

# The Wisconsin Department of Corrections: An Expensive Proposition

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# THE WISCONSIN DEPARTMENT OF CORRECTIONS: AN EXPENSIVE PROPOSITION

HONORABLE PATRICK J. FIEDLER\*

## I. INTRODUCTION

The Wisconsin state budget is passed by the legislature in July of odd numbered years and then is further defined by partial vetoes of the governor in August. The proposed 1993-95 biennial budget calls for the Department of Corrections to spend over \$300 million per year.<sup>1</sup> This is an increase in operating funds of nearly \$50 million per year,<sup>2</sup> and a total increase of 652 employees<sup>3</sup> at a time when the entire operation of state government is increasing by only 469 employees.<sup>4</sup> So, as money becomes increasingly tight, the Department of Corrections takes a proportionately larger share of the state budget. Chart 1 illustrates that 3.6% of all Wisconsin tax dollars are spent by the Department of Corrections.

What fuels this great increase of tax dollars spent on the correctional end of the criminal justice system? In its simplest terms, the answer is numbers. An increasing number of offenders are being sent to the Department of Corrections from criminal courtrooms throughout the state, resulting in record numbers of new inmates and new probationers. These inmates are, in turn, costing record amounts of money to supervise. As the state progresses toward the year 2000, an unfortunate but realistic question that we must ask ourselves is "How much public safety are we willing to pay for?"

The Department of Corrections has 4800 employees and an annual operating budget of \$250 million. Additionally, in the last biennial budget (1991-93), \$145 million was approved for the construction of almost 1700

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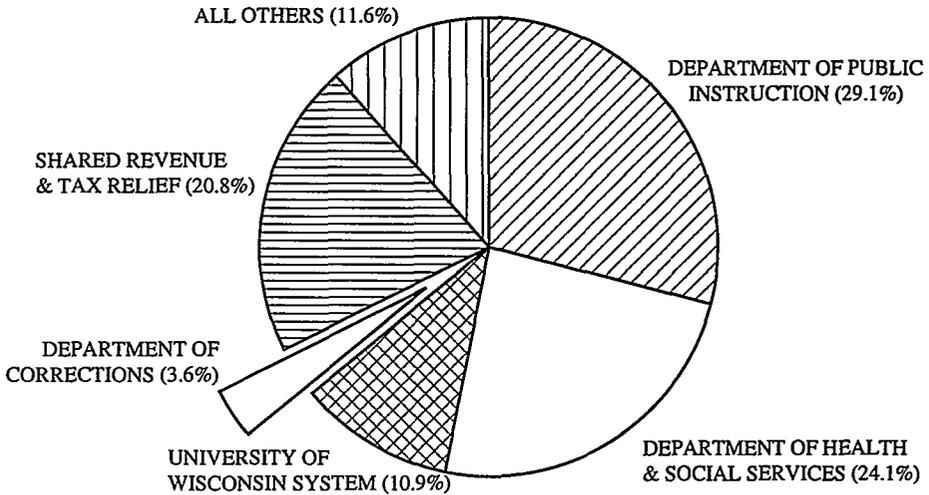
1. LEGISLATIVE FISCAL BUREAU, 1993-95 WISCONSIN STATE BUDGET, SUMMARY OF GOVERNOR'S BUDGET RECOMMENDATIONS, SENATE BILL 44, at 6 (1993).

2. *Id.*

3. *Id.* at 8.

4. *Id.* at 9.

Chart 1  
State Budget Fiscal Year 1993  
General Purpose Revenue Dollars (tax dollars)



	<u>Dollars</u>	<u>Full-time Employees</u>
Department of Public Instruction	\$2,024,697,300	437.83
Department of Health & Social Serviced	\$1,675,785,000	1,605.01
University of Wisconsin System	\$757,689,600	18,918.43
Department of Corrections	\$249,843,100	4,789.45
All Other Agencies	\$810,245,900	5,785.41
Shared Revenue & Tax Relief	<u>\$1,446,381,700</u>	<u>0.00</u>
Total General Purpose Revenue All Sources	\$6,964,642,600	31,536.13

Source: Wisconsin Department of Corrections — April 1993

new prison beds.<sup>5</sup> These prison beds, each costing over \$20,000 per year to operate, will still not be enough to provide equilibrium to a prison system that is 35% over capacity. What does it mean to be 35% over capacity? The State of Wisconsin has over 8600 inmates located in prison space that should hold no more than 6400. This is not a healthy situation. Overcrowding lessens the ability of the Department to work on the rehabilitative aspects of corrections and makes it more difficult to safely manage the in-

5. 1991 Wis. Laws 39.

mate population. One criticism of the Department that has always amused me is that overcrowding is due to the Department imprisoning too many people. I am unaware of any statutory authority that empowers the Department to determine who goes to prison.

