

1999 DRAFTING REQUEST

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By/Representing: **JEO**

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Alt. Drafters: **mdsida**

Subject: **Correctional System - misc
Criminal Law - miscellaneous**

Extra Copies:

Pre Topic:

No specific pre topic given

Topic:

Criminal penalties study committee recommendations

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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**CRIMINAL
PENALTIES
STUDY
COMMITTEE**

**January 21-22, 1999 Meeting
The Concourse Hotel
Madison, Wisconsin**

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1	Criminal Penalties Study Committee's charges
2	Agenda and Open Meetings Notice
3	Compendium of relevant statistics, including: -- Key figures for use by CPSC members -- Answers to some significant questions, with exhibits A-D -- First prison admissions, by region, and per 10,000 people per region for drug traffickers, and drug offense-non drug traffickers. -- Adult arrests, by region, and per 10,000 people per region, for burglary, robbery, and motor vehicle theft -- Felonies disposed of, prison, probation, and % of probation of total felonies disposed of per county -- Probation/parole statistics, including total numbers of offenders; statewide probation distribution, probation offense types by region, statewide parole distribution, parole offense types by region, % state population vs. % on supervision, and 1997 revocation information
4	Key questions for each subcommittee to consider and for recommendations on to the committee
5	Extended Supervision Revocation subcommittee working paper
6	Revocation flow chart (including approximate numbers and dates)
7	Memorandum on revocation process and procedure by Robert Pultz, DOC legal counsel
8	Revocation authority
9	Proposed revision of administrative regulation DOC 331.03 followed by administrative regulations Chapter DOC 331
10	Proposed revision of administrative regulation HA 2.07 followed by administrative regulations Chapter HA 2 and Appendix
11	Strict supervision model: pp. 13-19 of Intensive Sanctions Review Panel Final Report - February 9, 1998
12	Cost estimates for strict supervision model from DOC - Division of Community Corrections

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- 13 **DOA-Div. of Hrgs. and Appls. - written comments on revocation process and regional facilities for probation and parole detentions**
- 14 **Felony Class Structure - Current, New, & Proposed**
- 15 **Spreadsheet of 13 common offenses with: (a) current penalty; (b) truth-in-sentencing penalty; (c) number of criminal convictions under that statute over the last 8 years in Division of Adult Institutions; (d) minimum, median, and maximum sentences; (e) coefficient of variation of the median sentences; (f) correlation to mandatory release using “truth” penalties; (g) correlation to first release eligibility using “truth” penalties; (h) correlation to mandatory release using proposed felony class structure; and (i) correlation to first release eligibility using proposed felony class structure**
- 16 **Sentencing Guidance memorandum describing Conversion Table and Options A, B, C and D**
- 17 **Memorandum of proposed format for Wisconsin Sentencing Guidance Commission**
- 18 **Index to Committee’s background documents - on file at the Committee’s office, 819 N. 6th St., Rm. 834, Milw. WI 53203**

Committee's Charges

Section 454 of 1997 Wisconsin Act 283 created the Criminal Penalties Study Committee. The Committee shall study the classification of criminal offenses in the criminal code, the penalties for all felonies and Class A misdemeanors and issues relating to the implementation of the changes in sentencing made by this act. In addition the committee shall make recommendations concerning all of the following:

1. **Create** a uniform classification system for all felonies, including felonies outside criminal code.
2. **Classify** each felony and Class A misdemeanor such that crimes of similar severity are in the same classification.
3. **Consolidate** all felonies into a single criminal code.
4. **Create** a sentencing commission to promulgate advisory sentencing guidelines for judges to use when imposing sentence.
5. **Create** temporary advisory sentencing guidelines for use by judges during the period of time before the new sentencing commission promulgates advisory sentencing guidelines.
6. **Change** the Department of Corrections administrative rules to ensure that a person who violates extended supervision is returned to prison promptly for an appropriate period of time.

**AGENDA AND NOTICE OF MEETING
STATE OF WISCONSIN
CRIMINAL PENALTIES STUDY COMMITTEE**

Thursday, January 21, 1999

9:30 a.m.

Friday, January 22, 1999

8:00 a.m.

Senate Room
The Madison Concourse Hotel
1 West Dayton Street
Madison, Wisconsin 53703

1. Call to order - Chair Judge Thomas Barland
2. Consideration of minutes of January 8, 1999 meeting
3. Break out into subcommittees:
 - a. Sentencing Guidelines and Computer Modeling: remain in Senate room
 - b. Code Reclassification: conference room III (2nd floor)
 - c. Extended Supervision Revocation: conference room IV (2nd floor)
[Committee members are invited to join in the discussion of other subcommittees if their subcommittee's session finishes early.]
4. Committee reforms to consider and discuss relevant statistics
5. Committee discussion on, and possible decision of, various issues:
 - a. Extended Supervision Revocation
 1. Proposed revision of administrative regulation DOC 331.03
 2. Proposed revision of administrative regulation HA 2.05(7)
 3. Extended Supervision procedure:
 - a. Strict supervision model with less restrictive stages added to it
 - b. For offenders of certain classes of crimes, presumption of strict supervision during initial period of extended supervision
 - c. Cost of strict supervision model
 4. DOA Division of Hearings and Appeals, or DOC if offender waives hearing, to make revocation decision, or judge to do so in certain cases

- b. Code Reclassification
 - 1. New felony class structure
 - 2. Mandatory release period, or first release eligibility, as conversion mechanism for unclassified felonies
 - 3. Placement of ch. 961, Stats., Uniform Controlled Substance Act
 - 4. Placement of vehicle-related felonies in criminal code, or maintain in traffic code

- c. Sentencing Guidelines
 - 1. Nature of sentence guidance
 - 2. Nature of sentencing commission

- d. Computer Modeling
 - 1. Discuss and define parameters of task computer technician is undertaking

- 6. Public comments
- 7. Discussion and choice of requested deadline extension
- 8. Discussion and choice of future meeting dates
- 9. Adjournment on Friday, January 22, 1999

KEY FIGURES FOR USE BY CPSC MEMBERS

NUMBER IN PRISON, ON PAROLE, OR ON PROBATION AS OF 12/31/98:

Prison	17,967
Parole	9,645
Probation	<u>56,175</u>
Total	83,787

PROBATION/PAROLE:

Percentage of offenders on probation/parole by classification, as of September, 1998:

	% of Those on Probation/Parole
Intensive	4.5 %
Maximum	43.1%
Medium	43.9%
Minimum/Administrative	8.5%

This excludes new cases assigned during the month, out-of-state cases (Wisconsin cases in other states) and absconders.

VIOLATION BEDS

- A. Availability of beds for probation/parole violators generally
 1. Use of county jails
 - a. Approximately 12,000 jail beds throughout Wisconsin
 - b. On a daily average, DOC utilizes approximately 20% of these beds
 - Holds/Investigation/Revocation
 - Court Order - As a condition of probation
 - c. Enclosed is a copy of the county jails in Wisconsin and their respective bed space availability. Also enclosed is a copy of the counties planning to build additional jail space.
 - d. Milwaukee
 - 125 bed contract with sheriff
 - 300 bed contract at House of Correction effective April 1, 1999
 - 346 beds at the Racine Correctional Institution
 - 40 beds at the Racine Youthful Offender Facility
 - 38 beds at the Columbia Correctional Facility
 - 600 bed AODA/Sanction facility scheduled to open in spring, 2001

ADDITIONAL PRISON BEDS

APPROVED CAPITAL PROJECTS IN PROCESS			
Rev. Dec. 15, 1998			
Project	Estimated Completion	Cells	Operating Capacity
Supermax	August, 1999	500	500
Ellsworth (AODA)	February, 1999	30	30
Redgranite	January, 2001	512	750
600 Bed	January, 2001	600	200
New Lisbon	July, 2001	256	375
	TOTAL	1898	1855

Last updated Tuesday, January 19, 1999

Wisconsin County Jail Planning/Construction Summary

The following counties are in some phase of planning, design or construction. Some projects will be completed in phases. Additional beds and dates of completion are preliminary estimates.

County	Current Capacity	Present Action (Estimated Date of Completion)
Western		
Barron	52	Discussion stage
Chippewa	79	Planning addition (unknown)
Clark	32	Constructing new 145 bed facility (3/99)
Douglas	67	Discussion stage
Dunn	32	Constructing new 145 bed facility (2/99)
Eau Claire	176	Constructing 160 bed addition (4/99)
Jackson	60	Discussion stage
La Crosse	223	Planning addition for female inmates
Monroe	69	Discussion stage
Pepin	11	Design Development Stage
Pierce	29	Design Development Stage
Polk	55	Discussion stage
Trempealeau	34	Discussion stage
Vernon	27	Discussion stage
Northeastern		
Brown	253	Planning 500 bed facility (2001)
Calumet	39	Discussion stage
Door	40	Planning 200 bed facility (2001)
Green Lake	37	Discussion stage
Kewaunee	22	Planning 60 bed facility (2001)
Marinette	60	Planning 120 bed facility (2000)
Oconto	45	Discussion stage
Outagamie	507	Discussion stage
Sheboygan	121	Constructing 138 additional beds (Spring '99)
Sheboygan Juv.	12	Constructing up to 30 juvenile beds (1000)
Waupaca	79	Planning 260 bed addition (2001)
Waushara	44	Constructing 120 bed facility (2000)
Winnebago	268	Planning 300 bed facility (2001)

County	Current Capacity	Present Action (Estimated Date of Completion)
Southeastern		
Kenosha	189	Constructing Addition (1999)
Milwaukee HOC	1196	Constructing 1000 beds (600: 12/98, 400: Spring '99)
Ozaukee	158	Constructing 150 bed addition (9/99)
Racine	618	Discussion Stage
Walworth	238	Discussion Stage
Washington	100	Planning 192 bed addition [42 Juvenile] (2000)
Waukesha	526	Discussion Stage
Southern		
Crawford	40	Discussion stage
Dane	883	Planning 17 additional beds (1/2000)
Dane Juv.	18	Discussion stage
Dodge	96	Constructing 350 Beds (Fall 2000)
Grant	66	Discussion stage
Lafayette	22	Discussion stage, 50 bed addition
Richland	38	Discussion stage
Rock	477	Discussion Stage
Sauk	157	Discussion Stage
Northern		
Bayfield	28	Discussion stage
Florence	2	Discussion stage, 20-28 bed facility
Iron	14	Discussion stage
Langlade	31	Planning 110 bed facility (unknown)
Lincoln	38	Planning 100-130 bed facility or 40-50 bed addition
Marathon	143	Constructing 115 bed addition (8/99)
Oneida	45	Constructing 200 bed facility (7/99)
Price	22	Discussion stage
Sawyer	30	Discussion Stage, 78 bed facility
Vilas	25	Constructing 140 bed facility (7/99)

Department of Corrections
Office of Detention Facilities

3rd Quarter, 1998

Answers to Some Significant Questions

Question No. 1: How many new prison beds are needed per month now?

