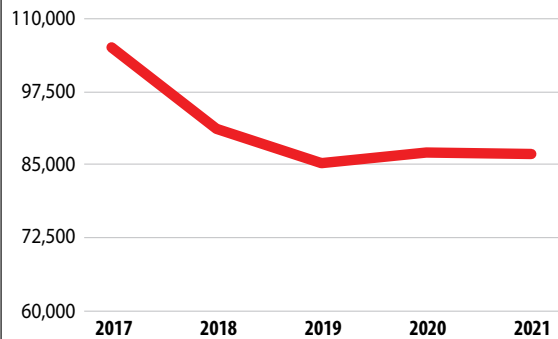
Violent crime volume was statistically unchanged (down 0.7%) from 2017 to 2021 levels across the state as a whole. Robbery fell most dramatically in Wisconsin as a whole, down almost 40% across the state and down 45% outside Milwaukee. In Milwaukee, robberies declined 34% between 2017 and 2019 and have remained essentially flat (down 2.1%) since then.

The state as a whole was on a positive, safer trajectory between 2017 and 2019, when violent crime decreased 7.5%. But a spike since then reversed the gains. Trends since 2019 are much more troubling across the state as a whole. Violent crime (homicide, rape, robbery and aggravated assault) jumped 7.4% from 2019 to 2021, with a 71.7% increase in homicides and a 12.2% uptick in aggravated assaults.

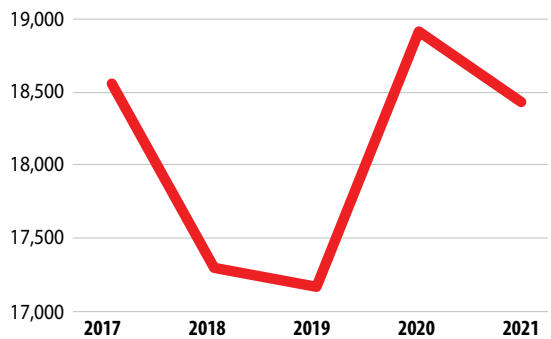
With approximately 10% of the state's population, the city of Milwaukee accounted for an outsized share of the total crime volume (in 2021, 60% of homicides, 53% of aggravated assaults and 68% of auto thefts) and is driving the statewide increase in these rising serious crime categories.

In 2021, Milwaukee reached its record homicide total (194), and the number of aggravated assaults, which include shootings, remained elevated (up 26% from 2019).

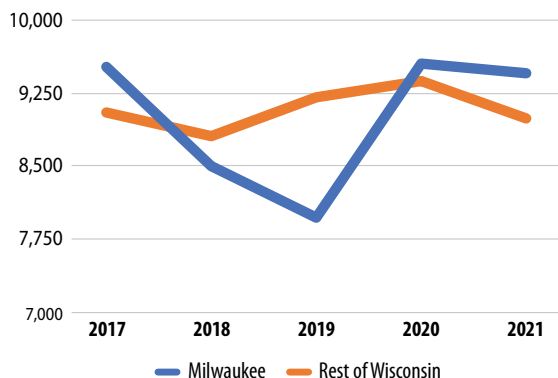
### Property crimes: All of Wisconsin



### Violent crimes: All of Wisconsin



### Violent crimes: Milwaukee and rest of Wisconsin



## Homicides

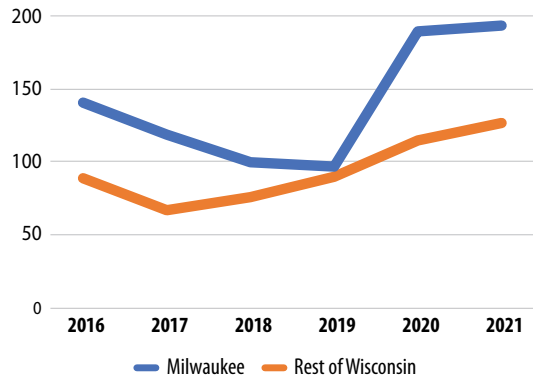
There are more homicides in Milwaukee each year than in the rest of Wisconsin combined — a record 194 in 2021 in Milwaukee, for example, vs. a total of 127 everywhere else.

That means the city with only 10% of the state's population had 60% of the state's homicides in 2021. Madison, the state's second-largest city with a population of 269,000, about half as large as Milwaukee, had 10 homicides. The city of Racine, with slightly under 80,000 people, had five.

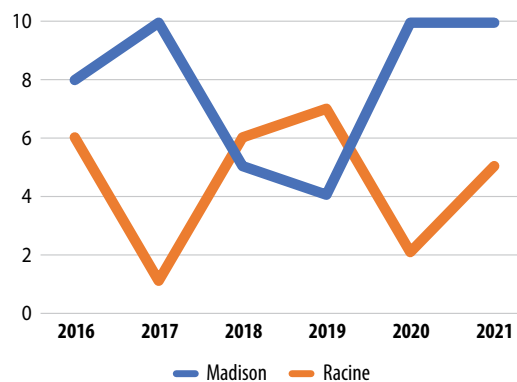
Milwaukee has seen a troubling spike in homicides since 2019, when there were 97. Just two years later, that doubled to 194 — a 100% increase. The rest of the state over those two years, meanwhile, saw a 41% increase, from 90 to 127.

That increase outside Milwaukee is cause for concern when looked at in aggregate, but the reality is that murder is unheard of across vast swaths of small-town and rural Wisconsin. In 2021, there were no homicides at all in 32 of the state's 72 counties, including fairly sizable ones such as Adams, Dodge, Door and Walworth. Outside the city of Milwaukee, the most homicides in Wisconsin in 2021 were in Kenosha County (16), Dane County, which includes Madison (15), suburban Milwaukee County (11), Racine County (nine) and Rock County (seven). Brown County, which includes Green Bay, had just five. Waukesha County had four.

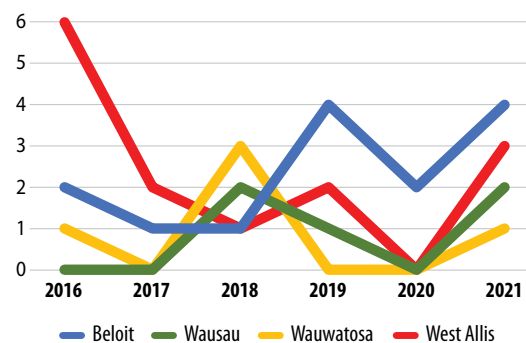
### Homicides: Milwaukee and rest of Wisconsin



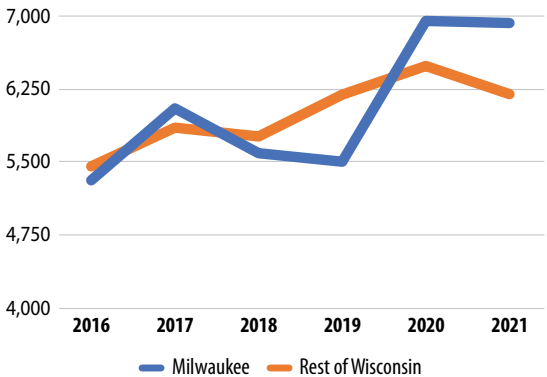
### Homicides: Madison and Racine



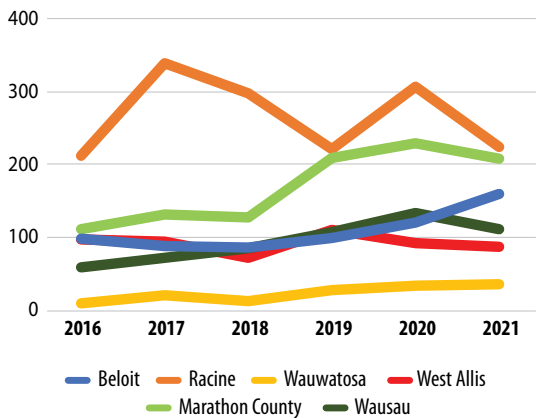
### Homicides: Other cities



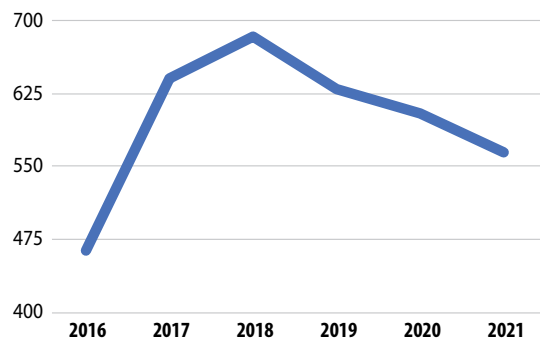
### Aggravated assaults: Milwaukee and rest of Wisconsin



### Aggravated assaults: Other cities



### Aggravated assaults: Madison



### About Wisconsin crime data

The available crime data for Wisconsin suffers a few noteworthy limitations:

First, the statewide Wisconsin Incident-Based Reporting System (WIBRS) is based on the FBI's updated crime reporting system — the National Incident-Based Reporting System (NIBRS) — which became mandatory for all law enforcement agencies in June 2022. WIBRS/NIBRS reporting offers greater offense-level and offender-specific data but is more onerous for agencies to collect.

While many local agencies, including the Milwaukee Police Department, adopted the WIBRS methodology prior to 2017, or backfilled their data, others did not. As a result, some prior years are not available for specific offenses at the agency level or the statewide totals are incomplete (for example, for vandalism). This study sought to correct for those data gaps or excluded data that was not directly comparable.

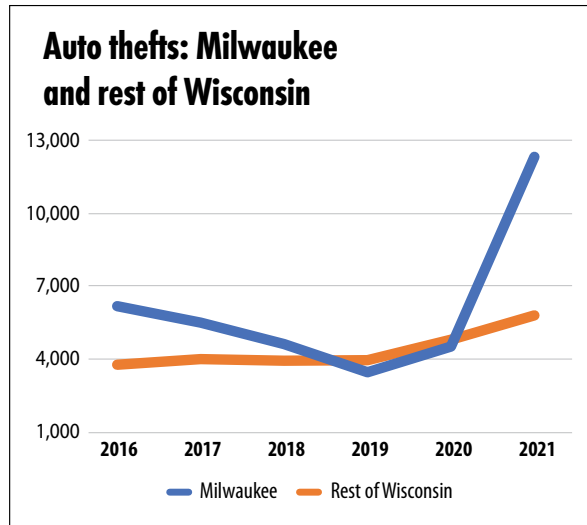
Second, there are a few instances in which the WIBRS portals' figures differ for the same offense category based on differing reporting methodologies. In 2021, "Group A Offense Counts by Agency" reports 4,911 simple assaults in Milwaukee using the new methodology, whereas "Offense Over Time by Agency," using the FBI's old Uniform Crime

See DATA, page 97 —>

### Auto Thefts

Auto thefts spiked precipitously (144%) across Wisconsin and dramatically in Milwaukee (255%), while thefts from vehicles are up 50% from 2019.

In Milwaukee suburbs, auto theft is up 436% in Wauwatosa from 2019 to 2021 and up 142% in West Allis. Madison also witnessed a 26% increase over the same period, Racine saw a 46% increase, and Beloit experienced a 10% jump. In volume, Milwaukee's 12,304 auto thefts in 2021 exceeded the total recorded for the rest of Wisconsin for the three-year period of 2017, 2018 and 2019.



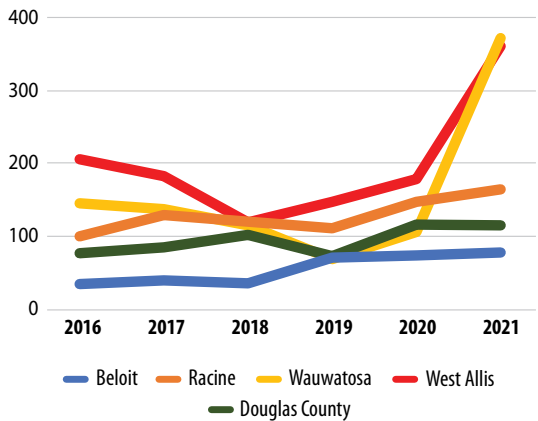
## Auto thefts

There is a worsening epidemic of auto thefts in the city of Milwaukee and in neighboring suburbs, and while the problem is not as monumental throughout the rest of Wisconsin, there are numerous areas that have seen large spikes in recent years.

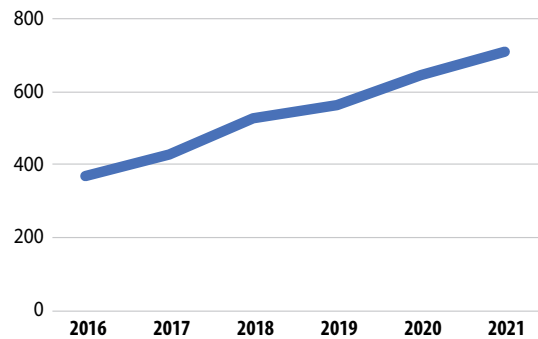
Milwaukee had 12,304 auto thefts in 2021 — a 124% increase over 2017. Wauwatosa and West Allis, both of which border Milwaukee, had increases over that same period of 170% and 96%, respectively, although the raw numbers in both cities are far below Milwaukee's total; the two large Milwaukee County suburbs had a combined 726 auto thefts in 2021.

On average, auto thefts throughout the rest of the state increased at slower rates, but the upward trend has still been dramatic in many cities, large and small. Hudson, for example, had only 12 auto thefts in 2017 but had 40 in 2021 — a 233% increase. Beloit went from 40 to 78 — a 95% increase. Superior went from 71 in 2017 (up from 58 in 2016) to 96 in 2021 — a 35% increase. A quick review of a dozen cities and counties throughout the state showed double-digit increases in all of them over the past five years, although 68% of all auto thefts in the state in 2021 were in the city of Milwaukee.

Auto thefts: Other cities



Auto thefts: Madison



DATA, from page 95

Reporting (UCR) methodology, reports 7,516 simple assaults in Milwaukee. This study adjusted for this by using the same dataset, “Group A Offense Counts,” for offense-level analysis, but UCR data for aggregated crime totals (i.e., property and violent) to enable cross-jurisdictional comparisons.

Third, Milwaukee’s reported offense-level figures starting in 2018 appear to be incongruous with trends in the rest of Wisconsin, among similarly sized cities nationwide and in adjacent offense categories. For example, from 2017 to 2019, all property crimes declined 15% across the rest of Wisconsin but fell 33% in Milwaukee — led by the largest categories by volume: burglaries and larceny-thefts. While Milwaukee’s overall property crimes returned to 2017 levels in 2021 — driven by the spike in auto thefts — burglaries reached a new low and shoplifting offenses fell to half the number five years before. At the same time, thefts from vehicles rose dramatically in 2020 and 2021 off 2019 lows.

The pattern of discrepancies raises questions about how Milwaukee is classifying and reporting offenses and about the data’s reliability. Since Milwaukee represents an outsized share of Wisconsin’s crime volume, any data errors would undermine the reliability of statewide crime figures and preclude their comparison to other jurisdictions or past years.

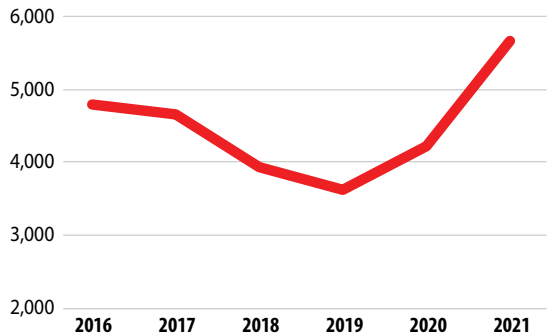
## Quality-of-Life and Disorder Crimes<sup>2</sup>

### Vandalism

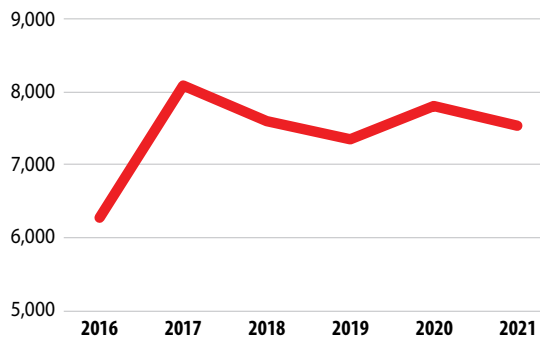
Vandalism (malicious destruction of property) statewide rose 39% in the post-2019 period. Statewide totals are not available for the full five-year period due to inconsistent data collection by agencies, but for agencies that did report consistently, vandalism rose only 3.6% from 2020 to 2021 after rising across all selected jurisdictions (i.e., Racine up 65%, Wauwatosa up 76%) and 27.6% statewide in 2020. Anomalously, Madison did not see a significant uptick in vandalism and actually reported a 12.5% decline between 2019 and 2021 — leaving it well below 2017 and 2019 levels.

In Milwaukee, vandalism increased 18.7% from 2017 to 2021, with a 56.5% increase after 2019 following declines in previous years. Notably, Milwaukee vandalism increased 34.3% in 2021 over the year prior, suggesting the trend was not isolated to the 2020 unrest.

### Vandalism: Milwaukee



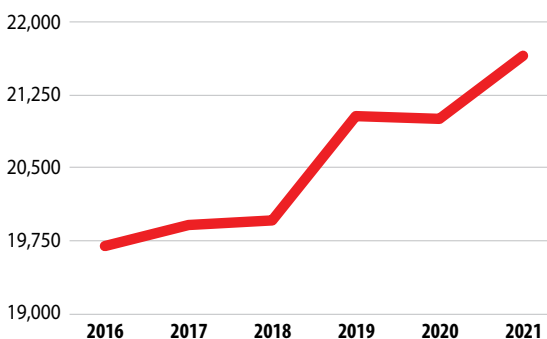
### Simple assaults: Milwaukee



### Simple Assaults

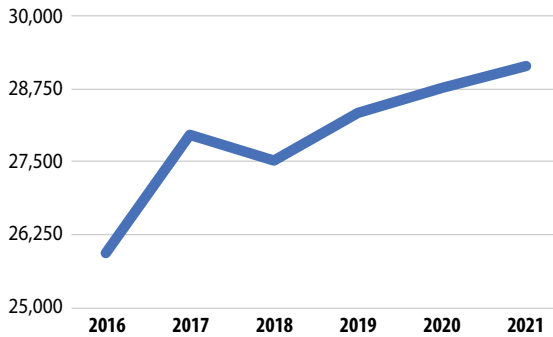
Simple assaults rose 4.2% across the state from 2017 to 2021, with the overall number of incidents ticking up only slightly (2.8%) after 2019. But the rest of Wisconsin — outside Milwaukee — trended upward (up 8.7% from 2017 to 2021 and up 3% after 2019). Milwaukee reported a 6.8% decline in simple assaults from 2017 to 2021 and small uptick (2.5%) since 2019, bucking the statewide trend in offenses.

### Simple assaults: Rest of Wisconsin

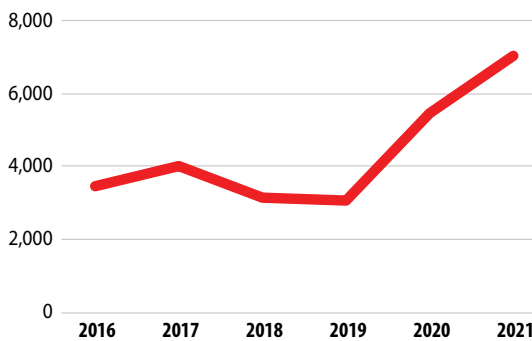




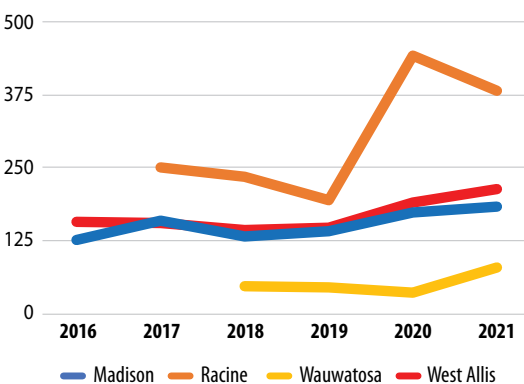
### Simple assaults: All of Wisconsin



### Weapons offenses: Milwaukee



### Weapons offenses: Other cities



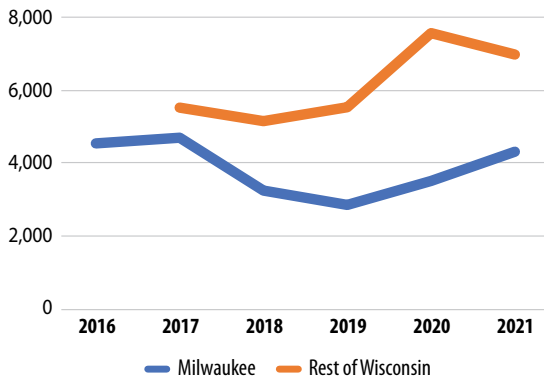
### Weapons Offenses

Weapons offenses (for instance, illegally carrying a firearm), which are notably linked to increased violence, rose across all selected jurisdictions. In Milwaukee, weapons offenses rose 127% from 2019 to 2021 (3,500 offenses vs. 7,059), further increasing 28.5% from 2020's record totals. Statewide figures suggest weapons offenses rose 96.4% in Racine, 30% in Madison, 75.6% in Wauwatosa, 45% in West Allis and 43.4% in Beloit, after falling in those jurisdictions in the prior period (2017-2019).

### Thefts / Shoplifting

Overall, larceny decreased 25%, or by about 20,000 offenses, from 2017 and fell 11.2% since 2019. While larceny dropped by a quarter from 2017 to 2019, it spiked 20% in Milwaukee after 2019 while continuing to fall in the rest of the state. A subset of larceny-theft, shoplifting, was largely unchanged even as overall theft declined 25% statewide from 2017 to 2021 and 15.7% since 2019. This indicator can be misleading due to law enforcement directives to not pursue shoplifters or by victims failing to report the crime. For example, Milwaukee's shoplifting offenses plummeted 56% from 1,526 in 2017 to 671 in 2020. They increased slightly to 763 in 2021, down 50% from 2017 and 7.4% lower than 2019. The trendline is similar in other large jurisdictions, where the adjacent category "other theft" increased slightly.

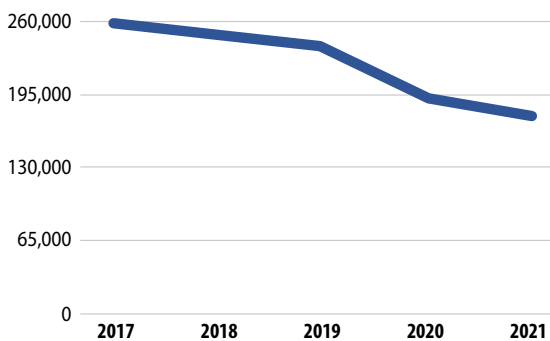
### Vehicle break-ins: Milwaukee and rest of Wisconsin



### Vehicle Break-ins

Vehicle break-ins around the state (for places where reliable data is available) saw continued downward trends in 2021 after one-year increases for 2020, with annual fluctuations in most jurisdictions. Milwaukee spiked dramatically (50.6%) after 2019, with double-digit increases each year, after falling 39% from 2017 to 2019. Milwaukee's share of these crimes rose to 39% of the total "theft from motor vehicle" crimes reported for 2021 — up from 32% of the statewide total in 2020. Although Milwaukee's total volume rose significantly, the reported statewide incidents dropped 8%.

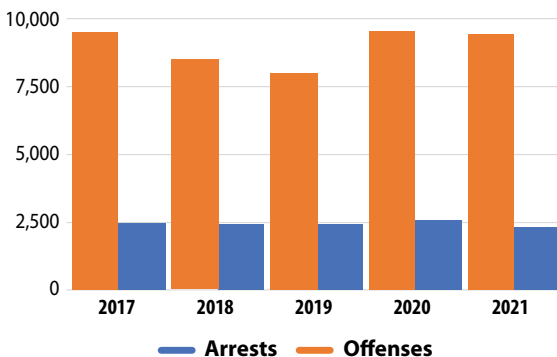
### Arrests, all crimes: All of Wisconsin



### Arrests

Statewide, arrests fell 32% between 2017 and 2021 — 82,437 fewer arrests by 2021. While the trend of fewer arrests began before 2017, it tracked closely with respective crime numbers — as crime fell, fewer were arrested for offenses. But in 2020, as crime spiked, arrests plummeted from 2019 levels, falling from 238,608 in 2019 to 192,214 in 2020 and further still to 176,508 in 2021. While "discretionary" arrests for drug crimes, liquor law violation and disorderly conduct fell, so, too, did arrests for more serious crimes, including burglary (down 50% from 2017 and down 28% from 2019), non-rape sex offenses (down 49% from 2017 and down 34% from 2019) and robbery (down 50% from 2017 and down 37% from 2019).

### Violent crimes, offenses vs. arrests: Milwaukee



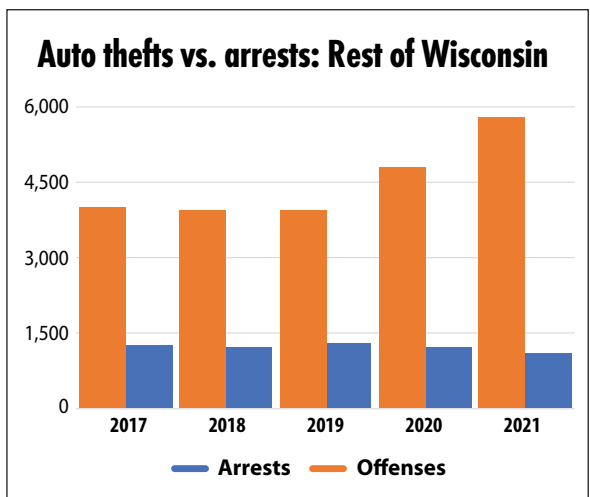
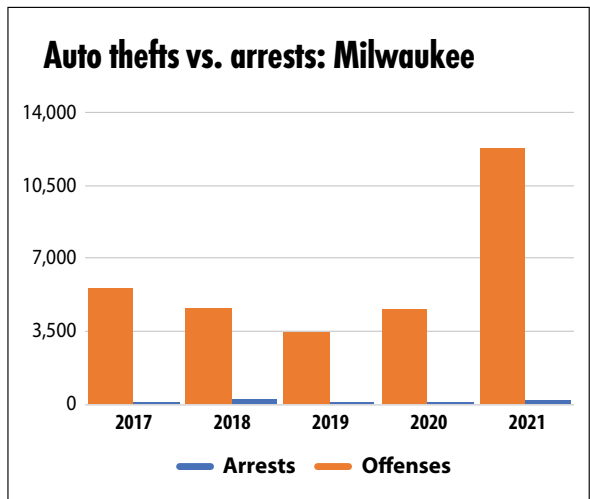
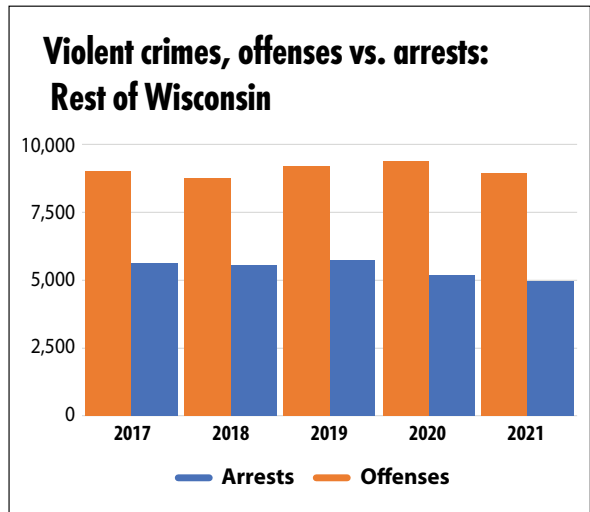
Notably, Milwaukee's persistently low arrest-to-offense ratio worsened with only 24 arrests per 100 violent

offenses, down from 31 in 2019. For homicides, Milwaukee police made arrests in fewer than half of homicides in 2021 — a dramatic decline from 88 arrests per 100 homicides in 2017. The rest of Wisconsin also saw a decline in both violent and homicide offense arrest shares but less dramatically so. Outside Milwaukee, police make arrests in more than half of violent crimes and eight for every 10 homicides.

Statewide, a shrinking share of offenses also resulted in arrest, with a pronounced decline in the offense-to-arrest ratio since 2019, continuing to fall through 2021 for aggravated assaults (down from 51% to 42%), robberies (down from 39% to 27%) and larceny-thefts (down from 33% to 22%). Auto thefts, where offenses more than doubled over the period, actually saw fewer total arrests in 2021 than in either 2017 or 2019, as the share fell from 19% of offenses resulting in arrests to 7%. In Milwaukee, less than 2% of auto thefts results in an arrest, while nearly one in five elsewhere in the state do.

For perspective, one of the largest arrest categories, disorderly conduct, fell from 32,797 in 2017 to 30,237 in 2019 and further to 22,430 in 2021 — below 2020 levels. But that raw reduction of 10,367 arrests is less than the total reduction in larceny-theft arrests over the period (25,300 arrests in 2017 to 21,665 in 2019 to 12,586 in 2021) and a much steeper drop than the decreased volume of reported offenses.

But this trend is not isolated to the



Badger State, as the FBI reported that nationwide arrest volume declined almost 30% from 2017 to 2020 and 25% from 2019 to 2020. (As of this analysis, FBI data is not available for 2021 and is likely to be both incomplete and unreliable due to reporting issues.)

While vandalism offenses fell between 2017 and 2019, those crimes spiked in 2020. By 2021, total vandalism exceeded 2017 levels, but arrests continued to fall sharply, especially in Milwaukee. Although the city saw more than 2,000 additional instances of property destruction in 2021 (5,661) than in 2019 (3,618), arrests fell by almost half to 216 — an already reduced figure from the 910 vandalism-related arrests in 2017, when vandalism crimes were fewer in number (4,789) than 2021 levels. The resulting vandalism offense-to-arrest ratio in Milwaukee went from 2017's 19% to 11% in 2019 to 3.8% in 2021. Other jurisdictions, including Racine and Madison, witnessed similar but less steep declines in vandalism offense-to-arrest ratios in the period.

Most alarmingly, weapons violations skyrocketed in Milwaukee in 2020 and 2021, up 74% (or 3,008 additional offenses) from 2017. At the same time, weapons arrests dropped 42% from 2017 to 2021. The resulting offense-to-arrest ratio dropped from 32% in 2017 to 28% in 2019 and then to 11% in 2021. These crimes, mostly related to firearms, are growing across the state (though at a much lower rate), but police agencies are making comparable numbers of arrests and achieving significantly higher offense-to-arrest ratios. In Madison, weapons arrests amounted to 60% of weapons offenses each year, while in Racine the figure was lower, ranging between 33% and 50%, but still significantly higher than in Milwaukee.

In 2021, there were 18,239 fewer juvenile arrests — almost half the number in 2017 and 46% less than 2019. While juveniles made up 15% of arrestees in 2017, they accounted for only 12% of those arrested in 2021. Even as weapons offenses and overall weapons arrests increased 5%, juvenile weapons arrests fell 26% since 2019. Although numerous violent and property crime offenses rose in volume from 2019, the number and share of juvenile arrests for those crimes fell substantially, with the notable exception of homicides, where the juvenile total and share rose.

## Robberies and burglaries

Assuming available data is accurate, there are two crimes in particular for which positive trends throughout Wisconsin are roughly in line with trends in Milwaukee: robbery and burglary.

Robberies were down 35% in Milwaukee between 2017 and 2021 and down approximately 45% throughout the rest of the state. Madison, Marathon County (including Wausau) and West Allis, for instance, all had drops between 30% and 51% over the same period.

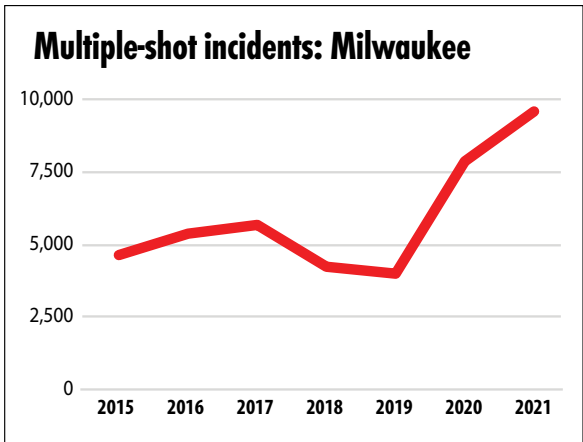
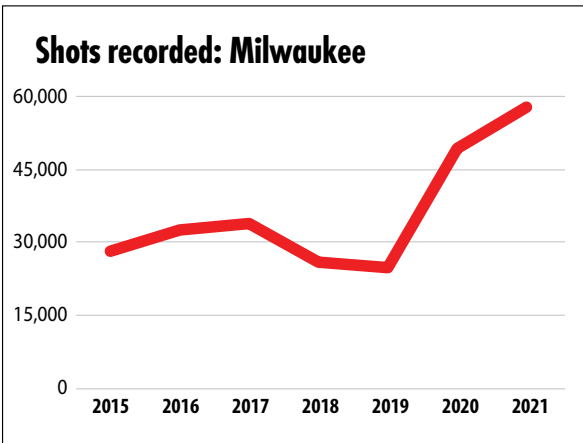
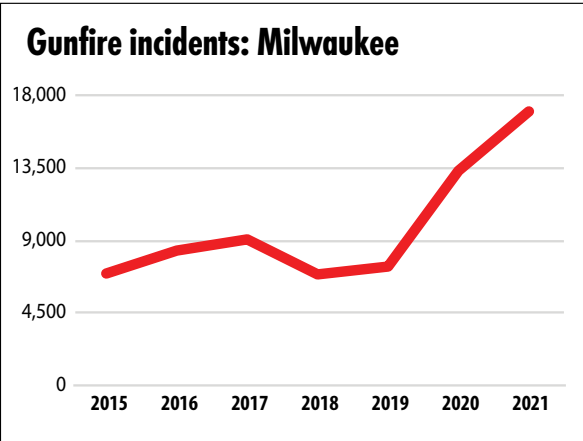
Burglaries were down 48% in Milwaukee between 2017 and 2021 and down 37% in the rest of the state. Beloit, Hudson, Racine, Superior, Wauwatosa and West Allis were among the cities that saw decreases of between 27% and 58%.

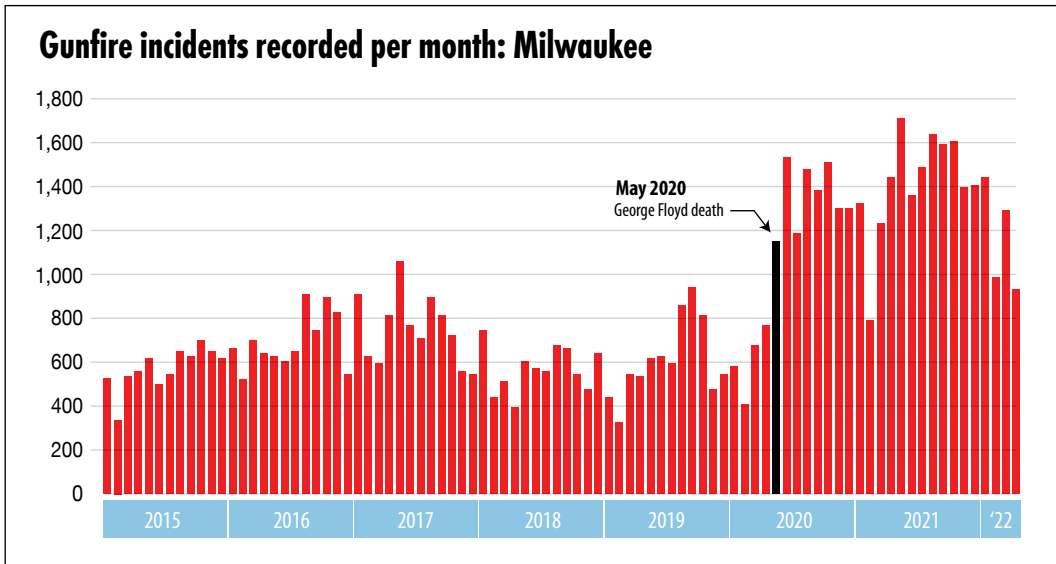
### Metrics for Violence

Cities across the country deploy ShotSpotter, an elaborate system of microphones designed to detect and geolocate gunfire, to direct police and emergency medical services to crime scenes and assist victims in real time. That data, unlike reported incidents logged in official reports or even emergency calls, reflects the “invisible” level of potential violence in large urban centers. Data retrieved from a Freedom of Information Act request to the Milwaukee Police Department illustrates how elevated and pervasive gunfire is in the city.

From 2015 to 2021, gunfire incidents rose 145% from 6,950 to 17,004 in 2021, while the total number of gunshots recorded more than doubled, as did the number of incidents involving multiple gunshots. The most precipitous increase in gunfire occurred between 2019 and 2020, and gunfire further increased in 2021. The first four months of 2022 show that gunfire incidents remain on pace to match or exceed 2021’s record levels. But deeper in the data, below the annual totals, a breakpoint emerges in the early summer of 2020, when the rate of gunfire doubled in the wake of the George Floyd unrest, then stayed at levels twice the seasonally adjusted figures for prior years.

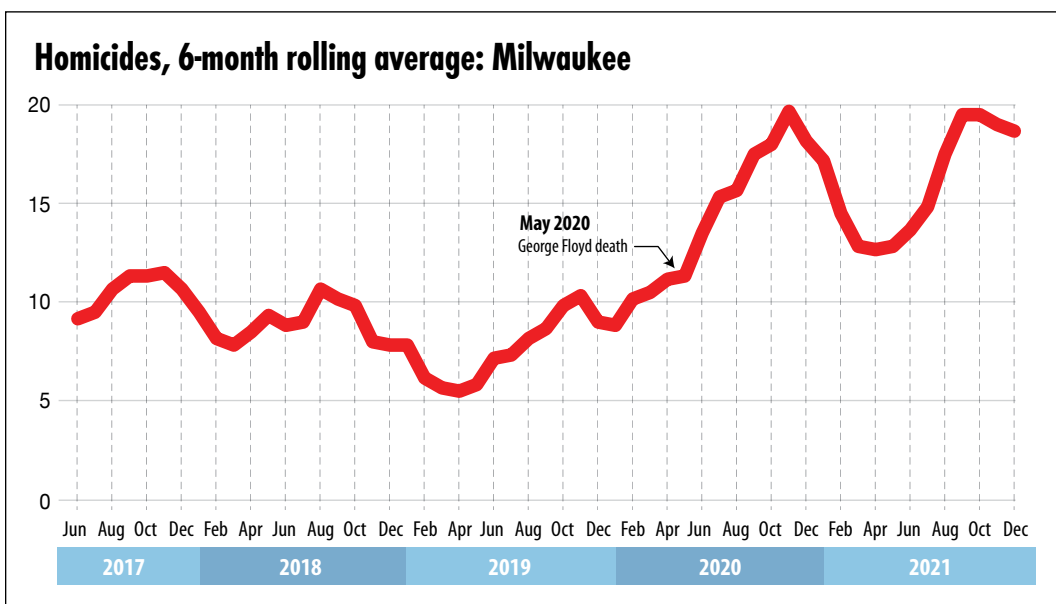
In short, the origins of Milwaukee’s wave of gun violence can be traced not to the pandemic lockdowns or to 2020 as a whole but to the summer of 2020, in keeping with the rise in ho-





micides, aggravated assaults and other violent offenses. Concerningly, the late 2020 violent crime wave did not ebb in 2021, and early data shows it is keeping pace with recent trends in 2022 as well.

In Milwaukee, homicide figures track this summer 2020 breakpoint as well, with the monthly average after seasonal adjustments almost doubling in the second half of 2020. The trend continued into 2021 and 2022, with monthly murder tallies consistently outpacing previous years' highs (excepting February 2021, when totals dipped before spiking the following month).



And as with weapons, Milwaukee's inability to arrest homicide and other serious offenders stands in stark contrast to the rest of the state.<sup>3</sup> In 2021, only 48% of the city's homicides (93 of 194) resulted in an arrest, while 80% of homicides in the rest of the state did. For aggravated assaults outside Milwaukee, 61% of offenses result in arrests, compared to just 24% in Milwaukee. Similarly, vehicle thefts elsewhere result in an arrest 19% of the time, compared to 1.4% in Milwaukee.

## Conclusion

Current data suggests Wisconsin's historically low crime levels and reputation as a home to safe and secure communities are in jeopardy if action is not taken to halt recent trends. But those trends are limited — either to specific crime categories (homicide, aggravated assault and auto theft) or geography (Milwaukee vs. the rest of Wisconsin). Moreover, while this rise in some crimes is concerning, is it a very recent phenomenon that, if diagnosed properly, can be addressed and reversed.

Due to the concentration of violence and serious property offenses in Milwaukee, any crime strategy to reduce statewide levels should be focused there and in other major cities where effective policing and prosecution policies would have the most impact. That must include reinvigorating the Milwaukee Police Department, whose ranks are depleted, budget stagnant and hands tied by the 2018 ACLU Settlement Agreement limiting "stop and frisk" practices.

Other more systemic concerns persist with crime data and the justice system in Wisconsin. Incomplete and incongruous crime data reporting may obscure the true challenge that policymakers face, not fully reflecting the volume and nature of crime across jurisdictions.

An accelerating trend that predates the recent spike in certain crimes is the declining number of arrests, especially for offenses such as auto theft that are rising precipitously. This may indicate that a limited number of offenders, who are not being apprehended and adjudicated, are responsible for a larger and growing share of crimes in Wisconsin, especially Milwaukee.



## **Badger Institute takeaways**

Rising crime in Wisconsin is a serious threat to the state, but it is limited in three ways:

- It is concentrated in specific offenses, most notably homicide, aggravated assault and auto theft.
- It is concentrated in Milwaukee, to the point that a city with 10% of Wisconsin's population suffers 60% of the state's homicides.
- It is concentrated in the most recent years. In most instances, increases after 2019 reverse trends that were declining until then.

Wisconsin policymakers should:

- Focus policy reforms and resources on Milwaukee.
- Focus on initiating and supporting the reinvigoration of the Milwaukee Police Department, which is hampered by insufficient staffing, budget and latitude for operation. Research elsewhere in the Mandate for Madison has details.
- Focus on restoring accountability to lawbreakers by reversing a declining trend in arrests.
- Prioritize full and accurate reporting of crime by law enforcement agencies.

## **The Rest of Wisconsin**

The founders of the FBI's Uniform Crime Reporting program grouped together so-called Part 1 offenses because they are all serious crimes that occur with regularity in all areas of the country and are likely to be reported to police. Part 1 statistics are arguably the best way to compare cities and measure the prevalence of crimes that most affect Wisconsinites' quality of life.

The tables that follow show Part 1 crimes for the state's largest cities (Milwaukee, Madison, Green Bay, Kenosha and Racine) and other counties or places that we think are representative of the state.

For simplicity's sake, we include raw data for numbers of crimes and percentage changes over two periods, 2017-2021 and 2019-2021. We chose not to include crime rates, or crimes per 1,000 or 100,000 people, although that information would be valuable as well and will likely be the subject of a forthcoming chapter.

The main part of this chapter focused on the dichotomy between Milwaukee and the "Rest of Wisconsin" — a surprisingly stark comparison. The rest of the state includes 90% of our



population, however, so we selected both larger cities and some counties and smaller locales for further analysis. They are far from homogenous. There are notable differences between places like Green Bay, Racine, Madison and Kenosha — not to mention Marathon County and Hudson.

For the most part, though, with the exception of homicide, aggravated assault and car theft (see related stories elsewhere in this chapter), Part 1 crimes are down in the larger cities we selected outside Milwaukee. Kenosha, Racine, Green Bay, Beloit and Superior all had fewer Part 1 crimes in 2021 than in 2017 or, with the exception of Racine, since 2019. Madison's numbers were about the same in 2021 as they were in both 2017 and 2019. Places like Hudson, Marathon County and Wauwatosa all experienced more crime in 2021 than in 2017 or 2019 — although, again, increases in the past two years were modest in comparison to Milwaukee.

— *Badger Institute*

### Wisconsin statewide

	2017	2018	2019	2020	2021	% CHANGE	
						'17-'21	'19-'21
<b>Homicide</b>	186	176	187	305	321	73%	72%
<b>Rape</b>	2,159	2,303	2,350	2,131	2,359	9%	0%
<b>Robbery</b>	4,330	3,482	2,954	3,073	2,655	-39%	-10%
<b>Aggravated assault</b>	11,885	11,337	11,677	13,408	13,099	10%	12%
<b>Simple assault</b>	27,987	27,546	28,363	28,791	29,166	4%	3%
<b>Burglary</b>	17,483	14,106	12,379	12,609	10,467	-40%	-15%
<b>Larceny-theft</b>	77,193	67,804	64,943	64,436	57,653	-25%	-11%
<b>Auto theft</b>	9,512	8,566	7,432	9,326	18,105	90%	144%
<b>Arson</b>	583	491	401	583	481	-17%	20%
<b>Total</b>	<b>151,318</b>	<b>135,811</b>	<b>130,686</b>	<b>134,662</b>	<b>134,306</b>	<b>-11%</b>	<b>3%</b>

### Beloit

	2017	2018	2019	2020	2021	% CHANGE	
						'17-'21	'19-'21
<b>Homicide</b>	1	1	4	2	4	300%	0%
<b>Rape</b>	32	34	20	26	23	-28%	15%
<b>Robbery</b>	34	32	31	34	29	-15%	-6%
<b>Aggravated Assault</b>	89	87	100	121	160	80%	60%
<b>Simple Assault</b>	412	339	398	383	388	-6%	-3%
<b>Burglary</b>	211	116	123	117	88	-58%	-28%
<b>Larceny Theft</b>	863	735	930	881	670	-22%	-28%
<b>Auto Theft</b>	40	36	71	74	78	95%	10%
<b>Arson</b>	5	9	11	12	8	60%	-27%
<b>Total</b>	<b>1,687</b>	<b>1,389</b>	<b>1,688</b>	<b>1,650</b>	<b>1,448</b>	<b>-14%</b>	<b>-14%</b>

**Green Bay**

	2017	2018	2019	2020	2021	% CHANGE	
						'17-'21	'19-'21
Homicide	0	1	3	6	3	NA	0%
Rape	82	81	82	76	74	-10%	-10%
Robbery	66	56	49	45	39	-41%	-20%
Aggravated assault	362	350	399	426	355	-2%	-11%
Simple assault	983	1,016	1,023	797	767	-22%	-25%
Burglary	324	252	245	206	236	-27%	-4%
Larceny-theft	1,751	1,460	1,362	1,277	1,161	-34%	-15%
Auto theft	89	102	124	116	133	49%	7%
Arson	19	7	10	12	12	-37%	20%
<b>Total</b>	<b>3,676</b>	<b>3,325</b>	<b>3,297</b>	<b>2,961</b>	<b>2,780</b>	<b>-24%</b>	<b>-16%</b>

**Hudson**

	2017	2018	2019	2020	2021	% CHANGE	
						'17-'21	'19-'21
Homicide	0	0	0	1	0	0%	0%
Rape	2	2	2	1	4	100%	100%
Robbery	1	1	1	3	1	0%	0%
Aggravated assault	13	16	16	33	20	54%	25%
Simple assault	61	27	40	43	48	-21%	20%
Burglary	32	20	29	7	18	-44%	-38%
Larceny-theft	308	349	333	302	329	7%	-1%
Auto theft	12	14	22	20	40	233%	82%
Arson	0	0	0	0	0	0%	0%
<b>Total</b>	<b>429</b>	<b>429</b>	<b>443</b>	<b>410</b>	<b>460</b>	<b>7%</b>	<b>4%</b>

**Kenosha**

	2017	2018	2019	2020	2021	% CHANGE	
						'17-'21	'19-'21
Homicide	5	4	5	7	13	160%	160%
Rape	61	48	58	49	68	11%	17%
Robbery	116	80	53	85	30	-74%	-43%
Aggravated assault	219	206	195	267	253	16%	30%
Simple assault	803	801	757	613	617	-23%	-18%
Burglary	337	248	188	214	146	-57%	-22%
Larceny-theft	1,392	1,196	1,222	1,004	800	-43%	-35%
Auto theft	76	51	172	226	158	108%	-8%
Arson	5	3	7	35	14	180%	100%
<b>Total</b>	<b>3,014</b>	<b>2,637</b>	<b>2,657</b>	<b>2,500</b>	<b>2,099</b>	<b>-30%</b>	<b>-21%</b>

**Madison**

	2017	2018	2019	2020	2021	% CHANGE	
						'17-'21	'19-'21
Homicide	10	5	4	10	10	0%	150%
Rape	97	119	123	81	111	14%	-10%
Robbery	212	244	225	167	142	-33%	-37%
Aggravated assault	642	685	631	606	566	-12%	-10%
Simple assault	1,077	1,027	1,181	1,180	1,231	14%	4%
Burglary	927	1,060	1,072	1,309	974	5%	-9%
Larceny-theft	5,458	5,147	4,966	5,374	5,029	-8%	1%
Auto theft	432	531	567	649	713	65%	26%
Arson	10	16	9	15	14	40%	56%
<b>Total</b>	<b>8,865</b>	<b>8,834</b>	<b>8,778</b>	<b>9,391</b>	<b>8,790</b>	<b>-1%</b>	<b>0%</b>

**Marathon County**

(including Wausau)

	2017	2018	2019	2020	2021	% CHANGE	
						'17-'21	'19-'21
Homicide	4	4	1	1	3	-25%	200%
Rape	55	48	78	60	68	24%	-13%
Robbery	17	11	12	19	9	-47%	-25%
Aggravated assault	132	128	209	229	208	58%	0%
Simple assault	539	498	531	473	457	-15%	-14%
Burglary	184	196	204	192	168	-9%	-18%
Larceny-theft	1,136	970	950	883	986	-13%	4%
Auto theft	41	60	73	96	89	117%	22%
Arson	5	4	7	5	9	80%	29%
<b>Total</b>	<b>2,113</b>	<b>1,919</b>	<b>2,065</b>	<b>1,958</b>	<b>1,997</b>	<b>-5%</b>	<b>-3%</b>

**Milwaukee**

	2017	2018	2019	2020	2021	% CHANGE	
						'17-'21	'19-'21
Homicide	119	100	97	191	194	63%	100%
Rape	434	524	453	480	462	6%	2%
Robbery	2,920	2,288	1,920	1,945	1,880	-36%	-2%
Aggravated assault	6,041	5,583	5,496	6,935	6,913	14%	26%
Simple assault	8,067	7,579	7,329	7,781	7,516	-7%	3%
Burglary	5,522	4,295	3,613	3,442	2,879	-48%	-20%
Larceny-theft	11,553	9,013	8,122	8,344	9,771	-15%	20%
Auto theft	5,504	4,624	3,467	4,519	12,304	124%	255%
Arson	313	252	198	288	240	-23%	21%
<b>Total</b>	<b>40,473</b>	<b>34,258</b>	<b>30,695</b>	<b>33,925</b>	<b>42,159</b>	<b>4%</b>	<b>37%</b>

**Racine**

	2017	2018	2019	2020	2021	% CHANGE	
						'17-'21	'19-'21
Homicide	1	6	7	2	5	400%	-29%
Rape	60	58	53	40	27	-55%	-49%
Robbery	122	80	62	90	45	-63%	-27%
Aggravated assault	338	297	221	306	224	-34%	1%
Simple assault	749	690	518	640	574	-23%	11%
Burglary	417	352	239	330	297	-29%	24%
Larceny-theft	1,208	1,202	755	937	652	-46%	-14%
Auto theft	129	120	111	147	162	26%	46%
Arson	13	17	5	17	8	-38%	60%
<b>Total</b>	<b>3,037</b>	<b>2,822</b>	<b>1,971</b>	<b>2,509</b>	<b>1,994</b>	<b>-34%</b>	<b>1%</b>

**Superior**

	2017	2018	2019	2020	2021	% CHANGE	
						'17-'21	'19-'21
Homicide	1	0	0	2	0	-100%	0%
Rape	8	11	14	6	12	50%	-14%
Robbery	8	16	4	10	7	-13%	75%
Aggravated assault	27	49	54	31	35	30%	-35%
Simple assault	189	193	202	199	260	38%	29%
Burglary	133	150	122	166	80	-40%	-34%
Larceny-theft	944	882	918	753	626	-34%	-32%
Auto theft	71	82	61	95	96	35%	57%
Arson	2	0	0	3	3	50%	NA
<b>Total</b>	<b>1,383</b>	<b>1,383</b>	<b>1,375</b>	<b>1,265</b>	<b>1,119</b>	<b>-19%</b>	<b>-19%</b>

**Wauwatosa**

	2017	2018	2019	2020	2021	% CHANGE	
						'17-'21	'19-'21
Homicide	0	3	0	0	1	NA	NA
Rape	0	6	8	2	2	NA	-75%
Robbery	42	38	28	32	29	-31%	4%
Aggravated assault	22	14	29	35	37	68%	28%
Simple assault	59	68	56	64	83	41%	48%
Burglary	173	127	90	76	80	-54%	-11%
Larceny-theft	1,417	1,019	1,197	986	858	-39%	-28%
Auto theft	137	115	69	106	370	170%	436%
Arson	1	2	1	1	1	0%	0%
<b>Total</b>	<b>1,851</b>	<b>1,392</b>	<b>1,478</b>	<b>1,302</b>	<b>1,461</b>	<b>-21%</b>	<b>-1%</b>

<b>West Allis</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>	<b>2021</b>	<b>% CHANGE</b>	
						<b>'17-'21</b>	<b>'19-'21</b>
<b>Homicide</b>	2	1	2	0	3	50%	50%
<b>Rape</b>	28	30	31	36	24	-14%	-23%
<b>Robbery</b>	81	76	68	72	40	-51%	-41%
<b>Aggravated assault</b>	95	73	111	93	88	-7%	-21%
<b>Simple assault</b>	665	599	713	700	607	-9%	-15%
<b>Burglary</b>	323	253	266	238	161	-50%	-39%
<b>Larceny-theft</b>	1,528	1,270	1,292	1,318	1,200	-21%	-7%
<b>Auto theft</b>	182	119	147	178	356	96%	142%
<b>Arson</b>	7	6	9	10	12	71%	33%
<b>Total</b>	<b>2,911</b>	<b>2,427</b>	<b>2,639</b>	<b>2,645</b>	<b>2,491</b>	<b>-14%</b>	<b>-6%</b>

## Endnotes

<sup>1</sup> Data is derived from the Wisconsin Department of Justice data dashboard, "UCR Offense and Arrest Data by Agency" ([www.doj.state.wi.us/dles/bjia/ucr-offense-and-arrest-data-agency](http://www.doj.state.wi.us/dles/bjia/ucr-offense-and-arrest-data-agency)) for both offense counts and arrest figures unless otherwise noted. Offense-level analysis for "sub offenses" not included or calculated separately from UCR are derived from the WIBRS Data Explorer including "Offense Counts" and "Agency Offense Trends" for 2017-2021, [www.doj.state.wi.us/dles/bjia/wibrs-data](http://www.doj.state.wi.us/dles/bjia/wibrs-data)

<sup>2</sup> These crime categories (except simple assault) under WIBRS are collected inconsistently by agencies; thus, statewide totals are not reflective of total volume due to multiple agencies failing to report in previous years. Only like-to-like totals of reporting agencies were used to report trends, and aggregated statewide totals are not comprehensive, thus are excluded.

<sup>3</sup> This data differs from previous offense-to-arrest ratio figures due to this corresponding to a specific offense tied to a specific arrest, whereas previous data only corresponds to arrests per offense, not arrest *for* offense. A given crime could have multiple offenders and would increase the total share but not affect the arrests for a specific crime discussed here.



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## A PREFACE TO

# The Thinning Blue Line: Milwaukee Police Department's Attrition Crisis

**M**ilwaukee is among the cities that have repeatedly cut law enforcement positions in recent years.

Not only has the city reduced the number of authorized police positions, it has fewer officers to fill them, leading to higher vacancy rates. This inability to fill what remaining positions the city is funding includes leadership ranks: The Milwaukee Police Department is facing a damaging loss of institutional knowledge and practical skills, a loss that could worsen policing just when Milwaukee needs its force to perform at its peak.

