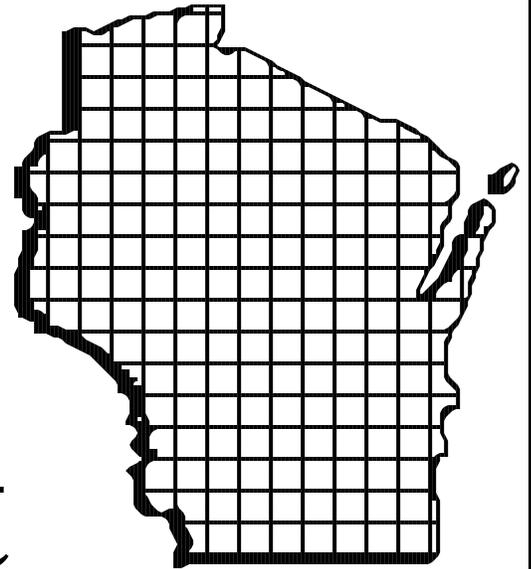


Wisconsin

Policy  
Research  
Institute  
Report



MAY 1998

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**PRIVATE  
PRISON-INDUSTRY  
ENTERPRISES:**

*Is It an Idea  
Whose Time has Come (Again)?*

## REPORT FROM THE PRESIDENT:

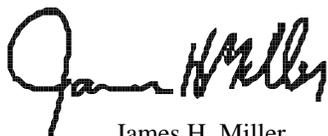
The current prison industry program in Wisconsin has been heavily criticized over the last year. The issue has been raised on whether or not prison industry programs take jobs from the private sector. This type of criticism is certainly warranted, but we felt that there are overriding issues of concern with this program. We asked Professor Sammis B. White of the University of Wisconsin-Milwaukee to examine prison industry enterprises not only in Wisconsin but across the country. His research indicates that these programs may have an important use in the public policy strategy of any state.

We know that corrections is the fastest growing part of our budget. We also know that policies such as "truth in sentencing" are likely to increase the cost of corrections over the next several years. What is needed in Wisconsin and across the country is some way of reducing the cost of our criminal justice system.

We know that one of the driving cost factors is the recidivism rate. Many prisoners once released, whether it be on parole, probation or the end of sentencing, are likely to return to prison within a short period of time. The big question which has remained elusive over the last generation is to find some sort of prison rehabilitation programs that will cut recidivism.

There are reasons to believe that the current prison industry program in Wisconsin may potentially be an answer to this problem. What current prisoners need are two things to help them once they are released from supervision. The first is to understand the culture of work in our society that is sadly missing in many of our inmates. The second is to have a job skill that can be duplicated in the private sector. A well-designed prison industry program can provide answers to both these problems. It can teach inmates that they must be available on a daily basis, from 9 to 5, to perform a job. Many of these inmates have never been in that situation before. Secondly, it is possible to construct programs where job skills can be taught to fill outside needs in the real job market.

With unemployment in Wisconsin reaching all time lows, there is a desperate need for skilled workers. Training former inmates to perform work once they are released from prison could have an enormous impact in cutting our prison population, and saving potential victims the horror of becoming another statistic. The proposal in this study to increase our current program to six industries should be tried if we are serious about trying to control costs in our criminal justice system.



James H. Miller

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## PRIVATE PRISON-INDUSTRY ENTERPRISES:

IS IT AN IDEA  
WHOSE TIME HAS COME (AGAIN)?

BY  
Sammis B. White, Ph.D.

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## EXECUTIVE SUMMARY

Wisconsin faces a continuing expansion of its prison population. Few programs in prisons have proven successful in reducing the rate of recidivism (i.e., the return to prison of inmates after their release). One condition, however, has been associated with lower return rates: employment.

If prisons are able to better prepare inmates for a life of legitimate work on the outside, then research suggests, with an expansion of prison work opportunities, more inmates will be given a better chance of not returning to prison. The unfortunate fact is that many of the criminals coming into prisons today have no work experience, much less the basic readiness skills needed to hold any job. If more prisoners can gain these skills and work experiences in prison, the chances are that fewer will return. The challenge is how to expand prison work opportunities in order to reduce recidivism. One answer, with some empirical research support, is private industry enterprises in prisons.

