

11X15 BLUEPRINT FOR ENDING MASS INCARCERATION IN WISCONSIN



EXECUTIVE SUMMARY

WELCOME TO WISCONSIN where, in many communities, being taken away to jail or prison is more common than being sent off to college. The prison population in this state has more than tripled since 1990, burdening taxpayers, compromising public safety and hindering justice.

Wisconsin's overuse of jails and prisons is out of control. WISDOM and its local affiliates around the state have worked to lower incarceration rates, most recently with the 11X15 Campaign to decrease prison population to 11,000 by the end of 2015. The campaign

continues as we study and reveal disturbing breakdowns in the prison system. This document serves to illuminate failures and opportunities, share personal stories and demand reform in 2015 by offering practical solutions.

A few facts illustrate the overwhelming failure of our state's criminal justice system:

- Wisconsin spends more than \$1.2 billion per year on the Department of Corrections. A few years ago, the state allocated more taxpayer money to its prison budget than to the entire University of Wisconsin system.

- Multiple studies reveal little relationship between crime rates and incarceration rates. The only connection is that excessive incarceration of low-risk offenders actually increases the likelihood that they will commit a crime in the future.
- Wisconsin has the nation's highest rate of incarceration for African American and Native American males. If you're a black male in this state, your incarceration rate is 13 percent, nearly double the national average. More than half of all African American men from Milwaukee County in their 30's and early 40's have been or are incarcerated. The Native American incarceration rate in Wisconsin is 7.6 percent, more than twice the national average.

Even in politically polarized Wisconsin, there are very few who defend the status quo.

Fundamental issues of injustice frame and feed the scandal of mass incarceration in Wisconsin. Racism and systemic discrimination rob too many young Wisconsinites of opportunity and hope. Injustice is reflected in our school policies, transportation policies, health policies and more. Basic racial and economic justice issues are intertwined with mass incarceration. We must address them all with urgency.

While we tackle immense issues in the bigger picture, we must also immediately work to reduce our prison population. We recommend evidence-based practices to cut the rate of incarceration by half. If implemented, these practices can save Wisconsin hundreds of millions of dollars each year, funds that can be spent to heal communities, provide prospects for those swept into mass incarceration for the past 25 years and offer opportunities for the next generation. A challenge to Wisconsin's legislature, Governor, public servants and private citizens, this document outlines achievable measures that can be implemented in three categories:

KEEP PEOPLE FROM ENTERING PRISON—In Wisconsin, we know how to keep low-risk people out of jails and prisons. Almost every county provides alternatives to incarceration, and nearly every program has proven effective, not only in reducing prison population, but also recidivism. A 2012 study showed that by fully funding the state's Treatment Alternatives and Diversions (TAD) fund, Wisconsin could keep 3,000 people per year out of the state's prisons and more than 27,000 from ever going to jail.² TAD enjoys broad bipartisan support. It is simply a matter of fully funding this cost-effective program and ensuring that it is targeted in communities where it will provide the greatest impact.

Wisconsin can further reduce its prison population by re-examining sentencing practices, as other states have done. Inordinately long prison time does nothing to enhance public safety. It's extremely costly, and it reduces the odds that the offender will be successfully re-integrated back into the community when released. Other common sense steps, from keeping 17-year-olds in the juvenile system to reforming bail practices, can also help keep people out of prison in the first place.

JUSTICE INSIDE PRISON WALLS—Wisconsin has nearly 3,000 people in its prisons who have long been eligible to be released on parole. A broken, out-of-control parole system has denied them a fair chance to be freed and get on with their lives. Many of these inmates have been evaluated as being of minimal risk to society. They have completed every required rehabilitative program. The Governor could order an immediate fix to this injustice.

Prison was once thought to be a place of rehabilitation. Some practices by the Department of "Corrections" actually work against this goal. The out-of-control overuse of solitary confinement as a discipline and management tool has damaged many people, magnifying mental health issues that often caused behaviors leading to incarceration. By turning prisons back into places of rehabilitation, we can greatly increase the chances that those who leave prison will do so once and for all, saving taxpayer money. We can also re-

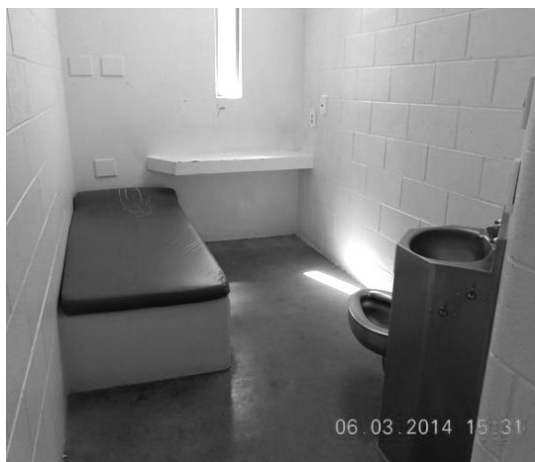
1 Pawasarat, John and Quinn, Lois M, 2013, *Wisconsin's Mass Incarceration of African-American Males: Workforce Challenges of 2013*, University of Wisconsin-Milwaukee Employment and Training Institute.

2 Human Impact Partners and WISDOM. November 2012. Healthier Lives, Stronger Families, Safer Communities: How Increasing Funding for Alternatives to Prison Will Save Lives and Money in Wisconsin

duce taxpayer burdens by addressing the staggering cost projections to meet health needs of Wisconsin's aging prison population. Compassionate release must be closely monitored and used more widely.