Here, researcher Sean Kennedy measures the results in reduced police protection for the city's beleaguered citizens.

Politicians who wanted to defund the police have backpedaled as crime has surged. But Kennedy finds they need to begin to repair the institution that serves as the frontline defense of Milwaukeeans' right to live in peace. Here is how.

— *Badger Institute*

## ABOUT THE AUTHOR



**Sean Kennedy** is a visiting fellow at the Maryland Public Policy Institute, where his work focuses on crime and justice issues. His research and writings have appeared in *The Wall Street Journal*, *The Washington Post*, the *New York Post*, *City Journal* and *The Baltimore Sun*, among other publications.

# The Thinning Blue Line: Milwaukee Police Department’s Attrition Crisis

By Sean Kennedy

## Overview

The Milwaukee Police Department (MPD) has experienced a dramatic reduction in sworn officer staffing levels from its 1995 levels in both authorized (budgeted) and actual (staffed) positions. The decline in the number of sworn officers, especially those in leadership and critical functions, has become more pronounced in recent years as the need for greater policing has grown amid rising violent and property crime since 2019.<sup>1</sup>

While the challenge of rising law enforcement attrition is not unique to the City of Milwaukee, the problem is more acute due to both the scale and type of staffing losses. As the city grapples with record levels of homicides, shootings and auto thefts, city leadership has implemented plans to further shrink MPD’s authorized sworn officer level.

Meanwhile, voluntary departures (resignations and retirements) are increasing force-level losses beyond intended attrition rates. The 2022 vacancy rate (open vs. staffed positions) stands at 11.2% — more than *six times* the 2019 rate of 1.8% and *16 times* the 1997 rate of 0.7%. Of late, MPD cannot maintain its significantly reduced staffing levels due to severe recruitment and training problems.

Figure 1

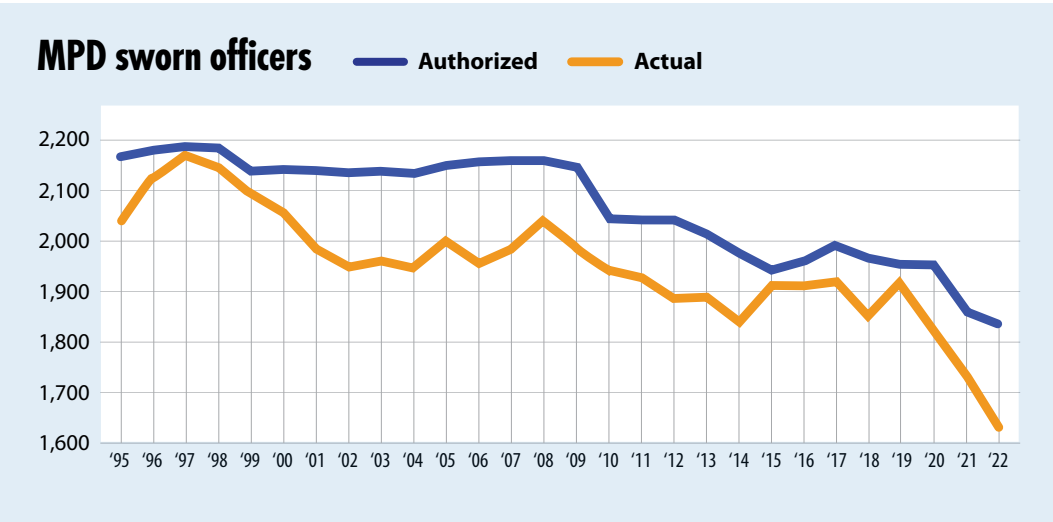
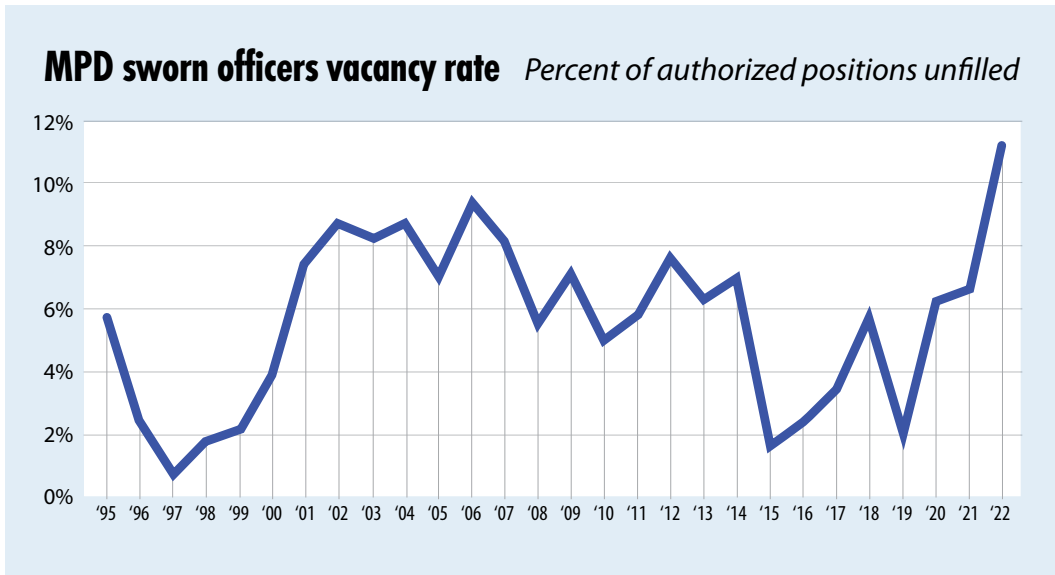




Figure 2



The consequence — designed and collateral — is that MPD’s ranks have been depleted over the past 25 years by 24.8%, or an actual reduction of 538 officers, between a peak in 1997 and 2022. The number of budgeted positions has been reduced by 16%, while the city’s population has fallen only 4% during that period. So, the number of officers per capita dropped from 350 per 100,000 residents in 1997 to 280 per 100,000 in 2022.

Projections suggest the ranks will fall even further — to as few as 1,432 sworn officers by the end of 2023, a 34% drop from 1997, when MPD had 2,169 sworn officers.

### Department-wide Trends

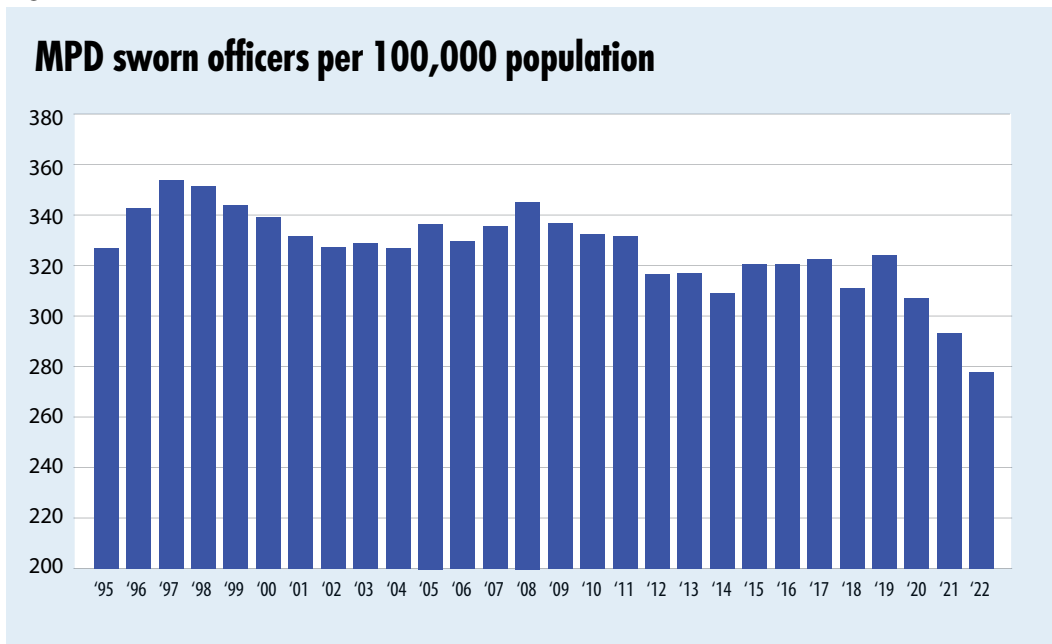
As the historical trends show, authorized force levels declined slightly between 2010 (2,043) and 2019 (1,951) prior to the city leadership’s 2020 announcement that it would cut another 120 officers through attrition.<sup>2</sup>

That was also prior to Mayor Cavalier Johnson’s announcement in late September 2022 that his budget proposal cuts more positions. The *Milwaukee Journal Sentinel* reported that in the proposed budget, the average sworn strength in the Police Department would drop from 1,657 officers to 1,640.

Actual force levels dropped even more sharply than intended after 2019, creating a widening vacancy gap between budgeted and filled positions. In 2019, less than 2% of budgeted sworn positions were vacant; by 2022, that climbed to 11.2% (206), even as the authorized force level decreased.

This vacancy gap has two related causes: persistent staff departures and the failure to

Figure 3



recruit and onboard new officers to fill the growing vacancies. In short, MPD officers are leaving faster than they can be replaced.<sup>3</sup>

### ***Rising Attrition***

The department has experienced a steady increase in attrition from voluntary departures (resignations and retirements) between 2018 and 2021. Over those four years, 523 officers have left willingly, compared to only 52 who were terminated, disabled or died, for a total of 575 in departures. Thus 90% of the raw attrition was due to officers' own decisions.

Following June 2020 — the month after civil unrest began related to George Floyd's death while in Minneapolis police custody — voluntary departures soared, rising 33% in the last seven months of 2020 compared to the same period in 2019 and 2018. While resignations declined by a third in that period, retirements — a much larger category by volume — rose by 57%.

Adjusting for a longer time frame, the trend of increasing voluntary departures holds (while involuntary ones declined). Retirements increased by 26% between June 2020 and January 2022 compared to the same 20-month period between June 2018 and January 2020, and retirements rose 18% compared to the prior 22-month period (June 2018 to March 2022).

Since 2020, when then-Mayor Tom Barrett and the Common Council pushed to reduce, through attrition, the police force even further out of a desire to cut costs and out of political hostility toward law enforcement,<sup>4</sup> the number of retirement-eligible officers has only grown, presaging even more dramatic staffing declines.

Approximately 180 MPD personnel were eligible for retirement in 2021, and nearly 200 more will be eligible in the following two years, for a total of 371 potential voluntary departures on the immediate horizon.<sup>5</sup> Of those 180 retirement-eligible officers, 107 accepted their retirement. Based on that share, the department is on track to lose 300 officers between 2021 and 2023 with 220 retirements in addition to 75 resignations and a dozen other miscellaneous departures — averaging a net annual loss of 100 officers per year.

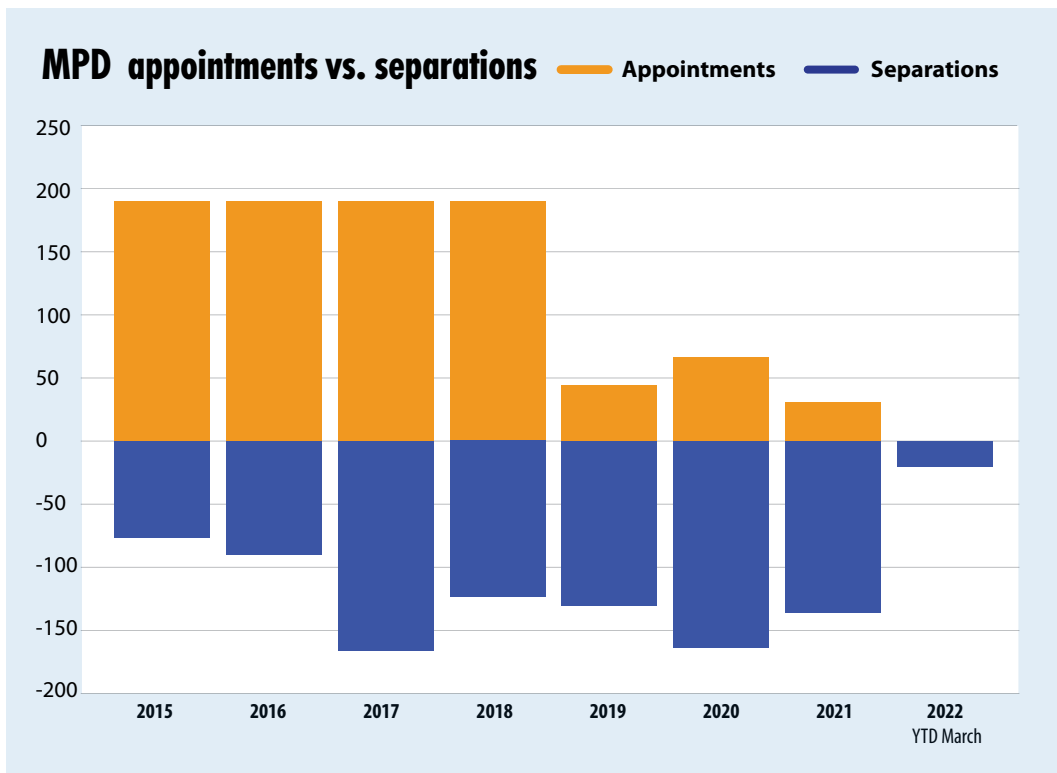
But counting total separations, MPD lost 164 officers in 2020 and another 135 in 2021, so if last year's trend holds, total attrition would exceed 400 officers, reducing the force to just over 1,400 sworn personnel.<sup>6</sup>

While these figures (a total combined attrition loss of 249 between June 2020 and March 2022) are elevated, the staffing crisis is compounded by the department's inability to recruit, train and appoint new officers to replace the departing ones.

### ***Recruitment Woes***

Milwaukee's police force was already understaffed following a slowdown in recruiting and onboarding cadets. Each year between 2015 and 2018, MPD appointed roughly 190 new officers to the force, but that fell to 45 in 2019, 66 in the March 2020 class (pre-COVID), 31 in 2021 and none in the first three months of 2022. In the last full three-year period (January 2019 through December 2021), MPD lost through all separation types 430 offi-

Figure 4



cers and appointed only 142, for a net loss of 288 officers.

For the first time in recent memory, the department has reached a level of vacancies such that it could not fill all the needed officer slots to maintain current force levels even if it did not sustain a single retirement, resignation or other separation.

The declining availability of new recruits, due to both city-implemented hiring freezes and budget cuts and a lack of applicants, creates another type of crisis — a crisis of quality.<sup>7</sup> As the supply of quality recruits shrinks and as demand rises, MPD may be compelled to accept less qualified or previously unsuitable applicants. This phenomenon is likely to exacerbate any discernible police-community tensions and further degrade the department's ability to address public safety challenges in the future.

### **Leadership Loss**

Quality leadership and role model officers become even more critical in this situation, but underlying trends showing an acute exodus of police leadership personnel bode poorly for MPD's future. Unlike ongoing recruitment challenges, the consequences cannot be remedied with more resources — either funds or effort.

More than frontline officers, veteran cops, especially senior and mid-level leadership, are departing en masse — taking their institutional knowledge, decades of experience and practical skills with them.

In the wake of the George Floyd unrest in 2020, an increasing number of officers in highly

Figure 5

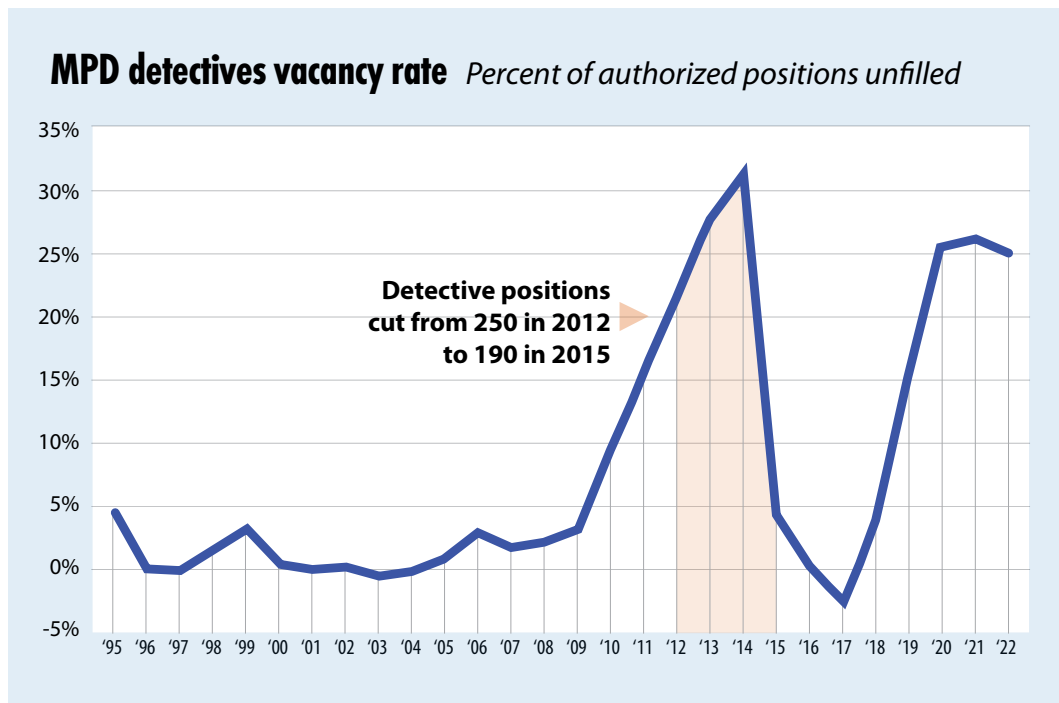
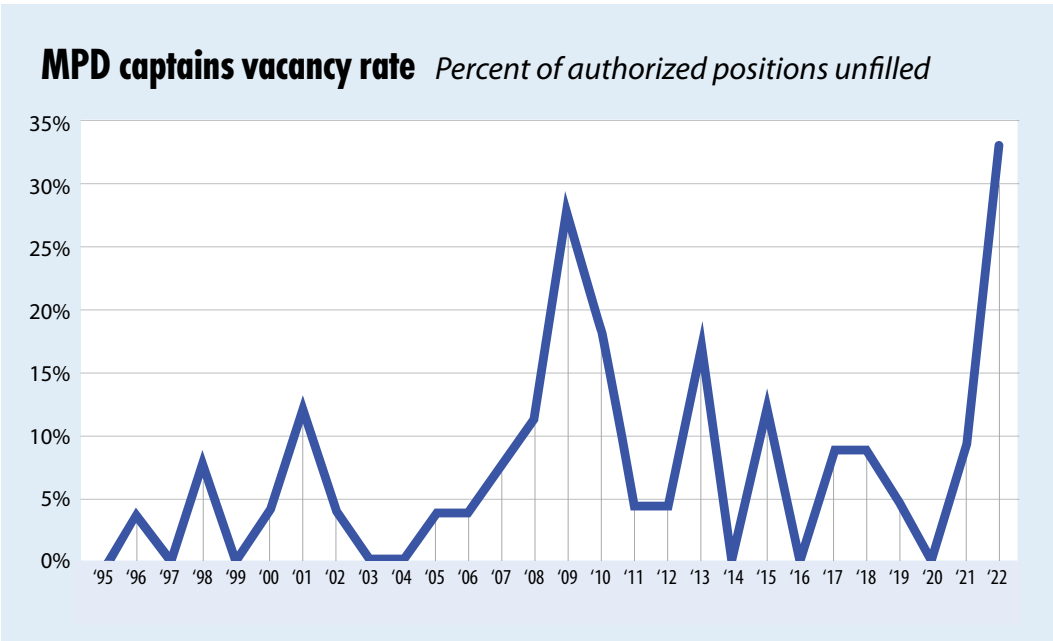


Figure 6



valued leadership roles left MPD. Retirements for senior ranking officers, including sergeants, lieutenants, captains and inspectors, more than doubled (+123%) from June to December 2020, compared to the same period in 2019. While the surge in senior-level retirements has slowed, retirements among these ranks are up 40% from June 2020 through March 2022, compared to the same period in 2018 to 2020.

While it follows that veteran officers are closer to retirement and more likely to depart, the increased number of departures represents an outsized share of senior staff relative to their total number. In other words, there are many more frontline police officers than lieutenants, sergeants, captains and inspectors, but leadership personnel are leaving in disproportionate numbers.

As the overall budgeted force levels have diminished since their 1990s peak, so have actual totals, but none more so than in specialized roles (for example, detectives) and key leadership posts (sergeants, lieutenants and captains).

The number of detectives — a critical role in solving serious crimes and identifying offenders before they reoffend — has dropped, and now that position is severely understaffed by any available metric. In 2001, MPD employed 245 detectives, with every position filled. As role vacancies slowly climbed in the following years (and serious crime declined), MPD reduced the budgeted number of detectives from 250 in 2012 to 190 in 2015, shrinking the detective vacancy rate from 32% in 2014 to less than 1% in 2016 by simply eliminating the positions instead of filling them.

But the gap between filled and budgeted detective positions widened again starting in

2018 (-8), growing to -50 in 2021, leaving 26% of positions unfilled with 106 (-43%) fewer detectives than the peak of 247 employed in 2004.

Similarly, the share of sergeant vacancies remained consistently low from 1995 to 2020 (with the single-year exception of 2014, when it reached 16% before reverting to the norm in 2015). But it jumped to 13% in 2021 and remained at 12% for 2022, the first consecutive years with double-digit vacancy rates. By 2022, the vacancy rates for lieutenants (19%) and captains (33%) also rose dramatically due to attrition.

The month-by-month attrition data in leadership positions comports with larger force-wide trends, tracking the unrest of mid-2020 and growing political hostility toward law enforcement.

In the last seven months of 2020, 30 frontline MPD police officers retired, while another 31 in leadership roles did (including four captains, 10 lieutenants and 14 sergeants). From June 2020 to March 2022 compared to the same period in the years prior, senior leadership retirements rose by 43%, with 11 captains (+83%), 19 lieutenants (+46%) and 30 sergeants (+25%) retiring.

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**The Milwaukee Police Department's success as a crime-fighting agency is a necessary precondition for the city to thrive, more so than any other agency or service.**

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While 60-some departures out of a force of 1,630 may seem relatively small, the figures demonstrate massive leadership turnover just as the department grapples with rising crime, budget challenges and political hostility. There are only 21 captain positions, so the 11 captain retirements represent 52% turnover in divisional leadership (MPD captains lead 21 police subdivisions, including police districts and the homicide, forensics and internal affairs subdivisions).

The department's severe institutional brain drain, combined with a growing need for more personnel, creates conditions for compounding crises. MPD could be compelled to lowering its recruiting standards to expand the applicant pool. Lower-caliber recruits coupled with the knowledge loss from veteran departures could lead to poorer policing and potentially more police misconduct. This in turn would further sour public attitudes toward MPD, depress officer morale and drive away even more potential applicants. Such a reinforcing cycle would make Milwaukee less safe, more hostile to law enforcement and, over time, poorer as residents and businesses flee the city.

## Conclusion

The Milwaukee Police Department's success as a crime-fighting and emergency response agency is a necessary precondition for the city to thrive, more so than any other agency or service. If residents and businesses feel unsafe and leave the city, its tax rolls will shrink and its vitality as a community will be diminished.

Unless measures are taken, Milwaukee's crime crisis is likely to be worsened by depleted police staffing numbers — with fewer officers responding to calls, doing so more slow-

ly and more infrequently.<sup>8</sup> Crime investigations also would suffer as detectives become overburdened with increasing caseloads and a scarcity of colleagues to pick up the slack. A vicious cycle could ensue as veteran officers retire or resign in the face of unrealistic and unpleasant workloads.

Along similar lines, the growing brain drain among leadership reduces the training, support and institutional knowledge available to up-and-coming officers who one day will join the leadership. Circumstance then would compel the department to either promote unprepared officers or leave the positions vacant for undetermined periods. These short- and medium-term consequences would be exacerbated by the recruitment crisis, with fewer qualified cadets available to take over frontline roles.

The turnaround at the Los Angeles Police Department from the late 1990s to the 2010s offers an instructive model for Milwaukee.<sup>9</sup> Following the 1992 riots, LAPD listed from scandal to scandal under the transitory leadership of four “reform-minded” police chiefs until former New York Police Commissioner William Bratton took the helm in 2002.

Morale had sunk, retirements surged and recruitment standards fell. Serious crime, which had been decreasing for a decade in Los Angeles, had begun to rise. Residents reported feeling unsafe and rated the department poorly. Meanwhile, officers retired in greater numbers, rated the job poorly and admitted to engaging in “de-policing” — reducing proactive policing due to bureaucratic hurdles and potential discipline. Bratton’s tenure reversed those troubling trends, and LAPD brought crime levels down faster and more dramatically than did the rest of the country in that period.

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**More than frontline officers, veteran cops, especially senior and mid-level leadership, are departing en masse — taking their institutional knowledge, decades of experience and practical skills with them.**

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The parallels between Milwaukee in 2022 and Los Angeles in 2002 are not perfect, but they are striking: rising crime, sinking morale, a depleted police force, tense community-police relations and greater and burdensome oversight. In 2000, LAPD entered into a federal consent decree with the U.S. Department of Justice to curtail perceived civil rights violations and corruption. In 2018, the City of Milwaukee signed a settlement agreement in federal court with the ACLU to end alleged racial bias in policing practices including stops and searches.<sup>10</sup>

These challenges were met head-on as LAPD actively sought to increase its force levels from below 9,000 in the early 1990s to over 10,000 by the 2000s while focusing on recruit quality, training and retention, and new crime-fighting tools. Critically, both LAPD’s internal strife and tensions with the community were alleviated by raising, not lowering, expectations for officers. This was accomplished largely because Bratton had the confidence of city leaders and earned the respect of frontline officers.

Bratton implemented strategic reforms that increased morale in the department and

prestige in the community, which in turn made recruiting high-quality candidates easier. In short, he created a “virtuous cycle” as the positive community response engendered by his changes motivated his officers and propelled the flagging institution toward a mission of excellence.

A 2009 study by the Harvard Kennedy School of Government summed up LAPD’s turnaround:

We found the LAPD much changed from eight years ago, and even more so in the last four or five years. Public satisfaction is up, with 83 percent of residents saying the LAPD is doing a good or excellent job; the frequency of the use of serious force has fallen each year since 2004. Despite the views of some officers that the consent decree inhibits them, there is no objective sign of so-called “de-policing” since 2002; indeed, we found that both the quantity and quality of enforcement activity have risen substantially over that period. The greater *quantity* is evident in the doubling of both pedestrian stops and motor vehicle stops since 2002, and in the rise in arrests over that same period. The greater *quality of stops* is evident in the higher proportion resulting in an arrest, and the *quality of arrests* is evident in the higher proportion in which the District Attorney files felony charges.

The Milwaukee Police Department is not yet in existential crisis, but that time is quickly approaching — with a force too small to do its job, with an existing and future force incapable of sustaining its current level of performance, let alone meeting the challenge of rising crime. But that fate is not preordained. City leaders can and should choose another path to restore and revitalize the police force as an institution that is admired and prized by both its members and residents. That future is possible if city leaders choose to make the tough decisions necessary to make it a reality.



### **Badger Institute takeaways**

- Increase Milwaukee Police Department force levels, by increasing both authorized positions and recruiting efforts to ensure positions are filled.
- Bolster the detective ranks so that the department can solve more crimes.
- At least maintain, and where possible increase, recruiting and performance standards as a means of improving police morale.
- Emulate places that have succeeded in turning around negative crime and police morale trends.



## Endnotes

<sup>1</sup> All police staffing data is derived from Milwaukee Police Department figures provided to the author via public records requests including: “Sworn Separations and New Hires January 2018-October 2021” (received electronically Oct. 20, 2021); “Sworn Separations 2015-2017” (received electronically April 21, 2022); “Sworn Hires 2015-2017,” “Sworn Staffing Levels 1995-2014,” “Sworn Staffing Levels 2015-2022” and “Sworn Separated and New Hires December 1997-December 2014” (received electronically May 19, 2022). Materials were obtained under Wisconsin Public Records Law. Data is available upon request.

<sup>2</sup> Corinne Hess, “120 Milwaukee Police Officers Cut Under Mayor’s Proposed 2021 Budget,” Wisconsin Public Radio, Sept. 22, 2022; <https://www.wpr.org/120-milwaukee-police-officers-cut-under-mayors-proposed-2021-budget>

<sup>3</sup> Derrick Rose, “Surging Retirements, slower recruiting plague Milwaukee police staffing,” WISN 12 News, May 6, 2021; <https://www.wisn.com/article/surging-retirements-slower-recruiting-plague-milwaukee-police-staffing/36357576>

<sup>4</sup> Marla Hiller, “What Does ‘Defund the Police’ Mean in Milwaukee,” *Milwaukee Magazine*, June 26, 2020; <https://www.milwaukeeemag.com/what-does-defund-the-police-mean-in-milwaukee/>; Corinne Hess, “City of Milwaukee Turns Down \$9.7M in Federal Policing Grant,” Wisconsin Public Radio, Dec. 15, 2020; <https://www.wpr.org/city-milwaukee-turns-down-9-7m-federal-policing-grant>

<sup>5</sup> Ben Jordan, “MPD dealing with nearly 200 law enforcement vacancies as retirements continue to reduce staff,” TMJ4, Aug. 4, 2021; <https://www.tmj4.com/news/local-news/mpd-dealing-with-nearly-200-law-enforcement-vacancies-as-retirements-continue-to-reduce-staff>

<sup>6</sup> Since retirement “eligibility” is a continuing status, when officers become eligible for retirement but remain on the force, they retain their ability to retire at any time in the future. Thus, this is a rolling figure: The active-but-retirement-eligible total shrinks as officers retire but grows as other officers become retirement-eligible. Nonetheless, the share of retirement-eligible officers is growing, and the total number of those opting for retirement — leaving the force — is climbing relative to the share of non-retirement-eligible officers.

<sup>7</sup> Jeramey Jannene, “Milwaukee Adopts ‘Calm Before The Storm’ 2022 Budget,” Urban Milwaukee, Nov. 5, 2021; <https://urbanmilwaukee.com/2021/11/05/city-hall-milwaukee-adopts-calm-before-the-storm-2022-budget/>; Alison Dirr, “Milwaukee Common Council adopts \$1.76 billion 2022 budget that socks away funds for pension spike,” *Milwaukee Journal Sentinel*, Nov. 5, 2021; <https://www.jsonline.com/story/news/local/milwaukee/2021/11/05/milwaukee-common-council-adopts-1-76-billion-2022-budget-socks-away-funds-pension-spike/8559237002/>; Corinne Hess, “Milwaukee police chief threatens major cuts without staffing increase,” Wisconsin Public Radio, Oct. 14, 2021; <https://www.wpr.org/milwaukee-police-chief-threatens-major-cuts-without-staffing-increase>

<sup>8</sup> Milwaukee Police Department, “2022 Milwaukee Police Department Community Report: Strategies, Initiatives and Partnerships,” June 2022; <https://smcv191.files.wordpress.com/2022/06/2022-milwaukee-police-department-community-report.pdf>

<sup>9</sup> Stone, Christopher, Todd Foglesong and Christine M. Cole, “Policing Los Angeles Under a Consent Decree: The Dynamics of Change at the LAPD.” Program in Criminal Justice Policy and Management Working Paper Series, Harvard Kennedy School, May 2009; [https://time.com/wp-content/uploads/2015/04/harvard-lapd\\_study.pdf](https://time.com/wp-content/uploads/2015/04/harvard-lapd_study.pdf)

<sup>10</sup> ACLU, “Common Council Approves Historic Settlement with ACLU, with Sweeping Police Reforms to End Unconstitutional Stops and Frisks of Black and Latinx People,” July 10, 2018, <https://www.aclu.org/press-releases/milwaukee-common-council-approves-historic-settlement-aclu-sweeping-police-reforms>; Todd Purdum, “Los Angeles Agrees to Changes for Police,” *The New York Times*, Sept. 21, 2000; [https://library.csun.edu/virtual-exhibit/LAFR/documents/Part3\\_Training\\_1.pdf](https://library.csun.edu/virtual-exhibit/LAFR/documents/Part3_Training_1.pdf)



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## A PREFACE TO

# Toward Swifter Justice: Overburdened Prosecutors and Public Defenders Linked to Wisconsin Court Backlogs

**W**isconsin's court system is plagued by massive delays and a growing backlog of criminal cases. It now takes more than a year for a court to resolve an armed robbery charge, 14 months to resolve a sexual assault case and more than 15 months to resolve an allegation that someone committed a murder.

Victims are often waiting a year or even longer for justice, and some high-profile defendants have been inappropriately released to commit more crimes in a system where justice is rarely swift. Others are being denied for too long the constitutional guarantees to a quality, state-funded defense meant to ensure that the innocent are not unjustly incarcerated.

There are many facets to the criminal justice system ranging from cops dealing with crime on the streets to judges who decide on punishment. Here, we ask policy analyst Jeremiah Mosteller to look strictly at prosecutors who frequently have been the subject of intense criticism in some high-profile cases as well as state-funded defense attorneys who appear stretched too thin.

Wisconsin cannot flourish without an efficient and fair criminal justice system. Fortunately, Mosteller tells us, there are important initial steps we can take to begin to address the crisis.

— *Badger Institute*

## ABOUT THE AUTHOR



**Jeremiah Mosteller**, an attorney and criminal justice policy expert, is a senior policy analyst at Americans for Prosperity, where he supports the organization's 35 state teams in their public safety efforts. Before joining AFP, he served on the criminal justice teams at the Due Process Institute, the Charles Koch Institute and Prison Fellowship. Mosteller is a graduate of Liberty University School of Law, where he also earned his MBA.

# Toward Swifter Justice: Overburdened Prosecutors and Public Defenders Linked to Wisconsin Court Backlogs

*By Jeremiah Mosteller*

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## Introduction

Our court system is frequently described as one that merely seeks to discover the truth. A core foundation of that search for truth is a belief that both sides in our adversarial system have an opportunity to present their arguments on equal footing to a neutral, unbiased arbiter.

It is vitally important for justice that both prosecutors and defense attorneys have the necessary resources to ensure accurate justice, respect for the rule of law and the proper exercise of the government's power to restrict individual liberty. Prosecution and defense are not just the two sides in a courtroom but necessary balancing forces to ensure that proper accountability is imposed for those who have violated our laws.

What happens when both sides face overwhelming workloads and do not have the resources to meet the demands placed on them by state and local leaders?

Prosecutors must stretch their limited resources by declining to prosecute certain cases, rushing the process in others or waiting to act for weeks or months after receiving a potential case from law enforcement.<sup>1</sup> Defense attorneys facing similar constraints will have less time to devote to individual cases — causing additional delays, increasing the likelihood of erroneous case results and blunting their ability to provide the vigorous defense promised by the Sixth Amendment.<sup>2</sup>

These understandable responses to limited resources on both sides of the courtroom leave crime victims without the justice they deserve, result in the unnecessary incarceration of innocent individuals accused of a crime and undermine public safety in our communities.<sup>3</sup> These are surely not the results that many taxpayers believe they are receiving from their investment.

## Prosecution and Criminal Defense Structure in Wisconsin

Every state has a unique approach to providing for the prosecution and defense of criminal charges. Some states completely delegate this responsibility and power to local juris-

dictions, whereas others have built out state-funded and state-controlled systems. This complicated patchwork of systems can seem confusing, but it truly reflects our founders' view of states as "laboratories of democracy." This study neither analyzes nor reaches a conclusion on the better choice between local and state control of these vital government services, but it explores the structures in a number of states as context.

### ***District Attorneys***

In Wisconsin, district attorneys and those they hire to work in their offices are responsible for prosecuting all violations of the state's criminal laws and other related matters such as forfeitures, grand jury proceedings and appeals. District attorneys are elected by the voters of each county and have responsibility for the criminal prosecutors within that jurisdiction. The state provides funding for the salaries of district attorneys, assistant district attorneys and other staff in the offices, but counties must provide the financial resources needed for other operating expenses such as equipment, office space and additional staff. The amount of funding each district attorney's office receives is generally based on the reported caseload of each office.<sup>4</sup>

### ***Public Defender Board***

Wisconsin has chosen a combination of public defenders and appointed counsel to fulfill its Sixth Amendment obligation to defendants. The state's Public Defender Board is an independent executive agency responsible for appointing the State Public Defender to a five-year term of service. This officer and any staff he or she select are responsible for coordinating the legal defense for all individuals charged with a criminal offense in the state and determined to be indigent as defined in statute. This representation can be handled by assigning individual cases to private attorneys or utilizing the services of full-time employees of the State Public Defender's 36 regional offices.<sup>5</sup> The state Legislature appropriates all funding for both the Public Defender Board and the State Public Defender's office.

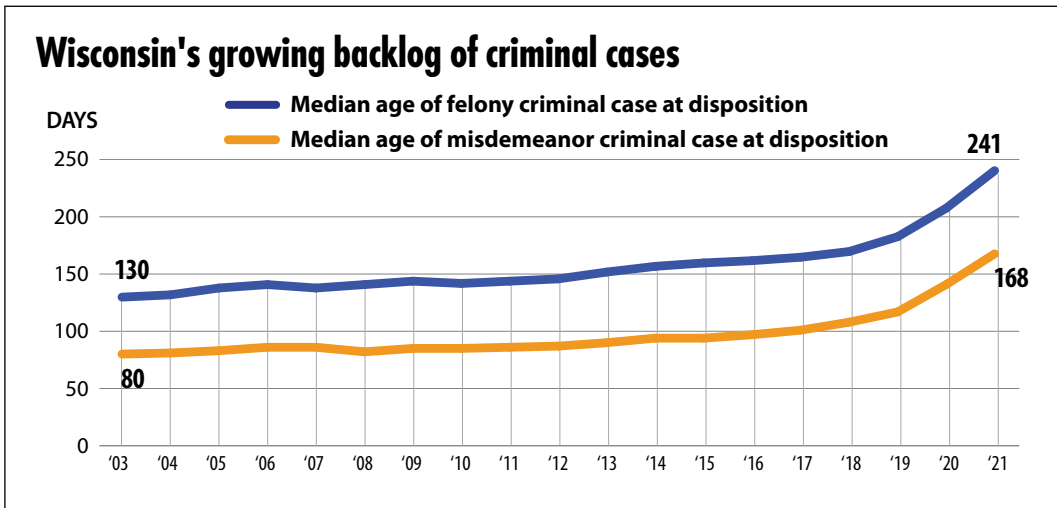
## **A Crisis of Delays in Justice**

Hidden in plain view is a growing crisis in Wisconsin. The state's court system is plagued by massive delays and a growing backlog of criminal cases. It now takes more than a year for a court to resolve an armed robbery charge, 14 months to resolve a sexual assault case and more than 15 months to resolve an allegation that someone committed a murder.<sup>6</sup>

Some misdemeanor charges take just as long — with one particular drug offense charge taking more than 16 months to resolve and ending only after prosecutors chose to dismiss the charge before a trial occurred.<sup>7</sup> Every day of delay is another day that crime victims go without justice or a blameless defendant is awaiting a jury to confirm his or her innocence at trial.

This crisis was severely exacerbated but not created by the COVID-19 pandemic or its associated shutdowns.<sup>8</sup> The number of backlogged cases already was growing year over year for many years, and the average time it takes to resolve a criminal case has grown consistently since 2003.<sup>9</sup> It now takes 85% longer to dispose of a felony criminal case and more

Figure 1



than 100% longer for a misdemeanor case.

Some may say that this growth indicates decades of neglect or apathy by Wisconsin's leaders, but the Badger State does not stand alone in seeing these types of delays. Other states surveyed for this analysis and the federal court system have seen a similar growth pattern in the time it takes to resolve a criminal case.<sup>10</sup>

Most of us, we can hope, will never see the harms of these delays firsthand, but they are ruining the lives of more and more families across Wisconsin every year. The state's leaders must step up to ensure that crime victims and defendants receive the justice they deserve. Without bold action to slow down this growth in delays, even a return to pre-pandemic growth will increase the delays by more than an additional 52 days for felonies and 48 days for misdemeanors before 2030.<sup>11</sup>

## Methodology and Hypothesis

Studying the criminal justice system of any state is challenging given how extraordinarily poor data reporting and transparency are throughout every single segment of the justice system.<sup>12</sup> Prosecutor and public defender offices are even further behind other parts of the system such as corrections departments in reporting data that can help legislators and other decision-makers implement improvements to the criminal justice system. This is partially understandable given the unique privacy and ethical concerns existing in the legal field, but it makes studying these systems in any state difficult. Here, we seek to effectively utilize the limited data available to explore how Wisconsin can improve justice for victims and defendants alike.

### Supply and Demand Problem

The growing delays in Wisconsin's justice system are a basic function of supply and

demand. Every crime and arrest constitute an event that requires a prosecutorial and potentially a public defender response. In aggregate, these serve as the level of “demand” for such services.<sup>13</sup> Prosecutors, defense attorneys and judges in Wisconsin for years have raised concerns that the “supply” of legal resources in the system is not enough to meet the demand. This has only gotten worse in recent years as the pandemic and inflation have further undermined how much supply can be provided with the financial resources provided by the Legislature.

### ***Selecting Comparison States***

To analyze some of the factors discussed in this study, it is necessary to compare Wisconsin to other states. Three groups of states were selected to ensure a more effective “apples to apples” comparison with Wisconsin:

- All neighboring states (Iowa, Illinois, Michigan and Minnesota).
- Three states with the most similar property and violent crime rates (New York, Pennsylvania and West Virginia).
- Six states with the most similar total number of property and violent crimes (Arkansas, Oklahoma, New Jersey, Massachusetts, Kentucky and Virginia).

### ***Classifying States***

An extensive review was completed of the sample states’ laws and fiscal budgets in recent years to determine how each has decided to support both the prosecution and defense functions of its justice system. Every state has a unique approach. The 14 states included in this study can be broken down roughly into three buckets:<sup>14</sup>

- State-funded: The state is statutorily required to provide all of the personnel and operational cost. (Six defense systems, one prosecutor system.)
- Hybrid: The state is statutorily required to provide some portion of the personnel and operational cost (e.g., 66% of the district attorney’s salary). (Five defense systems, seven prosecutor systems.)
- County-funded: The state has no statutory obligation to provide any portion of the personnel or operational cost but may choose to provide some grant funding. (Two defense systems, five prosecutor systems.)

*(Appendix A, at [badgerinstitute.org](http://badgerinstitute.org), provides a detailed breakdown of how each sample state is classified and the statutory or other legal justification for such classification.)*

### ***Hypothesis***

A major part of the conversation about improving the prosecution and defense functions of our justice system frequently revolves around fiscal resources.<sup>15</sup> Almost every year, Wisconsin’s Public Defender Board and district attorneys request an increase in state funding to deal with ever-growing demands on their time. My hypothesis is that a survey of the funding in the 14 states studied would reveal that Wisconsin provides less funding both per capita and per crime than other states — especially those with similar laws requiring the state to assume most or all of the fiscal burden for those functions — and compensates its attorneys at a much lower rate than other states. Both potential fiscal failures could have a clear impact on the “supply” of legal resources provided in those functions and could explain a substantial portion of the growing delays in justice found in the Badger State.

## **States' Support of Prosecution and Public Defense**

As discussed above, Wisconsin provides all of the funding for the state's Public Defender Board, but the Legislature provides only a portion of the personnel cost for the state's district attorney's offices. Many may worry that this is an uneven level of funding for these two systems within our adversarial justice system, but it is worth remembering that the state has a constitutional duty to provide a defense attorney to someone who cannot afford one and does not bear any constitutional burden to prosecute any crime.<sup>16</sup> Wisconsin's funding for these core government functions is significantly lower than the other states surveyed on a per capita basis but the situation is less clear when viewed on a per crime basis.

### ***Wisconsin's Prosecutor Funding Below Closest Peers***

The Wisconsin Legislature appropriated more than \$58 million in annual funding for the state's district attorney's offices in the past two years.<sup>17</sup> This represents slight negative real growth in appropriations once inflation has been considered. While this is surely a substantial investment, the state's current funding is significantly less than the most similarly situated states on a per crime and per capita basis.

Kentucky and Massachusetts are the sample states that have statutorily assumed the most similar fiscal burden among those with a hybrid funding method. Wisconsin's state funding for prosecutors is currently less than 40% of that provided by both states on a per crime basis.<sup>18</sup> On a per capita basis, Wisconsin provides less than half the prosecutor funding of Massachusetts and less than a third of Kentucky.<sup>19</sup> Both states also recently sought to significantly increase the total funding provided to their prosecutor systems, while Wisconsin's Legislature has failed to provide any real increase when growth is adjusted for inflation.

Among all of the other sample states, Wisconsin's funding of prosecutors is exactly where you would expect once you consider it within the context of each state's funding method. It provides less funding both per capita and per crime than the only fully state-funded system, the one in Oklahoma. Conversely, the Badger State provides more funding according to both metrics when compared to the other hybrid funding states that have assumed a much lower statutory proportion of the overall funding. Among all of those states, a few — Arkansas, Oklahoma and New Jersey — have increased their funding for prosecutors at a rate significantly faster than inflation, whereas the other states all have allowed inflation to slowly erode away the resources they provide to prosecutors.

### ***Wisconsin's Public Defense Spending in the Middle***

Wisconsin's Public Defender Board and State Public Defender received roughly \$113 million in funding over the past two fiscal years.<sup>20</sup> The board also recently received a one-time \$5.5 million grant from Wisconsin's American Rescue Plan Act funds to create a team of remote public defenders who can fill gaps when local counsel is not available. However, this is not a permanent increase in the system's resources.<sup>21</sup> The board's most recent appropriation is a net decline in fiscal resources given inflation.

Only five of the sample states — Kentucky, Massachusetts, Minnesota, Virginia and West



## The right to legal counsel in Wisconsin

Both the Sixth Amendment to the United States Constitution and the Wisconsin Constitution state that every defendant subject to an accusation that he or she has violated the law has a right to be represented by legal counsel as the state attempts to prove that such a violation occurred.<sup>1</sup> The Wisconsin Supreme Court has concluded that the state constitution “does not provide greater protections than the Sixth Amendment” even though its framers decided to use slightly different language than our nation’s founders.<sup>2</sup> This means the Wisconsin Supreme Court has merely adopted the case law developed by the United States Supreme Court as the rules that apply within its state for both constitutional provisions.

### ***When are someone’s Sixth Amendment rights triggered in Wisconsin?***

The U.S. Supreme Court has been explicit that a defendant’s right to counsel “arises after adversary judicial proceedings have been initiated.”<sup>3</sup> It is not restricted only to trial or other court hearings but extends to any other stage “where the results might well settle the accused’s fate.”<sup>4</sup> Given the uniqueness of every state’s justice system, the exact moment when this constitutional right is triggered may vary based on local context, but in Wisconsin, this right is triggered upon “the filing of a criminal complaint or the issuance of an arrest warrant.”<sup>5</sup>

### ***How does someone qualify to have legal counsel provided in Wisconsin’s justice system?***

There is an important distinction between the right to *access* legal counsel and the right to be *provided* legal counsel that is frequently lost in conversations about the Sixth Amendment.<sup>6</sup> In 1963, the U.S. Supreme Court clarified that a proper understanding of the amendment requires states to provide individuals with legal counsel when they are unable to afford an attorney with their own financial resources.<sup>7</sup> The Wisconsin Supreme Court had already concluded that counties must do this in 1858, but the constitutional burden shifted to the state after the 1963 ruling.<sup>8</sup> The U.S. Supreme Court did not clarify in its ruling when individuals should be considered “too poor” to afford their own legal counsel, so states have adopted a variety of mechanisms to make that determination.<sup>9</sup>

The Wisconsin Legislature has decided that a few small classes of individuals should be provided a state-funded attorney automatically.<sup>10</sup> Otherwise, it has delegated the responsibility of determining whether someone is indigent and should be provided legal counsel to the state’s Public Defender Board.<sup>11</sup> The board has decided to define whether someone qualifies for a public defender or appointed counsel according to whether the defendant’s family has either current assets or future income available to pay the cost of legal representation.<sup>12</sup>

In instances where the Public Defender Board does not find the person indigent, a trial court still must ensure that an individual’s right to counsel is satisfied.<sup>13</sup> In 1991, the Wisconsin Supreme Court ruled that a judge has “inherent authority” to appoint legal counsel for a defendant whom he determines is unable to afford private counsel and does not qualify for representation by the State Public Defender.<sup>14</sup> The cost of this appointment is borne by the local county and is called a “Dean appointment.”<sup>15</sup>

Virginia — have joined Wisconsin in assuming the full financial burden of indigent defense.<sup>22</sup> Wisconsin sits near the bottom of this sample when it comes to the amount of public defense funding it provides on a per capita basis, but when viewed on a per crime basis, the state moves to the center of the pack. When adjusted for inflation, three of those states (Massachusetts, Kentucky and Virginia) have drastically increased their total appropriations for public defense by a significant percentage in recent years. Minnesota has kept its adjusted appropriations flat, and West Virginia has seen a significant decline.

The remaining states sampled have statutorily chosen to be responsible for only a certain portion of the cost of indigent defense or have assumed no statutory obligation. Among those states, Iowa and New York stand out for their higher funding than Wisconsin for public defense even though they have assumed a smaller burden. New York provides close to the same amount of funding as Wisconsin on both a per capita and per crime basis even though the state has only voluntarily decided to provide certain grant programs to assist county-based public defender systems. Iowa provides funding that exceeds Wisconsin's level on both metrics, but it has required counties to retain a portion of local public defense cost.

### ***Data Gaps Hinder Comparisons and Analysis***

My initial goal was to complete a comparison of the number of prosecutors and public defenders in addition to their respective caseloads across states, but data in these two areas is lacking. It is vital that states improve tracking of both metrics if they truly want to better understand how their prosecution and public defense system are performing.

Only Iowa and Virginia complete any annual reporting on the number of full-time equivalent (FTE) positions provided by the funding appropriated by the legislature. It is therefore impossible to determine if Wisconsin is providing a comparatively smaller or larger number of attorneys in these two functions. But it is reasonable to conclude based on Wisconsin's relative lack of total funding when compared to other states that this lack of financial resources results in a lower number of attorneys being employed by the state for both prosecution and public defense.

### **What officials are saying about backlogs**

**"We** certainly have experienced a rise in cases and that has added to the workload of assistant district attorneys. The pandemic and case backlogs have extended the time between charging and resolution and that causes witnesses to lose interest, some move from the community and many victims and witnesses indicate an overall decreased level of engagement and increase frustration with the process."

**— Kent Lovern,**

*chief deputy district attorney, Milwaukee County*

**"A**cross Wisconsin, the number of open cases sitting on the desks of public defenders has gone from 32,000 before the pandemic to 64,000 in May of this year, according to data provided by the State Public Defender's Office. 'This is unsustainable and can potentially jeopardize the constitutional rights of our clients throughout the state,' SPD spokesperson Wilson Medina noted."

**— Channel 3000 report in July by Naomi Kowles**

Comprehensively reported data on the per-attorney prosecutor and defender caseloads across the sample states is completely lacking and cannot be used to analyze differences across states. But both public reporting and speaking with prosecutors and public defenders in Wisconsin revealed that high caseloads are a problem in the state that has existed for years.<sup>23</sup> These high caseloads are further complicated by the fact that the workload and time commitment associated with each individual case has increased because of new technologies such as police body-worn cameras, an overall increase in the volume of video evidence from various sources and digital data from computers and cellphones.<sup>24</sup>

## **A Failure to Retain Talent**

A separate but related funding failure that might be driving the growing delays in the state's court system is the salaries paid by Wisconsin's district attorneys and the Public Defender Board to their attorneys. Both have raised concerns for years about how low salaries established by the state for assistant district attorneys and assistant public defenders hinder their ability to retain hard-working and experienced attorneys.<sup>25</sup> This problem is not restricted to the Badger State.<sup>26</sup> Many of the states studied, including Wisconsin, have taken steps in recent decades to increase the salaries of these public servants.<sup>27</sup> There is limited research on the impact of such compensation changes, but evidence from one state shows that improved pay did result in better retention.<sup>28</sup>

### ***How Wisconsin's Prosecutor and Public Defender Salaries are Decided***

Wisconsin is an outlier among the sample states in that its salary schedule for assistant district attorneys and assistant public defenders is uniform across both roles. They are subject to a statutorily created and merit-based "pay progression plan" that provides for 17 steps, enabling merit-based raises if the Legislature provides the funding. The base salary and 17 steps are recalculated by Wisconsin's Division of Personnel Management for each two-year budget cycle.<sup>29</sup> Counties are unable to provide additional compensation for assistant district attorneys or assistant public defenders, but the Legislature can provide one-time merit raises without altering the standard pay progression plan.<sup>30</sup>

### ***Wisconsin's Prosecutor and Public Defender Salaries Compared to Other States***

Nine of the sample states similarly provide some form of salary schedule for their equivalent prosecutor or public defender roles. The way these schedules are established (union contract, agency decision or statute) varies widely by state.

*(Appendix E, at [badgerinstitute.org](http://badgerinstitute.org), details salary schedules in the sample states.)*

Common characteristics of these schedules include a standard salary range, minimum starting salary and some form of raise schedule based on merit, length of service or both. These common characteristics allowed a comparison across states. Differences in the cost of living within and between states can affect retention but were not considered for this analysis.

(Assistant prosecutor salaries in Michigan and Illinois are set at the county level by their equivalent of a district attorney, and there is no "standard" starting salary or salary range. A similar situation exists for their assistant public defender equivalents with the

exception that Michigan's Indigent Defense Commission is tasked with setting "minimum compensation standards" that amount to nothing more than saying that the compensation paid to assistant attorneys general is reasonable guidance. See Appendix E for more detail.)

Starting salaries for Wisconsin's assistant district attorneys and assistant public defenders are much lower than the national averages for prosecutors (\$68,056) and public defenders (\$63,638) reported in recent studies.<sup>31</sup> They also rank toward the bottom of the 14 roles in the nine sample states where starting salaries are established in a public document or could be secured from an official source.

In Minnesota, prosecutors and public defenders are provided a base salary that is 26% higher than they would receive in Wisconsin. Public defenders in Arkansas earn a starting salary that is 40% higher than they would receive in the Badger State. These low salaries surely play a role in Wisconsin's inability to recruit and retain quality legal talent in its prosecutor and public defender offices.

Many of the state's prosecutors and public defenders likely join the field with a sense of public duty or mission, expecting that their sacrifice

will pay off in a few years after a promotion or a few raises. Five years into their careers, though, these attorneys still will lag behind many of their counterparts in other states. Even in a state with a lower starting salary, Oklahoma, public defenders will earn significantly higher salaries by year five given Wisconsin's slow salary progression method. It is not until more than a decade later that this sacrifice might pay off for those still working in the state's criminal justice system, since Wisconsin's maximum salary for these roles is in the middle of pack for the sample states.

### ***Prosecutor and Defender Salaries Compared to Similar Roles in Wisconsin***

Wisconsin may underpay its assistant district attorneys and assistant public defenders relative to other states, but it is more likely that offices are losing these attorneys to other legal jobs within the state rather than to prosecutor and defender offices in other states. A

Table 1

### **Salaries in Wisconsin vs. other states**

Assistant district attorneys and assistant public defenders in Wisconsin earn less than their peers in other states.

State	Title	Starting salary
Arkansas	Public defender	\$77,862
Minnesota	Assistant county attorney	\$70,352
Minnesota	Assistant public defender	\$70,146
New Jersey	Assistant deputy public defender	\$68,214
Massachusetts	Assistant district attorney	\$68,000
Massachusetts	Trial attorney	\$63,440
Arkansas	Deputy prosecuting attorney	\$62,531
Virginia	Assistant commonwealth attorney	\$62,509
Iowa	Public defender	\$55,952
Virginia	Assistant public defender	\$55,707
Wisconsin	Assistant district attorney	\$55,536
Wisconsin	Assistant public defender	\$55,536
Kentucky	Staff attorney	\$52,000
Oklahoma	Defense counsel	\$50,000

Source: See appendix at [badgerinstitute.org](http://badgerinstitute.org)

survey of roles in the Badger State that allow the employment of both entry-level and experienced attorneys reveals why district attorney’s offices and the Public Defender Board are consistently losing their legal staff to other government attorney roles and private firms. Assistant district attorneys and assistant public defenders are significantly underpaid in comparison to attorneys in similar legal roles.