The corrections situation in Wisconsin must be viewed in light of the situation throughout the United States. As of January 1, 1992, the national incarceration rate was 326 inmates per 100,000 population.<sup>6</sup> This incarceration rate is the highest of any industrialized country in the world. On that same date, Wisconsin's incarceration rate was slightly less than half of that, totalling 159 inmates per 100,000 population.<sup>7</sup> Most people do not seem too surprised to hear that Wisconsin has 8600 inmates. They are, however, typically unaware that the state has an additional 49,000 people, referred to as clients, being monitored on probation and parole. In other words, for every one person in a prison bed the state has 5.7 probationers or parolees out in the community. Therefore, the Division of Adult Institutions (prisons) has authority over 15% of the total inmate/client population, while the Division of Probation and Parole has authority over 85% of the total. Clearly, these statistics support the argument that Wisconsin is not disproportionately incarcerating too many of its criminals.

The record intake of new inmates drives the Department budget and affects operations. Specifically, in calendar year 1992, the Department of Corrections averaged 382 new male inmates per month. Contrast this with calendar year 1988, a mere four years earlier, when that figure was 217 new male inmates per month. The Department has absolutely no control over the influx of new inmates each month, and recent history indicates that the state can expect that figure to continue to rise in subsequent years. In the first few months of 1993, Wisconsin received an average of 424 new male inmates each month.

Presently, the Department is not in danger of being required by a federal court order to release inmates for exceeding a maximum capacity number. This is due to four main factors: (1) a combination of more prison beds and correctional officers, (2) more probation and parole agents, (3) more discretionary paroles, and (4) the new Intensive Sanctions program. All four of these factors have allowed the Department to keep up with intake and must continue to operate effectively in order for it to avoid possible federal court intervention.

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6. GEORGE M. CAMP & CAMILLE G. CAMP, CRIMINAL JUSTICE INSTITUTE, INC., THE CORRECTIONS YEARBOOK 8 (1992).

7. *Id.*

## II. INTENSIVE SANCTIONS

### A. Background

A positive development in the area of corrections that came out of the 1991-93 Budget Bill<sup>8</sup> was the creation of the Intensive Sanctions program. Intensive Sanctions was specifically designed as a prison alternative for certain offenders who could be effectively monitored in the community while still satisfying the need for public safety. In considering the success of the Intensive Sanctions program, it is important to understand its evolution.

Wisconsin has been involved in intensive supervision programs for over ten years. In 1980, the former Division of Corrections (at that time part of the Department of Health and Social Services) implemented a high-risk supervision program. This program monitored offenders who had been paroled at their mandatory release date but who continued to pose a high risk to the community. Under this program, the caseloads were limited to two probation and parole agents for every forty offenders. This high-risk supervision program continues to operate in select areas of the state within the Division of Probation and Parole. In 1987, the Drug Intensive Supervision program began with a federal grant from the War on Drugs program. The caseloads were set at one agent per twenty offenders with the goal of reducing the frequency and severity of crimes committed by probationers and parolees with substance abuse problems.

In 1989, the Department implemented the Community Structured Supervision Program (CSSP), another intensive supervision program. The objective of CSSP was to provide intensive community supervision to offenders who otherwise would continue to be incarcerated in state prisons until their mandatory release date. In this instance, the caseloads were set at one agent per twenty-four offenders.

In 1990, the Department of Corrections implemented the Community Residential Confinement (CRC) program, its mission being to administratively transfer inmates to the community by electronically monitoring and supervising them through the use of an ankle bracelet. These "inmates" continued to be subject to rules of institutional conduct and could be administratively returned to prison for violations without the necessity of resorting to the revocation process.

