
Wisconsin Legislative Council

STAFF BRIEF



STUDY COMMITTEE ON INCREASING OFFENDER EMPLOYMENT OPPORTUNITIES

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The Wisconsin Legislative Council is a nonpartisan legislative service agency. Among other services provided to the Wisconsin Legislature, staff of the Wisconsin Legislative Council conduct study committees under the direction of the Joint Legislative Council.

Established in 1947, the Joint Legislative Council directs study committees to study and recommend legislation regarding major policy questions facing the state. Study committee members are selected by the Joint Legislative Council and include both legislators and citizen members who are knowledgeable about a study committee's topic.

This staff brief was prepared by the Wisconsin Legislative Council staff as an introduction for study committee members to the study committee's topic.

INTRODUCTION

Wisconsin is currently experiencing a low unemployment rate and a labor shortage. In this environment, employers are increasingly exploring untapped populations of potential workers. One such population includes individuals who are currently incarcerated, nearing release, or newly released. The state, the public at large, and individuals with convictions are all interested in efforts that provide job training and placement for offenders. In addition to providing workers for the Wisconsin economy, there is widespread interest in such efforts because stable employment is an important element in transitioning individuals back to the community and preventing recidivism.

Individuals with convictions face significant obstacles to securing employment that enables them to be self-sustaining, however. Lower levels of education, a lack of employment skills and experience, and general misgivings toward employing individuals with prior convictions have contributed to high unemployment rates following incarceration. Employers may be reluctant to hire individuals with convictions for fear of liability if an offender injures another employee or a member of the public, or because of a perception that “second chance equals second rate” when it comes to job candidates.¹ State laws prohibiting those with criminal records from obtaining certain types of employment or credentials also present impediments for certain individuals.

Formerly incarcerated individuals also face obstacles that, while not directly related to employment, make obtaining and retaining work more difficult. These associated challenges include access to substance abuse treatment, mental health providers, and affordable housing, as well as living in locations that are geographically distant from available jobs.

The Study Committee on Increasing Offender Employment Opportunities is directed to review existing impediments to employment and job training for individuals who are incarcerated or recently released and to recommend legislation. As part of its review, the committee is tasked with exploring ways to expand connections between private employers and potential employees who are incarcerated in state institutions or on extended supervision, exploring vocational earned release programs for possible implementation, considering release location flexibility based on employment opportunities, and evaluating other methods for improving job prospects for the offender population.

This staff brief provides background information to assist the study committee as it carries out its charge. More specifically, the staff brief includes the following parts:

Part I provides an overview of some of the programs administered by the Department of Corrections (DOC), the Department of Workforce Development (DWD), and the Wisconsin Technical College System (WTCS) that provide education, training, credentialing, and employment opportunities to offenders while they are incarcerated and upon release.

Part II summarizes existing state statutes and administrative rules that explicitly create or reference job training and vocational programs for incarcerated individuals.

Part III discusses state law establishing release programs relevant to employment.

Part IV addresses select state law relevant to the employability of individuals with prior convictions.

¹ Justin Stabley, “People leaving prison have a hard time getting jobs. The pandemic has made things worse.” (PBS NewsHour, March 31, 2021), quoting Jeffrey Korzenik, chief investment strategist at Fifth Third Bank and advocate for “second chance” hiring.

PART I | STATE AGENCY PROGRAMS ADDRESSING OFFENDER JOB TRAINING AND EMPLOYMENT

Several governmental programs, administered primarily by DOC, DWD, and WTCS, provide offenders with education, training, and credentials for employment while offenders are incarcerated and upon their release. While private community programs, often non-profit and faith-based, also offer outreach to offenders, community partners, and employers, these efforts are not included in the scope of this overview, as they are not directly created or required under state law.

The following section describes some of the state agency efforts relevant to employment opportunities and skill development for individuals while incarcerated and upon release. Some of these programs are specifically created by statute, as set forth in Part II, and some are created by the agencies as part of their agency objectives.

DEPARTMENT OF CORRECTIONS

DOC administers several programs aimed, in part or whole, at creating employment opportunities for individuals with criminal convictions. Some of these programs are developed and administered wholly by DOC, while others are operated in coordination with other state agencies. Certain programs assist incarcerated individuals, some are focused on the subset of incarcerated individuals whose release dates are approaching, and others are for individuals presently in community-based correctional programs such as probation or post-incarceration extended supervision. Many programs are primarily focused on preventing recidivism; however, successful employment that enables an offender to support himself or herself in the community is a key component of successful rehabilitation. Accordingly, many anti-recidivism programs contain at least some elements of educational training, vocational training, career readiness, or a combination thereof.