These public servants have the lowest average salary for attorneys in Wisconsin employed by both the public and private-sector institutions surveyed. Their average salary is nearly half that of attorneys employed by the University of Wisconsin, nearly 30% less than attorneys employed by the attorney general’s office and nearly 20% less than attorneys employed by counties. Even the private sector — with its much more diverse work settings — pays the average non-partner attorney in Wisconsin \$5,000 more than the average assistant district attorney and \$10,000 more than the average assistant public defender.

Table 2

Legal salaries in Wisconsin	
Prosecutors and public defenders here are paid far less than attorneys in similar legal roles.	
Title	Average salary <sup>32</sup>
University legal counsel	\$143,833
Assistant city attorneys	\$102,747
Assistant attorneys general	\$102,049
State agency attorney	\$99,454
Assistant corporation counsel	\$95,176
Private-sector associate/attorney	\$84,647
Assistant district attorney	\$79,769
Assistant public defender	\$74,728

Source: See appendix at [badgerinstitute.org](http://badgerinstitute.org)

Some of this appears to be driven by more experienced attorneys simply choosing different state government roles, but there are a number of roles with higher starting salaries that likely lure quality candidates away from prosecutor and defender jobs from the very start.<sup>33</sup> For example, an assistant district attorney could earn an additional \$4,000 to \$18,000 in his or her first year by working as an assistant city attorney. An assistant public defender could work as a federal or state court law clerk, boosting his or her pay by a similar or greater amount in the first year out of law school.

The blunt reality is that an attorney choosing to work as a prosecutor or public defender in Wisconsin is choosing to earn a lower starting salary on day one, a lower salary throughout his or her career and a lower ceiling on future earnings growth.

**Low Pay is Causing Major Staff Turnover**

Both district attorneys and public defenders report high turnover among assistant district attorneys and assistant public defenders. Kent Lovern, the chief deputy district attorney in Milwaukee County, directly affirmed the findings of this research when he noted:

*“We consistently lose attorneys to the city attorney office, U.S. attorney offices and county corporate counsel offices. A majority of these attorneys love their work as assistant district attorneys and leave regrettably. Unfortunately, assistant district attorneys are one of the lowest-paid public service roles for attorneys in Wisconsin. **We lose 10% of our staff — or 12.5 attorneys — a year on average.** We rarely lose someone in their first year, so*

*the attorneys we lose are those who have been here three, five or seven years, and they are now able to handle complicated felony cases. This experience takes years to replace, even with the talented new attorneys we consistently hire to replace a veteran prosecutor.*

## **“If we don’t put bodies in the courtroom, that is going to slow down cases”**

District attorneys throughout Wisconsin are finding it difficult or impossible to fill vacant prosecutor positions due largely to low pay — a key reason for worsening case backlogs.

Kurt Klomberg, the Dodge County district attorney and past president of the Wisconsin District Attorneys Association, said assistant district attorney jobs are difficult anyway, “and it has become worse in the last five years. There is a real acrimony toward law enforcement in this country, and that is overlaid on prosecutors as well.”

“You want to make sure you have quality people handling this work because they are carrying the burden for these victims,” he said.

According to state figures provided by Klomberg, counties have just over 30 vacancies in their state-funded assistant district attorney ranks. Another 22 prosecutor jobs funded by federal pandemic relief are vacant.

There is no doubt, said Klomberg, that prosecutor vacancies are a key factor: “If we don’t put bodies in the courtroom, that is going to slow down cases. It is that simple.”

Clark County District Attorney Melissa Inlow has funding for only one assistant district attorney. By mid-September the position had been vacant for seven weeks “without any interest or applications.”

“I did recently get permission to ‘hire above the minimum,’ where I can increase starting pay based on experience after law school graduation, but that hasn’t generated any interest,” she wrote in an email. “Based on conversations with colleagues, defense attorneys and community members, the continued vacancy is due to the pitifully low starting pay. Paralegals start at more an hour. Some support staff members make close to, if not more than, the starting pay for an ADA. Although they (the support staff) have several years’ experience, they do not have a law degree or an advanced degree.

“The cost of living along with student loans make it nearly impossible to make ends meet at \$26.70 (per hour). The starting pay in Clark for an assistant corporation counsel is \$40.31, a nearly \$15 difference.”

The lack of an assistant district attorney, said Inlow, is definitely slowing cases.

“I’m only one person. ... I need time to prep my cases, draft motions and motion responses, answer law enforcement questions and answer to the public. I cannot move cases forward with this caseload (approximately 720 criminal cases) and new cases coming in every day. There’s a longer delay in getting cases reviewed and charged out.”

— **Badger Institute**

*“When one of our attorneys purchases a home, has a child or undergoes another major life event, the 40%-50% salary increases they can receive in other public service roles are undeniable. **You cannot hold a grudge against someone who wants to serve their community and be able to provide effectively for their family.**”*

Among assistant public defenders, the situation appears to be even worse. Adam Plotkin, legislative liaison for the Office of the State Public Defender, recently noted that his agency is facing “the most significant turnover we’ve seen” and that turnover has jumped from about 10% to “just about 20%” over the past two years.<sup>34</sup>

Until the Wisconsin Legislature steps in to resolve this situation, district attorneys and the Public Defender Board will continue to see attorney after attorney depart for other roles with higher compensation. Public safety and justice should be two of our highest values as a society, but the status quo does not seem to reaffirm those principles.

### **Impact of Fiscal Failures on Pending Cases**

Every sample state surveyed saw its number of pending criminal cases increase throughout the pandemic, but only one — New York — has been able to effectively recover to pre-pandemic levels. Figure 2 summarizes the growth in pending criminal cases for sample states that are capable and willing to provide such data (excluding Kentucky and Oklahoma).<sup>35</sup> Some states such as Minnesota, Michigan and New Jersey matched or exceeded the growth rate in Wisconsin, while others saw only minimal growth in the backlog of criminal cases. Wisconsin ranks fifth in the total number of pending cases per 1,000 residents among the 12 states that were willing or able to provide this data, with nearly 13.5 pending criminal cases per 1,000 residents.

#### ***Impact of Total Funding on Pending Cases***

Comparing the pending case data with the funding data discussed in the previous section does not indicate that total appropriations alone are a strong predictor of how many pending cases a state had starting in 2019 or at the end of 2021, or the rate at which that figure has grown. For example, New York provides very similar levels of funding for public defense on both a per capita and per crime basis as Wisconsin but almost no state funding for prosecutors. In 2019, New York had a similar number of pending cases per 1,000 residents as Wisconsin but experienced only a small increase in 2020 and then recovered to a position better than its pre-pandemic pending caseload.

Massachusetts provides the most per capita and per crime funding for public defense among the states studied and the second most funding for prosecution. In 2019, the state had almost the same number of per capita pending cases as Wisconsin and still saw nearly 25% growth over the course of the pandemic. This example alone suggests that other factors are driving a state’s number of pending cases at year-end and any growth in case backlog.

#### ***Impact of Prosecutor and Defender Salaries on Pending Cases***

An analysis of the pending case and salary data for prosecutors and public defenders does not allow us to quantify how much the state’s comparatively low starting or maximum

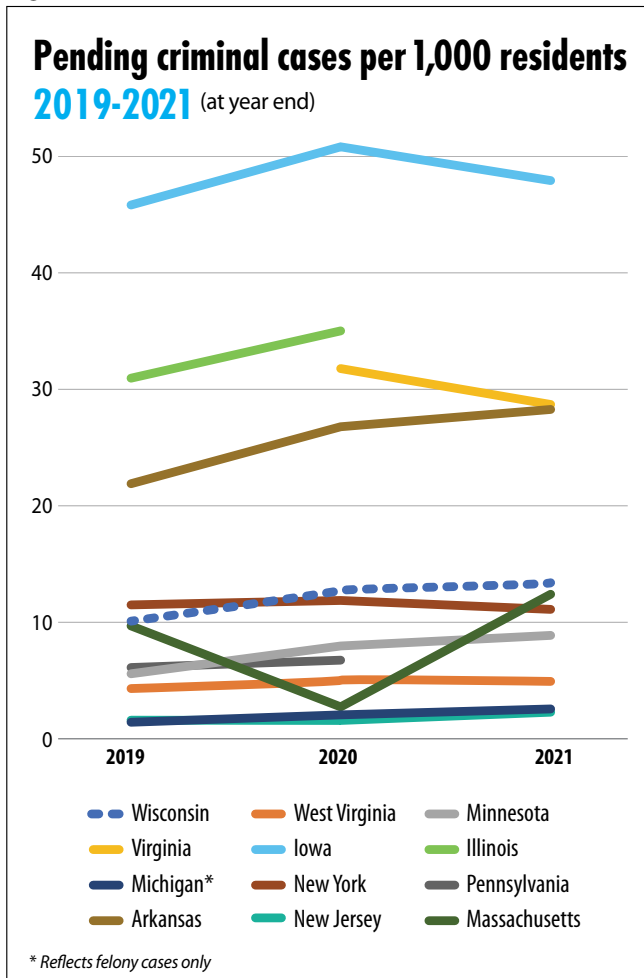


salaries for these jobs are contributing to the growing delays in the state's criminal justice system. Minnesota and New Jersey, for instance, both have higher starting and maximum salaries than Wisconsin and a much lower number of pending cases per capita, but they also saw their growth in pending cases increase significantly more in recent years. Arkansas and Massachusetts both saw a similar growth rate in criminal case backlog through recent years but provide substantially higher starting salaries but lower maximum salaries than Wisconsin. The impact of the pandemic and government reactions to it in different states significantly complicate the analysis.

Even though we may not be able to empirically quantify the relationship between these salaries and Wisconsin's case backlog, it is clear that this failure is contributing to the delays either directly or indirectly through the high turnover among these attorneys. Each new prosecutor or public defender must be trained for his or her position, and this training most likely will be completed by more senior attorneys. While proper training is important, this means that both the new and existing attorneys will not be focused on their caseloads during the hours spent on training.

In addition to training time, whenever a new attorney is assigned to a case, there will be necessary case delays so that the attorney can prepare to effectively represent the client, whether that client is the state or a defendant. The National Center for State Courts has found that the number of continuances and hearings occurring in a state's criminal cases is the largest contributor to its case processing times.<sup>36</sup> Both are likely to occur each time a new attorney is assigned to the case, and that will be quite frequent when 10% to 20% of attorneys are leaving district attorney's or public defender offices each year. Reducing turnover could help, on its own, to mitigate or reduce the growing case delays in Wisconsin.

Figure 2



Source: Respective state court systems



## Conclusion and Recommendations

Wisconsin's courts, prosecutors and defense attorneys should be applauded for being transparent about how they are unable to keep up with the growing burdens placed on them to ensure public safety and justice in the Badger State. But the state's consistent growth in backlogged criminal cases and case delays is an untenable situation that leaves crime victims and defendants alike without justice and the ability to move forward with their lives. Even a return to pre-pandemic performance will result in the state having nearly 900,000 backlogged cases by 2030.

This problem is not unique to Wisconsin, but the state can lead the nation in trying to resolve case backlogs and delays by adopting a slate of reforms focused on better maximizing the state's current justice system performance. Any action to merely improve the capacity of the state's current justice system without action to improve its performance and utilization of resources will result only in a temporary improvement in justice for the state's citizens.

To better understand the growing delays and improve the efficiency of the state's court, prosecution and public defender systems, the Legislature should adopt the following reforms:

- Establish a working group to identify how the state previously achieved reductions in both the number of backlogged cases and case disposition times between 2006 and 2011 so that those results can be replicated going forward.<sup>37</sup> This commission should be required to publish a report containing recommendations for legislative and judicial action within 180 days of being established.
- Require district attorneys and the Public Defender Board to annually track office turnover and the reasons for assistant district attorney and assistant public defender departures so the impact of future salary and funding increases can be evaluated.
- Require the Wisconsin Court System to track and provide an annual report on the number and justification for continuances being granted by judges in misdemeanor and felony cases.<sup>38</sup>
- Improve the starting salary and rate of pay progression for assistant district attorneys and assistant public defenders so both positions will be more competitive with other public sector attorney roles in Wisconsin and similar roles in other states.
- Require the Legislative Audit Bureau to publish on its website its annual analysis of the caseload of each district attorney's office and include a county-by-county comparison of current staffing vs. the staffing level needed to handle that caseload.<sup>39</sup> The Legislature should provide additional prosecutor positions to fill any reported gap between current and necessary staffing levels.<sup>40</sup>
- Revise the Wisconsin Code so that its statutorily prescribed caseload standard for assistant public defenders conforms to national caseload standards of 150 felonies

per attorney per year and 400 misdemeanors per attorney per year.<sup>41</sup> The Legislature should provide additional assistant public defender positions to fill any gap between the current statutory standard and necessary staffing levels.

These are some of the initial steps that the state must take to achieve an acceptable rate of justice. These actions are likely to slow the growing case backlog but will not be sufficient to reverse the trend without the addition of some separate steps to reduce crime in areas where it has been resurgent and the number of new cases entering the system or to reduce the complexity of future criminal cases so that they can be resolved more quickly.



### **Badger Institute takeaways**

Wisconsin's consistent growth in backlogged criminal cases and case delays leaves crime victims and defendants alike without justice and the ability to move forward. Lawmakers should:

- Identify how the state previously reduced case backlogs and disposition times.
- Require annual tracking of prosecutor and public defender office turnover.
- Require courts to track the number of and justification for continuances.
- Improve the starting salary and rate of pay progression for assistant district attorneys and assistant public defenders.
- Require the Legislative Audit Bureau to publish its annual analysis of the caseload of each district attorney's office, and provide additional prosecutor positions to fill any reported gap.
- Revise the Wisconsin Code so that its statutorily prescribed caseload standard for assistant public defenders conforms to national caseload standards.

## Endnotes

### Toward Swifter Justice

<sup>1</sup> Peter Joy & Kevin WcMunigal, Overloaded Prosecutors, 33 A.B.A. Crim. Just. 31 (2018); see e.g., Ashley Luthern & Alison Dirr, ‘A mistake’: Chisholm, chief judge explain low bail given to Waukesha parade suspect in earlier case, Milwaukee Journal Sentinel (2022), [jsonline.com/story/news/local/milwaukee/2021/12/02/john-chisholm-discuss-low-bail-given-man-charged-waukesha-christmas-parade-attack-darrell-brooks/8814614002/](https://www.jsonline.com/story/news/local/milwaukee/2021/12/02/john-chisholm-discuss-low-bail-given-man-charged-waukesha-christmas-parade-attack-darrell-brooks/8814614002/); Keegan Kyle, Sexual assault victims in Wisconsin often wait months to see charges filed, review shows, PostCrescent (2019), [postcrescent.com/story/news/investigations/2019/01/25/sexual-assault-cases-wisconsin-often-sit-idle-prosecutor-desks/2389873002/](https://postcrescent.com/story/news/investigations/2019/01/25/sexual-assault-cases-wisconsin-often-sit-idle-prosecutor-desks/2389873002/)

<sup>2</sup> Aaron Gottlieb & Kelsey Arnold, Do Public Defender Resources Matter? The Effect of Public Defender and Support Staff Caseloads on the Incarceration of Felony Defendants, 12 J. Society Soc. Work Res. 569 (2021); Bryan Furst, A Fair Fight: Achieving Indigent Defense Resource Parity, Brennan Center for Justice (2019), [brennancenter.org/our-work/research-reports/fair-fight](https://brennancenter.org/our-work/research-reports/fair-fight); Jon B. Gould, et al., Predicting Erroneous Convictions: A Social Science Approach to Miscarriages of Justice, U.S. Department of Justice (2009), [justice.gov/atj/publication/predicting-erroneous-convictions-social-science-approach-miscarriages-justice-ncj](https://justice.gov/atj/publication/predicting-erroneous-convictions-social-science-approach-miscarriages-justice-ncj); Radha Iyengar, An Analysis of the Performance of Federal Indigent Defense Counsel, National Bureau of Economic Research (2007), [nber.org/papers/w13187](https://nber.org/papers/w13187)

<sup>3</sup> Gottlieb, *supra* note 2; Irene Oritseweyinmi Joe, Regulating Mass Prosecution, 53 U.C. Davis L. Rev. 1175 (2020); Adam M. Gershowitz & Laura R. Killinger, The State (Never) Rests: How Excessive Prosecutorial Caseloads Harm Criminal Defendants, 105 Nw. U. L. Rev. 261 (2015); Jennifer Wyatt Bourgeois, et al., An Examination of Prosecutorial Staff, Budgets, Caseloads, and the Need for Change, Texas Southern University (2019), [centerforjusticersearch.org/reports/prosecutor-workload](https://centerforjusticersearch.org/reports/prosecutor-workload); Furst, *supra* note 2; Joy, *supra* note 1.

<sup>4</sup> The Badger Institute has discussed the problems and perverse incentives inherent in a caseload-based allocation method of prosecutor funding. See Julie Grace & Patrick Hughes, Problems with prosecutor funding in Wisconsin, Badger Institute (2020), [badgerinstitute.org/News/2019-2020/Problems-with-prosecutor-funding-in-Wisconsin.htm](https://badgerinstitute.org/News/2019-2020/Problems-with-prosecutor-funding-in-Wisconsin.htm)

<sup>5</sup> The Public Defender Board is statutorily required to handle 67% of the felony and juvenile cases with its own attorneys but can appoint private attorneys to handle all misdemeanor and the remaining felony and juvenile cases.

<sup>6</sup> Wisconsin Court System, Felony Disposition Summary by Disposing Court Official: Statewide Report, Wisconsin Court System (2022), available at [wicourts.gov/publications/statistics/circuit/circuitstats.htm](https://wicourts.gov/publications/statistics/circuit/circuitstats.htm)

<sup>7</sup> Wisconsin Court System, Misdemeanor Disposition Summary by Disposing Court Official: Statewide Report, Wisconsin Court System (2022), available at [wicourts.gov/publications/statistics/circuit/circuitstats.htm](https://wicourts.gov/publications/statistics/circuit/circuitstats.htm)

<sup>8</sup> Jeremiah Mosteller, Courts clogged: Pandemic made the problem of delayed justice worse in Wisconsin, Badger Institute (2022), [badgerinstitute.org/Diggings/Spring-2022/Courts-clogged.htm](https://badgerinstitute.org/Diggings/Spring-2022/Courts-clogged.htm)

<sup>9</sup> Wisconsin Court System, Circuit Court Statistical Reports, Wisconsin Court System (2022), [wicourts.gov/publications/statistics/circuit/circuitstats.htm](https://wicourts.gov/publications/statistics/circuit/circuitstats.htm)

<sup>10</sup> In Minnesota, the average number of days to dispose of major criminal cases has risen from 166 to 245 days (48% longer) and for minor criminal cases from 44 to 112 days (155% longer) between 2009 and 2020. See Court Services Division, Performance Measures: Key Results and Measures Annual Report, Minnesota Judicial Branch (2021), available at [mncourts.gov/About-The-Courts/PublicationsAndReports.aspx](https://mncourts.gov/About-The-Courts/PublicationsAndReports.aspx); Court Services Division, Performance Measures: Key Results and Measures, Minnesota Judicial Branch (2009), available at [mncourts.gov/About-The-Courts/PublicationsAndReports.aspx](https://mncourts.gov/About-The-Courts/PublicationsAndReports.aspx).

The length of time it takes to dispose of a felony criminal case in the federal court system has increased from 6.6 months to 10.8 months since 2001 — a 53% increase. See United States Courts, United States District Courts — National Judicial Caseload Profile, United States Courts (2022), available at [uscourts.gov/statistics-reports/caseload-statistics-data-tables](https://uscourts.gov/statistics-reports/caseload-statistics-data-tables); United States Courts, U.S. District Court — Judicial Caseload Profile, United States Courts (2006), available at [uscourts.gov/statistics-reports/caseload-statistics-data-tables](https://uscourts.gov/statistics-reports/caseload-statistics-data-tables).

See also National Center for State Courts, Effective Criminal Case Management Interactive Dashboard, National Center for State Courts (2022), [ncsc.org/consulting-and-research/areas-of-expertise/court-management-and-performance/caseload-management/effective-criminal-case-management/effective-criminal-case-management-interactive-dashboard](https://ncsc.org/consulting-and-research/areas-of-expertise/court-management-and-performance/caseload-management/effective-criminal-case-management/effective-criminal-case-management-interactive-dashboard) (showing that a number of court systems fail to resolve a majority of their criminal cases within 180 days or six months); Brian J. Ostrom, et al., Delivering Timely Justice in Criminal Cases: A National Picture, National Center for States Courts (2020), [ncsc.org/\\_data/assets/pdf\\_file/0017/53216/Delivering-Timely-Justice-in-Criminal-Cases-A-National-Picture.pdf](https://ncsc.org/_data/assets/pdf_file/0017/53216/Delivering-Timely-Justice-in-Criminal-Cases-A-National-Picture.pdf); Trevor Brown, Despite Reforms, High Caseloads Continue to Stress Public Defender System, Oklahoma Watch (2019), [oklahomawatch.org/2019/10/02/despite-reforms-high-case-loads-continue-to-stress-public-defender-system/](https://oklahomawatch.org/2019/10/02/despite-reforms-high-case-loads-continue-to-stress-public-defender-system/) (noting that the number of criminal cases being carried over from previous years increased by more than 150% between 2009 and 2019).

<sup>11</sup> The average growth in days it took to dispose of cases before 2020 was 2.18% for felonies and 2.45% for

misdemeanors each year.

<sup>12</sup> See e.g., Stuart Buck, We Need Criminal Justice Data That Doesn't Exist. Here's How the Biden Administration Can Fix It, Arnold Ventures (2021), [arnoldventures.org/stories/we-need-criminal-justice-data-that-doesnt-exist-heres-how-the-biden-administration-can-fix-it](https://arnoldventures.org/stories/we-need-criminal-justice-data-that-doesnt-exist-heres-how-the-biden-administration-can-fix-it); Matt Ford, The Missing Statistics of Criminal Justice, The Atlantic (2015), [theatlantic.com/politics/archive/2015/05/what-we-dont-know-about-mass-incarceration/394520/](https://theatlantic.com/politics/archive/2015/05/what-we-dont-know-about-mass-incarceration/394520/); See also Justice Center, Use data to understand crime trends, The Council of State Governments (2018), [50statespublicsafety.us/part-1/strategy-1/](https://50statespublicsafety.us/part-1/strategy-1/)

<sup>13</sup> In a perfect world, the equilibrium of this “market” would be an intersection between the total number of crimes committed (demand) and a high enough amount of prosecution and defense resources (supply) to resolve cases for those crimes. The number of arrests each year serves as the current actual demand for prosecution and defense services given that law enforcement only arrest someone in 41.7% of violent and 14.6% of property crimes. See Federal Bureau of Investigation, Percent of Offenses Cleared by Arrest or Exceptional Means by Population Group, 2020, U.S. Department of Justice (2021), available at [crime-data-explorer.app.cloud.gov/pages/downloads](https://crime-data-explorer.app.cloud.gov/pages/downloads)

<sup>14</sup> New York is an outlier for both its prosecutor and public defense funding in that the state has established county-funded systems, but then the state provides substantial funding through several non-statutorily required grant programs or funding streams.

<sup>15</sup> See e.g., Bruce Vielmetti, Wisconsin is sued over delayed lawyer appointments in criminal cases, Milwaukee Journal Sentinel (2022), [jsonline.com/story/news/2022/08/24/wisconsin-sued-over-lack-defense-layers/7874165001/](https://jsonline.com/story/news/2022/08/24/wisconsin-sued-over-lack-defense-layers/7874165001/); Christine Hatfield, Wisconsin public defenders stress need for solutions to agency staffing shortage, case backlog, Wisconsin Public Radio (2022), [wpr.org/wisconsin-public-defenders-stress-need-solutions-agency-staffing-shortage-case-backlog](https://wpr.org/wisconsin-public-defenders-stress-need-solutions-agency-staffing-shortage-case-backlog); Danielle Kaeding, Justice Delayed For Those Who Can Least Afford It?, Wisconsin Public Radio (2018), [wpr.org/justice-delayed-those-who-can-least-afford-it](https://wpr.org/justice-delayed-those-who-can-least-afford-it); Kevin Damask, Wisconsin district attorneys feel staffing squeeze, Associated Press (2016), [apnews.com/article/a214e3c2fe8d46458c93704deea9a621](https://apnews.com/article/a214e3c2fe8d46458c93704deea9a621); Eric Litke, DA shortage a ‘public safety crisis’?, PostCrescent (2016), [postcrescent.com/story/news/investigations/2016/10/14/da-shortage-public-safety-crisis/92004016/](https://postcrescent.com/story/news/investigations/2016/10/14/da-shortage-public-safety-crisis/92004016/)

<sup>16</sup> The Wisconsin Constitution provides victims with the right to “timely disposition of the case, free from unreasonable delay” but does not require the enforcement of any individual case. See Wis. Const. Art. I § 9m (2022).

<sup>17</sup> Appendix B, at [badgerinstitute.org](https://badgerinstitute.org), provides a detailed breakdown of the state funding provided to prosecutors in each sample state.

<sup>18</sup> See Appendix B (38.2% of Kentucky's per crime appropriations; 36.4% of Massachusetts per crime appropriations).

<sup>19</sup> See Appendix B (31.3% of Kentucky's per capita appropriations; 46.3% of Massachusetts per crime appropriations).

<sup>20</sup> Appendix C, at [badgerinstitute.org](https://badgerinstitute.org), provides a detailed breakdown of the state funding provided to indigent or public defense in each sample state.

<sup>21</sup> Office of the Governor, Gov. Evers Announces More Than \$50 Million Investment in Safer Communities Across Wisconsin, Office of the Governor (2022), [content.govdelivery.com/accounts/WIGOV/bulletins/30ec88b](https://content.govdelivery.com/accounts/WIGOV/bulletins/30ec88b)

<sup>22</sup> Counties in Wisconsin do sometimes carry the financial burden for the appointment of attorneys in criminal cases after the state public defender has determined that the person is not indigent. These are called Dean appointments and can be made based on a judge's “inherent authority” to appoint legal counsel for someone who might not be indigent, but the court still determines should receive government-provided representation. See *State v. Dean*, 471 N.W.2d 310 (Wis. 1991); see also Wisconsin State Public Defender, CR 10-133, Wisconsin State Public Defender (2020), [docs.legis.wisconsin.gov/ruletext/CR%2010-133](https://docs.legis.wisconsin.gov/ruletext/CR%2010-133) (noting that the cost of Dean appointments to counties in 2008 was \$7.6 million).

<sup>23</sup> See supra note 13; Naomi Kowles, ‘This is unsustainable’: Wisconsin public defender caseloads in crisis, Channel 3000 (2022), [channel3000.com/this-is-unsustainable-wisconsin-public-defender-caseloads-in-crisis/](https://channel3000.com/this-is-unsustainable-wisconsin-public-defender-caseloads-in-crisis/); Interview with Kent Lovern, chief deputy district attorney, Milwaukee County (Sept. 8, 2022) (by phone, notes on file with author); email from Lovern to Jeremiah Mosteller (Sept. 9, 2022) (on file with author) (providing details on the significant increase in cases for certain types of crimes — domestic violence (6%), non-fatal shootings (68%), felon in possession of a firearm (36%) and homicide (15%) — seen by the Milwaukee County district attorney's office between 2020 and 2021 and noting that the increased trend is continuing in 2022); Rob Romano, Many public defenders facing burnout amid high caseloads, staff shortages, News 8000 (2022), [news8000.com/many-public-defenders-facing-burnout-amid-high-caseloads-staff-shortages/](https://news8000.com/many-public-defenders-facing-burnout-amid-high-caseloads-staff-shortages/); Milwaukee County, infra note 33.

<sup>24</sup> Interview with Kent Lovern, supra note 20 (noting that “New technologies — like body-worn cameras — have also significantly increased the burden of each new case. For example, we review on average 15 non-fatal shootings a week. Each of those cases may include 15-20 hours of video evidence, including body-worn cameras, squad video and police videos of witness and suspect statements.”); State Public Defender's Office (SPD), et al., Criminal Justice Coalition: 2021-23 Biennial Budget Proposal, Criminal Justice Coalition (2021), [wpr-public.s3.amazonaws.com/wprorg/2021\\_budget\\_coalition\\_white\\_paper.pdf](https://wpr-public.s3.amazonaws.com/wprorg/2021_budget_coalition_white_paper.pdf)

<sup>25</sup> See e.g., Christine Hatfield, Wisconsin Public Defenders Badly Short Staffed, Wisconsin Public Radio (2022), [urbanmilwaukee.com/2022/05/05/wisconsin-public-defenders-badly-short-staffed/](http://urbanmilwaukee.com/2022/05/05/wisconsin-public-defenders-badly-short-staffed/); Doug Schneider & Eric Litke, Broken promise: DA pay hikes haven't materialized, Green Bay Press Gazette (2016), [greenbaypressgazette.com/story/news/2016/10/17/broken-promise-da-pay-hikes-havent-materialized/91663640/](http://greenbaypressgazette.com/story/news/2016/10/17/broken-promise-da-pay-hikes-havent-materialized/91663640/); Dennis Dresang, et al., Public Safety and Assistant District Attorney Staffing in Wisconsin, Robert M. La Follette School of Public Affairs at University of Wisconsin-Madison (2011), [lafollette.wisc.edu/outreach-public-service/past-events-initiatives-and-collaborations/public-safety-and-assistant-district-attorney-staffing-in-wisconsin](http://lafollette.wisc.edu/outreach-public-service/past-events-initiatives-and-collaborations/public-safety-and-assistant-district-attorney-staffing-in-wisconsin)

<sup>26</sup> See e.g., Aleeza Furman, District Attorney's Offices Across Pa. Say Salary Is Causing Staff Drain, Law.com (2022), [law.com/thelegalintelligencer/2022/05/25/district-attorneys-offices-across-pa-say-salary-is-causing-staff-drain/](http://law.com/thelegalintelligencer/2022/05/25/district-attorneys-offices-across-pa-say-salary-is-causing-staff-drain/); Charles Paullin, Shenandoah County Prosecutor Facing Staffing Woes, Daily News Record (2022), [dnronline.com/news/shenandoah-county/shenandoah-county-prosecutor-facing-staffing-woes/article\\_8281f6ff-0754-575e-a26e-ed9486780e45.html](http://dnronline.com/news/shenandoah-county/shenandoah-county-prosecutor-facing-staffing-woes/article_8281f6ff-0754-575e-a26e-ed9486780e45.html); Andrew Pantazi, Public defenders and prosecutors flee for better salaries, Florida Times-Union (2018), [jacksonville.com/story/news/politics/government/2018/02/23/paying-for-justice-public-defenders-and-prosecutors-flee-for-better-salaries/14124984007/](http://jacksonville.com/story/news/politics/government/2018/02/23/paying-for-justice-public-defenders-and-prosecutors-flee-for-better-salaries/14124984007/); Furst, *supra* note 2; Commission on Criminal Justice Attorney Compensation, Doing Right by Those Who Labor for Justice, Massachusetts Bar Association (2014), [massbar.org/docs/default-source/mba-reports/massbar-blue-ribbon-commission-report-doing-right-by-those-who-labor-for-justice-2014-may-09.pdf?sfvrsn=2](http://massbar.org/docs/default-source/mba-reports/massbar-blue-ribbon-commission-report-doing-right-by-those-who-labor-for-justice-2014-may-09.pdf?sfvrsn=2).

<sup>27</sup> Sample states such as New York, New Jersey, Massachusetts, Kentucky and Wisconsin have taken steps to improve public defender and prosecutor salaries. See Appendix B and C at [badgerinstitute.org](http://badgerinstitute.org). See also Mitchell Schmidt, Tony Evers signs bill to boost merit-based pay raises for state public defenders, Madison.com (2021), [madison.com/news/local/govt-and-politics/tony-evers-signs-bill-to-boost-merit-based-pay-raises-for-state-public-defenders/article\\_7da5b820-3b1e-582d-bd6f-0789800cec8c.html](http://madison.com/news/local/govt-and-politics/tony-evers-signs-bill-to-boost-merit-based-pay-raises-for-state-public-defenders/article_7da5b820-3b1e-582d-bd6f-0789800cec8c.html)

<sup>28</sup> Office of the State Auditor, The ADA Retention Fund might have a limited long-term impact, Commonwealth of Massachusetts (2018), [mass.gov/info-details/other-matters-the-ada-retention-fund-might-have-a-limited-long-term-impact](http://mass.gov/info-details/other-matters-the-ada-retention-fund-might-have-a-limited-long-term-impact) (finding that turnover of assistant district attorneys declined from 13.4% to 5.4% following the creation of a special state fund to provide ADAs with salary increases).

<sup>29</sup> Department of Administration, State of Wisconsin Compensation Plan, State of Wisconsin (2021), [dpm.wi.gov/Pages/Employees/CompensationPlan.aspx](http://dpm.wi.gov/Pages/Employees/CompensationPlan.aspx)

<sup>30</sup> S.B. 62, 2021 Legis., 2021 Reg. Sess. (Wis. 2021) (providing the Public Defender Board with the ability to provide merit-based pay raises up 0% of base salary during fiscal year 2021-2022); See generally Kent Tempus, Oconto County OKs incentive in hopes of drawing assistant DA applicants, Green Bay Press Gazette (2022), [greenbaypressgazette.com/story/news/local/oconto-county/2022/05/19/oconto-county-oks-incentive-hopes-drawing-assistant-da-applicants/9828393002/](http://greenbaypressgazette.com/story/news/local/oconto-county/2022/05/19/oconto-county-oks-incentive-hopes-drawing-assistant-da-applicants/9828393002/)

<sup>31</sup> Adam Biener, Prosecutor Workplace and Compensation Study: Report of Findings, Lafayette College & Association of Prosecuting Attorneys (2021), available at [apainc.org/press-release-prosecutor-workplace-and-compensation-study/](http://apainc.org/press-release-prosecutor-workplace-and-compensation-study/); Matt Perez, Low Pay A Deterrent To Would-Be Public Defenders, Law360 (2021), [law360.com/access-to-justice/articles/1430492/low-pay-a-deterrent-to-would-be-public-defenders](http://law360.com/access-to-justice/articles/1430492/low-pay-a-deterrent-to-would-be-public-defenders).

<sup>32</sup> Appendix F, at [badgerinstitute.org](http://badgerinstitute.org), provides a detailed breakdown of the salaries provided to each attorney role referenced here.

<sup>33</sup> Several roles surveyed — assistant attorneys general, state agency attorney and assistant corporation counsel — start at a similar or lower starting salary, but the current workforce has significantly higher average salaries than assistant district attorneys and assistant public defenders. See Appendix F.

<sup>34</sup> Roger Staffaroni, Demand for Public Defenders continues, WXOW (2022), [wxow.com/news/demand-for-public-defenders-continues/article\\_7c20306a-2591-11ed-a4fd-dfad7af5bfff8.html](http://wxow.com/news/demand-for-public-defenders-continues/article_7c20306a-2591-11ed-a4fd-dfad7af5bfff8.html); Rob Romano, Many public defenders facing burnout amid high caseloads, staff shortages, News 8000 (2022), [news8000.com/many-public-defenders-facing-burnout-amid-high-caseloads-staff-shortages/](http://news8000.com/many-public-defenders-facing-burnout-amid-high-caseloads-staff-shortages/); see also Gretchen Schuldt, Bill Gives Pay Parity to Public Defenders, Urban Milwaukee (2021), [urbanmilwaukee.com/2021/02/23/bill-gives-pay-parity-to-public-defenders/](http://urbanmilwaukee.com/2021/02/23/bill-gives-pay-parity-to-public-defenders/)

<sup>35</sup> Appendix G, at [badgerinstitute.org](http://badgerinstitute.org), provides a detailed breakdown of the raw pending case data provided by states.

<sup>36</sup> National Center for State Courts (2020), *supra* note 17.

<sup>37</sup> Between 2006 and 2010, the state experienced a 22% reduction in its number of pending cases and year-end. It also saw only minimal growth in the time it took to resolve a felony criminal case (2%) and saw no increase in the time it took to resolve a misdemeanor case. See *supra* notes 13-16.

<sup>38</sup> The National Center for State Courts completed a national study on case processing and found that the “number of hearings and continuances were the most influential factors in case duration.” See National Center for State Courts (2020), *supra* note 17.

<sup>39</sup> The Legislative Audit Bureau completes an analysis of prosecutor caseloads reported by each district attorney, but these figures are not accessible to the public unless published by the district attorney's office. See Milwaukee County, District Attorney Budget Summary, Milwaukee County (2022), [county.milwaukee.gov/files/county/administrative-services/PSB/BudgetsCopy-1/2023-Budget/2023-Requested/055.4500-DistrictAttorney1.pdf](https://county.milwaukee.gov/files/county/administrative-services/PSB/BudgetsCopy-1/2023-Budget/2023-Requested/055.4500-DistrictAttorney1.pdf); Grace, *supra* note 7; see also Department of Administration, An Evaluation Allocation of Prosecutor Positions, Department of Administration (2007), [docs.legis.wisconsin.gov/misc/lc/study/2010/special\\_committee\\_on\\_criminal\\_justice\\_funding\\_and\\_strategies/103\\_august\\_30\\_2010/07\\_9full](https://docs.legis.wisconsin.gov/misc/lc/study/2010/special_committee_on_criminal_justice_funding_and_strategies/103_august_30_2010/07_9full); Litke, *supra* note 13 (linking to a prosecutor staffing analysis completed in 2016).

<sup>40</sup> At least initially, new prosecutor positions should be allocated to counties with the longest delays in criminal case resolution — Adams, Dane, Langlade, Menominee, Racine and Shawano. See Wisconsin Court System, Age at Disposition Summary by Disposing Court Official, Wisconsin Court System (2022), available at [wicourts.gov/publications/statistics/circuit/circuitstats.htm](https://wicourts.gov/publications/statistics/circuit/circuitstats.htm)

<sup>41</sup> Wisconsin's current statutory standard specifies that each assistant state public defender should have an annual caseload of 184.5 felony cases or 492 misdemeanor cases, whereas national standards establish a maximum annual caseload of 150 felony charges or 400 misdemeanor charges. See Wis. Stat. § 977.08(5)(bn) (2022); Standing Committee On Legal Aid And Indigent Defense, ABA Ten Principles of a Public Defense Delivery System, American Bar Association (2022), [nacd.org/Document/ABA10PrinciplesPublicDefense](https://nacd.org/Document/ABA10PrinciplesPublicDefense); National Advisory Commission on Criminal Justice Standards and Goals, Standard 13.12 Workload of Public Defenders, National Advisory Commission on Criminal Justice Standards and Goals (1976), [nlada.org/defender-standards/national-advisory-commission](https://nlada.org/defender-standards/national-advisory-commission); see also State Bar of Wisconsin, Policy Positions: 2022, State Bar of Wisconsin (2022), available at [wisbar.org/aboutus/governmentrelations/pages/policy-positions.aspx](https://wisbar.org/aboutus/governmentrelations/pages/policy-positions.aspx)

**Note:** Some sources and endnotes have been shortened or removed entirely due to design constraints. All endnotes and appendices are available at [badgerinstitute.org](https://badgerinstitute.org).

## Endnotes

### The right to legal counsel in Wisconsin

<sup>1</sup> U.S. Const. amend. VI; Wis. Const. Art. I, § 7 ("In all criminal prosecutions the accused shall enjoy the right to be heard by himself and counsel...").

<sup>2</sup> *State v. Klessig*, 564 N.W.2d 716 (Wis. 1997) ("The scope, extent, and, thus, interpretation of the right to the assistance of counsel is identical under the Wisconsin Constitution and the United States Constitution."); *State v. Sanchez*, 548 N.W.2d 69 (Wis. 1996) ("The language of the Wisconsin provision, on its face, does not appear to differ so substantially from the federal Constitution's guarantee of the right to counsel so as to create a different right.").

<sup>3</sup> *Kirby v. Illinois*, 406 U.S. 682 (1972); see also *Brewer v. Williams*, 430 U.S. 387 (1977).

<sup>4</sup> *State v. Dagnall*, 612 N.W.2d 680 (Wis. 2000) (quoting *Maine v. Moulton*, 474 U.S. 159 (1985)); see also *United States v. Wade*, 388 U.S. 218 (1967).

<sup>5</sup> *State v. Forbush*, 796 N.W.2d 741 (Wis. 2011); *State v. Harris*, 544 N.W.2d 545, 548 n.3 (Wis. 1996).

<sup>6</sup> The first is a negative right that bars the government from preventing your use of legal counsel in the justice system, and the second is a positive right that requires the government to provide you with that legal counsel. This nuance has largely been lost in the conversation post-Gideon but is an important fact to understand since states have been given substantial discretion in this area. See Jeremiah Mosteller, Is access to counsel the most important due process right?, Stand Together Trust (2019), <https://standtogethertrust.org/stories/is-access-to-counsel-the-most-important-due-process-right>; see also Felix Rackow, The Right to Counsel: English and American Precedents, 11 Wm. & Mary Q 3 (1954).

<sup>7</sup> *Gideon v. Wainwright*, 372 U.S. 335 (1963) ("[A]ny person hauled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him...").

<sup>8</sup> *Browne v. State*, 129 N.W.2d 175 (Wis. 1964) (explaining that indigent defendants have a right to state-funded counsel, which shifted the prior burden off counties); *Carpenter v. County of Dane*, 9 Wis. 274 (1859) ("And would it not be a little like mockery to secure to a pauper these solemn constitutional guaranties for a fair and full trial of the matters with which he was charged, and yet say to him when on trial, that he must employ his own counsel, who could alone render these guaranties of any real permanent value to him." [sic]).

<sup>9</sup> John P. Gross, Too Poor to Hire a Lawyer but Not Indigent: How States Use the Federal Poverty Guidelines to Deprive Defendants of their Sixth Amendment Right to Counsel, 70 Wash. & Lee L. Rev. 1173, 1184-1204 (2013).

<sup>10</sup> Individuals who receive counsel from the State automatically include minors under age 17 held in a juvenile detention facility or alleged to be delinquent, adults involuntarily committed for substance use or mental health

treatment, or sexual violence. See Wis. Stat. § 977.07(1)(a); 977.02(3) (2022); see also Wis. Stat. § 48.23(1m); 51.60; 55.105; 938.23(1m); 980.03(2)(a) (2022).

<sup>11</sup> Wis. Stat. § 977.02(3); § 977.07; 977.08 (2022).

<sup>12</sup> Wis. Admin. Code PD § 3.01; 3.02 (outlining the schedule of anticipated cost for legal counsel); 3.03 (outlining the financial standards) (2022); see also Lola Velazquez-Aguilu, *Not Poor Enough: Why Wisconsin's System for Providing Indigent Defense is Failing*, 2006 Wis. L. Rev. 193 (2006) (further explaining the indigency determination process in Wisconsin).

<sup>13</sup> *State v. Dean*, 471 N.W.2d 310 (Wis. 1991) (“While this is the end of the inquiry concerning the public defender’s determination of indigency, it is not, however, the end of the trial court’s inquiry concerning the defendant’s right to counsel. An indigent defendant is entitled to be assisted by appointed counsel.”); see also *State v. Kennedy*, 762 N.W.2d 412, 416-419 (Wis. Ct. App. 2008).

<sup>14</sup> *Id.* at 314-315.

<sup>15</sup> *Id.* at 315; see also Wisconsin State Public Defender, CR 10-133, Wisconsin State Public Defender (2020), docs. [legis.wisconsin.gov/ruletext/CR%2010-133](https://legis.wisconsin.gov/ruletext/CR%2010-133) (noting that the cost of Dean appointments to counties in 2008 was \$7.6 million).





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A PREFACE TO

# Saving Money, Encouraging Work and Improving Safety Through More Rigorous Electronic Monitoring

**O**f the convicted criminals Wisconsin imprisons, most will serve a sentence and be released. Then what?

The released offenders usually will be supervised, with the official hope that they avoid further crime. This requires a lot of watching on the part of the state, and that watching could be done more closely on those who most merit it if the state had better means of tracking individuals — such as convicted drunken drivers — who present known and lesser risks than violent offenders.

This can help prevent recidivism and is important because our prison system is overcrowded and the state needs to make sure there is room for serious, violent offenders who deserve long sentences. Public safety requires that the taxpayers' resources be focused where they are most needed.

The Badger Institute has long studied this matter — how state corrections dollars can offer the best protection of the public. Here, we summarize the results of that research, offering recommendations about how the state's resources can best be used in preventing more crime from those who already have been caught and convicted.

— *Badger Institute*

# Saving Money, Encouraging Work and Improving Safety Through More Rigorous Electronic Monitoring

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## Introduction

**T**he Wisconsin Department of Corrections (DOC) has the largest budget of any state agency — \$2.68 billion for 2019-'21. The DOC budget is eight times larger than what it was 25 years ago and is expected to increase as the prison population continues to grow and age at a time when corrections costs are on the rise.

Even with all of this spending, state prisons are over capacity, with more than 20,000 prisoners inhabiting facilities designed for 17,600. Making matters worse, many of these facilities are outdated and understaffed.

One proposed solution — building a new 1,200-bed maximum security prison — likely would cost at least \$500 million<sup>1</sup> and still fall short of solving the overcrowding issues.

Fortunately, there are more productive options that other states have adopted with success.

## A New Age of Electronic Monitoring

A variety of devices can allow corrections and law enforcement officials to closely monitor the actions, locations and even sobriety of nonviolent offenders, those who are awaiting trial or immigration hearings, those engaged in work release programs or individuals under supervision.

More and more agencies nationwide are capitalizing on this technology. The use of electronic monitoring grew from 52,000 individuals to 125,000 between 2005 and 2015<sup>2</sup> — an increase of 140%, according to a study published by the Pew Charitable Trusts. That number likely has grown substantially since then.

In Wisconsin, when and how electronic monitoring can be used is determined by statute, criminal sentences and/or court orders. The DOC also has discretion to monitor those who are under community supervision.

A team of DOC staff conduct round-the-clock electronic monitoring from within the Division of Community Corrections.<sup>3</sup>

As of September 2022, there were 3,471 offenders under DOC supervision:

- The majority (1,900) were sex offenders required by law to be monitored by GPS.
- Another 580 were sex offenders on discretionary GPS monitoring ordered by the DOC.
- Just over 700 were on the Soberlink system, which requires the use of breathalyzer alcohol monitoring devices.
- Some 280 offenders under curfew orders were on radio frequency monitoring.
- Three offenders were on GPS monitoring for domestic violence convictions.

### ***County Level***

Judges, county sheriffs and house of corrections superintendents have the discretion to use electronic monitoring for home detention.<sup>4</sup> Sheriffs' decisions are typically made based on the capacity of county jails and the risks posed by offenders. While any jail inmate can be placed or removed from home detention by a sheriff at any time, state law requires the use of "active electronic monitoring"<sup>5</sup> for those on home detention.

**The use of electronic monitoring grew from 52,000 individuals to 125,000 between 2005 and 2015 — an increase of 140%.**

Private companies typically provide monitoring services and equipment for sheriff's departments on a contract basis.

Compiled data on the number of individuals being monitored by sheriff's departments in Wisconsin's 72 counties is not readily available, but from what can be ascertained, the numbers are significant.

Over the course of 2018 in Milwaukee County alone, nearly 860 offenders were on some form of electronic monitoring, an average of 155 per day.

Between 2005 and 2018, nearly 16,000 offenders were on continuous alcohol monitoring in Milwaukee, Waukesha, Kenosha, Sheboygan, Jefferson, Ozaukee and Manitowoc counties, according to Wisconsin Community Services, the company that provides monitoring services in those counties.

## **Types of Electronic Monitoring**

There are three main types of electronic supervision in use in Wisconsin and nationwide: radio frequency (RF), GPS location (satellite) and remote alcohol monitoring.

### ***Radio Frequency Monitoring***

Radio frequency systems, often used for individuals on home detention or required to meet curfews, consist of an ankle bracelet worn by the offender and a radio unit installed in his or her residence. The system notifies the monitoring agency when the wearer enters

or leaves a certain radius from the radio unit and sends an alert when such movement occurs outside of approved times.

Individuals on RF monitoring may be allowed to leave their residence to go to work, receive medical treatment, shop for groceries or attend rehabilitative programs. Since RF systems do not provide location information, they are being phased out in many jurisdictions in favor of GPS-based systems.

### ***GPS Monitoring***

Under a GPS system, the offender wears an ankle bracelet that continuously transmits his or her location to a digital map in the monitoring agency. Attempts to tamper with the bracelet or failure to charge the battery triggers an audio warning transmission from the bracelet speaker, and the monitoring center is alerted to the individual's last known location.

This approach allows law enforcement to designate off-limits areas for the individual being monitored. Sex offenders, for example, can be prohibited from being in the vicinity of schools. The monitoring center can use a speaker on the ankle bracelet to direct the offender to leave an area. They also can contact his agent or direct law enforcement to his location.

GPS monitoring systems maintain records of an offender's movement so if a crime is committed, police can use this information to determine if a monitored individual was nearby at the time.

In Wisconsin and other states that monitor domestic violence offenders, this technology is used to notify the monitoring center when an offender approaches his victim's home or workplace.

### ***Remote Alcohol Monitoring***

Using breath or transdermal testing, remote alcohol monitoring systems can determine if an offender has consumed alcohol and transmit the results to the monitoring agency.

Breath testing is conducted with either a home-based system or handheld breathalyzer device and is often used for convicted drunken drivers on home detention. The former uses a landline telephone or a wireless router to connect a breathalyzer device to the monitoring center. The offender is required to blow into the device at regular or random intervals to determine whether he or she has consumed alcohol. The drawback to this method is that the offender usually must be at home to be tested.

Advances in technology now allow for individuals to carry cellphone-sized, battery-powered devices that use cellular networks or Wi-Fi to transmit test results. This allows offenders to be tested at any time, making it easier for them to hold a job and giving the

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monitoring agency more flexibility in ordering testing.

The individual being monitored must carry the device at all times so he can be notified when a test has been ordered. At that point, he simply blows into the breathalyzer tube. If the device is unable to transmit, test results are recorded and transmitted when a connection is re-established.

These devices include anti-fraud technology that measures the strength of the breath and takes a picture to prevent an offender from cheating.

Transdermal testing is conducted via an ankle bracelet that uses sensors to automatically check the subject's skin throughout the day to determine if alcohol has been consumed. The device connects to a modem that daily transmits test results to the monitoring agency. The offender's only active responsibility is to keep the battery charged.

This system provides continuous monitoring and allows the offender to go to work without interruptions for testing. Over time, transdermal testing is likely to replace breathalyzer devices at both the state and local levels.

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**These devices include anti-fraud technology that measures the strength of the breath and takes a picture to prevent an offender from cheating.**

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## Expand Electronic Monitoring by the State

The DOC is better suited to expand electronic monitoring programs than are most counties. It could do so in multiple ways.

### ***Monitoring OWI Offenders***

Drunken drivers make up a growing proportion of Wisconsin's prison population. In 2000, 4.7% of prison admissions were due to drunken driving. In 2019, that percentage had grown to 11.6%,<sup>6</sup> with nearly 21,000 convictions for drunken driving in Wisconsin that year.

That number is even more disturbing given that under Wisconsin law, a first-offense operating while intoxicated (OWI) charge results in only a fine.

Subsequent drunken driving offenses are charged as misdemeanors or felonies that, upon conviction, result in either supervision or incarceration. Electronic monitoring can be used more effectively in both cases.

### **• A different approach to supervision**

An alcohol-monitoring ankle bracelet would allow agents to know if offenders are abstaining. If a positive test is recorded, the agent can quickly impose holds or sanctions on the violator.

Wisconsin also should consider increasing the use of ignition interlock devices — in-car breathalyzers — as an additional deterrent. These devices prevent a vehicle from starting

until the test confirms driver sobriety.

This combination would allow continuous monitoring of alcohol use and make it more difficult for offenders to drive drunk without an intervention.

It also would reduce or eliminate offender meetings with probation and parole agents and random in-person drug and alcohol tests that are disruptive to offenders' employment. In addition, it would free up agents to focus on offenders who pose a greater risk to public safety or any OWI offenders who could not be monitored remotely.

All of this could be accomplished without changes in state law. Wisconsin judges have discretion to order monitoring, and the DOC has wide latitude in administering community supervision and the authority to place offenders on electronic monitoring. New legislation would be required, however, to make ignition interlock devices mandatory.

- **Transition for incarcerated inmates**

When the state does incarcerate offenders with alcohol-related convictions, GPS and transdermal alcohol monitoring should be considered options for a pre-release transitional home detention program near the end of the sentence.

Inmates with OWI offenses that did not result in death or injury could apply to the DOC secretary to serve the final six months of their sentence in home detention under orders of complete sobriety enforced by these technologies.

Local law enforcement would be notified of the offenders' location and restrictions. Failure to remain within approved GPS-monitored boundaries or a positive alcohol test would result in a return to prison and possible additional criminal penalties.

This type of home detention is not within the authority of the DOC and would require new legislation.

### ***Work Release Home Detention Transitional Program***

Inmates in the Wisconsin Correctional Center System (WCCS), which prepares them "for safe and successful reintegration into the community,"<sup>7</sup> have access to a DOC work release program. Participants leave the correctional centers, work at jobs in the community and return at the end of the day. They earn market wages and are better equipped for a successful transition to the community. They pay fees for room, board and transportation to reduce the burden on taxpayers.

Although COVID-19 forced the DOC to halt work release to limit the spread of the virus to participants' institutions or workplaces, work release resumed in July 2021. Prior to the suspension of the program, there were 779 inmates in new work release placements in fiscal year 2020.<sup>8</sup>

The DOC should consider an electronically monitored transitional program where partic-

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**An electronically monitored transitional program would reduce costs and free up needed beds for more serious offenders.**

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Participants who follow the rules and receive positive reports from employers can apply to transition to home detention prior to release. Aside from work and authorized activities (e.g., grocery shopping), participants would be restricted to their residence and have an established curfew. Failure to maintain employment or abide by the rules would result in reincarceration. Participants should be charged fees to cover the cost of electronic monitoring.

This approach would reduce costs and free up needed beds for more serious offenders. It also would incentivize inmates to work hard and follow the rules.

Since eligible inmates already live in the lowest security level institutions and work in businesses without DOC supervision, risks to the public would be minimal. Close monitoring and swift responses to violations would keep participants in check. Had this model been in place during the pandemic, those in home detention could have continued to work.

New legislation would be needed for the DOC to allow for this option. Wisconsin's Huber Law, which authorizes sheriffs to assign home detention, could be a model for granting similar authority to the DOC secretary for defined categories of inmates. A starting point would be to allow any inmate who successfully participates in work release for six months to apply to serve the final six months of the sentence on home detention.

### ***High-risk Offenders After They've Served Their Time***

Wisconsin policymakers should look to other states that effectively use GPS technology to supervise high-risk and violent offenders.

While Wisconsin's electronic monitoring policies are geared toward compliance, California uses these tools to deter criminal behavior and assist law enforcement, especially in the area of gang activity. The California Department of Corrections and Rehabilitation (CDCR) has a statewide program that uses GPS tracking to detect criminal activity by gang members after their release from prison but while still under supervision. The intent is to prevent crime by providing close supervision that allows violations to be quickly detected and addressed.

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**The opportunities provided by GPS monitoring to deter or investigate violent crime support a significant expansion in its use.**

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Additional benefits include providing law enforcement with intelligence about gang activity and affiliations and using GPS tracking to identify offenders who were near crime scenes.

The program costs California \$7,738 per offender per year vs. \$2,628 per year for standard supervision. The results showed that while offenders were more frequently caught violating conditions of their parole, they were less likely to be arrested for new crimes.<sup>9</sup>

Legislation would be needed to allow Wisconsin to run a similar program. The state lacks specially trained DOC staff, and Wisconsin has no unit dedicated to anti-gang activities or violent offenders.

Another creative use of GPS technology has been adopted in Boston where law enforce-

ment officials created a “real time crime center” that links ShotSpotter, a system of sensors used to locate the source of gunfire, with police cameras and GPS bracelets worn by offenders.<sup>10</sup> When ShotSpotter detects gunfire, city-controlled cameras are automatically directed toward the location and sensors identify anyone wearing a GPS ankle bracelet in the area, allowing police to quickly track and record who is in the vicinity and dispatch officers to look for suspects.