See Exhibit A attached. This presents the monthly admissions vs. the monthly paroles for 1997-98. The last column indicates the net gain (loss) for the respective months. The figures in this last column is the net number of beds. You can see that for 1997, it was a monthly average gain of 256, and for 1998 through July, it was a monthly average gain of 372.

Question No. 2: Is the rate increasing? What is the history of rate increase?

1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998 (est.)	1999 (est.)
Pop. 6174	6609	7253	7687	8342	8951	10192	11, 227	13, 045	15, 151	18, 400	23, 300
Capa city 4683	4683	4939	5688	6010	6010	6880	7464	8889	9669	10,237	10,737
% > Cap. 32%	41%	47%	35%	39%	49%	48%	50%	47%	57%	56%	47%

This table shows the increases in both year-end population and prison capacity over the last ten years with predictions for 1988 and 1989. While the actual numbers are increasing, the overall percentage over capacity remains relatively stable, *assuming* new beds come on line.

See also Exhibit B attached, which graphs discretionary parole versus prison population.

Question No. 3: What has been the effect of the last change in the Parole Board leadership as to inmate population?

See Exhibit C attached. This charts shows a large decrease in the number of parole grants after the new chairmanship, in early April 1998. The number in March was 381, and in April was 16. Note that the number increased again somewhat in June and July.

The **second page of Exhibit C** gives parole release figures from 1985- 1997.

Question No. 4: Assuming present trends continue, what will the bed need be December 31, 1999?

As seen on the chart on page 1 of this memorandum, the population estimates for year-end 1998 and 1999 are estimated at 18,400 and 23,300, respectively. Assuming the super-max prison comes on line in 1999, which may add an additional 500 beds to overall capacity, from 10,237 to 10,737, we will still be 56% and 47% over-capacity for 1998

and 1999. Thus, we would need another 10,000 beds over the next two years to operate at near full-capacity.

Question No. 5: What is the average cost per year to house and service an inmate? What is it projected to be as of December 31, 1999?

The annual fiscal report for the year ending June 30, 1997 shows an average cost of \$19,933 per year. The average cost has been around \$20,000 for several years.

Question No. 6: What are the estimates for prison construction costs for several models?

See **Exhibit D** attached, December 23, 1998 letter from Barbara Carlson to Judge El and.

Question No. 7: What will be the new bed capital cost by December 31, 1999?

The per capacity cost for the past 6 years has been:

1992	1993	1994	1995	1996	1997
\$ 2 1 2 9 6 . 7 6	\$20,579.28	\$20,217.36	\$ 1 9 8 8 7 . 6 0	\$19,531.68	\$19,933

As you can see, this cost had been declining for 5 of the past 6 years.

1997 Wis. Act 27 authorized \$49.8 million for a 600 bed probation/parole hold/AODA facility and \$74.8 million for an additional 1,000 beds. The supermax prison was authorized in the previous biennium and is currently under construction. How these numbers will affect overall per capita cost is undetermined.

Question No. 8: How many offenders have been admitted with life sentences since 1990?

A total of **368**. See **Exhibit E** attached.

Question No. 9: Each year since 1990, how many inmates were first admitted to prison for (a) assaultive offenses, (b) sexual assaultive offenses, (c) drug offenses, and (d) property and other offenses? What is the average sentence in months for those types of crimes for those years?

See **Exhibit F** attached.

Question No. 10: Given the same breakdowns as in Question No. 9, what is the average sentence served?

See **Exhibit G** attached.

Question No. 11: Given the same breakdowns as in Question No. 9, are the average sentences for these groups of crimes getting longer? If so, by how many months?

See Exhibit H attached.

EXHIBIT A

CY 1997-98 Admissions vs. Paroles

Month	Admissions (male)	Admissions (female)	Admissions (total)	Paroles (all)	Net Gain (Loss)
1997					
January	419	33	452	278	174
February	470	48	518	241	277
March	541	49	590	271	319
April	571	46	617	265	352
May	524	54	578	205	373
June	492	34	526	264	262
July	494	46	540	288	252
August	450	35	485	307	178
September	460	37	497	368	129
October	568	60	628	335	293
November	448	41	489	317	172
December	542	42	584	293	291
Totals	5979	525	6504	3432	3072
<i>Monthly Average</i>	<i>498.25</i>	<i>43.75</i>	<i>542</i>	<i>286</i>	<i>256</i>
1998					
January	491	48	539	442	97
February	533	59	592	352	240
March	585	58	643	381	262
April	577	58	635	16	619
May	486	56	542	29	513
June	553	70	623	202	421
July	616	86	702	248	454
August					
September					
October					
November					
December					
Totals	3841	435	4276	1670	2606
<i>Monthly Averages</i>	<i>549</i>	<i>62</i>	<i>611</i>	<i>239</i>	<i>372</i>

* Statistical data for parole grants does not differentiate by gender.

Discretionary Parole v. Prison Population

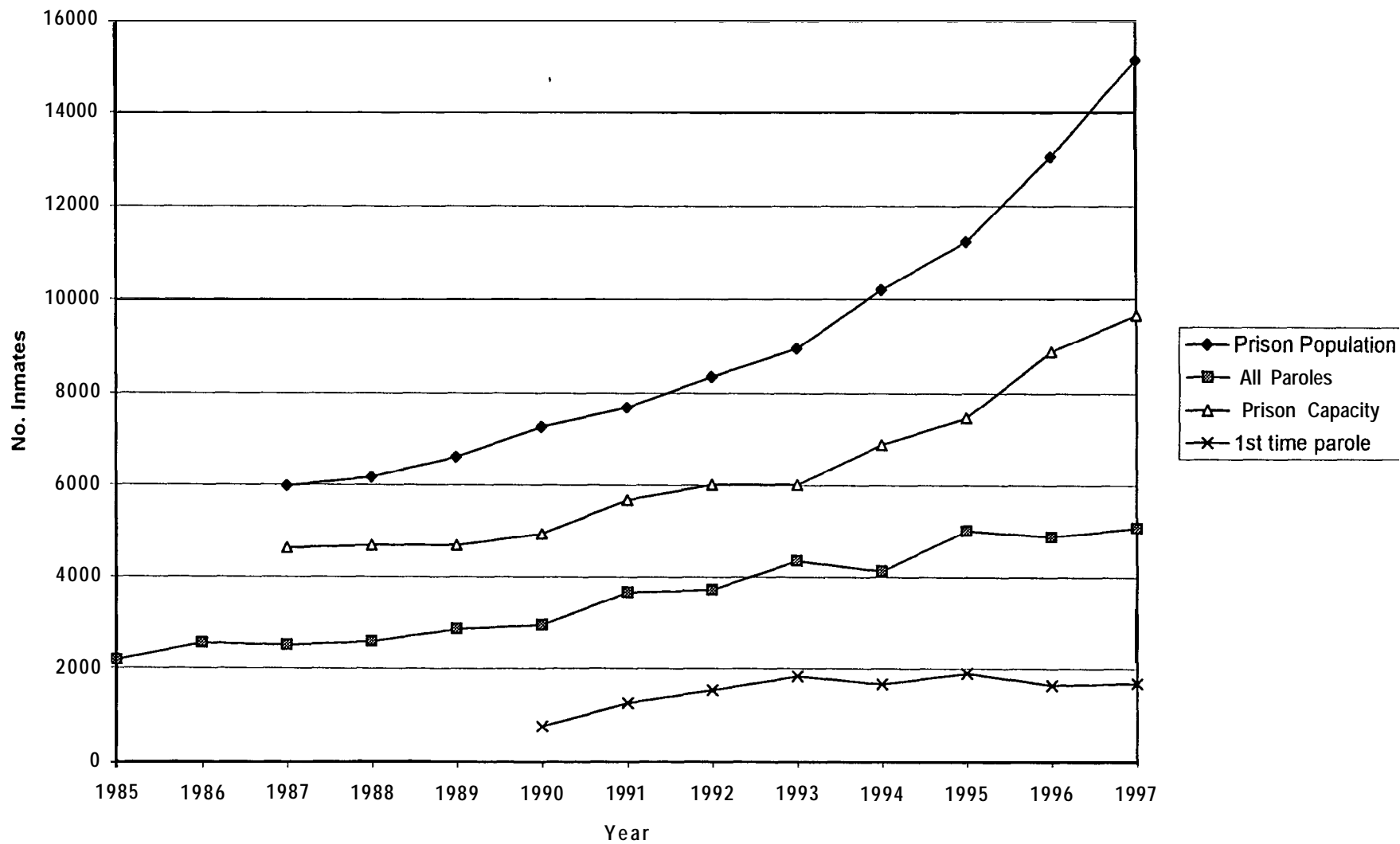


EXHIBIT B



Parole Activity for 1998

	January	February	March	April	May	June	July
<u>Disposition:</u>							
# recommended by Commission Members	96	76	96	42	26	117	126
# of "in Office" recommendations	379	308	322	158	53	112	71
# or recommendations approved by Chair	442,	352	381	16	29	202	121
# held dure to pending/new conduct report	7	9	12	112	30	8	0
# cancelled for cause	26	23	15	30	2	19	12
<u>Disposition of "No Actions" (full review req)</u>							
# reviewed	25	22	17	1	5	5	15
Grant Recommendations	11	5	3	0	1	1	4
deferrals	14	17	14	1	4	4	11
Paroled from intensive Sanctions	28	34	31	15	0	5	45
Paroled from Challenge incarceration Prog	9	3	15	8	6	13	7
Total # of Grants Issued	442	352	381	16	29	202	248

EXHIBIT C



Inmates released on parole 1985-1 997

	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997
Discretionary Parole	921	1106	794	1711	996	1461	2320	2923	3626	3328	3942	3677	3624
Mandatory Release	1121	1286	1558	1699	1669	1290	1185	648	606	689	938	1033	1276
Other (Intensive Sanctions or Challenge Incarceration)	146	171	165	181	202	202	169	152	122	120	130	171	183
TOTAL	2188	2563	2517	2591	2867	2953	3674	3723	4354	4137	5010	4881	5083

prison population			5986	6174	6609	7253	7687	8342	8951	10192	11227	13045	15151
prison capacity			4625	4683	4683	4939	5688	6010	6010	6880	7464	8889	9669
% over capacity			29%	32%	41%	47%	35%	39%	49%	48%	50%	47%	57%
# paroled (discretionary & MR) as % prison pop			39%	39%	40%	38%	46%	43%	47%	39%	43%	36%	32%

Discretionary Paroles													
Parole (new sentence)						762	1262	1537	1841	1676	1904	1644	1691
Parole (violators)						699	1058	1386	1785	1652	2038	2033	1933
TOTAL						1461	2320	2923	3626	3328	3942	3677	3624
% 1st paroled as % prison pop						11%	16%	18%	21%	16%	17%	13%	11%
% viol paroled as % pop						10%	14%	17%	20%	16%	18%	16%	13%
TOTAL						20%	30%	35%	41%	33%	35%	28%	24%

MR Paroles													
MR (original)						457	471	219	193	221	336	364	445
MR (violators)						833	714	429	413	468	602	669	831
TOTAL						1290	1185	648	606	689	938	1033	1276
% 1st mr as % prison pop						6%	6%	3%	2%	2%	3%	3%	3%
% mr viol as % prison pop						11%	9%	5%	5%	5%	5%	5%	5%
TOTAL						18%	15%	8%	7%	7%	8%	8%	8%

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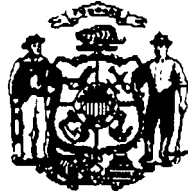
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EXHIBIT D

Tommy G. Thompson
Governor

Michael J. Sullivan
Secretary



Mailing Address
149 East Wilson Street
Post Office Box 7925
Madison, WI 53707-7925
Telephone (608) 266.2471

State of Wisconsin
Department of Corrections

December 23, 1998

Judge Thomas Barland
Eau Claire County Circuit Court, Branch 1
72 I Oxford Avenue
Eau Claire, WI 54703

Dear Judge Barland:

111 response to your questions on costs of various types of prison construction, I have put together a chart with the help of Len Witke, who is an architect for the department.