Council on Offender Reentry

Mission and Membership

The Legislature created the Council on Offender Reentry in the 2009 budget act, and charged the Council with coordinating reentry initiatives across state agencies and local service providers. The Council has identified its mission as the following:

Our mission is to identify and review existing reentry policies, programs, and procedures to ensure that these are aligned with evidence-based practices. Implementing these practices allow success for offenders reentering the community. Bringing together multiple state agencies and interested community stakeholders to review current WI-DOC programming initiatives aids in creating a cohesive continuum of care for men and women returning to our communities. Successful offender reentry promotes public safety, and reduces recidivism.²

² Council on Offender Reentry Annual Report (2015). See also: Jared Bernstein and Ellen Houston, *Crime and Work: What We Can Learn from the Low-wage Labor Market* (Washington, DC: Economic Policy Institute,

The Council is chaired by a director named by the DOC Secretary, and members include secretaries from various state agencies (or their designees) and community stakeholders. The Council has focused on issues of employment, vocational training, and coordinating educational and employment opportunities between state agencies and community partners at several meetings since its inception.

Grant Administration

The Council on Offender Reentry has a statutory duty to research federal grant opportunities and other funding opportunities. [s. 301.095 (2) and (5), Stats.] Accordingly, DOC administers several grants focusing on education, vocational training, or both. For example, the Council on Offender Reentry oversees implementation of the Adult Reentry and Employment Strategies (ARES) grant, which is intended to identify offenders who are at high risk for recidivism and have less job readiness in order to provide more services to increase their employability.

Another example is a Mellon Foundation grant to Marquette University for an Education Preparedness Program that offers coursework and educational support to incarcerated individuals and to individuals who were formerly incarcerated. Support provided may include mentoring, tutoring, writing assistance, and career counseling.

DOC has recently utilized federal grants to establish virtual learning opportunities for offenders and professional development for DOC instructors.

Becky Young Community Corrections Appropriation

The Becky Young Community Corrections Appropriation funds, in whole or in part, several initiatives that “provide services ... to persons who are on probation, or who are soon to be or are currently on parole or extended supervision, following a felony conviction, in an effort to reduce recidivism.” [s. 20.410 (1) (ds), Stats.] Recognizing that individuals with convictions who find and maintain employment are less likely to reoffend,³ several programs are aimed primarily at job readiness and career placement.

For example, in the Windows to Work program, DOC contracts with each of Wisconsin’s 11 regional workforce development boards to establish a program at specified prisons and jails. Typically, incarcerated individuals will begin participation in the program between three to 12 months prior to their release and will receive services in the following: (a) cognitive intervention; (b) general work skills and expectations; (c) financial literacy; (d) community resources; and (e) job seeking, applications, and resumes. Offenders receive assistance and support from a work coach in seeking and retaining a job; services extend for approximately one year post-release or until the individual finds and remains stable in a suitable job placement.

Additionally, in the Community Corrections Employment Program (CCEP), an employment program coordinator works with incarcerated individuals and those who are under community supervision to assess their readiness for employment and provide job skills and job-seeking support. CCEP works to match offenders with suitable positions offered by employers and with appropriate training programs offered by technical colleges and other community resources.

2000); and Bruce Western and Becky Petit, “Incarceration and Racial Inequality in Men’s Employment,” *Industrial and Labor Relations Review* 54, no.3 (2000): 3-16.

³ In its Becky Young Recidivism Reduction Annual Report (2021), DOC notes that the department “considers employment to be an important element in successfully transitioning individuals from incarceration to the community.” Annual Report, p. 32.

The Becky Young Appropriation provides funding to deliver short-term career and technical education academies to inmates housed at correctional centers. The DOC Reentry Unit, which is a division within the Secretary's Office, contracts with local technical colleges to deliver these academies onsite at local colleges. The certificates and credits earned are embedded as a pathway to an associate's degree.

DOC also uses Becky Young appropriations to fund employment support specialists at five adult correctional institutions. Employment support specialists generally strive to match offenders seeking work release placements with appropriate employment opportunities.

Educational Programming

DOC provides a wide variety of educational opportunities for individuals in its custody, including individualized instruction, computer-assisted instruction, peer or community tutor assistance, small group instruction, and regular class instruction. Offenders are assessed for literacy and other skills in order for DOC to determine the appropriate educational programming. DOC provides English as a Second Language programming for offenders to improve their English comprehension, reading, and writing skills. The Wisconsin Institutions Literacy Council also trains offenders to become qualified peer tutors in literacy to assist others in becoming independent readers, writers, and speakers in English. Peer tutors are hired to a paid position within the institution.

Adult Basic Education

DOC offers adult basic education instruction courses, which generally include reading, writing, math, and life skills, at most of its adult institutions. Offenders are provided with an opportunity to prepare and test for a High School Equivalency Diploma (HSED) and a General Education Diploma (GED) awarded by the Department of Public Education (DPI).⁴

For students who demonstrate sound, strong learning credentials but cannot translate or apply those skills on standardized testing formats, DOC and DPI offer a Competency-Based Education diploma. Offenders who seek this type of diploma need to demonstrate a certain level of proficiency or show significant growth in educational assessments.

Through its HSED testing, DOC assesses offenders for employability skills, including skills in job seeking, applying for work, retaining a job, and self-development and awareness.

