

# Why Not Minnesota? Norway, Justice Reform, and 50-Labs Federalism

## I. Introduction

In American criminal justice, as in other institutions, there are Pollyannas, curmudgeons, and pragmatic reformers. The Pollyannas view Norway as a correctional utopia, a nation of low crime, low incarceration, low recidivism, and strict adherence to high-minded ideals. The curmudgeons, by contrast, are entirely dismissive of such claims. Some curmudgeons offer internal critiques, suggesting that Norway falls short of its own lofty goals and the image presented in laudatory documentaries and news reports. Others appreciate the Norwegian laws and practices on their own terms, but wholly dismiss the possibility of generalizing them to the United States. The third group, pragmatic reformers, is mindful of these critiques but eager to import particular Norwegian policies and practices and to apply them in a more focused or targeted way.

Those who say “That’s fine for Norway, but it would never work in the United States” may well be right. It is difficult indeed to imagine the wholesale importation of Norwegian correctional practices to the federal government, much less the entire United States. As we will argue, however, a broad-based application of the Norwegian model to a single U.S. state is a conceivable and perhaps viable mode of pragmatic reform.<sup>1</sup> Criminal justice is multi-jurisdictional in the United States, but much of the responsibility for criminal sentencing and corrections rests with the states<sup>2</sup> and local government, as does much of the recent momentum in criminal justice reform.<sup>3</sup> And when a policy or set of policies is successfully implemented in one U.S. state, it can diffuse outward rather rapidly.<sup>4</sup> We consider Minnesota as an illustrative example because of the state’s relative proximity to Nordic society and justice institutions. As we will show, Minnesota bears particular resemblance to Norway in both its social and cultural profile and in its systems of courts, sentencing, and corrections. Thinking through the prospects for implementing a coherent package of Norwegian-style reforms in that state is thus a conversation-starter for actual reform, as well as a potentially generative *gedankenexperiment*.

## II. Translating Norwegian

There are clear legal and institutional differences between Norway and the United States, as well as some absolutely fundamental differences in philosophy and vision. With regard to the latter, the Norwegian Correctional Service

espouses a “principle of normality” that contrasts sharply with U.S. correctional approaches. The normality principle specifically foregrounds the rights of those convicted, limits punishment, and humanizes prisons:

- The punishment is the restriction of liberty; no other rights have been removed by the sentencing court. Therefore, the sentenced offender has all the same rights as all other who live in Norway.
- No-one shall serve their sentence under stricter circumstances than necessary for the security in the community. Therefore, offenders shall be placed in the lowest possible security regime.
- During the serving of a sentence, life inside will resemble life outside as much as possible.<sup>5</sup>

Explicitly limiting punishment to a restriction on liberty—rather than capping it at “cruel and unusual,” as directed by the Eighth Amendment to the U.S. Constitution—would significantly reduce the direct and collateral consequences of punishment. Many argue that the latter comprise a “system of disadvantage” in the United States, “piling on” severe restrictions on voting, occupational licensure, parental rights, and receipt of public benefits.<sup>6</sup> Moving American prisons toward “the lowest possible security regime” and reorganizing them so that “life inside will resemble life outside” would require a fundamental shift in emphasis and institutional practice. To simply imagine such possibilities, delegations of U.S. policymakers and criminal justice professionals have begun regularly traveling to Norway and other European nations as part of initiatives such as the Prison Law Office’s European Prison Project and the Vera Institute’s International Sentencing and Corrections Exchange. And, in states like North Dakota, officials are now attempting to implement some of the principles and practices they observed in Norwegian facilities.<sup>7</sup>

Whatever promise such state-level efforts may hold in reforming prisons, moving toward Norwegian-style justice would entail even greater changes in courts and sentencing.<sup>8</sup> Before briefly addressing the structure and functioning of Norwegian courts, sentencing, and corrections, we first provide some basic comparative information on Norway, the United States, and Minnesota. We have attempted to gather the most recent and most comparable data available for the two nations and the state, with the goal of highlighting key commonalities and differences.