As you will notice, there are several models. The first number indicates the number of cells and the number following the diagonal indicates the expected occupancy. Due to overcrowding, actual occupancy may be higher.

These costs are general estimates, and it is important to know that they do not include costs of land, or utility extensions to the site. The models are generic, and do not contain unusual features that might be a part of a given institution. Costs are in 1999 dollars, and would need to be inflated for construction in subsequent years.

I hope you find the chart helpful, and if you need further information, please do not hesitate to call. My telephone number is (608) 266-9340.

Sincerely,

Barbara B. Carlson

Barbara B. Carlson
Budget and Policy Analyst

Cc: Mary Cassady, Len Witke
Attachment

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ESTIMATES FOR CONSTRUCTION COSTS OF SEVERAL MODELS

SECURITY LEVEL	CELLS/BEDS	CROSS SQUARE FEET	TOTAL CAPITAL PROJECT	COST PER CELL
New Construction*				
MAXIMUM	750/750	412,500	\$ 86,600,000	s 115,500
MEDIUM	350/525	2 58,000	\$ 38,700,000	\$110,600/\$74,000
MEDIUM	500/1750	312,000	s 55,500,000	\$111,000/\$73,300
MEDIUM	1000/1500	575,000	s 86,000,000	\$86,000/\$57,300
MINIMUM CENTER	low200	58,600	\$ 6,670,000	\$66,700/\$33,400
Expansions				
MEDIUM 1 WET CELL HOUSING UNIT	100/175	36,300	\$ 6,300,000	\$63,000/\$36,000
I DRY CELL MED HOUSING UNIT	100/150	35.800	S 5,180,000	\$51,800/\$34.500

**NO SITE ACQUISITION OR OFF SITE UTILITIES COSTS ARE INCLUDED
ESTIMATES ARE AS OF JANUARY, 1999**

EXHIBIT E

Admissions with Life Sentences

Admission Year	Number
1990	31
1991	43
1992	74
1993	58
1994	51
1995	50
1996	34
1997	27
Total	368

EXHIBIT F

First Admissions During Calendar Years 1990-1 997

Admission Year	Offense Type	No. Inmates	Avg Sentence in Months
1990	Assaultive	665	81
	Sex/Assault	264	123
	Drug	379	41
	Property/Other	408	46
1991	Assaultive	883	91
	Sex/Assault	290	139
	Drug	352	39
	Property/Other	446	46
1992	Assaultive	904	105
	Sex/Assault	293	150
	Drug	632	42
	Property/Other	402	51
1993	Assaultive	950	88
	Sex/Assault	396	142
	Drug	618	46
	Property/Other	389	51
1994	Assaultive	869	99
	Sex/Assault	337	155
	Drug	681	42
	Property/Other	355	54
1995	Assaultive	943	116
	Sex/Assault	319	216
	Drug	729	48
	Property/Other	423	54
1996	Assaultive	996	131
	Sex/Assault	375	231
	Drug	761	49
	Property/Other	528	56
1997	Assaultive	930	113
	Sex/Assault	298	202
	Drug	632	47
	Property/Other	486	54
TOTAL		17933	

EXHIBIT G

Average Sentence Sewed by Release Year and Offense'

Release Yr	Offense Type	Number	Avg Sentence in Months	Avg Mos Served	Avg % Sentence Served
1990	Assaultive	791	57	33	58%
	Sex/Assault	243	63	37	59%
	Drug	332	34	18	53%
	Property/Other	775	40	23	57%
1991	Assaultive	1020	61	33	54%
	Sex/Assault	288	68	39	57%
	Drug	580	38	18	48%
	Property/Other	1011	43	23	53%
1992	Assaultive	1142	57	28	49%
	Sex/Assault	286	74	40	54%
	Drug	631	39	16	41%
	Property/Other	838	43	21	49%
1993	Assaultive	1298	60	28	47%
	Sex/Assault	351	68	36	53%
	Drug	822	39	14	36%
1994	Assaultive Property/Other	653	40	18	45%
		1184	58	25	43%
	Sex/Assault	243	73	40	55%
	Drug	772	37	13	35%
	Property/Other	477	40	17	42%
1995	Assaultive	1333	63	27	43%
	Sex/Assault	347	72	41	57%
	Drug	956	37	13	35%
	Property/Other	508	39	16	41%
1996	Assaultive Sex/Assault	1355	60	26	43%
		367	76	44	58%
	Drug	640	42	16	38%
	Property/Other	550	38	15	40%
1997	Assaultive	1190	65	30	46%
	Sex/Assault	384	80	48	60%
	Drug	947	36	16	45%
	Property/Other	512	39	17	44%

*1 ST RELEASE OF NON-DIS INMATES BETWEEN 1/1/90 AND 12/31/97 EXCLUDING LIFERS

EXHIBIT #

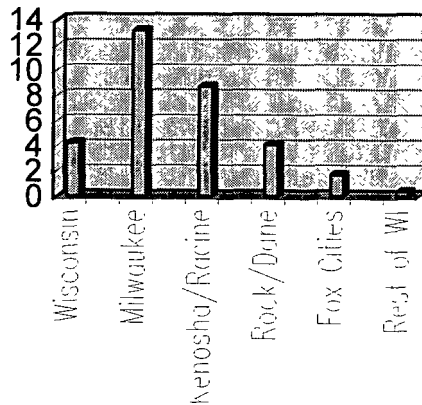
Average Sentence Comparison Between 1 st Releases v. 1 st Admissions
1990-1 997

Release Yr	Offense Type	Avg Sentence in Months 1st Releases	Avg Sentence in Months 1st Admissions	Difference in Months
1990	Assaultive	57	81	24
	Sex/Assault	63	123	60
	Drug	34	41	7
	Property/Other	40	46	6
1991	Assaultive	61	91	30
	Sex/Assault			
	Drug	68 38	139 39	71 1
	Property/Other	43	46	3
1992	Assaultive	57	105	48
	Sex/Assault	74	150	76
	Drug	39	42	3
	Property/Other	43	51	8
1993	Assaultive	60	88	28
	Sex/Assault	68	142	74
	Drug	39	46	7
	Property/Other Drug	40	51	11
1994	Assaultive	58	99	41
	Sex/Assault	73	155	82
	Drug	37	42	5
	Property/Other	40	54	14
1995	Assaultive	63	116	53
	Sex/Assault	72	216	144
	Drug	37	48	11
	Property/Other	39	54	15
1996	Assaultive Property/Other	60	131	71
	Sex/Assault	76	231	155
	Drug	42	49	7
	Property/Other	38	56	18
1997	Assaultive	65	113	48
	Sex/Assault	80	202	122
	Drug	36	47	11
	Property/Other	39	54	15

1st Admissions for Drug Traffickers by Population for November 1996 - October 1998

	1 st Admissions for Drug Traffickers	Total Population*	Ratio of Admissions to Population	Admissions per 10,000 people
Wisconsin	2208	5234350	0.000421829	4.22
Milwaukee	1263	957058	0.001319669	13.20
Kenosha, Racine	287	328804	0.00087286	8.73
Rock, Dane	228	557368	0.000409065	4.09
Brown, Outagamie, Winnebago, Fond Du Lac	108	624190	0.0001730242	1.73
Rest of Wisconsin	322	2766930	0.0001163745	1.18

Admissions per 10,000 people



*Total Population is based on 1997 estimates by the DOA Demographic Services Center

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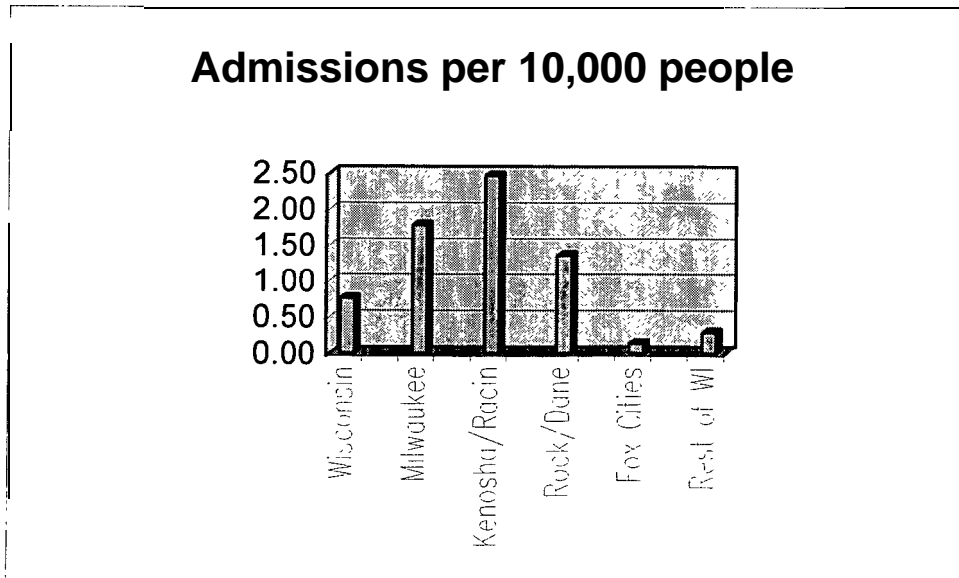
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1st Admissions for Drug Offense, Non-Drug Traffickers by Population for November 1996 - October 1998

	1 st Admission for Drug Offense Non Drug Traffickers	Total Population *	Ratio of Admissions to Population	Admissions per 10,000 people
Wisconsin	397	5234350	0.0000758451	0.76
Milwaukee	170	957058	0.000177628	1.78
Kenosha, Racine	63	328804	0.000191604	1.92
Rock, Dane	76	557368	0.000136355	1.36
Brown, Outagamie, Winnebago, Fond Du Lac	9	624190	0.0000144187	0.14
Rest of Wisconsin	79	2766930	0.0000285515	0.29

