

## Using Data to Understand Racial Disparities in Criminal Justice in Wisconsin and Milwaukee

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This is a short report written especially for the “Wisconsin Ideas” course offered by the Department of Sociology in the fall semester of 2016. On October 11, I am scheduled to be on a panel with UW Madison Law Professor Michelle LaVigne and Milwaukee County District Attorney John Chisholm to discuss criminal justice issues in Wisconsin. John Chisholm has received national attention for his work to use a data-informed approach to reducing arrests and incarceration in Milwaukee.

Beginning in 2000, I started analyzing racial disparities in incarceration as part of my community service role. I have given over 100 public presentations on these issues and have participated in over 100 meetings of advocacy groups, boards, commissions and task forces addressing these issues. My special role has been to try to bring data to bear on issues of racial disparity in criminal justice. In the spring of 2007, after being on a panel at a conference in Milwaukee, Mike McGann, then the District Attorney of Milwaukee County, invited me to have lunch with him and John Chisholm, who was in the process of running for election to replace McGann as Milwaukee DA in the upcoming November 2007 election. I opened up my laptop and gave the two of them a private presentation of my racial disparities lecture over lunch. I’d like to think that lunchtime presentation had some impact, although it is possible the tide would have been turning anyway without it.

At the time I began, it was not easy to find information that compared race-specific incarceration rates between places. Using my sociological skills, I downloaded data from the National Corrections Reporting Program for 1996, the latest available in 2000, wrote programs to generate imprisonment counts, merged it with population data, and calculated rates. I was shocked to discover that Wisconsin had an extremely high Black/White incarceration disparity of nearly 20 to 1. I wrote up a couple of handouts and gave a few presentations trying to call people’s attention to what I’d found, but at first few noticed. A series of interesting events gave me then-unusual access to Wisconsin Department of Corrections data. Gwen Moore, then a state senator, obtained the data in an open records request to the DOC. She was asking a specific question about prisoners housed out of state and DOC had said they did not have the requested data and were not required to produce it. When she read the answer in a Tennessee newspaper, she asked the reporter where they got the information. “From the Wisconsin DOC.” So she re-filed saying “give me what you gave the Tennessee newspaper.” The result was six floppy disks and a code book. Sen. Moore had seen one of my handouts (I believe she gave a speech waving it on the floor of the legislature), so she had her aide call me to ask I could help process the data. Why, yes I could! This was a real coup. Graduate student Jim Yocom volunteered his time to turn this into the Stata code to process the data and wrote spreadsheet macros to turn the tables into graphs. These data went through 2000. I received an update in 2003 when I did work for the Wisconsin Sentencing Commission and again in 2007 when I was on the Governor’s Commission to Reduce Racial Disparities in Criminal Justice.

My early analysis showed that Wisconsin was exceptionally high in Black incarceration and that the Black/White disparity was extremely high for drug offenses, especially for people under 25, and that Dane County's Black incarceration rate and Black/White disparity were much higher than Milwaukee's. However, because over 70% of Wisconsin's Black population lives in Milwaukee, what happens in Milwaukee determines much of the racial patterns of the state. In the late 1990s and early 2000s, Milwaukee's District Attorney, Mike McGann had a "tough on drugs" policy that said that anyone convicted of drug dealing would go to prison, and I saw printouts of Wisconsin corrections data showing hundreds of people sentenced to prison for "possession with intent to deliver" less than 5 grams of crack cocaine; they were essentially all Black. My early 2000s analyses indicated that much of the disparity in drug sentences in Milwaukee was due to disparities in arrests, while there was more post-arrest disparity in Dane. I started posting information on my web site, where you can see these old reports at <http://www.ssc.wisc.edu/~oliver/racial-disparities/reports-on-wisconsin/>. Unfortunately, the site has not been updated in nine years (I hope to do this in the coming year), but you can see the information I was producing in the early- to mid-2000s. In the 2000s, I spent a great deal of my time doing public lectures about racial disparities and serving on a number of boards, commissions, and task forces focused on addressing these issues.