The Milwaukee Police Department uses ShotSpotter but does not track those wearing GPS devices.

As these examples indicate, the opportunities provided by GPS monitoring to deter or investigate violent crime support a significant expansion in its use.

The DOC primarily uses discretionary GPS for homeless sex offenders, but it also could be used for high-risk offenders with a history of violent crimes or habitual felony arrests during the first two years of their community supervision. Research<sup>11</sup> published by the Badger Institute shows that the majority of revocations occur within the first two years of supervision, so this timeframe would be the most critical. Offenders could be charged fees to offset or cover their monitoring costs.

This group would not need to be supervised as closely as sex offenders. The very act of monitoring serves as a deterrent to the commission of new crimes. It also can serve as a valuable law enforcement tool when investigating crimes or rule violations.

If the DOC does not use its existing authority to increase GPS usage, the Legislature could require expansion of the program. The department also should transition from radio frequency to GPS monitoring systems for the reasons listed above.

### ***New Technologies and Opportunities***

The use of GPS tracking devices likely will increase as they become smaller, cheaper to operate and more versatile. Software is being developed that analyzes data to determine when an offender is committing a violation, allowing quicker law enforcement response and requiring fewer staff. In other cases, these devices will allow officials to better monitor the activities of high-risk offenders in the community.

Advances in monitoring technology will provide alternatives to incarceration for non-violent offenders and more options for those transitioning to the community. There are drug-detecting sensors in development that would operate similar to the transdermal alcohol units.

### ***Cost and Potential Savings***

On average, it costs Wisconsin taxpayers approximately \$37,000 a year (including all administrative costs) to house an inmate. When institution spending alone is counted, the amount is closer to \$27,000 per year.<sup>12</sup>

The average cost for an offender on supervision, however, is just \$3,241 per year including



all administrative costs. The costs of GPS monitoring are included in this average, though there are only about 3,200 offenders being monitored out of a community supervision population of around 63,000.

Monitoring costs vary per inmate, partly because the state recoups some of the expense by charging those under supervision based on income. The fees are authorized by statute, and the schedule is set by administrative code.<sup>13</sup>

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If we assume the highest tracking fee rate (\$240 per month) for monitored individuals, the annual cost of GPS monitoring would be \$2,880 per offender.

Sex offenders, high-risk individuals and those who are revoked cost more to monitor, while low-risk offenders, those who do not require drug or alcohol treatment and those who follow the rules cost less.

Even if increased electronic monitoring doubled the average cost of community supervision to approximately \$6,400 per year (likely a significant overestimate), it still would save the DOC \$24,000 per minimum-security inmate who is able to

leave the institution per year.

When more cells are needed for violent offenders, policymakers could expand electronic monitoring for nonviolent offenders to relieve prison and jail crowding, more effectively encourage sobriety and reentry, produce significant savings and ultimately improve community safety.

## Reforming Community Supervision

### ***Background***

As noted earlier, some 63,000 people in Wisconsin are currently serving criminal sentences in the community.

Every year, thousands of people are released from prison and placed under active supervision of the DOC in the form of extended supervision. Thousands of others are sentenced to probation — an alternative to incarceration where offenders spend their sentence in the community.

Wisconsin's truth-in-sentencing law 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.

Many people on supervision end up back in state prison — whether for a new crime or through revocation for violating a term of their supervision. According to the DOC, 39%

of all admissions to prison in 2019 were for a revocation only, and another 21% were for a revocation with a new crime.<sup>14</sup>

### *The Problem*

University of Wisconsin-Madison Law Professor Cecelia Klingele, in research published by the Badger Institute,<sup>15</sup> examined why so many people on supervision end up back behind bars. One consistent factor was addiction. Klingele found<sup>16</sup> that 81% of revocation cases examined involved drugs or alcohol as a contributing factor.

State law contributes to the high revocation level as well. Wisconsin is an outlier in the way it both 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.

Klingele's report found that as a result, Wisconsin imposes longer terms of supervision relative to other states. Twenty-one percent of all felony cases (or 4,554 individuals) in

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**Wisconsin is an outlier in the way it both imposes and calculates extended supervision.**

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2018 were sentenced to more than three years of supervision. That includes 28.7% of all extended supervision sentences and 17.1% of all probation sentences that year. Forty-four percent of these sentences were for lower-level felonies.

But most revocations occur shortly after people are released into the community. Badger Institute research found that 72% of the revocations studied occurred within the first 18 months after release from custody, and 92% occurred within the first two years of community supervision.

The public safety benefit of supervising individuals for longer than two to three years is minimal in comparison to earlier benefits. Many states and the federal system cap felony probation at five years or less. Wisconsin imposes longer terms than neighboring Illinois, Indiana, Iowa, Michigan and Minnesota.

### *Alternatives*

If Wisconsin were to shorten supervision terms, probation and parole agents could focus more on the individuals recently released from prison who are more likely to commit a new crime or violate their supervision terms. This also would save taxpayers money, maintain public safety and allow deserving offenders to move on with their lives.

Wisconsin should cap felony probation at five years or less to align Wisconsin with best practices from other states.

Another unique aspect of Wisconsin's supervision law is that while days spent in custody count against initial confinement, time spent following the rules in the community does not count as time served in the event of a revocation. This means offenders can end up serving more time under DOC supervision than originally intended by a sentencing judge. Offenders should get credit for time spent in compliance following their rules of supervision.

Many states allow for time off of a sentence for time spent in compliance — often referred to as “compliance credits.” Some states allow one month off a sentence for one month of following the rules. Others calculate time off using other formulas, such as 20 days off for 30 days in compliance. Such programs incentivize good behavior, increasing the likelihood of success on community supervision.<sup>17</sup> At least 19 states have some type of compliance credit program.<sup>18</sup>

Other states incentivize good behavior on supervision through short-term, non-custodial sanction programs, which are alternatives to incarceration that guarantee some level of immediate punishment if a term of probation is violated. Hawaii and Michigan<sup>19</sup> each have programs that have been found to reduce recidivism among participants, especially high-risk offenders.

Wisconsin should count time served following the rules in the community toward the completion of a sentence in the event of a revocation. Those serving a sentence in the community should be treated the same as those serving time behind bars before a trial.

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## Data and Definitions

When making decisions about corrections-related and criminal justice-related issues — including those discussed above and many others — Wisconsin lawmakers are at a disadvantage because thorough, consistent information from the state and county level is frequently lacking, difficult to locate and varied in its definitions. Whether it’s the prison system, the courts, district attorneys, public defenders, county sheriffs or police jurisdictions, each entity maintains its own records and defines its own terms.

For example, if someone wanted to know how many criminal cases were resolved through a deferred prosecution agreement in Wisconsin in 2021, he would have to file 72 public records requests, one with each county district attorney’s office. Even if a request can be fulfilled, it may be of limited value because the agency has access to only some of the information.

And Wisconsin law allows public records requests to be denied if the record holder is required to analyze data and create a new document to report the information.

State policymakers should require the collection, analysis and reporting of comprehensive data from state agencies and local governments alike. Identifying key data points and a standard process for collection and publication would fill a large gap in the state’s reporting structure.

Data and definitions legislation would help Wisconsin policymakers identify opportunities and challenges in corrections, policing and other areas throughout the justice system.

Are our policies working? Are they cost-effective? Can we do better? It's difficult to answer these questions without adequate statewide reporting or uniform data.

States such as Texas and Michigan in recent years adopted meaningful data bills that informed later legislative reforms.

In 2018, a bipartisan coalition of Florida policymakers passed the 2018 Criminal Justice Data Transparency initiative,<sup>20</sup> the nation's most comprehensive criminal justice data collection law,<sup>21</sup> targeting more than 100 data points to be collected and reported by law enforcement, the courts, prosecutors, public defenders, jails, prisons and community supervision.

The law is intended to gather data about the criminal justice system throughout the process in hopes of identifying problems and providing insights. It requires the collection of a range of 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.

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### ***Strengths and Shortcomings***

Wisconsin has long been a leader in making data about criminal cases transparent and available to the public through the Consolidated Court Automation Program (CCAP). This information technology service allows users to obtain data about specific cases online.

However, using CCAP to analyze larger data sets is more difficult, in part because the program lacks a publicly accessible interface. Data about other stages of the justice system is not as readily available and is not aggregated.

Wisconsin has other gaps and inconsistencies in important data points related to corrections. A few examples:

- 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.
- It's difficult to track criminal charges that are brought against defendants or those on supervision because district attorneys' charging practices differ greatly for each jurisdiction for similar conduct.

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

Lawmakers should create a statewide system where uniform and robust data is aggregated pertaining to everything from county jails to community supervision, from juvenile detention to police use of force. Policymakers, researchers and the public should be given access to the data for regular review.

## Conclusion

The Department of Corrections has the largest budget of any state agency and costs are expected only to rise. At the same time, the prison system is overcrowded, understaffed and outdated. Building a new 1,200-bed maximum security prison likely would cost the state at least half a billion dollars while failing to address overcrowding issues.

Fortunately, advances in technology can provide alternatives for nonviolent offenders using cells needed for more serious criminals. These tools would produce savings, relieve overcrowding, incentivize good behavior, encourage work, improve reentry and improve public safety.

### *Expand Electronic Monitoring*

The DOC and policymakers could begin by expanding the use of GPS tracking, both for existing individuals currently monitored by RF technology and for high-risk and violent offenders on supervision.

The combination of remote alcohol monitoring systems and in-car breathalyzers should be adopted to reduce or eliminate the need for testing, free up probation and parole agents to focus on other priorities, allow the supervised individual to maintain employment and keep intoxicated drivers off the road.

These tools also should be considered options for a pre-release transitional home detention program near the end of a sentence.

The DOC should consider an electronically monitored transitional program where participants who follow the rules and receive positive reports from employers can apply to transition to home detention prior to release. Lawmakers could give the DOC secretary authority similar to that granted to sheriffs under Wisconsin's Huber Law for defined categories of inmates.

This would reduce costs and free up needed beds for more serious offenders in an overcrowded system. It also would incentivize inmates to work hard and follow the rules.

Wisconsin should consider a program similar to one in California that tracks high-risk offenders with a history of violent crimes or habitual felony arrests during the first two years of their community supervision. This program has been found to deter criminal behavior and assist law enforcement, especially with offenders involved in gang activity.

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**Advances in technology can provide alternatives to incarceration for certain offenders. These tools would produce savings, relieve overcrowding, incentivize good behavior, encourage work, improve reentry and improve public safety.**

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Boston law enforcement provides another model, using GPS technology, police cameras and a system of sensors that locate the source of gunfire to identify anyone wearing a GPS ankle bracelet in an area where shots are fired.

### ***Reform Community Supervision***

Some 63,000 people in Wisconsin are currently serving criminal sentences in the community, either on parole or extended supervision.

Wisconsin imposes longer terms of supervision relative to other states — with no discernable benefit to public safety. Research conducted for the Badger Institute found that 72% of the revocations studied occurred within the first 18 months after release from custody, and 92% occurred within the first two years of community supervision.

Wisconsin should cap felony probation at five years or less to align Wisconsin with best practices from other states, including all of its neighbors.

This would allow probation and parole agents to focus more on the individuals recently released from prison who are more likely to commit a new crime or violate their supervision terms. It also would save taxpayers money, maintain public safety and allow deserving offenders to more quickly acclimate to the community.

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Another unique aspect of Wisconsin's supervision law is that while days spent in custody count against initial confinement, time spent following the rules in the community does not count as time served in the event of a revocation. Many states allow for time off of a sentence for time spent in compliance to incentivize compliance with supervisory rules.

Lawmakers should look to states that incentivize good behavior on supervision through short-term, non-custodial sanction programs that guarantee some level of immediate punishment if a term of probation is violated. Hawaii and Michigan, for example, have programs that have been found to reduce recidivism among participants, especially high-risk offenders.

### ***Improve Data and Definitions***

Wisconsin lacks thorough, consistent information on corrections from both the state and county levels. This makes it difficult for policymakers and the public to determine if policies are effective and if money is being well spent.

Lawmakers should emulate Florida, Michigan and Texas and create a statewide system where uniform and robust data is aggregated pertaining to law enforcement, the courts, prosecutors, public defenders, jails, prisons and community supervision.



## Badger Institute takeaways

Wisconsin should:

- Expand electronic monitoring.
- Reform community supervision.
- Improve data and definitions.

## Endnotes

<sup>1</sup> State budget realities make new prison construction unlikely (badgerinstitute.org)

<sup>2</sup> Use of Electronic Offender Tracking Devices Expands Sharply | The Pew Charitable Trusts (pewtrusts.org)

<sup>3</sup> The state does not contract for monitoring services like county governments, but it does have contracts for equipment and technical support.

<sup>4</sup> docs.legis.wisconsin.gov/document/statutes/973.03(3)(d)

<sup>5</sup> docs.legis.wisconsin.gov/document/statutes/302.425

<sup>6</sup> doc.wi.gov/DataResearch/InteractiveDashboards/DAIAdmissionsExecSum2000to2019.pdf

<sup>7</sup> doc.wi.gov/Pages/OffenderInformation/AdultInstitutions/WisconsinCorrectionalCenterSystem.aspx

<sup>8</sup> doc.wi.gov/Documents/OffenderInformation/AdultInstitutions/WCCSAnnualReport.pdf

<sup>9</sup> ojp.gov/pdffiles1/nij/grants/249888.pdf

<sup>10</sup> shotspotter.com/boston-gunfire-reduction-program/

<sup>11</sup> badgerinstitute.org/BI-Files/Reports/RevocationPDF.pdf

<sup>12</sup> Inmates housed at different security level institutions vary in cost, with an average of \$85.64 per day at maximum-security institutions (\$31,258.60 per year), \$68.90 per day at medium-security institutions (\$25,148.50 per year) and \$84.95 per day at minimum-security institutions (\$31,006.75 per year). Medium-security prisons have a lower per-inmate cost because they have large populations with fewer security needs, allowing for economies of scale. Minimum-security institutions tend to have fewer inmates and therefore a higher per-inmate cost.

<sup>13</sup> Offenders also pay fees to cover the costs of electronic monitoring to participate in Huber release including initial installation or setup costs and daily charges.

<sup>14</sup> doc.wi.gov/DataResearch/InteractiveDashboards/DAIAdmissions2000to2019.pdf

<sup>15</sup> badgerinstitute.org/BI-Files/Reports/RevocationPDF.pdf

<sup>16</sup> badgerinstitute.org/BI-Files/Reports/RevocationPDF.pdf

<sup>17</sup> journals.sagepub.com/doi/abs/10.1177/0093854810397866

<sup>18</sup> pewtrusts.org/-/media/assets/2020/04/policyreform\_communitysupervision\_report\_final.pdf

<sup>19</sup> crimesolutions.ojp.gov/ratedprograms/720#pd

<sup>20</sup> Florida's corrections data law: A model for Wisconsin - YouTube

<sup>21</sup> CS/HB 7071 (2018) - Criminal Justice Data Transparency | Florida House of Representatives (myfloridahouse.gov)





**TRANSPORTATION**



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## A PREFACE TO

# Future-Proofing Wisconsin's Highway Funding System

**A**s a way for funding an important public good — highways — Wisconsin's gas tax was pretty good: It put the cost on users in rough proportion to their use.

There were legitimate doubts: Was it too high? Was money diverted? Were we getting good value? Some were so vexing that voters acted, constitutionally banning transfers out of the highway fund to general government spending, for example.

But the big problem is that the gas tax *was* good. Every credible projection shows it fading as a revenue source as federal mandates and consumer tastes prompt a shift toward electric vehicles and, among remaining gas-powered ones, much more efficiency. More and more vehicles won't be paying for their share of pavement. Wisconsin needs a replacement for the gas tax.

In this chapter, legendary transportation scholar Robert W. Poole Jr. of the Reason Foundation and Badger Institute visiting fellow Benita Cotton-Orr explore how we can restore highway funding to a users-pay principle. They propose a mileage-based user fee — one that can phase in as a replacement for, not an addition to, the gas tax.

As we do so, we can fix problems that made Wisconsinites dissatisfied with the gas tax. The authors' options take advantage of advances in technology, such as the systems that already provide truckers a rebate of taxes on the fuel they burn driving tolled roads in New York and Massachusetts, for example.

These can make a phase-in seamless for drivers while providing confidence that a revenue shift is not a revenue grab, that it's an "instead," not an "and," even as it provides the resources for highways that give us the freedom to safely travel where and when we need.

— *Badger Institute*

## ABOUT THE AUTHORS



**Robert W. Poole Jr.** is director of transportation policy and the Searle Freedom Trust Transportation Fellow at Reason Foundation, a national public policy think tank based in Los Angeles. He is a Badger Institute visiting fellow.



His 1988 policy paper proposing supplemental privately financed toll lanes as congestion relievers directly inspired California's landmark private tollway law (AB 680), which authorized four pilot projects including the highly successful 91 Express Lanes in Orange County. Over two dozen states have enacted similar public-private partnership legislation. In 1993, Poole oversaw a study that introduced the term HOT (high-occupancy/toll) Lane, a concept that has become widely accepted since then.

Poole has advised the Federal Highway Administration, the Federal Transit Administration, the White House Office of Policy Development and National Economic Council, the Government Accountability Office and the California, Florida, Georgia, Indiana, Texas, Utah, Virginia and Washington State Departments of Transportation.

Poole is the author of dozens of policy studies and journal articles on transportation issues. His book, "Rethinking America's Highways," was published by the University of Chicago Press in 2018. Poole's writings have appeared in national newspapers, including *The New York Times*, *The Wall Street Journal* and *The Washington Post*. He has been a guest on "Crossfire," "Good Morning America" and "Huffington Post" as well as on ABC, CBS and NBC News, NPR and PBS. He produces the monthly e-newsletter *Surface Transportation Innovations*. *The New York Times* has called him "the chief theorist for private solutions to gridlock."

Poole received his B.S. and M.S. in mechanical engineering at MIT and did graduate work in operations research at NYU.



**Benita Cotton-Orr**, a Badger Institute visiting fellow, has written extensively on state transportation policy, from funding to technology to transportation options, including rail, bus, bus rapid transit (BRT), high-occupancy toll (HOT) lanes, fixed-guideway transit, rideshare and mileage-based user fees. She was a contributing chapter author to "21st Century Highways: Innovative Solutions to America's Transportation Needs" (Heritage Foundation, 2005).

Cotton-Orr spent 19 years as vice president of the Georgia Public Policy Foundation, leading its communications and its Environmental Initiative, which includes transportation, land use, energy, air and water policy. Before that, she was an editorial writer and columnist for *The Atlanta Journal* and an editorial writer for *The Atlanta Journal-Constitution*.

A journalism graduate of Rhodes University in Grahamstown, South Africa, Cotton-Orr immigrated to the United States in 1986.

# Future-Proofing Wisconsin's Highway Funding System

*By Robert W. Poole Jr. and Benita Cotton-Orr*

## Introduction

**T**ransportation projects in Wisconsin are primarily funded by per-gallon fuel taxes that are not sustainable given increased fuel economy and the move toward electric and hybrid vehicles.

Since 2006, Wisconsin's excise tax on motor vehicle fuel — diesel and gasoline — has been a flat 30.9 cents per gallon. Inflation has taken its toll, and fuel tax revenue is stagnating even as vehicle miles traveled (VMT) increase and the state's population and transportation needs grow. It's increasingly urgent, as a result, that policymakers implement new alternatives.

Wisconsin is currently one of just 15 states that have no toll roads or tolled bridges. Of its neighboring states — Michigan, Illinois, Iowa and Minnesota — only Iowa has no tolling. Wisconsin policymakers have studied the feasibility of tolling or implementing some other form of mileage-based user fees,<sup>1</sup> but the Legislature has yet to adopt either policy as a new funding source.

## The Long History of the Fuel Tax

The mass-market Ford Model T began production in 1908, with Ford producing 1 million of the vehicles between 1913 and 1927. The \$850 price made it the first vehicle affordable to the middle class. The surge in vehicles was soon followed by the first gasoline tax: In 1919, Oregon — which had 103,418 registered automobiles and trucks on its roads by 1920 — imposed a gasoline tax of one cent per gallon “for the repair of the damage done to said highways by such vehicles, machines and engines traveling thereon.”

In 1925, Wisconsin implemented a gas tax, becoming one of 35 states with such a tax.

Federal fuel taxes began in 1932 with a one-cent-per-gallon gas tax amid federal funding shortfalls during the Depression. Federal fuel taxes were not dedicated to highways, however, until the Federal-Aid Highway Act of 1956, which launched the Interstate Highway System. That law also created the federal Highway Trust Fund to safeguard these dedicated fuel tax revenues.

The last increase in the federal gas tax was nearly 30 years ago — on Oct. 1, 1993 — when it was set at 18.4 cents per gallon. It is not indexed to inflation.

Making matters worse for fuel tax revenues, in recent years federal policies have focused increasingly on eliminating fossil fuel use, including reducing the use of petroleum-fueled vehicles. Federal Corporate Average Fuel Economy (CAFE) regulations, begun in 1975 after the Arab oil embargo, are aimed at increasing the fuel economy of new cars and light trucks (pickups, vans and SUVs) produced for sale in the United States. Over the years, the fuel economy standards have become ever more stringent:

- For the 1975 model year, data from the federal Environmental Protection Agency (EPA) shows, about 10.2 million vehicles were produced with “real-world” average fuel economy of 13.1 mpg. Real-world means actual driving conditions.
- For the 2019 model year, 16.1 million vehicles were produced, with average fuel economy of 24.9 mpg.

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**Auto manufacturers continue to increase their focus on hybrid and all-electric vehicles, which use less or no petroleum. This will further affect the revenues generated by taxing fuel even as vehicle miles traveled continue to increase.**

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While annual vehicle production for 2019 was almost 58% higher than for 1975, the average mpg was a whopping 90% higher in 2019 than in 1975. Essentially, new cars in 2019 could go twice as far on a gallon of gas as 1975 cars.

This trend will continue.

In March 2022, the National Highway Transportation Safety Administration (NHTSA) announced it had finalized CAFE standards for model years 2024-2026: approximately 49 mpg for passenger cars and light trucks in model year 2026, accomplished by increasing fuel economy by 8% annually for model years 2024 and 2025, and 10% annually for model year 2026.<sup>2</sup>

Meanwhile, auto manufacturers continue to increase their focus on hybrid and all-electric vehicles, which use less or no petroleum. This will further affect the revenues generated by taxing fuel even as vehicle miles traveled (VMT) continue to increase.

This funding challenge has long been anticipated. In 2005, a special committee of the Transportation Research Board of the National Academies of Sciences concluded that fuel taxes would not remain viable as the primary highway funding source for the 21st century.<sup>3</sup> (The lead author of this study was a member of that committee.)

Congress responded by appointing a National Surface Transportation Infrastructure Financing Commission to consider approaches to longer-term funding for surface transportation. The commission considered many alternatives, concluding that:

- The original users-pay/users-benefit principle should be retained.
- The best way for users to pay would be to charge by the miles driven rather than by the gallons of fuel consumed.

Importantly, the commission recommended that the mileage-based user fees (MBUF) should be the *replacement* for fuel taxes rather than motorists being charged in addition to fuel taxes.<sup>4</sup>

This study focuses on a per-mile charge as one way for Wisconsin's policymakers to address the looming highway funding challenge. First, it provides estimates of the likely shrinkage of fuel sales through 2050. Then it discusses the general lack of awareness among some policymakers and especially the general public about this challenge and the potential in an alternative that charges road users by the mile. Finally, it suggests a policy framework for how such a system might be developed and implemented in Wisconsin.

## The Looming Decline in Wisconsin's Fuel Use and Revenue

Wisconsin's state funding for transportation needs largely comes from two sources: motor fuel taxes and registration fees, which account for 89% of state-collected transportation revenue and 54% of total budgeted transportation funds in 2020-'21, according to the Wisconsin Department of Transportation (WisDOT).

As of 2019, the latest data available, there were 3.92 million automobiles registered in the state and 5.16 million total vehicles registered, bringing in a total of \$720.1 million in vehicle registration fees. Several fee increases took effect in fiscal year 2020, including a \$75 surcharge for all hybrid-electric vehicles. Electric vehicle (EV) owners have paid a \$100 surcharge since 2018.

The state also charges a flat per-gallon tax on gasoline and diesel of 30.9 cents, plus two cents per gallon for the Petroleum Environmental Cleanup Fund Act (PECFA) tackling underground fuel tanks.

Fuel tax revenue in 2021 reached almost \$1.09 billion, according to Wisconsin Department of Revenue monthly reports. This included about \$807.6 million in gasoline tax revenue and \$278.5 million in diesel tax revenue.

From 1985 to 1997, the state had an annual rate adjustment based on inflation and overall fuel consumption.<sup>5</sup> The consumption factor was removed in 1997, and annual adjustments were based on the Consumer Price Index. (In 1989 and 1994, this led to a downward adjustment and a lower gas tax rate.) The CPI adjustment was eliminated starting in 2006. Today, even when gas prices increase, the per-gallon tax remains the same.

Wisconsin's fuel sales, at their strongest in 2018 (3.517 billion gallons), declined in 2019 by 1%. Sales plummeted another 3.65% in 2020 over 2019, probably reflecting COVID-19's impact on travel. Fuel sales increased 4.77% in 2021 over 2020 but remained below the 2018 high. Continued declines in fuel tax revenues can be expected.

Not only did the pandemic result in an immediate decline in fuel consumption as offices closed, but it also produced a work-from-home trend likely to continue post-pandemic.

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**In the worst case, by 2050, almost half of all light vehicle operators would be paying no fuel tax at all. This would be a shift away from the basic users-pay/ users-benefit principle.**

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How will Wisconsin make up for the cumulative effect of increased fuel efficiency, the elimination of petroleum as a source of fuel, the decline in work trips and the consequent decline in fuel tax revenues? The state has long grappled with this imminent funding challenge.

### ***Transportation Plans Admitted Unsustainable Funding Stream***

For more than a decade, Wisconsin's transportation planners have acknowledged the challenge the state faces in transportation funding due to the growing gap between transportation needs and stagnating fuel tax receipts.

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**The objective should be not merely to replace the revenue that fuel taxes have traditionally provided but also to remedy the other shortcomings of fuel taxes: lack of transparency, lack of accountability of road providers to road users and the fact that the fuel tax is a tax rather than a true user fee.**

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In October 2009, WisDOT announced the adoption of *Connections 2030*, the state's long-range multimodal transportation plan.<sup>6</sup> "Achieving a sustainable revenue stream is a challenge. In the near future, Wisconsin's traditional reliance on motor fuel taxes to fund transportation will be tested. ... As in other states, Wisconsin's transportation needs have routinely exceeded available dollars," the plan stated.

It added, "Transportation funding should rely on the principal (sic) of user financing. While the fuel tax may not be a viable long-term source of transportation revenue, it is likely to remain the main source of transportation revenues during the next 20 years. ... When funding falls short, implementation decisions must consider priorities and trade-offs."<sup>7</sup>

Wisconsin is one of just 15 states that do not toll roads or bridges. Of its neighbors — Michigan, Illinois, Iowa and Minnesota — only Iowa has no tolls. *Connections 2030* highlighted support of the work of the National Surface

Transportation Policy and Revenue Study Commission but stressed, "WisDOT does not support the commission's recommendations regarding tolling."<sup>8</sup>

To deal with the anticipated funding shortfall, Wisconsin's Transportation Finance and Policy Commission in 2012 recommended consideration of a one-cent-per-mile mileage-based fee — based on odometer readings — as well as increasing gas taxes, licensing and registration fees.<sup>9</sup>

In December 2021, WisDOT released its final version of *Connect 2050*, replacing *Connections 2030*, and reiterated the goal to "Pursue sustainable long-term transportation funding."<sup>10</sup>

For Wisconsin's 2015-'17 biennial budget, the Legislature's Joint Committee on Finance required a Transportation Fund solvency study.<sup>11</sup> WisDOT examined Transportation Fund revenues and expenditures from state fiscal year 2018 to 2027. Conducted before COVID-19's economic impact hurt revenues, the study forecast almost \$28.1 billion in revenue, with worrying shortfalls under each of three scenarios examined:



- Spending *less than* the 2015-'17 budget trend would result in a \$850 million budget shortfall and a 109% increase in “poor” state highway miles.
- Spending *the same* as the 2015-'17 budget trend would result in a \$3.03 billion shortfall and 93% increase in “poor” state highway miles.
- Spending *above* the 2015-'17 budget trend would result in a \$7.94 billion shortfall and 72% increase in “poor” state highway miles.

The study offered three new funding options: a mileage-based motor vehicle registration fee, a highway use fee on new vehicles registered in the state and tolling all or portions of the 875-mile Interstate highway system in Wisconsin. Notably, the authors reported that 940,000 Wisconsin vehicles were already registered to use the Illinois Tollway.

Federal Highway Administration (FHWA) statistics show that vehicle miles traveled in Wisconsin increased from about 59.8 billion miles in 2014 to a peak of 65.7 billion in 2019, an average annual rate of growth of about 2% per year. As noted earlier, the pandemic significantly reduced travel in the state in 2020 and throughout most of the U.S. Full recovery can be expected by 2022 or 2023, with a resumption of growth thereafter.

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**Motorists and trucking companies deserve to see a genuine value proposition in making a major switch in highway funding.**

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Fuel consumption in the state increased by about 1% per year through 2019, slightly lower than VMT growth, a difference largely attributable to the ongoing increase in fuel efficiency. In 2020, total fuel sales in the state were down due to travel reductions associated with the pandemic. There was significant recovery in 2021, but total fuel consumption was still slightly less than 2019 levels.

*Connect 2050* projects population growth of 13.5% between 2010 and 2040, to 6.5 million, and statewide VMT growth from 65.9 billion in 2018 to 82.9 billion in 2050.<sup>12</sup> As with the rest of the nation, despite an increase in population and VMT, the biggest contributing factor in Wisconsin's anticipated decline in fuel tax revenue is likely to be the shift toward EVs or plug-in hybrid vehicles. In 2021, EVs represented only about 0.25% of total light vehicles in the state, slightly less than the national average. But significant increases can be expected in the future.

### ***Forward-looking Analysis***

Estimates of future fuel consumption and fuel tax revenues in this study are based on calculations by transportation consultant Edward J. Regan, a 45-year veteran of revenue forecasting for transportation.

Regan's calculations are based on two national forecasts that are applied to Wisconsin.

- The U.S. Energy Information Administration's (EIA's) projection through 2050 in its 2022 Annual Energy Outlook, including annual estimates of the fuel efficiency of the passenger vehicle fleet as new, high-mpg vehicles are purchased and the older, lower-mpg fleet turns over. This is the basis for projecting estimated gasoline consumption.

- The Bloomberg New Energy Finance (BNEF) global projection of market penetration EVs as new vehicle sales.

*(A longer report from which this chapter was adapted, with detailed projections and assumptions regarding national consumption and fuel tax revenue, is available at the Badger Institute website, [badgerinstitute.org](http://badgerinstitute.org).)*

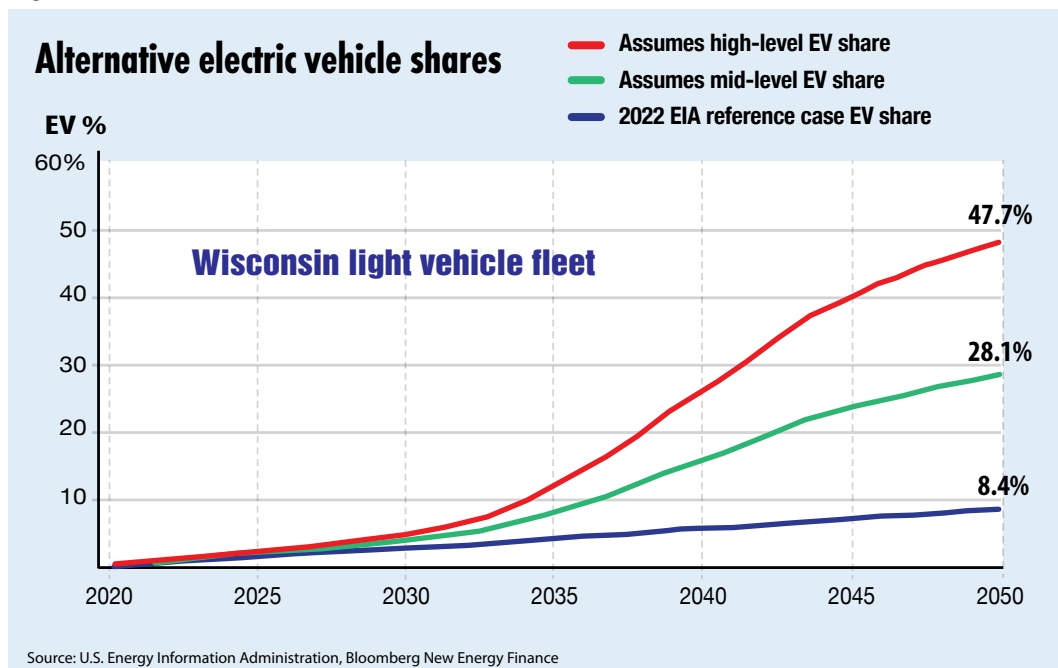
In effect, the EIA 2022 Annual Energy Outlook projects relatively little growth in U.S. fuel consumption over the next three decades, even though it expects total travel to increase by over 32% during the same period. The result is that by 2050, fuel sales (and fuel tax revenue) will be almost 25% lower than would be expected if there were no change in today's average fuel efficiency and EV share.

The EIA 2022 forecast, though, can be expected to underestimate the shift away from internal combustion engines: It anticipates the EV share of the U.S. light vehicle fleet to reach just under 10% by 2050. Recent trends by automakers suggest a more significant shift is on the horizon.

A recent article by Alistair Charlton highlighted the plans of U.S. and worldwide automakers.

- General Motors will have 30 new global EV models by 2025 and plans to no longer produce gas-powered vehicles by 2035.
- Ford will sell only EVs in Europe by 2030 and expects 40% of U.S. sales will be EVs by 2030.
- Audi and Fiat will offer only EVs by 2030.

Figure 1



- Volvo will be fully EV by 2030, while Volkswagen plans to be 50% EV by 2030 and fully EV by 2040.
- Hyundai plans to end sales of internal combustion engine vehicles worldwide by 2040.

Given the likely EIA underestimate, fuel consumption forecasts for the state were developed under three alternative scenarios in this study:

- Assuming fuel efficiency changes comparable to the 2022 EIA reference case forecast.
- Assuming a high level of EV penetration in the light vehicle fleet.
- Assuming a mid-level EV penetration level, essentially halfway between the EIA and high-level scenarios.

Figure 1 depicts the underlying assumed levels of EV penetration through 2050 for each scenario.

- The blue curve shows the EV penetration levels in the EIA reference case.
- The high-level EV estimates — the red curve — were derived from the adapted BNEF global forecast. Recognizing the rural nature of Wisconsin and current EV levels, future Wisconsin high-penetration levels were assumed to be 10% to 15% lower than the national forecast. This assumes EVs eventually will reach around 47% of the light vehicle fleet by 2050.
- The green curve shows the mid-level scenario, which assumes about 28% EVs by 2050.

Figure 2 depicts four alternative projections of total fuel consumption in the state through 2050. The black line on the left reflects actual historical consumption levels between 2015 and 2021. The orange line reflects what fuel sales would be with no changes in current fuel efficiency and EV shares. This is purely hypothetical and serves only for comparing estimates under other scenarios.

The analysis assumes travel will grow by an overall average of about 1% per year after 2022 and estimates trucks and other diesel-powered vehicles represent about 10% of VMT.

If there were no changes in fuel efficiency, total fuel sales in the state would increase from about 3.6 billion gallons in 2022 to more than 4.8 billion gallons by 2050 — but since that will not happen, the orange line is included for reference only.

Using the EIA reference case parameters, shown in blue, future fuel consumption will likely decline slightly over the next decade (after full recovery from the pandemic). In the later years, small increases are projected, but by 2050 fuel consumption still would be 22.3% lower than the hypothetical “no mpg change” scenario. As the share of EVs increases, fuel sales projections decline significantly.

In the mid-level EV scenario — which ultimately may prove to be an underestimate of EV penetration — fuel consumption would decline by more than 33% by 2050. Under the high-level EV scenario, the 2050 decline is estimated at more than 44%.

Figure 2

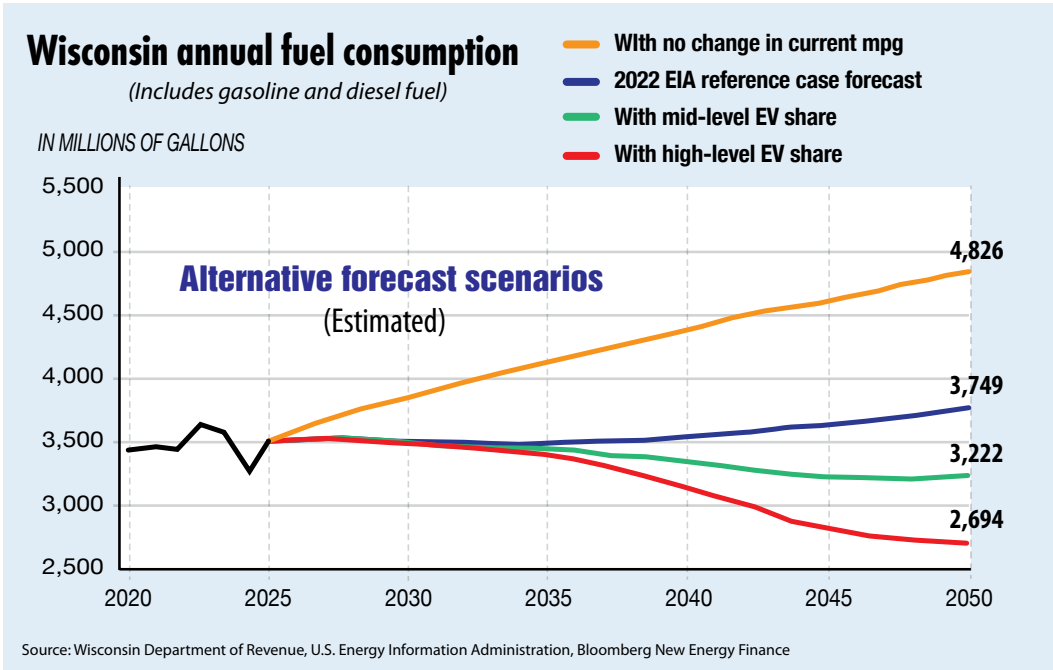


Figure 3 displays estimated Wisconsin fuel tax revenue through 2050 under the hypothetical “no mpg change” condition and the three alternative scenario forecasts. Even with the optimistic EIA reference case forecast, significant reductions can be expected. Under the worst case — assuming a high level of EVs — fuel tax revenue in Wisconsin would be reduced by more than 31% by 2040 and almost 45% by 2050.

Anticipating a revenue problem because of EVs, Wisconsin implemented an annual surcharge, in addition to annual registration fees, for EVs beginning in 2018 (\$100 per year) and for hybrid EVs beginning in 2020 (\$75 per year). Assuming a high level of shifts to EVs, the current level of supplemental fees would generate \$200 million to \$250 million in annual revenue by 2050.

This is well short of compensating for the estimated \$659 million reduction in annual fuel tax revenue that can be expected under the high-level EV scenario and still short of the \$496 million reduction that can be expected under the mid-level EV scenario. To make up for the shortfall in fuel tax revenue, legislators might consider increasing the gasoline and diesel tax for those still using conventional vehicles. Regan’s calculations show that for the mid-level EV penetration case, the fuel tax rate would have to increase by 50%, to \$0.463 per gallon, by 2050. In the high-level EV penetration case, the fuel tax rate increase needed to make up for the revenue shortfall would be 79%, for a rate of \$0.553 per gallon by 2050.

By contrast, in the high-level EV case, by 2050 almost half of all light vehicle operators would be paying *no fuel tax at all*. This would be a shift away from the basic users-pay/us-

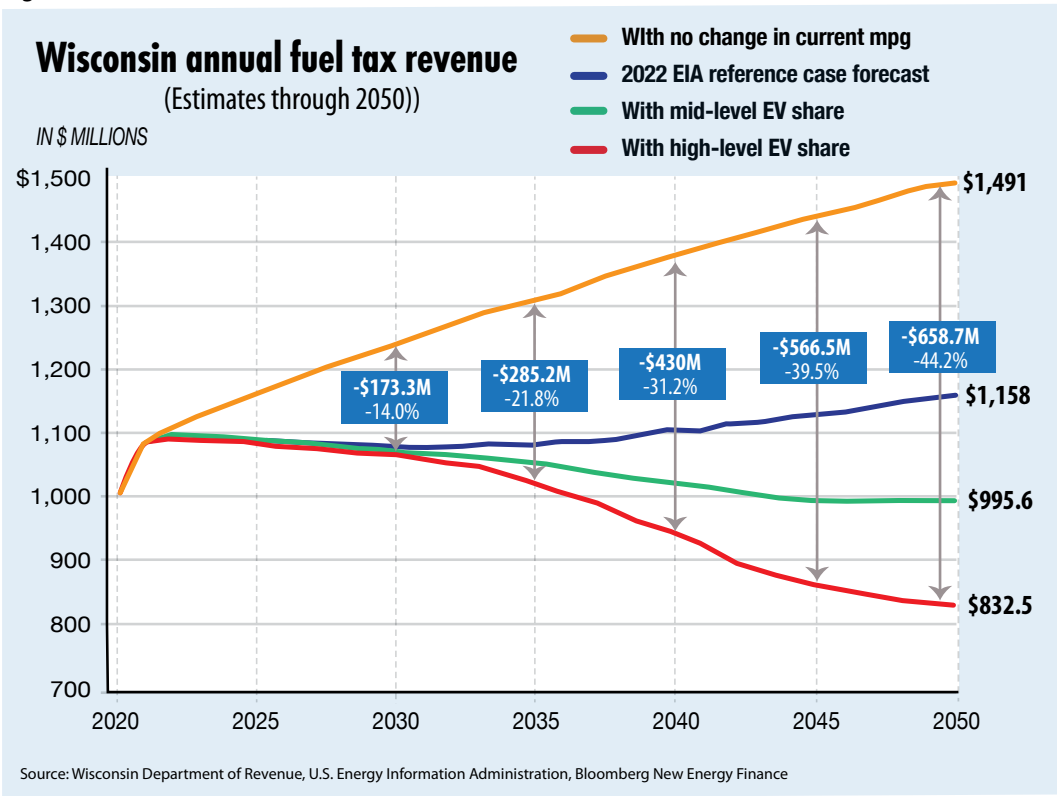
ers-benefit principle inherent in the traditional motor fuel tax: The more miles a vehicle is driven, the more fuel it consumes and the more tax it pays. These projections underscore the case for shifting all vehicles to a sustainable funding source, such as a mileage-based user fee.

What Americans Think About Mileage-Based User Fees

While many transportation policymakers consider a per-mile charge as the best replacement for per-gallon fuel taxes, many Americans have a negative impression of mileage-based user fees (MBUF). In surveys about possible future highway funding sources, only about one-quarter of the public sees per-mile charges as a good idea. In an online survey for Wisconsin’s *Connect 2050* transportation plan, respondents were supportive of a vaguely phrased “sustainable and predictable funding sources for transportation” (2.7 out of 3 rating) and exploring and implementing funding sources “other than the gas tax” where feasible (2.3 out of 3 rating).<sup>13</sup>

But when it came to the specific approach of “Further exploration of a mileage-based user fee (based on actual miles driven)” as a way to contribute to transportation funding in Wisconsin, respondents rated the approach 1.7 out of 3.<sup>14</sup> Tolling as a funding source earned the same rating as an MBUF — even though many Wisconsin drivers are familiar with the no-stopping nature of the Illinois Tollway electronic collection system.

Figure 3



Across the nation, one reason for this resistance to MBUF may be privacy concerns, amid media hype over government tracking: “Big Brother in your car.” Few drivers consider how closely they already are tracked by their own vehicle’s electronics (including the GPS) as well as their insurance companies, their smartphones, laptops and tablets, and Tile and Apple AirTag trackers stowed in their purses and backpacks.

Suspicious taxpayer groups seem certain that a per-mile charge would become yet another tax on driving instead of replacing the fuel tax. They can hardly be faulted for mistrusting government, given the steady increase in federal fuel taxes through the decades and the diversion of those revenues from roads and bridges.

Furthermore, anti-automobile and anti-highway activists, seeking to discourage driving, would like any per-mile charge to include additional taxes on emissions, noise and other impacts of driving, real or imagined. And Americans who appreciate the freedom and flexibility of the automobile and the nation’s wide-open spaces are inclined to see the switch to per-mile charges as a threat to their mobility and independence.

At the same time, while Wisconsin’s policymakers have investigated the possibility of tolling, there appears to be little movement toward this approach — even though the state is almost surrounded by states that toll. With the state not moving forward on tolling, an approach clearly familiar to its motorists, it’s no surprise that there is little interest in the less-familiar MBUF concept, especially when Wisconsin policymakers recommended considering *adding* the fee, rather than considering it to *replace* the fuel tax.

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**Anticipating a revenue problem because of electric vehicles, Wisconsin implemented an annual surcharge for EVs beginning in 2018. Its revenue projects are well short of compensating for the reduction in annual fuel tax revenue that can be expected.**

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The mileage-based user fee concept is not new, however, and Wisconsin would have the benefit of the experiences of the numerous state pilot projects already completed or under way. These have improved understanding of what an MBUF system would actually look like. Nearly all of the pilot projects:

- Gave participants a choice of several methods to record their miles traveled and for how those miles would be reported to the government.
- Did not “track” or report the time and place of every trip made.
- Used private, third-party companies to handle the reporting of miles to the government.
- Calculated what participants would have paid and compared that to the state gas tax they had actually paid for the miles driven during the test.
- Made clear that a state MBUF would *replace* the state fuel tax, not be charged in addition to it.
- Made use of stringent privacy protections for the mileage information collected.

Several pilot projects actively recruited public officials to be among the participants, which gave those officials firsthand experience in how it worked. In general, most participants

in the pilot projects came away with a positive view of the case to switch to per-mile charges.<sup>15</sup>

What is increasingly clear is that a strong, consistent and positive public education component is essential to the success of such a program. It would be unwise for a state DOT to focus single-mindedly on the MBUF as a way to fix a looming revenue shortfall, rather than pointing out the overall benefits of a much-improved highway system. When average people hear that the government needs more revenue, they tend to dig in their heels and tighten the grip on their wallets. While the revenue shortfall is indeed real and worrying, motorists and trucking companies deserve to see a genuine value proposition in making a major switch in highway funding.

In a 2019 Reason Foundation policy paper,<sup>16</sup> the co-author of this study suggested two elements of such a value proposition:

- Fix all of the shortcomings of the 100-year-old fuel taxes, not just its coming revenue shortfall.
- Begin the transition with something that offers large, visible benefits to highway users.

The next two sections expand upon those ideas.

### **Fixing All of the Fuel Tax's Shortcomings**

Most proposals to replace fuel taxes with per-mile charges focus only on the declining revenues. But the fuel tax has four other shortcomings. If Wisconsin and other states replace the fuel tax with a better funding source (a challenging undertaking), a sensible approach would be to consider whether the MBUF can be designed to fix the other shortcomings.

#### ***Fuel taxes don't keep pace with roadway needs.***

Wisconsin's motor fuel tax has not been adjusted since 2006, when the state eliminated adjustments based on the Consumer Price Index. Between 2010 and 2020, the state added nearly 207,000 people, according to the U.S. census, which put the 2020 population at about 5.9 million. *Connect 2050* projects the population will reach 6.5 million by 2040; statewide vehicle miles traveled (VMT) are forecast to grow from 65.9 billion in 2018 to 82.9 billion in 2050.<sup>17</sup> More of the highway budget will need to be spent on widening existing corridors, rebuilding and enhancing aging ones, and on increased maintenance. Charging all vehicles per mile driven will help highway funding keep pace with the growth in population and roadway travel.

#### ***Fuel taxes are not transparent.***

For other vital infrastructure (electricity, water, telecommunications, etc.), consumers receive a bill from the provider. The bill reports how much the customer used, the rate per "unit" of use and the total the customer owes. The customer sees what she used and the basis for the charges, and also knows who the provider is. With highways and other roads, how much the customer paid and the identity of the provider are obscure. In his book "Rethinking America's Highways," the lead author of this study included a

## The impending threat of shrinking gas tax revenue

This study is premised on the predicted long-term decline in revenue from Wisconsin's motor fuels tax. This revenue will decline for reasons laid out at length: ongoing improvement in miles per gallon for gas-powered cars and increasing use of electric vehicles. The only disagreement is in the degree and speed of decline, and perhaps at how theoretically high a gas tax on the dwindling number of fuel customers could go.

It is worth noting that Wisconsin's fuel tax revenue is not declining — yet — but the stagnating numbers demonstrate the imminent threat. Analyst Dale Knapp noted as much in a 2019 paper for the Badger Institute, "Transportation funding dilemma" (<https://bit.ly/3AcF9Sr>), observing that while gas tax revenue rose at a 3.2% average annual rate in the first seven years of this century, that growth turned into a decline averaging 0.7% annually during the Great Recession and its slow-growth wake. The turning point followed the end, in 2006, of regular inflation-linked increases in the gas tax rate.

From 2013 through 2018, gas tax revenue resumed growth, but slowly — 1.9% a year on average. The last full fiscal year before the COVID-19 pandemic, ending June 30, 2019, was no improvement: The five-year average growth rate in gas tax revenue was 1.3%, according to Wisconsin Department of Revenue data, for the five fiscal years ending in mid-2019. The 10-year average was just under 1%.

Knapp, now with Forward Analytics and for 18 years with the Wisconsin Taxpayers Alliance, pointed out in his 2019 paper that even the slow growth was projected to end soon. "Average fuel efficiency is expected to rise almost 24 percent through (2027), resulting in gas tax collections falling from just over \$1 billion to \$995 million in 2027," he wrote, quoting Department of Transportation projections. Revenue from fuel taxes and registration fees was expected to rise a total of about 4% over the decade leading to that year.

And that, he wrote on the eve of the pandemic, was vulnerable to a recession: "A deep or protracted downturn could have a devastating impact."

Indeed, for fiscal year 2020, which included the first four months of the pandemic, Department of Revenue figures show fuel tax revenues down 4.1% from the previous year. The strong recovery in fiscal year 2022, which ended June 30, brought total fuel tax revenues back only to 3.9% above the 2019 figure.

table showing that several years ago the average U.S. household paid just \$46 per month in federal plus state gas taxes, far less than for any of the other utilities<sup>18</sup> (e.g., for electricity, the national average was \$107 per month). Further, Americans have no idea who provides which roadways and, therefore, whom to hold accountable for problems. Many people even believe the federal government owns the Interstate highways, when in fact the states own and operate them.

### ***Fuel taxes are a one-size-fits-all method of charging.***

In Wisconsin, drivers pay an average of 1.3 cents per mile driven.<sup>19</sup> That is the same whether someone drives solely on local streets and roads or mostly on freeways and other



major highways. The cost of building and maintaining freeways is several times as much as for local streets, but 1.3 cents per mile is *far more* than is needed for local streets and two-lane rural roads. With this way of paying for roads, the people who use rural and local roads pay more than those roads cost, while those who use freeways pay less than they cost. That is not equitable.

Instead, imagine starting with a clean sheet of paper to design a per-mile charge system that addresses all of the above shortcomings, making it more like paying a utility bill than the current tax. It would have the following attributes:

- A true user fee, paid only by those who use roadways and spent only on roadways.
- Equitable to all users, with different rates for major highways (Interstates and freeways) compared with other roadways.
- Transparent, making it clear which provider is responsible for which roadways.
- Subject to periodic increases, when justified by increased operating and capital costs, via a public process similar to rate-setting for utilities.

### Starting the Transition via Major Highway Improvements

WisDOT's two recent long-term transportation plans and the transportation funding study ordered by legislators highlight understandable concern about the decline in fuel tax revenues. But policymakers should steer clear of making revenue shortfalls the primary rationale for a transition from shrinking per-gallon taxes to more equitable per-mile charges. The focus should be the need for *major investment in the state's aging and heavily used highway system*, which must be prepared for projected population growth over the next three decades.

The core of Wisconsin's highway system is the limited-access highways: long-distance Interstates and the urban freeway system. The Interstate system was authorized in 1956, and most of its corridors were built in the 1960s and early 1970s. That makes most of the system 50 years old or older, well beyond its original design life. Wisconsin has widened portions of its Interstate system and continues to develop plans for reconstruction and widening.

In the 2015 Fixing America's Surface Transportation (FAST) Act, Congress asked the Transportation Research Board (TRB) to convene an expert committee to study the future of the nation's Interstate system. The committee's 596-page report was released in December 2018.<sup>20</sup> Among its main findings:

- Much of the Interstate pavement is wearing out and needs to be replaced.
- The system has numerous bottleneck interchanges that are obsolete and should be replaced.
- There are not enough lanes in many corridors for projected growth in motorist and truck travel in coming decades.
- The system could benefit from dedicated truck lanes in some key freight corridors, but there are none. The only U.S. truck-only lanes planned, on I-75 in Georgia between Macon and McDonough, are expected to begin construction in 2030.

In its major report to Congress, the TRB committee suggested a repeat of the original 90%

federally funded Interstate highway program, which it estimated would require raising and spending an average of \$57 billion per year for the next 20 years (totaling about \$1.1 trillion). Doing so would necessitate a massive increase in federal gasoline and diesel taxes, which is highly unlikely. The committee's report also discussed the possibility of financing this huge set of projects based on projected toll revenues, which would require amending the 1956 federal law to permit the use of tolls on the 90% of the Interstate system where tolling is not allowed.

A 2019 Reason Foundation policy study responded to the TRB committee's report, recommending the toll-financed approach to rebuilding and selective widening.<sup>21</sup> It also proposed expanding an existing three-state pilot program to allow any state that decided to take this approach to use it to begin the transition from per-gallon taxes to per-mile charges.

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**Under the worst case — assuming a high level of electric vehicles — fuel tax revenue in Wisconsin would be reduced by more than 31% by 2040 and almost 45% by 2050.**

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In Wisconsin, this could be done along the following lines. WisDOT would develop a 20- to 30-year plan to reconstruct and modernize all its limited-access highways — the Interstate highways and urban freeways without Interstate numbers. It would decide on the order in which each corridor would be modernized and would explain that the modernization of each would be financed by the future revenues from newly instituted mileage-based user fees for the relevant corridor, with fuel tax rebates for miles driven on the corridors converted from fuel taxes to MBUF.<sup>22</sup>

As each corridor was finished and reopened to traffic, motorists and truckers would pay new per-mile fees *instead of* state gasoline and diesel taxes. An operating system — perhaps the same as the Illinois tolling system, given that nearly a million Wisconsin vehicles have I-PASS transponders already — would calculate the amount of fuel each customer used driving the rebuilt corridor (based on the vehicle make and model plus its EPA highway fuel economy rating), and software would calculate rebates of the state fuel taxes still in place for all other roads. This would demonstrate to people that the new per-mile charge serves as a *replacement* for the fuel tax.

Via this process, over several decades, almost 30% of all Wisconsin vehicle miles of travel would be converted from being paid for by per-gallon taxes to per-mile charges, *with no users paying both fuel taxes and per-mile charges for the same roadway*.

Starting with limited-access highways (where there are only a few places to get on and off) means that the transition to per-mile charging can begin by making use of technology already in use around the country and widely accepted. Using the popular Illinois Tollway I-PASS (or something similar), consisting of windshield-mounted transponders supplemented by license-plate imaging, avoids the need for near-term decisions about any new technology required in cars and trucks to enable per-mile charging for open-access roadways and numerous state-numbered highways as well as local streets. Equipping all of

those other roadways for charging via the I-PASS (or another) transponder would require many thousands of gantries to record vehicles' passage, which would be far too costly (and unsightly).

