

Reduction of Sentence Length in Dane County

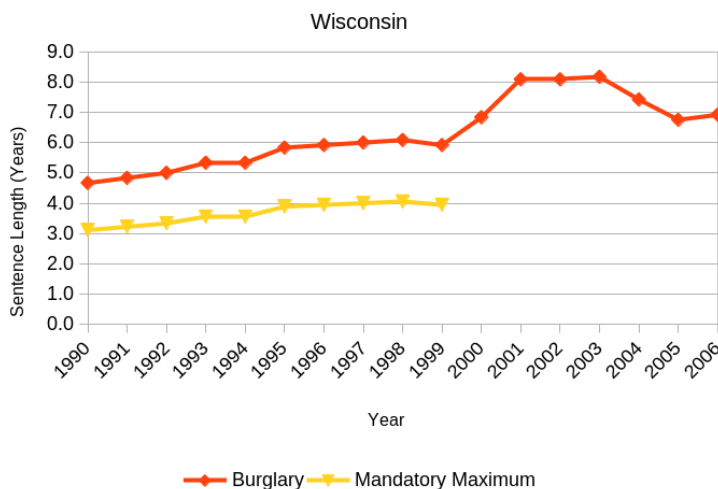
A MOSES white paper

In the fall of 2019, the Criminal Justice Council heard a report from Dr. James Austin that analyzed population data for the Dane County Jail. Dr. Austin’s analysis revealed that by reducing sentence length and by expediting the processing of felony cases which are in pretrial status, the population size in the jail could be reduced by 20%. MOSES, a local interfaith advocacy group that is focused on criminal justice reform, has been engaged in conversation with Judge McNamara, Public Defender Dorl, District Attorney Ozanne, and people impacted by the criminal justice system around this goal.

From a broader perspective, the United States, Wisconsin, and Dane County have large numbers of incarcerated people. Justice, appropriate treatment, and even financial impacts demand substantive efforts to decarcerate¹ the correctional institutions and to reduce the unnecessarily long periods of supervision during probation and parole. Decarceration is particularly urgent because of the huge racial disparities for incarceration both statewide and in Dane County and the destructive role incarceration plays in communities of color.

In this paper we will primarily focus on sentence length and length of supervision: probation, parole, and extended supervision (the Truth-in-Sentencing version of parole). Over time, sentence length has dramatically increased.

Figure 1: Average Burglary Sentence Length



In his book, Sentencing in Wisconsin, Michael O’Hear (2017) explores sentencing and incarceration in Wisconsin from the 1970s to the present. He points out that while truth-in-sentencing (2000) was a huge change in Wisconsin sentencing, the trend toward longer sentences and increased incarceration started more than a decade earlier. However, in spite of these earlier increases in sentencing, truth-in-sentencing laws had a large impact on the length of time that people were incarcerated. The most well-known change was that before truth-in-sentencing a person would be expected to serve, in

the worst case, 66% of the imposed sentence (the mandatory maximum) but after truth-in-sentencing a person would be expected to serve 100% of the imposed sentence.

¹ **decarceration**: the opposite of incarceration, entails reducing the number of people held in custody or under custodial supervision at the federal, state and municipal levels

Wisconsin Department of Corrections data provided to the Governor's Racial Disparity Oversight Commission (Wisconsin Office of Justice Assistance, 2009) indicate that rather than reducing sentences to compensate for this extra incarceration, sentences actually increased after truth-in-sentencing, particularly in the first years before sentencing reform. Using burglary as an example (a crime that has drawn less special legislative attention), we can see (Figure 1) both the rise in sentence lengths beginning in the 1990s and an additional rise in sentences following the 2000 implementation of truth-in-sentencing. The additional rise in sentence length is more dramatic when the mandatory maximum sentence from before 2000 (yellow line) and the sentence length following 2000 are compared. In the second year of truth-in-sentencing, the expected duration of incarceration doubled (from the 4-year average mandatory maximum to 8 years for a truth-in-sentencing average sentence).

