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Reforming Community Supervision

Review and recommendations

By Patrick Hughes



**BADGER
INSTITUTE**

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Introduction

The Wisconsin Department of Corrections (DOC) is preparing to make major changes to community supervision. These reforms will be enforced by the Division of Community Corrections (DCC), which is responsible for the supervision of 66,000 offenders on probation, extended supervision, parole and under electronic monitoring.

Some of the proposed changes can be implemented unilaterally under current DOC authority via new policies and instructions to probation and parole agents. Some appear to have already been enacted in order to temporarily reduce the inmate population during the COVID-19 crisis.

Others would require amendments to the administrative code that must be approved by the state Legislature.

If fully implemented and made permanent, the changes will significantly affect the state's criminal justice system and should be of intense interest to regular citizens, including crime victims and taxpayers, as well as state officials involved in supervision decisions. The Department of Administration's Division of Hearings and Appeals is responsible for revocation hearings, for instance, and must be aware of any changes to rules of supervision or supervision standards. Judges and attorneys need to know what community supervision requires of offenders before

criminal sentences are determined.

While many of the details have not been made public, the Badger Institute has used information presented at a virtual [town hall meeting](#), laid out in a DOC memo and provided by the DOC in response to specific questions to identify seven of the most significant proposed changes.

The institute also has analyzed whether the changes help achieve or detract from the department's stated mission of "enhancing public safety through the management and reduction of offender risk by providing supervision and collaboration with community partners to assist offenders to change their behavior and repair the harm they have done."¹

Effective community supervision is vital to improving the criminal justice system in Wisconsin. When an offender successfully completes his or her term of supervision without being revoked or being sentenced to a new term in prison, the strain is eased on an overcrowded prison system, communities are safer and more ex-offenders become contributing members of society.

Some of the proposed changes are worthwhile reforms that will reduce burdens on taxpayers and the DOC, bolster or at least maintain public safety levels and improve reintegration of ex-offenders into society; others are in need of further study.

Seven Key Proposed Changes

1. Rules of Supervision

DOC plan: The DOC plans to reduce the standard rules of supervision by half, from 18 to nine.

The DOC is developing new standard rules for offenders in the categories of domestic violence, operating while intoxicated (OWI), substance use, gang/high risk/violent, property/financial and electronic monitoring, but it has not publicly provided details. Similarly, the DOC has not specified which rules will be scrapped or merged.² When asked for more information about what the new standard rules will be, a DOC media spokesperson said, “While a preliminary review has occurred, nothing formal has been proposed.”

Background: The Badger Institute’s research on community supervision indicates that minor or technical rule violations are not contributing significantly to revocations, so reducing specific rules and creating new more general rules are unlikely to reduce the number of offenders being returned to prison.³

Significant changes to rules of supervision are worthwhile, however, if they are likely to result in fewer counterproductive, short-term jail holds. Fewer, clearer rules will help those under supervision understand their responsibilities, shrink unnecessary bureaucracy in the supervision process and allow DOC staff to focus time and resources elsewhere.

Recommendation: Since the standard rules are in administrative code, DOC changes must be submitted to the Legislature for approval. The Badger Institute recommends that the DOC and legislators use the following guidelines to make rules more direct, understandable and effective:

- Retain standard rules that outline only the basic responsibilities of offenders, such as avoiding criminal behavior, reporting police contacts, submitting to drug tests and making sure agents are aware of offenders’ place of residence and whereabouts.
- Retain rules directly related to the needs of offenders’ circumstances or specific offenses.
- Eliminate rules that interfere with offenders’

ability to maintain employment or unnecessarily restrict their ability to transition back into their communities.

- Eliminate rules that are overly specific or redundant.
- Avoid unnecessary reporting. Under the proposed guidelines, the DOC will require agents to review every offender’s rules every six months and make changes if appropriate. Offenders will be required to sign a document every year reaffirming that they are aware of their rules. While this is within the policymaking authority of the DOC, these requirements seem redundant.

