

2 INVESTIGATING ALTERNATIVES TO INCARCERATION, SOLUTIONS TO RACIAL
3 DISPARITIES AND MENTAL HEALTH CHALLENGES IN THE DANE COUNTY JAIL
4 AND THROUGHOUT DANE COUNTY'S CRIMINAL JUSTICE SYSTEM

5 Dane County is committed to addressing two critical issues which afflict the county's criminal
6 justice system: racial disparities in arrests and incarceration, and the mental health challenges
7 of those in and out of jail.

8
9 Dane County has worked on reducing racial disparities in criminal justice for several years and
10 has implemented some promising strategies that resulted from the collective work of community
11 and county via the Dane County Task Force on Racial Disparities in Criminal Justice Report
12 (2009), as well as the Disproportionate Minority Contact Juvenile Justice Solutions Workgroup
13 Report (2009). Additional reports and assistance has been provided by: The Sentencing
14 Project, American Bar Association, Bureau of Justice Assistance, and The Center for Court
15 Innovation, University of Wisconsin Law School-Restorative Justice. Other influential reports
16 and research includes: The State of Black Madison—Before the Tipping Point (2009), and Race
17 to Equity (2014).

18 Dane County's racial disparities in criminal justice continue to persist. To reduce racial
19 disparities, Dane County has funded new initiatives, such as the Community Restorative Court.
20 Even though the Community Restorative Court has not begun, we are hopeful in this new
21 approach to justice.

22 It is critical that Dane County engage the larger community to address inequities in criminal
23 justice, specifically around mental health and incarceration, solitary confinement and length of
24 stay, and alternatives to arrest and incarceration. Additionally, Dane County must address the
25 immediate health and safety issues within the City-County Building Jail.

26
27 **Background on Racial Disparities in Dane County Criminal Justice System:**

28 The lack of availability of reliable information regarding who is in the criminal justice system and
29 why continues to be a challenge in Dane County. Current and accurate measurement of
30 criminal justice data is integral to system reform and measuring success. While broad statistics

31 help to draw attention to problems, system change must be accompanied by better, more
32 precise and detailed data as to the jail population, improving integration of information with state
33 data systems, and increasing capacity for statistical analysis.

34 That said, the 2014 “Race to Equity” report from the Wisconsin Council on Children and
35 Families provides the larger picture of racial disparities in the Dane County juvenile and criminal
36 systems. According to the report:

37 • The total population of Dane County, as reported in the 2010 Census, is just over
38 488,000. Of that total, African Americans are 31,300 of the county’s population, or about 6.5%.
39 African American youth (under age 18) make up 8.5% of all youth (under age 18) in Dane
40 County.

41 • African American adults are eight times more likely to be arrested in Dane County than
42 white adults. This is double the adult arrest disparity rates in the rest of the state and more than
43 triple the national numbers.

44 • African American adult males are 43% of the Dane County jail population, while only
45 comprising 4.8% of the county’s adult male population.

46 • In 2010, the county’s black youth arrest rate was 469 per 1,000, compared to 77 per
47 1,000 for whites. Black teens in Dane County are six times more likely to be arrested than white
48 teens. This is double Wisconsin state’s juvenile arrest disparities and more than triple the
49 national numbers.

50 • African American youth are 15 times more likely to spend time in the county’s juvenile
51 secure detention facility.

52 • More than 54% of all African Americans in Dane County live below the federal poverty
53 level, compared to only 8.7% of Dane County’s white population. The numbers are even starker
54 for Dane County’s youth: 74% of African American youth live in poverty, compared to only 5.5%
55 of Dane County’s white population.

56

57 As highlighted by the Race to Equity Report, racial disparities between black people and white
58 people in Dane County are some of the highest in the nation. The data indicates that the Dane

59 County criminal justice system is not working fairly for all community members. Addressing
60 these issues will have a direct impact on the challenges of jail space needs.

61

62 **Mental Health, Solitary Confinement, and Incarceration:**

63 Dane County's support of individuals with mental health issues has not grown in the past
64 decade and has not kept up with the need for services. In fact, county General Purpose
65 Revenue (GPR) funding for adult mental health actually declined between 2003 and 2013, from
66 \$6.2 million in 2003 to \$6.1 million in 2013.