The notion that prisoners should work while in prison in order to: 1) occupy their time; 2) learn useful habits and skills that might reduce their chances of returning to prison; and 3) help to defray the costs of their incarceration has been part of the US corrections philosophy since 1823. What has changed over the ensuing years is the view of the role that private enterprise should play in organizing and benefiting from prison labor. Initially private enterprise played no role. But at the end of the 19th century, about 90% of all prisoners were employed, most commonly by private businesses. The greatest appeal to corrections officials was the money received for inmate labor. Due to many flagrant abuses, numerous complaints, and severe unemployment among the non-incarcerated population, during the Depression private enterprise in prisons was virtually eliminated.

In 1979 Congress re-opened the door to private industry involvement. The door was, however, not just flung open. Private industries could be involved with inmate labor but only under a series of rules aimed at preventing the abuses of the past. The new rules effectively constrain the level of activity. As of March 31, 1997, just under 2,300 inmate employees out of a national prison population of over one million persons were involved in private industry enterprises in prisons.

Wisconsin is one of 35 states (and 3 counties) sanctioned to participate in this new prison industry enterprise program. Currently, Wisconsin has two firms involved, which together employ over 150 inmates or approximately one percent of the state's prison population. Wisconsin additionally has an active publicly operated prison industry program which employs over 700 inmates in positions in such businesses as furniture making, sign construction, printing, and farming. Combined, these programs employ just under 6% of the state's prison population.

The goal for the state is to expand the employment option to at least 10% of the inmate population. The reasons for doing so are numerous. Among the most compelling are that employment programs:

- increase the benefits to inmates who learn habits and skills that will assist them upon release;
- induce better inmate behavior and reduce supervisory costs;
- decrease correctional costs because employment programs earn a return on sales;
- expand the chances that participants will recidivate at lower levels; and
- increase the possibility that long-term needs for prison spaces will be lower.

Desirable though prison industries may be, their expansion is difficult for a number of reasons, including the facts that they:

- require space in the prisons;
- require the identification of industries in which there is both sufficient demand and in which inmates will be allowed to compete;
- require further investment in the short run to realize gains in the long run; and
- require overcoming numerous historical complaints about unfair competition.

Publicly-operated industries in prisons have come to be largely accepted, although they too face many of the same barriers to expansion that private industry enterprises in prisons do. Neither is expanding rapidly. The issue is whether Wisconsin should be putting resources into expansion of private industry enterprises in prisons when it is having difficulty generating the resources to expand its public enterprises, much less its prison capacity.

That difficulty of generating resources for expansion of work options is one of the reasons why the Wisconsin Bureau of Correctional Enterprises (BCE) has sought to develop private industry enterprises in its prisons. These private industry enterprises have the potential to contribute more to the bottom line, expanding BCE's resources. There is also modest evidence that inmates in private industry enterprises have lower recidivism rates than even those inmates in public enterprises. This may mean lower prison costs over the long term. The use of private industry enterprises also allows BCE to expand the number of industries in which it operates. Private industry enterprises are additionally more likely to have jobs similar to those available to workers on the outside, speeding inmate involvement in the "straight" life upon release. Private industry enterprises also pay inmate workers substantially more per hour than do public industries, allowing the prisons to charge inmate workers for room and board, family support, contributions to victim funds, and still leave enough that inmates can build a small savings to help them in their transition at the time of release.

**Despite the constraints and the complaints, the benefits of private industry enterprise in prisons outweigh the costs when well implemented. Wisconsin should seek to expand from its current two employers to at least the legislative limit of six. To help make the case for further expansion, a special, long-term study of the impact of the private industry enterprise program on inmates and the correctional system should be undertaken. If this private industry alternative can be shown to have helped solve the riddle of how to reduce recidivism, it deserves even more support. As is, its several benefits to both inmates and the Department of Corrections (DOC) warrants its expansion to at least current legal limits.**

## I. INTRODUCTION

The idea that prisoners should work as part of their rehabilitation was first implemented in the US at the Auburn, New York, prison in 1823. Indeed by 1828 the federal prisons at Auburn and Sing Sing (New York) were paying for themselves, largely due to the work of the inmates.<sup>1</sup> The initial work undertaken by inmates related either to jobs which needed to be done to operate the prisons more frugally or which involved making craft items for resale by the prison. Only in a few instances in later years did prison “work” mean doing physical labor without a particular constructive purpose, e.g. breaking rocks.