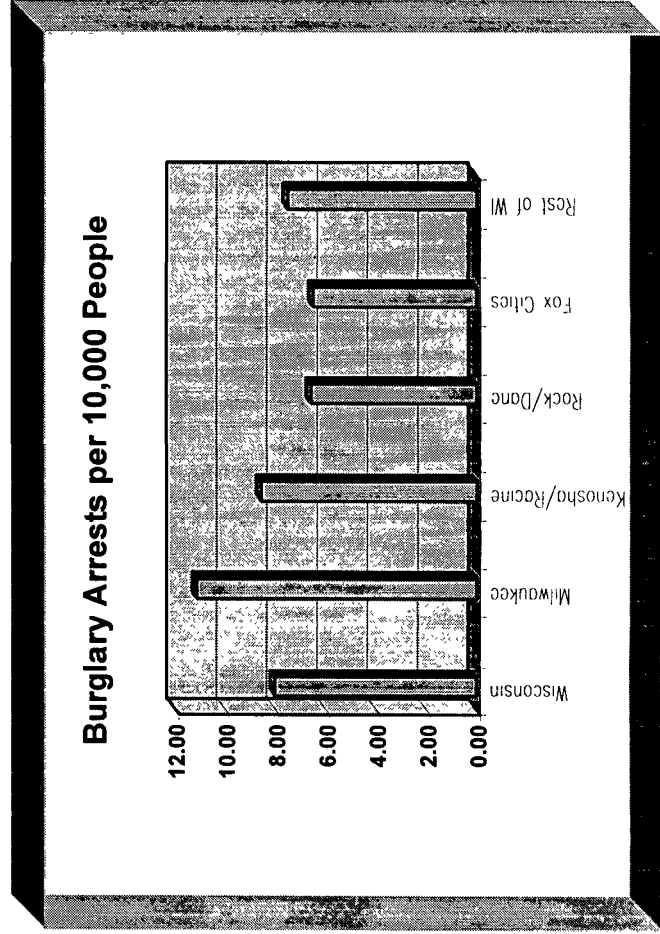


* Total Population is based on 1997 estimates by the DOA Demographic Services Center

Adult Arrests for Burglary by Region, 1997

	Arrests for Burglary	Adult Population*	Ratio of Burglary Arrests to Population
Wisconsin	3066	3821404	0.000802323
Milwaukee	781	701648	0.001113094
Kenosha, Racine	202	235601	0.000857382
Rock, Dane	275	417494	0.000658692
Brown, Outagamie, Winnebago, Fond Du Lac	297	457650	0.0006489676
Rest of Wisconsin	1511	2009011	0.0007521114

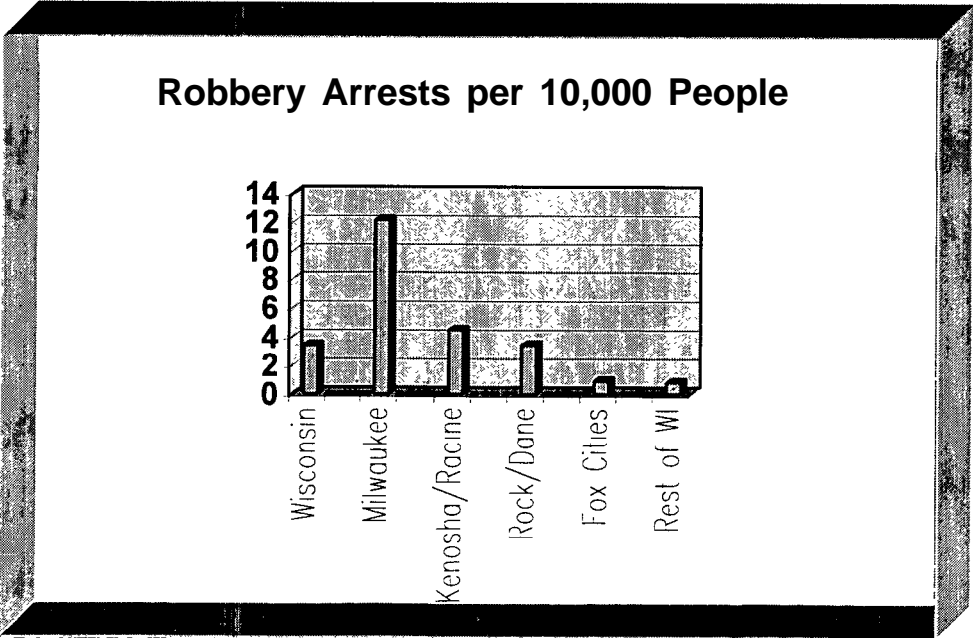
Arrests per 10,000 people
8.02
11.13
8.57
6.59
6.49
7.52



* Adult population figures were derived from the Department of Administration population estimates for 1997

Adult Arrests for Robbery by Region, 1997

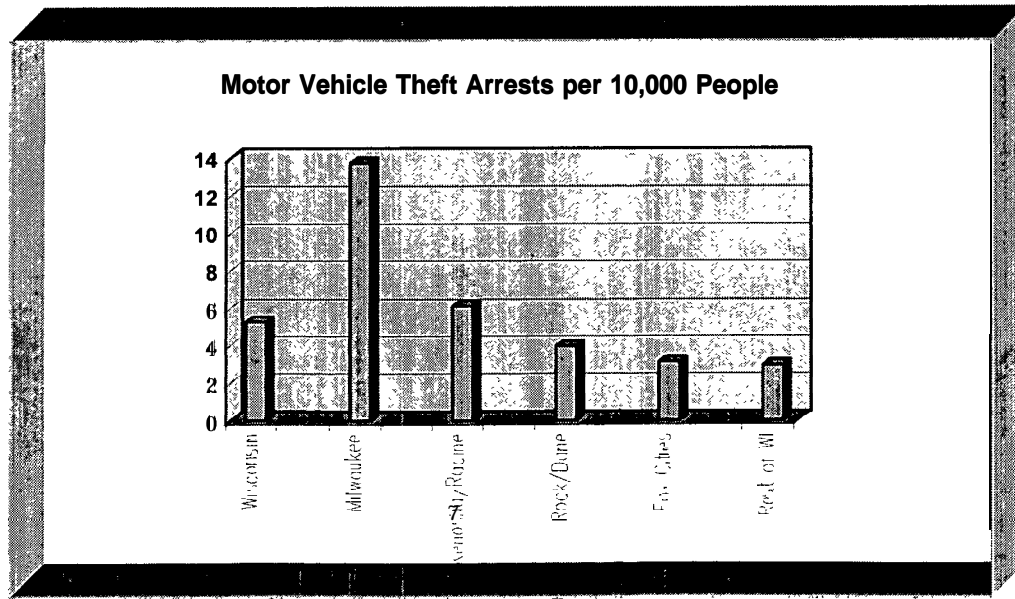
	Arrests for Robbery	Adult Population*	Ratio of Robbery Arrests to Population	Arrests per 10,000 people
Wisconsin	1305	3821404	0.000341498	3.41
Milwaukee	852	701648	0.001214284	12.14
Kenosha, Racine	105	235601	0.000445669	4.46
Rock, Dane	143	417494	0.00034252	3.43
Brown, Outagamie, Winnebago, Fond Du Lac	42	457650	0.0000917732	0.92
Rest of Wisconsin	163	2009011	0.0000811344	0.81



* Adult population figures were derived from the Department of Administration population estimates for 1997

Adult Arrests for Motor Vehicle Theft by Region, 1997

	Arrests for Motor Vehicle Theft	Adult Population*	Ratio of Motor Vehicle Theft Arrests to Population	Arrests per 10,000 people
Wisconsin	2002	3821404	0.000523891	5.24
Milwaukee	963	701648	0.001372483	13.72
Kenosha, Racine	144	235601	0.000611203	6.11
Rock, Dane	164	417494	0.00039282	3.93
Brown, Outagamie, Winnebago, Fond Du Lac	142	457650	0.0003102808	3.10
Rest of Wisconsin	589	2009011	0.0002931791	2.93



* Adult population figures were derived from the Department of Administration population estimates for 1997

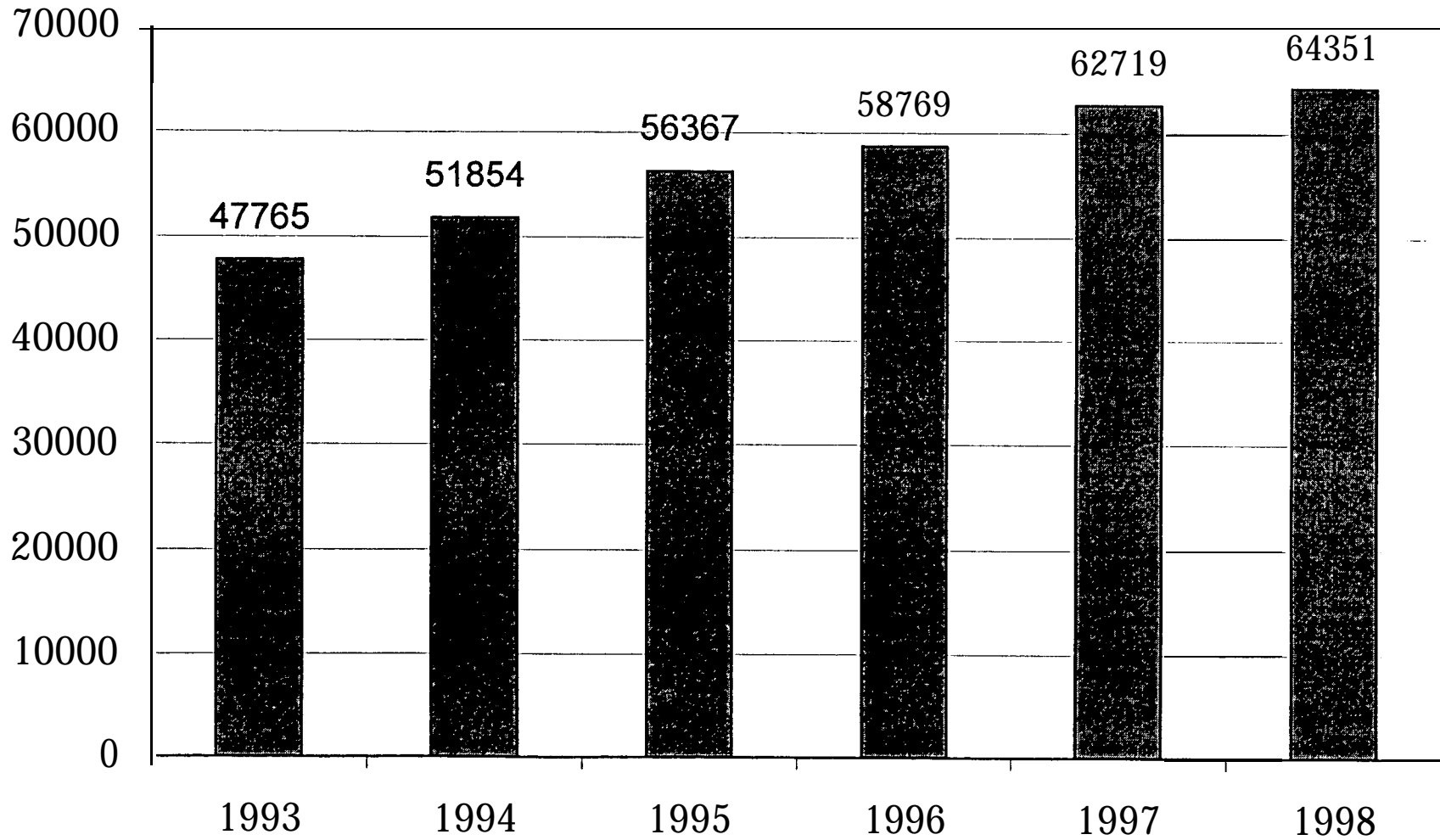
FELONY , PROBATION , PRISON %'s
 BY COUNTY