67 Criminalization of the mentally ill and those with mental health issues impacts hundreds of Dane
68 County individuals, families, and the community as a whole. It is critical to look for impactful
69 long term solutions to our residents with mental health issues.

70 According the United States Bureau of Justice Statistics, 44% of all individuals and 66% of all
71 Black individuals incarcerated in local jails throughout the nation have mental health challenges.
72 Due to the lack of mental health services overall throughout the United States, jails and prisons
73 have become the largest care-takers of individuals with mental health challenges.

74 Individuals with mental health struggles – diagnosed or not – who are incarcerated in the Dane
75 County Jail, are often placed in solitary confinement or other segregated space. Unfortunately,
76 solitary and other confinement placement often exacerbates the individual's mental health
77 problem. The result can be making the individual sicker than when they arrived in the Dane
78 County Jail.

79 Solitary confinement has been studied for decades, along with the short and long term
80 detrimental impacts on individuals. The Dane County Board and Dane County Sheriff are
81 seeking to eliminate this practice through more appropriate housing options.

82

83 **Length of Stay**

84 According to national research, length of stay negatively affects recidivism for people who have
85 a low and medium risk of reoffending. The collateral consequences experienced by individuals,
86 families, and communities caused by length of time spent in jail may further overall inequities in
87 Dane County. Consequences include accused individuals, especially the poor and people of

88 color, pleading guilty to get out of jail for economic and family reasons, rather than based upon
89 innocence or guilt of the alleged offenses.

90 In the 2007 Criminal Justice System Assessment conducted by the Institute for Law and Policy
91 Planning (ILPP), two strategies were recommended to reduce workload growth in the criminal
92 justice system, including the jail. They were: “1. Reduce admissions at key justice system
93 decision points, and 2. Reduce length of stay and case processing times throughout the
94 system.”

95 While there are measures Dane County may be able to take to reduce length of stay, typically
96 approximately 17 percent of the jail population are state prisoners being held because of
97 violations of probation or parole requirements. Solutions to this issue will require data analysis
98 to better define the reason prisoners are being held and for how long. This information could
99 inform discussions with state officials about their practices which result in jail stays.

100

101 **Alternatives to Arrest and Incarceration:**

102 Dane County has many alternatives to incarceration that, for some, have proven to be effective.
103 However, participation by people of color in alternatives is minimal. Alternatives include:
104 deferred prosecution, (including the first offender program), electronic monitoring, and treatment
105 alternatives, among others. Eligibility criteria need to be evaluated, modified, and/or developed
106 to ensure equitable access and use of alternatives to incarceration, including use of evidence-
107 based decision making through a racial equity lens.

108

109 **Current Jail Safety Issues:**

110 From the Mead and Hunt study and the Sheriff’s comments on the current facility, it is clear that
111 there are immediate mental health, solitary confinement, and life and safety issues with parts of
112 the facility.

113

114 **NOW, THEREFORE, BE IT RESOLVED**, that because of these and other systemic issues,
115 Dane County is committed to a comprehensive reform of the Dane County criminal justice
116 system. This reform will be influenced by a set of Guiding Principles. The Dane County Board

117 will measure its actions against these principles and will encourage its partners in the Dane
118 County criminal justice system to do the same. The Guiding Principles are:

