

# ACLU Wisconsin: Analysis of sham “tougher on crime” legislation

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Today the Wisconsin State Senate is expected to pass a harmful set of sham “tougher on crime” bills that would exacerbate the state’s mass incarceration crisis, force the construction of new state prisons, and fail to improve public safety – all at massive taxpayer expense.

These bills stand in direct opposition to the overwhelming evidence that so-called tough on crime policies fail to improve public safety and instead drive greater instability, economic dislocation, and more crime by separating families and destabilizing communities. Key Facts:

- Most States Have Downsized Their Prison Populations – Wisconsin’s Has Risen. Wisconsin is already out of step with national trends. Although the overall U.S. state imprisonment rate decreased by 7 percent between 2000 and 2016, Wisconsin’s imprisonment rate actually increased slightly over the same time period. These bills would exacerbate this harmful trend. [ACLU Smart Justice Blueprint]
- 34 States Reduce Imprisonment and Crime Rates. According to the Brennan Center, between 2007 and 2017, 34 states reduced both imprisonment and crime rates simultaneously, “showing clearly that reducing mass incarceration does not come at the cost of public safety.” [Brennan Center, 8/6/19]

● National Law Enforcement Group Opposes These Measures. The Law Enforcement Action Partnership, a national nonprofit of police, prosecutors, judges, corrections officials, and other law enforcement officials, has urged the Legislature to “reject all five of these bills.” In testimony submitted last week the organization warned the bills would “increase youth crime” and strip discretion from prosecutors. [Testimony Submitted 1/3/20]

● Conservative Badger Institute Calls Bills “Tougher on Taxpayers.” According to the Badger Institute, “even without the new, “Tougher on Crime” legislative package being pushed in Madison, Wisconsin’s prison population could increase by an estimated 5,500 inmates over the next decade and cost taxpayers at least \$690 million in new construction costs, according to a Badger Institute analysis of a draft of a report compiled by consultants hired by the state.” [Policy Brief]

● Wisconsin Already Spends \$1 Billion Per Year on Corrections. Wisconsin spends more than \$1 billion per year on corrections, accounting for 6.8 percent of the state’s total general fund spending. [ACLU Smart Justice Blueprint]

The following outlines the major flaws in two of the most egregious of these bills, based on our analysis and the nonpartisan fiscal analysis of state budget experts.

#### AB805: Costly, Cruel, and Excessive

● What it does: AB 805 would require the Department of Corrections (DOC) to recommend revocation of probation or community supervision for merely being charged with – not necessarily convicted of – a crime, which means an individual may be sent back to prison with only a finding of “probable cause,” rather than “beyond a reasonable doubt.” The bill is unnecessary and excessive, since making such a recommendation is already an option for agents if they think the charge merits revocation. Revocations already make up the largest source of new prison admissions, with more than 3,000

revocations per year during the past several years.

- What it costs: According to the Department of Corrections' fiscal analysis of the bill, AB805 would result in 4,672 additional people being incarcerated in state prisons at a cost of more than \$156 million annually, resulting in the need to construct two new state prisons. AB 805 would also burden local taxpayers with increased jail costs, because the people held under it will be housed at local county jails at local expense.

#### AB 806: More Children in Cages, Not Communities

- What it does: AB 806 broadens the criteria for the Serious Juvenile Offender program – the kind of program most states have eliminated. AB 806 would result in sending more children to the troubled, failing and expensive Lincoln Hills and Copper Lake facilities which the Legislature has already voted to close – or to new, costly, unnecessary prisons. We know that incarcerating more children will not help the youth nor will it make our communities safer. Instead, widespread research and the practice of most states shows that youth outcomes improve and community safety increases when they are provided services close to their home communities and in the most family-like settings possible.

- What it costs: While DOC was not able to estimate the total fiscal impact of the bill, it costs nearly \$200,000 a year to incarcerate a child in a juvenile correctional facility.

#### AB 808: Removing Local Control & Decisionmaking from Prosecutors

- What it does: AB 808 makes it more difficult to reduce charges in designated cases – which will only add to the state's current prison overcrowding crisis.

- What it costs: Fiscal notes are indeterminate for the bill, but lengthening sentences will result in increasing the number of people incarcerated in Wisconsin.

#### AB 809: Limiting Opportunities for Rehabilitative Programs

- What it does: AB 809 prohibits early release on parole or probation for people with a broader range of felonies – even if those people have completed programming or have extraordinary health conditions. It is not sensible to keep people locked up simply because their original conviction was one of these felonies. Older people pose fewer disciplinary problems during their incarceration and reoffend at lower rates upon release. The programming offered through earned release helps people to change their behaviors before they leave prison, which makes our communities safer.
- What they cost: According to the DOC's fiscal analysis, the cost is indeterminate for the bill, but as of June 2019, 13,912 people were eligible for the current program. Under this bill, 3,800 people would no longer be eligible for programming. By prohibiting early release for a broader range of people, this legislation will serve to exacerbate mass incarceration and cause more people to languish behind bars without appropriate treatment and programming.