Sentence Adjustment Petitions: Are They Working?

A relatively small number of Wisconsin prison inmates can be released early if they successfully complete intensive treatment — and 250 more of them could soon make it out the door if the Legislature approves a proposal by Gov. Scott Walker to add staff to the addiction treatment program.

But that remains only a small percentage of the state's inmate population, which in March inched toward a near-record with almost 23,000 inmates in a system originally designed for 16,000.

If legislators are interested in more significantly reducing the number of low-risk inmates overburdening the state's prisons, they may want to tweak a different, rarely used, early-release program that is part of state statutes.

Both Republican and Democratic lawmakers passed so-called sentence adjustment legislation in 2002 as part of truth-in-sentencing laws that were meant to allow early release of nonviolent offenders who behave well in prison, complete treatment and education programs and show promise for safe re-entry into their communities – goals synonymous with finding employment. Sentence adjustments also save taxpayers money by freeing up bed space in prisons.

Presumably aware of the positive impact that similar early-release programs have had in states such as Texas and New York, Wisconsin legislators reaffirmed their interest in sentence adjustments when they wrote yet another version of the state's truth-in-sentencing law in 2011. It appeared they wanted to give some inmates the opportunity, toward the end of their prison terms, to petition judges to let them serve out their terms under supervision in the community.

But a new analysis by the Wisconsin Policy Research Institute reveals that sentence adjustment petitions are rarely approved, raising questions about whether the law is working as intended.

To shed light on the use — or non-use — of sentence adjustment petitions, WPRI partnered with Court Data Technologies in Madison to create a unique, computerized data search to analyze petition filings by county and judges' decisions on those petitions.[1]

The analysis shows that over the past three years, Wisconsin inmates filed petitions for sentence adjustments in 6,886 cases — over 2,200 per year from a prison system with nearly 23,000 inmates. In those cases, the states' 249 circuit judges granted 821 sentence adjustments — roughly 270 per year, or an average of just over one granted petition per circuit judge per year in Wisconsin's 72 counties.

Judges' decisions varied widely by county.

Last year, for example, La Crosse County's five circuit judges granted petitions in 45 percent of all the cases filed in their courts, 20 out of 44. The same year, Milwaukee County, with 47 circuit judges, granted only 10 of 463 petitions, and in 2014, they granted only two of 536 petitions.

Counties with similar demographics also varied. While La Crosse County led the state in percentage of petitions granted last year, Brown County's nine circuit judges granted petitions in only six of 115 cases, or about 5 percent. The five circuit judges in nearby Fond du Lac County granted petitions in only six of 103 cases last year, or nearly 6 percent, and granted zero of 32 in 2014. Most rural counties see only a small number of petitions, and very few are granted.

"I'm not sure why La Crosse County would grant a higher percentage of these petitions," said La Crosse County Circuit Judge Scott L. Horne, who was the DA before becoming a judge more than a decade ago. "In fact, I'm surprised we're the highest. It's not something we've ever discussed as a group."

La Crosse County has been a statewide leader in early intervention programs and the creation of a drug court to specialize in drug-related crimes, Horne said. So it's possible that the culture of the La Crosse County courts are prone to looking at ways to keep people out of prison or work to help them rejoin society if they do serve time.

Some legal experts have speculated that the race of offenders may play a role in judges' decisions to grant or deny sentence adjustment petitions. However, there doesn't appear to be a strong, identifiable pattern. Milwaukee County, with a large African-American inmate population, granted few petitions,

while Dane County, also with a large minority caseload, saw its 17 circuit judges last year grant 41 of 151 petitions, or 27 percent.[2]

To examine in detail the use of sentence adjustment petitions, WPRI and CDT analyzed more than 17,000 "court events" related to the petitions from 2014 to 2016, using data from the Wisconsin court system's case management system, called the Consolidated Court Automation Programs, or CCAP. To avoid having to travel to each of the state's 72 counties to inspect court records, CDT designed a computer program to search CCAP to determine the number of petitions filed and calculate how many were granted and denied — as well as to identify why they were denied or dismissed, if available.[3]

While the court records usually don't reflect judges' rationale for denying petitions, the analysis shows that eligible inmates are consistently filing the petitions and that judges are denying the vast majority of them.

Wisconsin saw 2,213 petition cases filed in 2014 (the number of actual petitions may be higher as some of those cases involved multiple filings because inmates must file one petition for each conviction). The number of petition cases dropped slightly to 2,185 in 2015, then rose last year to 2,288, which shows that their use by eligible inmates has been consistent over the past three years.

At the same time, judges' granting of petitions did increase over those three years, suggesting a slightly growing acceptance. The number of cases in which judges granted petitions rose from 257 in 2014 to 270 in 2015 and to 295 last year — a nearly 15 percent increase over three years. The remaining petitions either were denied or the status of the case is unknown.[4]

The reasons that sentence adjustments aren't more widely used as a tool to encourage good inmate behavior are varied and, in some cases, speculative.