Using the existing rules as a starting point, the Badger Institute recommends the following new supervision rules:

1. Do not violate any statute, ordinance, law or correctional facility rule.
2. Report all arrests or police contact to your agent within 72 hours.
3. Take part in counseling offered during supervision and work toward case plan goals. This includes authorizing the exchange of information between the DOC and any court-ordered or agent-directed program.
4. Inform your agent of your whereabouts and activities as he/she directs, and obtain approval from your agent prior to changing residence or employment or leaving the state.
5. Make yourself available for searches including but not limited to residence, property, computer, cellphone or other electronic devices under your control, and make yourself available for tests including but not limited to urinalysis, breathalyzer, DNA collection and blood samples.
6. Pay court-ordered obligations and monthly supervision fees as directed by your agent per Wisconsin statutes and Wisconsin administrative code, and comply with any DOC and/or vendor procedures regarding payment of fees.
7. Obtain permission from your agent prior to

purchasing, possessing, owning or carrying a firearm or other weapon, or ammunition, including incapacitating agents. An offender may not possess a firearm if prohibited under federal or state law.

8. Provide true, accurate and complete information in response to inquiries by DOC staff.
9. Comply with any court-ordered conditions and/or any additional rules established by your agent, including showing up as directed for appointments.

Note: *Standard rules in the administrative code are not the only source of rules for offenders. Agents and judges can add rules at their discretion. Rules should be restricted to those that allow offenders to successfully rehabilitate, avoid new criminal activity and secure employment.*

2. Curfew Violations

DOC plan: Currently, when an offender under supervision violates curfew, an immediate hold is supposed to be issued, and the offender is supposed to be taken into custody by a probation or parole agent or, because agents typically work regular daytime hours, more likely by a police officer.

Under the DOC's new plan, this will no longer be the case.

For offenders with curfew restrictions, the DOC will draft individualized "special rules" to determine whether the person is a direct risk to public safety. These may include no-contact rules, geographic restrictions and prohibitions on firearms. Under the proposed rule change, unless there is behavior that endangers public safety, no hold order will be issued as a result of a curfew violation. Agents will be notified that the violation occurred and will determine appropriate action on the next business day.

Background: Probation and parole agents rarely work at night, and requiring most of them to do so is not feasible financially or within the scope of their current responsibilities. As a result, curfews are largely unenforceable except by local police departments, which are already often undermanned.

The DOC should explain whether this change is a simple acknowledgment of that fact and whether the agency also now believes based on evidence and history that curfews do not usually help prevent crime or are counterproductive when trying to reacclimate offenders into the community.

Holds, sanctions, ATRs and revocations

Holds are usually short-term incarcerations in jail designed to quickly correct misconduct, investigate suspected criminal activity or rule violations, or to secure an offender facing a revocation.

The administrative code gives agents the authority to initiate a hold for the following reasons: investigation of an alleged violation of a rule or condition of supervision; after an alleged violation to determine whether to commence revocation proceedings; disciplinary purposes; to prevent a possible violation by the offender; or pending placement in a program as an alternative to revocation (ATR). Holds are initially limited to five days; both supervisors and regional chiefs are permitted to extend a hold by five days each. A hold that goes beyond this 15-day limit must be authorized by the DCC division administrator.

A **sanction** is a more serious and generally longer

term of incarceration for criminal behavior or rule violations. An offender serves a sanction after he or she admits in writing that the misconduct occurred and the DCC regional chief signs off. The maximum incarceration term of a sanction is 90 days and may be served in a jail with the permission of the county sheriff.

An **ATR** is an option for the DOC to allow an offender facing revocation to return to custody and receive treatment and counseling and is designed to change behavior before a revocation is necessary. ATR programs include mental health treatment, alcohol or drug treatment, or other behavioral or educational programming.