HELP PEOPLE STAY OUT OF PRISON—The largest number of people entering Wisconsin prisons are re-entering. Nearly 5,000 people return to our prisons every year. About 4,000 of them have not committed a new crime. They are being “revoked” back to prison for violation of a rule of supervision or parole. Other states have found quality, community-based alternatives to revocation, and many have placed strict limits on the length of time that a person can be incarcerated for rules violation.

We need innovative programs designed to help newly released people succeed, reducing recidivism. By devoting minimal resources for common sense programs, we can increase the odds of success for men and women released back to society. A modest investment in transitional jobs, transitional housing, AODA and mental health treatment could make a difference.



Don't put someone in a box for 23 hours a day and hope that things will be great when they're dropped off in our communities.

— U.S. Sen. Jessie Ulibarri (Colorado)

Wisconsin's mass incarceration is a result of generations of bad policy. There is no point in assigning blame; Wisconsin leaders were caught up in a hysteria that afflicted much of the country in recent decades. Today, however, there are no more excuses. No one can claim ignorance about the enormous problem of mass incarceration. No one can claim lack of knowledge of appropriate and realistic solutions.

None of the solutions spelled out here are experimental or radical. We can achieve all of these results in 2015. Elected leaders must act now. This is the year when the people of Wisconsin must stand up and demand an end to tentative, indecisive leadership. We call on every citizen to demand that in 2015, we will do what we know how to do in the name of fiscal responsibility, public safety and justice for all.

Long ago, Moses said to his people:

This commandment that I'm giving you right now is definitely not too difficult for you. It isn't unreachable. It isn't up in heaven somewhere so that you have to ask, "Who will go up for us to heaven and get it for us that we can hear it and do it?" Nor is it across the ocean somewhere so that you have to ask, "Who will cross the ocean for us and get it for us that we can hear it and do it?" Not at all! The word is very close to you. It's in your mouth and in your heart, waiting for you to do it. (Deuteronomy 30:11-14)

In the same way, remedies to mass incarceration are not beyond our reach in Wisconsin. We welcome state officials and others to add their expertise and abilities to reform this broken system. We will not tolerate further delay.

KEEP PEOPLE FROM ENTERING PRISON

TREATMENT ALTERNATIVES AND DIVERSION (TAD)

The Issue

Wisconsin continues to imprison too many people for low-level offenses. Offenders with minor crimes are not served by going to prison, especially when those crimes are caused by mental health and/or addiction. Communities are safer when citizens are rehabilitated and helped to live healthy, productive lives.

Studies show that treatment and diversion programs are less costly and more effective in reducing recidivism and lowering crime rates. Wisconsin has reason to be proud of its Treatment Alternatives and Diversion (TAD) program. TAD awards state grants to counties for programs that keep people with addictions and mental health issues *out* of jail and prison and *in* effective treatment programs.

The program has been studied and proven to be effective. The University of Wisconsin Population Health Institute released a comprehensive report, *Treatment Alternatives and Diversion (TAD) Program: 2014 Participant Outcomes and Cost-Benefit Report (2007–2013)*, that gave TAD high marks. Some key findings from the report for the first seven years of TAD:

- 3,093 people participated in TAD programs.
- TAD saved a total of 141,215 jail days and 90,318 prison days. At \$35,000 per year per person, the prison days alone saved taxpayers nearly \$9 million. The entire TAD budget for those seven years was approximately \$7 million.
- Every dollar spent on TAD saved taxpayers \$1.96. The state saves when prison stays are avoided; counties save money when jail use is decreased.
- TAD participants have a lower recidivism rate than people who are sent to jail or prison for the same offenses.

The report notes critical factors that have made TAD successful, including:

- A model that fosters collaboration among state and local agencies.
- Local control: TAD programs are designed by counties.

- Independent evaluation and continual learning, ensuring accountability and use of evidence-based practices.

The proven track record of TAD has led other states to see it as a model, and it has led our own legislature to approve significant growth in the program. Recent increases in TAD funding (from \$1 to \$4 million per year) represent a step in the right direction, but it is not enough. A 2012 study determined that with \$75 million per year, all potential TAD participants in the state could have access to alternative programming, which would result in 3,000 fewer prison admissions, and tens of thousands of fewer jail admissions each year.

Recent increases have gone to start TAD programs in new counties. This is to be applauded, as now nearly half of Wisconsin's counties benefit from TAD, but more needs to be done. Wisconsin has the highest rate of incarceration for African-Americans of any state in the country. This shameful statistic could be remedied in part by targeted expansion of TAD. In Milwaukee, there are communities of color where nearly half of all working age men have been incarcerated, contributing to an

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unemployment rate nearly as high. By designating half of TAD expansion money for the five counties with the highest African-American population, Wisconsin could put a dent in racial disparity.

TAD is a positive Wisconsin innovation. It is a real tool to deal with over-incarceration and overspending in the

The Inside Story

In November of 2010, Donna Brown was arrested and charged for her 6th OWI offense. She was facing two years in prison. Before sentencing, she was referred to a new treatment program in her county, the OWI Court. After intense meetings and screening, Brown was the second person to be accepted into the program and consequently not sentenced to prison under the condition that she successfully complete treatment.



Donna Brown

this time in my life. Because of the program, I regained hope and self esteem. I began to understand that I had alcoholism and that I never needed to pick up a drink again," Brown said.