Cases disposed between 3/1/98 - 8/31/98 with a finding of guilty

County	Felonies Disposed	Probation	Not Probation	% Probation to Total Disposed
Adams	36	30	5	86%
Ashland	71	54	17	76%
Barron	57	50	17	75%
Bayfield	38	27	11	71%
Brown	420	320	100	76%
Buffalo	10	12	6	67%
Burnett	38	28	10	74%
Calumet	49	44	5	90%
Chippewa	100	79	21	79%
Clark	58	40	16	69%
Columbia	91	60	31	66%
Crawford	18	11	7	61%
Dane	1,116	730	365	65%
Dodge	101	50	21	79%
Door	77	58	19	75%
Douglas	84	51	33	61%
Dunn	78	60	16	79%
Eau Claire	290	204	86	70%
Florence	14	13	1	93%
Fond du Lac	171	149	22	67%
Forest	37	18	19	49%
Grant	79	61	18	77%
Green	61	50	11	82%
Green Lake	25	19	6	70%
Iowa	39	29	10	74%
Iron	27	19	8	70%
Jackson	35	29	6	83%
Jefferson	231	170	61	74%
Juneau	66	56	10	65%
Kenosha	511	374	137	73%
Kewaunee	31	28	3	00%
La Crosse	283	219	84	77%
Lafayette	12	7	5	58%
Langlade	59	30	29	51%
Lincoln	62	48	14	77%
Manitowoc	189	114	75	60%
Marathon	259	204	55	79%
Marquette	93	60	33	65%
Marquette	22	17	5	77%
Milwaukee	2,807	1,467	1,340	52%
Monroe	754	106	48	69%
Oconto	42	34	8	81%
Oneida	103	88	16	85%
Outagamie	44	37	7	84%

Ozaukee	87	65	22	75%
Pepin	6	6	0	100%
Pierce	43	38	7	84%
Polk	47	42	6	09%
Portage	51	37	14	73%
Price	15	8	7	53%
Racine	514	343	171	67%
Richland	37	28	9	76%
Rock	529	303	228	57%
Rusk	48	37	11	77%
St. Croix	90	71	19	79%
Sauk	109	74	35	88%
Sawyer	94	78	16	63%
Shawano	92	54	36	69%
Sheboygan	291	199	92	00%
Taylor	48	43	5	80%
Trempsaleau	22	10	4	82%
Vernon	41	34	7	83%
Vilas	33	27	6	82%
Walworth	119	86	33	72%
Washburn	34	24	10	71%
Washington	161	113	48	70%
Waukesha	308	219	89	71%
Waupaca	102	94	8	92%
Waushara	20	16	4	80%
Winnebago	21	12	9	57%
Wood	132	99	33	75%
Menominee	0	0	0	#DIV/0!
Total	11,296	7,550	3,746	67%
District: 2 - 10	8,489	6,083	2,406	72%
District 1	2,807	1,407	1,340	52%

Probation & Parole, 1/1/93 to 10/1/98



STATEWIDE DISTRIBUTION OF PROBATION/PAROLE POPULATION

Region	Felony		Misdemeanor		TOTAL
	Number	% of total	Number	% of total	
Statewide	30,716	49.0%	31,994	51.0%	62,710
Milwaukee, Racine and Kenosha	13,346	57.3%	9,926	42.7%	23,272
Milwaukee	10,309	59.2%	7,113	40.8%	17,422
Racine and Kenosha	3,037	51.9%	2,813	48.1%	5,850
Rock and Dane	4,089	58.7%	2,874	41.3%	6,963
Brown, Outagamie, Winnebago and Fond du Rest of the State (63 counties)	2,459	44.6%	3,053	55.4%	5,512
	10,822	40.1%	16,141	59.9%	26,963

PROBATION OFFENSE TYPES BY REGION

Region	Drug related		Assaultive		Sex-Assaultive		Property		TOTALS
	Number	% for offense type	Number	% for offense type	Number	% for offense type	Number	% for offense type	
Milwaukee, Racine and Kenosha	2435	33.7%	4851	38.6%	643	22.3%	10856	33.4%	18785
Milwaukee	1787	24.7%	3546	28.2%	443	15.3%	8360	25.7%	14136
Racine and Kenosha	648	9.0%	1305	10.4%	200	6.9%	2496	7.7%	4649
Rock and Dane	824	11.4%	1652	13.1%	331	11.5%	3010	9.3%	5817
Brown, Outagamie, Winnebago and Fond du Lac	672	9.3%	962	7.7%	286	9.9%	3070	9.4%	4990
Rest of the State (63 counties)	3293	45.6%	5108	40.6%	1626	56.3%	15554	47.9%	25581
Statewide	7224	13.1%	12573	22.8%	2886	5.2%	32490	58.9%	55173

STATEWIDE PAROLE POPULATION STATISTICS (On October 1, 1998)

County	Total	Felony		Misdemeanor			Other	
	Number	% of county parole population	% of state parole population	Number	% of county parole population	% of state parole population		
Milwaukee County	3,307	3,116	94.2%	36.0%	151	4.6%	1.7%	40
Racine and Kenosha Counties	1,193	1,007	84.4%	11.6%	174	14.6%	2.0%	12
Rock and Dane Counties	1,131	1,007	89.0%	11.6%	111	9.8%	1.3%	13
Brown, Outagamie, Winnebago and Fond du Lac	503	468	93.0%	5.4%	30	6.0%	0.3%	5
Rest of the State (63 counties)	2,531	2,062	81.5%	23.8%	193	7.6%	2.2%	276
TOTALS	8,665	7,660		88.4;	659		7.6%	346

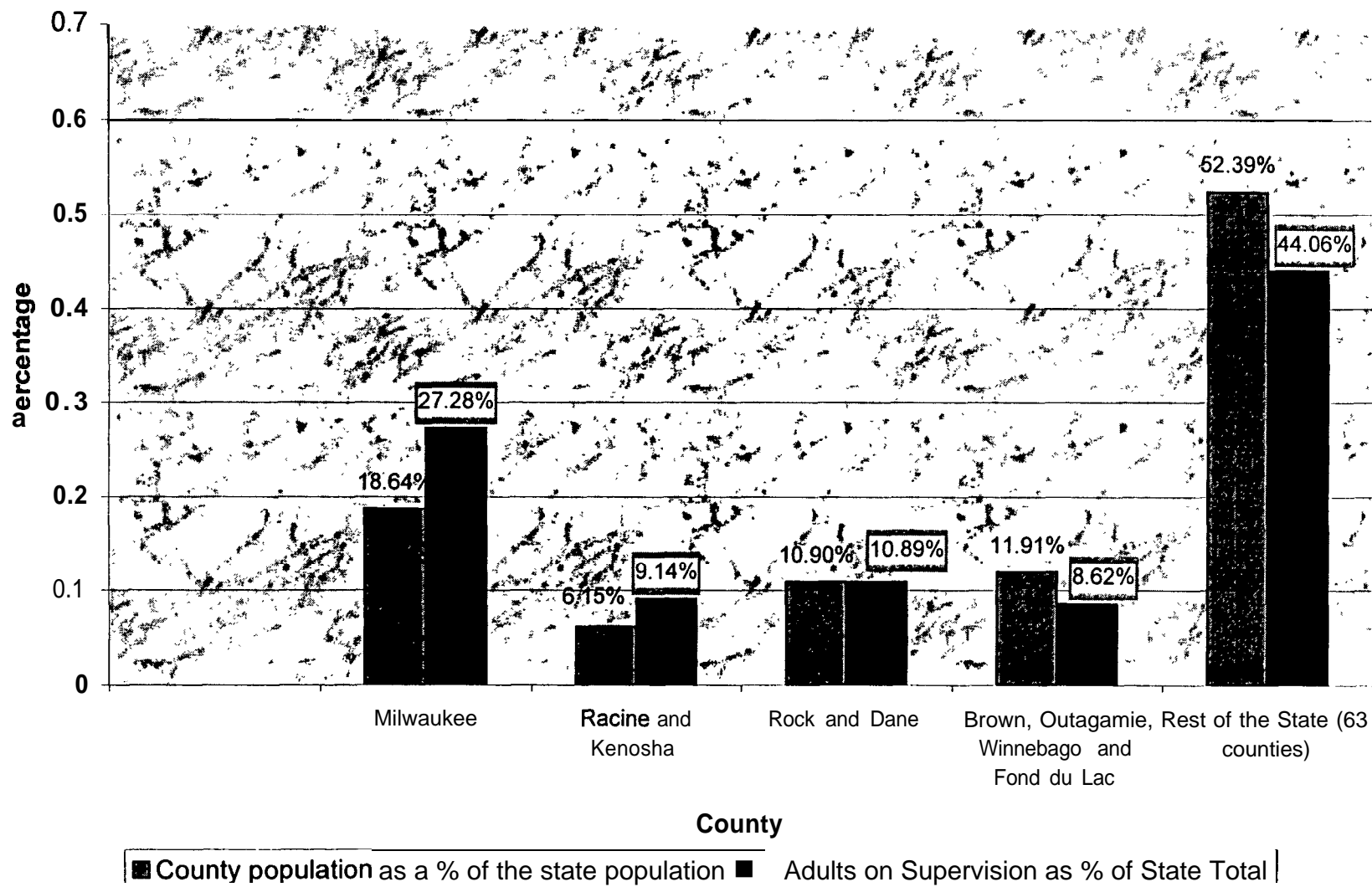
TOTAL PROBATION 55,447 83.3% of total population
TOTAL PAROLE 8,665 13.0% of total population
Community Correctional C 1617 2.4% of total population
Intensive Sanctions 838 1.3% of total population