Later in the 2000s, as I was doing work for the Sentencing Commission and then the Governor's Commission, my analysis showed that Black new sentences for drug dealing had abated, but now the disparities were being driven by disparities in probation and parole revocations. (NOTE: I use the phrase "parole revocation" to refer to all post-prison revocations, although in Wisconsin there are three types of post-prison supervision, "old law" parole, old law "mandatory release", and new law "extended supervision.") When you are on community supervision, you can be revoked into prison for violating the terms of supervision, including offenses that would not normally be crimes or crimes that would not normally draw a prison sentence. These were extremely high disparities based in the population, partly because such high proportions of Black men were on probation and parole, but I also found that there was still a racial disparity in revocation looking only at the people who were under supervision. When I was working with the Dane County Task Force on Racial Disparities in 2009, the judges were interested in working on the problem of prison sentences for first time drug dealers, but when we looked at the data, we discovered that there were essentially zero first time drug dealers being sentenced to prison any more, even though that had been a huge issue in the mid-1990s. Local officials in Dane County at the end of the 2000s told me that they worried less about people who were "on paper," that is, on probation or parole, figuring that they already had strikes against them and deserved less consideration for diversion.

There are two points to this summary. First, racial disparities in imprisonment arise from a large number of different forces that vary greatly between places and over time. Local decision-makers have tremendous influence over policies about policing, arrests, charging, plea bargaining, sentencing, and community supervision. Public discussions about one issue (e.g. drug charge disparities) can lead local actors to change their policies, but other unnoticed policy changes may keep disparities high, or they may drop them. Second, you need to keep monitoring data over time to see what is the same and what has changed. This is an important tool for holding institutions and systems accountable.

## Comparing Wisconsin to Other States

It is easiest to see how Wisconsin compares to other states in the US on Black and White imprisonment rates by looking at the animated scatter plots on my blog:

<http://www.ssc.wisc.edu/soc/racepoliticsjustice/2016/10/03/state-scatterplots-why-is-wisconsin-still-the-worst-for-black-imprisonment/>

You will see that Wisconsin consistently had the highest Black rate of state imprisonment 2000-2014 even though its rate of Black imprisonment fell after 2005 because other states' rates fell, too. If you look at the lower plot, for the Black/White disparity, you will see that Wisconsin is near the top but New Jersey (NJ) and Minnesota (MN) are close to it and sometimes higher; again the disparity was generally declining for all states in this period. If you want to look at this trends more slowly, you can click on the link on the site to download the PDF file, which also includes the methodological details. Flipping the pages in the PDF will give an animated effect at whatever pace you wish to go. (I'm writing this on 10/4/2016. By next week, I hope to have information in the same format available from a more complete data source for 1978-2014.)

## Trends in Wisconsin and Milwaukee 2000-2014

John Chisholm was elected to office as Milwaukee's district attorney in November of 2007, so his opportunity to make changes in Milwaukee's imprisonment rates can be assessed by comparing Milwaukee's imprisonment patterns using the end of 2007 as a watershed. It is also important to compare Milwaukee to other parts of Wisconsin as some of the changes may be due to general features of the whole environment and not just Chisholm's actions. It should be remembered that the economic crash of 2008 created economic devastation throughout most of Wisconsin.

First we compare Milwaukee to other parts of Wisconsin in overall prison admission rates. I use three-year averages to smooth the rates and to preserve confidentiality for instances of small numbers. People enter prison because a judge sentences them to prison, or because they are under community supervision and a probation/parole officer deems that they have violated the terms of their supervision and revokes their release, or both. Probation occurs before prison, the judge says: "I'll give you a chance and put you on probation, but if you mess up, you will be sent to prison." There are legally three kinds of post-prison supervision in Wisconsin—parole, mandatory release, extended supervision—but I'm going to ignore those legal differences in this report and call all forms of post-prison supervision "parole." I'm further going to simplify matters and ignore the difference between probation and post-prison supervision.