College Programs and the Second Chance Grant Program

DOC offers a four-year bachelor's degree program for individuals at Waupun Correctional Institution in collaboration with Trinity International University (TIU). To date, TIU has graduated two cohorts with a Bachelor of Arts degree.

Several University of Wisconsin campuses also offer correspondence courses for incarcerated individuals, who are responsible for tuition and book costs. Additionally, a federal grant program allows selected higher education institutions to use federal funds to offer post-secondary education courses to offenders who wish to earn an associates' degree.

DOC additionally partners with WTCS to provide post-secondary educational and workforce training programs. Those programs are described below.

⁴ Core courses include citizenship/civics, employability skills, health, mathematics, science, social studies, and reasoning through language arts.

Badger State Industries and Correctional Farms

The Bureau of Correctional Enterprise (BCE) within DOC has four major program areas: (a) Industry, in which offenders manufacture and upholster furniture, refurbish medical equipment, fabricate signs, and produce other products; (b) Logistics, in which offenders deliver and install Badger State Industry products; (c) Agricultural, in which offenders work on two farms; and (d) Transitions, which is a voluntary pre-and post-release program offered to offenders who have previously worked in a BCE program, that assists with career placement and assistance.

Incarcerated individuals who work in BCE must have earned a high school diploma or GED/HSED, may not have had any major rule violations for 12 months before they can apply for a BCE job, and must remain free of major violations to keep a BCE job.

BCE job opportunities are intended to mirror, as closely as possible, the work environments post-incarceration. DOC provides a transition program for individuals whose release dates are approaching. The BCE transition workers help those individuals prepare resumes, apply for jobs, and assist in locating leads on job vacancies that are close to the location where the individual will be released. The transition program may also fund the purchase of specific tools or clothes an individual may need in order to accept a job offer.

Reentry Assistance

Release Plan and Partnerships With Other Agencies

Approximately six to nine months before incarcerated individuals are scheduled to be released from confinement, DOC prepares a reentry plan, based on the individual's plans for residence, education or employment, and treatment. After completing a reentry assessment, offenders are connected with supervising agents who coordinate community services for the offender and answer any questions the offender may have about his or her release plan, rules of supervision, and programming recommendations. Individuals receive assistance in obtaining housing, health care, legal services to acquire documentation for employment or education, transportation, and other needs.⁵

DOC partners with the Department of Health Services (DHS) to facilitate Opening Avenues to Success (OARS), which provides intensive case management and housing to released individuals with serious mental illness who have been assessed at moderate or high risk to commit new crimes. Additionally, DOC contracts with Legal Action of Wisconsin to provide Reentry Legal Services (RLS). Attorneys who are expert benefit specialists assist individuals in applying for appropriate public benefits and continue to represent their clients after release until they have attained benefits or appeals are exhausted.

Pre-Release Curriculum Modules

All correctional institutions offer individuals self-study pre-release modules, which are located in the institution library. The curriculum includes modules such as employment, family support, financial literacy, personal development, and transportation. The pre-release curriculum is currently in the process of being updated.

⁵ If an individual is released from confinement and does not have continuing supervision in the community, he or she need not complete the same reentry assessment, but DOC still provides resources and referrals in the same manner as it does for individuals under supervision.

DEPARTMENT OF WORKFORCE DEVELOPMENT

DWD's Division of Employment and Training (DET) oversees all workforce services offered by DWD, and administers or partners with DOC to administer several programs to provide employment opportunities for offenders.

Job Centers, Mobile Training Labs, and the Workforce Initiative and Opportunity Act

DWD issues grants to DOC to create and operate mobile classrooms and job centers at minimum and medium security institutions. Mobile classrooms and vocational training sites allow offenders to obtain education and training at DOC institutions that do not have the appropriate classroom, laboratories, or vocational or other equipment within the facility.

Working with career placement specialists at the job centers, individuals can get assistance seeking and applying for jobs where they can work upon release to community corrections or while on a work release agreement. DWD has an apprenticeship navigator within DOC, as well, connecting offenders with apprenticeship programs in high-demand business sectors.

Under the federal Workforce Innovation and Opportunity Act (WIOA), DWD provides services to potential workers, including individuals with convictions, who are facing significant barriers to employment. In its Offender Reentry Program, DWD trains DOC staff in the use of assessment tools to assess the educational and vocational needs and skills of incarcerated individuals; works through its job centers to provide career planning, job placement, and job training; and offers other services, such as resume writing and interview support.

WISCONSIN TECHNICAL COLLEGE SYSTEMS BOARD

WTCS works with DOC to provide career technical education (CTE) programs and courses and to train offenders in high-demand skills. All CTE classes are affiliated with and accredited by WTCS, are taught by teachers accredited in the same way as college instructors, and are equivalent to classes offered outside DOC. Upon completion of these programs, offenders will receive certificates, CTE diplomas, or credit toward a two-year associate degree.

CTE is provided in approximately 20 different occupational areas. DOC encourages students to concentrate in one occupational area to attain work-related job skills that may be used while incarcerated and after release.

