

MSDF Task Force - Revocations Subcommittee  
Draft Report, November 12, 2019

Since its inception, the MSDF prison has served the primary purpose of incarcerating individuals under community corrections supervision. Accordingly, the future of MSDF is bound up with the future of corrections supervision. The Governor's office can make administrative changes that would restore justice, fairness, and efficacy to community corrections supervision in Wisconsin, thereby minimizing prison admissions to MSDF and rendering it unnecessary and ready for closure.

### Problems identified

- Supervision drives and perpetuates incarceration in Wisconsin<sup>1</sup>.
- Racial minorities, in particular Black individuals, are overrepresented in prisons, on supervision, and in revocations due to accumulated structural disadvantages and institutionalized racial discrimination in the legal system<sup>2</sup>.
- Wisconsin's supervision population is excessively large at 66,248, and 41% of these individuals are classified as having a low risk of reoffending<sup>3</sup>. The number of people under correctional supervision exceeds what is necessary for protecting public safety. These outcomes are driven by Wisconsin's harsh truth-and-sentencing laws.
- Lengths of supervision are overly-long, exceeding risk-of-re-offense periods and all the while encumbering individuals with unnecessary trip wires to revocation and stretching out already strained supervision resources<sup>4</sup>. In 2016, Wisconsin's average term lengths of parole and extended supervision exceeded three years, at almost double (1.7) the national averages<sup>5</sup>. Furthermore, under Wisconsin's existing laws an individual can be required

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<sup>1</sup> Jarred Williams, Vincent Schiraldi, and Kendra Bradner. *The Wisconsin Community Corrections Story* (New York, NY. January, 2019), 3.

<sup>2</sup> Williams, *The Wisconsin Community Corrections Story*, 1-2, 15, 17-19.

<sup>3</sup> Department of Corrections. *Division of Community Corrections: 2019 A Year in Review*. 4, 7.

<sup>4</sup> Williams, *The Wisconsin Community Corrections Story*, 7-8, 23.

<sup>5</sup> Williams, *The Wisconsin Community Corrections Story*, 1-2.

to serve more time on supervision than was originally sentenced by a judge. These outcomes are driven by truth-and-sentencing laws.

- Supervision rules are excessively numerous, burdensome, and invasive<sup>6</sup>. As such, they needlessly encumber the lives of individuals and hinder their chances of success<sup>7</sup>.
- Wisconsin has high failure rates on supervision, exceeding both national and regional averages<sup>8</sup>. Revocations substantially contribute to prison admission rates. In 2018, 70% of prison admissions were the result of revocations, and 40% were the result of revocations without a new conviction<sup>9</sup>. The Department of Corrections has voiced concern that such figures obscure the prevalence of public safety risks in revocations because some convictionless revocations do involve criminal behavior. To some degree this concern is valid. Nevertheless, some of convictionless revocations result from behavior that was not of a criminal nature nor a threat to public safety.
- Revocations often fail to address unmet needs for rehabilitation that contribute to failure on supervision. Such needs including mental health needs, substance abuse needs, and the needs for basic necessities such as housing and employment. The DOC reports that 56% of supervisees have criminogenic needs related to substance abuse, while 40% have needs related to employment<sup>10</sup>. A recent study by the Badger Institute found that of 189 sampled individuals who were revoked, 81% had pervasive substance abuse needs that contributed significantly to their failure on supervision<sup>11</sup>. Due in part to inadequacies in ATR programming and social services in Wisconsin, it is not uncommon for supervision officers to choose revocation as a response even when they would prefer rehabilitation programming were it available. All told, Wisconsin's laws and administrative practices keep some people trapped cycling between prison and supervision, while their underlying needs remain unmet and their chances of reestablishing their lives

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<sup>6</sup> Williams, *The Wisconsin Community Corrections Story*, 9-10, 20-22.

<sup>7</sup> Reentry Council, *Revocation Proceedings in Wisconsin: Proposed Administrative Changes*, 3-4, 9.

<sup>8</sup> Williams, *The Wisconsin Community Corrections Story*, 2.

<sup>9</sup> Izabela Zaluska. Wisconsin Watch, *Wisconsin's High Extended Supervision Rate Can Cause Longer Incarceration, Studies Show*. (Online).

<sup>10</sup> Department of Corrections. *Division of Community Corrections: 2019 A Year in Review*. 7.