Additionally, in 1990, Wisconsin commissioned a group to study the need for state prison beds from now until the end of this century.<sup>9</sup> The final

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8. 1991 Wis. Laws 39.

9. ZIMMERMAN DESIGN GROUP, STATE OF WISCONSIN CORRECTIONAL SYSTEM DEVELOPMENT PLAN (1990).

report indicated that Wisconsin's future need for prison beds could possibly double by the year 2000.<sup>10</sup> Based on this report, Governor Tommy G. Thompson introduced his corrections expansion plan. This plan not only called for the construction of a significant number of prison beds (4500 over the next eight years), but it also provided for the expansion of the CSSP and CRC programs to a total of 2000 offenders by the year 1995.

In response, a seven-member panel was appointed by the Wisconsin Assembly Speaker to review the overcrowded prison situation. The panel's final report recommended that the state create a new organizational unit within state corrections to implement a program of alternative sanctions for the "nonviolent property offender," as well as increase the number of prison beds.<sup>11</sup>

Finally, on August 15, 1991, Governor Thompson signed into law the 1991-93 Budget Bill, which included the creation of the Intensive Sanctions program. The Department of Corrections, in developing this program, recommended and was given approval to create a separate division known as the Division of Intensive Sanctions (DIS), which encompassed the CSSP, CRC, and Drug Intensive Supervision programs.

### B. Implementation

The Intensive Sanctions program gave the Department statutory authority to execute an alternative to prison for certain offenders.<sup>12</sup> The Department then faced the task of implementing a program statewide so that by June 30, 1995, the program would contain 2200 offenders.

The goal of statewide implementation required the creation of two separate committees to develop a successful game plan. The first committee consisted entirely of Department of Corrections personnel. The committee was in charge of designing all parts of the program, including administrative tasks such as obtaining office space, vehicles, supplies, services, and personnel. Moreover, the internal committee designed the functional framework for the program. Ultimately, the program would consist of four distinct phases for each offender to progress through and four separate entry points by which offenders could begin the program. The major requirements of the Intensive Sanctions program, as well as the entry points, are shown in Chart 2.

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10. *Id.* at 2.

11. WISCONSIN CORRECTIONAL SYSTEM REVIEW PANEL, FINAL REPORT 5 (1991).

12. WIS. STAT. § 973.032(1) (1991-92).

CHART 2  
INTENSIVE SANCTIONS PHASE SYSTEM

PHASE 1: CONFINEMENT

Every inmate in the Intensive Sanctions program will serve an initial period of confinement. There are four entry points to intensive sanctions. The amount of time that offenders will serve in confinement at the start of their terms in intensive sanctions depends on where they enter the program:

*Entry Points*

1. Sentenced to intensive sanctions
  - All inmates initially spend two weeks at Dodge Correctional Institution or Taycheedah Correctional Institution for assessment and evaluation.
  - After assessment and evaluation, all inmates will serve at least 25% of their court-ordered confinement at the start of their sentence or complete the required treatment program, whichever is greater.
2. Administrative transfer
  - All inmates must serve to their parole eligibility date before being considered for intensive sanctions.
3. Parole
  - All inmates must serve to their parole eligibility date before being considered for intensive sanctions.
4. Alternative to revocation
  - All inmates must complete the designated Alternative to Revocation Program (prison-based, jail-based, halfway house, residential treatment facility), which includes an initial two weeks at Dodge Correctional Institution or Taycheedah Correctional Institution.

Following completion of the confinement phase, all DIS inmates will move to a highly structured, extremely restrictive community-based intensive supervision phase (Phase 2) for a minimum period.

PHASE 2: INTENSIVE COMMUNITY SUPERVISION

- Minimum of three months in Phase 2.
- Mandatory agent/supervisor reviews every 30 days.
- Mandatory full-time programming (employment, school, treatment or community service).
- Minimum of 18 face-to-face contacts with inmate each month.
  - Six per month are by DIS staff.
    - must be one contact per week.
    - must be two home visits per month.