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**Table 1. Descriptive Statistics Comparing Norway, Minnesota, and the United States**

	Norway	Minnesota	United States
<b>Population</b>			
Population	5,295,619	5,576,606	325,719,178
Area (square miles)	148,728	86,943	3,796,742
% Foreign born	14.1%	7.9%	13.4%
% Norwegian-born (Norway) and Norwegian ancestry (US, MN)	82.7%	15.3%	1.0%
% White		85.3%	72.4%
% Black		5.2%	12.6%
% Asian		4.0%	4.8%
% American Indian		1.1%	0.9%
% Other or Multiracial		4.3%	9.7%
% Hispanic ethnicity		4.7%	16.3%
<b>Crime and Punishment</b>			
Number incarcerated	3,933	10,592 (prison)	1,417,100 (prison) 2,121,600 (total)
Incarceration rate per 100,000	74	191 (prison) 364 (total)	450 (prison) 698 (total)
Black/White incarceration ratio		11.0	5.1
Hispanic/White incarceration ratio		1.4	2.6
% Foreign nationals	30.5%		5.2%
Homicide rate per 100,000	0.5	1.8	5.4
<b>Social Indicators</b>			
% 25–64 year olds with tertiary education	43%	50%	45%
Voter turnout	78.2%	74.7%	55.7%
Gini coefficient	.26	.45	.48
Life expectancy	82.5	81.1	78.7

Of course, we could certainly have selected a different state for this comparison. For example, Maine, Vermont, and North Dakota all share relatively low incarceration rates, and by U.S. standards, Maine and Vermont impose relatively few collateral sanctions. These states are unusually homogenous and small in population, however, with a combined population of about 2.7 million residents, over 90 percent of whom are white.<sup>9</sup> Alternatively, we could have selected a state with higher rates of punishment, greater diversity, or less behavioral and cultural homogeneity than Minnesota. For justice reform, however, the particular state we select is less important than the general strategy of addressing a systematic package of justice reforms at the state level, rather than the federal or municipal level. Minnesota is not intended to be representative of other states, but it is a reasonable candidate state in which Norwegian-style reforms might take hold and then diffuse outward to other states. As but one example of this process, Minnesota was the first state to implement a sentencing guidelines structure in 1980, which has since diffused, with a “garden full of variety,” to many other states.<sup>10</sup>

Table 1 shows that Minnesota shares several key institutional, structural, and cultural features with Norway.<sup>11</sup> In terms of scale, Norway and Minnesota are each approximately 5.5 million in population, though Norway is about 70 percent larger in area. Many attribute American exceptionalism in punishment to the nation’s legacy of slavery and racial control.<sup>12</sup> So too, some attribute Nordic or Scandinavian exceptionalism in punishment to a historically high degree of racial and ethnic homogeneity.<sup>13</sup> Both Norway and Minnesota, however, are now home to a small but rapidly growing number of people of color and

immigrants. Foreign-born residents comprise about 14 percent of the Norwegian population (an additional 3 percent of the population are Norwegian-born to foreign-born parents) and 13 percent of the U.S. population.<sup>14</sup> Most immigrants to Norway are from Europe, though foreign-born residents from Asian and African countries make up about 30 percent and 14 percent of the foreign-born population, respectively. Minnesota’s much smaller foreign-born population today also comes largely from Asia and Africa, in addition to Latin America. But for at least a century, Minnesota’s immigrant population came largely from Norway, Sweden, or Germany.<sup>15</sup> As a result, Minnesota leads the United States in the number and percentage of Norwegian-Americans, at approximately 15 percent (an additional 8 percent of the population is Swedish-American).

Minnesota is considered a low-incarceration state by U.S. standards, but its total incarceration rate of 364 per 100,000, while about half the U.S. rate, is almost five times that of Norway. Note, however, that the adult prison incarceration rate is “only” 191 per 100,000. The remainder of the *total* confined population in Minnesota is made up of jail inmates, youth in secure facilities, an unusually large number of civil commitments for sex offenses (over 700 in 2016), and others in secure facilities.<sup>16</sup> The state also ranks among the most racially disparate in the nation, with a dreadful black-to-white incarceration ratio of 11:1, far in excess of the national rate of 5:1.<sup>17</sup> European nations have a somewhat different problem of disproportionality, incarcerating non-EU immigrants over six times as often as EU citizens.<sup>18</sup> Although immigrants make up about 17 percent of Norway’s population, they account for over 30 percent of

the nation's prisoners. By our calculations, the foreign-born incarceration rate in Norway is approximately 161 per 100,000, versus about 60 per 100,000 for the Norwegian-born, resulting in a Foreign-to-Norwegian ratio of approximately 2.7. With regard to crime, Minnesota's rate of homicide is 1.8 per 100,000, which is about one-third of the overall U.S. rate, but over three times the rate in Norway.