A **revocation** is a termination of community supervision. Ordinarily, revocation of extended supervision or parole results in a return to prison, while revocation of probation results in a jail or prison sentence.

Recommendation: Offenders should not, as a default, be given curfews that currently are largely unenforced. If most offenders continue to have curfews but know that the curfews will not be enforced, they are unlikely to abide by the rule anyway.

Some offenders considered a risk to public safety should still be given curfews as a special rule, and, in those instances, curfews should be enforced.

3. Hold Orders for Drug or Alcohol Use

DOC plan: The DOC is ending automatic hold orders for offenders when the only violation is using drugs or alcohol.

Background: This coincides with a move to end revocations for drug or alcohol use and indicates that the DOC no longer considers substance abuse alone a cause for punitive action by probation and parole agents. According to a DOC spokesperson, the department will continue to issue hold orders for assaultive behavior and other new criminal behavior. Agents will be notified of the behavior and address it the next business day, which could include ordering a hold.

It appears the changes to holds already have been implemented, possibly in an attempt to reduce incarcerations during the COVID-19 pandemic. In the six months prior to March 2020, there were an average of 36 holds ordered per day. In the following six months, there were an average of 26 holds per day. The decrease could be the result of reduced activity due to COVID-related restrictions, but some of the drop is likely due to changes in agent behavior.

Recommendation: The DOC should evaluate whether this de facto policy has led to an increase in new criminal behavior among the offenders who would have been placed on a hold under the previous criteria. Absent evidence that the policy is contributing to an increase in crime, and assuming there are adequate treatment resources, this change makes sense.

4. Revocation for Drug or Alcohol Violations

DOC plan: The DOC is planning to end revocations for drug or alcohol violations, although agents will continue to have the ability to exercise discretion. According to the DOC, revocation will be initiated if “certain

conditions apply,” or if all community-based treatment options are exhausted.

Background: This change appears to mean that lower-level drug or alcohol use by offenders will not result in a return to prison absent some other criminal behavior or significant rule violation.

The DOC could, however, still order sanctions typically served in county jails or, in Milwaukee, at the Milwaukee Secure Detention Facility. It is important to note that due to financial or capacity constraints, it is unlikely the DOC will be able to find enough treatment options for offenders caught using drugs — a key issue.

[Ex-Offenders Under Watch](#), an in-depth case study of 189 community supervision offenders authored by University of Wisconsin Law School professor Cecelia Klingele and published by the Badger Institute, revealed the challenges posed by substance abuse. Eighty-one percent of the offenders in the sample group had pervasive substance abuse problems that contributed to their revocation. In many cases, the DOC was unable to provide the necessary alcohol and other drug abuse (AODA) programs to address these issues. Klingele also found that substance abuse or positive drug tests alone rarely caused a revocation, but it did contribute to other criminal or antisocial behavior that often resulted in reincarceration.

Recommendation: In instances in which the only offense is alcohol or drug use and no other criminal conduct, sanctions can be a reasonable alternative to full revocation but will not be effective unless adequate community-based treatment options exist.

There may be cases in which an agent becomes aware that an offender is spiraling out of control due to drug or alcohol use and revocation may be the best option to remove the individual from a harmful situation.

The DOC indicates that revocation will continue to be appropriate under some circumstances, but officials should be more forthcoming about what the conditions are. There are circumstances in which offenders should be revoked for personal drug use.

All drug use is currently against the law and the rules of supervision, while alcohol use is prohibited for offenders with rules that require sobriety. The DOC should clarify whether offenders caught using heroin,

cocaine or methamphetamine will be treated differently than users of less serious drugs like marijuana.

The DOC should be careful not to create a situation wherein offenders under supervision are treated more leniently than individuals who are not under supervision but are charged with a similar drug-related crime by a district attorney.