<sup>11</sup> Klingele, Cecilia. *Understanding Revocation from Community Supervision*, 4.

outside of correctional control dwindle with each new violation and revocation.

- Supervision officers can be prone to attitudes of seeking accountability or punishment, which can sideline other objectives and run counter to supervisee success. Excessive workloads at DCC limit agent capacity to fully engage in supporting each supervisee, while also inclining them to respond less thoughtfully to individual case needs and to default under pressure to a modus operandi that is less caring and more “gotcha” oriented and unforgiving.
- Agent discretion, powerful and broad, is central to the operation of state supervision and as such contributes to Wisconsin’s excessive rates of revocation. Agent discretion at DCC is inconsistently utilized and sometimes highly arbitrary. In spite of this, the DCC does not adequately monitor or report on its use of discretion.
- Individuals on supervision are relegated to a second-class status in the legal system, being given weak due process protections. They face lower standards of proof in hearings, and can risk facing revocation even after having undergone criminal proceedings without conviction. At key junctures that affect outcomes of revocation and incarceration they are not provided legal counsel, and routine delays in the provision of case files hamper defense attorneys’ effectiveness in representing their clients in revocation proceedings. Eligibility requirements for preliminary revocation hearings are numerous, and individuals on supervision are required by their rules of supervision to provide written statements in response to allegations, without legal counsel, which often render them ineligible. Most Wisconsin residents facing revocation are denied a preliminary hearing<sup>12</sup>.
- Individuals are rarely if ever released back to supervision pending the outcome of the final hearing, irrespective of their risk to public safety or of absconding. These periods of detention, profoundly disruptive to individuals’ lives, span from days to months and are prolonged by procedural delays.
- Short-term sanctions, used in lieu of revocations, are imposed for needlessly long confinement periods. Excessive terms afford little benefit while further disrupting individuals’ lives. In 2018, the Wisconsin DCC imposed 3,675

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<sup>12</sup> Reentry Council, *Revocation Proceedings in Wisconsin: Proposed Administrative Changes*, 7.

sanctions with an average a length of over 50 days<sup>13</sup>. Some research throws into question the correctional benefits of such lengthy sanction periods.

- Supervision practices in Wisconsin are kept in a state of obfuscation to the public and to the DOC due to that agency's failure to collect and report critical missing information.

## Alternative Practices

- Shortening probation terms. At least nineteen states have shortened probation terms: AK, AL, DE, FL, GA, HI, IA, KY, LA, MO, MS, MT, NH, NJ, NV, OH, TX, UT, VT<sup>14</sup>. The American Law Institute's Model Penal Code: Sentencing (MPCS) recommends, 'For a felony conviction, the term of probation shall not exceed three years. For a misdemeanor conviction, the term shall not exceed one year. Consecutive sentences of probation may not be imposed<sup>15</sup>.'
- Granting early discharge from supervision. At least 18 states utilize earned compliance credits, granting 30 days off supervision for every 30 days of compliance: AK, AR, AZ, DE, GA, ID, KS, KY, LA, MD, MO, MS, MT, NH, OR, SC, SD, UT<sup>16</sup>. Missouri's adoption earned compliance credits in 2012 yielded significant results: 36,000 people under community corrections supervision were able to reduce their terms by 14 months, there was an overall 20% reduction in the supervision population, and re-conviction rates for those released early were the same as or lower than those discharged from supervision before the policy went into effect<sup>17</sup>. California passed a bill in 2017 that created further incentives for performance on supervision, granting 'reintegration credits' off of supervision sentences for obtaining high school and college degrees, completing counseling programs, obtaining technical training, and performing volunteer work<sup>18</sup>. The Harvard Executive Sessions, the Model Penal Code and the Statement on the Future of Community Corrections all recommend allowing people to earn early

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<sup>13</sup> Wisconsin Department of Corrections, *DCC Short-Term Sanctions Analysis*, 3, 7.

<sup>14</sup> Williams, *The Wisconsin Community Corrections Story*, 23.

<sup>15</sup> Williams, *The Wisconsin Community Corrections Story*, 23-24.

<sup>16</sup> Williams, *The Wisconsin Community Corrections Story*, 25.

<sup>17</sup> Williams, *The Wisconsin Community Corrections Story*, 25.

<sup>18</sup> Williams, *The Wisconsin Community Corrections Story*, 25.

discharge from community supervision, and numerous politically and geographically diverse states have experimented successfully with such earned credits for both community corrections supervision and terms of incarceration<sup>19</sup>.