On many social indicators, Minnesota is also closer to Norway than to the United States as a whole. For example, Minnesota and Norway have much higher rates of political participation than the United States overall. As measured by the Gini coefficient, Minnesota has a far greater degree of income inequality than Norway, but somewhat less inequality than the United States. Finally, life expectancy is comparatively longer in Norway and Minnesota than in the United States. The overall picture, then, is one of overall health and prosperity in Norway and in Minnesota, but with glaring inequalities on the basis of race (in Minnesota, the high ratios of Black and Hispanic incarceration relative to Whites) and migration status (in Norway, the high ratio of foreign-born to Norwegian-born incarceration). Historically, these inequalities have been masked, to some degree, by relative racial and ethnic homogeneity. As Norway, Minnesota, and the United States continue to diversify, however, alleviating and eliminating these disparities becomes an ever more urgent priority.

### III. Courts, Sentencing, and Corrections in Norway

Before identifying specific areas for reform, we next review some basic differences and commonalities in the structure and functioning of justice institutions in Norway and in Minnesota. The articles in this Issue of *NCLR* provide a more authoritative view of Norwegian criminal justice, so we provide only a brief outline here.

#### A. Courts

Norway's justice system operates under the expediency principle, in which prosecutors have great discretion over the individual cases they try, and they are not legally obligated to prosecute cases even when the evidence would support a conviction.<sup>19</sup> Located within divisions of local police departments, prosecutors are organizationally independent from the police,<sup>20</sup> though police have responsibility for prosecuting and investigating minor offenses.<sup>21</sup> There are five police regions and numerous districts within each region. The districts have local autonomy but are required to comply with national procedures.<sup>22</sup> Both the prosecutorial service and police departments are part of the Ministry of Justice. And although prosecution is organized within local police departments, prosecutors are required to have legal training. Police, prosecutors, and judges are all appointed civil servants who serve in permanent nonpartisan positions. The courts are constitutionally established as independent, guaranteeing a separation of powers in relation to the legislature.<sup>23</sup> The courts also have budgetary powers to organize court functions.<sup>24</sup> Defendants in Norway are guaranteed a (publicly compensated) defense

attorney in most criminal cases, but in cases of minor offenses or drunken driving charges, they must pay for their own counsel if they wish to be represented.<sup>25</sup> Notably, plea bargaining does not exist in Norway; there are no negotiations between defense attorneys and prosecutors about charges pursued or dismissed, and cooperation with law enforcement has no impact on sentencing or prosecution.<sup>26</sup>

#### B. Sentencing

To supplement the statutory maximum and minimum penalties, the Supreme Court of Norway has provided guideline decisions for sentencing.<sup>27</sup> For most serious crimes, the maximum term that can generally be imposed is 21 years, although the Penal Code has recently been modified to permit a 30-year maximum sentence for crimes of genocide, crimes against humanity, and some related war crimes.<sup>28,29</sup> Norway does not permit capital punishment or life sentences (which were abolished in 1979 and 1981, respectively). Defendants must serve two months of their sentence before they are eligible for early release, and parole is generally only revoked for a new offense committed during the parole supervision period.<sup>30</sup> Apart from incarceration, Norwegian sentencing options include an impressive range of alternatives. In 1984, Norway began to use community service as a criminal sanction, and subsequently changed its legal title to "community punishment" and expanded its scope to include drunk driving offenses. Community punishment is an independent sanction in Norway, rather than a complementary add-on to some other form of punishment, with a maximum number of 420 hours imposed. Mediation, another independent criminal sanction in Norway, began in 1981. Participation is completely voluntary and if successful, results in non-prosecution.<sup>31</sup> Such mediation is used extensively, in almost twice as many cases as unconditional prison terms.<sup>32</sup>

The number of annual prison sentences in Norway is about 200 per 100,000 residents, but the imprisonment rate is closer to 74 per 100,000, as the average prison sentence is only 4.3 months.<sup>33</sup> Drug sentences in Norway can be quite harsh, however. Since 1981, serious drug offenses have carried the same 21-year maximum penalty as first-degree murder.<sup>34</sup> As a result, people convicted of drug crimes make up about one-fourth of Norway's prison population. Sentences for violent offenses have also been increased for domestic violence in 1988 and 2006, and for serious and sexual violence in 2010. As of this writing, rape carries a minimum sentence of 3 years and homicide, a minimum sentence of 8 years.