In reforming sentencing and mass incarceration, it is essential to examine why we (judges and prosecutors and indeed the community) choose to incarcerate people. What is the desired outcome of incarceration? Of prime concern is public safety but there is a serious question as to whether increased incarceration also increases public safety. Does it reduce reoffending? Certainly, incapacitation happens when a person is actually imprisoned, and some may view punishment as a goal in itself. However, there is some evidence that imprisonment can have a criminogenic² effect through association with other offenders and by stigmatizing the person, cutting family ties and creating barriers to employment and housing. And there is also a concern that incarceration does not act as a specific deterrent and that longer sentences do not increase the deterrence. Another commonly held goal is rehabilitation, and again we must consider to what extent rehabilitation is occurring in Wisconsin correctional institutions and whether longer sentences enhance rehabilitation. "In the end, it is essential to test our understandings, including those about prisons, with the best scientific data available. And depending on what the evidence tells us, we need to have the intellectual and moral courage to change our minds and our policies." (Cullen et al. 2011, p. 59S)

It is obvious that reducing sentence length decreases the population of prisons and jails. In the Dane County Circuit Court multiple actors have an effect on the length of sentences, as they do in most jurisdictions. While the ultimate decision on sentence length resides with a judge, local practices of plea bargaining and the resulting joint sentencing recommendations play a crucial role in Dane County. We advocate that the judges, DAs, and defense bar engage in a coordinated effort to effect a moderate reduction in sentence length both in time served in prisons and jails and in the period of supervision. We believe that sentence lengths are not driven by data on achieving desired outcomes but rather are informed by a local courthouse culture.

Shorter sentences do not decrease public safety and may actually increase it

A study based on a large sample of federal offenders from 1999-2014 found no difference in recidivism³ for modest sentence length reductions (Rhodes et al., 2018). The study design

² **criminogenic:** producing or leading to crime

³ **recidivism:** a person's relapse into criminal behavior; as an example, it can be measured as the first felony conviction for a new offense within 3 years of release from prison

used a sentencing guidelines grid of 43 offense-seriousness levels and six criminal history categories. Their methodology was to compare people in a given offense-seriousness category with others in adjacent or near-adjacent offense-seriousness categories. Importantly, they controlled for criminal history (which also affects sentence length and recidivism) and age (which affects recidivism). Finding that while sentences were on average 7.5 months longer, yet the recidivism rate for the two categories was virtually the same, they concluded that a reduction of length of stay by 7.5 months had a minimal impact on recidivism. These effects did not vary by criminal offense history, offense seriousness, and sex, race, and education level. They concluded that modest reductions in length of stay will have significant impacts on prison population size but no substantive impact on recidivism. Thus, small changes in prison sentences have important potential for sentencing reform. The authors suggest that these results should be generalizable to state prisons.

A second study by Mears, Cochran, Bales, and Bhati (2016) analyzed data on 90,423 individuals convicted of felonies who were released from Florida prisons between 1994 and 2002. The researchers controlled for underlying recidivism risk factors. They found that recidivism increased with longer incarceration up to one year, decreased as incarceration lengthened from one to two years, and thereafter, length of stay had no effect. Thus, they saw nonlinear effects of time served on recidivism. Even though the recidivism rates declined in year two, they remained higher than for those who were incarcerated for six months or less. They commented that many previous assessments of the time served and recidivism relationship relied on weak research designs, such as using small samples and failing to address potential confounding factors. They state that “more recent and methodologically rigorous studies suggest that null effects are likely.” (Mears et al., 2016, p. 98)

Finally, a longitudinal study using a large sample of serious juvenile offenders estimated the causal treatment effect of institutional placement versus probation as well as the effect of length of stay on the future rate of re-arrest and self-reported offending (Loughran et al., 2009). For those placed in institutions, there was little or no marginal benefit from longer lengths of stay. There was an overall null effect of placement on future rate of re-arrest and future rate of self-reported offending, which “indirectly underscores the movement toward increased use of non-placement/community-based alternatives.” (p. 729)

There is more research on the effect of imprisonment on recidivism. Cullen et al. (2011) reviewed five methodologically strong studies that examined whether prison incarceration had a specific deterrent effect or whether it had a criminogenic effect, increasing future criminal activity. These studies indicate that imprisonment has no or even a criminogenic effect on recidivism. Thus, time in prison has criminogenic effects that tend to overwhelm any specific deterrence of future incarceration. The paper also included a summary of some systematic reviews of specific deterrence. The authors conclude that “the weight of the evidence falls clearly on one side of the issue: Placing offenders in prison does not appear to reduce their chances of recidivating.”(p. 58S) They emphasize the need for more high-quality research and argue that science should be a factor in the decision to incarcerate.

