WISDOM Comments and Recommendations regarding Legislative Study Council on Recidivism and Removing Impediments to EX-Offender Employment

WISDOM is the leading and oldest state-wide organization focused on criminal justice reform, with ten affiliates across Wisconsin. It began its work in 1986 when it convinced the Legislature to add Treatment Alternatives and Diversions (TAD) funding to the State budget so counties could divert people from prison. Through its 11X15 and current ROC campaigns, it has continued work on TAD funding, Ban-the-Box, stopping the abuse of solitary confinement, funding for transitional employment, the denial of Old Law Parole, and other criminal justice issues.

WISDOM has followed the progress of this Legislative Council Study (LSC) with great interest and has asked to make a presentation to the Council. We also take this written opportunity to share our thoughts. Our broadest concern is that the Council is still looking at only small incremental changes to the State's criminal justice system while most other states are evaluating and implementing very broad reforms to the "hard on crime" distorted thinking that drove public policy in the 80's and 90's. As Appendix A to this paper explains, Wisconsin is now 50th among all states in the scopes of its reforms and 47th in the rate of decrease in crime, which demonstrates that Wisconsin's approach is not working, but that the national reforms are both decreasing crime and saving large amounts of state funds.

WISDOM's position on issues under current study and proposals for more effective action:

I. Rep. Goyke's proposed bills:
WISDOM supports each of the proposed bills submitted by Rep. Goyke, but notes that they make only small incremental changes. For example, earned good time is very important in incentivizing those in prison to take programs and conform to all rules, but will still amount to only a minor reduction if sentences are grossly too long to start with, or if hundreds are on waiting lists to take such programs.

Here are the most important of Rep. Goyke's bill drafts, in order of impact:

A. Short Term Sanctions II (also referred to as Swift and Certain Sanction II), LRB-3839/AB 1002. In 2012, DOC admitted 3995 individuals back to prison solely as a result of a rule violation rather than conviction for a new crime, which amounts to 55% of those admitted. In April 2014, the Legislature passed 2013 Wisconsin Act 196, recommending that a rule violation be met with quick, fair and **proportionate** graduated sanctions, with a maximum of 90 days incarceration in certain cases. DOC was also directed by statute to give special weight to the impact of revocation on an individual's family and employment. Wis. Stat., sec. 301.03(3) required DOC to draft rules and train their employees on alternative sanctions to revocation back to prison. To date, DOC has promulgated no such rules and done no such formal training. Instead, in recent

meetings, a DOC Regional Chief referred to a 6 to 9 month prison revocation as a short term sanction.

Minimum Action: The Committee should vote to recommend adoption of LRB-3839/AB 1002, and also take immediate action to see that DOC formally implements the legislation passed over two years ago. DOC's own rules currently call for a minimum of 6 months incarceration for a rule violation. WISDOM would be happy to provide information and a draft model of graduated sanctions for rule violation.

More Effective Action: Stop revoking individuals to prison for crimeless revocation. Use a series of graduated sanctions not involving prison incarceration, (except when all graduated sanctions have been exhausted) when a new crime has not been charged, and the rule violation does not involve threats of violence, intimidation of past victims or witnesses, or a similar violation. To avoid DOC's inherent self-interest to keep their prisons full, use a local community panel rather than DOC to evaluate the need for revocation to prison for crimeless revocations based on community safety and the specific circumstances of the alleged rule violations: where no crime has been charged, DOC would be required to demonstrate to the community panel that the individual must be revoked back to prison.

B. Earned Good Time I and II, LRB-4016 (AB 998) and LRB-4015 (AB 999) : WISDOM supports each of these bills in part because they constitute such low hanging fruit, and because Wisconsin is so out of the norm nationally on this issue. Wisconsin is one of only 4 states that have no opportunity for earned release. See Attachment 6 of August 25, 2016 memo from Michael Queensland. Many have spoken about the need for incentives for good behavior while in prison, including members of law enforcement, and earned release is the greatest incentive.

Minimum Action: Approve LRB-4016 and LRB-4015.

More Effective Action: Take legislative action to reduce excessive sentences under Truth In Sentencing. In past public presentations, Tony Streveler, former DOC Director of Research and Policy, noted that periods of incarceration for felonies increased significantly in 1999 with Truth in Sentencing with little legislative discussion of the need for increased incarceration, and that periods of community supervisions under TIS increased by roughly 35%. Research has shown that longer time served in prison and longer time on community supervision actually **increases** likelihood of recidivism, meaning another citizen becomes the victim of a new crime, not to mention the extreme costs of high prison incarceration.

C. Earned Community Credit: **WISDOM strongly supports LRB -3889 (AB 992)** This is also low hanging fruit. Part of the statutory mission of DOC is to rehabilitate individuals, not hold them to standards of perfection for very lengthy periods of time. If after incarceration for 5 years, an individual does well under community supervision for 3

years of his 3.75 years of extended supervision but then is revoked for a rule violation (not a new crime), why should he not get credit for the 3 good years in the community? What could be a more powerful incentive to do well? Losing credit for those 3 years in the community, especially where employment and families have been re-established, is experienced as an excessive punishment for a violation of a rule of supervision, which are often minor or inadvertent.