#### C. Corrections

Norway has a total of 43 prisons in 61 locations.<sup>35</sup> These prisons are small by U.S. standards, ranging in capacity from 13 to 400 cells, with the average prison containing about 70 cells. In total, Norway's prisons thus have a capacity of nearly 3,900 cells. About one-third of Norway's prisoners are housed in open, minimum security prisons,

and the remainder in traditional, closed prisons. Norway introduced an electronic monitoring (EM) program in 2008 that enabled people sentenced to up to four months of incarceration to serve their entire prison term at home; those serving longer sentences could complete the final four months of their sentences at home. Notably, admission to the EM program is decided by the correctional services and not the court. EM in Norway thus represents a “true low-cost alternative to prison” rather than a complement to other punishments.<sup>36</sup>

The open prisons in Norway garner much popular attention as humane alternatives to U.S. incarceration, though residents in these institutions nevertheless experience pains from their carceral experiences. A recent qualitative investigation identifies several “pains of freedom” in these minimum-security facilities, including confusion, anxiety, ambiguity, relative deprivation, and great pressure to assume individual responsibility.<sup>37</sup> As for the traditional closed prisons in Norway, prison staff tend to rate their own quality of life somewhat higher when working in smaller facilities (those with fewer than 50 inmates). Similarly, prisoners housed in these small institutions report higher scores and more positive perceptions of their prison lives than prisoners housed in medium or large facilities.<sup>38</sup> The primary reason for these differences in scores for prisoners involves relationships with prison staff. Norway has about 3,600 full-time staff employed in prison service, all of whom are unarmed and about 40 percent of whom are female. Prison officers in Norway receive a two-year education at the Staff Academy, where they receive full pay while learning subjects such as human rights, ethics, criminology, law, and psychology.<sup>39</sup> Many rehabilitative services for prisoners are provided using an “import model” in which local and municipal service providers (rather than prison staff) deliver educational, library, religious, and medical services.<sup>40</sup>

Although Norway’s prisons have earned a reputation as relatively humane and effective by international standards, critical Norwegian scholars such as Thomas Mathiesen nevertheless identify shortcomings in the nation’s prison system.<sup>41</sup> For instance, while all Norwegian prisons have educational facilities, prisoners report that their education is often interrupted by prison procedures such as relocation and discipline. Many prisoners are held in pre-trial detention where their contact through visits and letters can be restricted by the court for four weeks, with this detention easily extended for up to four more weeks. Norwegians and immigrants can be detained in police isolation cells (with only a mattress and toilet) for up to 48 hours. In addition, Mathiesen highlights stubborn problems such as prisoner suicide, availability of mental and physical health care, and lack of conjugal relations during incarceration. Though some of these critiques may seem minor in comparison with American carceral experiences, they should be considered within the relative context of the Norwegian system rather than in direct comparison. Similarly, just as the pains of imprisonment in Norway may seem less severe

relative to the average American experience, the pains of imprisonment in Minnesota would likely seem less severe relative to the carceral experience in high-incarceration states like California, Florida, or Louisiana.

#### **IV. Courts, Sentencing, and Corrections in Minnesota**

We next turn to the Minnesota case, with an eye to the principles and institutions of Norwegian criminal justice. In the multi-jurisdictional U.S. justice system, states currently bear responsibility for almost 90 percent of the nation’s prisoners and even greater percentages of pretrial detainees, parolees, and probationers.<sup>42</sup> Among the states, Minnesota is distinguished by a unified court structure, a sentencing guideline commission, an unusually high ratio of community supervision to incarceration, low but rising incarceration rates, and persistently high racial disproportionality.<sup>43</sup> As we explain below, the combination of these structural features provides both an opportunity to implement broad Norwegian-style reforms and a compelling rationale to do so.