International comparison of sentencing

In a review article, Beckett contends that “the need for practices and policies that send fewer people to prison and for shorter times is clear” (Beckett, 2018, p. 237). She summarizes the following international comparisons of sentencing. In a study that decomposed the criminal justice process into its components to trace shifts, Raphael & Stoll (2013, p. 70) conclude “nearly all (if not all) of the growth of the state and federal prison populations can be attributed to tougher sentencing policy.” A comparison of sentencing in the United States with European countries is illustrative. Tonry (2016) argues that mass incarceration is largely due to changes in US sentencing policy. He notes that people convicted of felonies in the United States are far more likely to be incarcerated than in Europe. In the United States 73% of people convicted of felonies in 2009 were sent to prison or jail whereas the percentage in select European countries ranged from 3.1% in Finland to a high of 23% in the Netherlands. Examining the length of sentences is also interesting: fewer than 10% of all felony cases adjudicated in other Western democracies have a sentence longer than one year, and only 1–3% have a prison sentence of more than five years. For the United States in 2009, the average prison sentence was 4.3 years; for violent crimes, it was 7.5 years. In the US one in seven prisoners is serving a life sentence (Nellis 2017); in other democracies life sentences are extremely rare.

Other states have significantly reduced incarceration through sentence reduction

Many states across the country have been instituting reforms in the criminal justice system, and the data shows that these reforms have also increased public safety.

Five states – Connecticut, Michigan, Mississippi, Rhode Island, and South Carolina – achieved prison population reductions of 14-25% using data-driven policy reforms, including risk and needs assessment, community supervision, alternatives to incarceration, sentencing and sanctions, prison release mechanisms, prisoner reentry and community reintegration (Schrantz et al, 2018). Schrantz (p. 6) reports that a variety of sentencing reforms were used to decrease prison admissions:

- *Reductions in criminal penalties or adjusting penalties according to seriousness (all 5 states).*
- *Elimination of various mandatory minimum sentences, sometimes retroactively (CT, MI, RI, SC).*
- *Creation or expansion of specialty courts and/or other alternatives to incarceration (CT, MI, MS, SC).*
- *Modifications of responses to at-risk youth to disrupt school-to-prison pipeline (CT, SC).*

Returns to prison decreased (range -37% to -57%), the FBI reported crime rate fell (range -5% to -37%), and new prison admissions decreased (range -17% to -31%) (see Appendix 1).

These five states were not alone in pursuing sentencing reform. Prison population declines (Mauer, 2011) in New Jersey, New York, Kansas and Michigan were achieved by a mix of

front-end (sentencing reform) and back-end (parole release and revocation changes) reforms. There were no adverse impacts on public safety in any of these states. Mauer argues that there have been reforms in sentencing practices due in part to an increasing commitment to evidence-based policy. He highlights the importance of shifts in the political climate as well as fiscal concerns in allowing such changes.