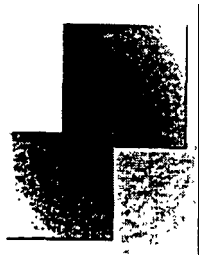
TOTAL P&P 66,567 100.0%

PAROLE OFFENSE TYPES BY REGION

Region	Drug-related		Assaultive		Sex-Assaultive		Property		TOTALS
	Number	% for offense type	Number	% for offense type	Number	% for offense type	Number	% for offense type	
Milwaukee, Racine and Kenosha	1299	65.8%	1651	60.7%	296	38.6%	1245	39.3%	4491
Milwaukee	987	50.0%	1265	46.5%	193	25.2%	858	27.1%	3303
Racine and Kenosha	312	15.8%	386	14.2%	103	13.4%	387	12.2%	1188
Rock and Dane	251	12.7%	360	13.2%	108	14.1%	411	13.0%	1130
Brown, Outagamie, Wtnnebago and Fond du Lac	105	5.3%	125	4.6%	72	9.4%	199	6.3%	501
Rest of the State (63 counties)	318	16.1%	584	21.5%	291	37.9%	1316	41.5%	2509
Statewide	1973	22.9%	2720	31.5%	767	8.9%	3171	36.7%	8631

% State Population vs. % on Supervision





DEPARTMENT OF CORRECTIONS



Division of Community Corrections

October 2, 1998

REVOCATION INFORMATION (Calendar Year 1997)

Total Revocations	7,418
Probation	5,965
Parole	1,150
Mandatory Release	302
Felony	2,559
Misdemeanor	4,846

Revocation month/year	Number	Felony	Misdemeanor	TOTAL
Jul-96	2	218	355	575
Aug-96	2	222	369	593
Sep-96	2	188	353	543
Ott-96	1	190	376	567
Nov-96	1	184	315	500
Dee-96		188	293	481
Jan-97		123	352	475
Feb-97	2	184	400	586
Mar-97	1	207	432	640
Apr-97		199	388	587
May-97		214	371	585
Jun-97		198	402	600
Jul-97	2	211	456	669
Aug-97	1	218	430	649
Sep-97	1	232	434	667
Ott-97	2	289	469	760
Nov-97	4	232	362	598
Dee-97		252	350	602
Jan-98		278	433	711
Feb-98		263	462	725
Mar-98		273	449	722
Apr-98	1	292	444	737
May-98		245	391	636
Jun-98	2	284	426	712
TOTAL	24	5,384	9,512	14,920

CRIMINAL PENALTIES STUDY COMMITTEE

QUESTIONS FOR CONSIDERATION BY SUBCOMMITTEES:

A. Criminal Code Reclassification:

1. Should the current 6 class classification system be maintained, with the new maximums as delineated in 1997 Wis. Act 283? Or should more classes be added?
2. If more classifications are added, how many, and where? What would the maximum periods of incarceration, extended supervision, and overall maximum penalty be for all classifications, including the new ones?
3. Is the goal of this proposed classification system to (a) incarcerate all offenders whom the committee deems should be incarcerated, (b) control corrections costs by incarcerating only those offenders the system can afford to, e.g. violent offenders, (c) some other goal, or (d) a combination of these?
4. How does the proposed classification system ensure that crimes of similar severity are grouped together for penalty purposes?
5. Should the 220 felonies currently outside the criminal code be included in a single criminal code?
 - a. Should the felonies involving illegal drugs be included in the new, single criminal code? If so, where?
 - b. How should the felonies involving illegal drugs be classified?
 - c. Should vehicle-related felonies be included in the new, single criminal code? If so, where?
 - d. How should the vehicle-related felonies be classified?
 - e. Should the felonies involving the environment be included in the new, single criminal code? If so, where?
 - f. How should the felonies involving the environment be classified?
 - g. Should the felonies involving elections be included in the new, single criminal code? If so, where?

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h. How should the felonies involving elections be classified?

6. Should the committee recommend that any felonies or Class A misdemeanors be consolidated, otherwise streamlined, or eliminated?

a. e.g., battery - this felony now includes various levels of offender's intent and harm to the victim; how should the various combinations of intent and harm be classified?

b. tentative conclusions reached by code reclassification subcommittee

7. Should the committee (a) maintain all penalty enhancers in the criminal code, (b) recommend the consolidation or elimination of some penalty enhancers, or (c) recommend that such enhancers not effect penalty length but be considered as part of the appropriate sentencing guideline?

B. Sentencing Guidelines:

1. Sec. 454(1)(e)1 of 1997 Wis. Act 283 mandates that this committee make a recommendation concerning the creation of a **sentencing commission** to promulgate advisory sentencing guidelines.

a. What are the goals and purposes of the sentencing commission?

b. What form should such a sentencing commission take?

c. Should such a sentencing commission be temporary or permanent?

d. How long are the members' terms? Should those terms be staggered?

e. How should the commission be staffed?

f. What should be the authority of such a sentencing commission?

g. What should be the scope of responsibility of such a sentencing commission?

2. What should be the **purposes behind** the committee's recommended sentencing guidance?

a. current WI courts: gravity of offense/defendant's character/need to protect public?

- b. federal courts pre-Guidelines: punishment/deterrence/rehabilitation?
 - c. Dickey/Smith, also Lamelas (?): public safety/just deserts-punishment
 - d. cost control, e.g. presumptive guidance to ensure reasonable corrections budget
 - e. some combination of these
3. What **type of advisory sentencing guidelines** should be recommended?
- a. Grid/matrix, checklist, or some other type?
 - b. How “advisory” should such guidelines be?
 - c. Should these guidelines advise on the in-prison/out-of-prison decision? Should such advice include duration of time in prison?
 - d. Should these guidelines advise on the **on-probation/not-on-probation** decision? Should such advice include duration of time on probation?
 - e. Should these guidelines advise on whether an offender should be sent to boot camp?
 - f. Should these guidelines advise on the duration of extended supervision? On the conditions of extended supervision?
 - g. How “appealable” should a judge’s use of such guidelines be?
 - h. Should the committee recommend a “geriatric” clause? If so, what conditions should be met before an inmate could be “paroled” under this clause?
4. **Intermediate/graduated sanctions:**
- a. Sec. 16 1 of 1997 Wis. Act 283 mandates that a prisoner serving a bifurcated sentence imposed under sec. 973.01 is not eligible for the intensive sanctions program during the term of confinement in the prison portion of the bifurcated sentence.
- Given this restriction, should intermediate/graduated sanctions be an option at an offender’s initial sentencing?

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- b. Should intermediate/graduated sanctions be an option for punishment short of full revocation and placement in prison for violation of extended supervision?
5. How should **mandatory minimum sentences** be handled: (a) integrate them into the sentencing guidelines, (b) recommend abolishment of them, or (c) leave them in the penalty statutes, and let them overrule the guidelines?

C. Extended Supervision Revocation:

1. What are the strengths and weaknesses of the current system for parole revocation?
2. What administrative rules should be recommended for the DOC to ensure that a person who violates a condition of extended supervision (a) “is returned to prison promptly and [(b)] for an appropriate period of time”?
3. Should the administrative rules take into account violation of a court-ordered condition of extended supervision versus a DOC-ordered condition of extended supervision?
4. Sec. 207 of 1997 Wis. Act. 283 creates the release mechanism for felony offenders not serving life sentences. Subsection 9(a) therein speaks to revocation of extended supervision. The fact of revocation and the period of time revoked are to be determined by (1) the DOA division of hearings and appeals, upon proper notice and hearing, or (2) the DOC, if the offender waives the hearing.
 - a. Should administrative rule DOC 33 1.03 and/or administrative rule HA 2.07 be modified to make the revocation process more just and/or efficient? If so, how?
 - b. Should those rules be changed such that, in certain cases, the sentencing judge makes the revocation decision? If so, how?
5. Sanctioning short of revocation for violation of ES:
 - a. Does the committee wish to recommend guidance for same? If so, what guidance?
 - b. Should the committee recommend increased spending on community corrections resources to sanction short of revocation? If so, what types of programs? Should the committee’s recommendation be geographic specific?



6. Should any such recommendations regarding increased spending on community corrections also be made with regard to probation in Milwaukee? On what statistical basis?

D. Computer Modeling:

1. What statistical capabilities does the committee wish the computer model to have?
 - a. Should the model reflect who is currently in the corrections system, on what crimes, and for how long?
 1. Should it do so for all offenders, or only the most common subpopulations?
 - b. Should the model forecast who is currently in the corrections system, on what crimes, and for how long, given 1997 Wis. Act 283? (That is, do we want projections, say 4, 7, and 10 years out, from the effective date of the new law, 12/31/99, if nothing changed from the current system?)
 - c. Should the model allow us to change the projections of 1 .b. by:
 1. adding new classifications, with new maximums, for the same crimes, and project corrections populations considering these new parameters; as well as
 2. overlaying sentencing guidelines (which assume a certain % compliance) upon certain crimes, which would affect how long a certain % of a given corrections subpopulation remained in the system.'
2. Should the model allow the committee to test which policies most influence overall corrections population numbers, as well as the numbers in certain offender sub-populations?
3. Should the model forecast impact of suggested changes on each of the areas of the corrections system: prison, jails, parole, and probation?
4. By inputting cost assumptions for prison beds, jail beds, extra probation/parole officers, extra parole beds, etc., should the model be able to cost out these projections, and be able to run "what-if" queries on changes in the law to see how it would affect ultimate cost, as well as the cost of changes in certain areas of the corrections system?

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5. Should the model attempt to cost out recidivism, by calculating costs of offenders to victims and society for those offenders let out of prison/ES/community corrections/probation earlier than other projected scenarios? How would it do so?
6. To what extent should the committee's computer model anticipate the work and needs of the sentencing commission the committee recommends?

CRIMINAL PENALTIES STUDY COMMITTEE
Extended Supervision Revocation Subcommittee

Working Paper on
the Nature of Extended Supervision Criteria

I. Recommended Administrative Law Changes

A. Criteria for revocation referral by Dept. of Corrections

1. Nature of violation(s)
2. Prior criminal history, including juvenile contacts
3. Consideration of possible alternatives to revocation is required, but not dispositive

Wis. Admin. Code DOC 33 1.03(3) would be revised per Tab 9.

B. Criteria for revocation decision by DOA - Div. of Hrgs. and Appls. ALJ

1. Whether a violation(s) occurred
2. Whether DOC considered the criteria above in I.A.
3. Whether confinement is necessary for public protection (including consideration of offender's prior criminal history and/or juvenile contacts), treatment, or not to unduly depreciate the nature of the violation(s)

Wis. Admin. Code HA 2.05(7) would be revised per Tab 10.