By the end of the 19th century the notion of prison labor evolved more completely from prison labor for prison purposes to prison labor for private profit. In fact, at the start of the twentieth century prison factories serving private companies were commonplace.<sup>2</sup> Many correctional facilities padded their budgets and many correctional officers padded their wallets with deals made with private companies. At that time as much as 90% of the inmate population was employed, generating revenues to help offset the costs of incarceration and helping to occupy the time and utilize the energies of the inmates.<sup>3</sup>

Not unexpectedly, the period was full of abuses. Convicts were unpaid. Money did not go into public coffers. Competitors using non-prison labor were upset by the unfair, under- or un-paid competition. And individuals were being arrested on trumped-up charges in order to procure enough labor to meet contract obligations. By the time of the Great Depression the abuses and competition, combined with the very high rates of unemployment among the non-incarcerated, were enough to force Congress and many states to ban the open-market sale of prison-made goods and to limit even sales to governments. Prison inmates could thereafter only be involved in prison operation and “traditional” prison industries, such as growing food for the inmates and building furniture for state offices. A marked distinction was made between “prison industries”, the employment of inmates in publicly run, correctional activities that either helped produce food for the prisoners or products that could be used by and sold to state agencies, and “prison industry enterprises”, prison-based industries which are allowed to sell goods and services to the private market. The decades of abuse virtually stopped the utilization of private industry enterprises.

This could have been the last word on the subject of private enterprises utilizing prison labor. But in 1979 Congress reversed itself in hopes of rehabilitating prisoners through work while reducing the costs of incarceration. Congress sanctioned the creation and operation of prison industry enterprises but with provisos which would attempt to stop the abuses which had occurred decades earlier. It established a program, the Private Sector/Prison Industry Enhancement Certification Program (PS/PIEC — known commonly today as PIE, Prison Industry Enhancement), to oversee and regulate all attempts by state or local correctional agencies to engage in activities with private firms using inmate labor.

The result has been an increased level of interest and numerous attempts to use prison labor for private enterprise. The scale of that activity, however, has been rather limited. Although some 38 jurisdictions (a mix of state and local) have been sanctioned, only 2,280 inmate employees were involved as of March 31, 1997.<sup>4</sup> That figure has undoubtedly grown some since then. But the number is relatively small (one in 500) when compared to the over one million men and women incarcerated in US prisons (this does not include the over 440,000 persons in jails).<sup>5</sup>

Wisconsin has had an active prison employment program (as opposed to a private industry enterprise program) for decades. One component involves staffing many prison functions, such as food and janitorial service. But it also has operated farms, built products such as office furniture, and offered services such as printing and data entry to state and municipal governments. More recently (1995), the state, through its Bureau of Correctional Enterprises, began to be additionally involved with private enterprise in its prisons. For the first time in many years, the state’s inmates could produce products for commercial sale on the open market. The legislation originally limited the experiment to three enterprises. Only two have become engaged in the prisons to date (March 1998). But the program was legislatively expanded in 1997 to the point that the Wisconsin Department of Corrections now has the ability to bring as many as six companies into the Wisconsin prisons. Given the limited scale of private industry enterprises both in state and nationally, one may wonder why such an effort is even being made. Why should Wisconsin expend precious correctional resources on experimenting with an idea that has had such limited use in recent years? That is the basic issue explored in this report.

To better understand the rationale and to better assess the merits of utilizing prison-industry enterprises, this report will explore: the seeming appeal of prison industry enterprise, the role of work in prison operation, the role of work in reforming inmates in order to reduce the chances they will recidivate (commit other crimes and return to prison), details on the federal program (PIE) of regulating private enterprise in prisons, the experience of other states with this approach, the experience of Wisconsin to date, variations on this approach elsewhere, and an assessment of where Wisconsin should be headed with this approach and why.