- 119
- 120 1. Racial equity will be achieved across the entire criminal justice system.
 - 121 2. The criminal justice system will be guided by the use of publicly available data and
122 information for understanding what is happening, for accountability, and for
123 measuring outcomes.
 - 124 3. Solitary confinement will be eliminated or greatly reduced.
 - 125 4. Arrests and incarceration will be reduced by having a coordinated system of
126 community treatment for substance abuse, mental health treatment and for people
127 with developmental disabilities.
 - 128 5. The number of arrests will be reduced along with people initially apprehended by
129 police, but diverted prior to booking.
 - 130 6. Efforts will be made within the criminal justice system to reduce sentences in ways
131 that do not compromise public safety, but which emphasize rehabilitation, reduce
132 incarceration and include wide ranging systemic reforms such as access to drug
133 treatment, training, and employment to support personal accountability.
 - 134 7. Dane County will provide resources to those incarcerated to reduce recidivism.
 - 135 8. The criminal justice system, including the Dane County Jail, will not be used to
136 generate excess revenue source.
 - 137 9. People charged with crimes or sentenced will be placed in the least restrictive setting
138 possible, while still ensuring reasonable public safety and justice for victims.
 - 139 10. People leaving jail have supports so that they can change their lives in positive
140 directions.
 - 141 11. Increased resources will be sought by maximizing state and federal funding sources
142 and leveraging private insurance.
 - 143 12. Dane County will build off of its own successful efforts at improving the criminal
144 justice system and will seek out the best evidence-based practices from around the
145 country.
 - 146 13. Dane County will identify and encourage the implementation of immediate actions
147 that can be taken as well as long-term solutions.
 - 148 14. Dane County shall have a safe and secure environment for those incarcerated
149

150 NOW BE IT RESOLVED, to address the challenges outlined above, recognize the value of
151 public participation, and respect the community response, the Dane County Board will engage
152 the public to identify next steps by establishing three work groups of the Public Protection and
153 Judiciary Committee. These workgroups shall produce the following:

- 154 1) A prioritized list of recommended changes based on previous consultants'
155 recommendations and from successful models implemented elsewhere;

- 156 2) Measurable outcomes/benchmarks and parties responsible for high priority
157 recommendations; and
158 3) Tangible implementation steps, benchmarks and timelines for high priority
159 recommendations.

160 The work of these three groups will not only inform the county's budget process, but also
161 provide information that will be valuable as the county seeks funding via grant opportunities.

162

163 BE IT FURTHER RESOLVED, that the Dane County Board of Supervisors establish a **Mental**
164 **Health, Solitary Confinement and Incarceration Work Group** to advise the Public Protection
165 and Judiciary Committee, with up to eleven (11) members appointed by the Chair of the
166 committee, in consultation with other members of the Board, with the Department of Human
167 Services assistance in securing facilitators for the workgroup, and additional support from
168 members of the Sheriff's Office and the Courts, to investigate the possibility of establishing the
169 following:

170 1(a). A mental health toolkit or mental health court to support Dane County's Circuit
171 Court judges. This includes but is not limited to: determining what charges/offenses to
172 be considered; screening tools or assessment to determine placement; options of
173 treatments/services need to be available (especially for individuals without health
174 insurance); and whether it should be a stand-alone court or toolkit integrated into all
175 criminal courtrooms.

176 1(b). One or more stand-alone community-based facilities, potentially based on a crisis
177 intervention or restoration center model, that serves individuals with: 1) mental health
178 needs and who are not incarcerated by the Sheriff, 2) mental health needs and who are
179 in police custody and need an alternative to jail placement, and 3) mental health needs
180 and who are in the Sheriff's custody. Recommendations should reflect existing mental
181 health and substance abuse diversion resources and needs in Dane County as well as
182 identified gaps in our community-based mental health and substance abuse services
183 systems. As part of a potential facility, investigate a mental health crisis intervention field
184 team that can be available to all Dane County law enforcement, fire, and emergency
185 entities, 24 hours a day.

186 1(c). Eliminating or greatly reducing the use of solitary confinement. This includes but is
187 not limited to: policy and practice changes recommended by workgroups, particularly

188 around addressing racial disparities in solitary confinement; creating mental health,
189 medical, special needs or other space options that provide for those incarcerated with
190 medical and mental health needs; and creating strategies to eliminate de factor solitary
191 confinement conditions when there are low numbers of incarcerated youth. Additionally,
192 this shall include investigating the impact of solitary confinement in any form on
193 incarcerated people, and particularly people with mental illness or people of color,
194 whether it is used due to space needs or as a tool for changing behavior. This includes
195 but is not limited to: the long-term outcome of solitary confinement in behavior
196 management; the effects of solitary confinement on recidivism; alternative tools to
197 solitary confinement to address various situations that keep the safety of the
198 incarcerated people, deputy and larger jail community in mind.