- of these six contacts, two must be either on the weekend or during nontraditional work hours.
- one may be a surveillance contact.
- Twelve per month are by law enforcement, treatment providers, employers, school or landlords.
  - must be verified weekly by DIS staff (phone/face-to-face).
  - must be contacted by at least two different resources.
- Monthly program/employment verification required (phone/face-to-face).
- Weekly verification of employment-seeking required (written/face-to-face with employers).
- Mandatory community service (20 hours per week) when not in programming.
- Four urine screens/alcohol tests each month.
- In addition to the minimum 18 face-to-face contacts with the inmate, DIS staff must complete one collateral contact each month with client's significant other, family member, friend or roommate.

#### PHASE 3: INTENSIVE COMMUNITY SUPERVISION

- Minimum of three months in Phase 3.
- Mandatory agent/supervisor reviews every 30 days.
- Mandatory full-time programming (employment, school, treatment or community service).
- Minimum of 10 face-to-face contacts with inmate each month.
  - Four per month are by DIS staff.
    - must be one per week.
    - must be one home visit per month.
    - of those four contacts, one must be either on the weekend or during nontraditional business hours.
    - one may be a surveillance contact.
  - Six per month are by law enforcement, treatment providers, employers, schools or landlords.
    - must be verified by DIS staff.
    - must be by at least two different resources.
- Mandatory community service (20 hours per week) when not in programming.
- Weekly verification of employment-seeking required (phone/face-to-face).
- Monthly program/employment verification required (written/face-to-face with employer).
- Two urine/alcohol screens each month.

- In addition to the minimum 10 face-to-face contacts with the inmate, DIS staff will complete one collateral contact each month with significant other, family member, friend or roommate.

#### PHASE 4: PRETRANSFER

- Minimum of two months in Phase 4.
- Minimum of two face-to-face contacts each month by DIS staff; one must be a home visit.
- Minimum of two collateral contracts per month.
- Monthly employment/programming verification required.
- Urine alcohol screens at agent's discretion.

Source: Wisconsin Department of Corrections — 1992.

As indicated in the chart, the four entry points into the Intensive Sanctions program are through (1) an administrative transfer from a prison to the program by the Department of Corrections, (2) a parole to the program by the Parole Commission, (3) an alternative to probation/parole revocation, or (4) a court sentence to the program.

As of July 1, 1992, every court in Wisconsin was given the discretion to sentence convicted felons to Intensive Sanctions.<sup>13</sup> The statute governing the eligibility of offenders for a sentence to Intensive Sanctions requires:

1. the person be convicted of a felony;
2. the felony must occur on or after August 15, 1991;
3. the sentencing must occur on or after July 1, 1992; and
4. the felony can not be punishable by life imprisonment.<sup>14</sup>

To better understand how the program works in the case of a court sentence, consider the example of a felon sentenced by the court to three years of intensive sanctions with up to one year of that sentence to be served in confinement (a 3-1 sentence). The "up to one year of confinement" is the statutory maximum amount of time that the Department may confine someone absent a further court order to add one additional year.<sup>15</sup> It is within the Department's discretion to determine how much of that confinement time will actually be served.<sup>16</sup> The three-year sentence to the program is the total time span over which the Department of Corrections has control over the individual.<sup>17</sup>

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13. WIS. STAT. § 973.032(1) (1991-92).

14. WIS. STAT. § 973.032(1), (2)(b) (1991-92).

15. WIS. STAT. § 973.032(3)(b), (4)(b) (1991-92).

16. WIS. STAT. § 973.032(4)(a) (1991-92).

17. WIS. STAT. § 973.032(3)(a) (1991-92). A court may sentence a felon to the program for whatever the maximum sentence to prison would be for the particular felony (e.g., Class B felony, up to 20 years; Class C felony, up to 10 years).

The Department has determined that every DIS inmate will serve a minimum of 25% of the confinement order. Thus, the confinement sentence of up to one year guarantees that the inmate will serve at least three months. This is analogous to inmates sentenced to prison who must serve at least 25% before becoming eligible for parole.<sup>18</sup> The confinement may be served in a Type 1 prison (traditional prison bed), county jail, reforestation camp, residential treatment facility, or a community-based residential facility.<sup>19</sup>

Every inmate sentenced to DIS by the courts spends a minimum of two weeks being assessed and evaluated at either Dodge Correctional Institution (male inmates) or Taycheedah Correctional Institution (female inmates). The Department considers moving an inmate from phase one to phase two upon completion of the minimum 25% of the court-ordered confinement. It also considers whether the inmate has been successful up to this point and whether further confinement is necessary. The Department may use any remaining confinement time as a sanction if the inmate later exhibits problems complying with the program.<sup>20</sup> For example, an inmate may be immediately returned to a prison cell if his or her behavior warrants it. In addition, an inmate who is administratively transferred or paroled to DIS is given credit for any time spent in confinement toward the 25% time service requirement of phase one.

