



WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

Memo No. 5

TO: MEMBERS OF THE STUDY COMMITTEE ON REDUCING RECIDIVISM AND REMOVING IMPEDIMENTS TO EX-OFFENDER EMPLOYMENT

FROM: Kaitlin Farquharson, Legal Intern, and Michael Queensland and Melissa Schmidt, Senior Staff Attorneys

RE: Current Status of the 2009 Council of State Governments Justice Center's Policy Options on Justice Reinvestment in Wisconsin

DATE: October 13, 2016

In 2009, the Council of State Governments Justice Center (hereinafter, "Justice Center") conducted analyses of Wisconsin's criminal justice system and provided the Joint Legislative Council's Special Committee on Justice Reinvestment Initiative Oversight (Special Committee) with data-driven recommendations regarding policy options that were designed to "reduce spending on corrections and reinvest in strategies to increase public safety in Wisconsin." [Council of State Governments Justice Center, *Justice Reinvestment in Wisconsin: Analyses & Policy Options to Reduce Spending on Corrections and Increase Public Safety* (New York: Council of State Governments Justice Center, 2009), included as **Attachment 1**.] After reviewing these policy options, the Special Committee recommended to the Joint Legislative Council four bill drafts for introduction into the Legislature, as well as made three additional policy recommendations.¹ The Special Committee's recommendations are included as **Attachment 2**.

¹ The Joint Legislative Council voted to introduce four bill drafts that were recommended for introduction by the Special Committee. However, portions of some of these bill drafts were enacted in 2009 Wisconsin Act 28, the 2009-11 Biennial Budget Act, after the Joint Legislative Council voted on introduction, but before the bill drafts were formally introduced into the Legislature. Because portions of some bill drafts became law prior to their introduction, the already enacted recommendations were removed from the introduced bills. The bills introduced by the Joint Legislative Council were: (1) 2009 Senate Bill 315 and 2009 Assembly Bill 497, relating to the maximum term of extended supervision; (2) 2009 Senate Bill 316 and 2009 Assembly Bill 498, relating to time spent in prison

This Memo describes: (1) the Justice Center's policy options for Wisconsin; and (2) the Special Committee's recommendations and the current status of these recommendations.

POLICY OPTION: FOCUS SUPERVISION RESOURCES

Justice Center Recommendation

The Justice Center's first recommendation entailed focusing community supervision resources. Specifically, the Justice Center recommended all of the following:

- Limit the length of extended supervision imposed at sentencing to no more than 75% of the length of confinement time.
- Ensure that community resources focus on the initial months and year of supervision, when there is a high risk of recidivism and a great potential to increase public safety.
- Balance the limit on extended supervision with the need to ensure adequate time to collect victim restitution.
- Exclude sex offenders and Class A, B, and C felony offenders from the policy change.
- Apply the policy change only to offenders sentenced on or after the enactment date.

Special Committee Recommendation: WLC: 0425/3, Relating to Maximum Term of Extended Supervision

In accordance with some aspects of the Justice Center's recommendation regarding community supervision, the Special Committee recommended introduction of WLC: 0425/3, which provided that a court could not order a term of extended supervision that exceeded 75% of the term of confinement in prison ordered for a person. The limitation did not apply to a person who had been convicted of a Class A, B, or C felony or a sex offense.

The Special Committee's recommendation to limit the length of extended supervision is not reflected in current law.

POLICY OPTION: REALLOCATE REVOCATION EXPENDITURES TO COMMUNITY-BASED STRATEGIES

Justice Center Recommendation

The Justice Center recommended the reduction of resources dedicated to reincarceration and expansion of resources for programming related to mental health and employment. Specifically, the Justice Center recommended all of the following:

after revocation of parole or extended supervision; (3) 2009 Senate Bill 317 and 2009 Assembly Bill 499, relating to community supervision services in the Department of Corrections; and (4) 2009 Senate Bill 318 and 2009 Assembly Bill 500, relating to risk reduction programming.

- Reduce resources currently allocated to incarcerate people revoked from extended supervision with no new sentence and expand community-based mental health and employment strategies.
- Establish a certain reconfinement period of six months for people whose extended supervision has been revoked but who have not been convicted of committing a new crime in order to eliminate the use of resources associated with reconfinement hearings.
- Allow the Department of Corrections (DOC) to hold an offender for up to 90 days beyond the six-month reconfinement period for institutional infractions or failure to participate in required programs.
- Expand community-based mental health services for people released from prison on to extended supervision who have a serious mental illness and pose a high risk to public safety.
- Expand Wisconsin's transitional employment and job placement services for people on community supervision.