##### **A. Courts**

Minnesota features a unified court structure with three levels, the District Court, the Court of Appeals, and the Supreme Court.<sup>44</sup> District Courts serving the ten judicial districts in Minnesota have original jurisdiction over all civil and criminal cases.<sup>45</sup> These include violations of state statutes, local ordinances, and matters of local or state law. In a unified court structure, the judicial branch is funded by the state rather than localities.<sup>46</sup> This structure allows for the implementation of uniform policies and reforms while also providing administrative and budgetary accountability for consistency and stability statewide. Centralizing the judicial budgetary- and policy-making authority at the state level also reduces local incentives for adulterating the judicial process (e.g., by imposing heavy fines and fees to fund court operations). In addition, Minnesota hosts 57 problem-solving (or “treatment”) courts, including drug courts, drunk driving courts, mental health courts, and veterans courts.<sup>47</sup> Unlike standard courts, treatment courts incorporate a broad spectrum of services (e.g., chemical dependency, mental health, or other appropriate therapies) into the court process. These specialty courts often involve more frequent court appearances, greater contact with probation officers, and incentives for successful participation, including a reduced likelihood of incarceration.<sup>48</sup> These conditions can also make treatment courts quite onerous, especially for the most disadvantaged,<sup>49</sup> though evaluations of several Minnesota treatment courts consistently find comparatively low rates of recidivism and comparatively high rates of employment and educational attainment among participants.<sup>50</sup>

##### **B. Sentencing**

Whereas the average sentence in Norway is about eight months and the maximum is capped at 21 years by statute, the average felony-level prison sentence in Minnesota is

about 46 months, and first-degree murder carries a mandatory life sentence.<sup>51</sup> Absent a dramatic crime drop or a pronounced expansion of diversion and discretionary release, then, states like Minnesota cannot hope to reduce incarceration rates to Norwegian levels without significantly shortening sentences. In this regard, Minnesota's guideline system provides a potential mechanism for change. For *non-felony* offenses, judges generally have discretion up to the maximum limits specified by statute for a given offense level: 90 days in jail and/or a \$1,000 fine, and up to one year in jail and a \$3,000 fine.<sup>52</sup> In lieu of the maximum sentence, judges regularly hand down shorter jail sentences or electronic home monitoring, along with a specified period of probation that includes additional restrictions (such as those prohibiting alcohol use or other activities) and requirements (such as chemical dependency treatment or life skills programming).

Felony-level sentences, in contrast, are guided by the Minnesota Sentencing Guidelines. The state was the earliest U.S. state to adopt sentencing guidelines for felony-level criminal sentencing, establishing the Minnesota Sentencing Guidelines Commission (MSGC) in 1978 by statute.<sup>53</sup> The MSGC is an independent agency consisting of eleven members (nine criminal justice officials and three members of the public) appointed by the governor or the chief justice of the Minnesota Supreme Court. Recommended modifications to the guidelines by the MSGC take effect unless overridden by the Legislature.<sup>54</sup>

As in similar systems, the Minnesota guidelines are arranged as grids with vertical (current offense severity) and horizontal (criminal history score) axes.<sup>55</sup> The presumptive sentence, which includes presumptive disposition (probation or prison) and sentence duration (in months), is found at the intersection of the current offense severity and criminal history score. Presumptive prison sentences are presented as a durational range to provide judges with some discretion. These presumptive sentences are legally binding, but judges can depart from the guidelines if there are "identifiable, substantial, and compelling circumstances."<sup>56</sup>

Meaningful changes to sentencing can occur rapidly in such systems. For example, the current iteration of the guidelines has three offense grids: a Standard Grid, a Sex Offender Grid, and a Drug Offender Grid. The latter was created in 2016 when the legislature, in the face of opposition from prosecutors and law enforcement, resisted the MSGC's proposed revisions for drug sentencing.<sup>57</sup> Rather than allowing the Commission's revisions to take effect, the legislature created its own drug offense revisions, which became the Drug Offender Grid. This reduced presumptive prison sentence lengths for felony drug offenses by as much as a third, raised the weight thresholds for cocaine and methamphetamine, removed most mandatory minimums, reduced possession of trace amounts of cocaine or methamphetamine to a gross misdemeanor, and increased the use of stays of adjudication (such that cases would be dismissed if the defendant successfully completes

probation).<sup>58</sup> For cases sentenced in the first year, these reforms reduced the prison-bed demand by 26 percent.<sup>59</sup>

The MSGC's "modified just deserts" sentencing philosophy prioritizes public safety, proportionality, and parsimony (that is, the least restrictive necessary to achieve the sentence's purpose). The Commission also considers state and local correctional resources when revising the guidelines.<sup>60</sup> To address the grave racial disparities noted above, the MSGC has explicitly considered the predicted racial impact of proposed guidelines revisions since 2006. Although stark disparities remain, the MSGC is responsible in part for Minnesota's low imprisonment rate, which has placed it among the four lowest-incarceration states in the United States since 1980.<sup>61</sup>