It appears from WPRI's analysis that most judges view sentence adjustments negatively. They are accountable if "low-risk" inmates whom they released early go on to commit new crimes. Because judges and district attorneys are accountable to voters every few years, some experts suggest that judges simply avoid the risk by denying all or most petitions.

Why fewer than 10 percent of inmates filed petitions is also both obvious and speculative. One obvious reason is that the law is so narrow that most inmates don't qualify.
Only nonviolent offenders who have served 75 to 85 percent of their original sentences are eligible — and only a third of the state's inmates, roughly 7,500, are serving time for nonviolent crimes, according to the DOC's "Inmate Profile" study in 2014. Even within the categories of eligible felonies — such as robberies and arson — not all would be considered nonviolent. On top of that, there is no precise definition of what constitutes "good behavior" in prison.

As such, there is no data that show the number of inmates who are truly nonviolent and who have good behavior records. But by most objective measures, the number of inmates eligible for sentence adjustments remains a relatively small subset of the total prison population.

Complicating the process for inmates (and judges) is that the vast majority file their adjustment petitions "pro se," which means they're writing their own personal appeals and must meet the burden of proof for their worthiness without the help of a lawyer.

As a result, many appeals aren't very good, noted Mary Prosser, a University of Wisconsin-Madison Law School professor. Prosser teaches at the school's Legal Aid To Incarcerated Persons program, which assists 150 to 200 inmates a year with their petitions.

Many judges receive petitions that are incomplete or lack supporting documentation, such as inmates' plans to get a job once released or their records of treatment successes and behavior while in prison. As the inmates don't appear in court personally, Prosser noted, an incomplete or poorly documented appeal makes it difficult for judges to accurately assess inmates' progress in prison as well as ascertain the risk they pose if released.

Another more speculative reason sentence adjustment petitions aren't more widely used is for many inmates serving short sentences, the petitions seem to be of little or no use.

DOC records show that in 2015, 4,803 of the 8,599 inmates discharged from prison were released after serving a sentence of a year or less. Inmates with a one-year sentence can't even submit a petition until they have served nine months. Because the process itself can take two to three months to complete, inmates with short sentences already would have completed most — or all — of their prison terms by the time a judge received and ruled on their petitions.

For example, inmates convicted of a Class F felony with a two-year prison term would be able to file a petition after serving 18 months (75 percent of their sentence), meaning that a granted petition would shave — at best — only a few months off their prison time. Inmates convicted of a Class C, D or E felonies can't file until they've served 85 percent of their sentences, creating the same marginal benefit.

That may not be what the Legislature intended as the sentence adjustment process has merit and could be a useful tool, many legal experts noted.

For inmates, sentence adjustments can incentivize good behavior and positive approaches to treatment and counseling. For taxpayers, sentence adjustments can reduce costs — housing an inmate in prison costs $87 per day compared to $6 per day for supervision in a community corrections setting.

But there are also practical legal considerations.

A court, when sentencing a defendant, should be imposing the minimum amount of custody consistent with protecting the public, the gravity of the offense and the defendant's rehabilitative needs, said Kelly Thompson, who heads Wisconsin's State Public Defender's Office.

"But that necessarily involves (judges') guessing about future variables such as what services will be available, what kind of progress an inmate will make in treatment and how hoped-for rehabilitation will progress. Sentence adjustments, in theory, provide some ability for the court to take these developments into account and fine-tune the sentence based on conduct, progress and other changes," Thompson said.

But for the process to work, she said, it "needs to be meaningful."

Some Wisconsin inmates have other avenues for early release. (*See "How the Process Works" on Page 14.*)

But for the vast majority of inmates convicted after 2011, sentence adjustment petitions are the only available mechanism for early release in exchange for good behavior. WPRI's examination of three years of court records suggests that sentence adjustments are a relatively small tool within the state's justice system — and likely will remain so under current state law.

Conclusions and Options

If the intent of legislators under truth-in-sentencing was to offer a significant number of low-risk inmates the opportunity to get out early and save taxpayers money, there are several ways they could alter the statute:

- **Allow inmates to start the petition process much earlier — for instance, after serving 50 percent of their term — but still be required to serve 75 to 85 percent.**

- **Allow inmates to petition for a sentence adjustment after serving a smaller percentage of their time — for instance, 60 percent, and then be released whenever the judge has completed the review.**

- **Encourage expedited review of petitions, perhaps by removing the provision that requires prosecutors to be part of the process.**

- **Encourage more legal representation of prisoners who qualify for early release.**

Endnotes

[1] State court administrators warn that CCAP is a state circuit court case management system and that the website was developed as a tool for the public to easily access court records, not as a research tool, making it difficult to use CCAP to mine data from thousands of court records in each of the state's 72 counties. In fact, the firm hired by WPRI to analyze the data, Court Data Technologies, had never seen this done before and had to develop its own program to analyze the data.