The initial program outlined here — for limited-access highways only — would serve as a guarantee to drivers that per-mile charges would indeed *replace* per-gallon taxes, as each corridor was modernized and opened with the new charges *and* rebates of the fuel tax paid for driving those miles. Highway user tax rebates like this are already being provided to trucking companies that use the Massachusetts Turnpike and the New York Thruway, both of which are tolled Interstates. The rebate process has been automated by trucking service provider Bestpass, which offers trucking companies a 48-state universal toll transponder and consolidated billing service.<sup>23</sup> Highway user-tax rebates are not simply a theory; they are in actual practice in two states.

### **How to Transition All Other Roadways to Per-Mile Charges**

Ultimately, as fuel tax revenue declines, Wisconsin and other states should expect to phase out this tax altogether and plan for replacing it with per-mile charges statewide. Converting limited-access highways first will provide breathing room, because as each segment of an Interstate or other limited-access highway is converted to per-mile charges, that portion of the state's overall highway system will become self-supporting and will no longer consume a portion of the declining revenue from fuel taxes. Fuel tax revenues will no longer have to cover the ongoing maintenance of those corridors and, more importantly, will not have to be used to rebuild and widen those corridors that have been converted.

As noted previously, the I-PASS-type transponder system would not work for the open-access state highways (which include critically important urban arterials). Nor would it work for local streets and roads. But if limited-access highways are converted first, Wisconsin will have many years to learn from other states' pilot projects and to experiment with customer-friendly ways for roadway users to record and report their other miles of travel.

While Wisconsin has not considered a pilot project to test various features of a state mileage-based user fee, the state should plan to do so in the near future. In designing such a project, the state can take advantage of what has been learned by states that already have implemented one or more MBUF pilot projects. Role models may be on the way: In January 2022, the U.S. Government Accountability Office recommended the Federal Highway Administration “develop and apply criteria to assess the scalability” of the MBUF pilot projects implemented since 2016 by 13 states, including two multistate coalitions.<sup>24</sup>

Here is a brief summary of key features that have been well-received by participants in MBUF pilot projects elsewhere:<sup>25</sup>

- Keep it simple and understandable: a user fee to pay for roads.
- Replace the state gas tax, rather than adding the fee on top of that tax.
- Make it fair to both rural and urban users, including lower per-mile charges for rural

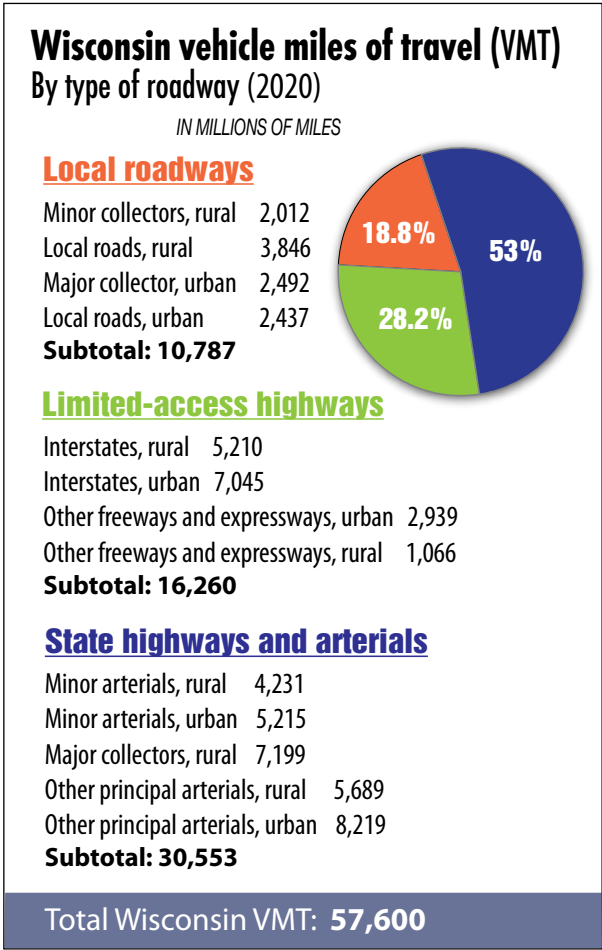
- roads and local streets.
- Make it transparent and self-explanatory, as with utility bills.
  - Use private firms, selected competitively, to handle collecting, processing and protecting miles-traveled data.
  - Legislate strict privacy protections for miles-traveled data.

Among the options for recording miles of travel that have been offered to participants in state pilot projects are the following:

- Annual odometer readings at the time of vehicle registration renewal.
- An all-you-can-drive option under which the annual charge would be the equivalent of what the vehicle would owe for driving twice the average number of miles driven per vehicle in that state.
- An onboard unit that plugs into the OBD-II port beneath a vehicle’s dashboard and records miles driven, and if certain location information is needed (e.g., if some miles are driven across a state or county border), those miles are identified using cell-tower data.
- An onboard unit that uses GPS to provide more precise location data than is available by using cell-tower data.

It is important to remember that the GPS system of satellites does not “track” anyone. GPS signals permit the vehicle’s computer or its operator to know where the vehicle is at any given time. That information can be stored on the vehicle, but it would only be uploaded, along with the total miles driven, if that is what the customer signed up for. It would operate much like the GPS receiver in a smartphone, which lets the phone’s owner know his or her device location at any time but does not transmit that information to anyone else without the owner’s permission, per the phone’s terms of service. Regardless of which method of reporting miles is used, stringent privacy protection for that data must be ensured by statute.

Table 1



Source: FHWA Highway Statistics, Table VM-2

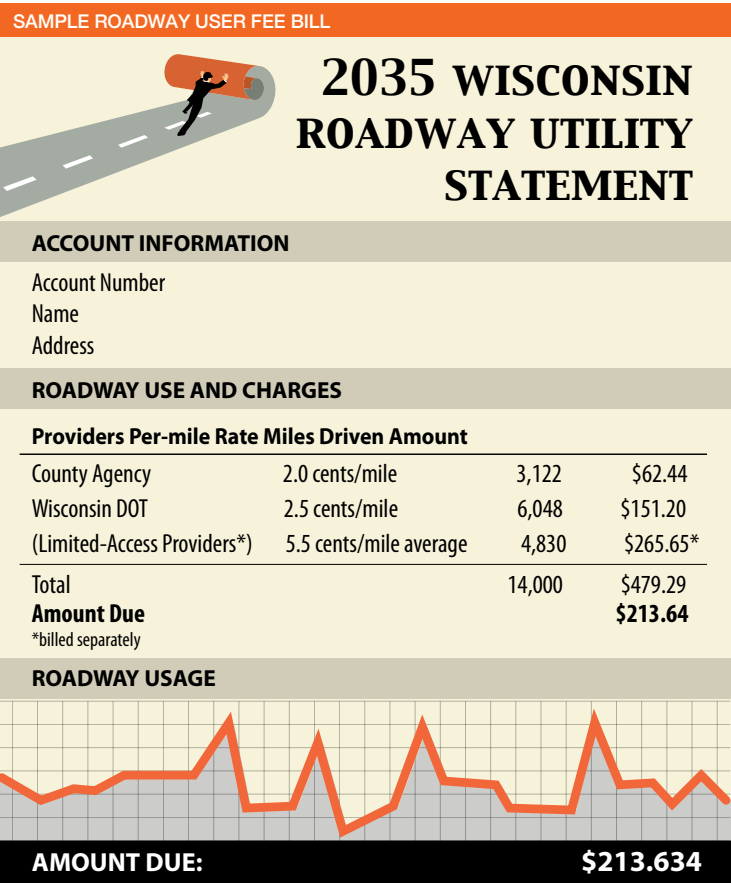
Assuming Wisconsin begins the transition to per-mile charging using the I-PASS system with which the state’s drivers are familiar (or something similar) on all the limited-access highways, that system will handle the revenue collection for all of *those* miles of travel. That would be nearly one-third — 28.2% — of all the VMT in the state, as shown in Table 1.

The next challenge is how to charge for the remaining VMT, driven on two different categories of roadway: those with state and U.S. highway numbers that are owned by WisDOT and maintained under contract by counties and cities, and the remaining local roads and streets that are the responsibility of counties, cities and villages, and towns.

Ideally, fees would differ according to the type of road a motorist drives on, with higher charges for costly limited-access highways and lower charges for two-lane highways or for local roads that cost less to build and maintain. But a system like this would require very precise data, such as that provided by GPS. A second-best option could involve calculating the funding needed for roads of each type — either according to Wisconsin’s current systems for funding the trunk highway system and for county and local road aid, or by a new state/local split — and dividing that by the projected miles driven on them in a year to arrive at an average per-mile fee that is then assessed via an odometer reading or another method.

The aim is to provide a transparent system under which roadway customers know who provides which set of roads they use, what they charge per mile traveled and, therefore, what they must pay, like the utility bills everyone is familiar with. Figure 4 provides a hypothetical roadway user fee statement. This concept assumes an annual statement comparable to property tax bills, but it would also be possible for people to pay their highway bills in quarterly or monthly installments.

Figure 4



## **Conclusion and Recommendations**

For more than a decade, Wisconsin's transportation policy has failed to address the impending decline in revenue from per-gallon gasoline and diesel taxes. It was not until 2018 and 2019 that the state began to hold electric vehicles and hybrid vehicles somewhat accountable, imposing flat annual surcharges on both. Wisconsin has not directly participated in any of the pilot projects created by Congress to allow states to experiment with mileage-based user fees. Other states that have developed MBUF pilot projects have learned a great deal about how such a program might work. A first step for Wisconsin should be to gain approval from the Federal Highway Administration for a Wisconsin MBUF pilot project.

In recommending that Wisconsin plan to shift from per-gallon taxes to per-mile charges for roadway funding, this study also has recommended that the objective should be not merely to replace the revenue that fuel taxes have traditionally provided but also to remedy the other shortcomings of fuel taxes. These include lack of transparency, lack of accountability of road providers to road users and the fact that the fuel tax is a tax rather than a true user fee like a utility bill.

Any switchover from fuel taxes to mileage-based user fees will necessarily be gradual. This study recommends beginning the transition with limited-access highways. The charging method is an electronic transponder, with which many Wisconsin motorists are already familiar, thanks to the I-PASS system in Illinois. The charges to use the limited-access system would be stated on a per-mile basis. Customers who pay these new electronic per-mile charges would be given rebates for the amount of state fuel taxes incurred for their miles driven on the per-mile-charged limited-access system. When this step is completed, about 28% of Wisconsin's vehicle miles of travel will have been transitioned from paying per-gallon to paying per-mile. Customers will receive regular statements documenting the miles driven and amounts charged via mileage-based user fees.

Once success has been sufficiently demonstrated in the transition of limited-access highways, Wisconsin should move to the next step: planning the transition of state and local roadways to a per-mile charging system. As success is shown in other states — including Oregon, Utah and Virginia — Wisconsin can learn and benefit from their experiences. By the time serious implementation planning is under way for state and local roadways, many of the kinks will be worked out elsewhere.

The U.S. Department of Transportation has agreed with the Government Accountability Office's recommendation that the Federal Highway Administration establish criteria to assess the scalability of MBUF pilot projects in the states. Road-user charging technology will have advanced, and a number of states that have participated in MBUF pilot projects can be expected to be paving the way with statewide systems in the early stages of implementation.

In the near term, besides embarking on its own MBUF pilot project, state transportation policymakers should prioritize two further next steps. Wisconsin already has drawn on

the findings of the Transportation Research Board's landmark study on the future of the nation's Interstates and is among the states that have investigated the need to modernize the limited-access system (including reconstruction, replacement of bottleneck interchanges and widening where needed). This corridor-by-corridor scrutiny has produced cost estimates and timeframes for various projects, including the feasibility of financing these projects based on bonding the revenue streams. It is time to lay out a master plan for renewal of the state's entire limited-access highway system of Interstates and freeways.

In addition, should any measure be introduced in Congress that would reduce or eliminate the 1956 ban on using tolls on the 90% of the Interstate system that is non-tolled, Wisconsin policymakers should strongly support such a measure. The MBUF to be implemented on Wisconsin Interstate corridors could be interpreted as per-mile tolls, unless federal law is changed to permit such a change.



### **Badger Institute takeaways**

- Mileage-based user fees should replace, not supplement, fuel taxes.
- The state should set up a pilot project to test mileage-based user fees.
- The state should lay out a master plan for renewal of the entire limited-access highway system of Interstates and freeways.
- The state should identify limited-access highways most in need of modernization and initially convert only those to a mileage-based user fee model.
- As each modernized corridor is finished and opened, fuel tax rebates should be given to drivers being charged a mileage-based user fee.
- Once success has been sufficiently demonstrated in the transition of limited-access highways, Wisconsin should plan the transition of state and local roadways to a per-mile charging system.



## Endnotes

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<sup>2</sup> Corporate Average Fuel Economy, National Highway Transportation Safety Administration, [www.nhtsa.gov](http://www.nhtsa.gov), (31 March 2022) [www.nhtsa.gov/laws-regulations/corporate-average-fuel-economy](http://www.nhtsa.gov/laws-regulations/corporate-average-fuel-economy) (7 May 2022).

<sup>3</sup> *The Fuel Tax and Alternatives for Transportation Funding*, Special Report 285, Transportation Research Board, 2006.

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<sup>9</sup> “Keep Wisconsin Moving: Smart Investments Measurable Results,” Transportation Finance & Policy Commission, [www.wisconsin.gov](http://www.wisconsin.gov), January 2013, Wisconsin Department of Transportation, <https://wisconsin.gov/Documents/about-wisdot/who-we-are/comm-couns/keep-wi-moving-report.pdf> (15 May 2020).

<sup>10</sup> “Connect 2050: Wisconsin’s Statewide Long-Range Transportation Plan,” Wisconsin Department of Transportation, [Wisconsin.gov](http://Wisconsin.gov), May 2022, <https://www.wisdotplans.gov/connect2050> (9 May 2022).

<sup>11</sup> 2016 Wisconsin Transportation Solvency Report, Wisconsin Department of Transportation, [Wisconsin.gov](http://Wisconsin.gov), [wisconsin.gov/Pages/projects/solvency.aspx](http://wisconsin.gov/Pages/projects/solvency.aspx) (10 May 2022).

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<sup>15</sup> Kathryn Jones and Maureen Bock, “Oregon’s Road Usage Charge: The OReGO Program, Final Report,” Oregon Department of Transportation, <https://www.oregon.gov/ODOT/>, April 2017, [www.oregon.gov/ODOT/Programs/RUF/IP-Road%20Usage%20Evaluation%20Book%20WEB\\_4-26.pdf](http://www.oregon.gov/ODOT/Programs/RUF/IP-Road%20Usage%20Evaluation%20Book%20WEB_4-26.pdf) (12 May 2022).

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## A PREFACE TO

# Minimum Markup: The Price is Not Right

**W**hy would a citizenry want its government to require, by law, higher prices?

At any time, it's a good question but, as veteran journalist Ken Wysocky points out, at a time of raging inflation, it takes on a new urgency.

And why would a government, such as Wisconsin's state government, go on requiring, by law, higher prices even though there is a broad bipartisan consensus that it should stop? And shelves of research showing it to be pernicious?

The Badger Institute has been asking this question for a long time, and Wysocky here reviews the findings — because our state is *still requiring*, by law, higher prices.

— *Badger Institute*

## ABOUT THE AUTHOR



**Ken Wysocky** is a Milwaukee-area freelance journalist and editor published in many national magazines and other media. His 40-plus years of journalism include reporting at daily newspapers in Milwaukee and the Chicago area, managing communications for a former Milwaukee-based Fortune 250 company and editing a magazine.

# Minimum Markup: The Price is Not Right

*By Ken Wysocky*

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**L**ike wings on birds that can't fly, Wisconsin's minimum markup law is a vestigial remnant — a well-intended but no longer needed government intrusion enacted during a bygone economic era. In short, it's a policy in search of a problem that no longer exists, according to numerous researchers, studies and reports that decry its impact on consumers.

The fact that there's been long-standing bipartisan support to repeal the law, originally passed by the Wisconsin Legislature in June 1939, speaks volumes about its relevance today.

## The Law's History

To understand why the law no longer makes sense requires a short history lesson.

Technically known as the Unfair Sales Act, the law was enacted to help stymie the tsunami of small business failures during the Great Depression of 1929 through 1939. It originally called for a mandatory 2% markup on wholesale prices and a 6% markup on retail prices on all merchandise sold in Wisconsin.

The legislation was based upon a model State Unfair Sales Act prepared by the National Food and Grocery Conference Committee. The committee, in turn, was made up of representatives of associations from various branches — retail, wholesale and manufacturing — of the food and grocery trade, according to 1939 drafting files.

Why would state government meddle in product pricing? Because of concerns that larger retailers could use so-called predatory pricing tactics — drive down prices so low that smaller businesses would fail. In essence, the law was designed as a protective measure to create at least a somewhat level playing field for both smaller businesses and their larger competitors.

The law underwent minor changes during the ensuing decades. But a major shift occurred in 1986, when the state Legislature removed most merchandise from under the yoke of markup requirements, creating a more free-market economy.

But lawmakers kept the law in place for a select number of goods, such as motor vehicle

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**Even though the Great Depression ended more than 80 years ago and economic dynamics have changed considerably since then, gas, alcohol and tobacco still cannot be sold at below-cost prices in the Badger State without violating the law.**

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fuel, tobacco and alcohol. And in 1997, the minimum markup on gasoline was raised to 9.18% of the “average posted terminal price,” which many consider a proxy for wholesale costs.

The end result: Even though the Great Depression ended more than 80 years ago and economic dynamics have changed considerably since then, gas, alcohol and tobacco still cannot be sold at below-cost prices in the Badger State without violating the law.

This dictum seems especially egregious in light of significantly higher prices for gasoline.

## The Research

### *Cost to Consumers*

As explained in a 2016 report<sup>1</sup> by the Badger Institute, it’s exceptionally difficult to estimate the aggregate impact of minimum markup laws on Joe and Jane Consumer, given variables such as fluctuating gasoline prices and widespread circumvention of the law.

But a 1999 study<sup>2</sup> by two professors at Marquette University in Milwaukee estimated the law cost consumers an additional two to three cents per gallon for gasoline — or a total of at least \$50 million a year. And that was when gas prices ranged from a mere \$1 to \$1.50 per gallon. (The study was published by the Badger Institute, then called the Wisconsin Policy Research Institute).

More recently, Will Flanders of the Wisconsin Institute for Law & Liberty (WILL) pointed out that because the minimum markup is tied to the wholesale price of gas, it’s difficult to pin down exactly how much more consumers pay because of the markup. But in an interview,<sup>3</sup> he estimated the law adds 32 cents to the price of a gallon of gas.

The Federal Trade Commission (FTC) supported the 1999 study’s findings. In a 2003 letter<sup>4</sup> to then-state Rep. Shirley Krug (D-Milwaukee), who supported repealing the law, the FTC said that the study “was consistent with a growing body of empirical research from the past two decades that has assessed the impact of ‘sales-below-cost’ laws on retail gasoline prices” and that “most studies find these laws raise gasoline prices or leave them unchanged.”

Wisconsin’s law, which the FTC said features one of the steepest minimum markups on retail fuel sales in the country, likely leads to significantly higher prices for consumers, discourages pro-competitive price cutting and — given federal antitrust laws — simply is not necessary.

The FTC emphasized that the federal government, state attorneys general and private parties all have the ability to fight “predatory pricing” without minimum markup laws. The

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**Wisconsin’s law, which the FTC said features one of the steepest minimum markups on retail fuel sales in the country, likely leads to significantly higher prices for consumers, discourages pro-competitive price cutting and — given federal antitrust laws — simply is not necessary.**

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U.S. Supreme Court defines predatory pricing as “pricing below an appropriate measure of (a defendant’s) cost for the purpose of eliminating competitors in the short run and reducing competition in the long run.”

But the FTC also stated that “predatory below-cost pricing happens infrequently” and that “anti-competitive, below-cost sales of motor fuels are especially unlikely.”

Finally, the FTC questioned the logic behind the 9.18% markup in particular, noting that it appears “completely arbitrary.”

### ***More Incentives to Repeal***

There’s also evidence that the law doesn’t even accomplish its intent.

In 2017, WILL partnered with Ike Brannon to examine the extent to which minimum markup laws<sup>5</sup> protected small businesses. (At the time, Brannon was a visiting fellow at the Cato Institute and now is president of Capital Policy Analytics, a consulting firm in Washington, D.C., and a Badger Institute visiting fellow.)

After comparing states that had both a gasoline-specific minimum markup law and general minimum markup law, Brannon found no difference in the number of per capita small businesses in those states.

“Indeed, in the modern era, the law may protect the same big retailers that it was designed to restrict,” an article<sup>6</sup> on WILL’s website reports. “In general, bigger gas providers like these laws because they guarantee a profit on gas sales while severely restricting the ability of alternative retailers to undercut them on price. This has made the repeal of this law, which almost indisputably harms consumers, all but impossible in the (Wisconsin) legislature.”

Furthermore, the 2017 study points out that the profit margins on gasoline sales already are extremely slim. Gas stations typically rely on sales of ancillary items, not fuel, for profits, just as restaurants typically rely on alcohol sales for profits while making little money on food.

Gas stations in states without a minimum markup requirement don’t perceive narrow margins on gasoline as an existential threat, the report notes. Why not? Because modern gasoline stations make most of their money on ancillary sales of convenience store items such as soft drinks and snack foods.

This, the report goes on to say, is a primary reason supermarket chains such as Walmart, Kroger and Woodman’s have been so keen to enter the gasoline market in recent years.

### ***Effects Beyond Gas Prices***

The law affects more than just gas prices. A 2020 Badger Institute article<sup>7</sup> provides a telling example of how the law can penalize consumers.

Years ago, Walmart began selling an array of generic prescription drugs for just \$4 for a 30-day supply and \$10 for a 90-day supply. The retailer surmised that while some of the

prices may have been a little below cost, charging a uniform low price across such a wide array of drugs would encourage shoppers to get all of their prescriptions at Walmart — and make other purchases at the same time.

It was a great deal for consumers, and other large pharmacy operators such as Costco, Walgreens and Kroger eventually followed suit with similar pricing programs.

However, because some of the generic drugs on Walmart's list cost the retailer more than \$4 and violated the state's Unfair Sales Act, Wisconsin prevented Walmart from offering the deal. In the name of protecting Badger State consumers, Walmart was forced to charge higher prices in Wisconsin than in other states.

The fact that this discounting program has survived for years and years elsewhere belies any notion that Walmart's low prices will drive its competitors out of business. Besides, these days its biggest competition comes from online sellers.

"If this is predatory pricing designed to drive competitors out of business, then Walmart is really, really bad at it," the article concludes.

### ***No Enforcement***

There's at least one more compelling reason to repeal the law: It's rarely enforced. During the past 25 years or so, Wisconsin has effectively adopted a go-easy, look-the-other-way approach to violations, according to research compiled for the 2016 Badger Institute report.

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In fact, the Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) employs just two full-time staff members whose duties include, but aren't restricted to, handling complaints and issuing warning letters when alleged violations occur. Furthermore, since 2005, the state has referred just one case for prosecution, according to the agency.

Pointedly, DATCP takes action only when someone files a complaint. During the past five years (2017 through 2021), the state received 6,907 complaints about pricing violations, with almost 99% of them (6,822) stemming from gas prices. That's an annual average of 1,364 complaints about gas prices, according to the agency.

Alleged violators receive an informational letter with an educational packet that explains the law. If violations continue, the state then issues a warning letter. During the past five years (2017 to 2021), the state sent out an average of 115 warning letters, mostly pertaining to gas price disputes, according to DATCP. The agency was unable to timely provide information on the number of complaints it received during that period.

## **Conclusion**

Wisconsin has an estimated 3,000 gas stations so, generally speaking, minimum markup violations for gas prices don't appear to be a big concern for the state's station owners.

There's some debate over the exact number of states with similar minimum markup laws. In a 2018 article,<sup>8</sup> *The Wall Street Journal* reported that 26 states have minimum markup laws. As of 2016, the Wisconsin Legislative Reference Bureau stated there were 21 states with general restrictions on retail sales below cost and 11 with laws specific to motor vehicle fuel. Also as of 2016, the National Conference of State Legislatures said Wisconsin was one of 16 states with minimum markup laws.

Whatever the exact number, there's no doubt the Badger State is a member of a distinct minority of states that still have this relic of Depression-era economics on their books. It's a membership that state legislators should terminate as quickly as possible.



### **Badger Institute takeaways**

- Wisconsin lawmakers should immediately repeal the state's minimum markup law.

### **Endnotes**

<sup>1</sup> [badgerinstitute.org/BI-Files/Special-Reports/Minimum\\_Markup\\_SpecialReport\\_2016.pdf](https://badgerinstitute.org/BI-Files/Special-Reports/Minimum_Markup_SpecialReport_2016.pdf)

<sup>2</sup> [wpri.org/BI-Files/Reports/Vol12no7.pdf](https://wpri.org/BI-Files/Reports/Vol12no7.pdf)

<sup>3</sup> [thecentersquare.com/wisconsin/wisconsin-s-minimum-mark-up-law-not-helping-with-gas-prices/article\\_ecb663a2-a0b3-11ec-a0a9-9730f4be7374.html](https://thecentersquare.com/wisconsin/wisconsin-s-minimum-mark-up-law-not-helping-with-gas-prices/article_ecb663a2-a0b3-11ec-a0a9-9730f4be7374.html)

<sup>4</sup> [ftc.gov/news-events/news/press-releases/2003/10/ftc-staff-wisconsins-unfair-sales-act-likely-raises-gas-prices](https://ftc.gov/news-events/news/press-releases/2003/10/ftc-staff-wisconsins-unfair-sales-act-likely-raises-gas-prices)

<sup>5</sup> [will-law.org/wp-content/uploads/2021/01/2017-MML-Final.pdf](https://will-law.org/wp-content/uploads/2021/01/2017-MML-Final.pdf)

<sup>6</sup> [will-law.org/repeal-minimum-markup-law/](https://will-law.org/repeal-minimum-markup-law/)

<sup>7</sup> [badgerinstitute.org/News/2019-2020/State-law-inflates-prescription-drug-costs.htm](https://badgerinstitute.org/News/2019-2020/State-law-inflates-prescription-drug-costs.htm)

<sup>8</sup> [wsj.com/articles/these-prices-are-a-steal-and-in-some-states-thats-illegal-1517007867](https://wsj.com/articles/these-prices-are-a-steal-and-in-some-states-thats-illegal-1517007867)



**WORK**



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A P R E F A C E T O

# Occupational Licensing: Get Out of the Way of Work

**W**isconsin's politicians prohibit over 1 million citizens from working unless they have government permission.

This is the root of the scandalous backlogs plaguing Wisconsin's occupational licensing bureaucracy, which is forcing many people to sit on the sidelines after they move to our state or graduate from their training, unable to work in their chosen field.

The Badger Institute's scholars have documented this growing problem for years. This chapter offers a quick tour of their findings — and presents concrete reforms that have worked in other states.

While some licensing in certain occupations makes sense, unnecessary licensing requirements negatively affect the labor supply and add to consumer costs. Reform could prove critical for Wisconsin's future prosperity, especially given the current worker shortage.

But more than that, reform is a matter of justice. When people are qualified and willing to do a job, the state should not stand in the way.

— *Badger Institute*

# Occupational Licensing: Get Out of the Way of Work

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## Introduction

**T**he Wisconsin Department of Safety and Professional Services (DSPS), the agency authorized by state law to review, approve and regulate most occupational licenses, has experienced a significant backlog in recent years. It's not uncommon for Wisconsinites seeking a license to wait weeks, months or even longer for the certification they need to enter their profession. While they wait, they are precluded from working in their desired fields, serving others with their skills and earning paychecks commensurate with their education and training.

During legislative hearings, aspiring professionals in a range of vocations have shared their stories — sometimes tearfully — describing the confusing application process, endless hours spent on the phone, unanswered emails, DSPS requests for already submitted paperwork and other inexplicable delays. Many point out that DSPS is quick to cash their checks before assuming radio silence.

Some blame the delays on bureaucracy and inefficiency. Others say the department is underfunded and short-staffed.

There may be merit to both claims, but they ignore the root of the problem. The dramatic growth of professions requiring state licensure has resulted in the need for more than 1 million Wisconsin workers<sup>1</sup> to seek the state's permission before they can secure — or maintain — employment.

Wisconsin's politicians and bureaucrats have proven themselves incapable of approving, monitoring and renewing all of those licenses — but there is another, more essential problem that must be addressed.

## The Problem

### ***What is Occupational Licensing?***

An occupational license is a government permission slip to work in a particular field.

The justification for state involvement is the protection of public health and safety. But what began as a way to ensure entry-level competence for workers primarily in healthcare fields has absorbed other occupations and grown increasingly complex and costly.

The number of fields requiring government certification has soared. Between 1996 and 2016, the number of licensed occupations in Wisconsin increased by 84%. The state's pop-

ulation grew just over 10% during that period.<sup>2</sup>

The state currently requires 1 million Wisconsinites to secure certification for 280 credential types.<sup>3</sup> Government permission is now required in the Badger State for anyone seeking to become an auctioneer, animal trainer, dance therapist, landscape architect, butter maker, manicurist, bartender, elevator helper, barber, taxidermist and soil erosion inspector, to name a few.

Each applicant must jump over numerous government hurdles. To obtain a license, an aspiring worker may have to acquire a minimum level of education, experience and training, and pass state-sanctioned exams. DSPS often requires application and renewal fees.

### *The Downside*

In recent years, academics and lawmakers have developed a better understanding of the economic impact of occupational licensing on workers and consumers. The work of Morris Kleiner at the University of Minnesota, Edward Timmons at West Virginia University, Dick Carpenter at the Institute for Justice and others has quantified the effects on employment, income, mobility, competition and innovation.

Kleiner, considered the nation's foremost expert on licensure, notes the practice is often more about reducing competition than safeguarding consumers.

"Economic studies have demonstrated far more cases where occupational licensing has reduced employment and increased prices and wages of licensed workers than where it has improved the quality and safety of services," wrote Kleiner, a professor of labor policy at the Humphrey School of Public Affairs at the University of Minnesota.<sup>4</sup>

"Because people need to get licenses for so many kinds of jobs, it's becoming harder for them to break into certain occupations," Kleiner observed in another report. "That's especially true for low-income workers."<sup>5</sup>

This research has contributed to a growing recognition that licensing often pits market participants against those seeking to enter the field. It's revealing that while public health and safety are given as the justification for new categories of licenses, injured or endangered consumers are rarely the ones seeking this remedy. Instead, it's most often practitioners of a particular vocation who lobby state lawmakers to establish a new license. When they succeed, it is those in the field who usually get grandfathered from the requirements that they set for those who follow.

Licensing boards and advisory councils are empowered by the state to establish standards for existing license holders as well as those who aspire to a profession.

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**By restricting the labor supply, licensing allows license holders to raise the prices they charge for consumer goods and services from licensed professions. This creates an artificial wage premium in many occupations.**

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“For a professional association, obtaining licensing legislation requires raising funds from members of the occupation to lobby the state legislature, especially the chairs of appropriate committees,” Kleiner wrote in 2011. “In addition, the occupation association often solicits volunteers from its membership to work on legislative campaigns. With financial contributions, political action committees and volunteers, ... occupational associations ... have a significant ability to influence legislation, especially when opposition to regulatory legislation is absent or minimal.”<sup>6</sup>

Once market participants have control, there is an increased risk of self-dealing, even if unintentional. Those who already possess licenses in a profession are unlikely to lower the requirements for those who follow. More often than not, they impose higher educational requirements, hours of experience, fees or residency requirements, resulting in fewer individuals who are able to pursue a licensed occupation.<sup>7</sup>

In short, licensing requirements erect barriers to newcomers, especially the economically disadvantaged. This suppresses competition, harming consumers by offering the market fewer choices and artificially inflating prices.

### *Calls for Reform*

A growing recognition of these realities has generated bipartisan support for licensure reform. Elected officials who rarely see eye to eye — including Presidents Barack Obama, Donald Trump and Joe Biden — have highlighted the ill effects of professional licensing and called for reforms.

In July 2015, Obama’s Council of Economic Advisers issued a landmark paper highlighting the costs and burdens of occupational licensing in the United States. The report cited the “substantial costs” that “raise the price of goods and services, restrict employment opportunities, and make it more difficult for workers to take their skills across state lines.”<sup>8</sup>

The council concluded: “The practice of licensing can impose substantial costs on job seekers, consumers, and the economy more generally. This is particularly true when licensing regulations are poorly aligned toward consumer protection and when they are not updated to reflect a changing economy.”<sup>9</sup>

In December 2020, Trump issued an executive order that, among other things, encouraged states to eliminate unnecessary licenses, reduce burdensome requirements and recognize out-of-state licenses.<sup>10</sup>

In July 2021, Biden signed an executive order directing the Federal Trade Commission to issue rules to roll back professional licensing restrictions that “unfairly limit worker mobility.”<sup>11</sup>

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**Government  
permission is now  
required in the Badger  
State for anyone  
seeking to become an  
auctioneer, animal  
trainer, dance  
therapist, landscape  
architect, butter maker,  
manicurist, bartender,  
elevator helper, barber,  
taxidermist and soil  
erosion inspector,  
to name a few.**

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In a growing number of states, governors and legislators from both parties have worked together to adopt alternatives to licensing and to pass meaningful reforms.

The courts also have taken steps to rein in licensing regulations that promote self-dealing. In a landmark case in 2015, the U.S. Supreme Court recognized the antitrust implications for occupational licensing boards that were captured by licensees. In that decision, Justice Anthony Kennedy warned of the “risks licensing boards dominated by market participants may pose to the free market.”<sup>12</sup>

By delegating power to active market participants, he wrote, “established ethical standards may blend with private anti-competitive motives in a way difficult even for market participants to discern.”

As these concerns have grown, efforts to limit the effects of occupational licensing on workers and consumers have gained momentum. Several states have adopted reforms, including the elimination of barriers to work and streamlining of the licensure process, placing parameters around the creation of new licenses and requiring the elimination of licenses when a public benefit cannot be established.

Wisconsin is lagging, although some reforms have been adopted in the past few years:

- In December 2021, Gov. Tony Evers signed a bipartisan bill designed to streamline approvals by allowing a credentialing board to delegate authority to DSPS to make an immediate determination regarding an application. At this point, it does not appear to have had a significant effect on the DSPS backlog.
- In July 2021, Evers signed legislation clarifying that natural hair braiders don’t need a state license.
- In March 2020, Evers signed another bipartisan measure that allows Wisconsin to accept occupational licenses from other states when held by current and former military members and their spouses.
- In 2018, Gov. Scott Walker signed a bill that brought onerous Wisconsin requirements for new chiropractors in line with other states.
- In 2017, bipartisan measures signed by Walker removed barriers for barbers, cosmetologists and other beauty-related professionals to obtain a license, run their own businesses and work outside a shop or salon.

But as the ongoing DSPS backlog demonstrates, Wisconsin lawmakers have yet to advance reforms that address licensing on a broad scale.

## **Research on the Effects of Licensing**

### ***Limits Labor Supply***

By its nature, occupational licensing erects barriers to entry. As a result, research shows, licensing restricts the labor supply in ways that have the heaviest impact on those with low skills and limited experience, disproportionately harming immigrants, low-income workers and the formerly incarcerated.

According to the Institute for Justice, Wisconsin licenses 42 of the 102 low- to moderate-income occupations studied.<sup>13</sup>

A 2018 Institute for Justice study found that licensing costs the nation's economy between 1.8 million and 1.9 million jobs annually — including as many as 37,000 jobs in Wisconsin.<sup>14</sup>

Licensing can make it particularly difficult for low-income workers to secure a foothold on the ladder of opportunity. Training requirements and costly licensing fees can limit attainability of a wide range of professions for those with limited means. The Institute for Justice found that of the 42 low- and moderate-income jobs licensed in Wisconsin, the average fee is \$259 and the average training period is 214 days.<sup>15</sup> Many professions require thousands of hours of training before a license can be secured, potentially locking people out of their dream vocations.

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**Licensing requirements erect barriers to newcomers, especially the economically disadvantaged. This suppresses competition, harming consumers.**

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### *Hinders Worker Mobility*

Licensing requirements can vary dramatically from state to state, producing a patchwork of regulations that often makes it difficult for licensed professionals to rejoin the workforce when they relocate.

Again, the hardest hit can be those with the fewest means. The Institute for Justice found that of 102 lower-income occupations with licensing regulations in at least one state, just 23 occupations are licensed in 40 or more states.<sup>16</sup>

This difference in licensing requirements among states can prove decisive in a worker's decision to move across state lines. It also can encourage Wisconsin residents to move to other states that approve licenses more swiftly. If Iowa approves in a few weeks a license that takes months to secure in Wisconsin, Badger State aspirants might prefer to move than forgo income for an unpredictable period.

### *Inflates Costs*

By restricting the labor supply, licensing allows license holders to raise the prices they charge for consumer goods and services from licensed professions. Intended or not, the propensity of licensing to fence out competition creates an artificial wage premium in many occupations.

A 2011 study by Kleiner for the W.E. Upjohn Institute for Employment Research estimated that licensing increases costs for U.S. consumers by \$203 billion annually.<sup>17</sup> A 2016 Wisconsin Institute for Law & Liberty study estimated that licensing costs Wisconsin nearly \$2 billion annually in higher consumer prices.<sup>18</sup>

### *Scant Evidence of Benefits to Public Health and Safety*

For occupations that are widely and consistently licensed, such as physicians and dentists, licensing is easier to justify. For occupations that are licensed in some states and not others, or where regulations vary widely across states, the safety argument is less obvious.



For instance, the training requirements for a licensed cosmetologist range from 2,300 hours in Oregon to 1,000 hours in New York. Wisconsin is in between, requiring 1,550 hours of training. There is no evidence, however, that increased training hours produce better or safer services.

Academic research on the impact of licensing on quality or safety has been decidedly inconclusive.<sup>19</sup>

## Recommendations

### ***Universal Licensure Recognition***

Millions of Americans every year relocate across state lines, but many encounter road-blocks as they attempt to practice their trade in a new state. If the individual's industry requires a license, he or she will have to apply for certification and may have to meet additional requirements or pay fees to secure it regardless of the applicant's years of experience or competency.

Some states have solved this problem by enacting universal licensure recognition. Over the past five years, 18 states have passed licensing reform laws that make it easier for those who move across state lines to continue working in their licensed professions.<sup>20</sup>

Arizona has one of the most comprehensive. In most cases, the credentials of new residents are "recognized" by the respective licensing board or agency. The major requirements are that applicants be licensed in good standing in their originating states, that they have been licensed for at least a year, that they do not have any past or pending investigations or complaints and that they pay any required fees.<sup>21</sup>

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**A Right to Earn  
a Living Act shifts  
the burden of proof  
from job-seekers and  
aspiring workers to  
the regulators who  
create and enforce  
restrictions.**

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Similar recognition bills have been adopted in both red and blue states, including Iowa (2020), Colorado (2020), Kansas (2021), Pennsylvania (2019), New Hampshire (2018), New Jersey (2018), Mississippi (2021), South Dakota (2021), Nevada (2017) and Missouri (2020).<sup>22</sup>

Lawmakers in these states recognized that skills, experience and qualifications are not lost when workers move. For Wisconsin and other states looking to attract workers, simplifying the process for qualified licensed professionals can help.

Throughout the COVID-19 pandemic, most states, including Wisconsin, adopted temporary measures allowing for licensure recognition in healthcare fields. From April 2020 through May 2021, more than 2,500<sup>23</sup> healthcare workers received temporary licenses to practice in Wisconsin, either in person or via telehealth.

In the first year that Arizona's law was in effect prior to the pandemic, 1,454 people already licensed in other states applied for licenses, and 1,186 received them.<sup>24</sup>

The Badger State should adopt universal licensure recognition, and lawmakers should incorporate the best aspects of other states' laws. Missouri,<sup>25</sup> Colorado<sup>26</sup> and Utah,<sup>27</sup> for instance, do not require applicants to establish residency when applying for a license, a distinct advantage for those living in border communities.

Missouri's law also removes the condition that the originating state's license be "substantially similar" to the one Missouri issues. If an individual has been licensed for more than a year in another state, he or she can apply for its equivalent in Missouri.

Iowa's law<sup>28</sup> considers work experience when evaluating an applicant's qualifications, which means it won't necessarily require additional education or training if an applicant's previous state did not require a license and the individual has three or more years of related experience. This allows experienced professionals to forgo additional training for work they may have been doing for years.

### *Alternatives to Licensing*

When a new license is proposed, legislative debates often focus on a binary choice: To license or not to license.

The Institute for Justice has compiled a list of alternatives that can address public safety concerns without harmful, unintended consequences. These options include voluntary, third-party professional certification; inspections; voluntary or mandatory bonding; or insurance and registration.<sup>29</sup>

Figure 1 shows those alternatives, ranging from the least restrictive at the top to the most restrictive at the bottom.

The state should be predisposed to allowing individuals to earn a living with the fewest government-imposed burdens. Given that an occupational license is the most restrictive form of government regulation of work, it should be an option only when alternatives are inadequate.

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### *Sunrise Review Laws*

As a check on the rapid growth of occupational licensure, many states have adopted sunrise laws, which provide lawmakers with clear, less restrictive alternatives for addressing perceived public health or safety risks.

Under a sunrise review, when a professional licensing bill is introduced, an entity (ideally the state audit bureau) assesses:

- Evidence of significant harm to the public from the unregulated practice of the profession.
- Whether the public would benefit from the occupation being licensed.
- The least restrictive regulation that would address the real harm.
- An analysis of requirements for the occupation in other states.

- The economic impact of the proposed requirement on consumers and businesses.

At least 14 states have sunrise review laws.<sup>30</sup> Ideally, the review weeds out unsubstantiated claims of harm. It then recommends either no regulation, a less restrictive form of regulation or the enactment of a license.

The goal is to use empirical data to ensure that there is a need for regulation and then, if there is potential for significant and substantial harm, recommend a new regulation that actually protects the public and does so through the most appropriate, cost-effective and pro-opportunity approach.

Some sunrise review laws have been on the books for decades. They appear to be working. From 1985 to 2005, for example, Colorado’s sunrise review agency examined 109 proposals and favored regulation only 12 times.<sup>31</sup> The legislature created new regulation in only 19 instances.

Additionally, sunrise reviews recently have prevented the regulation of occupations such as paid tax preparers and sign language interpreters (Colorado), herbal therapists (Hawaii), behavior analysts and massage therapists (Vermont), perfusionists (Virginia) and lactation consultants (Washington).<sup>32</sup>

The Wisconsin Legislature should adopt a sunrise review and task the nonpartisan, independent Legislative Audit Bureau (LAB) to conduct it. The LAB is best suited since it is free from political pressure and lobbying efforts.

### ***Sunset Review Laws***

While sunrise reviews provide lawmakers with pertinent information at the beginning of a licensing discussion, sunset review laws require an examination of all existing licenses or licensing boards after a set number of years. If it cannot be demonstrated that the lack of an existing license or licensing board would pose a danger to the public, the license or board would be eliminated or re-examined to determine if a less restrictive form of regulation would suffice.

Thirty-six states have some form of sunset review process.<sup>33</sup>

In Ohio, all licensing boards expire every six years unless the legislature actively decides to renew them.<sup>34</sup>

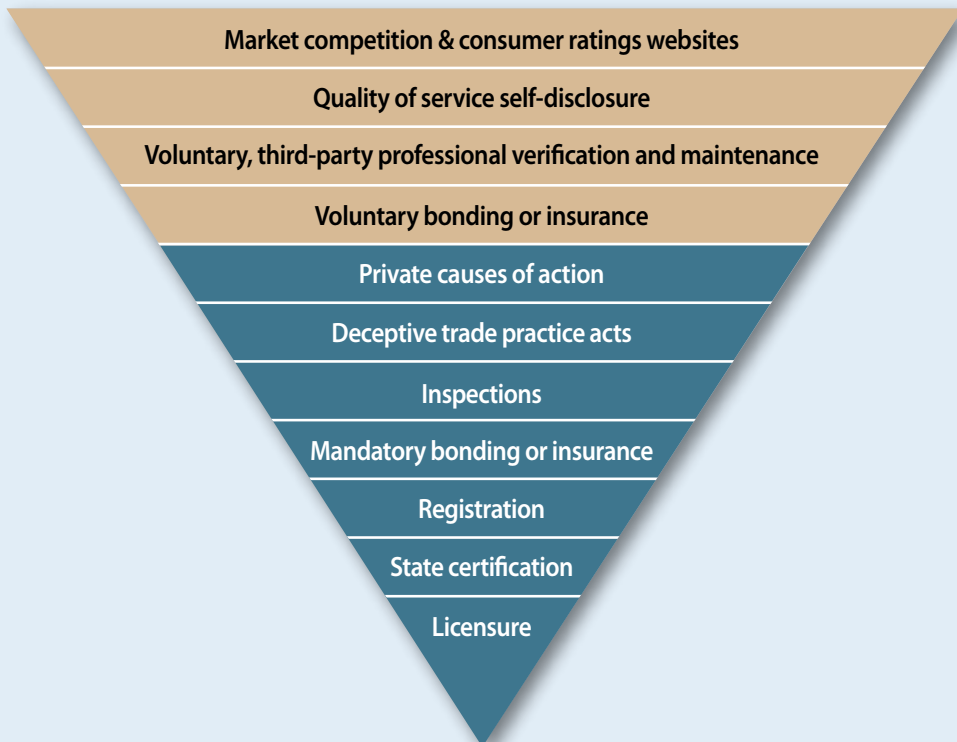
Nebraska’s sunset review law, passed in 2018, requires a legislative review of one-fifth of all licensing regulations every year.<sup>35</sup> Lawmakers must determine whether there are “present, significant and substantiated harms” that justify the current license and, if so, determine whether a less restrictive option would address the need.

Colorado<sup>36</sup> was the first state to adopt a sunset review. Regardless of the party in charge, the Centennial State has made effective use of this tool. The Colorado Office of Policy, Research & Regulatory Reform (COPRRR) conducts a comprehensive review process that

Figure 1

## The Inverted Pyramid: A hierarchy of less restrictive alternatives to licensing

The Institute for Justice offers options to occupational licensing, ranging from the least restrictive at the top to the most restrictive at the bottom.



### Voluntary or non-regulatory options

#### Market competition & consumer ratings websites

Markets harness the power of reputation through word of mouth and online platforms like Yelp, Google and Angi. Market competition creates incentives to develop professional skills and deliver high quality at reasonable prices.

#### Quality of service self-disclosure

In many fields, providers share information about their past performance through references or by linking to online consumer reviews, signaling that they take customer satisfaction seriously.

#### Voluntary certification

Certification from a non-governmental organization, like the National Institute for Automotive Service Excellence, indicates that a provider has attained certain qualifications and adheres to industry standards.

#### Voluntary bonding or insurance

Providers often get bonded or purchase liability insurance, giving consumers recourse if something goes wrong. Bonding and insurance companies have strong incentives to insist providers are financially sound and follow industry standards.

## Government interventions

### Private causes of action

Private causes of action give consumers the right to sue providers at fault for injury or loss, compelling practitioners to maintain high standards to avoid litigation. If needed, lawmakers can make litigation easier by allowing consumers to sue in small claims court and recover costs and attorney's fees.

### Deceptive trade practice acts

Consumers can sue fraudulent businesses under deceptive trade practice acts. These laws also give attorneys general the power to investigate and bring civil or criminal suits against bad actors. If needed, lawmakers can strengthen these laws or direct the attorney general to enhance enforcement.

### Inspections

In industries such as food service or beauty care, inspectors help ensure sanitary practices, and in fields like construction, they provide a practiced eye to spot potential hazards. Inspections closely target potential harms and could be applied to other occupations.

### Mandatory bonding or insurance

Mandatory bonding or insurance can give consumers and third parties an avenue for redress and encourage the adoption of industry standards. Some states already employ this alternative in fields such as tree trimmers, HVAC contractors and auctioneers.

### Registration

Registration with the secretary of state or department of consumer protection can deter fly-by-night operators. It also supports enforcement of other alternatives to licensure. Some states require registration for occupations licensed elsewhere, as with construction contractors.

### State certification

State certification signals that providers have attained certain credentials, established and verified by the government. Non-certified providers remain free to practice, but they may not call themselves certified.

### Licensure

When imposed, licensing requirements should be narrowly tailored to mitigating harm, and the scope of practice should be carefully drafted to prevent encroachment on competing fields.

Source: Adapted from an Institute for Justice infographic

includes a literature review, data collection, stakeholder engagement, statutes from other states and recommendations for the continued, modified or ceased regulation of a profession.<sup>37</sup> If the legislature approves the recommendations, the agency modifies the rulemaking process accordingly.

In Wisconsin, the review ideally would be conducted by a nonpartisan entity such as the LAB to prevent outside influence from licensing boards, interest groups or licensed professionals.

A thorough review should include an examination of whether the occupation is licensed

in other states. If there is not consistency in how states regulate the same profession, a less restrictive option would likely do the job. The LAB or similar analytical staff then would recommend to DSPS about changing its rules or to the Legislature about changing statutes.

For sunset reviews to effectively bring change, they should consider the following:

- Whether less restrictive forms of regulation would meet public safety requirements. If so, alternatives should be suggested. If the review determines that the license is justified, it must demonstrate why.
- Whether education requirements, testing requirements, rules that limit scope of practice and anti-competitive rules are necessary.

Since these reviews do not automatically eliminate or restructure licensing regulations, the Wisconsin Legislature must commit to acting on recommendations.

### ***Right to Earn a Living Act***

The Wisconsin Constitution's Declaration of Rights begins with this guarantee: "All people are born equally free and independent, and have certain inherent rights; among these are life, liberty and the pursuit of happiness."<sup>38</sup> Historically, economic liberties were protected under this clause, but over the decades, as licensure and the regulatory state have grown, these liberties have eroded.

Adopting a Right to Earn a Living Act would help restore them.

The first Right to Earn a Living Act<sup>39</sup> was adopted by Arizona in 2017.<sup>40</sup> Mississippi, Tennessee and Louisiana followed suit. The measure shifts the burden of proof from job-seekers and aspiring workers to the regulators who create and enforce restrictions.

The Act allows the judiciary to serve as a check on policymakers and regulators who create and maintain overly burdensome regulations. It requires that all regulations pertaining to a profession are legitimate, necessary and tailored. If an individual believes certain restrictions are infringing on her right to earn a living, she may challenge them in court.

There are two ways lawmakers could address this. A constitutional amendment could be passed that explicitly states that an individual's right to pursue a vocation should be free from arbitrary or excessive government interference. Or the Legislature could enshrine these protections in statute, passing a bill that specifically articulates the right to earn a living and offering a cause of action for affected workers who believe these rights have been infringed. The Legislature could further narrow the cause of action to administrative rules and not statutes.

Either way, the Legislature should adopt a Right to Earn a Living Act so Wisconsinites

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**Wisconsin has 15 licenses that do not require applicants to obtain any credentials or training prior to working. Bureaucrats could get many Wisconsinites off of backlogs if legislators repealed these 15 licenses.**

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may earn a living without unnecessary restrictions. Doing so would incentivize regulatory agencies to police their own rules and perhaps recommend to legislators the repeal or reduction of unnecessary statutes. This would go a long way toward creating a more reasonable and just regulatory environment.

### ***Repeal Unnecessary Licenses***

One sure way of reducing DSPS' workload is to repeal licenses. A good starting point would be those that have no personal requirements related to education or experience. Specifically, legislators might focus on licenses that are only registrations. To get such a license, the applicant merely needs to sign the form and pay the fee. The license demands nothing more.

Wisconsin has 15 such licenses that do not require applicants to obtain any credentials or training prior to working. DSPS could get many Wisconsinites off its rolls if legislators repealed these 15 licenses or replaced the licenses with *private* certifications:

- Bill collection agency (not licensed in 19 states)
- Security guard, unarmed (not licensed in 16 states)
- Animal breeder (not licensed in 32 states)
- Bartender (not licensed in 37 states)
- Animal trainer (not licensed in 41 states)
- Milk sampler (not licensed in eight states)
- HVAC contractor, commercial (not licensed in 13 states)
- HVAC contractor, residential (not licensed in 15 states)
- Sheet metal contractor, HVAC, commercial (not licensed in 13 states)
- Sheet metal contractor, HVAC, residential (not licensed in 14 states)
- Farm labor contractor (not licensed in 40 states)
- Taxidermist (not licensed in 32 states)
- Landscape contractor, commercial (not licensed in three states)
- Landscape contractor, residential (not licensed in two states)
- Fisher, commercial (not licensed in seven states)

Additionally, the following licenses require negligible personal qualifications and are not licensed in many states:

- Pipelayer contractor, required to take one test (not licensed in 23 states)
- Auctioneer, required to take one test (not licensed in 20 states)
- Mobile home installer, required to take 12 hours of training and one test (not licensed in 11 states)

Since the first 15 licenses have no requirements, consumer protections would not change by repealing them.

This list is just the low-hanging fruit. The Legislature should actively seek opportunities to repeal or find less restrictive options for many more existing licenses.

## **Streamlining Recommendations**

### ***Provisional Licensing***

Until universal licensure recognition becomes law in Wisconsin, the Legislature should adopt measures that make it easier for people who apply for a license to get one. A bill introduced in the last legislative session would have allowed for provisional licenses for qualified applicants while they waited for their permanent license.<sup>41</sup>

This would allow DSPS to grant a temporary license to applicants so they can begin to practice — and earn a living. Applicants would have to follow the same laws and procedures as their peers.

If an individual's application is approved by DSPS, the temporary status is removed. If DSPS for some reason rejects the application, the temporary license immediately expires.

### ***Lookback Practices***

The Legislature should clarify in statute that when DSPS reviews an application, it only requests information pertinent to the license being sought. In most cases, individuals with criminal backgrounds can receive a license in Wisconsin as long as their underlying offense is not “substantially related” to the profession.

Engaging in lookback practices that force applicants to track down police and court documents associated with a previous crime even when it's not substantially related to the occupation contributes to the licensing backlog. DSPS should not waste time reviewing past minor offenses if they would not disqualify an applicant from receiving a license.

### ***Licensing Board Transparency***

As the Badger Institute found in its 2020 report “Absence and Violation,”<sup>42</sup> much of licensing boards' activities occur in private sessions with little transparency. The public is often underrepresented or not represented at all on several boards, in violation of state law. The Legislature should require that board meetings are as open as possible, board minutes and recordings of meetings are posted publicly and that the public positions on licensing boards and advisory councils are filled.





## **Badger Institute takeaways**

Wisconsin should:

- Adopt a form of universal license recognition, accepting valid licenses from other states. Consider elements such as recognizing licenses from states with “substantially similar” requirements or recognizing work experience in states that do not license an occupation.
- Require a sunrise review of proposed licensing by a designated auditor, such as the Legislative Audit Bureau, instituting licensure only on an affirmative recommendation.
- Require periodic sunset review by a designated auditor of all existing licensure requirements. Such review should have to show that less restrictive forms of regulation would not suffice. It should have to show that training, testing and scope-of-practice rules are necessary.
- Enact a Right to Earn a Living Act, granting individuals a cause of action against unnecessary occupational licensing rules.
- Repeal licensing requirements for the 15 occupations with no personal requirements related to education or experience, and for other occupations with minimal such requirements.
- Enact provisional licensing for qualified applicants.
- Repeal lookback provisions for offenses unrelated to an occupation.
- Require public transparency of licensing boards’ activities, and enforce laws requiring public membership on boards.

## Endnotes

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## A PREFACE TO

# Increasing Minimum Wage Simply Doesn't Help

**S**ome people earn a lot of money. Some earn a little. And if those whose skills and labor are worth a low rate of pay from those willing and able to purchase them plead that they ought to earn more, many Wisconsinites find it viscerally satisfying to say the state should command it — that the state should raise its minimum wage.

This is a sentiment that has been around, perhaps, for as long as there have been minimum wages, long enough for a great deal of economic research showing it's an idea that doesn't work. It means that a lot of people won't work — they won't have a job.

Here, Ken Wysocky summarizes those findings, including research specific to Wisconsin published in recent years by the Badger Institute.