An inmate who successfully completes phase one then enters phase two. A phase two inmate wears an electronic ankle bracelet to ensure that he or she remains in his or her residence. A phase two inmate is allowed to travel from his or her residence only for preapproved work, school, or treatment programs. The inmate, working with his or her agent, must develop a case plan within thirty days. After thirty days, the inmate is allowed to apply for recreation time of no more than four hours per week. The recreation time and activity must be preapproved. Each inmate receives a mandatory review by the agent and the agent's supervisor every thirty days. Every inmate is also subjected to mandatory full-time programming (employment, school, treatment, or community service) and must complete a mandatory twenty hours per week of community service when not in other programming. This latter requirement will encourage inmates to actively seek employment.

Phase two requires a minimum of eighteen face-to-face contacts with each inmate every month. Six of the contacts must be by DIS staff, and

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18. WIS. STAT. § 304.06(1)(b) (1991-92).

19. WIS. STAT. § 301.048(3)(a)(1) (1991-92).

20. WIS. STAT. § 301.048(3)(b) (1991-92).

twelve contacts may be by law enforcement, treatment providers, employers, school, and/or landlords. In addition, there are a minimum of four drug and alcohol screens every month that are randomly administered at the supervising agent's discretion. The minimum requirements to move forward to phase three include (1) at least three months of phase two, (2) the agent's and supervisor's agreement that the case plan objectives have been met, (3) stable employment and/or employment and a legal means of support, (4) positive program adjustment, and (5) no major violations or positive drug and alcohol screens for ninety days. The inmate moves to phase three only if the Department determines that the inmate has successfully completed phase two.

Phase three is very similar to phase two except that the restrictions are not quite as strict. Agents and supervisors review the case file every thirty days and mandatory full-time programming remains in effect. The number of monthly face-to-face contacts with each inmate drops to ten, four of which must be completed by DIS staff while the remaining six may be completed by collateral contacts. Drug and alcohol screens are also done at least twice a month. To be considered for movement to phase four, the inmate must have completed at least three months of phase three, the agent and the supervisor must agree that the case plan objectives have been met, stable education and/or employment must have been obtained as well as a legal means of support, there must be positive program adjustment, and there must have been no major violations or positive drug and alcohol screens for ninety days.

Phase four is the pretransfer phase that is akin to supervision of an individual on traditional probation and parole at the maximum level. There are at least two face-to-face contacts each month with the inmate and two collateral contacts. There is monthly verification of employment or programming, and drug and alcohol screens are done at the agent's discretion. To be considered for transfer to traditional probation and parole, or in very rare circumstances, outright discharge, the inmate must have completed a minimum of two months in phase four, both the agent and supervisor must agree that the case plan objectives have been met, stable employment and/or education must have been obtained, and all the other factors must be positive.

The program's phase criteria were developed by the Internal Committee with comment and review provided by the External Advisory Committee. The External Advisory Committee was formed for two main purposes: (1) to serve as a sounding board in the development of the program and (2) to

serve as a conduit for educating the rest of the criminal justice system about the program.<sup>21</sup>

The Department of Corrections took that advice and formed the External Advisory Committee consisting of six circuit court judges, three district attorneys, the state public defender, two sheriffs, one police chief, and one victim/witness advocate. Prior to the July 1, 1992 effective date,<sup>22</sup> this committee met on two occasions and reviewed in detail the proposed phase system and entry points. The committee reached the consensus that the program should be limited to nonviolent property offenders who present a low risk of assault and should not be opened up to drug dealers because of the continual and ongoing law enforcement efforts in convicting those offenders. Adopting these concerns, the Department believed that up to 20% of those offenders in prison and those to be sentenced to prison could safely be diverted to this new program.