After 17 months, she became the first to graduate from the OWI Court in her community. Today she can admit her mistakes and added, "I can be the happy person that I was born to be. I am grateful to the

OWI Court. It saved my life and helped me to turn things around for the better."

"The program was not easy. It was very intense. But it gave me the structure and discipline I needed at

Department of Corrections. While expanding the program to serve all of Wisconsin, we can also use it to strategically address racial injustice.

Call to Action

As we move toward full implementation of TAD, the Department of Justice, the Governor and the Legislature need to include at least an additional \$20 million per year in the TAD program in the 2015–17 state budget.

This increase would reduce prison admissions by at least 1,000 people per year (which, conservatively, could save the state more than \$30 million) and keep several more thousand people out of county jails.

At least half of the 2015–17 increase needs to be tar-

geted to the communities with the greatest need, and to programs that will have the greatest impact on racial disparities in our criminal justice system.

MOVING TOWARD A FAIR PROCESS TO KEEP US SAFE

The Issues

All Wisconsinites want a criminal justice system that helps keep us safe while being accurate, fair and cost effective. However well intentioned, Wisconsin's four-decade reliance on prosecution and punishment to make our state safe has been costly and ineffective.

In 1974, Wisconsin's population was 4,566,000. In 2014 it grew to 5,686,986, an increase of approximately 24 percent.¹ In contrast, in the same time frame our prison population has grown by more than 1,000 percent, from approximately 2,000 in 1974 to more than 22,000 in November 2014.²

The system is broken and needs to be re-considered from top to bottom. Instead of creating more and more crimes and ever-harsher sentences, we need our legislature and administration to have the courage and far-sighted wisdom necessary to look at a comprehensive overhaul. We need a system based on the principles of restorative justice, with the goal of repairing the harm done by crime and restoring both the victim and the offender to wholeness. We need a system, like Minnesota's 1973 Community Corrections Act, that creates an equitable means of allocating the costs of the criminal justice system.

As Wisconsin moves toward comprehensive sentencing reform, there are some actions that can and should be taken immediately:

Community Impact Statements. Important policy decisions ought never be made without understanding their true impact. This is especially true in our criminal justice system. We have professionals and available data that can predict the impact that laws and guidelines will have on various communities, including communities of color, people with disabilities and low-income people. Community Impact Statements would not favor any particular action— they would simply aid legislators and the general public in understanding how different actions would affect different communities. All proposed laws are subject to a fiscal impact analysis, and many require environmental impact statements. Our people deserve as much consideration as our budgets and our wildlife.

Treating Our Children as Children. Our children are the heart of our families and the future of our communities. From any perspective, the legislative decision to

treat 17-year-old offenders as adult criminals is a failed experiment. It has increased the likelihood of recidivism and provided little public benefit. It is time to follow the example of most other states and recognize this as a failed experiment. Indisputable evidence shows that children *are* different than adults. Their brains are still developing, and they have greater capacity for change. Widespread support exists for returning the vast majority of 17-year-olds to the juvenile system. As former Governor Tommy Thompson said, "There has been plenty of research over the past decade to suggest the juvenile court system is best-positioned to hold first-time, non-violent 17-year-old offenders accountable and reduce recidivism. The Second Chance Bill is good policy and makes sense."

Call to Action

The Governor, state agencies and all community stakeholders should work together to create more cost-effective and fair practices that will enhance public safety. As first steps, these efforts should include:

- A commitment to evidence-based and informed policy through the enactment of community impact statement legislation, similar to laws in place in Iowa, Connecticut, Oregon and Minnesota.
- Return most 17-year-old offenders to the juvenile justice system by passing the Second Chance Act.
- Begin the process for a comprehensive review and revision of the criminal code to put sentencing guidelines in line with best practices around the country.

1 <http://books.google.com/books?id=rCBWAAAAMAAJ&pg=PA695&lpg=PA695&dq=wisconsin+population+1974&source=bl&ots=GFCMKmZNVv&sig=cQfv6oKtCNSSvNDR6aG5fq8WPPA&hl=en&sa=X&ei=XLVqVNLwDZagyATb44CgBQ&ved=0CC4Q6AEwAg#v=onepage&q=wisconsin%20population%201974&f=false>; <https://suburbanstats.org/population/how-many-people-live-in-wisconsin>

2 <http://law.marquette.edu/assets/marquette-lawyers/pdf/marquette-lawyer/2014-summer/2014-summer-p36.pdf>; http://doc.wi.gov/Documents/WEB/ABOUT/DATARESEARCH/NOTABLESTATISTICS/FRIDAYREPORTS/fri_11_07_2014.pdf; see also <http://www.prisonpolicy.org/profiles/WI.html>

JUSTICE INSIDE PRISON WALLS

SOLITARY CONFINEMENT

The Issue

Solitary confinement is ineffective, immoral, dangerous and very expensive.

The United Nations declared that no prisoner should be held in solitary confinement for longer than 15 days,

and that to do so constitutes torture. Decades of research have shown that solitary confinement causes serious and lasting psychological and physiological harm for those subjected to this inhumane and degrading practice. Nu-

The Inside Story

Tom and Jan Gilbert adopted their son Aaron in 1995 when he was 6 years old. His birth mother's drug and alcohol use resulted in fetal alcohol disorder for Aaron, who has struggled with cognitive deficits his entire life. Now in his mid-20s, Aaron is serving 5-year sentence for being party to a crime.