Minimum Action: Approve LRB-3839 except amend by deleting its blanket non-application to people who have been convicted of sex offenses. We need to stop treating people as permanent pariahs. Sexual assault, especially as a youth or young man, is a very common crime with a low rate of recidivism once punished. If individuals have served their sentences, and done well in the community, why permanently punish them so they have no hope? Many people who have been convicted of sex crimes have not committed a sexual assault for decades and regret their actions of long ago, yet are never given a chance to become valued members of the community. This is especially unfair given what we now know about how common sexual assaults are, for example, on university campuses, and not usually the acts of dangerous deviants who cannot be rehabilitated.

D. Expungment Reform I and II submitted by Rep. Goyke and Rep. Milroy's bill AB 1005)

Minimum Action: WISDOM supports each of these bills as incremental improvements to the current expungement law.

More Effective Action: Expungement should be a presumption for all individuals (not just allowed by a court upon sentencing, or requiring individuals to one by one petition a court) who have completed their period of incarceration and their period of extended supervision or parole as long as they don't commit another crime. How else can they be expected to re-integrate back into the community? (See CCAP statement on pages 6 and 7)

E. Delayed Access to Programming or Denial of Programming

Attachment 19—2015 Released Offenders with at Least One Unmet Primary Program Need,- from DOC Reentry Director Dr. Silvia Jackson to Michael Queensland, Staff Attorney, dated August 25, 2016, demonstrates the gross inadequacy of DOC's Programming model. It states that 32% of those being released from prison have not been provided with the programming DOC has determined they need, including Anger Management, AODA, Cognitive Intervention, and Domestic Violence programming. This is a disgrace. This same delayed access or denial of programming plays a significant role in the denial of parole for Old Law inmates discussed at number 3, below.

Sentences should be shorter with more programming provided both sooner in prison and in the community upon release. Many formerly incarcerated people have been

through such programming, understand its impact when done well, and would be credible and effective paid facilitators of such groups, helping provide them with needed income.

F. **WISDOM supports each of the proposals made in the submission by State Public Defender Kelly Thompson, Attachment 3 to Staff Attorney Queensland's memo of August 25, 2016.** We especially support the attention she draws to the impact of CCAP as a permanent impediment to employment (see proposal __ below), the life-long collateral consequence of a conviction history, and the need to treat crimeless revocations differently [[such as AB 1002]]

G. WISDOM supports WLC: 0427/3 of the 2009 Special Committee on Justice Reinvestment Initiative. This directs corrections spending to mental health services for mentally ill persons who are on parole or extended supervision, to transitional employment programs for persons on parole or extended supervision, and for community services to reduce recidivism.

Additional WISDOM proposals for consideration

1. To have a significant impact, the LSC must carefully review the impact of Crimeless Revocations (known as "Revocations Only" by DOC)

Stopping crimeless revocations is perhaps the lowest hanging fruit. The DOC's definition of the term "recidivism" does not include crimeless revocations, yet in Wisconsin crimeless revocations account for 35%-50% of current prison admissions each year. Do not let this huge and costly impediment to successful community re-integration continue.

Individuals released from prison generally have 25-55 rules of supervision they must follow. While a couple make significant sense, many rules prohibit activities that most of us do every day, and establish an impossibly high set of expectations, such as not ever missing a meeting curfew, not borrowing money without an agent's approval, never drinking alcohol, etc. Violation of such rules can and do regularly lead to revocation back to prison. Having 35%-50% of new prison admissions each year arise from crimeless revocations is a tremendous waste of taxpayers' resources, and a devastating burden on individuals and their families.

Yet DOC has ignored the Legislature's directive in 2013 Act 196, enacted April 7, 2014, the Swift and Certain Short Term Sanctions Act, to establish a clear series of graduated short term sanctions for rule violations, with special care taken by DOC to minimize disruption of employment and families. Research shows there are many steps (such as counseling, home arrest, denial of privileges, or a weekend in jail) short of revocation to prison (with an annual cost of $35,000 to $50,000 per person) which will remind individuals of the need to make their non-criminal behavior conform to their rules.

Revisions to Chapter 304.06(3g) .03(3) Wisconsin Wis. Stats. also included the discretion to impose a **maximum o**f 90 days re-incarceration to prison, which is still too long and in most cases will destroy employment, housing and families. **The DOC's rules still require a minimum of 6 months in prison for a rule violation** (the same minimum for weapons possession or drug delivery)**. (**See DOC's Electronic Case Reference Manual, .17 Penalty Schedule, whereby rules violations **must receive a minimum of 6 month** incarceration.**)** In very recent meetings, DOC representatives stated that they consider 6 to 9 months prison incarceration a short-term sanction for crimeless revocation!