## Recommendations

- Repeal Wisconsin’s truth-in-sentencing laws, which constitute the greatest single contributor to Wisconsin’s oversize prison and supervision populations and to the prevalence of revocations.
- Reduce probation, parole, and extended supervision terms to a cap between 1 and 3 years, except in rare circumstances<sup>20</sup>.
- Provide for “merit time” or “earned compliance credit,” and allow for early termination for sustained compliance, for probation, parole, and incarceration.
- Reduce the number of standard rules of supervision and revise rules to be brought into closer conformity with the US Sentencing Commission’s federal conditions of supervised release. Limit the applicability of some rules and the rule-making discretion given to supervising agents.
- Eliminate or strictly limit incarceration as a response to technical violations.
- Strengthen due process protections for people under community corrections supervision. Ensure legal counsel is made available immediately following notice of revocation and at each decision juncture of consequence to the supervisee. Make optional the provision of a written statement in response to allegations of a violation. Adopt a beyond reasonable doubt standard of proof during revocation proceedings and as a matter of practice do not permit hearsay. Lower the eligibility requirements for preliminary hearings. Allow supervisees who are not charged with a new offense and do not have a history of absconding to request preliminary hearings and release to the

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<sup>19</sup> Williams, *The Wisconsin Community Corrections Story*, 26.

<sup>20</sup> Williams, *The Wisconsin Community Corrections Story*, 23.

community pending a final hearing. Reduce lengthy delays in the provision of case documents to defense attorneys.

- Allow for more individuals to remain unconfined during investigations and revocation proceedings. Adopt a standard of granting temporary release to at least 40% of individuals not charged with a new offense and who do not have a history of absconding.
- Track and disseminate key metrics pertaining to supervision investigations, responses to violations, holds, ATRs, sanctions, and revocation proceedings. Highlight in these metrics relevant demographics of supervisees, including their race, age, sex, mental health challenge status, and substance abuse and addiction status. Monitor and reduce lead times in the notification and provision of case documents to defense attorneys. Continue working with community partners to determine data needs.
- Address the problem of inadequate racial diversity among DCC employees. Ensure that any disadvantages facing non-white individuals are identified and eliminated. Take measures to ensure that supervision officers generally reflect the racial demographics of the individuals they are supervising, and hail from their communities. Target hiring and outreach accordingly. Matching demographics as such would significantly improve agent effectiveness, augmenting trust and understanding in relationships with supervisees.
- Address cultural problems at the DOC. Openly and vehemently discourage an “accountability as the overriding priority” attitude amongst DCC staff, and intervene with disciplinary action wherever abuse of discretion occurs. Initiate an independent audit on culture at the DOC and publicize the results. Adopt an internal whistleblower protection policy. Foster a culture of eagerness to find and address institutional problems. Historically, the staff of the DOC at large has exhibited several problematic cultural tendencies, internally and externally, including reluctance to surface problems, resisting rather than promoting transparency, unquestioning deference to hierarchy and unwillingness to challenge the status quo, and relating to outsiders with distance and distrust. Resolve these larger cultural issues at the DOC.
- Build upon a positive trend of deepening the involvement of communities and directly impacted individuals as partners in the DOC’s transformation. Move further in the direction of augmented transparency and the non-

adversarial provision of easy access to requested information. Provide direct lines of communication with leadership to community representatives for information requests, and do not use the open records request mechanism as a way to delay, deny, obscure, or otherwise encumber the provision of public information.

- Publicize the findings of DCC's audit initiatives as they become available, including the DCC's internal Work Plan audit and the Council of State Government audit. Staff directly impacted individuals in leadership positions on Work Plan audit subcommittee workgroups. Beyond merely involving them in specialized focus groups, grant them a seat at the table as equals in efforts to steer organizational reform.
- Reduce supervision officer caseloads through the implementation of these recommendations.
- Realign cost savings to community programs.

### Projected Impact

By transforming community corrections supervision as recommended, Wisconsin will minimize unnecessary supervision and excessive revocations, freeing up individuals to succeed in their lives while freeing up enormous state resources for reinvestment in communities, thereby improving public safety, racial equity, and the health and wellbeing of Wisconsin families and communities.

### Sources

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#### Suggestions for Further Information on Supervision and Revocations

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