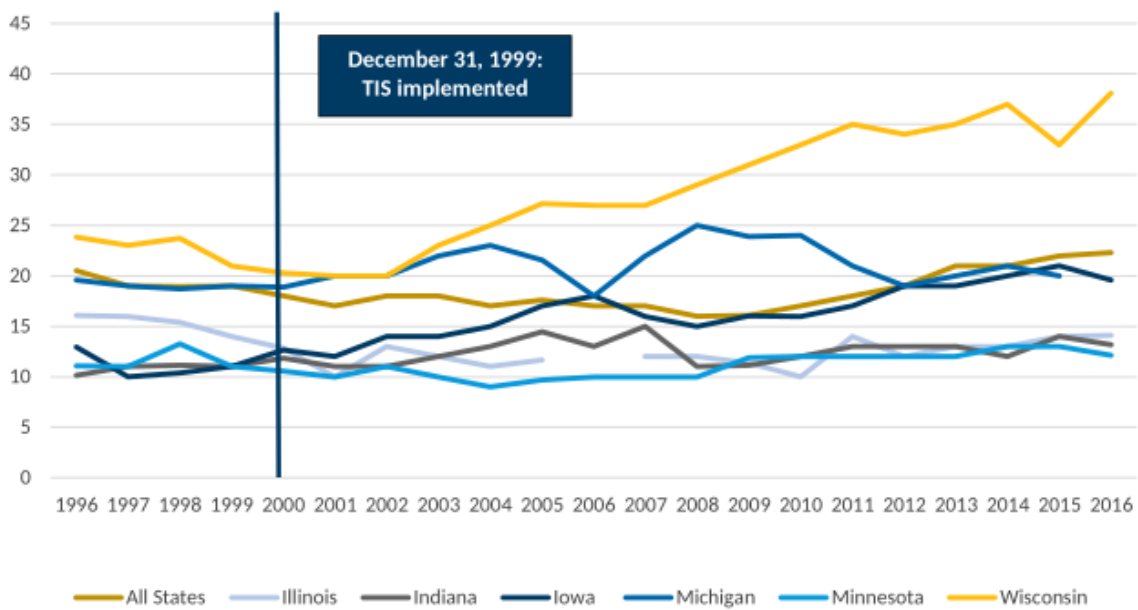
In 2011 California passed a historic reform (Lofstrom et al., 2016), commonly referred to as the “public safety realignment”, which greatly reduced the number of people incarcerated and increased non-institutional time. Several studies employing different empirical strategies “paint a picture of noticeable declines in incarceration rates with no measurable effect on violent crime and only modest effect on property crime.” (p. 349-350) (Studies indicated a modest increase in auto theft.)

As reported by Green and Schiraldi (2016), between 1996 and 2014, New York City’s jail and state prison incarceration rate decreased by 55%. Though New York City’s population increased by more than one million people during that period, the number of NYC residents incarcerated in prisons and jails decreased by 31,120. During the same period, the City’s crime rate declined by 58%. Between 1991 and 2014, the violent crime rate fell by 73%. Sharp decreases in jail and prison populations were driven in part by “a dramatic change in dispositions of those arrested for felonies and misdemeanors”.(p. 31) For felony cases, there was a sharp decline in prison sentences, and for misdemeanor cases, there were more cases where the courts and prosecutors diverted or declined to prosecute, and jail as a disposition also declined. Incarceration for violations of probation declined significantly.

Reduction of the length of supervision

Since Wisconsin’s implementation of Truth in Sentencing in 2000, the number of people on supervision has dramatically expanded, particularly for people on parole or extended supervision (Figure 2) (Williams et al. 2019, p. 8). This increase in the supervised population is partly driven by longer supervision sentences.

Figure 2: Estimated average length of stay under parole supervision in months, select jurisdictions (1996-2016)



Source: Justice Lab analysis of Kaeble 2018, Appendix Table 5. Following Bureau of Justice Statistics methodology (described in Maruschak and Bonczar 2013), average length of stay is calculated as the inverse of the exit rate. Note: Data on parole exits are not available for Illinois in 2006 or Michigan in 2016; the corresponding missing data points are shown as gaps in the graph.

Although extended supervision is a less constrained type of punishment than incarceration, it may be as stressful or more stressful. Human Impact Partners (2016) examined the health impacts of both incarceration and supervision:

Adults who have been incarcerated report more chronic health problems after their incarceration than before—even accounting for a variety of factors including pre-existing chronic diseases prior to their confinement. . . . They are also at a greater risk for physical health problems associated with stress after their release. These include high blood pressure, chronic lung disease, and heart problems. (p. 39)

Although supervision has been viewed as a transition from incarceration, the stress of supervision and the constraints of supervision may not serve the goals of public safety and rehabilitation. On balance, research has shown that long periods of supervision do not reduce recidivism and may actually increase recidivism. The conservative Badger Institute recently (2019) published a study on supervision and revocation by University of Wisconsin Professor Cecelia Klingele: *Understanding Revocation from Community Supervision*. In this study Klingele examined 189 cases where a parole agent initiated revocation from supervision. She concludes:

There is no evidence that extended periods of supervision protect the community, but there is significant evidence that they can interfere with the ability of those on supervision to successfully focus on work, family life and other pro-social connections to their communities (Scott-Hayward, 2011). Assuming the low rates of late-in-time revocation seen in the study sample are similar statewide, it is worth considering whether periods of supervision longer than 18 to 24 months for probationers and two to three years for those on extended supervision are worth the social and financial costs they impose.

