

Broke in a broken system

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Probation holds clog Wisconsin jails; critics say the accused suffer without due process

On one day alone, 3,000 people were sitting in custody across Wisconsin on probation and parole holds. Many were in for technical violations.

Alison Dirr, Milwaukee Journal Sentinel Updated 10:15 a.m. CDT Aug. 20, 2019

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Mark Rice had been released on community supervision in an armed burglary case when he was returned to jail after disorderly conduct arrests.

Once, he was held for a couple of days. In two other instances, he was held for increasing lengths of time — and with each, he felt the effects more acutely.

Rice was kept in jail on what's known as a probation or parole "hold."

It allows probation and parole agents to temporarily lock up people on supervision while the agents investigate allegations that they committed new crimes or violated rules of their release.

WHO'S IN JAIL: [A one-day snapshot](#)

Mark Rice, who has been held in the Milwaukee Secure Detention Facility on probation holds and now advocates for criminal justice reform as lead national organizer at JustLeadershipUSA Holds can make communities even less safe because it creates instability in people's lives.

Last year, agents ordered nearly 45,000 holds in Wisconsin. More than one-third of those cases, over 16,000 detentions, were for accusations of breaking supervision rules. Those [rules include](#) showing up for agents' inspections, submitting urine, DNA and blood samples as ordered, attending counseling, and getting agent approval before changing jobs or addresses.

Critics say the holds, which can last weeks, put people in a cycle of repeatedly rebuilding their lives. Employment, housing, relationships, the ability to be with and support children — the elements of rehabilitation — evaporate.

"Holds can make communities even less safe because it creates instability in people's lives," said Rice, who now advocates for criminal justice reform as lead national organizer at JustLeadershipUSA. He said he's also finishing his PhD in urban studies at the University of Wisconsin-Milwaukee.

The effect on public safety is backed by research that shows "incarceration actually results in slightly increased rates of offender recidivism," according to [a report for the National Institute of Corrections](#), part of the U.S. Department of Justice.

What's more, Rice and others say, a person jailed on a hold doesn't have the ability to defend themselves before a neutral person, like a judge, within a few days of being held.

Kevin Carr, [selected by Gov. Tony Evers](#) as the new secretary of the Wisconsin Department of Corrections, acknowledged holds' potential to destabilize people's lives. The department's goal is to keep people out of custody, he said, though its primary obligation is to public safety.

The Department of Corrections is considering how it could cut back on the number of people jailed on rule violations, Carr said. He said he expects "concrete changes" in the supervision system within the next year or so.

At the same time, he's skeptical of stories of people being put in jail for no good reason, given the [state's significant prison population](#).

"With the current population issues that we have at some of our facilities, we have as an agency no interest or motivation to hold people for no reason at all," he said. "It's not in our best interests, and it's not in the best interest of the people that we supervise."

Once incarcerated, he now works to restore the rights of others

Mark Rice has become an advocate to push for restoring voting rights of those previously incarcerated.

Angela Peterson, Milwaukee Journal Sentinel

But, Rice said, people are cycling in and out on holds, crowding county jails and the state-run Milwaukee Secure Detention Facility.

On one day alone in April, about 3,000 people were sitting in custody across Wisconsin on holds.

As happened in Rice's case, if an agent decides to try to revoke community supervision — which can mean returning people to court for sentencing or sending them directly to prison — time spent in custody only continues.

168 days in jail

The more time Rice spent locked up, the more things fell apart, he said.

A judge ordered Rice to serve probation in 2000 on charges of burglary and burglary armed with a dangerous weapon. At his sentencing, the prosecutor acknowledged that Rice had a diagnosis of paranoid schizophrenia.

During his community supervision stemming from that case, Rice was put on holds three times following disorderly conduct arrests after women reported he was following them. Each time, he was experiencing symptoms of his mental illness, Rice said.

The first hold was in 2003 and lasted a couple days. He said his probation agent in Madison was a mental health specialist, who focused on finding him the support he needed in the community.

In 2006, he said, he moved to Milwaukee to attend graduate school, and his new agent took a different approach.

On the second hold, this one in 2007, he was detained for seven days, which put him behind on classwork at the University of Wisconsin-Milwaukee, he said.

His third hold occurred the same year. That disorderly conduct charge was dismissed at his first court appearance in Milwaukee County two days after his arrest.

Even with the charge dropped, his agent sought to revoke his supervised release that stemmed from the armed burglary case, opening up the possibility that Rice could be sent to prison on those earlier charges.

"The judge and the public defender and the prosecutor all agreed that my behavior was not criminal," he said. "They understood it just to be a mental health crisis, but my probation officer, who had no specialized training in mental health issues, decided to move forward with the revocation process."

His supervision was revoked in January 2008, after he'd already been in held for five months. The bulk of that time was spent at the Milwaukee Secure Detention Facility.

In February 2008, he was sentenced to time-served for the months he had spent in jail, and he was released.

By that time, he had been detained for 168 days. Had he been convicted of disorderly conduct while not on supervision, the maximum sentence would have been 90 days.

In those 168 days, he said, he lost his job, apartment and school scholarship. The experience was psychologically devastating.

"My case exemplifies how not to deal with a person who is living with mental illness in the system," he said.

'Usually there's a pattern of behavior'

The Department of Corrections does not track what happens after a hold: whether people are released with no further action, sanctioned, allowed to complete a program instead of having their supervision revoked, or whether an agent attempts to [revoke them from supervision](#).

Corrections officials couldn't say how often holds based on new criminal allegations actually lead to formal charges.

A study by the nonprofit, nonpartisan Wisconsin Policy Forum found that Wisconsin state prisons are filling up faster with inmates whose parole was revoked — with no new convictions — than with any other group. By 2017, [more than 36% of all new prison admissions were people locked up for a revocation without a new sentence](#).