Total imprisonment rates for all races combined are misleading because places differ in the percentage of their population that is Black and Blacks are much more likely to be sent to prison. So I am only showing the White and Black prison admission rates. I'm not showing the rates for Hispanics in this brief because the numbers are small enough to require special analysis.

The file of graphs [Oliver\\_compareMKE\\_WIcountiesNCRP\\_admits\\_2016.pdf](#) is the basis of the following discussion. I suggest you work back and forth between the graphs and this discussion.

### White Imprisonment Rates

1. Milwaukee's White total prison admission rates were higher than most other Wisconsin counties prior to 2007 and have become more comparable since then as the rates in other places rose while Milwaukee declined modestly. Dane has lower White rates and Kenosha and Racine higher White rates than Milwaukee. Trends in White rates were generally upward before 2007 and varied by county after 2007.
2. Looking only at new sentence with no revocation, Milwaukee declined before 2007 and went up again pretty steeply after 2009. Most other counties except Dane also went up.
3. Looking at all new sentences (with or without revocation), the pattern is similar except less pronounced. This would be because the category of new sentence plus revocation was declining or not increasing as rapidly as new sentences alone.
4. Looking at revocations only, there was a rise in all places prior to 2007 and a decline in Milwaukee, Dane and Kenosha after while the trend was modestly upward in Racine and the rest of Wisconsin.

### Black Imprisonment Rates

1. Black prison admission rates were declining in all parts of the state after 2007. Before 2007, they were declining modestly in Kenosha, Dane, and Milwaukee and rising in Racine and the rest of Wisconsin.
2. Black new sentence rates with no revocation for Milwaukee were high relative to the rest of the state (except Kenosha) in the early 2000s and began declining in 2003; the decline continued after 2007 but leveled off, with a modest rise after 2012. Other counties declined less or rose, and after 2010, Milwaukee is lower than all other counties except Dane (which showed a steep decline throughout the period.)
3. The pattern for all new sentences, including those with revocations, also shows declines, but the relative ranking of the counties over time shows different patterns that are due to the mix of "with revocation" in the new sentence group. After 2004, Milwaukee has the lowest Black all new sentences rate, and Dane's rate is second lowest (having been much higher in the early 2000s).
4. Revocations only were generally stable or rising before 2007 and decline in all places afterwards. Milwaukee has the lowest rate of Black "revocation only" prison admissions.

### Black/White Disparity

1. The overall disparity in prison admissions is declining throughout the state, with exceptions being rises in Racine and Kenosha after 2010. Dane has by far the highest Black/White disparity in the graph, with the "rest of Wisconsin" ranking second. Milwaukee, Racine and Kenosha are lower but their relative ranking has varied over time.
2. For new prison sentences only (no revocation), the Black/White disparity has been declining pretty steadily in all places since 2000. The disparity is consistently lowest in Milwaukee and highest in Dane County. By the end of the series, the other places are comparable to each other.
3. For all new prison sentences (including those with revocations) the pattern is generally similar, except that the gap between Milwaukee and Kenosha and Racine is smaller.

4. For prison admission on revocations only, the disparity is generally decreasing throughout the period, especially for Dane and Milwaukee; Milwaukee has the lowest disparity by far and Dane the highest.

### **Milwaukee Only: Offense Patterns**

This refers to the document [Oliver\\_OffensesByTypeMilwaukee.pdf](#).

I've generated a packet of graphs about prison admissions in Milwaukee over time separated by offense group. These use three-year averages. I've follow the usual practice and sort people by the offense listed first in the records, which is the offense that carries the longest sentence. Some people have multiple offenses and multiple sentences. I pulled out all offenses that are linked to large numbers of prison admissions for either Blacks or Whites. There is a lot of information crammed into these graphs. It is fascinating but can be hard to digest.