In addition to vocational training, CTE includes related, required course work. Related course work can include communications, human/job relations, math, occupational success and strategies, student success, and small business development. This coursework is designed by WTCS and credit is awarded for successful completion.

WTCS also offers non-credit CTE at some DOC sites and offers some accelerated, academy-style training opportunities that are based on local job markets, area technical college program offerings, and available resources with DOC.

PART II | STATE LAW ADDRESSING VOCATIONAL TRAINING FOR INCARCERATED INDIVIDUALS

State law imposes few direct requirements regarding job training and employment programs for currently incarcerated or recently released individuals. While vocational programs for these populations exist, the programs are often created by state and local government agencies and non-profit organizations on their own initiative or as one effort within a larger appropriation or program targeted at worker training, prisoner reentry, or reducing recidivism.

Specific to incarcerated individuals, DOC provides numerous programs to assist individuals in pursuing their education and developing skills necessary for successful employment. The agency also provides, in coordination with WTCS, career technical education courses and training programs that vary depending on the area technical college program offerings and local job market needs. Many of these offerings and programs are operated under DOC's general authority to provide educational programs and other services to individuals in its care, rather than being specifically required or individually outlined in state law.

Part I of the brief summarizes state agency programs, most of which are not detailed or mentioned within state statutes. This part describes the limited state law that does exist explicitly addressing vocational training programs and related funding for incarcerated individuals.

FUNDS FOR MOBILE JOB TRAINING CLASSROOMS

State law appropriates funds to DWD and requires the agency to allocate the funds as grants to DOC for the creation and operation of mobile classrooms.⁶ The mobile classrooms must be used to provide job skills training to inmates at correctional facilities who are preparing to reenter the workforce, as well as training to other individuals in underserved areas of Wisconsin. DOC may use the grant funds to purchase capital equipment (a mobile or modular unit) for use as a mobile classroom, modify the unit to make it suitable for classroom instruction, and purchase and install furniture, equipment, and necessary supplies. The statutes authorize DOC to allocate up to \$50,000 of the funds to provide upkeep and maintenance of the mobile classrooms following purchase and implementation. [s. 106.27 (1j), Stats.]

FUNDS FOR JOB CENTERS AT DOC INSTITUTIONS

State law also requires DWD to allocate grants to DOC to fund the creation and operation of job centers at certain DOC minimum security correctional institutions or medium security prisons.⁷ The statute does not provide any additional detail about the particular services an institutional job center provides to inmates. [s. 106.27 (1j) (ad) and (am), Stats.]

DOC AUTHORIZATION TO CONDUCT VOCATIONAL INSTRUCTION

The Wisconsin statutes include a brief section entitled “Vocational Instruction at Prisons” that authorizes DOC to maintain vocational schools in the state prisons and to instruct inmates in

⁶ DWD allocated \$681,995 in Fiscal Year 2021 (FY 2021) for instructional costs for the mobile training labs.

⁷ In FY 2021, DWD allocated \$704,467 for contracted positions for the institutional job centers and mobile job centers, and \$89,000 for research and data information technology solutions to work on employment program outcomes.

“trades and domestic science.” State law provides no further instruction on what employment skills are to be taught or how instruction should be offered. [s. 303.05, Stats.]

DOC AUTHORIZATION FOR AUTO BODY REPAIR EDUCATION PROGRAM

State law authorizes DOC to operate a vocational education program in auto body repair at the Green Bay Correctional Institution (GBCI). The education program may receive vehicles from licensed automobile dealers and repair shops to be repaired, painted, or processed by individuals enrolled in the program. The auto body repair program may charge prices for its services that are as near as possible to the market value, and must use any proceeds to purchase materials, supplies, and equipment for the vocational education program. The statutory provision allows DOC to operate such a program, but does not require it to do so. DOC does not currently offer an auto body repair program at GBCI. [s. 302.21, Stats.]

DOC AUTHORIZATION TO OPERATE PRISON INDUSTRIES

State law permits DOC to establish industries that employ inmates and operate similar to private business to sell goods and services to governmental entities and tax-supported institutions and non-profit agencies. The DOC Bureau of Correctional Enterprises (BCE) operates these industries under the direction of the Prison Industries Board, which is comprised of nine individuals representing private industry, labor organizations, DOC, WTCS, and the Department of Administration. The specific industries operated by BCE are not enumerated in state law, but currently include wood and metal fabrication, upholstery, metal stamping, printing, textiles and embroidery, and durable medical equipment refurbishing, among others. [ss. 15.145 (2), 303.01, and 303.015, Stats., and DOC 313.04, Wis. Adm. Code.]

Incarcerated individuals employed by BCE often develop technical skills that could be transferred to employment in private business following release, including forklift operation, machining, and commercial printing. State statutes specify that one goal of prison industries is to provide inmates with training and work experience allowing them to develop skills necessary to retain employment in outside business and industry. State law further authorizes DOC to provide inmates employed in these industries with education courses related to their work to enhance their employability upon release. [s. 303.01 (6), Stats., and DOC 313.01, Wis. Adm. Code.]