199
200 BE IT FURTHER RESOLVED that the Dane County Board of Supervisors establish a second
201 work group, the **Length of Stay Work Group**, to advise the Public Protection and Judiciary
202 Committee to address approaches to reduce the number of people in jail and racial disparities
203 among people in jail, with up to eleven (11) members appointed by the Chair of the committee,
204 in consultation with other members of the Board, and with the Department of Human Services
205 assistance in securing facilitators for the workgroup to investigate the possibility of the following:

206 2. Initiatives that decrease the average length of stay post-booking for those
207 incarcerated in Dane County Jail, with the goal of diverting people from incarceration.
208 This includes but is not limited to: weekend arraignment court, signature bonds,
209 deferred prosecution, full-scale pre-trial services program, policies relating to probation
210 and parole holds, alternative to bail programs, expanding the current Bail Monitoring
211 Program, and expanding home detention (electronic monitoring) as allowed by state
212 statute to people who do not qualify for other pre-trial jail diversion programs.

213
214 Additionally, the work group shall recommend changes in policies and procedures to
215 reduce racial disparities in participation in bail monitoring, home detention, and
216 work/study release (Huber) programs. The work group shall also investigate what can
217 be done to expedite the release of people alleged to have violated state Department of
218 Corrections community supervision (probation, extended supervision, parole). All
219 recommendations will focus on improving racial equity and equitable access for those
220 unable to pay fees.

221

222

223 BE IT FURTHER RESOLVED that the Dane County Board of Supervisors establish a third work
224 group, the **Alternatives to Arrest and Incarceration Work Group**, to advise the Public
225 Protection and Judiciary Committee to address alternatives to arrest and incarceration, prior to
226 being booked, with up to eleven (11) members appointed by the Chair of the committee, in
227 consultation with other members of the Board, and the Department of Human Services
228 assistance in securing facilitators for the workgroup to investigate the possibility of establishing
229 the following:

230 3. Diverting incarcerated people from incarceration by seeking options outside of the
231 traditional justice system. Recommendations should be based on a review of existing
232 diversion policies, prior recommendations, and current resources, particularly for African-
233 American and community-of-color led services. Areas for review include but are not
234 limited to: community restorative courts, restorative justice practices, allowing for a
235 continuum of services for individuals needing more or less support; creating Day
236 Reporting Centers as part of these facilities; prioritizing diversion of youthful offenders;
237 creating restorative justice programs for all individuals charged with non-felony crimes or
238 who would otherwise qualify for minimum-security placement or work-study release, and
239 co-locating alternatives to incarceration programs within one or more “one-stop
240 shopping” facilities. There also must be an investigation of what policies could be
241 implemented to encourage police and law enforcement to send and/or refer people
242 directly to services and programs instead of committing people into jail, whether referring
243 people to services reduces recidivism more than jail, and what services, especially
244 African-American and community-of-color led services, already exist (or could be
245 created given a critical mass of future referrals) that could be housed in such facilities.
246 This investigation shall include options for both adults and juveniles.

247

248 BE IT FURTHER RESOLVED that all of the above investigations shall prioritize needs of
249 communities of color, especially African Americans, and people with mental illness due to their
250 large disproportionate numbers in the criminal justice system. This includes increasing racial

251 equity in access and participation as well as reducing racial disparities in services and programs
252 outlined in this resolution.

253

254 BE IT FURTHER RESOLVED that each work group shall include community members,
255 explicitly including communities of color, particularly the African-American community, people
256 with mental illness and people who have been impacted by incarceration.

257

258 BE IT FURTHER RESOLVED that the chair of the Public Protection and Judiciary Committee
259 shall be an ex-officio member of each of the three work groups and may meet and deliberate in
260 their meetings, and may make motions, but may not vote while acting as an ex-officio member.
261 However, the chair of the Public Protection and Judiciary Committee may be counted as a
262 member present for the purposes of reaching a quorum.