C. Criteria for DOC resentencing recommendation:

1. To include "boot camp" as alternative to incarceration
2. To be studied further at future ESR subcommittee meeting

D. Criteria for ALJ resentencing decision:

1. To include "boot camp" as alternative to incarceration

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2. To be studied further at future ESR subcommittee meeting

II. Extended Supervision Procedure

- A. DOC reviews to determine offender's proper initial level of supervision
- B. Presumptions regarding initial level of supervision:
 1. Strict supervision if offender committed felonies in the following classes: A, B, BC, or C
 2. No presumption concerning other felonies
- C. Considerations for appropriate level of supervision:
 1. Length of ES
 2. Dangerousness of offender
 3. Movement between levels
 4. Treatment needs
 5. Others?
- D. Lamelas Committee Strict Supervision Model should be adopted; less restrictive stages added to it.

See Tab 11 for a description of the strict supervision model.

Purpose of adoption of strict supervision model: to increase the panoply of sanctions open to DOC to match the spectrum of possible ES violations.

Note that Tab 11, p. 16, the recommendation regarding *confinement beds* would be as follows: beds/cells would be of a basic nature, not unlike those in prison segregation. They would not be state-of-the-art, and would not include TV or other amenities. In this way, offenders spending time in local facilities would be doing more difficult time, motivating them to satisfy the conditions of their ES.

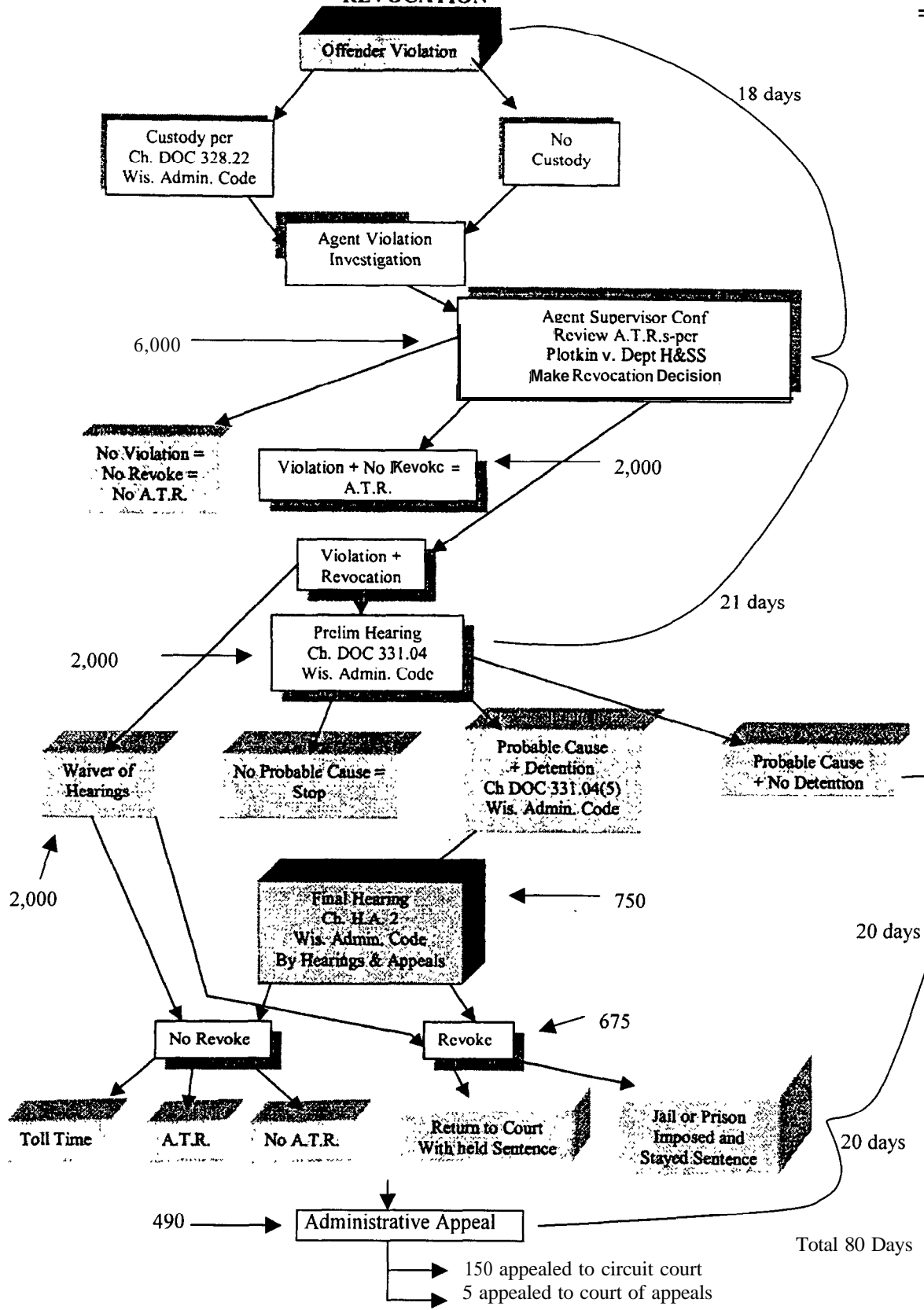
Further, at Tab 11, p. 16, the recommendation regarding *staff caseload* could be 25 offenders per agent.

E. Resources/Cost for II.D.

1. Bill Grosshans to gather estimates from DOC; this information is found at Tab 12.
2. Dave Schwarz to gather estimates from DOA-Div. of Hrgs. & Appls.; this information is found at Tab 13.



REVOCAION



September 21, 1998

MEMORANDUM/CORRESPONDANCE

TO: William J. Grosshans, Administrator

From: Robert G. Pultz, Assistant Legal Counsel

RE: Revocation Process and Procedure

I am responding to your specific questions concerning the Department of Corrections (DOC or Department) probation and parole revocation process. I have attached a separate document that outlines the legal authority relative to revocation practice in Wisconsin. Some of the following questions have been answered in part by reference to state statute or administrative code, which are included within the separate revocation authority document.

Question: What differences exist in the revocation process between probationers and parolees, felons and misdemeanants, withheld sentenced offenders and imposed and stayed sentenced?

Answer: The hearing process for each of these categories of offenders is identical. The singular distinction is that subsequent to the Department receiving a signed revocation order a withheld sentence offender returns to court for imposition of sentence. Parolees and imposed and stayed sentenced offenders go directly to a jail or prison to commence serving their sentence less any custody time that is applicable under sec. 973.155, Stats.

Question: What criteria exists for Administrative Law Judges (ALJs) when deciding whether to revoke supervision?

Answer: Administrative Law Judges must determine whether a violation of supervision has occurred. Second, ALJs must address an availability of reasonable alternatives pursuant to the ruling in Plotkin v. Dept. H& SS., 63 Wis.2d 535, 217 N.W.2d 641 (1974). This second step is more complex than the first and involves a predicative and discretionary judgment. Moreover, the holding in Plotkin requires the parole authority make this judgment.

The second question involves the application of expertise **by the parole authority** in making a prediction as to the ability of the individual to live in society without committing antisocial acts. Plotkin, at 63 Wis.2d 543.

In contrast, what has occurred over the years is a codification of the Plotkin criteria in Ch. H.A. 2, Wis. Admin. Code with a provision that the ALJ make this predictive determination. Thus, ALJs on occasion substitute their own judgment for that of the DOC. I believe that this represents the Division of Hearings and Appeals arrogating to themselves the decision making authority that belongs by law to the DOC. The ALJs inquiry should be limited to determining: (1) whether a violation occurred, (2) whether the Department adhered to Plotkin by considering alternatives, and (3) whether confinement is necessary for public protection, treatment or to not unduly depreciate the nature of the violation.

Question: What set of circumstances will prompt a return to prison?

Answer: This is a fact driven determination that involves the two step analysis outlined above and in the Revocation Authority document. There is no bright line rule.

Question: What legal requirement mandates that two hearings take place?

Answer: See Morrissey v. Brewer, 408 U.S. 471 (1972). The Morrissey Court outlined a two hearing process due to considerable delays and the lack of any requirement for a hearing. The Court ruled that a preliminary hearing take place near the violation as promptly as convenient after arrest. However, if a final hearing took place within 30 days of arrest, all due process rights would seemingly be met and the requirement for two hearings could conceivably be eliminated. Conducting the hearings within a 30 day time frame is a resource issue for both the DOC and the Division of Hearings and Appeals.

Question: Does the Wisconsin revocation process provide more due process rights than are mandated by law?

Answer: The only supplemental rights provided by the Wisconsin revocation process are the right to counsel in each case and the requirement that a licensed attorney preside at the hearing. Given the complexities of the revocation process and the body of law that had developed relative to these hearings, I do not believe that a person untrained in the law would be able to conduct these hearings and rule on the legal issues that are presented. Typically, DOC employees preside at the preliminary hearing, but refrain from ruling on legal issues. As noted in the Revocation Authority document (page 4) the experience with litigation and “Scarpelli” hearings dictated that it was expedient to provide offenders with legal counsel in every case.

Question: What could be done to streamline the revocation process?

Answer: I believe that there are two major steps that would improve the efficiency of the process. First, a single hearing within 30 days should be implemented. This change has

various process and resource issues, which can best be sorted out by the DOC and DHA. Second, the ability of an ALJ to order that the offender not be revoked on the basis of alternatives should be eliminated. The field supervisor and agent are in the best position to make this predictive judgment and determine whether the offender presents a reasonable risk to the community.

Question: What is the historical perspective of due process in the probation and parole context?

Answer: See the "Revocation Authority" document.

Question: What law requires the State to provide the offender with an attorney during the revocation process?

Answer: Ch. H.A. 2, Wis. Admin. Code, provides for the right to counsel at revocation hearings. The right could be eliminated, but it is questionable whether any tangible benefit would result. See document "Revocation Authority" (page 4), and the discussion above.

Question: What law requires that the person serving as the neutral and detached decision maker is an attorney?

Answer: This practice is pursuant to state statute. Sec. 304.06 (3), Stats. I would not recommend a change. A complex body of case law has developed concerning revocation procedure and practice. Implementing a non-attorney as the decision maker may result in an increased level of appeals to the circuit courts.

Question: What process is required for revocation of extended supervision under Truth in Sentencing?

Answer: There is no change in process or practice.

Question: How much time can be forfeited if an offenders extended supervision is revoked?

Answer: An offender may be returned to prison for the entire period of the bifurcated sentence that has not been served. This is defined as any part of the confinement portion and extended supervision portion during which the offender was not in physical custody.

Question: How many revocation hearings took place during 1997?

Answer: 1,867 hearings took place in 1997.

Question: In how many cases, where hearings actually took place, did the Department prevail?

Answer: The probationer or parolee was revoked in 1,699 cases of the total 1, 867 hearings held. In 168 cases the offender was not revoked. This represents a success rate for the Department of 91% in revocation hearings.

In many other cases the offender waived his or her due process right to hearings resulting in revocation. I believe that information technology will be forwarding to you the total number of revocations processed in 1997.