PART III | STATE LAW ESTABLISHING RELEASE PROGRAMS RELEVANT TO EMPLOYMENT

State law creates programs under which individuals confined to state correctional institutions and county jails can leave the facilities to engage in employment. State law also permits qualifying individuals to be released to the community under supervision earlier than otherwise permitted, if those individuals complete specified programming. Current law does not permit early release based on completing job training or obtaining work, but background information about the early release program is included below because policy proposals have suggested expanding the program to incorporate employment.

This part summarizes current law allowing release from confinement for purposes of employment, and creating an earned release program allowing an individual to convert confinement time into supervision time upon completion of programming.

WORK RELEASE FOR DOC INMATES

State law permits inmates at state correctional institutions to leave the confines of the institution to engage in employment or training activities. The statutes give DOC broad authority to grant work release privileges to “any person incarcerated within the state prisons,” subject to certain limitations on those serving life sentences or convicted of operating a vehicle under the influence (OWI). Work release privileges allow inmates to engage in employment; attend a university, college, technical school, or vocational school; or participate in other skills training programs. DOC must provide facilities to house work release participants, either within DOC prisons or by contract with county jails, halfway houses, or other agencies and facilities. [s. 303.065 (1) to (3), Stats.]

The work release statute provides few details on how the program functions, and instead, empowers DOC to promulgate administrative rules governing the program and select the inmates who will participate. Chapter DOC 324, *Work and Study Release*, Wis. Adm. Code, contains administrative rules establishing eligibility criteria, application and approval procedures, participant rules of conduct, and termination procedures.⁸

An inmate must meet the following criteria before applying for the work release program: (a) reside in a minimum security facility; (b) have a “community custody” classification⁹; (c) have no escape attempts within the prior year; (d) have regained eligibility, if prior work release was terminated for misconduct; and (e) be parole eligible, if serving a life sentence (typically, after serving 20 years). After an inmate applies for the work release program, the warden or superintendent at the inmate’s institution will approve or deny work release status.

An inmate who receives work release status must then qualify for an actual work placement. The following criteria must be met before an inmate may receive placement: (a) the inmate must have a confirmed job offer; and (b) the pay for the job

Inmates can only work in private sector jobs that offer market-competitive wages.

⁸ DOC administrative rules distinguish between “work release,” which is for employment, and “study release,” which is for educational purposes to improve an inmate’s skills and abilities. [DOC 324.03 (5) and (8), Wis. Adm. Code.] This section uses the term “work release” generically to refer to either type of program.

⁹ “Community custody” classification is a DOC custody classification that allows inmates to participate in off-grounds activities. [DOC 324.03 (1), Wis. Adm. Code.]

must be comparable to other, non-inmate workers employed in similar positions by that employer. [DOC 324.04, 324.05, and 324.07, Wis. Adm. Code.]

Work release participants must comply with DOC conduct rules, conditions imposed by the jail or facility where they are housed, and rules of the employer or educational entity. Failure to comply may result in termination of work release privileges, following a DOC hearing to determine whether a violation occurred. Additionally, an inmate who does not report to a work release assignment or does not return to the DOC institution, jail, or facility after work commits an escape and is subject to criminal prosecution for a new crime.¹⁰ [s. 303.065 (2) and (3), Stats., and DOC 324.12 (3) and 324.13, Wis. Adm. Code.]

HUBER RELEASE FOR JAIL INMATES

State law permits inmates in county jails, tribal jails, or other county facilities to leave during “necessary and reasonable hours” to work, participate in job training, seek employment, attend an educational institution, or to engage in other specified activities.¹¹ Unlike work release for state inmates, Huber release privileges are granted by courts and not by DOC.¹² An individual sentenced to jail or to a term of probation is potentially eligible for Huber release.¹³ [ss. 303.08 (1) and (2) and 973.09 (4), Stats.]

Eligible individuals may petition the court for Huber release privileges. The court often grants Huber release privileges at the time of sentencing, but may also grant them at a later date. State law empowers courts to withdraw Huber release privileges at any time, with or without prior notice. [s. 303.08 (2), Stats.]

Sheriffs oversee individuals who have been granted Huber privileges by courts, but have limited authority to deny them release. State law permits a sheriff to deny Huber release privileges for five days or less for a breach of discipline or other violation of jail regulations, but does not permit a sheriff to fully revoke Huber release on his or her own initiative.¹⁴ A sheriff can, however, ask the court to withdraw release for an individual the sheriff believes is inappropriate for participation. State law does require a sheriff to deny Huber release to certain individuals with OWI convictions, unless they meet specified conditions such as installing a vehicle ignition interlock device. [s. 303.08 (10) to (10r), Stats.]

¹⁰ A warden or superintendent may also terminate an inmate’s work release placement based on negative public reaction, even if the inmate complies with all rules and conditions. [DOC 324.13 (9), Wis. Adm. Code.]

¹¹ Huber release also allows a jail inmate to leave the facility to perform community service, housekeeping, or family care, attend court proceedings, receive medical treatment, obtain counseling or therapy, attend a parenting education program, or meet with the individual’s probation and parole agent. [s. 303.08 (1), Stats.]