Special Committee Recommendation: WLC: 0426/3, Relating to the Parole and Extended Supervision Revocation Process and Time Spent in Prison After Revocation

In accordance with some aspects of the Justice Center's recommendation, the Special Committee recommended introduction of WLC: 0426/3, which provided that when an individual's extended supervision or parole was revoked, the person must be ordered to be confined in prison for six months. Under the bill draft, DOC could extend the confinement time by up to 90 days for rule violations or failure to participate in programming or treatment. The bill draft also removed a requirement that a court order the period of time spent in prison after extended supervision is revoked and provided that an administrative law judge must order the revocation period.

The portion of this recommendation that directed an administrative law judge to order the period of time spent in prison after extended supervision is revoked became law with the passage of 2009 Wisconsin Act 28 (2009-11 Biennial Budget Act 28, hereinafter "2009 Act 28"). The remainder of this recommendation is not reflected in current law.

Special Committee Recommendation: WLC: 0427/3, Relating to Community Supervision Services

Also in accordance with parts of the Justice Center's recommendation, the Special Committee recommended introduction of WLC: 0427/3. Among other things, this bill draft created biennial general purpose revenue (GPR) appropriations for DOC to provide or purchase all of the following:

- \$8 million for mental health services for severely mentally ill persons who are on parole or extended supervision and are at high risk of re-offending.

- \$12 million for a transitional employment program for persons who are on parole or extended supervision, are unemployed, and are at high risk of re-offending.
- \$10 million for community services to reduce recidivism for persons who are on probation, parole, or extended supervision for a felony.

2009 Act 28 created a \$10 million appropriation for community services to reduce recidivism. This program is known as the Becky Young Community Corrections Appropriation. [ss. 20.410 (1) (ds) and 301.068, Stats.] The appropriations for mental health services and a transitional employment program did not become law. However, some mental health services for severely mentally ill individuals who are transitioning from incarceration into the community on community supervision are provided through Becky Young funding. For example, the Opening Avenues to Reentry Success program provides services to the most seriously mentally ill inmates releasing to 37 Wisconsin counties. Likewise, some employment programming is provided to individuals who are transitioning to community supervision through Becky Young funding. For example, the Windows to Work program helps inmates obtain full-time employment by providing individual release and case planning and developing constructive skills. The *Becky Young Community Corrections Recidivism Reduction Fiscal Year 2016 Report* is included as **Attachment 3**.

POLICY OPTION: CREATE SENTENCING OPTION TO REDUCE RISK PRIOR TO RELEASE

Justice Center Recommendation

The Justice Center recommended the creation of a new sentencing option that required use of evidence-based practices and incentivized offender participation in programming. Specifically, the Justice Center recommended all of the following:

- Provide courts with a sentencing option that incentivizes offenders to complete programs prior to release while adhering to the principles of truth-in-sentencing.
- Provide courts with the ability to impose a period of risk reduction time, established at 75% of the amount of confinement time ordered.
- If the offender successfully completes one or more programs ordered by DOC and demonstrates satisfactory institutional behavior, he or she will serve the risk reduction time ordered. If the offender does not successfully complete the required programs, he or she will serve the total amount of confinement time ordered.
- Require DOC to complete a comprehensive and validated risk/needs assessment for each offender admitted with the risk reduction option and notify the sentencing judge of the results of the assessment and required programs.
- Require DOC to assess the quality of programs available to offenders with the risk reduction option and require that at least 75% of those programs be certified as evidence-based by 2011 (within two years).

Special Committee Recommendation: WLC: 0428/3, Relating to Risk Reduction Sentence

In accordance with some aspects of the Justice Center's recommendation, the Special Committee recommended WLC: 0428/3. This bill draft permitted a court to order a risk reduction sentence for certain individuals who agreed to participate in an assessment of their criminogenic needs and risk of re-offending and any programming or treatment required by DOC to address their risks and needs. If the person successfully completed the risk reduction sentence, DOC was required to release the person to extended supervision after he or she served 75% of the term of confinement in prison ordered under the sentence.

2009 Act 28 enacted provisions substantially similar to the Special Committee's recommendation to permit a risk reduction sentence. The Act permitted a court to order a risk reduction sentence for an individual who had been convicted of a felony, with exceptions for certain felonies, if the court determined that a risk reduction sentence was appropriate and if the individual agreed to: (1) cooperate in an assessment of his or her criminogenic factors and risk of re-offending; and (2) participate in any programming or treatment ordered by DOC to address issues raised in any needs or risk assessment conducted by DOC. Under 2009 Act 28, DOC was required to: (1) conduct a validated and objective assessment of the criminogenic needs and risk of re-offending of any individual under a risk reduction sentence; and (2) provide programming and treatment to address the risks and needs identified in the assessment. If DOC determined that a person successfully completed the programming or treatment and maintained a good conduct record during his or her term of confinement, DOC was required to release the person to extended supervision after he or she had served at least 75% of his or her term of confinement. Upon so doing, DOC was also required to notify the sentencing court that the person had successfully completed the risk reduction sentence.