The research leads to a clear conclusion: The best way to help people earn more, especially those on the lowest rungs of the income ladder, is to not break off the rungs they're climbing.  
— *Badger Institute*

## ABOUT THE AUTHOR



**Ken Wysocky** is a Milwaukee-area freelance journalist and editor published in many national magazines and other media. His 40-plus years of journalism include reporting at daily newspapers in Milwaukee and the Chicago area, managing communications for a former Milwaukee-based Fortune 250 company and editing a magazine.

# Increasing Minimum Wage Simply Doesn't Help

*By Ken Wysocky*

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## Introduction

**A**t first blush, raising Wisconsin's minimum wage to \$15 an hour from \$7.25 seems like the morally correct thing to do — a feel-good cure for what ails entry-level, low-income workers.

But a less emotional and more objective examination of the issue reveals that roughly doubling the minimum wage more likely creates a remedy that will harm the very people it's designed to help.

There's no doubt it's a contentious, many-faceted issue. Legislators, policymakers, activists and researchers have been debating the merits of a minimum wage increase for decades.

Proponents of a higher minimum wage have achieved a modicum of success. Since 2014, 30 states have increased their minimum wage above the federal rate of \$7.25, which hasn't increased since 2009.

Should Wisconsin join those 30 states? Numerous studies, surveys and reports indicate that doing so would create a ripple effect of unintended consequences that ultimately would harm workers on the lower rungs of the economic ladder. In short, a higher minimum wage renders low-skill employees unaffordable for many small businesses that simply can't raise the price of their products or services high enough to accommodate the increased labor costs. Numerous studies back up this assertion.

## The Research

Consider the results of a February 2022 survey of 160 American economists,<sup>1</sup> conducted by the Washington, D.C.-based Employment Policies Institute (EPI), a nonprofit research organization dedicated to studying public policy issues related to employment growth. The survey asked the economists about the impact of raising the federal minimum wage to \$15, which states would have to follow.

The survey results indicate a lack of support for a minimum wage increase. Specifically:

- 62% of the economists oppose the move, with 50% strongly against it.
- 75% believe such an increase would negatively affect employment levels for people under age 20. (This is a critical employment stage when youths gain valuable experience that propels them to better-paying jobs.)

- 81% agree it would have a negative impact on small businesses with less than 50 employees.
- 43% say the current minimum wage is correct.
- 39% agree that raising the minimum wage would increase poverty rates, while another 19% feel it would have no effect.

### ***Job Losses in Wisconsin***

About 350,000 workers in Wisconsin would lose their jobs if the state raised its minimum wage to \$15 an hour, a 2019 analysis<sup>2</sup> for the Badger Institute by economists Ike Brannon and Andrew Hanson found.

Data at that time showed that roughly 38% of Wisconsin workers earn less than \$15 an hour. Modeling based on data from the U.S. Bureau of Labor Statistics suggests that about one-third of those 1.1 million workers would suffer job losses if Wisconsin quickly raised the minimum wage.

**Roughly 38% of Wisconsin workers earn less than \$15 an hour. About one-third of those workers would be at risk of losing their jobs if Wisconsin quickly raised the minimum wage.**

Moreover, half of those job losses would come at the expense of the lowest-earning 10% of workers, and the remaining 90% of job losses would affect those in the lowest-earning quartile of income.

An estimated 50% of those job losses would come from the food-preparation and service sectors. Other job segments most affected would include building and grounds cleaning and maintenance, personal care and service, sales, office and administrative support, production occupations, and transportation and material-moving industries.

Job losses for entry-level workers aren't the only detrimental side effect. Some employers likely would reduce hours for remaining workers as well as non-wage benefits such as employee discounts, paid time off, and training and certifications, the study noted.

"Unsurprisingly, we found that the less populated western and northwestern areas of the state would suffer the greatest job losses, with Madison experiencing the fewest. Our analysis estimated that over 10% of the working population would lose their jobs in some rural communities as a result of the increased minimum wage," Brannon and Hanson wrote.

Furthermore, fewer workers would result in reduced state payroll and income taxes as well as less accrued service time for Social Security retirement benefits for those workers. Unemployed workers would also require more public support services.

### ***National Ramifications***

At the national level, 92% of small businesses responded in a 2021 survey<sup>3</sup> that a \$15-an-hour minimum wage would be "harmful to Main Street and its job opportunities." The survey was conducted by the National Federation of Independent Business (NFIB), a small business association.

A \$15 federal minimum wage would cost an estimated 1.6 million jobs in the private sector, according to a 2019 report<sup>4</sup> published by the NFIB titled “Economic Effects of Enacting the Raise the Wage Act on Small Businesses and the U.S. Economy.” Moreover, an NFIB multi-region economic forecasting and policy analysis tool showed that businesses with fewer than 100 employees would shed about 700,000 jobs by 2029, the report noted.

A 2020 report<sup>5</sup> titled “The State Employment Impact of a \$15 Minimum Wage,” compiled for the EPI by William Even of Miami University and David Macpherson of Trinity University, also predicted significant job losses.

In assessing the impact of a congressional bill that would phase in a \$15 minimum wage and a \$12.60 minimum hourly wage for so-called tipped employees by 2027, Even and Macpherson estimated that 2 million jobs would be lost, positions held mostly by female workers ages 16 to 24.

Tipped workers — bartenders, waitstaff and the like — would account for nearly 700,000 of those job losses, which equates to a higher proportion of affected jobs than non-tipped workers (31% vs. 8%, respectively). As such, an increase in the tipped minimum wage would impose “an especially cruel burden” on tipped workers, who typically earn more than the minimum wage anyway, according to the report.

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**What’s often misunderstood — or even ignored — is that a guaranteed minimum wage does not guarantee a job.**

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Furthermore, the additional burden of a steep rise in labor costs piled atop financial pressures caused by the COVID-19 pandemic will cause many businesses to reduce employment or close altogether. Raising the minimum wage by \$5 or more in just five years would pose “a significant shock to state economies and business owners in a relatively short period of time,” the report warned.

Some cities already have experienced job losses in the wake of raising the minimum wage. After Seattle’s minimum wage was raised to \$13 in 2016, researchers at the University of Washington<sup>6</sup> found that employers responded by reducing the hours of low-wage employees. As such, total payroll for such jobs actually declined in spite of the hourly wage increase as employers decreased employees’ hours in an effort to reduce labor costs.

In San Francisco, which phased in a \$15 minimum wage, each \$1 increase in wages created a 14% probability that a median-rated restaurant would close, according to a 2017 study by Harvard Business School.<sup>7</sup> There was no significant impact on high-end restaurants, the study noted, which suggests that businesses already struggling to bring in customers may be the most negatively affected by minimum wage increases.

### ***Further Ripple Effects***

A host of other consequential side effects would come into play at the federal level if a \$15 minimum wage is implemented by June 2025, as proposed by the Raise the Wage Act introduced in Congress in January 2021, according to a February 2021<sup>8</sup> report from the Congressional Budget Office. The agency provides Congress with nonpartisan analysis of



the financial impacts of proposed legislation.

In evaluating the bill's impact on federal government spending, the report concluded that:

- The federal budget deficit from 2021 to 2031 would increase by \$54 billion because of higher prices for goods and services, particularly in the healthcare industry. (That figure doesn't account for additional costs imposed by higher interest rates and inflation that the bill could spark, possibly adding \$16 billion more to the deficit.)
- Employment would be reduced by 1.4 million workers.
- The cost of federal subsidies for health insurance would increase because as household incomes rise, those families become eligible for tax credits to cover the costs of premiums on health insurance purchased on government exchanges.
- Spending for unemployment compensation would increase as more workers lose their jobs.
- Social Security spending would increase because higher wages result in higher average retirement benefits.

## Conclusion

Clearly, there's ample evidence that suggests negative impacts from raising the minimum wage, which was implemented in 1938 with the intention of aiding workers in the Great Depression and preventing businesses from exploiting minors. Opponents note that only 1.4% of hourly workers nationally make minimum wage or less, according to the Bureau of Labor Statistics.<sup>9</sup> In Wisconsin, that figure is 1.6%.<sup>10</sup>

Free-market advocates also emphasize that the market should dictate employee pay, not the government. Businesses will respond to supply-and-demand market conditions by raising pay as needed, as evidenced by the slew of fast-food restaurants and big-box retailers now offering pay above \$15 an hour due to labor shortages.

Lastly, it's worth noting comments from Eloise Anderson, a nationally known expert on welfare issues and the former secretary of the Wisconsin Department of Children and Families. In a 2021 opinion article for the Badger Institute,<sup>11</sup> Anderson wrote that what's often misunderstood — or even ignored — is that a guaranteed minimum wage does not guarantee a job.

"The business owner who must comply with a mandated wage increase has to consider each job and what the contribution of that employee to the job is worth. That calculation includes the employee's output, wages, Social Security tax, Medicare, unemployment compensation, worker compensation and overhead," wrote Anderson, who is also a Badger Institute visiting fellow.

"The employer has to assess whether this cost will be borne by the price of the service or product. In 2019, before the COVID-19 shutdowns, low- or non-skilled individuals, especially low-income males and teenagers, were getting jobs at record rates. Many small businesses were willing to hire and train them. Wages were increasing based on labor supply and demand."

“The willingness of employers to hire and train is critical to the upward mobility of low- and non-skilled individuals,” she wrote. “These workers need to develop soft skills such as being dependable, showing up on time, working eight hours a day and five days a week, taking directions and calling in when sick.

“A \$15-an-hour minimum wage will cut off the lower rungs of the economic ladder just as many had finally secured their footing.”



### **Badger Institute takeaways**

- Wisconsin should not raise its minimum wage.
- To bring about higher wages, policymakers should increase demand for workers by avoiding actions that impede the growth of Wisconsin’s economy and the vigor of its employers.

### **Endnotes**

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## “Ban the Box” Policies May Hurt the Job-Seekers They Aim to Help

**S**o-called Ban the Box policies were well-intended, prohibiting employers from asking on an initial job application whether an individual has been convicted of a crime. This, the theory went, gives qualified applicants with criminal records an opportunity to convey their value to employers rather than seeing their résumés preemptively thrown out.

Do the policies work? This can be tested since 37 states have such laws, with some places even applying them to the private sector. Wisconsin has applied a Ban the Box law to state government hiring since 2016, and Milwaukee and Racine followed for municipal jobs. Has it made a difference?

Recent and rigorous academic evaluations suggest that such policies aren't effective at increasing employment among the formerly incarcerated. Some research links the policies with worsened employment prospects for men without criminal records or for Black men.

In short, Ban the Box policies are ripe for re-evaluation and Wisconsin should avoid them.

— *Badger Institute*

# “Ban the Box” Policies May Hurt the Job-Seekers They Aim to Help

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## Introduction

“**B**an the Box” (BTB) policies have gained popularity as a method of attempting to ensure that individuals with criminal records get a fair shake from employers. With key political leaders expressing support, BTB may see increasing discussion in Wisconsin.

While the goals of BTB policies are noble and reducing recidivism rates should be a priority, leaders should resist simple acceptance of BTB as a tried-and-true solution. Research suggests that BTB policies may help some but also hurt those with records more than they help and that the policies may have significant unintended consequences for younger, less-skilled minority men who do *not* have criminal records.

## Ban the Box

In general terms, Ban the Box policies forbid employers from asking on an initial job application whether an individual has been convicted of a crime. On many applications, conviction history is a box to be checked. Hence, the policy’s name.

Under BTB policies, it is only later in the hiring process — presumably after applications have been screened and the prospective employee has an opportunity to convey his or her qualifications to the employer — that an employer may inquire about relevant conviction history or run a background check.

The theory is intuitively appealing. It goes like this: When employers see an application showing a criminal history, they too often throw it in the trash. As a result, qualified applicants with criminal records never get the opportunity to convey their value directly to employers. Because they never get in the door, they do not get hired.

So, eliminating a tool that employers use to immediately screen out those with convictions should increase the chances that qualified applicants with a conviction history get hired. This, in turn, should reduce recidivism rates. Since more individuals with conviction histories would be earning legal, regular paychecks, their need or incentive to return to illegal activities for economic reasons would be reduced.

The policies have proliferated at the federal, state and local levels. In 2015, then-President Barack Obama banned the box in federal employment. By some measures, 37 states and

150 municipalities now have such policies in some form. In some areas, the policies are known as fair-chance laws. Most pertain to public-sector hiring. However, BTB policies have been extended to the private sector as well in 15 states.

Wisconsin has had BTB laws on the books since 2016. The 2015 Wisconsin Act 150 included provisions stating that the state may not “request a person applying for a position in the civil service, on an application or otherwise to supply information regarding the conviction record of the applicant or otherwise inquire into or consider the conviction record of the applicant before the applicant has been certified for the position.”<sup>1</sup> Milwaukee in 2016 and Racine in 2017 passed similar local ordinances applying to civil service positions.<sup>2</sup> As yet, these laws have not applied to private-sector employment in Wisconsin.

### ***Do Ban the Box Policies Work?***

Several recent and rigorous academic evaluations of these policies suggest that, at most, the policies do not appear to be effective at increasing employment levels among the formerly incarcerated. And many suggest that the policies have significant, unintended negative effects. Here is a selection.

#### **• The racial gap in employer callback rates**

A significant amount of research has documented that some level of discrimination occurs when employers review job applications — applicants with traditionally Black names are less likely to receive employer callbacks than identical applicants with traditionally white names. Sonja Starr, a law professor at the University of Michigan, and Amanda Agan, a Princeton University economist, conducted a field experiment in New York and New Jersey to determine whether implementation of BTB in those jurisdictions affected this racial gap in callbacks.

They submitted applications from fictitious men in matched pairs based on race — Black and white — by assigning distinctly Black or distinctly white names to the fictitious applicants. They then randomly assigned to these applications a felony conviction or no record. They submitted the matched applications to the same employer with order randomized and time lag. They then tracked the percentage of those fictitious résumés that received callbacks from employers before and after the jurisdictions implemented BTB.

The authors found that before BTB, and among employers affected by the laws, white applicants received 7% more callbacks than matched Black applicants. However, after BTB went into effect, and among this same group of affected employers, this racial callback gap increased dramatically — to 43%. While the results do show that callback rates for Black men with criminal records increased following BTB, the authors indicate that:

“The post-BTB increase in racial inequality in callback rates appears to come from a combination of losses to Black applicants and gains to white applicants. In particular,

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**The authors of the 2017 study put it bluntly: “We find evidence that BTB has unintentionally done more harm than good when it comes to helping disadvantaged job-seekers find jobs.”**

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Black applicants without criminal records saw a substantial drop in callback rates after BTB, which their white counterparts did not see. Meanwhile, white applicants with criminal records saw a substantial increase in callbacks, which their Black counterparts did not see. This pattern suggests that when employers lack individualized information, they tend to generalize that Black applicants, but not white applicants, are likely to have records.”<sup>3</sup>

Figure 1

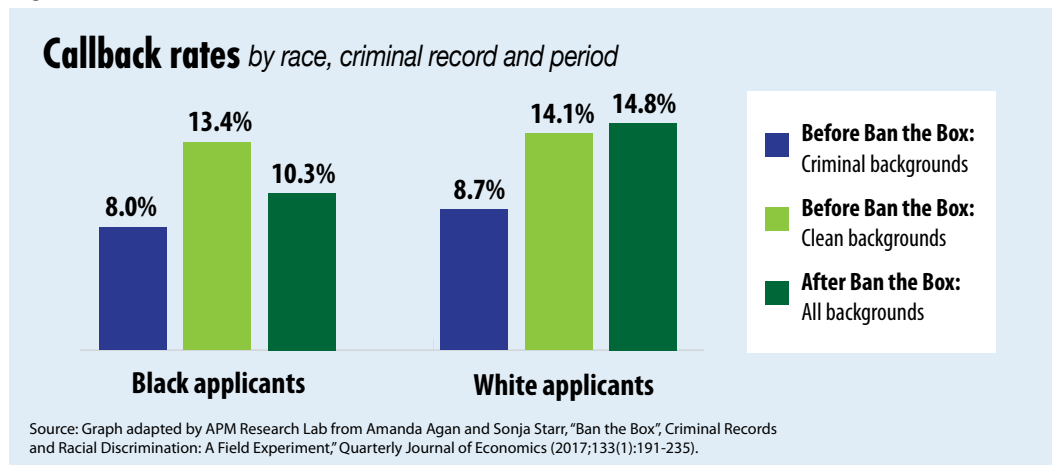


Figure 1, from the APM Research Lab, presents the findings in another way.<sup>4</sup>

This appears consistent with other research on statistical discrimination. Harry Holzer of Georgetown University, Steven Raphael of the University of California-Berkeley and Michael Stoll of UCLA find the same thing — just in reverse. They found that “employers who check criminal backgrounds are more likely to hire African American workers, especially men. This effect is stronger among those employers who report an aversion to hiring those with criminal records than among those who do not.” They note that “in the absence of criminal background checks, some employers discriminate statistically against Black men and/or those with weak employment records.”<sup>5</sup>

#### • Employment among less-skilled minority men

Texas A&M University economist Jennifer Doleac and University of Oregon economist Benjamin Hansen took a slightly different approach to their evaluation of the effects of BTB laws. They exploited differences in the structure and implementation of these policies across states to determine what effect the policies had on actual employment, not just callback rates or inequities.

Their research found that BTB reduced the probability of employment by 3.4 percentage points for younger, less-skilled Black men and by 2.3 percentage points for younger, less-skilled Hispanic men. The effects persisted for Black men long after the policy change, and the effects were “larger for the least skilled in this group (those with no high school diploma or GED), for whom a recent incarceration is more likely.”

Figure 2, from their 2017 paper, compares changes in the probability of employment for Black and Hispanic men ages 25 to 34 with no college degree, based on whether or not the jurisdiction adopted BTB laws. The orange line tracks employment probabilities for those that adopted BTB; the blue line shows trends for jurisdictions that did not adopt BTB. The authors put it bluntly: “We find evidence that BTB has unintentionally done more harm than good when it comes to helping disadvantaged job-seekers find jobs.”<sup>6</sup>

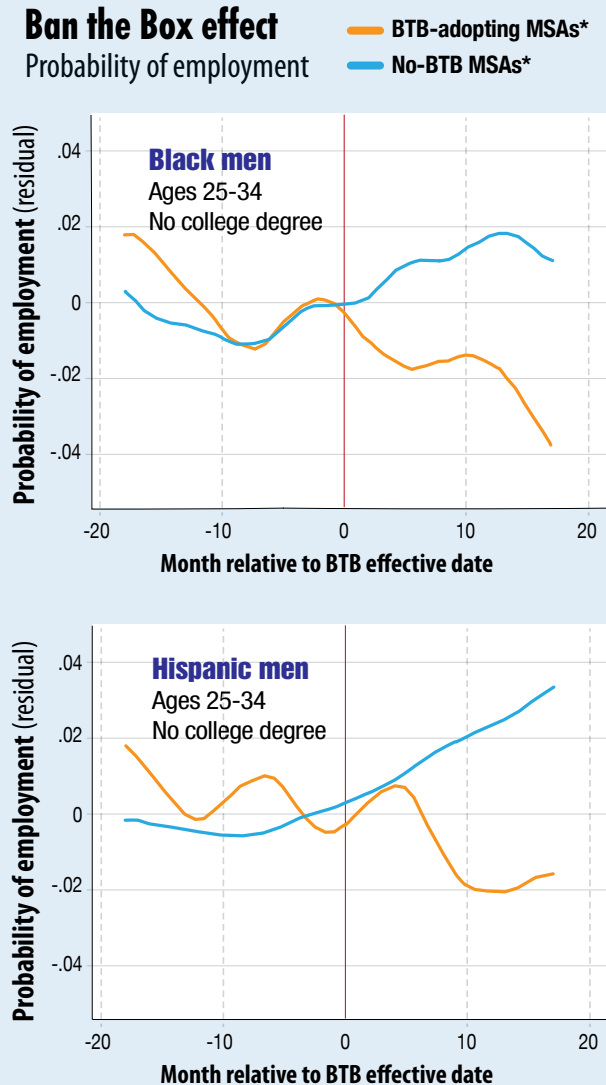
This aligns logically with another interesting study the authors cite about statistical discrimination, drug testing and Black employment. Abigail Wozniak of the University of Notre Dame found that with respect to drug testing, “adoption of pro-testing legislation increased Black employment in the testing sector by 7-30% and relative wages by 1.4-13%, with the largest shifts among low-skilled Black men.”<sup>7</sup>

In the absence of information, employers statistically discriminated against the groups they perceived to use drugs at higher rates. The same appears to be the case here, but for conviction history.

#### • Employment among ex-offenders

A study conducted by Osborne Jackson and Bo Zhao of the Federal Reserve Bank of Boston focused directly on those with criminal records. The study examined employment records of individuals who had criminal records and presumably would be helped by a change in Massachusetts policy in 2010-’12.

Figure 2



\*Metropolitan Statistical Area

Data source: CPS 2004-2014. Sample includes black and Hispanic men ages 25-34 who do not have a college degree. To allow at least 18 months of data before and after the effective date, these graphs are limited to jurisdictions that implemented BTB between June 2005 and July 2013. The mean of the effective dates applying to these groups for BTB-adopting jurisdictions (October 2010 for blacks, May 2010 for Hispanics) are used as the “effective date” for the no-BTB jurisdictions.

The policy included two components. First, it applied BTB restrictions for both private- and public-sector employers. Second, it limited the amount of information available to employers about criminal histories in its Criminal Offender Record Information database.

If these policies worked as intended, one would expect that the gap in employment rates between ex-offenders and the general population would narrow. The authors found that relative to the broader population, employment among ex-offenders post-BTB declined roughly 2.6 percentage points. The records reforms had a modest negative reduction of about 0.46 percentage points in employment.

Another study by Evan Rose found that in Seattle, the enactment of BTB policies had little impact on employment and earnings for ex-offenders. Rose suggested that this could be explained by employers running a background check later in the interview process or by ex-offenders selectively deciding to apply to companies already known not to disqualify applicants based on a prior conviction.<sup>8</sup>

### ***Counterpoint?***

No public policy issue would be complete without some apparently conflicting evidence.

One recent example comes from Daniel Shoag of Harvard University's Kennedy School and Stan Veuger of the American Enterprise Institute. They examined BTB effects at the neighborhood level. They sought to understand employment effects of the policy in high-crime neighborhoods in response to implementation of BTB — which would seem consistent with the objectives of the policy.

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**By some measures,  
37 states and 150  
municipalities have  
Ban the Box policies  
in some form.**

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They found that the top quarter of high-crime neighborhoods saw a 4-percentage-point increase in employment following implementation of BTB, noting that gains were concentrated in public-sector and low-wage jobs.

Interestingly, they also found that the gains “do not represent aggregate employment gains, but rather substitution across workers.” Employers, they found, responded to this policy shift by raising the educational qualifications required for jobs, perhaps as a screening proxy for employee quality in the absence of criminal history questions.

Their findings contradicted the previously described research — they found that Black men benefit, but Black women are worse off. This, they suggest, is because Black women are less likely to have been convicted of a crime than Black men — so when convictions are used less to screen out applicants, the advantaged position that Black women previously enjoyed is reduced.<sup>9</sup>

Additionally, a study by Terry-Ann Craigie that looked specifically at the public sector saw the probability of employment for ex-offenders increase by 4 percentage points after the implementation of BTB. Furthermore, Craigie did not find that public employers engaged in statistical discrimination against young Black males that others have observed.<sup>10</sup>



## Conclusion

Policymakers should use caution and consult rigorous academic research when considering issues as important as BTB policies and that have as much intuitive appeal. Though well-intended, and potentially beneficial for some, strong evidence indicates that BTB can reduce employment among young minority men with no criminal records as well as those with criminal records.

But there is also evidence that high-crime neighborhoods may benefit and that Black men in those neighborhoods benefit while women in those neighborhoods are made worse off. It could be that both are true — for example, that those with criminal histories and less-skilled minority men in lower-crime neighborhoods are worse off on average, and especially worse off in lower-crime neighborhoods than they would have been without BTB, but also that those in the highest-crime neighborhoods are better off. Or it could be that older Black men are made better off, while younger minority men are worse off.

As UC-Berkeley’s Raphael summarized in 2021, “The weight of the empirical evidence suggests that BTB does not improve the employment prospects of those with criminal histories at private-sector employers, although there is some evidence of an improvement in employment prospects in the public sector. Regarding spillover effects operating through statistical discrimination, several studies indicate that BTB harms the employment prospects of African American men.”<sup>11</sup>

**Strong evidence indicates that Ban the Box policies can reduce employment among young minority men with no criminal records as well as those with criminal records.**

Indeed, there is evidence that BTB policies have harmful ramifications outside of employment as well. Sherrard Ryan found that BTB policies were associated with a “1.34 percentage point (7.2%) increase in the probability of 1-year recidivism for Black ex-offenders,”<sup>12</sup> and Sabia, et al., found BTB laws to be associated with a “10 percent increase in criminal incidents involving Hispanic male arrestees.”<sup>13</sup>

These are areas for research and careful public policy discussion. For example, would it be worth increasing employment in the highest-crime neighborhoods if doing so makes less-skilled minority men with no criminal record and those with criminal records worse off overall as well as Black women in the highest-crime neighborhoods?

The point is that BTB policies are not costless panaceas that make everyone better off. Perhaps there are more effective, targeted ways to address the barriers to employment faced by those with criminal records. Take certificates of qualification for employment (CQE), for example. If a judge makes the determination that an individual has demonstrated rehabilitation and work-readiness, the court issues a certificate saying so.

The theory is that by presenting this certificate to an employer, applicants with criminal records signal that they are ready to work, offsetting concerns an employer may have about their criminal history. This can be paired with a policy that eliminates liability for an

employer — another of their concerns — if they hire someone who has presented a certificate. If a court has said that person is ready for work, why should the employer be sued for negligence in hiring?

Peter Leasure of York College of Pennsylvania and Tia Stevens Andersen of the University of South Carolina tested this idea. They created job applications and randomly assigned either a clean record, a felony conviction or a felony conviction with CQE.

The results? Those with CQE were called back at roughly the same rate as those with no felony conviction, while those with a felony conviction but no CQE were called back at much lower rates.<sup>14</sup>

Under Ban the Box policies, some groups appear to be made worse off, while others may modestly gain. At a minimum, policymakers should not gloss over focused discussion and honest weighing of these significant trade-offs — more harm than good could easily be done.

The literature indicates there may well be better approaches that involve fewer trade-offs.



### **Badger Institute takeaways**

- Elected officials should repeal all Ban the Box laws in Wisconsin because there is significant evidence that they are harmful to at least some minorities.

## **Endnotes**

<sup>1</sup> <https://docs.legis.wisconsin.gov/2015/related/acts/150/31>

<sup>2</sup> <https://www.natlawreview.com/article/wisconsin-racine-bans-box-civil-service-applications>

<sup>3</sup> Amanda Agan and Sonja Starr (2018). "Ban the Box, Criminal Records, and Racial Discrimination: A Field Experiment." *Quarterly Journal of Economics*, 133.

<sup>4</sup> <https://www.apmresearchlab.org/stories/2018/05/16/ban-the-box-may-be-counterproductive>

<sup>5</sup> Harry J. Holzer, Steven Raphael and Michael A. Stoll, "Perceived Criminality, Criminal Background Checks, and the Racial Hiring Practices of Employers," *The Journal of Law and Economics* 49, no. 2 (October 2006): 451-480.

<sup>6</sup> [http://jenniferdoleac.com/wp-content/uploads/2015/03/Doleac\\_Hansen\\_BanTheBox.pdf](http://jenniferdoleac.com/wp-content/uploads/2015/03/Doleac_Hansen_BanTheBox.pdf)

<sup>7</sup> Wozniak, A. (2015). Discrimination and the Effects of Drug Testing on Black Employment. *Review of Economics and Statistics*, 97(3):548-566.

<sup>8</sup> Rose, E. (2021). "Does Banning the Box Help Ex-Offenders Get Jobs? Evaluating the Effects of a Prominent Example." *Journal of Labor Economics* 39(1):79-113.

<sup>9</sup> <http://www.aei.org/publication/banning-the-box-the-labor-market-consequences-of-bans-on-criminal-record-screening-in-employment-applications/>

<sup>10</sup> Craigie, T. (2019). "Ban the Box, Convictions, and Public Employment." *Economic Inquiry*, 58(1):425-445.

<sup>11</sup> Raphael, S. (2021). "The Intended and Unintended Consequences of Ban the Box." *Annual Review of Criminology*, 4:191-207.

<sup>12</sup> Sherrard, R. (2020). " 'Ban the Box' Policies and Criminal Recidivism." Available at SSRN: <https://ssrn.com/abstract=3515048>

<sup>13</sup> Sabia, J., et al. (2020) "Do Ban the Box Laws Increase Crime?" National Bureau of Economic Research, 10.3386/w24381.

<sup>14</sup> Peter Leasure and Tia Stevens Andersen (2016). "The Effectiveness of Certificates of Relief as Collateral Consequence Relief Mechanisms: An Experimental Study." *Yale Law & Policy Review Inter Alia*, 35(11): 11-22.



## Expungement: A Pathway to Employment

**W**isconsin, like most states, allows individuals who have been convicted of a one-time, low-level offense to ask a judge to have the record of that conviction expunged once they've served their sentence and demonstrated they pose no risk to public safety. Lawmakers have long recognized that an isolated, nonviolent event shouldn't erect a lifetime of barriers to employment, education, housing or service.

The individual, the community and the economy all benefit when someone chooses employment over government dependency or criminal activity. A sealed record can increase the likelihood that the beneficiary will secure the dignity and other benefits associated with work.

Wisconsin, however, is an outlier in that it is the only state to require a judge to make this decision at the time of sentencing when there is scant information about the individual's desire to reform. A negative decision by the judge at this time means the individual can never again seek to have his record sealed, even if he goes on to live a spotless life.

Wisconsin residents overwhelmingly support reforming the timing of a judge's decision. In April 2021, the Badger Institute released the results of a survey conducted by Public Opinion Strategies that found that nearly three-quarters of Wisconsin voters support allowing a judge to grant an expungement after the completion of a sentence. Support for that change extends across party lines.

Wisconsin also has an arbitrary age cap of 25 that prevents anyone who committed a crime after that age from seeking an expungement. Most states allow for records to be expunged regardless of the age of the individual at the time of the crime.

Badger Institute research found that about 35,000 people a year who are 25 or older and have no prior felonies commit expungement-eligible offenses. Of those, a significant majority committed misdemeanors or were never found guilty of an offense. The rest committed lower-level Class H or I felonies. Higher-level felonies would be ineligible for consideration of an expungement.

— *Badger Institute*

# Expungement: A Pathway to Employment

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## Introduction

**S**ince 1975, the expungement (or sealing) of a criminal record in Wisconsin has been an option for low-level offenders as a means of helping them avoid some of the collateral consequences associated with a nonviolent crime. Expungement is designed to help those who served their time to secure employment, education, housing and other essentials that enable them to become contributing members of their communities.

Unfortunately, more people are affected by such policies than one might suspect. Some 70 million Americans — one out of every three working-age adults — have a criminal conviction.<sup>1</sup> Criminal records carry lifelong consequences that can affect everything from getting a job or a loan to joining the military to getting into college. The problem is particularly acute in Milwaukee, where 42% of the unemployed seeking jobs reportedly have a criminal history.<sup>2</sup>

Expungement offers a way to maintain public safety while helping those who want to chart a new course. When an expungement is requested, the decision is made by the presiding judge, who factors in the potential impact on others. Wisconsin law states that “the court may order at the time of sentencing that the record be expunged upon successful completion of the sentence if the court determines the person will benefit and society will not be harmed by this disposition.”<sup>3</sup>

In short, at the time of sentencing, the court may order the conviction to be expunged eventually if the defendant successfully completes his or her sentence, including any probation.

Wisconsin legislators long have provided leeway to low-risk offenders in the hope that given a second chance they will prosper and earn the dignity that comes with a job — instead of dependence on government or, worse, a return to criminal activity and an expensive prison cell.

“Expungement is one of many tools that will assist people that have a prior, nonviolent felony conviction,” says Steve Kuehl, economic development director and Wisconsin state director at the Federal Reserve Bank of Chicago. “These are individuals who have paid

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**Most defendants who benefited from expungement were charged with possession of small amounts of marijuana or drug paraphernalia, or minor thefts such as shoplifting or disorderly conduct.**

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their debt to society. We have to ask ourselves: (Do) people who have been in prison need to keep paying over and over again for that, or can we move forward?”

The “Now Hiring” signs visible in almost every Wisconsin community demonstrate the urgent need for growing and retaining the state’s workforce. While most inmates do not have a high level of education — only about 5% to 6% of the Wisconsin prison population have an associate or bachelor’s degree — there are plenty of low-skill, entry-level jobs that need filling.

### Current Law

Wisconsin law allows for the expungement of minor criminal offenses for anyone who was under age 25 at the time of the offense if a judge finds that the offender will benefit and that society will not be harmed.<sup>4</sup>

There are limitations:

- The maximum punishment for the crime cannot be more than six years, which eliminates the vast majority of felonies from consideration. In Wisconsin, Class A through G felonies allow for sentences over six years, meaning none of those felonies is eligible to be expunged. Only Class H and I felonies are potentially eligible, and individuals charged with those types of felonies are also disqualified if they have a prior felony, even one that was expunged, or if their crime fits a definition of violent.
- No defendant, regardless of the charge, is eligible if he or she has a prior felony conviction.

While most states have expungement laws, Wisconsin’s is unique in that it requires judges to order relief at the time of sentencing, with the actual expungement occurring at a later date, contingent on the successful completion of the individual’s sentence.

In other words, Wisconsin judges have to determine 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) would be more readily apparent. This 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 lead law-abiding lives following a criminal conviction.

Unless a judge declares a defendant eligible at the time of sentencing, the offender’s record can never be expunged. This means that a 45-year-old who wrote a bad check 22 years ago and has maintained a clean record since cannot seek this option.

A more common-sense approach would move the eligibility decision from the time of sentencing to a point after an offender has completed his or her sentence, allowing the judge to make an informed decision based on a defendant’s post-sentencing behavior. This would have the added benefit of incentivizing the expungement seeker to demonstrate good behavior.

It also would give defendants an opportunity to focus on and ask for expungement when they are less immersed in other legal questions and at a greater distance from the prosecution of their case.

### *Who's Affected*

Wisconsin law also contains an arbitrary age restriction that eliminates expungement eligibility for anyone who was age 25 or older when he or she committed the crime.

Badger Institute research found that about 35,000 people a year who are 25 or older and have no prior felonies commit expungement-eligible offenses.

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**The majority of inmates will be out in less than five years. When they complete their sentences, gainful employment can play a critical role in preventing their return to the corrections system.**

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Roughly 24,000 of that total are people who commit misdemeanors. Another 6,600 are individuals who had a misdemeanor charge reduced to a forfeiture and, therefore, were never found guilty of a criminal offense. The remainder would be individuals who committed a lower-level felony.

Our analysis determined that roughly 4,500 lower-level Class H or I felonies are committed every year by people 25 or older who would be eligible if the age cap were removed, but only for those who have no prior felony offense.

In our 2019 report “Black Robes & Blue Collars,” we partnered with Court Data Technologies in Madison to analyze every expungement case filed between Jan. 1, 2010, and April

14, 2017 — a total of 10,000 expunged cases.

We found that most defendants who benefited from expungement were charged with possession of small amounts of marijuana or drug paraphernalia, or minor thefts such as shoplifting or disorderly conduct. Nearly two-thirds of the expungements — more than 6,300 — involved cases where the most serious charge was a misdemeanor. The remaining third — just over 3,600 — included low-level felonies. A small fraction involved traffic cases that rose to the level of a criminal offense.

### *Disparities*

Badger Institute research has shown that the process produces troubling disparities by age, class, race and geography for those seeking an expungement.

In order to determine how, when and where the expungement law is used in Wisconsin, we examined the 10,000 cases filed and later expunged, and then linked each of those to original Wisconsin court documents identifying the county in which the crime was committed, the nature of the crime, the defendant's race and his or her age at the time of the offense.

The goal was to identify how often cases are being expunged in Wisconsin, the types of cases most frequently expunged and whether expungement decisions vary by county, age



or race. As noted above, we found that of the cases examined, most were criminal misdemeanors or involved charges for which the defendant had been found not guilty. Several factors could contribute to the disparities found by Badger Institute research — economics and the related lack of legal representation, bias, differences in prior criminal records, differing attitudes among judges. Regardless, the research found that the defendants in Milwaukee, the city with the highest widespread levels of unemployment and poverty in the state, have much less likelihood of securing an expungement than Wisconsinites elsewhere.

But unemployed Milwaukeeans with records of nonviolent, low-level crimes are not the only ones who could benefit from better use of Wisconsin's expungement law. Burnett County, for example, has very low median household income, a higher-than-average poverty rate and one of the highest unemployment rates in Wisconsin. For some reason, nearly 25 times as many defendants are granted expungements in neighboring Washburn County, where the unemployment rate is comparable.

### ***Bipartisan Support for Reform***

In recent years, various bills have been introduced that would make it easier for deserving citizens to receive a second chance. The most recent version, which passed in the Assembly last session and enjoyed broad bipartisan support in the Senate, would have eliminated the age restriction and allowed for expungements to be granted after a sentence is served.

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**Wisconsin requires judges to decide on the possibility of expungement at the time of sentencing, rather than later, when the defendant's rehabilitation (or lack thereof) would be more apparent.**

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The measure would not have expanded the types of crimes eligible. Judicial discretion would have been retained. In cases where a sentencing court denied an expungement request, the bill would allow the individual to file a petition with the sentencing court upon completion of his or her sentence. The court then would be required to review the petition and make a determination.

If a petition were denied, the bill would have allowed the applicant to file a one-time petition two years after the denial.

The bill also specified that if a record is expunged, that crime is not considered a conviction for employment purposes.

Even if this bill was signed into law, the state would continue to maintain a record of all convictions. The Crime Information Bureau within the Wisconsin Department of Justice maintains the Wisconsin Online Record Check System, which contains even expunged convictions.

Only one in 20 male inmates, and fewer women, are serving life terms in the Badger State. The majority of inmates will be out in less than five years. When they complete their sentences, gainful employment can play a critical role in preventing their return to the

corrections system.

Education and stable housing can also be affected by an isolated, low-level criminal act. Expungement can make it easier for an individual to secure the basic essentials that are so key to human success.

## Conclusion

Wisconsin policymakers clearly recognize that expungement can be an effective tool; they created the law and have kept it on the books for decades. But the unique timing and the random age limitation keep the law from being used by many people who committed a low-level crime and subsequently turned their lives around.

Policymakers should make the state's expungement law a more logical, equitable and effective path for low-level offenders to find work and companies to find employees.



### **Badger Institute takeaways**

Wisconsin should:

- Eliminate the age limit of 25 for expungement eligibility.
- Move the decision about an offender's expungement eligibility from the time of sentencing to a point after the sentence is served.

## Endnotes

<sup>1</sup> Brennan Center for Justice based on FBI database.

<sup>2</sup> Barriers to Employment, 2015, Public Policy Forum.

<sup>3</sup> <https://docs.legis.wisconsin.gov/statutes/statutes/973/015/1m/a/3/b>

<sup>4</sup> For anyone sentenced before July 1, 2009, expungement is available only to those under age 21 at the time of the crime and if the crime was a misdemeanor.

**HEALTHCARE**



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## A PREFACE TO

# Common-sense Healthcare Reforms for Wisconsin

*with Overview at the State and Federal Level*

To improve the healthcare that Wisconsinites receive, we need to grasp that, as with most goods and services, the surest way to enable people to get the greatest satisfaction at the most favorable price is via a free and transparent market.

And that the healthcare market in Wisconsin is far from free and transparent.

Here, scholars Daniel Sem and Scott Niederjohn lay out concrete steps that Wisconsin policymakers can take to change that, to enable medical professionals and the patients who need them to meet directly — reforms to what they term “the patient-provider interface.” It means removing barriers to providing individualized and innovative care, while letting patients choose services and getting them the information they need to make decisions.

Sem and Niederjohn specifically address new, better options for buying healthcare, reforms Wisconsin can undertake to moderate drug prices and improve availability, ways to expand access to doctors, tools to let patients find better care at a better price and changes to ensure that enough providers will be available when Wisconsinites need them.

These reforms center on reducing the role and influence of third parties such as insurers and governments, and shifting power to patients and the providers they choose. Reforms need to happen at the federal level, too, but as the authors make clear, state policymakers have a great many tasks — and can accomplish great things now.

— *Badger Institute*

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# Common-sense Healthcare Reforms for Wisconsin

*with Overview at the State and Federal Level*

*By Daniel Sem and Scott Niederjohn*

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## Introduction and Background

In Wisconsin, as in the other 49 states, the cost of healthcare is a growing problem, and our healthcare delivery system is arguably at a breaking point. Healthcare costs nationally are the highest in the developed world, at 19.7% of gross domestic product.<sup>1</sup> As we outlined in a July 2022 report for the Badger Institute,<sup>2</sup> the underlying problem is uncontrolled cost of care, due to the lack of a functioning healthcare market. What we have instead is a dysfunctional market focused on sick-care rather than healthcare.<sup>3</sup> And increasingly, this market is vertically integrated (such as insurers buying the providers that they reimburse for),<sup>4</sup> horizontally integrated (such as large providers buying small physician groups, then merging with each other) and overregulated.<sup>5</sup>

In that report, “A Roadmap for Healthcare Reform in Wisconsin,” we described the economics of healthcare delivery with a focus on Wisconsin and then charted a path forward for the state. (*Read the report at [badgerinstitute.org/Mandate](https://badgerinstitute.org/Mandate).*) Wisconsin can lead the nation in empowering patients as consumers, enabling them to seek care in a functioning market with transparent pricing. The goal is to provide the value-based care that the healthcare industry says it wants but in a more flexible way that empowers patients as consumers.

We turn here to Wisconsin healthcare policies and legislative priorities to guide policymakers and providers on this path forward. Solutions must be suitable for all — from wealthy to middle class to poor, and for both urban and rural populations. That is the goal.

## Objective

The objective of this chapter is to provide information, resources and support to all parties, including policymakers, healthcare innovators, patients and providers. The move toward consumer-focused healthcare depends on enabling patients and providers so they can make their own healthcare decisions. Only then can market forces drive down cost and increase accessibility while maintaining or increasing quality.

The focus of our proposed reforms is on the direct interaction between patients and provid-

ers —what we call “the patient-provider interface.” In free and transparent markets, assigning priority to the patient-provider interface would be expected to require less government involvement and regulation. However, an important caveat is that healthcare in America currently does not function with free and transparent markets because there is often “rent-seeking” behavior of large players. Rent-seeking is an economic term where, in this case, large companies or organizations use regulatory barriers to create anticompetitive advantages for themselves. It typically refers to lobbying for laws or regulations that benefit narrow corporate financial interests. Thus, deregulation without market reform is not advisable.

## Direct Primary Care

Direct primary care (DPC) is healthcare obtained directly from a provider with cash rather than insurance. It is affordable and is distinct from more costly concierge medicine. It is typically less expensive, with monthly fees of \$50 to \$150, compared to the high copays and deductibles of using insurance.<sup>6</sup> DPC is provided without the intervention of insurance and without the bureaucracy found in our current medical system, which former American Medical Association president Barbara McAneny referred to as the “medical industrial complex.”<sup>7</sup>

DPC focuses on the interface between patient and physician (or other provider), delivering care the way it was done many years ago, as preferred by patients. Physicians prefer this also, as they get to spend more time with patients. There’s a reason that 65% of physicians say burnout is a serious problem,<sup>8</sup> due largely to the medical bureaucracy. The average patient load in a traditional practice is 2,000, whereas with DPC, a physician may manage 345 patients on average (although up to 800 is easily manageable).<sup>9</sup> The greater attention benefits both patient and provider.

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**Given that DPC is better for providers and for patients, who might lose from a move toward more DPC? Large hospitals and insurance companies that benefit from the opaque reimbursement-driven system that has led to unrelenting increases in healthcare costs.**

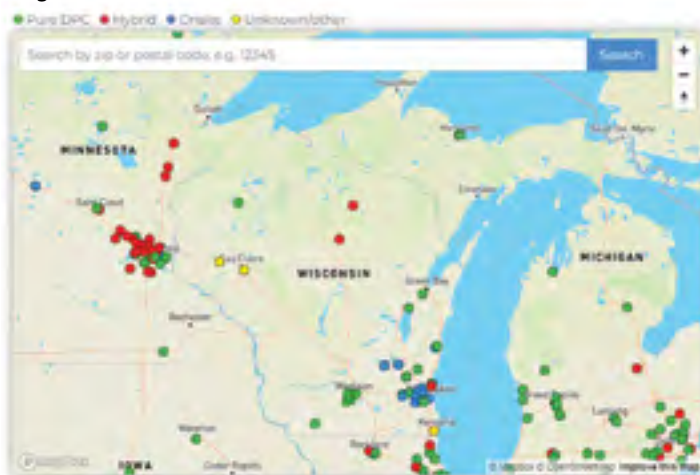
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For a low cost, typically about \$70 per month, patients get unlimited electronic access to the provider (e.g., physician) along with expanded in-person time and care. So, for less than the cost of a single emergency room visit (\$1,500 in Wisconsin<sup>10</sup>), patients get personal and more comprehensive care for a year. DPC practice members also receive routine follow-up lab tests, prescriptions and even imaging for a nominal extra cost. This is more affordable, more accessible and better care for over 90% of the medical problems that people have. Given that DPC is better for providers and for patients, who might lose from a move toward more DPC? Large hospitals and insurance companies that benefit from the opaque reimbursement-driven system that has led to unrelenting increases in healthcare costs in a system that is anything but a well-functioning market.

DPC is taking off across the country, with average annual growth of 36% per year.<sup>11</sup> It works better for many consumers than existing insurance-based care, including what is delivered through the Affordable Care Act (ACA). Even with subsidies, low-end ACA

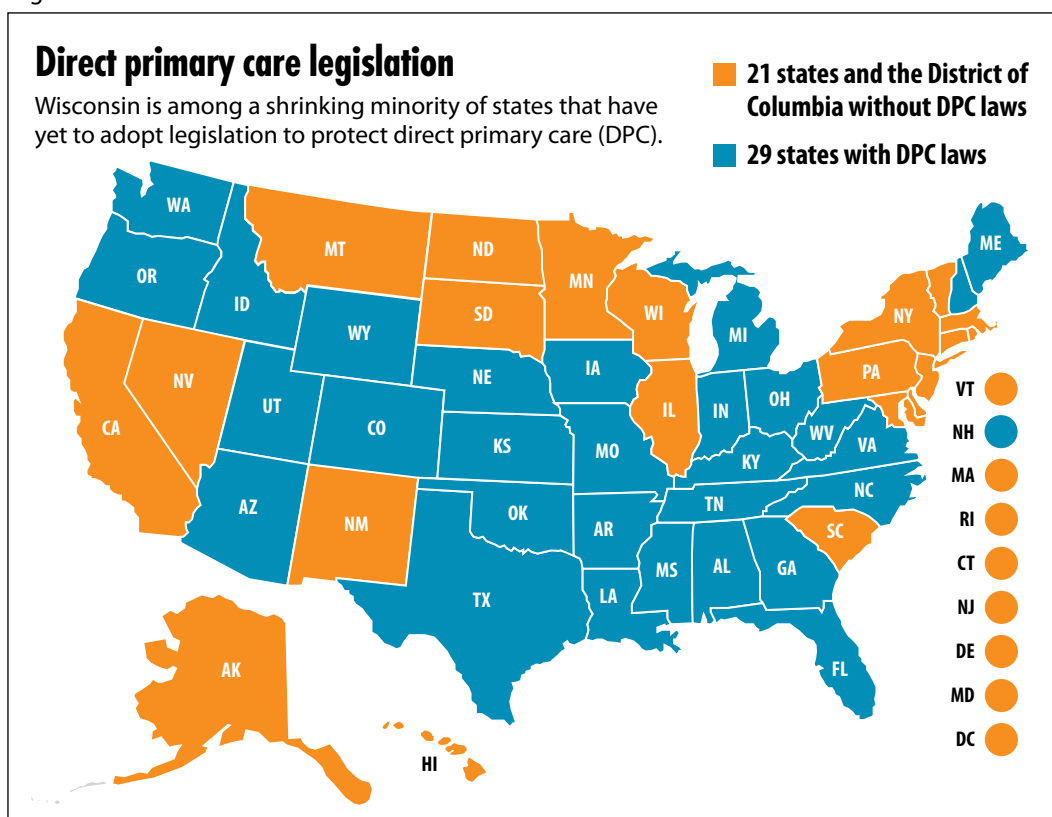
bronze plans can be unaffordable (in Wisconsin, premiums in 2021 were \$328 per month, with the minimum deductible for a family of \$2,800 and maximum out of pocket of \$14,000<sup>12</sup>). It seems logical to let patients get affordable DPC care (\$70 per month) at far less than the cost of deductibles (that is, \$2,800) and copays with insurance — and then use insurance only for more expensive things. In other words, it makes more sense to use health insurance like we use other insurance and

Figure 1



This screen capture from DPC Frontier’s mapper tool shows the location of direct primary care clinics in Wisconsin and neighboring states as of September 2022, based on data from DPC Frontier (<https://mapper.dpcfrontier.com/>).

Figure 2



Source: American Academy of Family Physicians



to pay out of pocket with cash, like for DPC, for routine medical problems.

This approach was favored by David Goldhill in his book “Catastrophic Care.”<sup>13</sup> Goldhill followed up on his writing by launching Sesame, a national-level portal to DPC providers.<sup>14</sup> DPC is becoming available across the United States and soon will become a widely available healthcare option for most consumers. Even the president of the Wisconsin Medical Society, Dr. Wendy Molaska, has switched to dealing with her patients via DPC, and she loves it.<sup>15</sup> There are now more than 1,700 DPC practices in the U.S., including dozens in Wisconsin (Figure 1), up from 250 five years ago.<sup>16</sup> A recent validation of this trend in healthcare delivery is Amazon’s acquisition of DPC provider One Medical for \$3.9 billion.<sup>17</sup> This continues a wave of market enthusiasm for DPC such as the \$340 million investment in growing Everside Health.<sup>18</sup>

So why would DPC need to be protected with legislation in Wisconsin? Simply stated, as in other states, legislation is needed to clarify that DPC is not insurance. According to the American Academy of Family Physicians, 29 states already have adopted this kind of DPC legislation<sup>19</sup> (Figure 2). The objective is to ensure that doctors can continue to provide care this way and not be blocked by the insurance industry. The risk is that DPC may be characterized as insurance and, therefore, become subject to insurance-like regulation and be restricted in its use. The insurance industry potentially has much to gain by preventing DPC and the resulting empowerment of the patient-physician interface that delivers better care more efficiently without insurance.

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**The insurance industry potentially has much to gain by preventing DPC and the empowerment of the patient-physician interface that delivers better care more efficiently without insurance.**

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The Wisconsin legislation that was introduced in early 2022, SB 889,<sup>20</sup> contains the major elements of model legislation put forth by the DPC Coalition,<sup>21</sup> a nonprofit focused on research and sharing information about DPC. Such legislation, passed in many other states, is needed in Wisconsin to protect DPC providers from the regulatory constraints of the insurance industry. SB 889 did not advance.

**Recommendation:** Legislation to protect DPC is essential to achieving more affordable and accessible healthcare in Wisconsin. It merely needs to state that *DPC is not insurance*. This should be a priority.

## Drug Prices: White Bagging

Drug prices are another serious concern of healthcare consumers. The most expensive drugs, those used to treat cancer and some chronic illnesses, carry an average price tag as high as \$1 million per year.<sup>22</sup> The reason is complicated, which includes the expense of developing the drugs as well as expenses associated with market dysfunctions. Some studies have shown that 80% of hospitals may charge over 200% of their acquisition cost for these drugs.<sup>23</sup> For this reason, the insurance industry is proposing a cost-containment process called “white bagging.”

White bagging requires direct delivery of drugs from preselected, negotiated compounding pharmacies to providers (for example, hospitals).<sup>24</sup> “Brown bagging,” by contrast, calls for delivery directly to the patient. Some groups — including Wisconsin Manufacturers & Commerce (WMC), the state’s chamber of commerce — argue that white bagging would decrease drug costs.<sup>25</sup> Others, notably physicians and pharmacists, argue that white bagging severely limits their flexibility in delivering drugs to patients.<sup>26</sup>

In Texas, anti-steering legislation (HB 1919<sup>27</sup>) was passed to block the anticompetitive practice of pharmacy benefit managers (PBMs) to vertically integrate to control where drugs come from (especially if the pharmacy is owned by the PBM).<sup>28</sup> The true cost impact of white bagging is unclear, even as insurers look to mandate white bagging in some cases. In Wisconsin, a bipartisan group of legislators in 2022 introduced AB 718/SB 753,<sup>29</sup> which would ban mandatory white bagging by insurance companies.

**Recommendation:** Since cost savings are uncertain, giving insurers absolute power to require white bagging — which closes off the possibility in a more robust direct care market of a doctor and patient choosing a drug supplier that they judge best — may not be worth it. However, small companies with fewer employees that self-insure need mechanisms to control costs; a rare but expensive drug for an employee could bankrupt the company if there is no upper limit on what they must pay out from their plan. Thus, the bipartisan bill that was introduced in Wisconsin addressed real concerns but should have taken into account other interests, such as those of self-insured small companies that need to control costs, sometimes effectively done through white bagging. Lawmakers should do more to address this concern of those small businesses, which could break under the strain of healthcare costs.

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**Some studies have shown that 80% of hospitals may charge over 200% of their acquisition cost for these drugs. For this reason, the insurance industry is proposing a cost-containment process called “white bagging.”**

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## Drug Prices: Pharmacy Benefit Managers

Much has been written about the pricing behavior of pharmacy benefit managers (PBMs), including notably by Antonio Ciaccia<sup>30</sup> and his 46brooklyn project.<sup>31</sup> PBMs serve as middlemen between pharmaceutical companies and pharmacies. While they serve a useful purpose in the drug supply chain, they sometimes take a disproportionate share of drug profits via “spread pricing” (pricing arbitrage). Recent abuses uncovered by Ciaccia and others have led to proposed drug transparency rules,<sup>32</sup> initially introduced under the Trump administration. More recently, a bipartisan bill was introduced by U.S. Sens. Charles Grassley (R-Iowa) and Maria Cantwell (D-Wash.), the Pharmacy Benefit Manager Transparency Act of 2022,<sup>33</sup> to address the problem of PBMs that participate in spread pricing.

Under this practice, PBMs charge health plans and payers more for a prescription drug than the amount they reimburse to the pharmacy. They then simply pocket the difference, which is known as the spread. Many states have adopted legislation limiting spread pricing

by requiring disclosure of spreads. In Wisconsin, Gov. Tony Evers in 2021 signed into law Act 9,<sup>34</sup> which goes beyond PBM price transparency to include price controls.

**Recommendation:** While legislation to force price transparency by PBMs in an inherently opaque and anticompetitive market, thereby mitigating spread pricing, is a positive development, forced price controls are always questionable if a goal is well-functioning markets. We are in favor of price transparency mandates, which should be used as a tool to stop spread pricing. However, we oppose outright price controls, which would introduce market dysfunctions with unintended consequences. Lawmakers should consider modifying statutory language resulting from Act 9 in a way that retains price transparency elements while eliminating price controls.

### Drug Prices: Price Controls

It is tempting but potentially counterproductive to address the high cost of drugs with price controls. Price controls stand in opposition to market-based approaches, which rely on drug prices to motivate the development of new and better branded drugs, especially for untreated or poorly treated conditions (development that now costs an estimated \$2.6 billion per new drug<sup>35</sup>). Thanks to the pricing power granted by patents, the pharmaceutical innovator recoups its research and development (R&D) expenses by charging a price for branded drugs that far exceeds bare manufacturing costs. In contrast, manufacturing cost is the price-determining factor for generic drugs.

The high pricing of branded drugs stems from the monopoly power granted by patents. To some extent, this was a central and important concept of our country's founders. Patents are in the U.S. Constitution (Article 1, Section 8, Clause 8) and exist to foster innovation such as drug development. Like many tools, patents are mostly good but sometimes are abused. Price controls usurp the intended effect of patents and run the risk of hindering innovation because they can prevent companies from recovering their R&D expenses.