To date, the Department feels that the Intensive Sanctions program has been a success. Chart 3 illustrates that as of April 1, 1993, over 1000 offenders were occupying slots in the Intensive Sanctions program. Twenty percent of those individuals entered the program as a result of direct sentencing by the courts, indicating a judicial willingness to give this program a chance. One of the driving factors in developing the Intensive Sanctions program was the state's desire to avoid building more prison beds than absolutely necessary because it would cost approximately \$95 million to construct a prison that would hold 1000 inmates and annually cost over \$20,000 per inmate to operate. In contrast, the annual cost of supervising an Intensive Sanctions inmate is only approximately \$6800 per inmate. Additionally, the Intensive Sanctions program does not require any construction expense. Thus, the continued successful implementation of this program clearly can play a major role in helping to contain corrections costs.

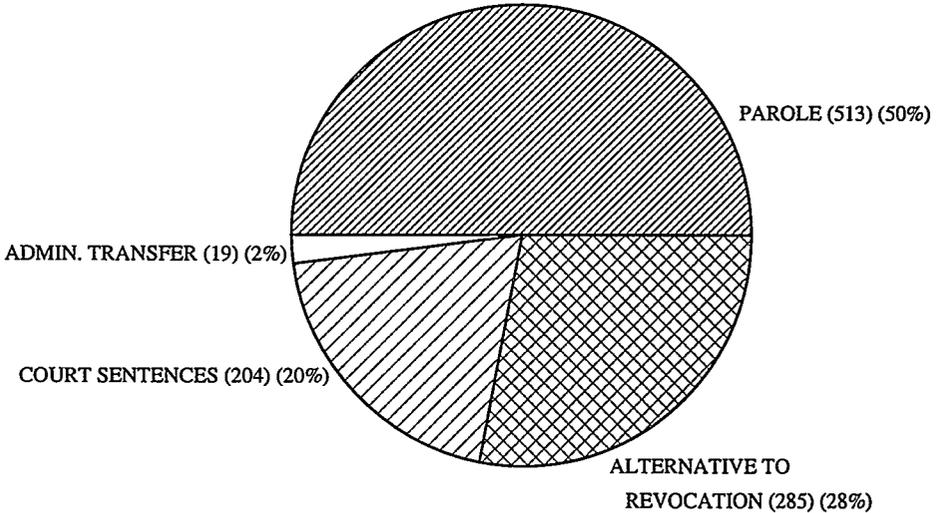
Of course, monetary savings alone are not enough to convince the entire criminal justice system and the public at large that Intensive Sanctions is a worthy program that should be given a fair chance. Accordingly, the Department has utilized the External Advisory Committee to help educate the

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21. In reviewing what other states had done in the development of prison alternative programs, the Department of Corrections was heavily influenced by an article by Delaware Governor Michael Castle. In that article, Governor Castle noted the importance of educating the rest of the criminal justice system and the community at large as to the purpose of alternative sentencing. See generally Michael N. Castle, *Alternative Sentencing: Selling It to the Public*, in NATIONAL INSTITUTE OF JUSTICE, RESEARCH IN ACTION 1 (1991).

22. July 1, 1992 was the first day Wisconsin circuit courts were authorized to sentence eligible felons to Intensive Sanctions. WIS. STAT. § 973.032(1) (1991-92).

Chart 3  
 Division of Intensive Sanctions  
 Active Inmates as of 4/1/93



Entry Point Totals

Parole	513
Administrative Transfer	19
Court Sentences	204
Alternative to Revocation	285
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Total:	1021

Source: Wisconsin Department of Corrections — April 1993

criminal justice system on other benefits of the program, including the allocation of more financial and personnel resources than traditional probation and parole. The purpose of the educational program is to show that these sources will be allocated to effectively supervise those inmates in the community who in the past would have remained in prison. Specifically, the average caseload of a probation and parole agent in Wisconsin is one agent for every seventy-two clients. The caseload for an Intensive Sanctions agent is no greater than one agent for every twenty-five inmates. This allows the Department to maintain contacts with both the individual offender and with the offender's employers, teachers, treatment providers, landlords, and the like, as a means of monitoring the offender's conduct and progress. Additionally, of the \$6800 spent per year on each Intensive Sanctions slot, up

to \$2400 can be utilized for treatment of the offender. Contrast this with an average of \$150 per year the Department has to spend on treatment for a client on probation or parole. Thus, the Intensive Sanctions program allows the Department to emphasize and target basic treatment needs such as alcoholism, drug abuse, criminal behavior thinking, literacy, and vocational job skills.