¹² DOC may grant Huber release privileges under limited circumstances to individuals in DOC custody who are being temporarily held in county jails. Specifically, when an individual who is on extended supervision commits a violation of his or her release conditions, DOC may confine the individual in a county jail for less than 90 days as a “short term sanction,” rather than revoking the individual and sending him or her back to prison. DOC has authority to grant Huber release to these individuals. [s. 303.08 (2), Stats.]

¹³ State law also permits DOC inmates in these facilities to be released for employment, education, or other purposes pursuant to a contract between DOC and the facility. [s. 302.27, Stats.] DOC reports that no such contracts currently exist, so no DOC inmates are currently being released from county facilities under this program.

¹⁴ The Wisconsin Court of Appeals held in *State ex rel. Coogan v. Michek*, 2020 WI App 37, that a sheriff cannot disregard a court order for Huber release, except for the temporary denial of five days or less provided by state law. Sheriffs and DOC do determine Huber release eligibility for certain probationers that committed a misdemeanor and who commit a probation violation that is not a crime. [s. 302.335 (2j), Stats.]

EARNED RELEASE PROGRAM

State law allows eligible inmates to earn early release to extended supervision or parole if they complete a substance abuse program. The statutes refer to this program as both the “Earned Release Program” (ERP) and the “Wisconsin Substance Abuse Program.” While ERP does not currently permit early release based on securing employment or completion of job training, policy proposals have been advanced to expand the program in this way.

Inmates are generally eligible for early release to supervision under ERP if they meet the following conditions: (a) the inmate is serving time for a non-violent crime¹⁵; (b) the sentencing court deems the inmate eligible; and (c) the inmate successfully completes a DOC substance abuse treatment program. [s. 302.05 (3), Stats.]

A court will modify the sentence of an inmate who completes ERP to convert confinement time to extended supervision time. Thus, the total period of the sentence does not change, but the inmate serves less time within a correctional institution and more time in the community on supervision.

For individuals who are potentially eligible for ERP because they committed a non-disqualifying crime, the Presentence Investigation (PSI) Report must make a recommendation about whether the court should deem the individual ERP-eligible. A PSI report is compiled by a DOC agent after a person is convicted of a crime, but prior to the person receiving a sentence, and provides background information to the court about an individual’s case, criminal history, substance abuse issues, employment history, family, and other relevant topics. The court receives the PSI and its ERP recommendation and makes its own determination about whether the individual will be eligible for ERP. [ss. 302.05 (3) (c) 2., and 972.15 (2b), Stats.]

Early release to supervision is available only to inmates with identified substance abuse treatment needs.

ERP is not currently available for inmates who secure jobs or complete vocational training.

¹⁵ To be eligible for earned release, an inmate cannot be serving a sentence for any violation contained in ch. 940, *Crimes Against Life and Bodily Security*, or for a violation of s. 948.02, *Sexual Assault of a Child*; s. 948.025, *Repeated Acts of Sexual Assault of the Same Child*; s. 948.03, *Physical Abuse of a Child*; s. 948.05, *Sexual Exploitation of a Child*; s. 948.051, *Trafficking of a Child*; s. 948.055, *Causing a Child to View or Listen to Sexual Activity*; s. 948.06, *Incest with a Child*; s. 948.07, *Child Enticement*; s. 948.075, *Use of a Computer to Facilitate a Child Sex Crime*; s. 948.08, *Soliciting a Child for Prostitution*; s. 948.085, *Sexual Assault of a Child Placed in Substitute Care*; or s. 948.095, *Sexual Assault of a Child by School Staff or Person who Works With or Volunteers with Children*. [s. 302.05 (3) (a) 1., Stats.]

PART VI | STATE LAW RELEVANT TO EMPLOYABILITY OF INDIVIDUALS WITH PRIOR CONVICTIONS

State law contains provisions and programs that may assist individuals with prior convictions who are seeking employment. These include providing a state certificate endorsing an individual as qualified to work, prohibiting employers from refusing to hire an individual on the basis of his or her conviction record, and expunging court records of conviction. Conversely, state law also contains provisions impeding individuals from being employed or licensed in certain occupations based on prior convictions.

The following section summarizes current law relevant to the employability of individuals who have criminal convictions.

CERTIFICATES OF QUALIFICATION FOR EMPLOYMENT

State law creates a process allowing a person convicted of a non-violent crime to apply for and receive a Certificate of Qualification for Employment (CQE). A CQE is a certificate that provides an individual with relief from collateral sanctions. A “collateral sanction” is generally defined as a penalty, ineligibility, disability, or disadvantage related to employment or occupation licensing or certification and that is the result of the individual’s criminal record. [s. 973.25 (1), Stats.] State law does not specifically identify penalties, disabilities, or disadvantages that a CQE protects an individual against, so the legal effect of holding a CQE is unclear. The practical effect for an individual may be that potential employers will consider the CQE an endorsement of the individual and may be more likely to offer employment.