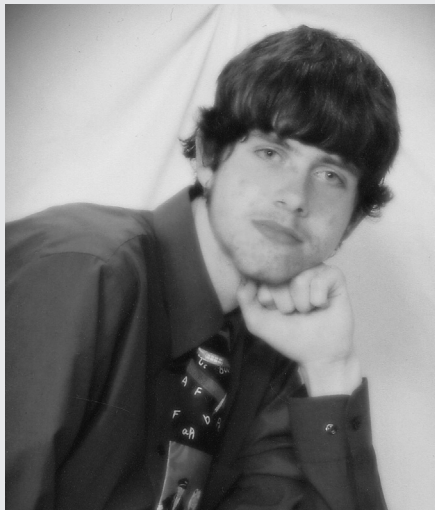
Tom and Jan faithfully visit him every two weeks. Twice during his sentence, Aaron has been stripped cold turkey of his medications and consequently violated prison rules, resulting in repeated stays in solitary confinement. In March 2014, Aaron landed in solitary again. When Jan and Tom visited him in May, they found his body marked from admitted self-harm. At a June visit, Aaron refused to leave the cell that he occupies 23 hours a day, every day.

The Gilberts' attempts to visit and write to their son subsequently in June and July were met with refusal by the DOC. They finally learned Aaron

was moved to a facility operated jointly by the DOC and the Department of Health, where he is supposed to receive good psychiatric care. When the Gilberts finally got to see Aaron in August, they were shocked to find him delusional, paranoid and sickly thin, with curly and matted hair, speaking in gibberish and dressed in a padded suicide smock.

"He looked and acted like a wild man," Tom said. "As we reflect on his terrible condition, we are baffled by the fact that, when he was losing his grip on reality, the DOC kept him in solitary confinement and cut him off from contact with us and with any sense of reality. Aaron has

significant cognitive defects, but when he entered the state prison system, he was a sane person. Inadequate care and torture in solitary confinement have pushed him over the psychotic edge."



Aaron Gilbert's high school graduation photo.

TOM AND JAN GILBERT

merous studies have also made it clear that prolonged isolation dramatically increases rates of self-harm and suicide, fails to reduce prison violence, and increases recidivism.

Not only is solitary confinement immoral and damaging, it's also expensive. According to Solitary Watch, one study estimated that, annually, "the average per-cell cost of housing an inmate in a solitary confinement prison is \$75,000, as opposed to \$25,000 for an inmate in the general population."

Yet, on a regular basis, Wisconsin still employs this practice for intervals much longer than 15 days, isolating prisoners for months, years and even decades.

According to a survey, from December 1, 2011 to December 1, 2012, Wisconsin placed more than 4,000 men—20 percent of the state's entire prison population—in solitary confinement, far exceeding the national average. In December 2012, a DOC official reported that more than 600 prisoners in solitary had been there between 6 and 12 months; 79 prisoners had been there 2–5 years; and 14 prisoners had spent more than 10 years in solitary confinement.

But the Department of Corrections claims it has no idea how often this program, which is antithetical to rehabilitation, is used. A DOC official reported, "Data by bed placement type (i.e., segregation) and time in that bed (i.e., number of days in segregation) are not currently captured in our data system for adult institutions."

While Wisconsin's prison system remains unaccountable and lags behind, reform is happening elsewhere: "Spurred by growing budget deficits, costly litigation arising from unconstitutional treatment, and the public's objection to inhumane conditions, several states have begun to reform their prison systems to limit the use of long-term solitary confinement."

Maine, New Mexico and Colorado have made significant reductions in their use of isolation, yielding considerable cost savings without jeopardizing prison safety.

Call to Action

The Governor must demand and oversee the following:

- The U.S. Department of Justice must conduct an immediate investigation of abuses in the segregation unit in Waupun and all other Wisconsin prisons. All correctional officers must be immediately rotated out of segregation units, if they have worked in segregation longer than three months.

- The Department of Corrections must stop retaliating against inmates, their families, their advocates or staff for bringing forward evidence of abuses in solitary confinement. An independent complaint review system must be implemented immediately.
- The Department of Corrections must restrict the use of solitary confinement to 15 days or less, and then only for safety reasons. A clear and defined policy must be immediately established for transitioning all existing prisoners out of all forms of prolonged solitary confinement.
- The Department of Corrections must eliminate the use of solitary confinement for all mentally ill inmates and must establish model mental health units in all prisons, as were mandated by the courts at Taycheedah Correctional Institution.
- The Department of Corrections must stop the use of solitary confinement for anyone under the age of 18, regardless of whether they are considered to be juveniles or have been waived into an adult status.
- The Department of Corrections must immediately establish a public database to share the exact number of prisoners held in solitary confinement every day, their mental health status, their age and racial-ethnic identity, the length of time that each prisoner has been held and the projected end of their stay in solitary.

For citations, please see "A Call for Accountability in the Department of Corrections, Brief Three: Solitary Confinement" at <http://prayforjusticeinwi.org/wp-content/uploads/2011/12/Solitary-Confinement-is-Torture.-WISDOM-Brief-3.pdf>

PAROLE/OLD LAW

The Issue

The Department of Corrections is denying a fair chance at freedom for more than 2,800 men and women in the Wisconsin state prison system who are legally eligible for parole. Incarcerating thousands of people unnecessarily costs taxpayers millions of dollars.