Once the requirements of the four-phase system received approval from the External Advisory Committee, the Department worked with the Committee to provide training programs through regional and state-wide conferences. These programs included judges, prosecutors, state public defenders, victim/witness advocates, police chiefs, and sheriffs. A manual for the criminal justice system was developed to explain all facets of the program. Representatives of the Department discussed the program in detail with the editorial staff of every daily newspaper in Wisconsin because the Department believed that this was the most effective way to reach the majority of the community. Although the degree of support received from the individual newspapers varied, almost every publication indicated that the program should be given a chance. Finally, the Department accepted all invitations it received from service clubs throughout the state and utilized those opportunities to talk about the Intensive Sanctions program.

Throughout the educational process, some citizens expressed concern with the Intensive Sanctions program. However, the value of this program can be best illustrated by the unfortunate predicament of another state. The Director of the Michigan Department of Corrections telephoned me in 1992 inquiring whether I wished to lease prison space in his state. It seemed that in fighting the continuing War on Crime, the State of Michigan had spent over \$1 billion on prison construction. But, in the summer of 1992, Michigan had four new prisons that had yet to be occupied because the state did not have the money available to staff them. Clearly, this is a situation that Wisconsin would do well to avoid.

### III. PAROLE

A prison system that is overcrowded and receiving record numbers of new inmates must necessarily release more people on parole than it has in the past. Under Wisconsin law, an inmate is entitled to mandatory release after serving two-thirds of the total sentence imposed.<sup>23</sup> Any inmate who reaches this point of his or her sentence must be released whether or not the Department of Corrections or the Parole Commission agrees that release is

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23. WIS. STAT. § 302.11(1) (1991-92).

**CHART 4**  
**TYPE OF RELEASES**

(from the Wisconsin Correctional Institutions)

Year	Totals	Discretionary Parole		Mandatory Release		Other*	
		#	%	#	%	#	%
1988	2736	492	18.0	1700	62.2	544	19.8
1989	3028	838	27.6	1668	55.1	522	17.3
1990	3039	1426	47.0	1262	41.5	351	11.5
1991	3828	2314	60.4	1173	30.6	341	9.0

Year	Total	Discretionary Parole		Mandatory Release		Other*		DIS Movements To Community	
		#	%	#	%	#	%	#	%
1992	4786	2921	61.0	639	13.4	372	7.8	854	17.8

\* "Other" includes expiration of sentences, court-ordered discharges, deaths, alternative to revocations, and special action releases.

Source: Wisconsin Department of Corrections — April 1993

appropriate. All releases that occur prior to the mandatory release date are within the purview of the Parole Commission. Pursuant to Wisconsin Statute, the Parole Commission may parole an inmate when he or she has served 25% of the sentence imposed for the offense or six months, whichever is greater.<sup>24</sup> It is from this eligible pool of inmates that the Parole Commission exercises its judgment and decides in these times of overcrowding which inmates will receive "discretionary parole."

As Chart 4 shows, between 1988 and 1992 the number of discretionary paroles granted increased from 18% to 61%, while the number of inmates held to mandatory release time declined from 62% to 13% of all releases. The initiation of the Intensive Sanctions program in 1992 allowed the Parole Commission to place 854 more people in the community in addition to those who received discretionary paroles.

In determining whether an inmate will receive discretionary parole, the Parole Commission considers the following criteria:<sup>25</sup>

1. statutory eligibility for parole;
2. whether sufficient time for punishment has been served;
3. institutional adjustment and program participation;
4. adequacy of parole plan; and
5. risk to the public.

24. WIS. STAT. § 304.06(1)(b) (1991-92).

25. WIS. ADMIN. CODE § PAC 1.06(7) (Jan. 1993).

The first criterion, statutory eligibility for parole, cannot be unilaterally disregarded by the Parole Commission. Absent legislative action, the criteria remain constant, even during periods of overcrowding. The fifth criterion, risk to the public, is one that may be viewed differently depending upon the extent of overcrowding, but the Parole Commission will not place someone in the community when the risk to the public is considered unreasonable.