## **II. THE PROS AND CONS OF PRISON WORK**

The case for prison work is not clear cut. Many arguments can be made in its favor. But many also can be made against it, especially if it involves private enterprise. Even as recently as April 1998 the merits of bringing private employment opportunities into the state's prisons were being debated. The section below explores the major arguments used both for and against the use of prison industries.

### **The Case for Prison Work**

Before exploring the appeal of prison industry enterprises, we should first examine the many reasons why work in any form is thought to be an important part of the incarceration experience. Like many former welfare recipients, inmates often come with rather limited exposure to what is required for successful work experiences. From the perspective of the corrections system, work in prison can provide at least five benefits to the inmates.<sup>6</sup> First, work in prison can expose the offenders to the norms of the workplace, norms such as being at work every day, being responsible for one's time, knowing the linkage between work and rewards, acknowledging the need to listen to one's supervisor, and the like. Second, inmates can have real work experience, working regularly at a position for which they are responsible. Third, if lucky, inmates can actually receive vocational training while in prison, learning skills beyond work readiness that will make them more employable upon release. Fourth, inmates gain life management skills. Inmates learn to avoid situations which could compromise their prison jobs. Prisoners learn that they have to make good choices to keep the jobs they have in prison, just as they do on the outside. Fifth, they earn gate money, money which will allow them to have a little extra time upon release to get a better job, to dress a little better to interview for that job, and to be less tempted by illegal alternatives upon release.

As far as the correctional institutions are concerned, prison labor yields other rewards for the institution. A primary benefit is that work reduces the idleness among prisoners. Maintaining order among a group of prisoners with nothing to do is harder than among a group of prisoners who are actively engaged in various enterprises, be these work, education, physical exercise, or other organized activities. Not only does work take physical and mental energy, it helps to structure the day. For those who work six to eight hours a day, it is a reinforcement for what life will be like once they are on the outside.

Furthermore, if access to certain jobs in prison requires higher levels of education and behavior, the competition for these jobs reinforces the need for order and for inmates to elect options such as education, commonly the completion of the GED. Another benefit for the institution is that using prison labor reduces the cost of corrections. If low-pay inmates can be used to provide food service, janitorial, and other maintenance work, costs will be lower. If inmates can also be used to produce products and services which can be sold to an outside market, that labor can generate additional revenue to help offset the costs of corrections. The revenues generated may not add a surplus, but they may help to offset the costs of materials and supervision that the system would otherwise have to pay.

Even society as a whole can benefit from prisoners working while incarcerated. If the inmates are paid, a portion of their earnings can go to victim restitution, helping to offset the losses victims of crime have endured. Portions of the earnings can also help to support dependents of the inmates, reducing the pressure for societal support. And in a more general sense society can be partially reimbursed as it is being partially compensated by inmates helping to operate the institutions in which they are housed.

The list can go on. Inmate work has a lot of appeal. An additional argument that is often alleged and which will be explored in greater depth below is that those prisoners who have worked while in prison have a lower recidi-

vism rate than those who sit idly while in prison. If this hypothesis is true, then it makes an even stronger case for prisoner employment. If the case can be made that not just employment but employment in private industries in prisons has an even greater positive impact on reducing recidivism, then this alternative is seen in an even better light. What may make a difference is that inmates in such jobs participate in work which is currently in demand on the outside. The same employers may, in fact, hire the same workers upon release, making the transition to a free life much easier. Unfortunately, the experience with private enterprises in prisons is limited and the research on the subject is even more so.

Compelling though these many arguments for prison work may sound, the actual practice varies from the concept. The many supposed benefits are not always compatible with one another and, therefore, cannot be simultaneously achieved.<sup>7</sup> For example, if one tries to promote vocational training, it is likely to be more costly, thereby reducing the financial payoff from having work accomplished. Also, if a prison wants to give many inmates work experience, it may overassign workers to jobs, leading to idleness and the non-achievement of the goals of developing good work habits or offsetting potential savings from using inmate labor. If restitution and payments to families are important, then inmate workers must be paid well enough that they can make significant contributions to these funds. But to pay them well means that costs will rise, offsetting those benefits.