263

264 BE IT FURTHER RESOLVED that each work group shall include in its recommendations
265 methods for improving baseline statistical information and evaluation of any system change by
266 developing better, more precise and detailed data as to the jail population, which shall:

- 267 1) Include the race and ethnicity of people involved in Dane County's criminal justice
268 system, and to the extent possible aggregate health information, including mental
269 illness;
- 270 2) Recognizing that County data must be created and collected, improve integration with
271 state data systems, including a data dashboard with customizable reports;
- 272 3) Increase capacity for statistical analysis; and
- 273 4) Make easily available to the public any data used to produce statistics or analysis that
274 inform decisions in Dane County's criminal justice system.

275

276 BE IT FURTHER RESOLVED that any funding needed to further study these issues beyond the
277 work groups shall come from the \$8 million in capital funding designated in the 2013 budget to
278 investigate jail space needs, to the extent that the study addressed capital issues. Additionally,
279 any outside request for proposals or studies shall be awarded to entities that have a
280 demonstrated history of understanding the impact of race discrimination, as well as race and

281 poverty combined, in Wisconsin and the United States on an individual's mental and physical
282 well being.

283

284 BE IT FURTHER RESOLVED each of the work groups shall make recommendations for
285 tangible next steps to the Public Protection and Judiciary Committee and to the Criminal Justice
286 Council by September 30, 2015, and shall then be dissolved. Members of the committee are
287 requested to be available for consultation during the 2016 budget process. These
288 recommendations shall be the foundation of 2016, 2017 and future operating budget proposals
289 to improve services and programs in the criminal justice system and in the community,
290 especially the African American community.

291 1) Improve services and programs in the criminal justice system and in the community,
292 especially the African American community and people with mental illness;

293 2) Reduce incarceration;

294 3) Reduce racial disparities in Dane County's criminal justice system; and

295 4) Divert people with mental health needs.

296

297 BE IT FURTHER RESOLVED each of the work groups shall make recommendations to the
298 extent possible that reduce the local tax burden and increase resources by systematically using
299 available state and federal funding sources including:

300 1) Estimating how referrals directly to Medicaid certified providers for Medicaid recipients
301 could save County dollars;

302 2) Estimating how FoodShare Employment and Training dollars could be used to expand
303 Drug Court and other diversion programs;

304 3) Developing strategies to ensure that people flowing through the jail and the criminal
305 justice system have the opportunity to get assistance to help apply for BadgerCare,
306 FoodShare and other programs as necessary.

307 BE IT FURTHER RESOLVED that the Dane County Board of Supervisors authorizes per diem
308 payments for non-supervisor and non-staff members of the work group on the same basis and
309 under the same policies as other Dane County bodies that receive per diems and mileage.

310

311 BE IT FURTHER RESOLVED that the Dane County Board of Supervisors directs the Public
312 Protection and Judiciary Committee and requests the Criminal Justice Council's Racial
313 Disparities Subcommittee to review work group recommendations, as well as review and report
314 on progress to date, in January and July, 2016.

315 BE IT FURTHER RESOLVED, that in creating recommendations, the work groups as well as
316 consultants selected shall consider that in passing this resolution the County Board is
317 unequivocally stating its support for eliminating racial disparities, reducing incarceration,
318 reducing the number of jail beds, as well as its opposition to the construction a new standalone
319 jail.

320

321 BE IT FURTHER RESOLVED, the County Board supports addressing the immediate health and
322 safety issues in the jail, eliminating or reducing solitary confinement, and compliance with the
323 Prison Rape Elimination Act (PREA). Additionally, the County Board is committed to addressing
324 mental health issues outside the jail to the degree practical and within the jail in the least
325 restrictive environment.

326

327 BE IT FURTHER RESOLVED, the County Board will provide the Sheriff's Office access to funds
328 to develop solutions which address the immediate health and safety concerns of the current jail
329 facilities in the City-County Building.

330

331 BE IT FURTHER RESOLVED the Sheriff's office in consultation with Department of
332 Administration shall issue a request for proposals for the following scope of work:

333 1. **Emergency and Life Safety Issues.** The consultant shall identify emergency and life
334 safety issues in the City-County Building Jail and shall provide recommendations and a
335 work plan to address the identified issues.