Wisconsin's Truth-in-Sentencing law, authored by Governor Walker when he was in the state Assembly, went into effect Jan. 1, 2000. People sentenced under this new law do not have a possibility of parole and must serve every day of court-imposed sentences. However, men and women convicted under the old law, prior to

The Inside Story

As a young man, Baron Walker was an accessory to an armed robbery where no one was injured. In 1996, a judge sentenced him to 60 years in prison with the possibility of parole after 15 years. Now 40 years old, having served 18 years in the Wisconsin state prison system and completed all required programming and more, Baron wants justice for himself and his family. He is an old law prisoner, lost in an unfair system.



Baron and Beverly Walker

BEVERLY WALKER

In an interview from the Fox Lake Correctional Institution, Baron takes several minutes to share a long list of rehabilitative programming he's taken advantage of during his incarceration, including getting his GED and HSED; getting an associate's degree in building services with certifications in welding, plumbing, carpentry and electric wiring; receiving a literacy certification and tutoring inmates; completing financial development and financial literacy courses; and participating in a Restorative Justice program.

"The PRC (Program Review Committee) told me that my institutional adjustment was exceptional,"

Baron said, noting his good behavior. Yet each time he's been before the parole board, he is denied parole and simply told he has "insufficient time served." Baron and his wife Beverly have been together since high school. They have children and grandchildren. Beverly desperately wants her husband home. She went door-to-door in their neighborhood to collect about 200 signatures of people who support Baron's release.

"He is not a danger to his community. He's a different person than he was when he was party to a crime. He clips coupons and sends them home, reads to the kids on the phone, makes them charts for homework," Beverly said.

Baron coined an acronym in his fight for justice: H.O.P.E.—Honest Opportunity for Parole Eligibility. He adds, "I regret what I did as a young person, and I served my time. Now I just want to be able to support my family."

Dec. 31, 1999, can still be paroled. Currently in Wisconsin, inmates get no meaningful consideration for parole.

Judges under the old law recognized that people could change in positive ways in prison, and these judges deliberately set sentences with parole in mind. Men and women convicted of crimes under the old law understand that they have the right to earn parole by serving sufficient time, participating in programs and showing good be-

havior. But parole in the state prison system has slowed to a near halt. According to the Legislative Fiscal Bureau, in 2011–12, only 150 paroles were granted, in contrast to 1,651 paroles in 2004.

Old law prisoners cost taxpayers more than \$95 million per year, in addition to the wasted money spent on programming and certifications that expire while inmates await release that never comes. If 1,000 people legally eli-

gible for parole were released, the state would save more than \$30 million per year. If savings were reinvested in alternatives to prison through TAD and similar programs, the state could save an additional \$60 million per year.

The Parole Commission has authority to grant paroles independent of the DOC but in practice defers to DOC's Program Review Committee (PRC). PRC is charged with reviewing inmates' treatment and educational needs and securing program or treatment space. These two bodies totally lack effective communication and accountability. Men and women who have served their time and participated in all necessary programming are bounced between Parole and PRC in a cruel and unjust cycle.

The parole system has broken faith with judges who imposed old law sentences, with incarcerated men and women who were promised a second chance, with families waiting for loved ones to come home after serving their time, and with citizens of Wisconsin who expect state agencies to be fair and fiscally responsible.

Call to Action

The Governor must direct the Parole Commission and the Department of Corrections to work together to:

- Immediately review the 421 parole-eligible inmates in minimum or community custody who have met the DOC's standard of safety. Many of these men and women are working in communities every day. At the same time, however, recognize that parole-eligible inmates may be housed in maximum or medium security, but this should not keep them from being fairly considered for release.
- Conduct a substantive review of every parole-eligible inmate at least once a year to determine if they can be safely released. If parole is not granted, the parole board must state in detail the specific requirements an applicant needs to meet to be released on parole. 'Insufficient time served' is not an adequate response.
- Immediately implement required treatment and training programs so incarcerated men and women can qualify for parole.

Finally, the Governor must immediately appoint an Ombudsman, selected by the Chief Justice of the Wisconsin Supreme Court, with authority to ensure that people eligible for parole are not lost, lingering and overlooked. Within six months of his or her appointment, the Ombudsman must report on the number of people le-

gally eligible to go home and progress made in reducing that number.

For citations, please see "A Call for Accountability in the Department of Corrections, Brief One: A Broken Parole System" at <http://prayforjusticeinwi.org/wp-content/uploads/2011/12/A-Broken-Parole-System.-WISDOM-Brief-1.-.pdf>

COMPASSIONATE RELEASE

The Issue

According to an October 2014 article in *The Nation*, "All across the United States, prison populations are graying, growing old and infirm behind bars... Today, nearly 16 percent of this country's 2-plus million prisoners are over the age of 50, or 'elderly,' as defined by the National Institute of Corrections. By 2030, a third of all inmates will be elderly—and many prisons may look a lot like nursing homes."³

A comprehensive study in the *Marquette Law Review*⁴ found that not only is the prison population aging at a rapid pace, but also that the annual cost of housing an ill and aging prisoner is \$70,000 a year, nearly twice as much as a younger prisoner.

The *Marquette* study points out, "The burgeoning population of aging and ill prisoners requires significant medical assistance—a service that the prison system is required to provide. In *Estelle v. Gamble*, the United States Supreme Court... found that the state has a duty to provide medical care to inmates because it maintains custody and control over the prisoner... Any bad faith in treatment in meeting the medical needs of inmates may be deemed cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution."