Furthermore, countries outside the U.S. have price controls, which typically means their consumers pay less than U.S. consumers for the same drug, often discovered and made in the U.S. In this sense, the domestic consumer is financing drug development for the rest of the world, which seems unjust. This pricing pattern also motivates U.S. patients to purchase drugs from Canada, which has price controls.

Policy efforts to address this price disparity between the U.S. and other countries have been unsuccessful. Under the Trump administration, the Centers for Medicare & Medicaid Services (CMS) issued an emergency rule<sup>36</sup> to attempt to cap drug prices at the lowest price charged in a pool of 16 countries (i.e., the Most Favored Nation Model), which themselves have price controls. Federal courts blocked the rule, holding that the CMS did not follow proper rulemaking procedures. Later, efforts to address price disparity generated some support in the Biden administration, although the proposed rule was withdrawn by the CMS under President Joe Biden.<sup>37</sup>

The concept of drug price controls reappeared in a different form in the Build Back Better

Act, which has since transformed into the Inflation Reduction Act, passed in August 2022. While not setting price controls per se, it allows the government to negotiate prices for certain drugs under Medicare Part D.<sup>38</sup> This would apply to 10 Part D drugs in 2026, 15 Part D drugs in 2027, 15 Part B and Part D drugs in 2028, and 20 Part B and Part D drugs in 2029 and later years. It would impose a \$2,000 out-of-pocket spending cap for drugs. Some impact (estimated at 10% to 15%) on pharmaceutical company revenue is expected, with potential modest impact on new drug development predicted but not as significant as the price referencing that was proposed under the Trump administration's Most Favored Nation executive order.<sup>39</sup>

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**Price controls usurp the intended effect of patents and run the risk of hindering innovation because they can prevent companies from recovering their R&D expenses.**

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**Recommendation:** Outright price controls are a questionable strategy that runs counter to market principles and could disincentivize new drug development. Allowing the government (that is, Medicare) to negotiate prices in some limited cases may be reasonable. But the implementation of this new federal legislation may be very similar to a price control, which would have unintended negative consequences on pharmaceutical R&D efforts and perhaps limit access to desirable drugs where prices have not been “negotiated.” A longer-term and more strategically formulated solution is needed.

## Drug Access, Regulations and Right to Try

It takes on average 10 years and \$2.6 billion to develop a new drug. Consider patients who have a cancer that is expected to be lethal within six months. Shouldn't they be allowed to try an unapproved drug? If there are no other options, perhaps the risk-benefit ratio justifies their use of an experimental drug if they fully understand and accept the risk. Or what if a treatment is being developed for only a small number of patients (or even just one, as in personalized medicine, called N=1 trials)? The cost of drug development for such rare diseases is prohibitive, suggesting that reduced regulation for drugs to treat a very small number of patients is warranted. Recently adopted legislation addresses these two situations.

### ***Right to Try***

Drugs ordinarily cannot be sold until they are approved by the U.S. Food and Drug Administration (FDA), based on clinical trials that establish safety and efficacy. With these trials requiring on average 10 years and thousands of patients (with some modest simplifications for rare diseases), patients with a terminal illness may see little hope for new treatments in a useful timeframe. This long regulatory approval process recently has been waived or simplified for terminal patients who are fully informed and consent to the risks. Due to efforts led by the Goldwater Institute, 40 states have passed Right to Try laws.<sup>40</sup> Wisconsin's Right to Try Act was signed by Gov. Scott Walker in March 2018.<sup>41</sup> The federal Right to Try Act became law in May 2018.<sup>42</sup>

### ***Right to Try 2.0***

In Arizona, Gov. Doug Ducey signed into law the Goldwater Institute's Right to Try for

Individualized Treatments (Right to Try 2.0; SB 1163) in April 2022.<sup>43</sup> The legislation, which had bipartisan support, enables faster adoption of personalized treatments based on a patient's own genetic makeup (sometimes called personalized medicine, precision medicine or N=1 medicine). There is no need for lengthy clinical trials that simply are not possible in these single-patient cases and for very rare diseases. At present, Wisconsin has no such legislation.

**Recommendation:** Right to Try 2.0, a logical extension to Right to Try, would allow flexibility to try experimental medicines in situations where there are too few patients to justify full clinical trials such as in precision or personalized medicine. A safe and rational implementation of Right to Try 2.0 is a positive step that adjusts the FDA regulatory process to keep pace with innovations in genomics and personalized medicine.

## Telehealth

One of the unexpected positive outcomes of COVID-19 was the broad use and acceptance of telehealth as an alternative to in-person healthcare. Still, various challenges make delivery of care via telehealth difficult. These challenges include medical licensure restrictions that prohibit delivery of care across state lines as well as privacy regulations that can restrict electronic communication between provider and patient such as texting or interactive computer sessions (as via Zoom).

These regulations were intended to protect patient privacy under the Health Insurance Portability and Accountability Act (HIPAA) but may have the effect of preventing the straightforward delivery of telehealth services. State policies are being updated to enable more ready and safe delivery of care through telehealth, as through Michigan's HB 4356 to facilitate electronically delivered exams and contact lens prescriptions.<sup>44</sup>

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**Telehealth may  
reduce cost of care  
delivery as long as  
the care received will  
be reimbursed or paid  
for at levels that  
reflect actual cost  
with telehealth's  
lower overhead.**

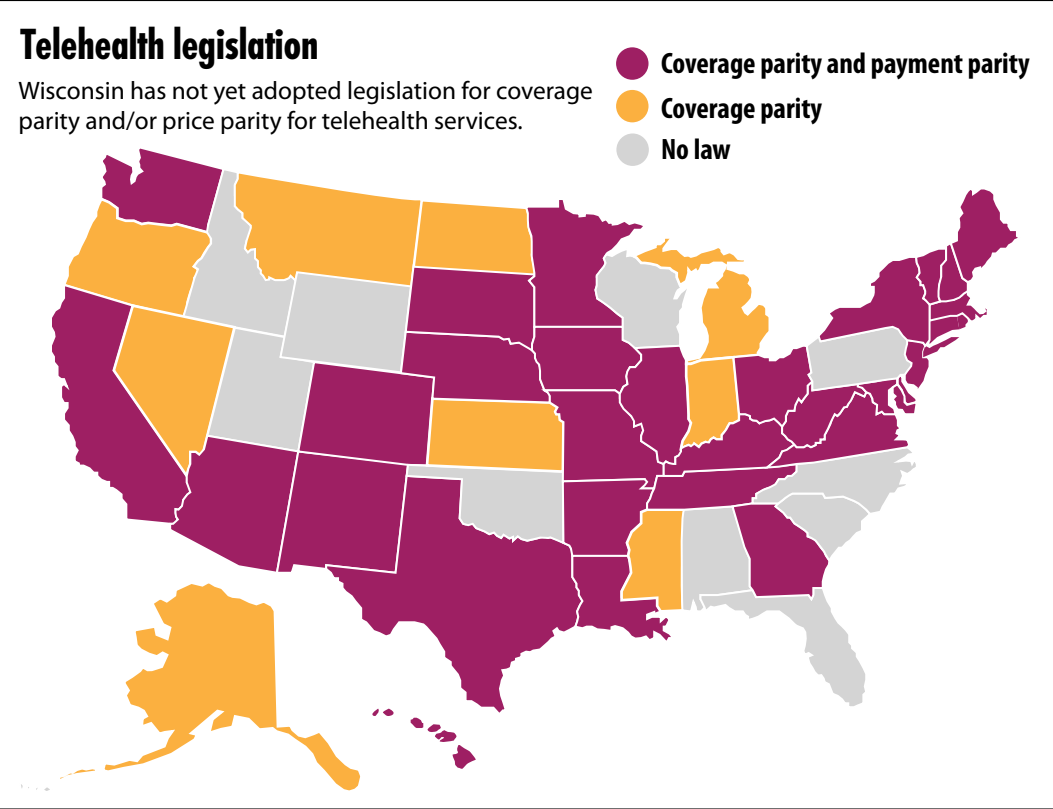
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Wisconsin is looking to make telehealth more accessible to Medicare patients.<sup>45</sup> More broadly, the state is also exploring legislation to make remote care more accessible, via AB 259 and SB 306, by requiring insurance companies to reimburse for care delivered via telehealth.<sup>46</sup>

### ***Price Parity for Telehealth***

Care via telehealth is often less expensive than in-person care, given that overhead costs are lower (no need for an expensive building). Laws in 43 states require insurers to reimburse telehealth,<sup>47</sup> a positive development toward empowering patients with choices. Within the context of these positive developments, so-called payment parity laws are being adopted in many states (Figure 3) to mandate equality of payments across telehealth and in-person visits. Such laws would effectively eliminate the cost saving to consumers. Why? These laws interfere with patient-oriented healthcare in free and open markets<sup>48</sup> and are not desirable for the stated goals of this chapter. If healthcare can be delivered more cost-effectively with lower overhead in some cases, those cost benefits should be realized.

Figure 3



Source: Mercatus (Nov. 30, 2021)

**Recommendation:** Healthcare services via telehealth is a positive development in that it introduces more flexibility for patients. It is part of a well-functioning healthcare market that may even reduce cost of care delivery — as long as the care received in this manner will be reimbursed by insurers or can be paid for with cash or health savings accounts at levels that reflect actual cost with telehealth’s lower overhead, not artificially inflated prices (i.e., via price or payment parity). Anticompetitive forces will likely resist this. Wisconsin should consider coverage parity — mandating that insurers cover telehealth for a procedure or patient they already cover in-person — but not price or payment parity. Importantly, though, for the full benefits of telehealth to be realized across Wisconsin, something needs to be done urgently to provide more extensive broadband access in rural areas. Finally, medical licensure reforms are needed so that telehealth can be provided across state lines.

**Flexible and Mobile Patient Medical Records**

The full benefit of remote healthcare delivery in the hands of empowered patients can be achieved only if patients can give providers ready access to their medical records in a mobile and flexible way. Anticompetitive forces in the marketplace, supported by non-portable electronic medical records and sometimes overly restrictive HIPAA regulations, block this access. These same anticompetitive forces generate barriers to healthcare innovators

developing software tools and applications that empower patients to manage and control their care directly.

At present, it is not easy for patients to get their medical records from providers in a usable form, and the information is held in proprietary electronic health record (EHR) databases such as those from Epic or Cerner. Federal legislation, the ONC Patient Cures Act, is being advanced to implement standards for mobile medical records that will permit this flexibility,<sup>49</sup> perhaps in databases external to a single provider. This would allow patients to go to whichever providers they want and to move readily between providers.

**Recommendation:** Just as the federal government has a role in creating interstate highways, and at one time facilitating electrical and communication networks and grids (at least initially), it may have some role in assisting patients in the mobile storage, control and movement of their medical records so that patients can go where they want. But less intrusive than serving as that information backbone would be to at least play a role in setting standards so that commercial vendors for mobile medical records can emerge as options to the current oligopoly controlled largely by Epic and Cerner.<sup>50</sup> This is an area that the market likely will solve on its own eventually, but initial creation of standards may help healthcare innovators break into an already anticompetitive market that is also protected by network effects (i.e., market penetration requires upfront broad adoption by many users<sup>51</sup>). In short, standards created via the ONC Patient Cures Act are a potentially positive development, within certain boundaries.

### Hospital Costs: Price Transparency

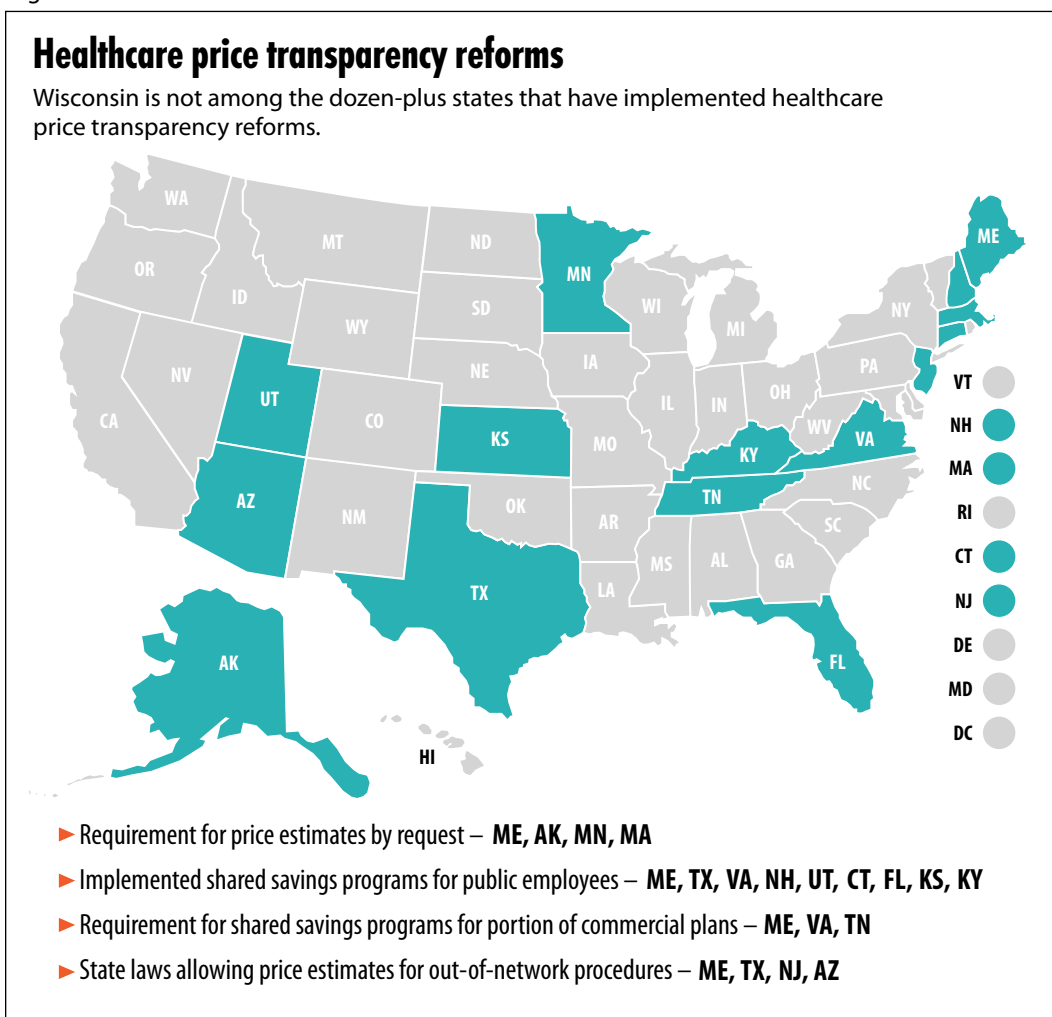
Patients (or their employers, who often pay for their health insurance) cannot shop for healthcare if they do not know the prices. Meanwhile, prices vary in an arbitrary way that is surprisingly not correlated with quality or outcomes, which would suggest shopping would be futile — unless, of course, patients and payers knew prices and quality or outcome metrics and could shop for the best value (quality weighed against price).<sup>52</sup> There is no properly functioning market yet to normalize prices in this manner.

Yet when patients have to pay a deductible before insurance kicks in or go out of network, they are effectively uninsured and must pay these often-inflated prices that they never were informed of. This is when they encounter the so-called large surprise bills — based on these arbitrary and inflated prices that were never stated to them upfront. Prices often are inflated by providers that have unusually large overhead expenses such as costly buildings and administrative staff, for which they seek reimbursement when they bill insurance companies (or patients, before they hit their deductible).

In an attempt to address this problem based in market dysfunctions, federal regulations introduced by the CMS during the Trump administration<sup>53</sup> and continued in the Biden administration required hospitals to post prices in an easily accessible and understandable manner. The regulations went into effect on Jan. 1, 2021.<sup>54</sup> They were intended to prevent surprise bills to patients and to create a free and transparent market, conducive to competition.



Figure 4



Source: State Policy Network (June 16, 2022)

One year after that regulatory mandate, 85% of hospitals were not compliant, arguing that the rules are hard to comply with and opting instead to pay the penalty rather than tell patients the costs upfront.<sup>55</sup> As noted above, at present, market forces are not operating properly in healthcare, due to the opaque reimbursement-driven market. In this setting, the noncompetitive nature of the marketplace is reinforced by an already overregulated industry.

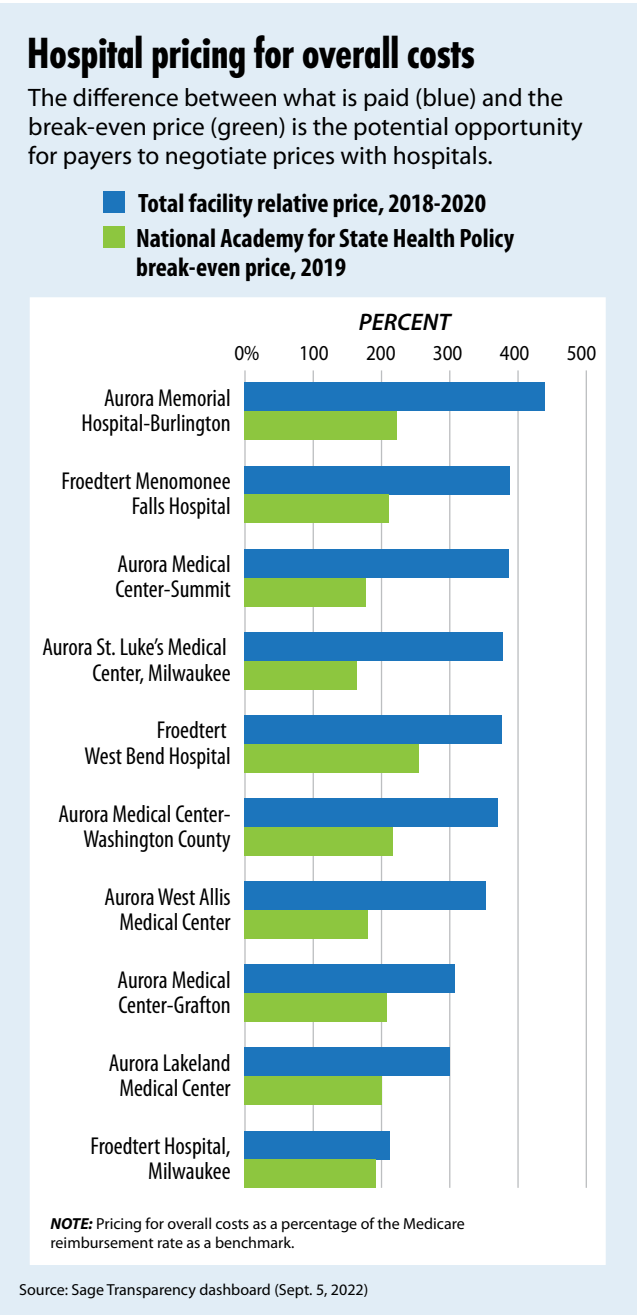
This is another example of the rent-seeking behavior of the medical industrial complex, which benefits financially from opaque markets. But things are changing slowly, as hospitals begin to post prices and patients will begin to demand to know upfront what things will cost. To facilitate this trend, a number of states have price transparency measures in place (Figure 4).<sup>56</sup> Notably, Texas SB 1137<sup>57</sup> codifies much of what was in the original Trump administration regulations and strengthens aspects of it, adding stacking penalties for noncompliance.



Once hospital price data is available, consumers (especially employers that self-insure) can shop, and hospitals will begin to be held accountable to the quality of services they provide at a given price — that is, value-based care. A software tool, Sage Transparency, was developed by the Employers’ Forum of Indiana to mine for these prices for thousands of hospitals in the Employer Hospital Price Transparency Project.<sup>58</sup> It is the first such tool that brings together public and private data on hospital pricing and quality to finally enable a transparent hospital marketplace. It uses data from the RAND 4.0 Hospital Price Transparency Study.<sup>59</sup> The data represents what employers and insurers paid in 2018-2020.

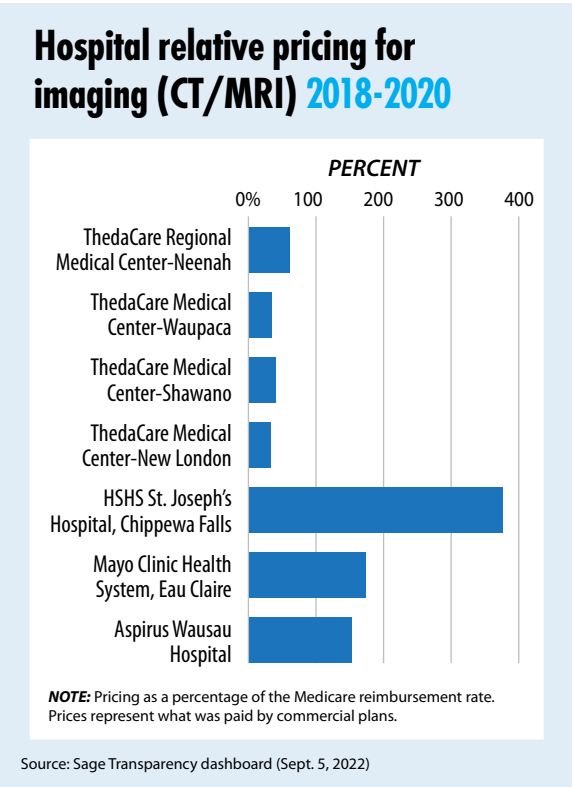
Figures 5A-C show pricing data from select Wisconsin hospitals using the Sage tool. In this sampling of data, for example, employers can see that Froedtert Hospital in Milwaukee has — relatively speaking — reasonable prices (Figure 5A), and there is little room for negotiating a lower price because the price charged is close to their break-even level. Likewise, for imaging work (Figure 5B), HSHS St. Joseph’s Hospital in Chippewa Falls is quite expensive, whereas ThedaCare at multiple locations (Neenah, Waupaca, Shawano, New London) is more affordable, by more than tenfold. For childbirth (Figure 5C), Aurora West Allis Medical Center charges 267% of the Medicare reimbursement rate (the benchmark that is used), while multiple nearby Ascension hospitals are in the 150% to 160% range — this is a 1.7-fold difference in price.

Figure 5A



Would you be willing to pay 70% more for a car being sold on one side of town than an-

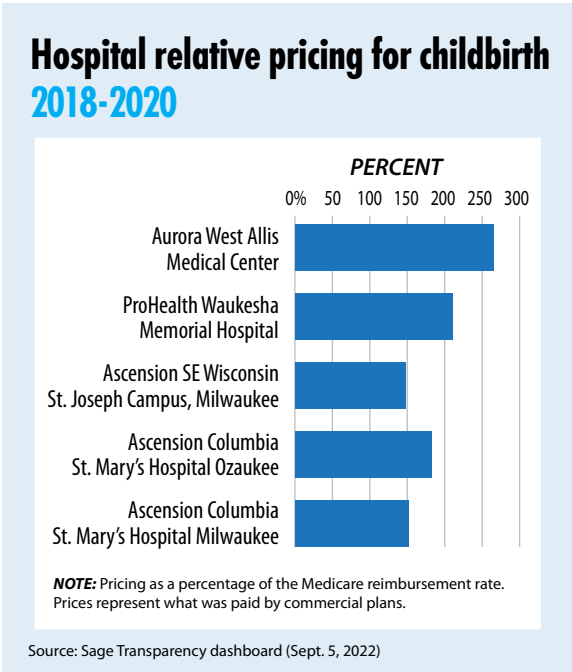
Figure 5B



other? Only if, when you made the purchase, you didn't know the price because it was an opaque market. Price transparency is crucial for a functioning market, and now that it is mandated, employers, who are the primary payers for health insurance, can shop for value to get the most and best care for their dollars. But that's only if hospitals comply with price transparency mandates. Given that Wisconsin ranks fourth highest in the U.S. for hospital commercial prices (inpatient and outpatient plus professional services) relative to Medicare (Figure 6), we stand to gain from price transparency-led market forces that can rein in these high costs.

**Recommendation:** Wisconsin hospitals need to comply with price transparency regulations to create a transparent market that consumers — especially employers buying healthcare — can shop. This can be facilitated by price transparency legislation, such as SB 1137 passed in Texas. We also need more in-depth data on Wisconsin pricing, maintained by an objective party. Patients and payers need transparent and accurate information about prices and costs. In Wisconsin (besides Sage), one source of such data is the Wisconsin Health Information Organization (WHIO),<sup>60</sup> the state's statutory all-payer claims database. It is a neutral party in the middle of the healthcare systems' competing interests. Although hospitals may resist disclosure, supporting investment in objective public-private data like WHIO is a key to achieving an open, transparent and well-functioning healthcare marketplace.

Figure 5C



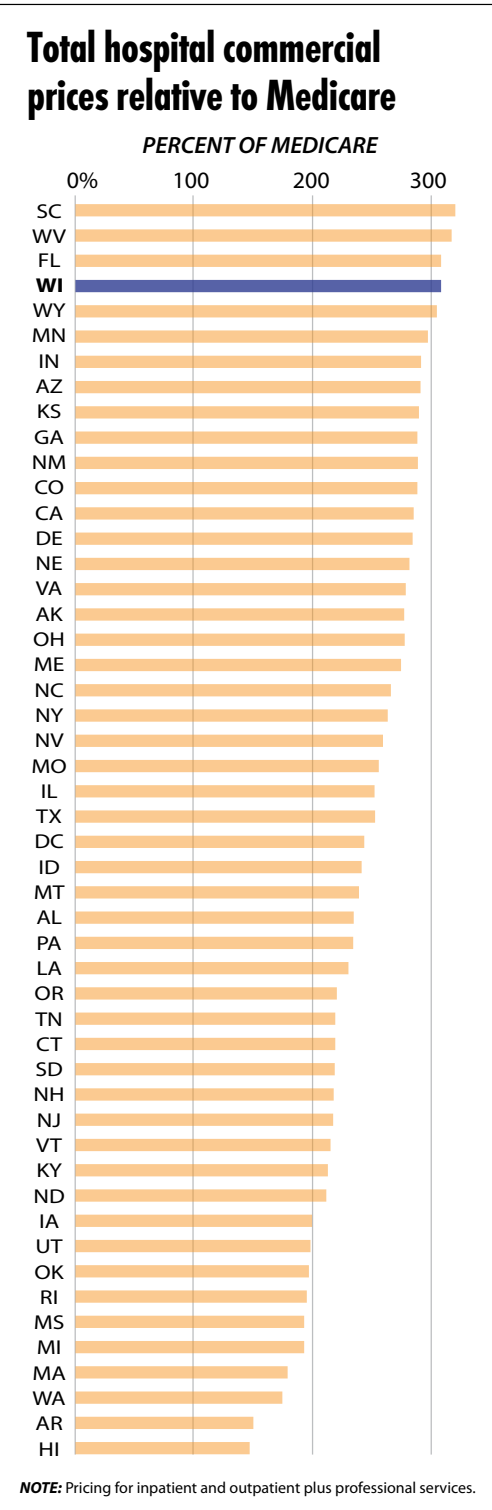
HSAs, Medicare and Medicaid

Price transparency of drugs, hospital expenses and health plans, as just discussed, would allow patients to shop, provided they have mobile medical records that permit them to get their care where they want. Still, patients need a pool of money to draw from for these shoppable healthcare expenses, especially those not fully reimbursed by insurance. Federal legislation (HR 6271<sup>61</sup>) is being considered to address this problem by permitting more flexibility in spending from health savings accounts (HSAs). Permitting HSA spending for direct primary care would empower patients; under current rules, DPC is not an allowable medical expense.

Likewise, allowing spending of Medicare or Medicaid dollars via HSA vouchers also would empower patients to obtain better care more flexibly through a free and open market. This would require a federal waiver. Such legislation would give patients more freedom in purchasing healthcare. Early attempts have not been encouraging, with one effort failing in Texas. This is legislation worth developing at the state and federal level.

**Recommendation:** Wisconsin should lead nationally by implementing a pilot program to provide flexible healthcare options to disadvantaged populations served by Medicaid, using HSA vouchers to purchase care wherever they want, rather than being restricted as they are now. This would require a federal waiver. Or, if federal waivers are not granted, perhaps there could be philanthropic or industry-funded sources of funds, to be placed in flexible HSAs, that could be spent on DPC memberships for the poor to complement Medicaid. State legislation is also needed to introduce more flexibility in terms of how HSA dollars can be spent to include purchasing of DPC. For the \$1,200 per year

Figure 6



Source: Employers' Forum of Indiana using RAND 4.0 data, Sage Transparency dashboard (August 2022)

typically charged for a DPC membership, patients would have less need to use emergency rooms for primary care, which would save the system money and provide better care, and chronic conditions such as diabetes and heart disease could be better managed.

### Scope of Practice

There is a tremendous workforce problem in healthcare in Wisconsin and nationally. Rural areas have an especially acute shortage of nurses, medical assistants, physicians, physician assistants and dentists. In response to that provider shortage, legislation was introduced to increase what is known as scope of practice.

With a broader scope of practice, non-physician providers such as nurses, pharmacists, dentists and physician assistants would be able to practice with more autonomy. Two recent Wisconsin bills were aimed at broadening scope of practice. The first, 2021 SB 394,<sup>62</sup> would have allowed for advanced practice registered nurses (APRNs) to practice without a written collaborative agreement with a physician. It passed the Legislature but was vetoed by Gov. Evers. The second, 2021 AB 125,<sup>63</sup> became law. It allows physician assistants (PAs) to practice under a written collaborative agreement rather than under direct supervision of a physician. The trend nationally is for advanced practice providers (APPs) to be given a broader scope of practice. Professional societies such as the American Medical Association (AMA) have opposed some expansions of scope of practice, citing dangers associated with the trend.<sup>64</sup> It is not clear whether the data supports this concern, but clearly scope of practice expansion must be done with caution, not creating unwarranted risk to patients by expanding too far.

Other useful licensure legislation would facilitate telehealth by allowing physicians and therapists in one state to offer care online to patients in another state. Interstate agreements such as licensure compacts that simplify cross-state telehealth in participating states are highly worthwhile.

**Recommendation:** Scope of practice expansion for healthcare professionals such as APRNs, PAs and pharmacists is a positive development but cannot be done carte blanche. There need to be reasonable limits to the expanded scope that ensure patient safety. Licensure compacts that permit delivery of healthcare across state lines should be pursued.

### Workforce

Wisconsin is seeking to increase the supply of practitioners by attracting more teachers and students to medical, nursing and pharmacy schools. The state provided \$5 million in the last biennial budget to support grants and loan forgiveness for nurse educators who agree to teach for three years in a Wisconsin school of nursing. A similar program is advancing to encourage pharmacists to move to rural practice areas (2021 SB 872).<sup>65</sup> While financial incentives are one strategy to increase the pool of practitioners, a simpler approach may be to remove artificial bottlenecks. A significant bottleneck for the physician pool is the limited number of residency slots for doctors. Those slots are funded in part

by Medicare,<sup>66</sup> which pays hospitals to run graduate medical education for a set group of residents. There are similar bottlenecks for training nurses.

**Recommendation:** State-based incentives to encourage training of nurses, pharmacists and even doctors to pursue practice in rural areas may make sense, if that is what voters want. Better yet would be for communities to provide the incentives themselves, and to remove artificial roadblocks to healthcare provider training such as limits to residency slots.

## **Conclusion**

Policy action is needed at the state and federal levels to remove the current market dysfunctions in healthcare delivery. The most promising ideas will further empower decision-making and spending at the patient-provider interface. They will reduce the role and influence of third parties such as insurers and governments.

For this to happen, there needs to be more price transparency for drugs, hospital services and healthcare plans. Patients and payers need meaningful choices to go where they want for their care, using options such as telehealth and flexible HSA plans. HSA plans should empower patients to purchase with or without the use of insurance, including via the increasingly popular direct primary care options that provide extensive electronic and in-person access to a provider for an entire year at less than the cost of a single emergency room visit.

Flexible HSA spending and DPC options also should be made available to patients on Medicare and Medicaid via vouchers enabled by federal waivers. Legislation and regulations are pending in Wisconsin and at the federal level to enable this new and better world of healthcare delivery. Wisconsin, already a leader in delivering quality healthcare, has an opportunity to show the rest of the nation how to provide more affordable and accessible care as well. On, Wisconsin!



## **Badger Institute takeaways**

Wisconsin lawmakers should:

- Pass legislation to enable emerging direct primary care options by stating that DPC is not insurance.
- Reevaluate legislation on “white bagging,” taking better account of the valid interests both of patients and doctors to choose a drug supplier and of small self-insured employers to control extraordinary costs.
- Consider modifying existing statutes on drug pricing to retain price transparency elements while eliminating price controls.
- Pass Right to Try 2.0 legislation to enable faster adoption of personalized medicine, sometimes called “N=1” medicine.
- Pass legislation to require coverage parity for telehealth but not payment parity. Reform licensing to permit telehealth to be provided across state lines.
- Pass stronger price transparency legislation, such as Texas has done, and ensure hospital compliance. Examine ways to use the Wisconsin Health Information Organization’s all-payer claims database to widely disclose accurate information about costs.
- Implement a pilot program to provide Medicaid patients with HSA vouchers to purchase care wherever they want. This would require a federal waiver.
- Expand the scope of practice for healthcare professionals such as advanced practice registered nurses, physician assistants and pharmacists. Pursue licensure compacts that permit delivery of care across state lines.

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## A PREFACE TO

# Dental Therapy Can Fill Gaps in Care and Access

**T**he Badger Institute has been paying attention to dental health for years now — researching, explaining and laying out options to lawmakers.

And with good reason: As veteran journalist Ken Wysocky points out here, synthesizing Badger Institute research, Wisconsin's dental health is not good. Among states, we have among the worst access and use rates of dental care among disadvantaged populations. We have disproportionately poor dental outcomes for people in rural areas or among people with low incomes.

It doesn't have to be this way. Other states are starting to implement the practice of dental therapy — healthcare professionals who work under the indirect supervision of dentists and who can provide routine dental care, alleviating the shortages of practitioners that are behind Wisconsin's poor dental health.

One of those states is Minnesota. Wysocky explains what Badger Institute research has found about Minnesota's experience and how it can apply here.

It's a reform that finds bipartisan favor and that helps people without dinging the taxpayer. Find out how Wisconsin can score an easy win.

— *Badger Institute*

## ABOUT THE AUTHOR



**Ken Wysocky** is a Milwaukee-area freelance journalist and editor published in many national magazines and other media. His 40-plus years of journalism include reporting at daily newspapers in Milwaukee and the Chicago area, managing communications for a former Milwaukee-based Fortune 250 company and editing a magazine.

# Dental Therapy Can Fill Gaps in Care and Access

*By Ken Wysocky*

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## Introduction

**W**hen it comes to adequate dental care, too many Wisconsin residents have little reason to smile. Hundreds of thousands of Wisconsin children receive no dental care at all, and the state is dotted with areas where both children and adults suffer from a shortage of dentists.

In fact, Wisconsin has among the worst access and use rates of dental care for disadvantaged and underserved populations in the United States as well as disproportionately poor dental outcomes for disadvantaged populations.

Fortunately, there is a simple, free-market solution that would fill many of these gaps — and lots of cavities — should Wisconsin lawmakers adopt it. Dental therapy has been practiced in a growing number of states, producing meaningful results in a short amount of time.

## Dental Therapy

### *Versatile Professionals*

Dental therapists are mid-level providers who perform preventive, restorative and intermediate restorative procedures — think fluoride applications, cavity repairs, extractions of diseased teeth and the like. They're the rough equivalent of nurse practitioners or physician assistants in the medical field.

These licensed professionals work under the general or indirect supervision of dentists and often practice in locations that serve low-income and underserved populations.

Some contend that higher Medicaid reimbursements for dentists would solve the problem of poor access to dental care. A more effective alternative, however, would be for Wisconsin to allow dental therapy to be practiced here, which would increase access to oral care, improve the outcomes for disadvantaged populations and create jobs at no cost to taxpayers.

In addition, using dental therapists to supplement the dental profession likely would reduce costs by preventing untreated dental problems from escalating into larger, more expensive issues — or even emergency room visits and deaths.

### *Scope of Need*

How great is the need to bolster dental care in the Badger State? Consider these facts:

- Wisconsin has the lowest rate of dental care use among all states for the more than 550,000 children who receive dental benefits through Medicaid. As of 2020, the rate of dental care use stood at a mere 11.8%, according to Medicaid data from the U.S. Department of Health and Human Services (HHS).<sup>1</sup>
- Roughly 64% of those children — more than 345,000 — received no dental care, according to HHS data.<sup>2</sup>
- About 80% of Wisconsin’s 72 counties, or 58, suffer from too few dental providers per capita as of 2019, according to data from the Wisconsin Department of Health Services’ (DHS) Division of Public Health.<sup>3</sup>
- As of 2021, more than 1.22 million residents (more than 20% of the state’s population) lived in 116 “health professional shortage areas,” where there’s a shortage of dental providers. Within these areas, the current number of dentists is able to meet the needs of only 36% of the population. An additional 206 dentists are needed to eliminate all such shortage areas in Wisconsin, according to federal statistics.<sup>4</sup>
- Nearly two-thirds of Wisconsin dentists, around 62%, do not accept Medicaid or Children’s Health Insurance Program (CHIP) patients as of 2019, according to American Dental Association (ADA) Health Policy Institute figures.<sup>5</sup>
- About 48% of Black adults and 38% of Hispanic adults in Wisconsin reported needing but not receiving dental care in 2015, compared with 18% of white adults, according to DHS statistics.<sup>6</sup>
- Blacks adults in Wisconsin were twice as likely as white adults to have untreated decay and a need for dental care in 2015.<sup>7</sup>
- Adults in Wisconsin earning less than \$25,000 a year had more than 2.5 times the untreated decay and a need for dental care relative to those earning more than \$25,000 a year in 2015.<sup>8</sup>
- About 12.5% more adults with a disability in Wisconsin had untreated decay and a need for dental care than did adults without a disability in 2015.<sup>9</sup>
- The population-to-active dentist ratio in Wisconsin decreased by 2.52% from 2001 to 2015, and Wisconsin was one of only 10 states that experienced a decrease in the ratio during this period. The decrease was the fourth largest among these states, according to Centers for Disease Control and Prevention figures.<sup>10</sup>

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**Dental clinics in Minnesota that employed dental therapists saw more patients, provided more services and increased gross revenues after integrating these mid-level providers into their teams.**

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### ***Negative Ripple Effects***

Many health, financial and societal problems stem from insufficient dental care, which tends to occur in urban neighborhoods and rural communities that often share traits such as higher proportions of low-income residents, less access to private insurance, heavy dependence on Medicaid, limited transportation options and a shortage of providers.

Poor oral health can increase the risks for chronic conditions such as diabetes and heart

disease as well as spur lost workdays and reduced employability. It also often leads to subsequent health problems, especially among children.

Students with poor dental health are more likely to post low grade-point averages. Early childhood cavities may hurt participation and performance in pre-kindergarten education programs, which have been shown to have substantial long-term economic returns for disadvantaged children.

Research even shows a correlation between proper dental hygiene — which includes regular dental visits — and a lower risk of serious COVID-19 infection and complications, according to a 2021 study<sup>11</sup> out of Cairo University.

Proper dental care also can reduce the use of costly but preventable acute care. One study identified \$2.7 billion in dental-related emergency room visits nationwide during a three-year period. Medicaid-enrolled adults accounted for 30% of the visits, and more than 40% were uninsured individuals, according to a Center for Health Care Strategies report.<sup>12</sup>

In Wisconsin, there were more than 41,000 emergency room visits for preventable oral health conditions in 2015, and the visits cost nearly \$27.5 million in 2012 alone.<sup>13</sup>

### *Minnesota's Success*

To see how effectively dental therapy licensure can work, Wisconsin residents need only look to Minnesota, which in 2009 became the first state to authorize the use of dental therapists statewide. Driving support for the legislation was Minnesota's relatively high frequency of emergency room visits for preventable dental problems and their substantial associated costs.

Minnesota is now one of eight states that have authorized dental therapist programs statewide. Another five states have authorized the practice on tribal lands or as pilot programs. And as of 2021, nine other states, including Wisconsin, were considering dental therapy legislation, according to data from the American Dental Hygienists Association.<sup>14</sup>

Dental therapists in Minnesota are licensed by the Minnesota Board of Dentistry. A majority of board members are dentists (five of nine members), which allows dentists to have significant input into the licensure process. To acquire a license, dental therapists must pass the same clinical competency exam as dentists do for the procedures and services they're authorized to provide.

When Minnesota first authorized the use of dental therapists, 80% of dentists did not support it, according to Karl Self, a dentist and educator who directs the University of Minnesota's dental therapy program. A decade later, 60% to 70% of dentists supported the change, and demand today for dental therapists is so high that many students secure jobs before graduating.<sup>15</sup>

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**Dental therapists are mid-level providers who perform preventive, restorative and intermediate restorative work. They're the rough equivalent of nurse practitioners or physician assistants in the medical field.**

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### ***Compelling Data***

In 2016, Minnesota dental therapists provided care for nearly 100,000 patients. That number undoubtedly has increased since then as the number of practicing dental therapists has grown to 131 as of September 2022, according to the Minnesota Board of Dentistry.<sup>16</sup>

It's also notable that the board has not disciplined or required corrective actions on any licensed dental therapist due to quality or safety concerns, according to an article in *Dimensions of Dental Hygiene*, a peer-reviewed industry publication.<sup>17</sup>

Clinics in Minnesota that employed dental therapists saw more patients, provided more services and increased gross revenues after integrating these mid-level providers into their teams, according to a 2020 study by researchers at the Center for Health Workforce Studies at the University of Albany School of Public Health in New York.<sup>18</sup>

The study was based on data from more than 76,000 patients who visited two Apple Tree dental clinics between 2009 and 2019. One of Minnesota's first clinics to hire dental therapists, Apple Tree has been a nonprofit community dental provider for 35 years and operates seven clinics in urban and rural regions of Minnesota. About 80% of its patients are low-income or insured by Medicaid.

A systematic review in 2013 by the ADA Council on Scientific Affairs concluded that well-trained dental therapists provide high-quality treatment, including restorative care, according to a *Dimensions of Dental Hygiene* article.<sup>19</sup>

## **Wisconsin Legislation**

Legislation that would authorize licensed dental therapists to practice in Wisconsin unanimously passed the state Senate in April 2021, and a companion bill garnered broad bipartisan support in the Assembly. However, Assembly Speaker Robin Vos (R-Rochester) assigned the bill to a committee that does not consider legislation, where it has languished for months.

The proposal, introduced by state Sen. Mary Felzkowski (R-Irma), would have required dental therapists to practice in a healthcare-provider shortage area or in an area made up of at least 50% underserved populations such as those on Medicaid, patients in long-term care facilities, veterans or the uninsured.

In addition, dental therapists would have been required to graduate from an accredited program offered by the Commission on Dental Accreditation or the respective dental boards in Wisconsin or Minnesota, and they would practice for 2,000 hours under the direct supervision of a dentist before moving to general supervision.

The proposal is supported by a diverse 50-member coalition, including AARP, Delta Dental of Wisconsin, Children's Wisconsin, the Wisconsin Hospital Association, the Wisconsin Dental Hygienists' Association, Disability Rights Wisconsin and others.



## Badger Institute takeaways

- Wisconsin lawmakers should pass legislation authorizing dental therapists to practice in our state, such as existing legislation that has stalled in the Assembly after passing unanimously in the Senate.

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**THE  
LADDER  
UPWARD**



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## A PREFACE TO

# Ensuring Opportunity: Altering Wisconsin's Safety Net to Encourage Upward Mobility

**E**ven before the COVID-19 pandemic, the United States faced a fragile fiscal future, with entitlement spending on an unsustainable path and the growth means-tested safety net programs far outstripping inflation. The consequences will affect Wisconsin: Federal cuts, higher taxes, or both, inevitably will hinder Wisconsin's aim of helping the poor and vulnerable among us. Still, this grim scenario creates an opportunity for Wisconsin to demand more authority over federal safety net programs, including a willingness to take a larger funding role while assuming more responsibility.

Here, eminent poverty scholar Angela Rachidi outlines what Wisconsin can do to address poverty better through reforms to the federal safety net.

For decades, the federal government has assumed a larger role in funding and running safety net programs. This leaves state leaders with little ability to address flaws such as employment and marriage disincentives and little power to make changes.

By Rachidi's estimates, Wisconsinites receive at least \$9 billion a year in federal assistance through means-tested programs, and the state contributes another \$3 billion. Big-government proponents want more, advocating for child allowances and universal benefits. Can still more money poured into a flawed system reduce poverty and increase upward mobility? Unless we address underlying causes, namely limited employment and unmarried parenthood, the answer is no.

Instead, state leaders must assume more control over fighting poverty, with more power to design programs in a way that encourages employment and marriage. This demands a shift in how federal safety net programs work and requires state leaders willing to take on that responsibility.

— *Badger Institute*

## ABOUT THE AUTHOR



**Angela Rachidi** is a senior fellow and the Rowe Scholar in poverty studies at the Washington, D.C.-based American Enterprise Institute. She is the founder and principal of Rachidi Research and Consulting, LLC. Before joining AEI, she was the deputy commissioner for policy research at the New York City Department of Social Services. Rachidi holds a doctorate in public policy from The New School in New York City, a master's degree in public administration from Northern Illinois University and a bachelor's degree from the University of Wisconsin-Whitewater. Rachidi, a Badger Institute visiting fellow, lives and works in Middleton, Wisconsin.

# Ensuring Opportunity: Altering Wisconsin's Safety Net to Encourage Upward Mobility

*By Angela Rachidi*

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## Introduction

**H**istorically, the Badger State has been among the lowest poverty states in the nation. Wisconsin benefits from a relatively strong economy, low cost of living and relatively high labor force participation, although the state's aging population presents challenges for the future.<sup>1</sup> This helps explain why 6.8% of people in Wisconsin were in poverty compared to 11.2% of the U.S. population in 2020, according to the Census Bureau's supplemental poverty measure.

At the same time, however, there are pockets of poverty in the state where families face economic vulnerabilities that threaten their livelihoods and hinder their climb up the economic ladder. Wisconsin leaders also face impending workforce challenges with an aging population and disruptions to manufacturing and agricultural sectors.<sup>2</sup> Additionally, the U.S. government is on an unsustainable fiscal path, with growing entitlement programs that continue to strain the federal budget, unprecedented levels of debt and a vulnerability to rising interest rates that will increase the cost of servicing the ever-increasing federal debt. Without reform, the impending U.S. fiscal crisis will severely limit the ability of the federal government to provide for the nation's poor. State leaders must take an active role in ensuring that a safety net exists for the next generation.

In the coming years, the challenge for Wisconsin's leaders will be to maintain the state's progress fighting poverty while ensuring that every family can share in the state's prosperity. This requires a multipronged approach. Foremost, helping families escape poverty requires tax and regulatory policies that support a strong economy, combined with education and training policies that attract and build a skilled workforce. However, reducing poverty and increasing upward mobility also require public assistance policies that give struggling families temporary financial assistance when needed while reinforcing the behaviors necessary to get people back on their feet.

The focus of this chapter is to outline a safety net approach for Wisconsin that emphasizes employment and family formation as a permanent path out of poverty toward upward mobility. I recommend changes at the federal level that would give states more flexibility in designing programs, while asking states to assume more of the cost. At the state level, I propose restructuring the Wisconsin's safety net infrastructure. The aim is to allow state leaders to design benefit programs in a way that reduces administrative complexity, en-

courages employment, reduces effective marginal tax rates (i.e., benefit cliffs) and reduces marriage penalties.

## Background

### *What is the Safety Net?*

The social safety net involves means-tested government programs that provide cash and in-kind assistance to low-income families and individuals. The federal government funds more than 80 different means-tested programs and services, but the largest programs in terms of expenditures fall into these categories: income support, nutrition assistance, housing and energy assistance, and public health insurance.<sup>3</sup>

The U.S. safety net has a long history of federal, state and local partnerships to fund and operate programs to help poor people. At the country's founding, local organizations and charities played the primary role in addressing poverty. However, beginning with the Social Security Act of 1935, the federal government codified its role to provide cash assistance to poor mothers with children, followed by a major expansion in the federal government's role in the 1960s as part of President Lyndon Johnson's War on Poverty.<sup>4</sup>

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**By disincentivizing employment and penalizing marriage, it is likely that increasing transfer payments makes it harder for families to escape poverty on their own, leading to persistent low income and limited upward mobility.**

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Many safety net programs started as a shared responsibility between the federal government and states. Over the years, the federal government passed laws to establish federal safety net programs and authorize funding. The federal government created programs to help poor families meet their basic needs, including food, housing and health insurance. Most programs started by targeting families with children, which remains a focus today, although over time programs expanded to also assist working-age and elderly individuals without dependents.

In many safety net programs, the federal government gives state governments the responsibility for administering programs, including determining eligibility and distributing payments within a framework provided by federal law, while also requiring state governments to share in the costs. However, since the 1990s, the federal government has assumed a larger role in providing direct income support to poor families without state involvement, mainly through the federal Earned Income Tax Credit (EITC), Child Tax Credit (CTC) and Supplemental Security Income (SSI) — all of which are funded and administered entirely by the federal government.

States still play a funding and administrative role in the Temporary Assistance for Needy Families (TANF) program, which also provides income support to low-income families. But since the 1996 welfare reform law, the size and scope of TANF relative to other safety net programs has shrunk tremendously. Consequently, income support to low-income families through the federally operated EITC, CTC and SSI far surpasses assistance provided through TANF in today's safety net (Figure 2).

The federal government also plays the primary role in funding nutrition assistance programs, including the Supplemental Nutrition Assistance Program (SNAP), formerly known as the food stamp program, and the National School Lunch Program as well as housing and energy programs, such as Housing Choice Vouchers (Section 8) and public housing. However, in Wisconsin as in other states, county offices and local housing authorities administer these programs under state and federal rules and regulations. Families and individuals apply for benefits through county offices, and staff employed by these agencies assess eligibility and distribute benefits.

Medicaid (and the Children’s Health Insurance Program, or CHIP) is another major component of the safety net and provides government-funded health insurance to low- and moderate-income families. Medicaid is different from other safety net programs in several ways, including how it operates and how the federal government and states fund it, although it remains means-tested. Medicaid encompasses a complex scheme of funding formulas, eligibility criteria and funded services that differ by state.<sup>5</sup> States play a large role in funding Medicaid, with cost-sharing requirements that range from 10% to 50% of total Medicaid expenditures.

In sum, the evolution of policies has resulted in a safety net for low-income families that combines multiple programs operating through a mix of federal and state funding and administering authority. Some programs are entitlements, meaning that Congress authorizes funding to serve every eligible individual, while other programs are discretionary, meaning that Congress caps program funds and they cannot serve all eligible families. Table 1 summarizes the major federal safety net programs, the federal and state roles in administering them and the federal cost for Wisconsin residents in fiscal year 2019 (prior to the pandemic). Federal expenditures on Wisconsin residents in these select programs totaled approximately \$9.1 billion in 2019, with Medicaid accounting for the bulk of federal spending. The State of Wisconsin contributed another roughly \$3.6 billion through

Table 1

Federal income, nutrition, housing and public health insurance programs 2019		
Program	Description	Federal cost for Wisconsin residents
Income support		
Earned Income Tax Credit (EITC)	<ul style="list-style-type: none"><li>• The federal government administers the EITC through the Internal Revenue Service.</li><li>• The EITC provides a lump sum benefit at tax time — which can range from a few hundred dollars to over \$6,700 depending on other income in the household and family size — including to those who have no federal income tax liability.<sup>6</sup></li></ul>	\$806 million in federal EITC payments to Wisconsin tax filers. <sup>7</sup> Wisconsin’s state EITC totaled \$94.1 million in 2019-’20. <sup>8</sup>

	<ul style="list-style-type: none"> <li>• The EITC phases in at different rates depending on family size starting with the first dollar earned, increasing as earnings rise.</li> <li>• The EITC phases out completely for families with three or more children at \$51,000 in annual income (in 2021) and at lower amounts for families with fewer children.</li> <li>• The EITC targets low-income households, with the bottom two-fifths of tax units receiving \$59 billion in benefits in calendar year (CY) 2019.<sup>9</sup></li> <li>• Some states and cities have their own EITC, which they provide in addition to the federal EITC. Wisconsin provides 4%, 11% and 34% of the federal credit to tax units with one, two and three qualifying children, respectively.</li> </ul>	
<b>Refundable Child Tax Credit (CTC), also called the Additional Child Tax Credit (ACTC)</b>	<ul style="list-style-type: none"> <li>• In CY 2022, the federal CTC provided up to \$2,000 per child for families with income tax liability, including up to \$1,400 per child for families without income tax liability (refundable portion), phasing in at 15% of earnings above \$2,500.<sup>10</sup></li> <li>• The CTC was significantly expanded temporarily for 2021, including by 1) increasing the benefit amount, 2) making the benefit entirely refundable (that is, no longer contingent on work and earnings by recipient adults), and 3) making benefit payments in monthly installments, between July and December 2021.</li> <li>• Maximum annual benefits in 2021 increased from \$2,000 per child in 2020 to \$3,600 per child (under age 6) or \$3,000 per child (ages 6 through 17).</li> <li>• The refundable portion of the CTC targets low-income households, with the bottom two-fifths of tax units receiving \$32 billion in benefits in fiscal year 2019.<sup>11</sup></li> <li>• Wisconsin does not provide a state CTC.</li> </ul>	Approximately 244,000 Wisconsin children receive the refundable portion of the CTC, suggesting that the federal government sent \$244 million to Wisconsin through the refundable CTC in 2019. <sup>12</sup>
<b>Supplemental Security Income (SSI)</b>	<ul style="list-style-type: none"> <li>• Monthly cash payment from the federal government for low-income adults unable to work due to age, being blind or otherwise disabled; with benefits ranging from \$841 per month for an individual to \$1,261 for an eligible couple (in 2021).<sup>13</sup></li> <li>• Requires an application to the Social Security Administration, and working-age recipients must demonstrate a severe disability that prevents gainful employment, while children are assessed based on the severity of their physical or mental impairments.</li> </ul>	\$833 million in federal SSI payments to Wisconsin residents. <sup>14</sup>

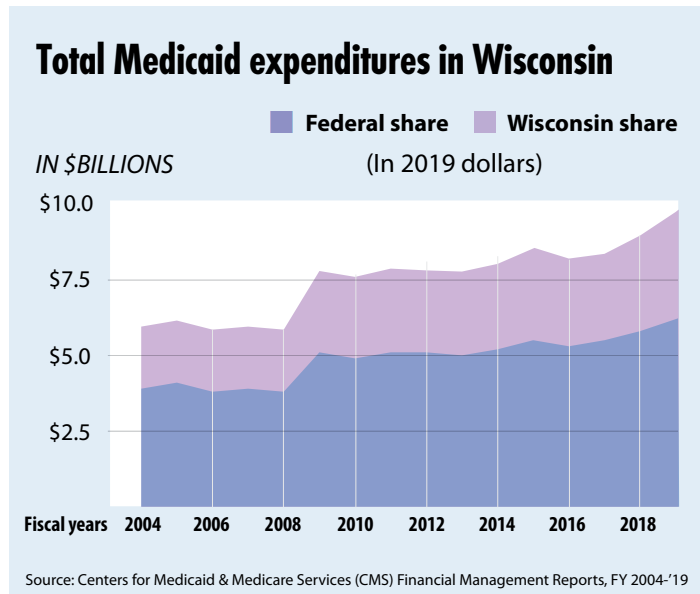
	Income support	
	<ul style="list-style-type: none"> <li>• Eligibility is generally limited to individuals below the federal poverty threshold, which was \$12,880 for a one-person household in 2021.</li> <li>• Wisconsin provides an exceptional expense supplement for recipients of federal SSI who need full-time in-home care. Wisconsin also provides a caregiver supplement.<sup>15</sup></li> </ul>	
<b>Temporary Assistance for Needy Families (TANF)</b>	<ul style="list-style-type: none"> <li>• Federal block grant administered by the states.</li> <li>• States can use funds to provide various benefits and services, including cash assistance, to low-income families with children.</li> <li>• Direct cash assistance comes with federal time limits and work requirements.</li> <li>• Wisconsin offers several TANF programs, including Wisconsin Works (W-2), which provides cash assistance and job search and training assistance to eligible participants.<sup>16</sup></li> <li>• As part of W-2, participants in a paid placement receive up to \$653 per month depending on the type of placement and hours. They also receive childcare and other supports, such as SNAP and Medicaid.<sup>17</sup></li> </ul>	<p>\$312.8 million in federal TANF funds to Wisconsin in FY 2019.<sup>18</sup> Wisconsin provided an additional \$275.6 million in FY 2019 in state funds through maintenance of effort requirements,<sup>19</sup> with 13% in direct cash assistance, 35% for childcare, 12% for tax credits and 25% for other services.<sup>20</sup></p>
	Nutrition assistance	
<b>Supplemental Nutrition Assistance Program (SNAP)</b>	<ul style="list-style-type: none"> <li>• SNAP, formerly known as the food stamp program, provides a monthly benefit from the federal government to low-income households for food and beverages.</li> <li>• Non-working able-bodied adults without dependents are subject to time limits for benefits, which generally have been waived in recent years. Wisconsin reinstated the work requirement in 2015, and it was suspended statewide in 2020 due to the pandemic.</li> <li>• SNAP benefits range from \$250 per month for a one-person household to \$992 per month for a family of five (FY 2022).<sup>21</sup></li> <li>• Gross income must be below 130% of the federal poverty threshold for most household types to be eligible.</li> </ul>	<p>\$778.4 million in federal benefits to Wisconsin households in FY 2019.<sup>22</sup></p>



	<ul style="list-style-type: none"> <li>• States administer SNAP through local offices and share the administrative costs with the federal government. States also partly fund employment and training programs. Wisconsin's program is called FoodShare.</li> </ul>	
<b>Housing and energy</b>		
<b>Housing (Housing Choice Vouchers and public housing)</b>	<ul style="list-style-type: none"> <li>• Provides assistance in two forms: tenant-based assistance (vouchers to eligible families used for housing costs) and project-based assistance (assigned an apartment in public housing).</li> <li>• Administered by state/local housing authorities.</li> <li>• Voucher amounts vary by state and follow fair market rent guidelines. Public housing assigns apartments to eligible recipients. Both programs generally require families to contribute 30% of income toward housing costs.</li> <li>• Funding is limited, and not all eligible families receive assistance.</li> </ul>	\$186.3 million to Wisconsin households. <sup>23</sup>
<b>Public health insurance</b>		
<b>Medicaid</b>	<ul style="list-style-type: none"> <li>• Medicaid is a joint federal and state program that provides health insurance to low-income individuals and families who lack coverage. It also funds long-term care services for low-income elderly residents.</li> <li>• States design their own coverage programs within federal guidelines and share in the financing of services. States determine what their Medicaid program covers (under federal guidelines) and enroll eligible participants.</li> <li>• The federal government requires each state to contribute toward total Medicaid costs according to a formula — the Federal Medicaid Assistance Percentage, or FMAP. Wisconsin covers approximately 35% of Medicaid costs, with the federal government covering the remainder.</li> <li>• Wisconsin provides several different Medicaid programs called BadgerCare, including for children, adults and people with disabilities.<sup>24</sup> Generally, children and pregnant women are eligible for BadgerCare when income is below 300% of the federal poverty line (FPL); other adults are eligible with income below 100% of the FPL. Some families must provide a copay for services, and a range of services is covered.<sup>25</sup></li> </ul>	\$5.9 billion in federal Medicaid costs for Wisconsin in 2019. The state provides approximately \$3.2 billion, or 35%, of total costs. <sup>26</sup>

Source: Author's summary of safety net programs

Figure 1



these safety net programs.