One possible response to these many potential problems is the use of private industry enterprises in prisons. It is to that subject we now turn.

### **The Case for Private Prison-Industry Enterprises**

The prison population in Wisconsin has been growing rapidly. In fact, the inmate population has been growing faster than an expanding prison system can handle. The prison system has grown from around 5,500 inmates in 1986 to around 15,000 at the start of 1998. Wisconsin's 15,000 prisoners are housed in a system designed to handle 9,538.<sup>8</sup> These figures do not count the 8,060 persons on parole or the 56,637 persons on probation.<sup>9</sup> All of these are sizable figures which reveal a significant drain on state funds. In fact, the FY1998 state budget for the Department of Corrections allocates some \$498 million for the correctional activities for adults in the state.

With the overcrowded facilities, the DOC has had to decide how to contend with the scale of incarceration with which they are faced. One answer has been the construction or expansion of prisons. This option has been used to add 7,000 beds in the 1990s with additional construction authorized for a new 1,000 bed, or two, 500-bed, medium-security correctional institutions.<sup>10</sup> But construction is an expensive option. A second option, one that has been extensively utilized, is to release prisoners early to probation, parole, or electronic monitoring. While oftentimes successful, a high profile case of murder by a man on electronic surveillance in the summer of 1997 put the early-release option in jeopardy. Given the cost of building additional prisons, and the political pressure to keep convicts in prison longer, it is no wonder that the third option of incarceration of Wisconsin inmates in prisons in other states is being used. In January of 1998 a deal was struck to ship some 1200 Wisconsin prisoners to prisons in Tennessee to reduce the overcrowding already experienced in Wisconsin. This is in addition to the over 600 inmates Wisconsin has already housed in Texas facilities.<sup>11</sup>

Yet another option, the subject of this report, is also being experimented with: private enterprise in prisons. Wisconsin currently has two private businesses operating in state prisons. One operating in the Waupun Correctional Facility does welding for a Mequon firm, Jorgensen Conveyors. Some 12 inmates are employed at this time. In the Green Bay Correctional Facility the Fabry Glove and Mitten Company of Green Bay has some 140 inmates sewing gloves and glove liners. Negotiations for a third firm have been underway for over a year, but the main contender, Jacobs Trading Company, has encountered several political roadblocks. At any rate, the option is being used, and Bureau of Correctional Enterprises (BCE), an arm of the Department of Corrections, is actively searching to fill the remaining four slots allowed by state legislation. These slots may not be filled immediately, but they will be filled appropriately, according to the head of BCE, Steve Kronzer.<sup>12</sup>

The argument for the use of private enterprise in prisons has several dimensions. The most basic is that it is another source of employment for prisoners. Badger State Industries (BSI), the division of BCE that sells products and services to state and municipal governments, employs approximately 600 prisoners in its many operations

around the state, not counting the 113 who work on Correctional Farms.<sup>13</sup> While employment in the public prison industries is growing, there are market and space limitations on how rapidly this can occur. Private industry enterprise operations in prisons also are limited by space availability, but their existence does expand the industries in which inmates can work. Beyond that, prison industry enterprise may open better post-release employment opportunities because inmates should have developed skills which are currently being demanded by employers in the state. In fact, the two employers involved to date have said that they will hire any of their current inmate employees upon their release. The skills these prisoners develop are likely to be more easily transferred to the real world than those developed as a license plate stamper or an agricultural worker (two of the BCE occupations).

## **...inmates working for the private industries help to reimburse the state for the costs of incarceration.**

An additional appeal of private industry enterprise to the DOC is the fact that correctional officials have another and better means of controlling the prisoners. The private sector jobs, which pay far more than the other prison industry jobs, can be used as carrots to further control the behavior of prisoners. Only the best behaved will be able to qualify for these jobs.