2011 Wisconsin Act 38 repealed the provisions in 2009 Act 28 that permitted risk reduction sentences.

POLICY OPTION: SET RECIDIVISM REDUCTION GOAL

Justice Center Recommendation

Related to setting a recidivism reduction goal, the Justice Center recommended all of the following:

- Establish a statewide goal of reducing recidivism rates for people on probation and released from prison by 25% from 2008 levels by 2011 (within two years).
- Improve assessment processes, align supervision resources according to risk and needs, connect offenders to the right services to reduce violations, and tailor responses to violations to improve compliance.
- Expand the capacity of substance abuse treatment, day reporting centers, and other sanctions and services.

Special Committee Recommendation: WLC: 0427/3, Relating to Community Supervision Services

As stated above, the Special Committee recommended WLC: 0427/3, relating to community supervision services. In addition to creating appropriations for community-based mental health services, a transitional employment program, and community services to reduce recidivism for persons on supervision, this bill draft made a number of changes that corresponded with the Justice Center's recommendations described above. The bill draft's additional changes included provisions to do all of the following:

- Require DOC to establish community services that have the goal of increasing public safety, reducing the risk of offenders on community supervision, and reducing the community supervision recidivism rate for persons convicted of a felony by 25% between fiscal years 2008 and 2011.
- Provide that the services must target the criminogenic needs of medium- and high-risk offenders and DOC, in establishing alternatives, must consider the capacity of existing services and any gaps in services for medium- and high-risk offenders placed in the community.
- Provide that the community services to reduce recidivism must include alcohol and other drug treatment, including residential treatment, outpatient treatment, and aftercare; cognitive group intervention; day reporting centers; and other services that are evidence based and have been shown to reduce recidivism.
- Provide that DOC must ensure that the services target offenders who are at medium or high risk for revocation of supervision; provide offenders with needed supervision to improve the offender's opportunity to successfully complete his or her term of probation, parole, or extended supervision; use a system of intermediate sanctions for violations; and be based upon an assessment and evaluation of the offender using valid, reliable, and objective instruments approved by DOC.
- Require DOC to develop an accountability system for monitoring and tracking offenders receiving services under this provision in order to evaluate the effectiveness of services provided under this provision.
- Require DOC to provide training and skill development for probation, extended supervision, and parole agents in risk reduction and intervention and to develop policies to guide agents in the supervision and revocation of offenders on community supervision and best practices relating to the use of alternatives to revocation of supervision. DOC must promulgate rules setting forth the requirements for staff training and skill development.
- Require DOC to create community services to reduce recidivism, to track the effectiveness of these services, and to report annually to the Governor, the Legislature, and the Director of State Courts on the services provided and the progress towards reducing recidivism.

As stated above, 2009 Act 28 created the Becky Young Community Corrections Appropriation and made several requirements for the use of these funds. The goal of reducing recidivism by 25% was not codified in the statutes; however, a number of other provisions included in the Justice Center's recommendation related to setting a recidivism reduction goal were enacted as part of the Becky Young statute. [s. 301.068, Stats.] The statute requires DOC to provide services to people on probation, and people who will soon be or are currently on parole or extended supervision following a felony conviction, to reduce recidivism. Specifically, DOC is required to provide all of the following community services:

- Alcohol and other drug treatment, including residential treatment, outpatient treatment, and aftercare.
- Group programming focused on changing the thought patterns and attitudes that lead to committing crimes.
- Day reporting centers.
- Evidence-based treatment and services.

Additionally, DOC's community services must:

- Target offenders who are at a medium or high risk for revocation or recidivism.
- Provide services designed to expand offenders' opportunities to complete their terms of probation, parole, or extended supervision by mitigating offender attributes and factors likely to lead to criminal behavior.
- Use a system of intermediate sanctions on offenders for violations.

DOC must also:

- Monitor offenders receiving community services to evaluate how effective the programs are at reducing arrests, convictions, and imprisonments.
- Train probation, extended supervision, and parole agents in intervention techniques to reduce offenders' risks of reoffending.

Finally, s. 301.068, Stats., requires DOC to provide an annual report on the Becky Young programs to the Governor, the Legislature, and the Director of State Courts. The report must discuss the scope of DOC's community services; provide data on arrests, convictions, and prison sentences imposed for program participants; and describe progress towards reducing recidivism. As mentioned above, DOC's *Becky Young Community Corrections Recidivism Reduction Fiscal Year 2016 Report* is attached to this Memo.