A 2013 Legislative Fiscal Bureau Report⁵ reports 3,528 inmates in Wisconsin prisons who are over the age of 55. Those inmates represent a fiscal time bomb that must be defused.

Truth In Sentencing (enacted in Wisconsin by Governor Walker to reduce the possibility of early release) has

³ "By 2030, American Prisons Will Be Filled With Grandmas and Grandpas," by Kate Cox, *The Nation*, October 27, 2014

⁴ Nicole M. Murphy, *Dying to be Free: An Analysis of Wisconsin's Restructured Compassionate Release Statute*, 95 Marq. L. Rev. 1679 (2012). Available at: <http://scholarship.law.marquette.edu/mulr/vol95/iss4/17>

⁵ Adult Corrections Program Informational Paper 56, Wisconsin Legislative Fiscal Bureau, January 2013. Available at http://legis.wisconsin.gov/lfb/publications/informational-papers/documents/2013/56_adult%20corrections%20program.pdf

The Inside Story

Gonzalo de la Cruz was diagnosed with terminal liver cancer in 2010 at age 64 after serving 31 years in prison. A letter from the Carbone Cancer Center stated that no further treatment could stop the spread of his cancer.

Three of his sisters were ready to care for him in their home in Minnesota and began advocating for his release. Minnesota's Department of Community Corrections cleared him to spend the rest of his life under their supervision. The Wisconsin Department of Corrections was the roadblock and did not release him until March 2013. He died in November 2013 at his sister's house, having missed out on precious years of living at home, costing state taxpayers well over \$100,000 for prison time that served no purpose.

deprived the Department of Corrections of any control over the number of people admitted to the system and how long they stay.

The continuing and dangerous expansion of mass incarceration in Wisconsin will be accelerated beyond any reasonable taxpayer support because of the ever-increasing health needs of an aging prison population. The Governor, the Secretary of Corrections, the Chair of the Parole Commission and the legislature must act immediately to address this explosive situation by making maximum use of parole and expanding compassionate release.

This can be done safely. Studies have shown that prisoners over 55 who are released from prison have a low recidivism rate: between 2 and 8 percent.

Many Wisconsin inmates eligible for compassionate release due to advanced age (the oldest recent inmate to die in a Wisconsin prison was 102 years old), or serious illness, are not being released. From August 2011 to October 31, 2013, 23 of 29 petitions received were deemed eligible. Of those 23 eligible applications, only 8 were released, according to DOC records.

The Secretary of the DOC is expected to recommend reforms to compassionate release in January 2015. We will carefully examine these recommendations as we continue to promote a procedure that protects the needs of sick and aging inmates.

Call to Action

- The Secretary of the Department of Corrections is constitutionally obligated to provide health care to all the inmates in Wisconsin prisons and must be allowed discretion to release on extended supervision any inmate over 55 who is chronically ill and eligible for medical assistance and any inmate over 65 who is eligible for release.
- The DOC needs to aggressively look for opportunities to use compassionate release. Clear guidelines for the program, both for "old law" and truth-in-sentencing inmates, must be communicated to all eligible inmates and their families. The DOC must provide a more streamlined procedure as well as assistance in applying.
- The following people must be able to initiate the application for compassionate release: the inmate, the inmate's family member(s), other concerned persons, the inmate's attorney, the attending physician or other licensed health care professional, or a DOC employee or official.
- An independent panel appointed by the Chief Justice of the Wisconsin Supreme Court should regularly review all applications for compassionate release to see that the program is being fairly administered.
- Applications for Medicare and/or Medicaid should be initiated before release so that there is no breakdown in availability of access to health care.

HELP PEOPLE STAY OUT OF PRISON

REVOCATIONS

The Issue

Revocation of probation and parole currently accounts for more than 4,000 of the new admissions to Wisconsin's prisons each year. This number does not include those who have been convicted of a new crime. Taxpayers need to know that incarcerating men and women for rules violation costs an estimated \$140 million per year.

Breaking rules of supervision can include simple acts done without explicit prior permission from probation and parole agents, such as accepting a job offer, unauthorized use of a cell phone or computer, borrowing money, or stepping over a county line. Former inmates who wear a GPS (global positioning system) bracelet can also be re-incarcerated for repeated failures of the GPS technology, over which they have no control.

A person revoked has no right to a judge or trial to determine if the revocation is warranted, even if imprisonment may be for years or even a decade. The only recourse is a hearing before an Administrative Law Judge who may allow 30–45 minutes to listen to a case before most likely adopting the DOC's recommendation.

Other than verbal warnings, the Department of Corrections rarely uses any other mid-level sanctions, such as tightened curfew, weekend arrest, community service, etc. Thus, a former inmate could be sent back to prison for 8 years for a rule violation, at a taxpayer cost of \$35,000 per year. Men and women lose their jobs and are denied good time for the years they were doing well in the community. Such use of revocation is unjust, fiscally irresponsible and a threat to public safety.

A recent report from the Council of State Governments has celebrated declines in recidivism due to sending fewer people to prison on revocations. Other states have reformed their revocation system with promising results. Measures in Colorado, Minnesota, Hawaii, Louisiana, Maryland and South Dakota have provided alternative sanctions to prison time for rule violations and limited time served. Colorado saved \$4.5 million in 2010 with its reforms; Louisiana's policy reform is expected to save that state \$3.9 million.

Revocations are so commonplace that many people on

People are being revoked for what most of us take for granted: using a cell phone or a computer. Or they are being revoked because of the state's investment in defective technology. Revoking 4,000 people per year for rule violations adds nothing to the safety of our communities.