[2] The computerized data-based research wasn't designed to analyze cases by race or inmate profile. That would have required personally analyzing thousands of case files in each Wisconsin county.

[3] Complicating the data search is the fact that county clerks file judges' sentence adjustment decisions differently. Some clerks file the decisions, checking off one of 16 categories that list reasons for granting or denying a petition. Some clerks file judges' decisions in a reporting category called "order concerning sentence adjustment," which is space for judges' comments or rationale. Some clerks file judges' decisions in both categories, creating two electronic records for one decision. Categories include "denied — summarily" and "denied — not in the public interest," which reflects state law that says judges don't have to give a reason to deny a petition.

To address that issue, Court Data Technologies created a word search for "granted," "denied" and "dismissed" to analyze the language of the "orders concerning sentence adjustment." But for most cases, the records provide little insight into judges' decisions to deny or grant.

[4] Even if court records were personally inspected, the form used to record the cases doesn't require clerks to record judges' reasons for denial, making it difficult to analyze why some counties' judges grant higher percentages of petitions, while most others grant very few or, in several cases, none.

How the Process Works

Here's how Wisconsin's sentence adjustment system works under current law, which took effect in 2002 and was revised in 2011:

• To qualify for sentence adjustment, a convicted felon serving time in Wisconsin must be nonviolent, with a record of good behavior while in prison. About a third of the state's prison inmates are serving time for what are defined as nonviolent crimes.

• Those convicted of a Class C, D or E felony (Class C includes robbery or arson, for example) may petition for sentence adjustment after serving 85 percent of their prison term. Those convicted of a Class F, G, H or I felony, such as burglary, theft, forgery or repeat drunken driving, may petition after serving 75 percent of their time. A study in 2006 of two counties' court records showed inmates with these lower-class felonies were the most likely to receive sentence adjustments.

• Inmates seeking sentence adjustment are required to file the petitions — one petition per conviction per year — with their sentencing judges, who then refer them to the district attorney who prosecuted the case. The DA has 45 days to review the petition and return it to the sentencing judge with a recommendation. The judge is not required to follow the DA's recommendation. In some cases, such as sex crimes, the DA must notify victims about the petitions and give instructions on how to object.

• Sentencing judges have broad latitude to grant or deny petitions, which they can do without comment or by invoking a category called "in the interest of justice." Judges have access to the original sentencing transcripts, as well as inmates' prison records, such as behavior and participation in treatment and education programs. Judges also can factor in law changes, such as inmates convicted under previous versions of truth-in-sentencing that in some cases would have resulted in less confinement time.

• Sentence adjustments do not reduce the overall length of a sentence. The judge can grant reduced prison time, but that time is added to the offender's extended supervision period, which is managed by a Wisconsin Department of Corrections agent.

• The reduced prison time for most inmates is not extensive.

About half of Wisconsin inmates are serving sentences of two years or less, according to the DOC's 2014 "Inmate Profile" study. That means an inmate serving two years for a Class F felony could petition a judge after 18 months (75 percent of time served). But the process itself can take two to three months from the time the petition is submitted, reviewed by the DA, researched by the judge and a final decision ordered. That means the sentence reduction, if granted, would be only a few months.

There are other forms of early release in Wisconsin primarily because the state's 22,717 inmates (as of March 2017) were sentenced under different sets of laws over the past two decades.

• Inmates convicted prior to Dec. 31, 1999, are subject to sentences under the state's old laws that still include probation and parole. That covers just over 2,000 inmates in Wisconsin prisons.

• Inmates convicted between October 2009 and August 2011 are eligible for "positive adjustment time" — essentially time off for good behavior. PAT became law as part of Act 28, signed by Gov. Jim Doyle, and eliminated by Act 38, signed by Gov. Scott Walker.

• Wisconsin has a small Earned Release Program (ERP) for inmates with drug and alcohol addiction who successfully complete intensive treatment programs while in prison. Eligibility is determined by the sentencing judge, who includes it as part of the offender's original sentence. As of December 2016, there were 5,572 inmates eligible for the program but only 617 enrolled. Walker's budget proposes to expand participation by 250 inmates by adding 16.25 new positions to staff the program at an annual cost of $836,700.

• Wisconsin also releases a few inmates every year because they're very old or have severe health problems. From Jan. 1 to Nov. 30 of 2016, the DOC received 11 petitions for "compassionate release," seven due to "extraordinary health conditions" and four due to "geriatric status." The DOC's program review committee approved three petitions, and the sentencing courts approved two and denied one. In 2015, the committee approved five petitions, and the courts approved four and denied one. (If the inmates were sentenced prior to 2000, the Parole Board alone can approve or deny compassionate release petitions.)