The remaining criteria are typically viewed differently in times of overcrowding. In particular, the term "sufficient time for punishment" does not have a hard and fast meaning since it is based in part on how many prison beds are available for inmates. During overcrowded times, what is considered sufficient time for punishment will necessarily be less than during times of even capacity. This is most clearly shown by Chart 5, which compares calendar years 1990 and 1992. Note that in 1992 the Wisconsin prison system admitted approximately 1700 more inmates than in 1990, yet the net gain was actually less in 1992. This is due to the fact that there were approximately 1700 more releases in 1992 than in 1990.

CHART 5  
WISCONSIN PRISON SYSTEM GROWTH

Year	Admissions	Net Gain
1990	3731	+692
1992	5444	+658

Source: Wisconsin Department of Corrections — April 1993

#### IV. INMATE DEMOGRAPHICS

The public has two basic expectations of the Wisconsin Department of Corrections. The first is that it will keep the public safe. The second is that it will rehabilitate those individuals sentenced to its custody.<sup>26</sup> One significant problem of overcrowding is that a sufficient amount of time is not available to deal with the needs of inmates. The scarcest commodity that the system has is that of prison beds. As a result, once inmates are classified

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26. In considering the second expectation, inmate demographics must be considered. Of those inmates occupying our prisons, 80% have a need for alcohol and/or drug abuse treatment. Forty-eight percent are functionally illiterate, meaning that they are unable to read or write at the ninth-grade level.

The typical male inmate is 31 years of age. Fifty-two percent of all male inmates test below the ninth-grade level. Sixty-seven percent of all male inmates are unskilled, meaning that they do not possess one legitimate job skill. The average length of time that the prison system keeps these

downward from maximum to medium security, they must immediately be moved; and once they are classified from medium to minimum, they must again be moved to a different facility. An inherent problem with this system is that the inmates may not be able to continue their present course of programming from one facility to another since not all facilities are created equal. Unfortunately, such mobility clearly frustrates rehabilitative efforts and inmate demographics clearly show that these offenders are in need of rehabilitation if they ever hope to become law-abiding individuals.

## V. CONCLUSION

The foregoing discussion is intended to raise the level of consciousness among citizens. Holding the position of Secretary of the Wisconsin Department of Corrections has caused me to recognize an inherent philosophical conflict within myself: I find it increasingly difficult to reconcile my conservative beliefs of law and order and fiscal responsibilities in light of spiraling costs of incarcerating more and more criminals. I find myself opposed to any type of mandatory minimum sentences for certain criminal convictions because such sentences remove flexibility from a system that continues to face overcrowding and underfunding. We need to recognize that some additional prison construction will be necessary because, for many offenders, nothing less than a prison cell will protect society.<sup>27</sup> But clearly, the expense of prison construction and operational costs dictate that prison beds are a scarce resource and should be used wisely. Otherwise, we may end up punishing the taxpayer more than the criminal.

What is the answer to this dilemma? My suggestion is to stay the present course. A balanced approach consists of expanding our existing community correction programs such as probation and Intensive Sanctions for those individuals convicted of a crime, but who do not pose unreasonable risks to the public. Moreover, we need some expansion of our prison capacity for those violent and assaultive individuals who must be locked up. We also must realize that any successful "get tough on crime" approach will necessarily result in spending more tax dollars on corrections. If, for instance, politicians suggest tougher sentencing, we also must raise the issue of increased costs for prison beds in order to deal with the increased num-

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unskilled males in its custody, and during which it can deal with these deficiencies, is twenty-three months.

Among the female inmates, the average age is 32, and 50% test below the ninth-grade level. Sixty-one percent of the female inmates are unskilled. The average amount of time these unskilled women serve in prison is 17 months.

27. This is reflected by the fact that 70% of adult inmates in our institutions were convicted of some form of assault.

bers of offenders. If a politician suggests adding more police officers, we must remember that this is only the initial cost; more police officers means more arrests, convictions, and prison sentences. This, in turn, results in the necessity for more prosecutors, courts, and ultimately, more prison beds.

The bottom line is that we must consider all the costs of the entire criminal justice system, including the corrections end, when we engage in any discussion of public safety. We must then logically and realistically ask ourselves the question: "How much public safety are we willing to pay for?"