5. Short-term Sanctions

DOC plan: The DOC will pursue short-term sanctions in a county jail rather than revocations for violations that result in less than one year of incarceration for offenders on parole or extended supervision. Because the administrative code limits sanctions to no more than 90 days, this will drive down the revocation rate and make the maximum incarceration period 90 days for offenders facing up to a year of incarceration. The DOC will not apply this new policy to offenders on probation; they will be referred to the sentencing judge or serve the sentence that was stayed. If an offender fails to admit to the violation, the DOC plans to pursue a revocation.

Background: The DOC has two custodial options less serious than revocations for disciplining offenders – holds and sanctions. Since March 2020, the DOC has issued 2,016 holds and 349 sanctions, according to its website.

Recommendation: The use of short-term sanctions in place of revocations that would result in incarceration terms of less than one year can be effective at improving outcomes for offenders and a more efficient use of state resources.

Sanctions are intended to be a rapid response by the department to correct the behavior of an offender failing to follow the rules of supervision. If the DOC is able to act quickly to correct less serious misconduct with a sanction, it may make a revocation or conviction for a new offense less likely in the future. For this reason, the DOC should instruct its agents to be proactive in the use of sanctions.

This approach is a more effective use of state resources because the sanction can be served in a jail rather than in a state prison. Introducing new inmates to the state prison system is a time-consuming process

that involves transporting inmates from the county jail to a state facility and conducting intake procedures that include a medical screen, mental health and security risk level evaluation and placement in a prison housing unit. Then, prior to discharge, the inmate must undergo a prerelease program. For inmates facing less than a year of incarceration, jail will often offer a more efficient option.

6. Community-based Alternatives to Revocation

DOC plan: Shift some Alternatives to Revocation (ATR), which are now typically served in custody, to the community.

Background: An ATR is designed to change behavior before a revocation is necessary. The DOC can allow an offender to return to custody and receive treatment and counseling in lieu of revocation.

ATR programs include mental health treatment, alcohol or drug treatment, or other behavioral or educational programming. It is unclear how the new ATR programs will be delivered in the community since DOC staff previously ran the programs and offenders were in custody and required to attend.⁴

A basic challenge must be acknowledged. Offenders who are eligible for ATR are by definition in violation of the rules of supervision and not following the directions of their probation and parole agents. A community-based ATR will be less restrictive. If the issue is rooted in an addiction that can be better addressed outside of the DOC, the ATR may be effective, but offenders in need of more structure, oversight or discipline may not be better off.⁵

Community-based providers are contracted by the state to provide mental health, employment and transitional housing programming for community supervision offenders. Major providers include Lutheran Social Services and Wausau-based ATTIC Correctional Services. Presumably, the new ATR program will use a similar model.

Recommendation: More information is needed on whether providers are prepared to offer ATR services in the community or whether DOC staff will be providing telehealth or other ATR services remotely. This could

be a valuable change, but success is dependent on having an adequate number of qualified providers.

When asked about this, a DOC official responded that most of the department's contracted programs have waiting lists, indicating that there are not enough providers for offenders who need these services.

While the DOC says it is working to increase access to community services, without an increase in funding or the number of organizations providing substance abuse, mental health or behavioral counseling, the department will not be able to give offenders the support they need.

7. Prison Time Forfeiture Recommendations

DOC plan: Create a new formula to determine how probation and parole agents make sentencing recommendations for offenders following a revocation hearing.

Background: Under Wisconsin law, offenders may be sent back to prison for the entire term of community supervision following a revocation, though in practice they are usually sent back for a shorter duration based on the recommendation of a probation and parole agent.

Probation and parole agents currently rely on categories to guide recommendations. These guidelines are not in the administrative code and can be changed by the DOC at any time. Moreover, the violations and criminal behavior listed in these categories do not require that charges be pending against offenders.⁶

These sentencing recommendations are submitted to administrative law judges and limited to the term of incarceration following a revocation. If offenders on supervision commit new crimes, they can face prosecution and new sentences regardless of DOC actions. Or they can be revoked and returned to prison for violating the rules of supervision by engaging in criminal activity and also face new charges from the district attorney. If convicted, the offender would receive a separate sentence determined by a judge.