— Rev. Jerry Hancock, of WISDOM

extended supervision expect them. Mark Rice, an 11x15 leader, recounted this from his stay at the Milwaukee Secure Detention Facility: *The probation officer of one of my cellmates recommended the revocation of his probation because he drank alcohol and missed an appointment with a treatment provider. He faced three years in prison, but he did not challenge the revocation. When my cellmate went to court, he told the judge to give him the full three years in prison. The judge proceeded with the revocation and sentenced him to three years. My cellmate thought that he would be better off doing three years in prison than continuing to be under the supervision of the DOC in the community. He believed that his probation officer would eventually revoke him anyway. My cellmate knew that he would not be given credit for any time served on probation. He chose to have his probation revoked because he would then no longer be under the supervision of the DOC after he got released.*

Call to Action

It is past time to reform the Wisconsin Department of Corrections' excessive and expensive revocation process. The Governor must order the Wisconsin Department of Corrections to:

- Count time successfully served on parole or supervision as time served.

The Inside Story

Hector Cubero was 18 when he committed a crime with a group of men. A member of the group shot and killed a person who was being robbed. Hector was charged with being a party to armed robbery and party to first-degree murder. Too far away to see the shooter, Hector wouldn't testify against him and was consequently sentenced to life in prison, plus 10 years, in 1981.



Charlotte's daughter with Hector

CHARLOTTE MERTINS

Released on parole in 2008 after serving more than 27 years, Hector held a steady job in a restaurant, cared for his mother, fell in love with Charlotte Mertins and got engaged. In the time he was out, he never had a parole violation, never failed a drug test and never had a run-in with the law.

Hector had become an accomplished amateur artist during his years in prison, and he went on to draw and sketch for others as a hobby. In 2012, a young

man asked Hector if he would give him a tattoo. Hector agreed. The young man was not 18 years old as he had claimed. His mother disapproved of the tattoo and contacted Hector's parole agent. In two days, Hector's parole was revoked, and he has been back in prison ever since.

"Before Hector was revoked, he was helping rehabilitate abused dogs, caring for his

mother and building strong relationships with his new family," Charlotte said. "Since I've been with Hector, he has been nothing less than a kind and warm-hearted person. He's always the first to lend a helping hand."

There is no indication of when or if Hector might be released from prison. The Department of Corrections will not allow Charlotte or her adult children to visit him.

- Adopt a policy similar to Minnesota where offenders who violate technical conditions of supervision may participate in a sanctions conference in lieu of a formal revocation proceeding. No former inmate should be sent back to prison for a rules violation that does not involve a new crime.
- Implement an evidence-based set of graduated sanctions designed to help the person succeed.
- Create a system of incentives that rewards parole agents for the success of the former inmates under their supervision.

- Direct millions of dollars saved by reducing revocations toward finding jobs and housing for formerly incarcerated individuals.
- Release, on bail, a person picked up for a possible revocation during the revocation process. If they are charged with a crime, the ability to get out on bail should be in accordance with that crime. If it is strictly a technical violation, the former inmate should be free while waiting for a decision.
- Require more probation and parole officers to complete in-depth training in how to work with people with mental illness. Anyone on supervision with a diagnosed mental illness should be assigned only to officers who have completed in-depth training in how to work with the mentally ill.

For citations, please see “A Call for Accountability in the Department of Corrections, Brief Two: Failures in Revocation and GPS Monitoring” at <http://prayforjusticeinwi.org/wp-content/uploads/2011/12/2.-Failures-in-Revocations-and-GPS-Monitoring-August-20-2014.pdf>

GPS MONITORING

The Issue

Unjust revocation is a particular problem with the DOC’s GPS monitoring system. Under current law, the Department of Corrections may put anyone on GPS supervision for a lifetime. It has been shown that this GPS system has a history of routinely sending out false alerts and failing to work at all if an individual is in various buildings or sometimes even if the person is at home.

In a 2013 article, the Wisconsin Center for Investigative Journalism reported that a DOC spokesperson said the department “has not audited performance of the (GPS) system” since it began in 2007.

The story also said, “In 2007, a legislative study committee in Arizona measured the effectiveness of using GPS technology to track offenders. It found that the 140 offenders monitored that year experienced a total of 35,601 false alerts, due to problems such as low batteries or signals lost in dead zones. The study group found 463 confirmed violations, meaning that false alerts outnumbered proven infractions by a 77–1 margin.”

In regards to Wisconsin’s GPS system, the 2010-budgeted costs at the DOC were \$2,737,200. Governor Walker’s proposed budget recommended \$10 million in new funding for GPS tracking in fiscal years 2014 and 2015.

Call to Action

Wisconsin must reform its deeply flawed GPS system that hinders justice, wastes taxpayer money, undermines true rehabilitation and does little to uphold public safety. The Governor must order the Wisconsin Department of Corrections to:

- Order a complete audit of the operation, effectiveness and costs of the GPS monitoring system.
- Establish a policy whereby individuals cannot be arrested, jailed or revoked for a mere failure of GPS signal or false alert until the DOC has proven it operates a highly effective GPS system.