For both fiscal years 2015-16 and 2016-17, the Legislature appropriated \$10,138,400 of general purpose revenue to Becky Young community services.

POLICY OPTION: COORDINATION AND EVALUATION

Justice Center Recommendation

The Justice Center recommended charging a state agency, independent body, or outside organization with periodically assessing the implementation progress, fiscal impact, and public safety impact of the policy options on various components of Wisconsin's overall criminal justice system.

Special Committee Recommendation

The Special Committee did not incorporate this recommendation into a bill draft or other recommendation.

ADDITIONAL RECOMMENDATIONS BY THE SPECIAL COMMITTEE

The Special Committee made three additional recommendations in its report to the Joint Legislative Council that did not take the form of a bill draft.

Recommendation 1: Tracking and Enforcing Restitution Orders

The Special Committee recommended that legislation be enacted to create a mechanism for tracking restitution orders and enforcing the payment of restitution by persons on correctional supervision or against whom a civil judgment for restitution has been entered.

Because this recommendation did not take the form of a bill draft, it is more difficult to determine whether the recommendation is reflected in current policy. Current law requires DOC to notify the sentencing court, district attorney, and victim at least 90 days prior to discharge if the offender has unpaid court ordered obligations. If DOC determines that the offender has made a good faith effort to pay ordered obligations, DOC must recommend the court order the restitution due be entered as a civil judgment in favor of the victims. However, if DOC determines that an offender who is on probation has not made a good faith effort to pay the ordered obligations, DOC may recommend that the court extend the term of probation and modify any condition or may recommend that the court enter a civil judgment in favor of the victims. [s. DOC 328.08 (2), Wis. Adm. Code.]

During the 2015-16 Legislative Session, the Legislature took additional steps to encourage the collection of restitution by passing 2015 Wisconsin Act 355 (Act 355). Generally, Act 355 made all of the following changes:

- Provides that any garnishment order to collect unpaid restitution remains in place until the restitution is paid in full.
- Prohibits the DOC from collecting a fee from probationers, parolees, and persons on extended supervision to partially reimburse DOC for its costs in providing supervision and other services unless all restitution payments due from the person have been paid by the time the fee is collected.

- Provides that if a defendant fails to make restitution payment in full within the time period ordered by the court, or if the defendant is delinquent in making payments toward restitution as ordered, the clerk of courts or DOC may certify to the Department of Revenue (DOR) the amount of restitution owed, and DOR may withhold that amount from any state tax refund the defendant receives.
- Provides that if a defendant sentenced to prison is ordered to pay restitution, the court order must require the defendant to authorize DOC to collect, from the defendant's wages and prisoner's account, an amount or a percentage DOC determines is reasonable for payment to victims.
- Requires DOC and each clerk of court that collects restitution to annually submit a report to the Legislature that specifies all of the following, for each fiscal year:
 - The total amounts of restitution ordered for DOC and each clerk of court to collect.
 - The amount of the fee DOC and each clerk of court collects to offset administrative expenses for collecting restitution.
 - The amounts of restitution collected by DOC and by the clerk of court and dispersed to victims.

Recommendation 2: Victim Notification When an Offender's Extended Supervision or Parole is Revoked

The Special Committee recommended that legislation be enacted to provide notification to victims when an offender's supervision is subject to revocation.

It appears that 2015 Wisconsin Act 354 (Act 354) addresses this recommendation. Act 354 requires DOC to make a reasonable effort to send notice of a revocation of parole or extended supervision to the victim of an offense committed by the inmate. DOC must make a reasonable effort to send the notice, postmarked no more than 10 days after the revocation, to the victim's last-known address. [s. 302.107, Stats.]

Recommendation 3: Victim Notification of Institutional Programming

The Special Committee recommended that legislation be enacted to provide information to victims relating to programming DOC provides to offenders in institutions and in the community.

It does not appear that this recommendation is reflected in current law. However, DOC's Office of Victim Services & Programs (OVSP) currently sends letters to registered victims when offenders are admitted to, complete, or are terminated from the Earned Release Program (ERP) or the Challenge Incarceration Program (CIP). DOC's Division of Community Corrections (DCC) publishes information on inmate programs and activities on a fiscal year basis in the *Corrections at a Glance* brochure and in the *Offender Program of Services Guide*, available on DOC's website. DOC does not release the details of particular offender treatment records to victims.

On the same topic, Senator Taylor introduced 2015 Senate Bill 802. Senate Bill 802 generally requires DOC to notify a victim who requests notification when the person convicted of a crime against the victim is assigned to any school, vocational program, or treatment program while in prison. Senate Bill 802 did not receive a public hearing and failed to pass the Legislature.

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Attachments