336 a. The recommendations and work plan shall include the costs and the anticipated
337 longevity of any repairs, staffing and procedural options for life safety mitigations,
338 and whether incarcerated people will need to be temporarily moved out of areas

339 of the City-County Building Jail in order to effectuate needed repairs and, if so,
340 options for housing incarcerated people.

341 b. Emergency and life safety recommendations shall include: operational layout,
342 structure and design, plumbing, HVAC, the entire locking system, door hardware
343 and controls, voice communication systems, video surveillance technology,
344 detention barriers, and other security systems consistent with industry standards
345 and current code compliance.

346
347 2. **Reducing incarceration and integrating workgroup recommendations.** Within 90
348 days of receiving reports of the workgroups, the consultant shall provide
349 recommendations that incorporate predicted jail population reductions due to
350 implementing plans to eliminate racial disparity, and to ensure compliance with the
351 PREA as well as to eliminate or reduce solitary confinement.

352 a. **Integrate workgroup recommendation to reduce incarceration and racial**
353 **disparities.** The consultant shall provide recommendations that incorporate
354 predicted jail population reductions due to implementing plans to significantly
355 reduce or eliminate racial disparities, divert people with mental health needs,
356 and increase diversions and alternatives and community-based treatment.

357 b. **Prison Rape Elimination Act.** The consultant shall recommend immediate
358 solutions to bring all jail facilities into compliance with all Prison Rape Elimination
359 Act (PREA) standards

360 c. **Solitary Confinement.** The consultant shall develop up to two options to
361 eliminate or greatly reduce the use of solitary confinement.

362 d. These recommendations shall provide discrete alternatives that address
363 renovating the City-County Building Jail and the PSB Jail to meet current jail
364 standards, applicable codes as well as health and safety needs. Options should
365 decrease the number of beds at Dane County jail facilities commensurate with
366 estimated reductions in the jail population.

367
368 3. **Format and components of recommendations.** Recognizing that the solutions
369 recommended in #2 may need to be addressed independently, the consultant shall
370 include a plan allowing for independently or sequentially addressing issues. The
371 consultant shall include strategies (i.e., physical plant and operational) to optimize

372 programmatic, treatment, and behavior management resources. As part of #2 solutions,
373 the consultant shall address the following:

- 374 a. Incorporation of workgroup recommendations for reductions in jail population due
375 to implementing recommendations that eliminate racial disparities;
- 376 b. Compliance with the Prison Rape Elimination Act (PREA) and current applicable
377 state and federal regulations;
- 378 c. Appropriate and effective housing for the care and custody of incarcerated
379 people, including; (Such housing is not to increase the functional capacity of the
380 jail, but rather ensure quality of care.)
 - 381 i. Develop medical and mental health housing;
 - 382 ii. Reduce the use of solitary confinement, by creating specialized beds
383 such as mental health or medical beds/cells or restrictive housing beds
384 that incorporate the recommendations of the workgroup;
 - 385 iii. Provide options for supportive jail based treatments and interventions;
386 and
 - 387 iv. Incorporate programmatic space for incarcerated people use;
- 388 d. Best practices and modern standards for the safety and well-being of jail staff;

389
390 The consultant shall deliver information on #1 by December 31, 2015, and the remainder within
391 90 days of the workgroup's final recommendations. The consultant will provide operational and
392 space recommendations, an incarcerated people disaggregation plan, macro staffing
393 deployments and redeployments, operating costs recommendations and preliminary drawings
394 representing these recommendations, a written report of the reasoning for recommendations,
395 and associated opinion of probable costs.

396
397 The consultant shall deliver, by December 31, 2015, operational and space recommendations,
398 an incarcerated people disaggregation plan, macro staffing deployments and redeployments,
399 operating costs recommendations and preliminary drawings representing these
400 recommendations, a written report of the reasoning for recommendations, and associated
401 opinion of probable project costs of a phased project both in terms of probable repair,
402 renovation and construction costs.

403
404

405 BE IT FINALLY RESOLVED that, except for the allocation for the consultant described above,
406 no further use of the eight million dollars set aside will be considered without both the outcomes
407 of the above work group recommendations presented and the approval of the Dane County
408 Board of Supervisors, except to address imminent life and safety issues in the current facilities.