### C. Corrections

Minnesota's institutions are generally larger and less open than those in Norway. The Minnesota Department of Corrections, which operates Minnesota's prison system, maintains a four-level custody system with ten correctional facilities that house over 10,000 adult prisoners. As of year-end 2017, 468 had a life sentence with the possibility of parole and 130 had life sentences without the possibility of parole.<sup>62</sup> In a study by Amy Lerman and Joshua Page that compared staff in two U.S. states, Minnesota prison officers held significantly less punitive attitudes than their counterparts in California.<sup>63</sup> Among the Minnesota officers, Sarah Shannon and Page found that these attitudes were shaped by stress, support, and prison resources. More specifically, higher levels of work stress and a perceived lack of prison resources were associated with more punitive (and less rehabilitative) attitudes toward prisoners, with the converse true when officers perceived greater support and more prison resources.

Reducing the state's correctional population will require changes in community supervision as well as incarceration. Those on supervised release (formerly known as "parole") in Minnesota can expect regular visits with a community corrections agent, drug and alcohol testing, and in some cases electronic home monitoring, GPS monitoring, and internet restrictions. Relative to other states, Minnesota relies heavily on probation and community supervision at the felony and non-felony levels, and has consistently ranked in the top eight states in probation rate since 2000.<sup>64</sup> In comparison to other U.S. states, Minnesota thus ranks exceptionally low in incarceration, but unusually high in probation. Unlike many neighboring states, there is no maximum length of felony probation in Minnesota, apart from the statutory limit.<sup>65</sup> The average probation term is thus approximately 5.5 years in Minnesota, significantly longer than that of many other states, and probation sentences frequently span decades (more than 15 percent of felony probation sentences from 2004 to 2014 were for 10 or more years).<sup>66</sup>

### V. Traveling Toward Norway

We have thus far compared Norway and Minnesota along several dimensions, both within and outside of criminal

justice institutions, and identified structural features of these institutions that are more or less amenable to change. Norway and Minnesota are similar in population, civic participation, education, and life expectancy. As for differences, Norway has a significantly lower rate of serious crimes like homicide and a dramatically lower rate of incarceration. Although the degree of racial diversity in Minnesota's communities and prisons differs greatly from the Norwegian case, there are similarities in their correctional systems. Both Minnesota and Norway represent relatively prosperous societies facing glaring problems regarding the disproportionate punishment of racial minorities and immigrant populations, respectively.

Moving beyond thought experiments, however, requires a greater degree of specificity. What action steps would help bring Norwegian approaches to Minnesota or another American state? One milestone on the road to Norway would involve building a broad-based commitment to a normality principle or locally derived equivalent: a basic collective vision that emphasizes the rights and humanity of the punished, curbs excesses in the system, and pushes for social integration rather than isolation. The seeds for such a shift in vision have already been planted in the form of the MSGC's considered use of resources and its principle of parsimony—that sentences and non-custodial conditions should be no more restrictive than necessary to achieve the purposes of the sentence.<sup>67</sup> A broad-based reform would likely involve administrative policy changes in institutions like the Department of Corrections, social movement activism among local organizations such as the Minnesota Second Chance Coalition and the new Minnesota Justice Research Center, and leadership by key elected officials, particularly county attorneys.

Signature legislation advancing such a vision might, for example, involve voting rights restoration for probationers, parolees, and prisoners, and other steps toward social integration and inclusion. More generally, this approach would entail paring back or sunseting collateral sanctions that do not serve compelling public safety interests, as well as continually monitoring and evaluating the effects of any remaining collateral sanctions. Similarly, Minnesota's unified court system already plays an important part in curbing the reliance of local courts on excessive monetary sanctions.<sup>68</sup> This structure can further reduce or eliminate potentially criminogenic fines and fees, while helping to ensure implementation and fidelity to other reforms.

The MSGC, in partnership with the Legislature, is also well-positioned to implement Norwegian-style reforms. This would build on recent incremental reductions in sentence length, such as the new Drug Offender Grid, but move the state in a more systematic and sustained direction toward a Minnesotan normality principle. The enabling statute for the MSGC already explicitly grants the Commission broad authority to establish guidelines for non-prison sentences, including but not limited to "payment of fines, day fines, restitution, community work orders, work

release programs in local facilities, community based residential and nonresidential programs, incarceration in a local correctional facility, and probation and the conditions thereof."<sup>69</sup> Instituting guidelines (and thus limits) for probation length and jail terms would dramatically reduce the state's overall correctional populations, if not its prison population. Further, the MSGC could proactively establish general guidelines for probation conditions that at present can be quite onerous and counterproductive. Finally, following Norway's model, community service could be used as a sanction in its own right as opposed to an addition to a probation sentence, as it is generally used in Minnesota.