Policy-makers should consider the possibility of reducing maximum terms of supervision (particularly for those on extended supervision), prohibiting extensions of probation, expanding opportunities for early termination of supervision by judges and granting compliance credit to people on supervision who follow the rules and comply with their court-ordered obligations (Klinge, 2019, p. 13).

The increasing number of people on supervision also strains the Community Corrections system itself. Parole agents with large caseloads are less able to provide effective supervision. Limiting periods of supervision will decrease caseloads.

Given the lack of public benefit from long terms of supervision, the problematic effects of supervision on the people supervised and the cost of community corrections, it is not surprising that states have started to reform supervision. In 2020 California, in a series of bills including California AB 1950, implemented dramatic supervision reform.

The changes in [AB 1950](#) align with what research says works to improve supervision. The law limits misdemeanor probation to one year and felony probation to two years, with certain exceptions. Research shows that multiyear supervision sentences that extend beyond the point of serving rehabilitative or public safety objectives result in bloated probation and parole caseloads. (Horowitz, 2020, pg. 4)

Here in Dane County, the courthouse culture tacitly endorses judgements of supervision much longer than the statutory minimum of 25% of the period of incarceration and longer than supported by current research. Public safety, judicial resources, and the functioning of our community would all benefit from the reduction of supervision sentences to those used in the California model.

Racial Disparities

A major driver of racial disparities in incarceration in Wisconsin is that alternatives to incarceration are used less when sentencing people of color, as documented by the Wisconsin Court System Office of Research and Justice Statistics (draft 2020, which became public in 2021). The main point of the study is that Wisconsin's racial disparities in incarceration are not in the length of those sentences, but rather in the proportion of cases where incarceration is imposed. White people are 21% less likely to be incarcerated for crimes relative to four other racial groups. These disparities are apparent even after controlling for six other factors (the initial and convicted charge severity, whether guilt is determined via trial, criminal history, age (< 30 years old) and regional variations). In other

words, Black and other people of color are more likely to be incarcerated than White people charged with similar crimes and criminal histories. White people, in contrast, are more likely to be sentenced to other, non-custodial, sanctions. This increased incarceration of people of color has a negative impact on their families and their communities.

While the importance of this issue warrants mention, our focus here is on the length of sentences and the impact of those sentences on both the people convicted and the institutions responsible following conviction regardless of the race of the person convicted.

Justice challenge: Decarceration

Meeting the challenge of decarceration will involve significant resource investment and changes in policy and laws. But meaningful changes in sentencing can be made without either money or new laws by changing the courthouse culture of Dane County sentencing. Already, sentences in Dane County differ from other jurisdictions, sometimes in beneficial ways. Moving Dane County's sentencing practices to align with empirically supported best practices will benefit both the people served by the courts and the wider community. States documenting best practices have made reforms at the front end (e.g., diversion, sentencing practices), in rehabilitation, and at the re-entry and post incarceration end of the criminal justice process.

In MOSES, we advocate across the criminal justice system for humane and data-driven reforms. MOSES is part of the statewide WISDOM network, and many MOSES members actively advocate in the areas of prison prevention (e.g., expansion of Treatment Alternatives and Diversion funding and eligibility), release of "old law" prisoners eligible for parole, conditions of confinement, and post-release success. MOSES also focuses on reform within Dane County. Through its Justice System Reform Initiative, MOSES has been instrumental in many of the new County efforts to provide more appropriate treatment than incarceration for people experiencing a behavioral health crisis. MOSES members meet periodically with Dane County Jail staff to discuss issues, and a MOSES member participates in the citizen design committee for the jail remodel. We regularly attend Dane County Board committee meetings and those of the Criminal Justice Council and its committees where we have spoken on behalf of reform. Recently formed MOSES task forces are addressing public safety and the "childhood-to school-to prison" pipeline.