Individuals released after non-violent convictions may apply to the Council on Offender Employment for a CQE after meeting one of the following conditions: (a) the individual served at least two years in state prison; or (b) the individual served at least one year in state prison and one year on extended supervision. The council consists of the Attorney General, State Public Defender, and Chairperson of the Parole Commission¹⁶ and is convened by the Director of State Courts for the purpose of reviewing applications and granting CQEs. [s. 973.25 (3), Stats.]

The council receives information from DOC about an applicant’s education level, completed treatment, work performance evaluations, risk and needs assessments, and any other information the council requests. The council then considers whether the applicant poses a risk to public safety, whether a CQE will assist the applicant in obtaining employment or licensing, and whether a CQE will decrease the chances that the applicant commits an additional offense. [s. 973.25 (4) (b) and (5), Stats.]

Employers who hire a CQE holder receive civil immunity for certain acts by that employee. An employer is immune from liability for the intentional acts or omissions of the employee and any acts of the employee outside the course of employment. An employer is also immune from liability for any claim of negligent hiring, retention, training, or supervision of the employee, unless the employer acted maliciously or with intentional disregard for an individual’s rights when hiring the CQE holder. [s. 895.492, Stats.]

¹⁶ A designee of the Attorney General, State Public Defender, or Parole Commission Chairperson may sit on the council in place of the officeholder. [s. 973.25 (2), Stats.]

A CQE does not protect an individual against denial of employment, licensing, or certification if any of the following apply:

- Child Care or Foster Home Licensure. Protections do not apply if the licensure sought is related to child care or a foster home, and the conviction is substantially related to care of a client.
- Client Care Facility. Protections do not apply if the licensure sought is related to a care facility, and the conviction was for a serious crime or the individual misappropriated client funds or abused or neglected a client or child.
- Employment as a Caregiver. Protections do not apply if the employment an individual seeks is as a caregiver and the conviction was for a serious crime or the individual misappropriated client funds or abused or neglected a client or child.
- Offense Substantially Relates to Job or License. Protections do not apply if the circumstances of an individual's offense are substantially related to the job or license the individual seeks.
- Employment at a School. Protections do not apply if the employment is for an educational agency and the individual has a felony conviction.
- Security-Related Jobs. Protections do not apply if the licensure is for a private investigator, security personnel, or the installation of burglar alarms, and the individual has a felony conviction.
- Alcohol Licenses. Protections do not apply if the licensure the individual seeks relates to alcohol beverages, and the conviction was for a controlled substances crime.

[s. 973.25 (1) (a), Stats.]

Additionally, a CQE does not protect an individual with a prior conviction against consequences imposed as punishment for his or her crime. An individual remains subject to confinement in jail or prison; probation, parole, or extended supervision; suspension or revocation of driving privileges; forfeitures, fines, or assessments; costs of prosecution; and restitution. [s. 973.25 (1) (a) and (b), Stats.]

EMPLOYMENT DISCRIMINATION BASED ON CONVICTION RECORD

Wisconsin employment discrimination law generally prohibits an employer or licensing agency from refusing to hire or license an individual for specific reasons, including arrest or conviction record. "Conviction record" includes "information indicating that an individual has been convicted of any felony, misdemeanor or other offense, has been adjudicated delinquent, has been less than honorably discharged, or has been placed on probation, fined, imprisoned, placed on extended supervision or paroled pursuant to any law enforcement or military authority." [ss. 111.32 (3) and 111.335 (2) (b) and (3) (a) 1., Stats.]

However, employers and licensing agencies may deny employment or licensing if the circumstances of a person's criminal conduct "substantially relate" to the circumstances of the job or licensed activity. Employers and agencies may also refuse to hire or license an individual for particular employment or a specific license based on conviction record regardless of whether the job and offense circumstances are substantially related. Many of the exceptions to employment discrimination based on conviction are the same as the exceptions to CQE protections, listed in the previous part. For instance, an employer may refuse to hire an

Employers may refuse to hire a person because of a prior conviction if the offense is "substantially related" to the job or if the hiring is for certain jobs.

individual with a felony conviction as a teaching assistant or as a security guard without regard to the type of offense or facts of the crime. [s. 111.322 (1) and 111.335 (2) (b) and (3) (a) 1., Stats.]

EXPUNGEMENT OF CRIMINAL RECORDS

State law permits certain individuals with convictions to have their court records expunged. An individual granted expungement by a court will have his or her court records relating to a particular conviction sealed, destroyed, or otherwise removed from view. No record of the case, other than the case number, will be available on the court system's public-facing database, commonly referred to as "CCAP." [s. 973.015, Stats., and SCR 72.05 (2) (L) and 72.06.]

Expungement does not vacate or set aside a conviction, so does not restore eligibility for licensing or employment for which an individual is otherwise ineligible. An employer may refuse to hire an individual with a prior conviction under certain circumstances, discussed above, whether or not the court records for that conviction were later expunged.