In the short term, reductions in prison sentences and prison populations will likely be tied to incremental reductions on the grid. In the longer term, however, more ambitious Norwegian-style reforms, such as elimination of sentences of life without parole (and, particularly, life without possibility of parole) are certainly conceivable in a state such as Minnesota. Within institutions, efforts to better align life "inside" with life "outside" will also likely entail incremental changes as a near-term goal, rather than construction of smaller, geographically dispersed Norwegian-style facilities. Emulating Norway, some basic steps that Minnesota could feasibly take toward this end would include providing more intensive training for prison staff—requiring instruction in psychology, law, criminology, human rights, and ethics. Additionally, following Norway's "import model," Minnesota corrections could draw more of their educational, religious, library, and medical services from local and municipal community providers rather than correctional services.

At this point, in connecting short-term incremental goals with a broader, longer-term vision, the line between pragmatic reformer and unrealistic Pollyanna begins to blur. Norway is no correctional utopia, but it provides a tangible example and alternative vision for those dissatisfied with U.S. practices. Given the continuing bipartisan appetite for criminal justice reform, we believe that Minnesota or some other state will soon begin traveling more purposefully toward Norwegian-style justice. And if that should happen, the curmudgeons who maintain "It could never work here" will seem as unrealistic as the Pollyannas do today.

## Notes

- <sup>1</sup> For a related argument encouraging broader application of existing state-level reforms in the United States, see R.S. Frase, "Learning from European Punishment Practices—and from Similar American Practices, Now and In the Past," *Federal Sentencing Reporter* 27, no.1 (2014): 19–25, doi 10.1525/fsr.2014.27.1.19
- <sup>2</sup> R.E. Barkow, "Federalism and Criminal Law: What the Feds can Learn from the States," *Michigan Law Review* 109, no.4 (2011): 519–80.
- <sup>3</sup> The Sentencing Project, *Policy Brief: State Advances in Criminal Justice Reform* (2016).
- <sup>4</sup> See, e.g., S.S. Schaefer & C. Uggen, "Blended Sentencing Laws and the Punitive Turn in Juvenile Justice," *Law & Social Inquiry* 41, no.2 (2016): 435–63.

- <sup>5</sup> Norwegian Correctional Service. *About the Norwegian Correctional Service*, <http://www.kriminalomsorgen.no/information-in-english.265199.no.html>.
- <sup>6</sup> See, e.g.: D. Wheelock, "Collateral Consequences and Racial Inequality: Felon Status Restrictions as a System of Disadvantage," *Journal of Contemporary Criminal Justice* 21, no.1 (2005): 82–90; C. Uggen & R. Stewart, "Piling on: Collateral Consequences and Community Supervision," *Minnesota Law Review* 99, no.5 (2015): 1871–1912; J. Travis, "Invisible punishment: An instrument of social exclusion," in *Invisible punishment: The collateral consequences of mass imprisonment* (M. Mauer & M. Chesney-Lind, eds., pp. 15–36), New York: New Press, 2002.
- <sup>7</sup> See, e.g., D. Slater, "North Dakota's Norway Experiment," *Mother Jones*, July/August 2017, <https://www.motherjones.com/crime-justice/2017/07/north-dakota-norway-prisons-experiment/>.
- <sup>8</sup> K. Reiter, L. Sexton, & J. Sumner, "Theoretical and empirical limits of Scandinavian Exceptionalism: Isolation and normalization in Danish prisons," *Punishment & Society* 20, no.1 (2018): 92–112.
- <sup>9</sup> U.S. Census Bureau American Community Survey Office, *Census American FactFinder. ACS Demographic and Housing Estimates, 2012–2016*, <http://factfinder2.census.gov>.
- <sup>10</sup> K.L. Mitchell, "State Sentencing Guidelines: A Garden Full of Variety," *Federal Probation* 81, no.2 (2017): 28–36.
- <sup>11</sup> The data for Table 1 are taken from the following sources:  
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