### **Offense mix by race and disparities by offense**

The first set of graphs plots prison admission rates for all new sentences (with or without revocations) by offense for Whites and Blacks, and the Black/White disparity.

For Whites, the big offense groups are assaults, DWI, drugs property, robbery and burglary. Admissions for drugs were high in the early 2000s, dropped to the mid-2000s, then rose again after 2006. There is a similar although more muted pattern for assaults. Admissions for DWI rose steeply throughout the period. Admissions for property offenses started very high but declined markedly, while admissions for robbery and burglary increased more modestly after 2007. Prison admissions for homicide are lower but have been rising for Whites.

The big story in the Black graph is the very high rate of drug sentences in the early 2000s and its steep decline since 2003. Other offense groups had fairly steady or declining and lower rates of admission. An Exception is admissions for weapons charges, which start increasing in 2005, peak in 2007, decline modestly, and then rise again after 2012.

The Black/White disparity is by far the highest, staying in the 30-40 range, for weapons offenses, which may be significant as Whites own guns also, or may represent a way of cracking down on certain kinds of offenders with a weapons enhancer. The drug offense disparity was above 30 before 2007 but has declined steadily to under 10 by 2014. In the middle are the disparities for homicide (which has declined from 20 to 10) and robbery (which has declined more modestly from 20 to 15). Disparities for most of the other offenses are fairly constant or declining in the 5-10 range. The disparity for public order offenses peaked at 10 in 2003, declined to about 2 around 2007, then rose a bit after 2012. DWI is the only offense which has higher or comparable imprisonment rates for Whites than for Blacks (disparity = 1).

### **Type of admission by offense**

I've also prepared a big pile of graphs, one for each offense group plus the total for all offenses, that show the mix of admission types within offense groups. In these graphs, the top line is all prison admissions, including admissions categorized as "revocation only" for which that offense group is the one with the longest sentence. The bottom line is "new sentence only," which is a new sentence with no revocation, and the middle line is "all new sentences." The gap between "all new sentences" and "new

sentence only” shows you the proportion who entered with a combination of new sentence and revocation, and the gap between “all new sentences” and “total” shows you the proportion who entered on revocation only. What you will see in all the graphs is that most people are entering on revocation only and that about half of the new sentences also include a revocation. However, this varies somewhat by offense and race.

In these graphs, the Disparity charts have a different interpretation, as the gap is not meaningful. Instead they show what the disparity is for different admission types. You’ll see in these graphs that the disparity is pretty similar across admission types.

## **Conclusions**

You will see that I give you a lot of information to chew on about what the trends have been. The numbers don’t tell you why the trends happened, whether they are good or bad, or what to do about them. But breaking things down gets beyond simple-minded questions like “are the disparities due to differences in crime or differences in enforcement?” to digging in to what is happening out in society and what is happening inside our institutions. This is the kind of digging that John Chisholm instituted in the DA’s office and that within-the-system reformers have instituted in many places.

But there is a lot more digging that can be done. As one example, our institutions tend to routinely punish people more severely for any given crime if they have a prior record of convictions and, in many cases, of arrests or even non-arrest police contact. Research has often shown that this is one of the big factors that gives Black people greater likelihood than Whites of being sentenced to prison for any given offense. But police do not patrol randomly: they focus their attention on “high crime” areas and (arguably) on racially-segregated Black and Latino areas even more than poor White areas. People with comparable patterns of actual criminal behavior are more likely to be caught if they live in highly-patrolled areas, and are thus more likely to accumulate the “prior record” that will lead them to be treated more harshly in the criminal justice system. In this example, race is affecting how people are treated in the system, but indirectly through the apparently race-neutral factor of prior record. Once you have been drawn into the system, and especially once you have been in prison, it becomes that much harder after you get out to get a good job and live a law-abiding life.

My view is that public institutions should be able to provide information that allows us to monitor their actions for the public good.