For citations, please see “A Call for Accountability in the Department of Corrections, Brief Two: Failures in Revocation and GPS Monitoring” at <http://prayforjusticeinwi.org/wp-content/uploads/2011/12/2.-Failures-in-Revocations-and-GPS-Monitoring-August-20-2014.pdf>

The Inside Story

Testimony from Matt Becker, Milwaukee, August 20, 2014:

I am a person that has made some very poor choices in my past. I have served my prison time, and I will soon complete my extended supervision. I have been placed in the Lifetime GPS program for sex offenders, and after more than four years into my extended supervision, I have never found where in the statute it states that I am supposed to be on it. During this time I have been incarcerated 13 times due to equipment/system failures. I am not the same person I was 8+ years ago. I am someone who has completed treatment, has been violation free on supervision for more than a year, and has lowered my supervision level twice in the last year. I am Matt Becker, a son, a brother, an uncle, an employee, a taxpayer, a small business owner and a state organizer with WisconsinReform.org. Should I be able to earn my way off of the Lifetime GPS program?

REMOVING BARRIERS FOR SUCCESSFUL RE-ENTRY

The Issues and Calls to Action

Most people leave jail or prison filled with hope and a desire to live productively. As a state, we need to make modest investments so they can be successful.

Transitional jobs. Transitional jobs are short-term subsidized jobs aimed at getting marginalized people into the workforce. The program especially aims to get jobs for the long-term unemployed. Thirty-nine percent of those participating have been people with a felony conviction.

The largest transitional jobs program in Wisconsin was the recently completed Department of Children and Families Transitional Jobs Demonstration Project. It was highly effective in getting half of the participants across the state into regular, unsubsidized employment within six months.

More than 4,000 people participated in the project, working in more than 800 companies and non-profits. More than 2,000 people went on to secure unsubsidized work. Also, the transitional jobs program “Transform Milwaukee” is operating with just under 1,000 transitional jobs. The next budget should include a \$50 million annual statewide program that would give more than 6,000 people annually the opportunity to work in a transitional job.

Ban the Box. Another obstacle to successful re-entry is “the box”. WISDOM supports Ban the Box initiatives. A primary reason people end up back in jail is because they cannot get jobs. Often, they can’t get jobs because most applications now have a yes/no check-box regarding convictions.

A “yes” answer usually means instant disqualification. The applicant is denied even if they are highly qualified and motivated, even if their crime was years ago or has nothing to do with the job, even if they have turned their life around. With no job, people can’t provide for themselves and their families. They end up on public support, desperately poor and often back in jail. Their children suffer from instability and poverty; many end up in foster care or jail. All this is a waste of taxpayers’ money and human lives.

Ban the Box initiatives move the criminal history question from the start to the end of the job application pro-

cess. When criminal background checks are done later, qualified applicants can respond and explain. After that conversation, the employer can decide whether or not to deny them the job.

The 11x15 Campaign has already worked with public officials in Milwaukee County, Madison and Appleton to ban the box for many jobs. It is time for Wisconsin to follow the lead of places like Minnesota and Hawaii that have banned the box for all employers, public and private.

Administered Databases. Wisconsin also needs to follow the lead of Massachusetts and other states that have reformed their state-administered databases (like Wis-

Most people leave jail or prison filled with hope and a desire to live productively. As a state, we need to make modest investments so they can be successful.

consin’s CCAP). CCAP needs to delete information about arrests that never resulted in charges, charges that were dropped and alleged offenses in which the defendant was found not guilty. Misdemeanors should be dropped from the on-line database after five years, and all but the most serious felonies should be deleted after 10. People searching the database should be required to sign in so that those using it inappropriately can’t do so anonymously.

Lack of Housing. Lack of housing is another barrier to successful re-entry. The Urban Institute on Housing and Reentry recently found that:

- The majority of prisoners believe that having a stable place to live is important to successful re-entry. Those with no housing arrangements said they need help finding a place to live after release.
- The majority of returning prisoners live with family members and/or intimate partners upon release.
- Many former prisoners return home to temporary living arrangements.
- Housing options for returning prisoners who do not

stay with family members or friends are extremely limited.

- Practitioners and researchers agree that there are few evidence-based re-entry housing programs that target returning prisoners with mental illness.

Transitional housing resources for those returning from jail or prison are inadequate in Wisconsin. As the number of returnees increase, the state needs to create more options, both temporary and permanent.

Special Services. Finally, as it changes its focus from re-vocation to rehabilitation, the Department of Corrections needs to concentrate on ensuring that special services are available for those who need them. The DOC must:

- Mandate that probation and parole officers working with mentally ill people on supervision or parole be specially trained for work with that population.
- Ensure that there are adequate community-based slots available to those returning from jail or prison who have a history of addiction or mental illness.
- Remove barriers to higher education, technical training or professional licenses for people with conviction histories, with very few exceptions.



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This publication builds on a series of 11x15 Reform Now briefs first published in July, August and October 2014. WISDOM's call for reform will continue until mass incarceration in Wisconsin is ended. Find the briefs at <http://prayforjusticeinwi.org>.



WISDOM, the Wisconsin affiliate of the Gamaliel Foundation, is a statewide network, including 12 congregation-based community organizations that work to live out their values regarding social justice in the world: MICAH Milwaukee County, RIC Racine County, CUSH Kenosha County, SOPHIA Waukesha County, JOSHUA Green Bay area, ESTHER Fox Valley, JONAH Eau Claire and Chippewa Valley, JOB Beloit and Janesville, AMOS La Crosse area, NAOMI Wausau and North Central Wisconsin, MOSES Madison and RUTH Manitowoc County. Visit WISDOM's website at <http://prayforjusticeinwi.org>.