A hold can lead to a domino effect, according to Anne Strauch of Community Circles of Support, a volunteer-led program that aims to help people transition from incarceration to the community.

A sudden return to jail can result in a lost job that leads to lost housing and lost ability to pay child support and treatment fees, according to Strauch. It can result in a repossessed vehicle and the disruption of medications.

And it can cause a feeling of uselessness, she said, putting those on supervision back in a criminal mindset.

On the other hand, Strauch said, "We have some very good agents out there working hard to do the right thing. They are trying to use a hold as a last resort. Yet many times for the safety of the community, a victim, or the offender, a hold is the best solution."

Carr, the new Corrections secretary, said he's well aware a hold can derail a person's progress in building a productive life.

"We recognize that if they're employed and we take them away from that employment because of some technical violation or if they have committed some other criminal offense, it impacts their ability to maintain employment, it may impact child-care issues, it may impact other family issues, it may impact a whole array of issues in their lives," he said.

Taking someone out of the community isn't a cavalier decision, he said. For one thing, it can be expensive: It costs an average of \$33,000 a year to house one person in a facility, compared with about \$3,200 a year to monitor someone released on community supervision.

Carr, who rose through the ranks over three decades at the Milwaukee County Sheriff's Department before being appointed U.S. marshal, challenged the notion that people are locked up for a single rule violation.

There are [18 standard rules for community supervision](#), and an agent or judge can add rules on top of those.

■ Wisconsin Corrections Secretary Kevin Carr doubts probation and parole agents are carelessly incarcerating people who violate rules of their supervised release. Michael Sears / Milwaukee Journal Sentinel

“Usually there’s a pattern of behavior that leads up to a hold being placed, unless there’s a criminal violation involved,” he said. “So, my understanding is that our agents do use discretion and alternatives available to them prior to actually issuing a hold for a technical violation.”

The only reason to hold people initially is to determine if their conduct warrants any further action, and, Carr said, the department is working to identify situations that don't require a hold at all.

“There’s a lot of things that we can do to address the perception that people are being held intentionally for no good reason, but that is not anyone’s purposeful intention to do that,” he said.

Agents also have rules to follow, so it's not always up to them to decide whether to put someone in jail. State law requires them to order the arrest of a person “alleged to have been involved in assaultive or dangerous conduct.”

State law allows agents to keep someone on a hold in jail for up to five working days. A supervisor can approve up to another five working days and a regional chief can approve an additional five working days. Together, that amounts to three weeks, including weekends, and the administrator can authorize additional time.

But the Department of Corrections’ own rules are more stringent, allowing for no more than 11 business days.

Public safety and due process

Bernie Vetrone, who spent nearly two decades as a probation and parole agent and corrections field supervisor, said he doesn’t know how the system could function without the mechanism to put people in custody.

Bernie Vetrone, who left the Department of Corrections about five years ago to become the director of Outagamie County’s Criminal Justice Treatment Services.

The No. 1 thing that goes through your mind is public safety, whether a probation hold gets issued.

“The No. 1 thing that goes through your mind is public safety, whether a probation hold gets issued,” said Vetrone, who left the Department of Corrections about five years ago to become the

director of Outagamie County's Criminal Justice Treatment Services in Appleton. "If we do not put a hold on this person, is this person likely to engage in assaultive behavior?"

During his tenure at Corrections, Vetrone said, he also saw holds used as discipline. But he said the state is trying to move toward more evidence-based responses. Evidence suggests that short-term sanctions like jail time aren't as effective as positive reinforcement, he said.

He also said it's important to be judicious when deciding who goes on a probation hold.

Anthony Cotton, a defense attorney in Wisconsin, noted that people who are criminally charged while not on supervision are entitled to a hearing before a judge to have bond set, usually within 48 to 72 hours. People locked up for breaking supervision rules can sit for weeks with no hearing, no bond.

"An agent can dictate that you're held longer in custody without access to a hearing than would occur if you were charged with murder," he said.

That's just as true in cases of false accusations, when people fabricate allegations against someone on supervision or threaten them because they know they can easily end up back in jail.

"The agents don't know it's a false allegation, they don't know the context, so they put the hold on the person," Cotton said. "Then they interview the girlfriend, they look into it and see if there are police reports, and by the time 10 days are up they realize, well this was a jilted girlfriend who made a false claim, but that person just lost two weeks of their life, and they lost their job and they might have gotten behind on child support payments and they might have missed their court hearing."

In the state's community supervision system, he said, it's "completely unfair" that there's no ability to make a case to a neutral person like a judge or court commissioner.

Federal system could offer road map

Vetrone and Cotton said the federal system offers a level of fairness that Wisconsin's system doesn't.

"You do want to have a system where there is a consequence to your actions. It's just a question of should the consequence be imposed right away, immediately, because it's such a life-ruining event," Cotton said. "I mean, I couldn't imagine if I, just for two weeks, were just ripped out of my career, the number of dominoes that would fall over and the consequences that would happen."

Federal probation agents can't decide to put someone on a probation hold, Vetrone said. Instead, they have to go through the courts. Wisconsin, he said, needs to look at whether the Department of Corrections has too much authority and whether the system is fair for those on holds.

Cotton, who practices in the federal and state courts, said the federal system is “infinitely better” than Wisconsin’s and builds trust in the system because a neutral person is making the decision.

Often those accused of violating supervision rules in the federal system are allowed to stay out of incarceration while they challenge the allegation, he said.

“Then you keep your job, you tuck your kids in at night,” he said. “It gives you a chance to show that you can correct the behavior.”

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