Additionally, expungement seals access to court records, but not to information or records held by the Department of Justice's Crime Information Bureau, DOC, law enforcement agencies, or the Department of Transportation. A person conducting a background check or other investigation on an individual can still obtain information about an expunged conviction from these other sources.¹⁷

Finally, most individuals with criminal convictions are not eligible for expungement. With limited exceptions, an adult is eligible only if the court orders expungement at the time of sentencing. Wisconsin law does not generally allow an adult to petition for expungement after he or she is sentenced.¹⁸ Additionally, all of the following conditions must be met before a court can order expungement:

- Young Offender. The person must have been under the age of 25 when he or she committed the offense for which expungement is sought.
- Misdemeanor or Low-Level Felony. The offense must have a maximum penalty of six or fewer years of imprisonment, meaning only misdemeanors and Class H and I felonies may be expunged.
- Completion of Sentence. The person must have successfully completed his or her sentence, meaning that the person served all ordered confinement and parole or extended supervision time. If on probation, the person completed the probation period, satisfied all conditions, and was not revoked.
- Court Findings on Benefit and Harm. The sentencing court must determine that the person will benefit from record expungement and that society will not be harmed by it.

[s. 973.015 (1m) (a) 1. and (b), Stats.]

Even if an individual meets these conditions, a court cannot expunge a Class H or I felony if the individual has a prior felony conviction or the offense falls into certain categories.¹⁹ [s. 973.015 (1m), Stats.]

¹⁷ See *State v. Leitner*, 2002 WI 77, 253 Wis. 2d 449, and *State v. Braunschweig*, 2018 WI 113, 384 Wis. 2d 742.

¹⁸ A victim of human trafficking for the purpose of a commercial sex act may request expungement of a court record for prostitution at any time after conviction. [s. 973.015 (2m), Stats.]

¹⁹ A Class H felony cannot be expunged if the offense is stalking, intentional or reckless physical abuse of a child, sexual assault by a school staff member or volunteer, or is defined as a violent offense. A Class I felony

PROHIBITIONS ON OFFENDERS HOLDING CERTAIN JOBS OR OBTAINING PARTICULAR CREDENTIALS

State statutes and administrative rules promulgated by the Department of Safety and Professional Services (DPS) and its affiliated boards and credentialing bodies prohibit individuals with particular convictions from working in specified jobs or obtaining certain professional licenses, certificates, and permits. State law imposes varying levels of prohibition depending on the occupation or license at issue. The prohibitions range from barring anyone with a felony conviction to simply requiring a background check without precluding hiring or licensing of an individual.²⁰

The strictest statutory provisions exclude an individual with a misdemeanor or felony conviction from particular occupations. For example, an individual with an arrest or conviction record cannot work as a funeral director or as an auctioneer because state law makes them explicitly ineligible for the necessary licensure or registration. [ss. 125.04 (5) (a) 1., 445.045 (1) (b), and 480.03 (2) (c), Stats.] Similarly, an individual with any felony conviction cannot work as private security personnel. [s. 440.26 (5m) (a) 2., Stats.] These blanket prohibitions are relatively uncommon, however.

More commonly, an individual is prohibited from holding certain jobs or licenses if the individual committed certain types of crimes or committed them while engaged in the profession. For example, an individual cannot be a massage therapist if convicted of prostitution, and cannot drive for a transportation network company (e.g., Uber or Lyft) if, within the last seven years, he or she committed any crime involving fraud, theft, damage to property, violence, or use of a motor vehicle in the commission of a felony. [s. 440.445 (2) (a) 2., and 460.05 (1) (h), Stats.] Similarly, an individual is ineligible for a cosmetology license if convicted of a felony committed while engaged in the practice of cosmetology, and is ineligible for a construction contractor permit if convicted of a crime related to the construction of a dwelling. [ss. 454.06 (1) (b) and 101.654 (5) (c), Stats.]

State law sometimes allows a licensing agency to deny occupational credentials based on prior convictions without requiring that it do so. This discretion specific to a particular job or license is in addition to state law, discussed above, that permits a licensing agency to deny licensure based on circumstances of an individual's offense that "substantially relate" to the job or credential without committing employment discrimination. As an example of explicit discretion to deny a particular license, DHS has the option to deny an individual a license to do asbestos abatement if he or she committed any offense related to environmental remediation, but can choose whether to exercise that option. [DHS 159.44 (4) (b), Wis. Adm. Code.]

Individuals with prior convictions can obtain a predetermination from a state licensing agency about whether he or she would be disqualified from obtaining a license prior to submitting a full license application and paying any fee. Each licensing agency is also required to publish a list of offenses or kinds of offenses that may cause it to deny licensure. [s. 111.335 (4) (e) and (f) 1., Stats.]

cannot be expunged if the offense is concealing the death of a child or is defined as a violent offense. [s. 973.015 (1m) (a) 3., Stats.]

²⁰ The National Reentry Resource Center provides a [National Inventory of Collateral Consequences](#) cataloguing the impact of convictions on licensure and employment in each state. Detailed information regarding prohibitions that exist under Wisconsin law can be obtained by selecting "Wisconsin" as the jurisdiction.