Re-examining policies that support public safety is crucial to bringing about change. As Mauer (2011, p. 33, 35) stated,

... we need to assess how to reframe the debate on public safety so that it becomes one that is not focused on incarceration, but rather a more holistic view of how to promote safe communities. . . . On a larger scale, the developing concept of justice reinvestment holds the potential for informing a more rational approach to public safety.

As actions and policies reduce the size of the incarcerated and supervised populations, funding, e.g., from prison closings, should be reinvested in the community in ways that are more effective than excessive incarceration. If there is a commitment to promoting public

safety in the community, investments such as preschool education or substance abuse and mental health treatment will strengthen our community and reduce crime.

The impact of the criminal justice system on public safety is often judged partly by the ability of the criminal justice system to turn people away from crime. A more holistic view of public safety would also consider any damage or healing an intervention causes to the families and communities connected to the directly targeted people. Incarceration often comes with collateral damage. For example, low income families are often thrown into deep poverty by the loss of an incarcerated breadwinner. Non-custodial sentencing would decrease this damage.

In this paper, we raise some areas of reform particularly related to the judiciary's and prosecutor's roles in decarceration. We ask you, Judges and Prosecutors, to engage with community advocates to explore what can be changed in the area of sentencing. Some of the changes will only require a commitment to change courthouse cultural practices. Your commitment will determine the speed and success of these reforms. Other changes will require new legislation. We advocate that the Judges, DAs, and defense bar engage in a coordinated effort to effect a moderate reduction in sentence length and significantly limit the period of supervision. These changes will reduce the jail and prison populations, promote public safety, and decrease the harm to individuals, families and our communities.

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Appendix 1: DECARCERATION STRATEGIES
How 5 States Achieved Substantial Prison Population Reductions

Prison Population Trends	Connecticut 2007-2016	Michigan 2006-2016	Mississippi 2008-2016	Rhode Island 2008-2016	South Carolina 2008-2016
Prison Population Reduction	-25% , from 19,438 to 14,532	-20% , from 51,454 to 41,122	-18% , from 22,831 to 18,833	-23% , from 4,045 in to 3,103	-14% , from 24,326 to 20,858
New Prison Commitments	-27%	-23%	-31% through 2015	-28%	-17%
Returns to Prison	-55% through 2016 across all community release return types.	-41% through 2016 across all parole violator return types.		-37% through 2016 across all community release return types.	-57% through 2016 across all community release return types.
Discretionary Moves to Parole		+17% higher average annual number through 2016.	+153% in 1999 and +104% in 2014 (the 2 years of greatest population decline).	["Prison Releases"] +27% on average during 2008-2010 after legislation reducing length of incarceration	
Facilities Downsizing	Closure of 3 correctional facilities , a juvenile detention center, and housing units in 3 other facilities.	Closure and consolidation of more than 26 prison facilities and corrections camps.	Vacated 3 private prisons, closed 5 community work centers , scaled back regional jails & county work programs.	Occasional partial closure of some facilities to generate savings on operational expenses.	Closure of 7 correctional facilities , incl. prisons & other smaller facilities such as pre-release centers.
Cost Savings	\$39.8 million per year estimated savings generated by closed facilities and units.	\$392 million in savings via closures and operating costs, along with cost avoidance because 2006 projections had forecasted additional prison population growth absent reforms.	\$6 million saved from pop. drop caused by 2008 reforms, \$266 million est. savings from 2014 reforms, \$40 million in reduced corrections expenditures since FY 2014.	Primarily through cost avoidance.	Real savings of \$33 million in operating costs for the closed and downsized facilities. An additional \$458 million estimated to be "saved" by avoiding more prisons.
Arrests	-32%	-23%		-22%	-12%
Index Crime Rate	-27% through 2016, including both violent and property crime rates.	-37% through 2016, including both violent (-19%) and property (-41%) crime rates.	-5% , 2008-2016, including both violent (-8%) and property (-5%) crime rates.	-31% through 2016, including both violent (-6%) and property (-33%) crime rates.	-25% through 2016, including both violent (-31%) and property (-23%) crime rates.

Source: The Sentencing Project's, *Decarceration Strategies: How 5 States Achieved Substantial Prison Population Reductions*, September 5, 2018.