The new, proposed categories are as follows:

Category I: Rule violations, electronic monitoring violations, drug use and possession, resisting or obstructing an officer, retail theft and "Criminal Behaviors that have not resulted in charges filed." An offender revoked for these reasons will receive a sentencing recommendation of up to 15% of the maximum available.

Category II: Misdemeanor theft, OWI, assaultive misdemeanors, felon in possession of a firearm, possession with intent to deliver, possession of drug paraphernalia, failure to register as a sex offender, GPS tamper/removal, felony behavior not otherwise listed, and absconding. An offender revoked for these reasons will receive a sentencing recommendation of up to 35% of the maximum available.

Category III: Assaultive felonies, OWI that results in injury, homicide, manslaughter, homicide by intoxicated use of a motor vehicle, sexual assault, arson and possession of child pornography. An offender revoked for this category would receive a sentence recommendation of up to 70% of the maximum available.

In the meantime, the new policy to use short-term sanctions for offenders who previously would have served less than a year following a revocation means that one year is the new minimum.

When the DOC begins using these new sentencing guidelines, an offender with a seven-year term could receive the following maximum recommendations. For category I violations, 1.05 years' incarceration; category II violations, 2.45 years; for category III violations, 4.9 years.

As it is currently being described by the DOC, these changes to the revocation sentencing recommendations are unlikely to result in any significant changes in post-revocation prison sentences.

Recommendation: The DOC should limit prison sentence recommendations to the amount of time remaining on offenders' community supervision. Under current law, offenders can be sentenced to prison for the entire term of their community supervision following a revocation. For example, an offender with a prison term of five years followed by a five-year supervision term who is revoked after serving four years of extended supervision could be sent back to prison for up to five years.

Under the Badger Institute's proposed guideline change, the DOC could recommend only one year of incarceration. This new policy would reflect — and effectively subtract — the amount of time the offender spent on supervision with good conduct, providing an incentive for good behavior.



About the author

Patrick Hughes is a Badger Institute corrections consultant. He previously served as assistant deputy secretary and division administrator in the Wisconsin Department of Corrections.

Endnotes

¹ DOC Division of Community Corrections (DCC) (wi.gov)

² <https://doc.wi.gov/Pages/AboutDOC/CommunityCorrections/SupervisionRules.aspx>

³ The limited information provided by the DOC during the town hall supports our findings. In 2018 there were 11,347 total revocations from among an average population of 65,920 individuals on supervision that year (17%). Of those revocations, the DOC reports that 10,411 (92%) were due to criminal behavior and 936 (8%) were due to non-criminal behavior (which we assume means rule violations of some kind).

⁴ If the DOC shifts to a contract-based model, institution staff that provided the services under the previous model will need to be reassigned.

The 2021- '23 DOC budget submission should include a reduction in the Division of Adult Institutions staff counts and spending, and increased DCC services spending for contracted services. When asked about how the DOC was planning to pay for the changes to the ATR program, the department said that there were no planned changes to staffing at institutions and that they will use existing state funds and grants.

⁵ This proposal codifies a decision by the DOC in March 2020 to cancel all ATR programming at Milwaukee Secure Detention Facility (MSDF) and release 177 offenders to the community in response to the COVID-19 pandemic. Before then, ATR offenders at MSDF would receive programming for 100 to 120 days and be released back into the community to serve the remainder of their supervision term. It now appears that the DOC is planning to end the ATR program at MSDF permanently.

This change reduces the inmate population at MSDF, which was built to house offenders facing revocation and to reduce the need for offenders to be held in the Milwaukee County Jail. After this change, the facility will only house inmates serving standard prison sentences and possibly offenders with short-term sanctions.

⁶ Under proposed changes, a district attorney would have to file charges for category II or III violations to be considered, although an agent still could override under certain circumstances.