2. Those convicted under Wisconsin's Old Law should have a right to parole honest parole consideration according to their sentencing court.

More than 2,800 people currently held in Wisconsin prisons are parole-eligible, These are "Old Law Inmates" who were convicted of crimes committed before Truth in Sentencing was enacted in 1999. The Old Law inmates were given longer sentences by Wisconsin judges with the understanding that they would be seriously evaluated for parole after 25% of their overall sentence had been served if they completed their programs and were deemed rehabilitated; thus, the sentencing court gave them a set date by which they were deemed "eligible for parole" as well as a later "mandatory release date." It is very important that Committee members understand that a Parole Eligibility Date is as important as "Mandatory Release Date."

400 of these 2800 inmates have minimum security classifications and are housed in low-risk facilities. Many of these inmates work outside the institution, in the community, and operate state vehicles in order to get back-and-forth to work. Unfortunately, the number of individuals eligible for parole who are granted parole has dropped precipitously in the last ten years, from 1,146 in 2005 to 132 in 2012.

Since Truth in Sentencing was passed, these inmates are instead being denied their rights under the Old Law and treated as if they were sentenced under Truth in Sentencing. Some have been denied parole 8, 10, 12 or even 14 times, and despite praise for their good behavior, are denied parole with the excuse "insufficient time served" even though their sentencing court had deemed them eligible for parole already. Others are praised for their good behavior but denied parole because they haven't met some programming requirement--which is often not available in their institution, or has a waiting list of hundreds,--or have been denied transfer to a facility where they can obtain the needed programming. WISDOM can provide testimony substantiating this.

DOC's argument that some of these individuals committed violent crimes in the past and therefore shouldn't be paroled, is refuted by evidence; the sentencing court knew their crime when they were sentenced. DOC's own charts demonstrate that those who committed violent crimes are the LEAST likely to commit another crime after release. In

fact, a recent Stanford University study showed that in a cohort of 860 convicted murderers released since 1995 in California, only **five** individuals were returned to incarceration (and none for murder), for the lowest recidivism rate of less than 1%. But in Wisconsin denial of parole has become a method by which to keep prison cells filled and the census high.

Action Needed: Parole evaluators should be prohibited from keeping any Old Law inmate in prison 1) with the subjective excuse that there has been "insufficient time served" when the sentencing court has recommended otherwise, or 2) if they are on a waiting list for DOC required programming. If DOC fails or refuses to provide the necessary programming to someone before that person's initial parole eligibility date, then it is unjust, unfair and a potential constitutional violation to deny them parole because of DOC's lack of programming. The Legislature should order an independent study or audit of this situation.

3. Pass Legislation Providing for a State-wide Ban the Box for Private and Public Employers

Last Session, the Legislature passed Ban the Box/Fair Chance legislation for most State employment. Several Cities and Counties in Wisconsin have passed Ban the Box Legislation for their employment and sometimes for their contractors.
It is time for Wisconsin to join the nine States that have passed Ban the Box legislation for both public and private employers in their state including Minnesota and Illinois; dozens of other states have done so for state employers. Over 100 Cities and Counties have passed Ban the Box/Fair Chance Legislation. Several studies show that these policies have helped to make communities safer. This should not be surprising since a steady job is the most important factor in whether an individual commits another crime; an individual cannot live on no income of any kind.

Immediately effective Action: By legislation, ban all employers doing business in Wisconsin from asking about conviction history on their initial applications. Instead, require employers to abide by the Fair Employment Law, and allow only the Human Resources Department/Manager to review conviction history after a conditional offer of employment is made, and allow the applicant to respond. WISDOM will be happy to provide legislative models that achieve this.

4. CCAP, the elephant in the room

Sec. 111.31, Wisconsin's Fair Employment Law, provides that employers cannot discriminate on the basis of conviction record unless the circumstances of the conviction are "substantially related" to the circumstances of the particular job. Yet as evidenced by formerly incarcerated individuals who have applied for hundreds of jobs that have no relationship to their conviction history, with no call back of any kind, the Fair Employment Law is routinely violated, ironically with the State's assistance.

The CCAP system gets over 8 million hits per year. The vast majority of Wisconsin employers routinely consult CCAP and then refuse any further consideration to someone with a conviction history. Conviction questions on the initial employment application combined with misuse of CCAP is the single greatest barrier to employment.

Immediately Effective Action: By law, employers should be prohibited from consulting CCAP or any other public or private service reporting conviction history until the employer has made a conditional offer of employment to an applicant; if the employer plans to withdraw that conditional offer of employment based on conviction history, the employer must inform the applicant of the nature of the conviction history that led to the withdrawal.

Thank you for the opportunity to comment on the very important work you are doing. It is our hope that the Legislative Study Council can begin some very important criminal justice reform by adopting several large reforms, and that the Legislature will then appoint a staffed commission to continue the work. Wisconsin is far behind the curve in creating a safer community and saving millions in taxpayer dollars. WISDOM stands ready to assist you, and requests an opportunity to speak at your hearing.