REVOCATION AUTHORITY

Statutory Authority: Sec. 973.10, Stats., provides the legal authority for revocation of probation supervision:

If a probationer-violates the conditions of probation, the department of corrections may initiate a proceeding before the division of hearings and appeals in the department of administration. Unless waived by the probationer, a hearing examiner for the division shall conduct an administrative hearing and enter an order either revoking or not revoking probation. Upon request of either party, the administrator of the division shall review the order. If the probationer waives the final administrative hearing, the secretary of corrections, shall enter an order either revoking or not revoking probation. If probation is revoked, the department shall:

Sec. 302.11 (7) (a), Stats., provides the legal authority for revocation of parole supervision:

The division of hearings and appeals in the department of administration, upon proper notice and hearing, or the department of corrections, if the parolee waives a hearing, may return a parolee released under sub. (1) or (lg) (b) or s. 304.02 or 304.06 (1) to prison for a period of time up to the remainder of the sentence for a violation of the conditions of parole. The remainder of the sentence is the entire sentence, less time served in custody prior to parole. The revocation order shall provide the parolee with credit in accordance with ss. 304.072 and 973.155.

(b) A parolee returned to prison for violation of the conditions of parole shall be incarcerated for the entire period of time determined by the department of corrections in the case of a waiver or the division of hearings and appeals in the department of administration in the case of a hearing under par. (a), unless paroled earlier under par. (c). The parolee is not subject to mandatory release under sub. (1) or presumptive mandatory release under sub. (lg). The period of time determined under par. (a) may be extended in accordance with sub (2).

Section 304.06 (3), Stats., provides additional parole revocation authority:

Every paroled prisoner remains in the legal custody of the department unless otherwise provided by the department. If the department alleges that any condition or rule of parole has been violated by the prisoner, the department may take physical custody of the of the prisoner for the investigation of the alleged violation. If the department is satisfied that any condition or rule of parole has been violated it shall afford the prisoner such administrative hearings as are required by law. Unless waived by the parolee, the final administrative hearing shall be held before a hearing examiner from the division of hearings and appeals in the department of administration who is licensed to practice law in this state.

The hearing examiner shall enter an order revoking or not revoking parole. Upon request by either party, the administrator of the department of hearings and appeals shall review the order. The hearing examiner may order the taking and allow the use of a video-taped deposition under s. 967.04 (7) to (10). If the parolee waives the final administrative hearing, the secretary of corrections shall enter an order revoking or not revoking parole. If the examiner, the administrator upon review, or the secretary in the case of a waiver finds that the prisoner has violated the rules or conditions of parole, the examiner, the administrator upon review, or the secretary of corrections in the case of a waiver may order the prisoner returned to prison to continue serving his or her sentence, or to continue on parole. If the prisoner claims or appears to be indigent, the department shall refer the prisoner to the authority for indigency determinations specified under s. 977.07 (1).

Revocation Time Limits: Sec. 302.335, Stats., requires that a preliminary revocation hearing be held within 15 working days of detention in a county jail facility. The statute requires that a final revocation hearing commence within 50 calendar days (60 days if an extension is granted by the Division of Hearings and Appeals) after the person is detained in a county jail. However, these time limits are directory not mandatory. The Department of Corrections does not lose jurisdiction to revoke when the time limits are exceeded. State ex rel. Jones v. Division of Hearings and Appeals, 195 Wis.2d 669, 536 N.W.2d 213 (1995). The consequence for a delay beyond these time limits is that the sheriff in charge of the jail may release the offender upon 24 hours notice to the Department. Finally, these time limits do not apply when an offender is held in a state prison pending revocation.

Nonetheless, revocation hearings must be held within a reasonable time after the violation. State ex rel. Flowers v. D.H.S.S., 81 Wis.2d 376, 260 N.W.2d 727 (1977). In Flowers the Court held that a delay of 4 months between the preliminary and final revocation hearing was not unreasonable.

Administrative Code Authority: Procedures for the revocation hearing process are found in the Wisconsin Administrative Code.

Legal authority to detain an offender during the investigation of a violation is found at Ch. DOC 328.22, Wis. Admin. Code. This section of the code allows the Department of Corrections to detain offenders for the purposes of:

1. Any assaultive or dangerous conduct: mandatory detention
2. Violation investigation
3. Disciplinary purposes, and
4. To prevent a possible violation

The foregoing section does not apply to detentions pending final revocation hearing. Those detentions are authorized by Ch. DOC 33 1.04 (5), Wis. Admin. Code. This section of the code includes procedures for:

1. Preliminary hearings
2. Detentions pending final revocation hearing
3. Waived hearings
4. Good time forfeiture hearings (old law - before June 1, 1984 crimes), and Reincarceration hearings (new law - post June 1, 1998 crimes), and
5. Tolloed time authority

Moreover, Ch. DOC 33 1.03 (3), Wis. Admin. Code, requires a consideration of alternatives to revocation. This subsection codifies Plotkin v. Dept. of H&SS, 63 Wis.2d 535,217 N.W.2d 641 (1974). The Court in Plotkin adopted the American Bar Association Standards Relating to Probation which provide:

Revocation followed by imprisonment should not be the disposition, however, unless the court finds on the basis of the original offense and the intervening conduct of the offender that:

- (i) confinement is necessary to protect the public from further criminal activity by the offender; or
- (ii) the offender is in need of correctional treatment which can most effectively be provided if he is confined; or
- (iii) it would unduly depreciate the seriousness of the violation if probation were not revoked.

. . . .In any event, the following intermediate steps should be considered in every case as possible alternatives to revocation:

- (i) a review of the conditions, followed by changes where necessary or desirable;
- (ii) a formal or informal conference with the probationer to re-emphasize the necessity of compliance with the conditions;
- (iii) a formal or informal warning that further violations could result in revocation.

Plotkin, at 63 Wis.2d 544, 545.

The above passage is especially noteworthy as alternatives to revocation often become the focus of revocation hearings. Often times, offenders admit guilt, but through their attorney argue that alternatives existing in the community are viable options to incarceration. Thus, the hearing is actually a two part process in which the first part involves a strictly factual process as to whether the offender actually violated supervision, and a second step, which is a predicative and discretionary exercise by the correctional authority and the Administrative Law Judge. Plotkin, at 63 Wis.2d 543.

The procedure and process for final revocation hearings are found at Ch. H.A. 2, Wis. Admin. Code. This administrative code, promulgated by the Department of Administration, Division of Hearings and Appeals contains provisions for:

1. Hearing notice
2. Due process rights

3. Right to counsel
4. Hearing procedure
5. Decision criteria (Codification of Plotkin)
6. Appeal rights

Common Law Authority: There is a body of case law that interprets revocation practice and procedure. Perhaps, the most noteworthy of these in the United States Supreme Court decision in Morrissey v. Brewer, 408 U.S. 471 (1972). The Morrissey Court mandated that a preliminary hearing take place at a location reasonably near the parole violation and as promptly as convenient after arrest. Moreover, the Court stated that a final revocation hearing should take place within a reasonable time after the offender is taken in custody. The Court enumerated the minimal due process requirements that should be provided an offender:

1. Written notice
2. Disclosure of evidence
3. Opportunity to be heard and present witnesses and evidence
4. Confrontation and cross-examination of adverse witnesses
5. A neutral and detached hearing body, and
6. A written decision

Gagon v. Scarpelli, 411 U.S. 778 (1973), involved the issue of right to counsel at revocation hearings. The Court held that there was a qualified right to counsel that should be determined on a case by case basis. One of the consequences of this decision was that the Department of Corrections implemented a “Scarpelli” hearing process to determine in an individual offender should be provided counsel. However, the process resulted in delays and numerous appeals to the circuit courts. Hence, a decision was made to bestow the right by statute. Sec. 304.06 (3), Stats., evinces a legislative intent to provide counsel in every case. Sec. H.A. 2.05 (3) (f), Wis. Admin. Code, currently provides the right to counsel in all revocations. To summarize the issue, the delay and expense of not providing counsel outweighed any administrative convenience to the State.

The other seminal case in revocation practice is Plotkin. (discussed above) This decision has led to the development of a Plotkin analysis contained in revocation summaries prepared by the supervising probation/parole agent.

Review of a decision to revoke probation/parole is by writ of certiorari directed to the sentencing court. State ex rel. Johnson v. Cady, 50 Wis.2d 540, 185 N.W.2d 306 (1971).

During the 1998-1999 term, the Wisconsin Supreme Court will hear the case of State v. Horn, ~~97s275~~ 1998 WI 10. Horn involves a challenge to the Division of Hearings and Appeals authority to revoke probation. The argument made by the Kenosha Circuit Court is that revocation authority resides with the judiciary as a matter of constitutional law. An adverse decision would affect probation revocation procedure, but not parole. Parole is an act of grace bestowed by the executive branch. Given the legal principles

involved, an adverse decision would vest revocation authority for extended supervision in the judicial branch.

For further information concerning the case law that has developed relative to probation and parole revocation hearings. See Resource Book for Probation and Parole Revocation Hearings, Donald R. Schneider, 1998 Edition.

**PROPOSED CHANGES TO DOC 331.03 REVOCATION OF PROBATION &
PAROLE**

DOC 331.03 Revocation of probation and parole. (1) Revocation. A client's probation or parole may be revoked and the client transported to a correctional institution or court if the client violates a rule or condition of supervision.

(2) Investigation. A client's agent shall investigate the facts underlying an alleged violation and shall meet with the client to discuss the allegation within a reasonable period of time after becoming aware of the allegation.

(3) Recommendation. After investigation and discussion under sub. (2), the agent shall decide whether to:

(a) Take no action because the allegation is unfounded;

(b) Except as provided in par. c, resolve alleged violations by:

1. A review of the rules of supervision followed by changes in them where necessary or desirable, including return to court;
2. A formal or informal counseling session with the client to reemphasize the necessity of compliance with the rules or conditions; or
3. An informal or formal warning that further violation may result in a recommendation for revocation; or

(c) ~~Recommend revocation for an alleged violation.~~ Nothing in **par.b.** prevents the agent from recommending revocation **when** the behavior of the offender precludes implementation of alternatives. Neither is the agent obligated to implement every alternative available.

(d) Recommend revocation for an alleged violation

(4) Report. An agent shall report all alleged client violations of the rules or conditions of supervision to the agent's supervisor. The following shall be reported:

- (a) The facts underlying the alleged violation, including conflicting versions regarding the nature and circumstances of the alleged violation;
- (b) The agent's investigatory efforts and conclusions;
- (c) A brief summary of the agent's discussion with the client;
- (d) The agent's recommendation regarding disposition and the reasons for it;
- (e) A statement as to the custody status of the client;
- (f) Any pending criminal charges, guilt plea, confession, or conviction for the conduct underlying the alleged violation; and
- (g) Reference to the client's prior adjustment, including but not limited to alleged violations, violations, and **abscondings**.