Federal and state spending on these programs has increased dramatically over the past few decades, with Wisconsin's Medicaid expenditures alone increasing over 60 percent in constant dollars since 2004 (Figure 1).

Spending on other safety net programs also has risen in recent decades. At the federal level, expenditures on major means-tested safety net programs across

all states, including food assistance, SSI, family support (mainly TANF) and refundable tax credits have almost doubled in constant dollars since 1995 (Figure 2).

Figure 2

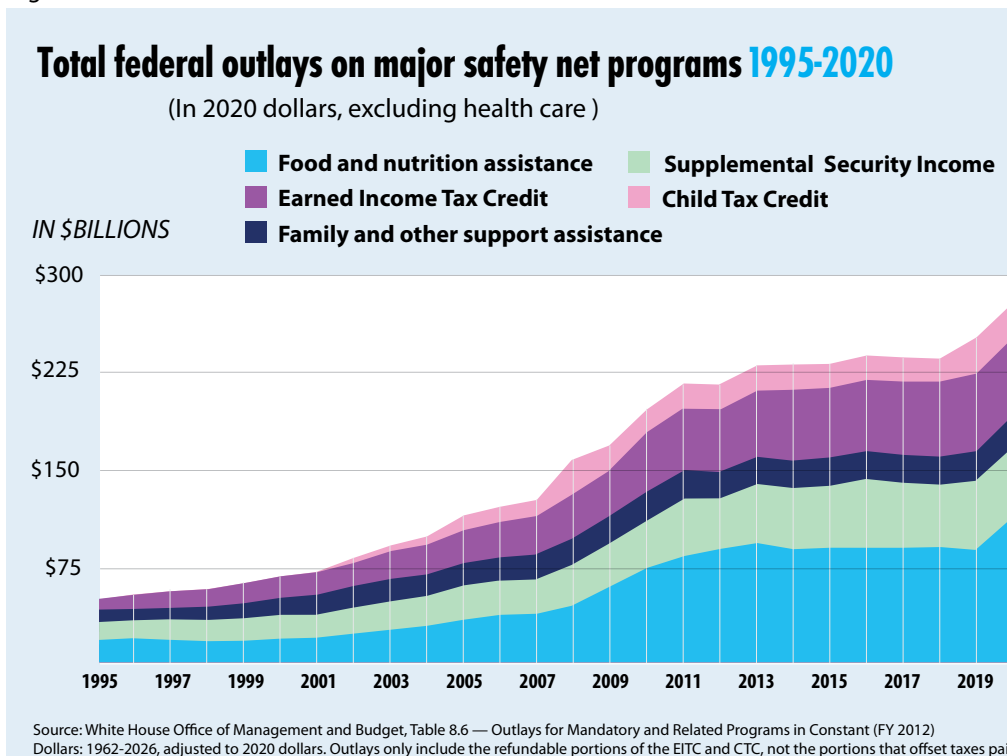
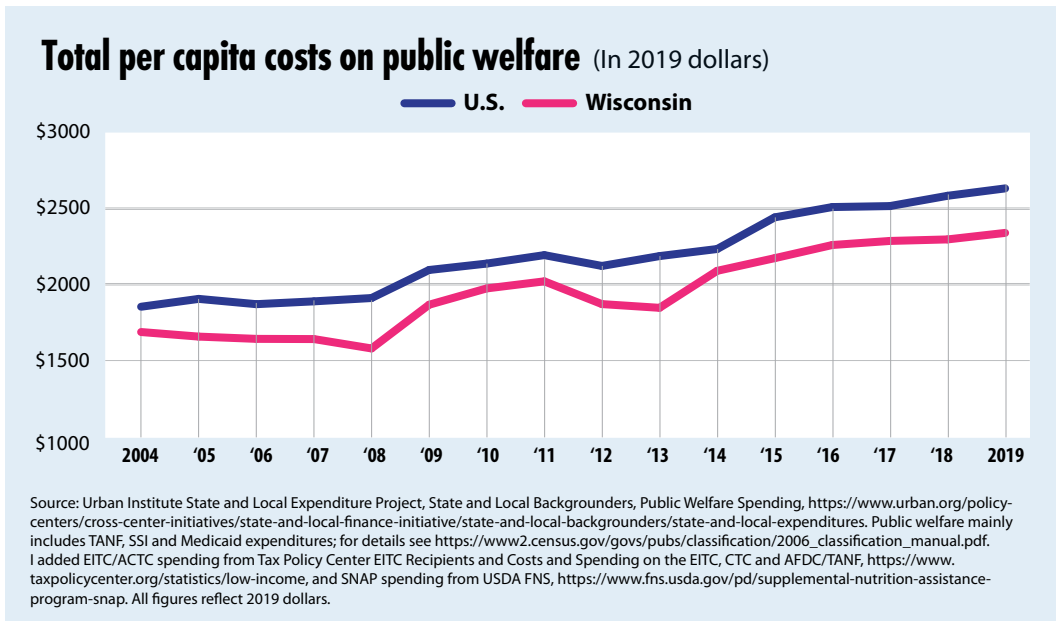


Figure 3



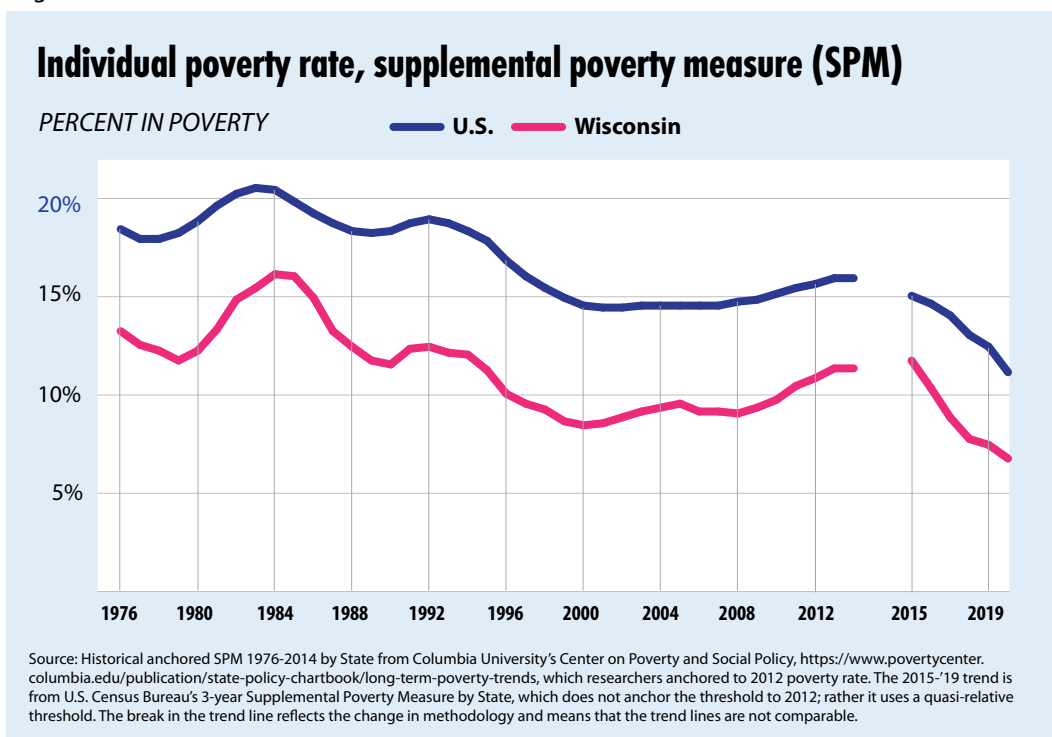
Expenditures at the state level on different safety net programs can be difficult to obtain, mainly because of the complex nature of the financing structures and programs operate out of many different state and federal agencies. The Urban Institute compiles expenditure data and summarizes state and local funding on various categories, including public welfare. Its “public welfare” category includes cash and in-kind assistance programs, such as TANF and housing assistance as well as public health insurance. Its analysis shows that growing expenditures on Medicaid and other federally funded programs have led to large increases in spending per capita on public welfare by the State of Wisconsin and by the U.S. government as a whole (Figure 3). Since 2004, per capita spending on public welfare by the State of Wisconsin increased 39% and by the federal government by 42%.

### ***How Safety Net Expansions Have Affected Poverty in Wisconsin***

Poverty rate trends help to show the impact of this increased safety net spending, although measuring poverty is not straightforward. Controversy over how to measure poverty dates back to the original inception of an official national poverty statistic in the 1960s. The details of poverty measurement in the U.S. are beyond the scope of this chapter — simply stated, the best way to assess poverty trends over time in the context of safety net programs is to use the supplemental poverty measure (SPM). This is because the SPM counts most government assistance as household resources, including safety net expenditures, to the extent that people report them on surveys. Importantly, research shows that households vastly underreport on surveys the amount of public benefits they receive, suggesting that the true poverty level would be even lower than the SPM indicates.<sup>27</sup>

Even still, trends in the SPM show large declines in poverty in Wisconsin in recent decades. Figure 4 reflects the percentage of all individuals in poverty in Wisconsin and the

Figure 4



U.S. based on two versions of the SPM,<sup>28</sup> and it shows a long-term decline in poverty for Wisconsin (and the U.S.) that started in the 1980s and continued until the recession that began in 2007. Since 2007, poverty rates for Wisconsin increased slightly and then started to decline again through the strong economy of 2019 (Figure 4). Since the COVID-19 pandemic, poverty has continued to decline, although this has been due largely to the amount of government assistance provided to households to mitigate the pandemic.<sup>29</sup>

These trends present a picture of growing public expenditures on means-tested programs combined with declining poverty rates. Big-government advocates often use this reality to argue that the key to reducing poverty even more requires the federal government (or states) to transfer more money to poor families. However, this approach ignores the potential downsides to ever-increasing public transfer payments. The design of current safety net programs can discourage the very things that help families escape poverty permanently on their own, such as employment and marriage.

Despite increasing payouts from safety net programs over the past several decades, research has shown that those at the bottom of the income distribution are no more likely to climb the ladder to the middle class than previous generations.<sup>30</sup> When government expands safety net programs without considering the unintended behavioral consequences, it can make situations worse for families in the end and for states trying to foster a strong economy and high quality of living for all of their residents.

Although point-in-time poverty rates can be useful in showing the effects of government transfer payments, there is no way to know what poverty rates would have looked like in Wisconsin in the context of a safety net that better promotes employment and marriage. The point-in-time poverty rate also reveals nothing about persistent poverty and upward mobility trends. By disincentivizing employment and penalizing marriage, it is likely that increasing transfer payments makes it harder for families to escape poverty on their own, leading to persistent conditions of low income (even among those not technically poor) and of limited upward mobility.

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**Without a financial stake in the outcomes of programs, states lack strong incentives to support work and marriage as a way to reduce program dependency.**

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Additionally, the prospect of ever-increasing public expenditures to reduce poverty is fiscally irresponsible without an attempt to address the underlying contributors to poverty. When federal and state safety net programs fail to promote the behaviors necessary for upward mobility, more and more people will find themselves income poor, and the government will continue to increase expenditures indefinitely to try to raise them out of poverty. This creates a vicious cycle of bad incentives and federal spending — ultimately inhibiting the path to self-sufficiency and fiscal responsibility.

### ***The Three Pillars: What Wisconsin Can Do to Address Poverty Instead***

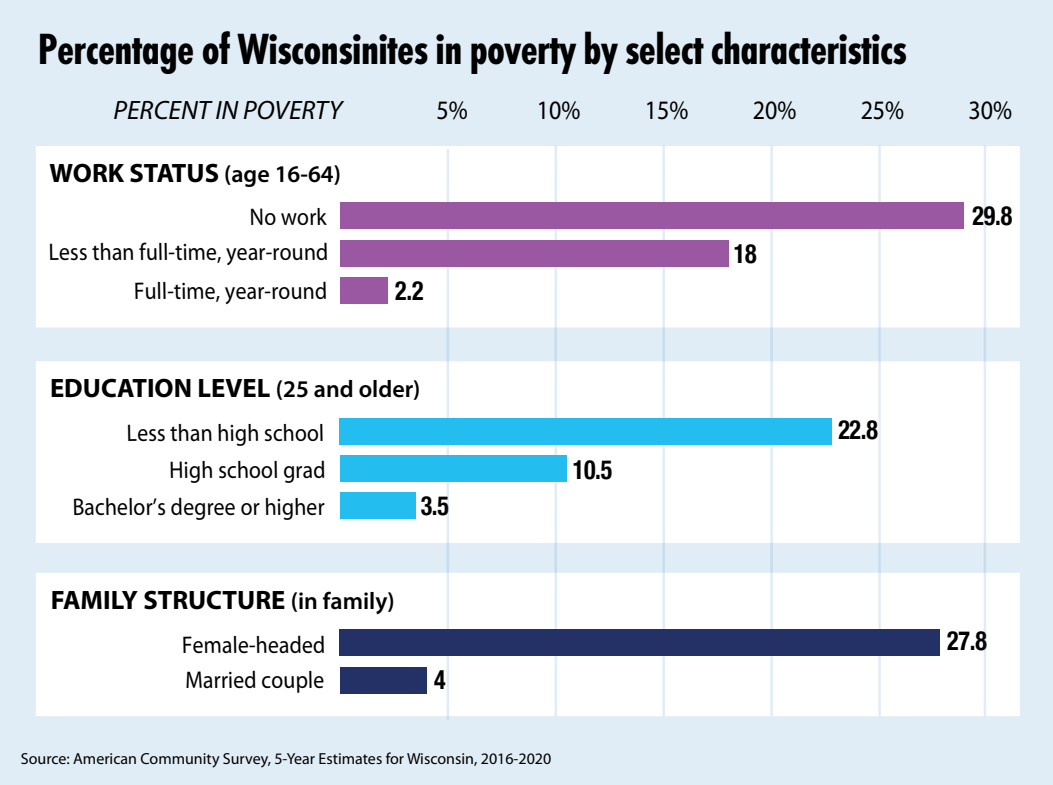
The complex and increasingly centralized nature of the safety net leaves state leaders with limited opportunities to help residents escape poverty permanently and to increase upward mobility. This is especially true when considering the employment and marriage disincentives built into some of the federal safety net programs, such as SNAP and housing assistance, over which states currently have no control. However, Wisconsin's leaders can still focus their efforts on changing safety net policies with the aim of improving the underlying conditions that cause poverty: education levels, employment rates and family structure. Education policy is treated elsewhere; here I will cover employment and family structure.

This will require Wisconsin's leaders to take a two-pronged approach. First, administrative officials within state agencies can take advantage of existing opportunities to waive program requirements or to use TANF's flexibility to innovate. Additionally, state elected leaders will need to lobby Congress to gain more flexibility and authority over federal safety net funding and program administration. State leaders took both approaches in reforming the welfare system in the 1980s and '90s, including a major role played by then-Wisconsin Gov. Tommy Thompson and his administration's officials.<sup>31</sup>

Data shows that employment is crucial to helping families escape poverty. Using 2016-'20 data for Wisconsin, 2.2% of people working full time year-round were poor, according to the official poverty rate (that is, without fully considering government benefits), compared to 29.8% of those with no work (Figure 5). Beyond the direct impact of earnings on poverty rates, employment provides other nonfinancial benefits to parents, such as improved health and a sense of purpose, which also can improve family well-being over the long run.<sup>32</sup>

At the national level, data from the Survey of Income and Program Participation shows that almost 40% of persistently poor households (meaning income below the poverty

Figure 5



threshold for three-quarters of a three-year period) were also persistently jobless during the same timeframe. Only 6% of households who had escaped poverty in the same three-year period were persistently jobless.<sup>33</sup>

When children live in a two-parent household, they also do better on a variety of behavioral, academic and health-related outcomes.<sup>34</sup> Not only does having two adults with two potential incomes in a household reduce poverty for children, it also increases the chance of upward economic mobility, research shows.<sup>35</sup> For these reasons, policies that support employment and two-parent families offer a better path out of poverty than transferring income alone.

***The Proposal: Supporting Employment and Marriage to Reduce Poverty***

As previously stated, research shows that federal housing programs (Housing Choice Vouchers and public housing), SNAP and SSI disincentivize employment.<sup>36</sup> This is because assistance provided by the federal government replaces the need for employment or creates benefit cliffs, meaning that as recipients' earnings rise, their benefits decrease — making the individuals only marginally better off by working.<sup>37</sup> To address employment disincentives in the current safety net, states need more flexibility over program design. State leaders need the ability to structure income-support programs in ways that meet the material needs of poor families but also incentivize employment. This requires the ability to impose things such as program time limits and work requirements as well as the flexibility to coordinate the phasing out of benefits in order to minimize marginal effective tax

rates (that is, benefit cliffs).

To achieve this flexibility, Congress needs to authorize “superwaivers” of federal safety net programs through demonstration projects. Wisconsin’s leaders cannot currently coordinate the phasing-out of the federal EITC, SNAP and childcare assistance in a way that minimizes benefit cliffs.<sup>38</sup> In general, Wisconsin leaders also cannot impose time limits and work requirements on SNAP participants or housing program participants with the aim of reducing program dependency and encouraging self-sufficiency. Similarly, significant marriage penalties exist in SNAP, childcare subsidies and housing assistance programs, and state leaders have no ability to reduce these penalties.<sup>39</sup> Rather than trying to tackle these problems at the federal level, Congress needs to provide states with the ability to redesign the safety net to meet the unique needs of their residents.

With the proper authority granted by Congress, Wisconsin leaders would be able to consolidate funding streams from different safety net programs, such as SNAP, SSI, housing assistance and TANF to design a more effective safety net. One potential design would be to create a Unified Family Assistance Program.

This would provide financial assistance and services to low-income families in a coordinated way that involves a family assistance budget and that sets clear goals for employment and self-sufficiency. This also would help coordinate services at the state and county level in ways that the current federal structure of programs makes difficult. Under the current structure, different safety net programs have different rules and reporting requirements from the federal government, which makes it difficult for states to try to coordinate the application and recertification of different programs into one process. While there might be some advantage to consolidating these processes at the state level, until the federal government gives states more flexibility, consolidation will remain difficult.

The process would ensure that Wisconsin families could meet their food, housing and other expenses with sufficient employment and government assistance, and the benefits would phase out slowly in a coordinated way to minimize benefit cliffs. The program could address marriage penalties by setting income eligibility requirements higher for married families. Additionally, Wisconsin officials could impose reasonable work and education expectations as a condition of receiving assistance and set time limits for cash support. The federal government would need only to allow states the administrative flexibility to design a safety net that meets the needs of their participants.

With this flexibility, however, states would need to assume more financial responsibility for safety net programs while being held accountable for positive outcomes. Congress’ Joint Economic Committee (JEC) described the problem in a recent report: “States do not

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**When children live in a two-parent household, they do better. Not only does having two adults with two potential incomes in a household reduce poverty for children, it also increases the chances of upward economic mobility. Policies that support employment and two-parent families offer a better path out of poverty than transferring income alone.**

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have strong incentives to properly steward the welfare system because the federal government provides the vast majority of funding.”<sup>40</sup>

The JEC continued, “Requiring states to contribute more of their own funding to welfare programs could also increase their motivation to discourage long-term dependence and promote self-reliance.”<sup>41</sup> Without a financial stake in the outcomes of programs, states lack strong incentives to support work and marriage as a way to reduce program dependency. In fact, in some ways, states have financial disincentives to helping people move away from safety net programs because that can mean fewer federal dollars coming into the state in the short term.

In exchange for more flexibility over program design, Congress could require that states contribute a larger share toward programs that currently are federally funded. In another chapter on entitlement and safety net reforms, two of my American Enterprise Institute colleagues, Matt Weidinger and Scott Winship, and I outline what this might look like.

We propose that Congress require states to contribute 50% of program costs for SNAP, housing programs and SSI, giving states a larger financial stake in the success of these programs in moving people into employment. We recognize that this approach would introduce a new financial burden on Wisconsin and other states. Therefore, we also propose that Congress allow states to offset some of these new costs if states meet employment and poverty-reduction benchmarks for their low-income residents. In our view, the threat of increased financial burden is precisely what states need as an incentive to implement effective program designs that help people escape poverty permanently.

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**Helping families escape poverty requires policies that support a strong economy. It also requires public assistance policies that reinforce the behaviors necessary to get people back on their feet.**

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At the same time, the federal government should support working low-income families by expanding direct cash assistance through increased federal tax credits and by using savings from state-level safety net reforms to fund more childcare assistance. This follows the idea that the federal government can provide assistance to support work while state leaders implement social service programs. One way to achieve this goal would be to combine the EITC and CTC into a unified child tax credit administered through the federal income tax system, which also would reduce marriage penalties in the EITC.<sup>42</sup>

The framework involves the federal government taking full responsibility for providing direct cash assistance through tax credits and childcare assistance to working families, while states such as Wisconsin would take responsibility for the balance of safety net programs, with the ability to restructure them. Through this re-envisioned safety net, Wisconsin would serve low-income populations that struggle to find employment because of disabilities, health issues or a history of incarceration, for example. In sum, the financial and administrative architecture would recognize that Wisconsin’s leaders need greater control over policies aimed at reducing poverty. State leaders are better suited than the federal government to develop policies that meet the needs of their residents.



To support marriage better, reducing marriage penalties through a consolidated child tax credit and through flexibility at the state level would be a major step forward. However, there are additional things Wisconsin leaders can do to encourage two-parent families. One approach is to promote the success sequence among Wisconsin's young people. Research has demonstrated that those who complete the success sequence — finishing high school, working full time and waiting until marriage to have children — are far less likely to be in poverty than those who do not.<sup>43</sup>

Messages to young people about finishing high school, working and waiting until marriage to have children traditionally come from parents. However, alternative sources can reinforce these messages through programs at schools, youth centers and other social service programs. Similar to the National Campaign to Reduce Teen Pregnancy, Wisconsin philanthropic leaders could come together to support nonprofit organizations aimed at promoting the success sequence among Wisconsin's young people. It could collaborate with churches, faith-based organizations and private charities to implement a statewide campaign to promote the success sequence as a way to reduce poverty and ensure prosperity for all Wisconsin families.

## Conclusion

Wisconsin already has among the lowest poverty rates in the nation, but too many families remain without opportunities to move up the income ladder and achieve prosperity. Too often, the federal safety net is to blame, however well-intentioned it might be. Employment disincentives and marriage penalties can hold Wisconsin's low-income families back and prevent them from meeting their full potential. The approach outlined above moves away from simply accommodating poverty and toward supporting the principles that will lead to family prosperity — more work, less government dependence and more marriage.

This requires a restructuring of the responsibility for safety net programs in this country, with an emphasis on returning control to the states. Much like the welfare reform experiments in 1996 (led in Wisconsin by then-Gov. Tommy Thompson), state leaders should push the federal government to authorize demonstration projects allowing states to blend safety net program funding for the purposes of promoting employment and two-parent families as a way to reduce poverty. At the same time, the federal government should spend more on federal tax credits for working families while authorizing demonstration projects and requiring states to pick up more of the tab for assistance programs. This will incentivize state leaders to achieve better outcomes for Wisconsin's low-income families.

The reforms detailed above would return more of the responsibility for helping Wisconsin families escape poverty to state leaders, where it rightfully belongs. This contrasts with current policies that have the federal government sending increasing amounts of federal money to Wisconsin households without consideration for their employment status or their family situation. American families — and especially those in need of assistance — deserve far better.



## Badger Institute takeaways

Wisconsin should demand of Congress waivers that permit innovation in federal safety net programs in our state. Elements that Wisconsin should pursue:

- Consolidate funding streams for SNAP, SSI, housing assistance, TANF and other programs into a Unified Family Assistance Program.
- Structure aid under the United Family Assistance Program to phase out in a coordinated way to minimize benefit cliffs that discourage work.
- Increase income eligibility requirements under the plan for married families, to stop discouraging marriage.
- Set and enforce work and education requirements for receipt of benefits.
- Set time limits for cash support.

In exchange, Wisconsin would assume a greater share of the cost of the program than it does under existing programs with an opportunity to offset those new costs when it hits agreed-on employment and poverty-reduction benchmarks.

Wisconsin should encourage or require schools, youth centers and other social service programs to explain the success sequence — finishing high school, working full time and waiting until marriage to have children — as the demonstrably likeliest way to avoid poverty.

Philanthropic leaders in the Badger State should support nonprofit organizations that promote the success sequence among young Wisconsinites.

## Endnotes

<sup>1</sup> Relative to the United States as a whole and many other states, Wisconsin in recent years has had lower unemployment rates and higher labor force participation, although labor force participation has declined in Wisconsin over the past decade due to demographic challenges such as an aging population. See Noah Williams, “Labor Markets in the US and Wisconsin: Current State and Long-run Trends,” Center for Research on the Wisconsin Economy, University of Wisconsin-Madison, <https://crowe.wisc.edu/wp-content/uploads/sites/313/2021/06/wi-labor21.pdf>, for more detail.

<sup>2</sup> Tessa Conroy, Matt Kures and Steven Deller, “Labor Market Trends in Wisconsin: Potential Worker Shortage and Changing Skill Demand,” 2016. <https://economicdevelopment.extension.wisc.edu/files/2018/11/0402-WI-Econ-Labor-Policy-Brief.pdf>

<sup>3</sup> Childcare assistance is also a means-tested program that is part of the safety net. However, the government’s system of childcare and early learning assistance is covered in another chapter.

<sup>4</sup> Angela Rachidi, *The American Safety Net: A Primer on Welfare Programs for Low-income Populations*, American Enterprise Institute, January 2017, <https://www.aei.org/wp-content/uploads/2017/01/The-American-Safety-Net.pdf?x91208>

<sup>5</sup> Jason J. Fichtner, *The Economics of Medicaid: Assessing the Costs and Consequences*, Mercatus Center, April 2014, <https://www.mercatus.org/system/files/EconomicsofMedicaid.pdf>

<sup>6</sup> Robert Bellafiore, “The Earned Income Tax Credit, A Primer,” Tax Foundation, May 2019, <https://taxfoundation.org/earned-income-tax-credit-eitc/>

<sup>7</sup> Tax Policy Center Statistics, “EITC Claims by State,” February 2022, <https://www.taxpolicycenter.org/statistics/eitc-claims-state>

<sup>8</sup> Dan Spika, “Earned Income Tax Credit,” Wisconsin Legislative Fiscal Bureau, January 2021, [https://docs.legis.wisconsin.gov/misc/lfb/informational\\_papers/january\\_2021/0012\\_earned\\_income\\_tax\\_credit\\_informational\\_paper\\_12.pdf](https://docs.legis.wisconsin.gov/misc/lfb/informational_papers/january_2021/0012_earned_income_tax_credit_informational_paper_12.pdf)

<sup>9</sup> Tax Policy Center Model Estimates, “Earned Income Tax Credit; Baseline: Current Law; Distribution of Federal Tax Change by Expanded Cash Income Percentile, 2019,” March 2020, <https://www.taxpolicycenter.org/model-estimates/2019-child-and-work-credit-proposals/t20-0090-earned-income-tax-credit-baseline>

<sup>10</sup> Tax Policy Center, “Briefing Book,” May 2022, <https://www.taxpolicycenter.org/briefing-book/what-child-tax-credit>

<sup>11</sup> Tax Policy Center Model Estimates, “Child Tax Credit; Baseline: Current Law; Distribution of Federal Tax Change by Expanded Cash Income Percentile, 2019,” March 2020, <https://www.taxpolicycenter.org/model-estimates/2019-child-and-work-credit-proposals/t20-0092-child-tax-credit-baseline-current-law>

<sup>12</sup> “The Child Tax Credit: A Tool for Fighting Child Poverty in Wisconsin,” Center on Budget and Policy Priorities, 2018, [https://www.cbpp-multimedia.org/1-25-19tax/1-25-19tax\\_actc\\_wisconsin\\_statewide.pdf](https://www.cbpp-multimedia.org/1-25-19tax/1-25-19tax_actc_wisconsin_statewide.pdf)  
\*Assumes an average \$1,000 in refundable CTC per tax filer, based on the Tax Policy Center.

<sup>13</sup> Social Security Administration, “SSI Federal Payment Amounts For 2022,” 2022, <https://www.ssa.gov/oact/cola/SSI.html>; Social Security Office of Policy, “A Primer: Social Security Act Programs to Assist the Disabled,” 2006, <https://www.ssa.gov/policy/docs/ssb/v66n3/v66n3p53.html>

<sup>14</sup> Social Security Administration, “SSI Recipients by State and County, 2020,” 2021, [https://www.ssa.gov/policy/docs/statcomps/ssi\\_sc/2020/table02.pdf](https://www.ssa.gov/policy/docs/statcomps/ssi_sc/2020/table02.pdf)

<sup>15</sup> Wisconsin Department of Health Services, “Social Security Income (SSI) Eligibility,” September 2021, <https://www.dhs.wisconsin.gov/ssi/eligibility.htm>

<sup>16</sup> Wisconsin Department of Children and Families, “For Researchers: Current TANF Programs,” 2022, <https://dcf.wisconsin.gov/w2/researchers/programs>; Wisconsin Department of Children and Families, Wisconsin’s Temporary Assistance for Needy Families (TANF) Annual Report FY 2019, 2020 <https://dcf.wisconsin.gov/files/w2/tanf-annual-reports/2019-wi-tanf-annual-report.pdf>.

<sup>17</sup> Wisconsin Department of Children and Families W-2 Policy Manual, <https://dcf.wisconsin.gov/manuals/w-2-manual/Production/default.htm>

<sup>18</sup> Administration for Children and Families, Office of Family Assistance, “FY 2020 Federal TANF & State MOE Financial Data,” [https://www.acf.hhs.gov/sites/default/files/documents/ofa/fy2020\\_tanf\\_financial\\_data\\_table\\_092221.pdf](https://www.acf.hhs.gov/sites/default/files/documents/ofa/fy2020_tanf_financial_data_table_092221.pdf). See also a summary of Wisconsin’s biennial budget. [https://docs.legis.wisconsin.gov/misc/lfb/budget/2019\\_21\\_biennial\\_budget/202\\_comparative\\_summary\\_of\\_provisions\\_2019\\_act\\_9\\_august\\_2019\\_entire\\_document.pdf](https://docs.legis.wisconsin.gov/misc/lfb/budget/2019_21_biennial_budget/202_comparative_summary_of_provisions_2019_act_9_august_2019_entire_document.pdf)

<sup>19</sup> Administration for Children and Families, Office of Family Assistance, “FY 2020 Federal TANF & State MOE Financial Data,” [https://www.acf.hhs.gov/sites/default/files/documents/ofa/fy2020\\_tanf\\_financial\\_data\\_table\\_092221.pdf](https://www.acf.hhs.gov/sites/default/files/documents/ofa/fy2020_tanf_financial_data_table_092221.pdf); Administration for Children and Families, “FY 2019 TANF & State MOE Financial Data,” September 2020, [https://www.acf.hhs.gov/sites/default/files/documents/ofa/tanf\\_financial\\_data\\_fy\\_2019\\_91020.pdf](https://www.acf.hhs.gov/sites/default/files/documents/ofa/tanf_financial_data_fy_2019_91020.pdf)

<sup>20</sup> Center on Budget and Policy Priorities, “Wisconsin TANF Spending,” 2021, [https://www.cbpp.org/sites/default/files/atoms/files/tanf\\_spending\\_wi.pdf](https://www.cbpp.org/sites/default/files/atoms/files/tanf_spending_wi.pdf)

<sup>21</sup> U.S. Department of Agriculture Food and Nutrition Service, “SNAP Eligibility,” October 2021 <https://www.fns.usda.gov/snap/recipient/eligibility>

<sup>22</sup> U.S. Department of Agriculture Food and Nutrition Service, “SNAP Data Tables,” June 2022, <https://www.fns.usda.gov/pd/supplemental-nutrition-assistance-program-snap>

<sup>23</sup> Wisconsin Housing and Economic Development Authority, FY 2018-19 Annual Report, 2020, <https://www.wheda.com/globalassets/documents/annual-reports-and-financials/2018-2019-annual-report.pdf>

<sup>24</sup> See Wisconsin Department of Health Services for details on Wisconsin’s Medicaid program, <https://www.dhs.wisconsin.gov/medicaid/children.htm>.

<sup>25</sup> See the Wisconsin Department of Health Services Enrollment and Benefit Handbook for income eligibility and covered services, <https://www.dhs.wisconsin.gov/publications/p0/p00079.pdf>

<sup>26</sup> Medicaid.gov, “Annual Medicaid & CHIP Expenditures” 2020, <https://www.medicaid.gov/state-overviews/scorecard/annual-medicaid-chip-expenditures/index.html>

<sup>27</sup> Bruce D. Meyer, Wallace KC Mok and James X. Sullivan. The under-reporting of transfers in household surveys: its nature and consequences. No. w15181. National Bureau of Economic Research, 2009.

<sup>28</sup> Regrettably, it is difficult to obtain historically useful poverty rates at the state level. The U.S. Census Bureau publishes the SPM by state using a quasi-relative threshold, but it is available only starting in 2015. Researchers at Columbia University published a historical SPM through 2014 but anchored the threshold to the 2012 poverty rate and adjusted it for inflation, making it incomparable to the Census Bureau’s 2015–19 trend. Nonetheless, the SPM is far superior to the official poverty measure because it captures a larger share of resources available to low-income households.

<sup>29</sup> PovertyMeasurement.org, “Near Real Time COVID-19 Income and Poverty Dashboard,” June 2022, <http://povertyMeasurement.org/covid-19-poverty-dashboard/>; U.S. Census Bureau, “The Supplemental Poverty Measure: 2020,” September 2021, <https://www.census.gov/library/publications/2021/demo/p60-275.html>

<sup>30</sup> Scott Winship, “Economic mobility in America: A state-of-the-art primer.” Archbridge Institute, November 2021, <https://www.aei.org/research-products/report/economic-mobility-in-america-a-state-of-the-art-primer/>

<sup>31</sup> Carol S. Weissert, Ed. *Learning from Leaders: Welfare Reform, Politics and Policy in Five Midwestern States*. SUNY Press, 2000, <https://sunypress.edu/Books/L/Learning-from-Leaders>

<sup>32</sup> Angela Rachidi, “Health and Poverty: The Case for Work,” American Enterprise Institute, May 2020, <https://www.aei.org/wp-content/uploads/2020/04/Health-and-Poverty-The-Case-for-Work.pdf?x91208>; Diana Frasquilho et al., “Distress and Unemployment: The Related Economic and Noneconomic Factors in a Sample of Unemployed Adults,” *International Journal of Public Health* 61, no. 7 (2016): 821–28, <https://link.springer.com/article/10.1007%2Fs00038-016-0806-z>; Marie Jahoda, “Work, Employment, and Unemployment: Values, Theories, and Approaches in Social Research,” *American Psychologist* 35, no. 2: 184–191, <https://doi.org/10.1037/0003-066X.36.2.184>

<sup>33</sup> Angela Rachidi, “The Persistence of Poverty,” American Enterprise Institute, July 2018, <https://www.aei.org/wp-content/uploads/2018/07/Rachidi-Joblessness-2018.pdf?x91208>

<sup>34</sup> Brad Wilcox, Chris Bullivant and Peyton Roth, “Family Stability: Bridging America’s Social Capital Divide,” Social Capital Campaign, May 2022, <https://static1.squarespace.com/static/60abb375ca5a79523fb94711/t/62703654462def272d60f94d/1651521110209/SCCFamilyStability.pdf>

<sup>35</sup> Richard Reeves, “Where’s the Glue: Policies to Close the Family Gap,” The Brookings Institution, 2019, [https://www.brookings.edu/wp-content/uploads/2019/03/wheres\\_the\\_glue\\_policies\\_to\\_close\\_the\\_family\\_gap-1.pdf](https://www.brookings.edu/wp-content/uploads/2019/03/wheres_the_glue_policies_to_close_the_family_gap-1.pdf)

<sup>36</sup> Richard Burkhauser and Mary Daly, “The Supplemental Security Income Disabled Children Program: Improving Employment Outcomes in Adulthood,” *A Safety Net That Works*, American Enterprise Institute, 2017, <https://www.aei.org/research-products/book/a-safety-net-that-works-improving-federal-programs-for-low-income-americans/>; Hilary Williamson Hoynes and Diane Whitmore Schanzenbach, “Work Incentives and the Food Stamp Program,” NBER, July 2010, <https://www.nber.org/papers/w16198>; Robert Collinson, Ingrid Gould Ellen and Jens Ludwig, “Reforming housing assistance.” *The ANNALS of the American Academy of Political and Social Science* 686, no. 1 (2019): 250–285.

<sup>37</sup> U.S. Department of Health and Humans Services, Assistant Secretary for Planning and Evaluation, Marginal Tax Rate Series, <https://aspe.hhs.gov/topics/poverty-economic-mobility/marginal-tax-rate-series>

<sup>38</sup> Benefit cliffs occur when welfare recipients are made materially worse off by increasing their earnings. This happens when benefits phase out more quickly than beneficiaries’ earned income rises.

<sup>39</sup> Marriage penalties refer to situations when an unmarried mother has income that makes her eligible for a public benefit program (e.g., childcare assistance), but if she were to marry the father, his income combined with her own would make the family ineligible.

<sup>40</sup> Joint Economic Committee Social Capital Project, “Reconnecting Americans to the Benefits of Work,” October 2021, [https://www.jec.senate.gov/public/\\_cache/files/5ac0a254-ff00-4a18-baf0-bdfedb9bb154/connections-to-work.pdf](https://www.jec.senate.gov/public/_cache/files/5ac0a254-ff00-4a18-baf0-bdfedb9bb154/connections-to-work.pdf)

<sup>41</sup> Ibid.

<sup>42</sup> Angela Rachidi, “A Simpler Safety Net for Families: Consolidating Child Tax Credits into a Working Family Credit,” American Enterprise Institute, May 2022, <https://www.aei.org/research-products/report/a-simpler-safety-net-for-families-consolidating-child-tax-credits-into-a-working-family-credit/>

<sup>43</sup> Brian Goesling, Hande Inanc and Angela Rachidi, "Success Sequence: A Synthesis of the Literature," OPRE Report 2020-41, December 2020, <https://www.mathematica.org/publications/success-sequence-a-synthesis-of-the-literature>. See also Wendy Wang and Brad Wilcox, "The Power of the Success Sequence for Disadvantaged Young People," Institute for Family Studies Report, May 2022, <https://www.aei.org/wp-content/uploads/2022/05/successsequencedisadvantagedya-final.pdf?x91208>; Hande Inanc, Ariella Spitzer and Brian Goesling, "Assessing the Benefits of the Success Sequence for Economic Self-Sufficiency and Family Stability," OPRE Report # 2021-148, September 2021, <https://www.mathematica.org/publications/assessing-the-benefits-of-the-success-sequence-for-economic-self-sufficiency-and-family-stability>



## For a New Civil Society

**O**ur Mandate for Madison's primary concern is the role of the state in the lives of Wisconsin's citizens. But we hope our focus on government is not confused with any fundamental belief in it as a guiding hand or caretaker or beneficent presence. The good things in life in this democracy — opportunity, fulfillment, upward mobility, prosperity, the redounding energy and succor that comes from free association, love of relatives and friends — do not emanate from Madison or D.C. They come from the private sector, from family and from civil society — that space between the individual and government.

Churches, clubs, community associations, private schools, charities — these are the so-called mediating institutions of civil society that foster social connections, friendship, participation, dignity, belonging and ultimately the advancement and support that comes from communal bonds. As noted in "The Space Between: Renewing the American Tradition of Civil Society," a publication of the Joint Economic Committee, civil society is also essential in minimizing estrangement and alienation — the problem that surely is contributing to much of today's societal conflict and violence.

Civil society is the essential space for the growth of character, for acts of kindness, for development of trust — for the altruism that drives Wisconsinites to help each other when they see a need.

Unfortunately, as others have noted, the fundamental pillars of civil society are eroding. From 1974 to 2018, the share of adults who reported spending an evening with a neighbor at least several times a month dropped from 44% to 29%. From 1972 to 2018, the share of adults who reported attending religious services once a month or more dropped from 57% to 42%. Membership in fraternal organizations has plummeted. The share of Americans who have never attended any sort of club meeting increased from two-thirds in the late 1990s to three-fourths in the late 2000s.

A healthy civil society is absolutely essential to a healthy democracy. As The Bradley Foundation's Rick Graber noted in a speech, *A Civil Society for the 21st Century*, that some of us here at the Badger Institute attended at the Wisconsin Forum in October 2021, "During those inevitable times when some of our fellow citizens endure hardship, it is families, neighbors and communities — and not government — that are most capable of providing help and assistance."

Alexis de Tocqueville famously noted in his first volume of "Democracy in America" in the 1830s that "Americans of all ages, all conditions, all minds constantly unite. Not only do they have commercial and industrial associations in which all take part, but they also have a thousand other kinds: religious, moral, grave, futile, very general and very particular, immense and very small; Americans use associations to give fetes, to found seminaries, to build inns, to raise churches, to distribute books, to send missionaries to the antipodes ... . Finally, if it is

a question of bringing to light a truth or developing a sentiment with the support of a great example, they associate.”

Or did.

For guidance on how Wisconsin can again value and participate in civil society, we turned to one of the most thoughtful and experienced people we know on these issues, on civil society and the family, someone who has worked extensively within government but also knows the great value of what happens outside it, Eloise Anderson.

— *Badger Institute*

### ABOUT THE AUTHOR



**Eloise Anderson**, a visiting fellow at the Badger Institute, is known nationally and internationally as a leader on welfare issues, family structure and the role of government in people's lives.

She served in Gov. Scott Walker's administration as secretary of the Wisconsin Department of Children and Families from 2011 to 2019. As the former director of the California Department of Social Services, she created a successful work model that led to thousands of people transitioning from welfare to self-sufficiency.

Anderson began her career in Milwaukee as a social worker and in various roles within state and county government. In 1988, Gov. Tommy Thompson appointed her administrator of the Division of Community Services, a position she held for four years.

She has over 20 years of experience in state service. The leadership of the U.S. House of Representatives named Anderson to the National Advisory Board on Welfare Indicators, and she was honored with the 1996 National Governors Association award for outstanding state official.



# For a New Civil Society

*By Eloise Anderson*

**M**any believe the deteriorating condition of American society, especially in the urban centers, is the result of government crowding out what is known as civil society.

I had feared that the bigger the federal government got, the less important cities, villages and towns and, in reality, the individual would be. Unfortunately, that fear has been realized. But I've never given up on the reemergence of those pillars of civil society, the churches and community organizations, to displace pessimism with optimism, purposelessness with purpose and hope.

Since the Depression, government has intervened with the conviction that it could and should replace the traditional support system of family, neighbors and church.

No thought seems to have been given that the government must forcibly take from one group of people, taxpayers, to do its good. Policymakers have legislated not understanding the full impact of the support they seek to provide.

How did this happen? What are the effects? Can this be turned around? Turning it around will require the retreat of all government, but especially the federal government, from American lives. It will mean supporting men and fathers with education and training and restructuring how public education is funded and governed.

In the mid-1960s, Milwaukee was a beautiful and safe place to live. It was the economic engine of Wisconsin. I often called it the "star of the North." But at that same time, Milwaukee was experiencing decline and the loss of many industries. As the base of heavy industry began to shrink and change, workers and their families turned to government and away from their old support systems.

In August 1964, President Lyndon Johnson, a Democrat, signed the omnibus Economic Opportunity Act, the legislation that launched the Great Society. That same year, Warren Knowles, a Republican, was elected governor of Wisconsin.

Leaders of both parties have come to believe that government was the instrument to perfect civil society. Every governor I've worked for believed that government can do good, so they want to help. We should beware of good intentions.

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**Programs such as Temporary Assistance to Needy Families, Housing and Urban Development subsidies, Supplemental Nutrition Assistance Program, Medicaid, Supplemental Security Income and Head Start have overwhelmed parental authority and undermined family stability.**

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This idea that taxpayer-funded government programs would assume responsibility for civil society would have confounded Edmund Burke, the 18th century statesman-philosopher. Burke believed the key to a society's success was the "little platoons," families, neighborhoods, schools and churches.

The French diplomat Alexis de Tocqueville marveled at these platoons at work when he toured America in 1831 and later described them in his prescient book, "Democracy in America."

"With much care and skill, power has been broken into fragments in the American township, so that the maximum possible number of people have some concern with public affairs."

Programs such as Temporary Assistance to Needy Families (TANF), Housing and Urban Development subsidies, Supplemental Nutrition Assistance Program (SNAP), Medicaid, Supplemental Security Income (SSI) and Head Start have overwhelmed parental authority and undermined family stability.

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**We must commit to reestablish the importance of men, of fathers, in our society. And we must restructure K-12 and vocational education.**

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One of these, Aid to Dependent Children, later renamed Aid to Families with Dependent Children (AFDC), provided assistance only to "suitable homes." In reality, the aid supported single parents, some adolescents, who never married and were independent of their own parents. The program did not support married parents living together with their children.

What has changed in our society is the poor men. The economic base has changed on them. The skills that they had no longer are the skills that work. And what we need to do is spend time providing them with the education and training they need to function in this new economic world that they're in. And the help needs to be focused on men and fathers.

If what we truly want for our communities is peace and prosperity, it will come not from government but from the family. Often, policymakers speak of the family as an organization of two parents and their biological children. Family therapists broaden this definition to include relatives who influence the dynamic of parental behavior.

No matter how it is defined, the family — responsible for rearing and sheltering, supporting and educating — exerts the most powerful influence on people, from birth until death.

Parents ought to be most responsible for the care of their children. In extended families, grandparents play a critical role. The single-parent household often lacks this support system. The young single parent is usually ill-equipped to provide the emotional and psychological support children need in their early years.

These years provide the foundation that will determine if a community thrives. The com-

munity needs parents engaged in developing their children's ability to think and reason. Being in a married household is especially good for girls. Teen girls living in a two-parent household delay having sex longer than peers living in a single-parent household. Teen girls living with either their biological father or stepfather are less likely to get pregnant than those living with a single mother.

On the other hand, boys with little or no involvement with their father do poorly in school, drop out at a higher rate and are less likely to be employed. They are more likely to be abused and violent, to be involved with drugs and alcohol. They are more likely to be homeless and more prone to suicide.

What's in the family — or not in the family — inevitably spills out into the neighborhoods, spreading instability, crime and chaos. The pessimism and purposelessness, the apathy and selfishness, disconnects people from their larger community.

For all of the decades and the billions of dollars spent, government has provided no answers for these seemingly intractable social ills. In a speech to the Federalist Society more than 20 years ago, retired federal Judge Janice Rogers Brown lamented:

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**If what we truly  
want for our  
communities is peace  
and prosperity, it  
will come not from  
government but  
from the family.**

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“Where government moves in, community retreats, civil society disintegrates and our ability to control our own destiny atrophies. The result is: families under siege; war in the streets; unapologetic expropriation of property; the precipitous decline of the rule of law; the rapid rise of corruption; the loss of civility and the triumph of deceit.”

It's past time for the bureaucrats to step away and allow for two things to happen in order to form “a more perfect union.” We must commit to reestablish the importance of men, of fathers, in our society. And we must restructure K-12 and vocational education.

The child support system, a quasi-criminal-justice system that is punitive rather than supportive, should be refitted with no additional funding to provide counseling, job training and placement with the goal of providing for children.

Funds to pay for this structural change can come from government programs already provided for children in homes without a father. Social work and mental health experts could develop a curriculum for fathers with no criminal history. Staffing could come from military veterans who have an understanding of discipline and structure.

There should be a presumption that both parents have a financial responsibility for their children. The financial support of children should not be the responsibility of the taxpayer.

There are roughly 2 million community organizations in this country, with about 11 million employees and 63 million volunteers supported by \$390 billion in charitable giving. They should not have to compete with government for resources that are better spent by

people who know their communities best.

Funds already provided by the federal Workforce Innovation and Opportunity Act (WIOA) of 2014 should be directed to apprenticeship programs and employer-paid internships for single, unmarried men to improve their economic standing in the community and put them in a position to marry and provide for children.

Another component of this strategy would be a life and job skills training program through the University of Wisconsin Extension in every county in our state. Such a program would include a housing stipend tied to active participation in the program for men ages 18 to 26 who have come out of the foster care system and have minimal skills and a sporadic work history. Life skills would stress the basics — financial management, food purchasing and food preparation.

There is a tremendous opportunity for our prison and jail systems to play a role in rehabilitating rather than simply housing men and women. Mastering basic life skills, proficiency in English and math and some understanding of Western culture should be required for release. After all, we are all Westerners.

Jailed men and women who are the products of the foster care system should be provided direct mental health services with an emphasis on trauma from trained counselors, not prison guards.

Men and women who grew up without a father in the home should get mental health services tailored to the most serious accompanying problems, physical and sexual abuse. Like foster care alumni, life and job skills and meeting educational proficiency standards would be required for parole.

And don't tell me that people won't come. When I was secretary of the state Department of Children and Families (DCF), my team and I developed a program called Transitional Jobs. We expanded the use of TANF, which is supposed to go to parents, and diverted some of it for fathers (they *are* parents) and sent it to local programs in Milwaukee and across the state. And men came in long lines to get jobs.

I went to Beloit, where we had a transitional job program. In the neighborhood was a factory. A young man got a job at the factory sweeping floors. People there took a liking to him, and he said he wanted to be one of the machinists. He worked hard. They sent him to school to become a machinist.

He said he had never seen what went on in this factory before, the kind of jobs that were there. "I live two blocks from this, and I didn't know it was here," he told me.

Transitional Jobs helped him get a job, a little sweeping-the-floor job, but it worked into

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**Taxpayer money, so liberally spent and so foolishly squandered, should go to parents who can best determine where their children should go to school. Parents and educators must be equal partners for educational outcomes to improve.**

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something else. So, you've got to put these men in places where they've never been.

This kind of technical education must begin long before high school graduation. Graduates of apprenticeships and internships should feed our technical and vocational schools. Those schools should take an active role in shaping high school curriculum to maximize career opportunities.

This kind of reform can come only from the bottom up. The belief in government-run education as the vehicle best-designed to prepare youth for the future may already be dead.

Taxpayer money, so liberally spent and so foolishly squandered, should go to parents who can best determine where their children should go to school. Parents and educators must be equal partners for educational outcomes to improve.

This partnership would flourish, particularly in Milwaukee, if we reestablished neighborhood schools and residential high schools. Residential schools help bring stability into young lives that are often unstable and chaotic.

The governor, whoever the governor is, must start talking about the problems with Milwaukee Public Schools. And the same for Madison's public schools because it's not just Milwaukee.

The last governor who came to the inner city of Milwaukee was Tommy Thompson. We need the governor to do that again, to come down and talk to people and say, "Hey, this is what I see. What do you see? Tell me what you see. Tell me what you need."

When I was DCF secretary, I thought we should take on Milwaukee Public Schools. But opponents always said, "Well, you know, it can be helped."

I said it can't be helped, it's gone. It's got way too much administration for what it needs to be. We've got to go back to community schools. We're going to get rid of busing, unless you live in the country. We're not busing you to school anymore. You're going to walk to your neighborhood schools. And if it's too dangerous for your kids to walk to school, maybe you need to do something about it.

Parents right now can't get involved because the schools aren't in their neighborhoods. You don't know where in the world your kids are. If you have three kids, they might be in three different schools, so you can't get involved.

So, if we put the students back in their neighborhoods, where they are right down the street or around the corner, parents can go and get involved.

I offer these proposals as a real-world attempt at reversing the cumulative effect of public policy decisions that have rewarded single parenting and damaged public education.

Every one of these prescriptions is reasonable and doable within the current structure

of our state government. They could use existing federal funds. But the money would be deployed with the goal of solving problems rather than sustaining programs. All funding should come with a sunset provision triggered by a program's success.

Government sunseting would give room for churches and community organizations to build on the already vital work they do and encourage new volunteer work locally. When men return to their families, neighborhoods become safer. Neighbors build trust. And through that trust comes a sense of community, of volunteering, of philanthropy — all hallmarks of a civil society.

To get all of this done, and believe me it's a big job, we need a leader, a governor who actually understands the problems with these schools and is willing to take them on.

The real question is are we ready to take back responsibility for our children's educations, to reintegrate our poor men into family and public life and reclaim our place as the stewards of civil society?

I truly hope so.



**“I** can attest to the power of ideas  
in shaping policy reforms.  
Our 1981 Mandate for Leadership  
significantly influenced the Reagan  
Revolution in ways that benefited  
generations of Americans.

The Badger Institute, with its  
Mandate for Madison, is casting  
the same vision, combining  
the free-market principles,  
in-depth research and legislative  
influence needed to produce  
opportunity and prosperity.

The Badger Institute is advancing  
your values in Madison.  
I hope you will consider supporting  
their work at this critical time.”

**– Ed Feulner**

*Co-founder and former President,  
The Heritage Foundation*

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