Corrections officials know that their budgets are largely being consumed merely attempting to house the expanding prison population, much less trying to create in-prison programs which will reform them. By partnering with private enterprise the prisons create opportunities to expand and modernize

prison work. As an example, Badger State Industries, although very productive with the equipment it has and very resourceful in maintaining it, is able to spend only paltry sums purchasing new equipment. Capital expenditures for FY 96 and FY 97 were each in the neighborhood of \$187,000. For an enterprise with almost \$16 million in annual sales that is an incredibly small figure and is a valid reason to seek alternative means to bolster employment options.

Even more appealing to many legislators is the fact that inmates working for the private industries help to reimburse the state for the costs of incarceration. Wisconsin prisoners working for the two private employers in FY1997 paid the state \$231,000 in prison maintenance fees to offset the costs of room and board. They further paid \$23,300 into a victim restitution fund and over \$61,500 in state and federal taxes.<sup>14</sup> Though very modest, the inmate-workers do help to reduce the costs of the correctional system. If the scale of the program were to expand, the state's cash benefits would be even greater.

Yet another argument that has been used to convince legislators to approve creation and expansion of the use of private enterprise in prisons is the potential for decreasing the need for additional prisons. It has been argued that not only employment while in prison but specifically employment in private enterprise in prison reduces recidivism. If fewer state felons return to prison, then fewer places should be needed in those prisons. The PRIDE program in Florida, which is responsible for all prison industries in the Florida prison system, claims a dramatic reduction in recidivism to 12.6% among prisoners who have worked at least 180 days in its private industries in Florida's prisons.<sup>15</sup> This rate appears to be considerably smaller than the 20% to 30% rates of recidivism found among recent releases from the Wisconsin prisons for the same two-year period (see below for an extended discussion of recidivism). Even if the rate of recidivism is lower but not that dramatically lower than other prison options, it is possible that on a larger scale private industries could lead to decreased demand for prison slots, as fewer of these prisoners return.

Given these arguments, it is not surprising that some 35 states and 3 counties in the US are certified to use private enterprise in prisons. Furthermore, the number of inmates employed in these industries is increasing. In Wisconsin the number has jumped from zero three years ago to 155 today. Nationally, the figures seem to have jumped from 1,000 in 1993 to 2,280 in March of 1997.<sup>16</sup> In a single quarter (July - September 1996) inmate employees in private enterprises earned over \$3.9 million in wages.<sup>17</sup> Some authors think that the trend will continue. "The future of jail work and industries programs is brighter than ever," says industry observer Rod Miller.<sup>18</sup>

In any event the Wisconsin legislature and the Governor have found the arguments for private industries operating in prisons compelling enough to want to expand the utilization further. The doubling from three to six em-

ployers in the 1998 budget was the second Wisconsin endorsement of the concept. The move to six was not unanimous. A number of arguments are used against any utilization of prison labor by the private sector, much less an expansion of its use in Wisconsin. The next section documents several of the arguments employed against allowing private enterprise in prisons.

### **Arguments Against Private Enterprise in Prisons**

The three most common and most strongly felt arguments against the use of inmate labor for private profit-making firms concern competition. One argument is from firms who do not use prison labor: they think that firms that do use such labor are unfair competition because such firms are allowed to pay low wages and do not have to worry about the additional costs of such items as workman's compensation, health benefits, space rent, and equipment rental. By not incurring these costs, prison industries should be able to under-price businesses on the "outside" which must incur these expenses. Since the work occurs in prison which is already responsible for health care and which commonly has no need for workman's compensation, these savings may well occur to some degree.

The degree may be limited, because PIE-certified industries must make "comparable" worker compensation benefits available. But some of the prison-based industries have contracts which provide space in prisons rent-free, at times with equipment included. No doubt, this saves on expenses. The argument is that not having to incur these expenses gives the prison-based firms an unfair pricing advantage over those which must operate in the normal market. And, depending on the specific circumstances, some or all of these cost savings may be available.

Strongly held though these complaints may be, there are other considerations of the workplace which make the environment less than ideal and which may affect delivery schedules, if not the pricing of the products, and add to the cost of prison labor. One is that trouble sometimes occurs in prisons and a common response is the lockdown. Under lockdown all prisoners, including the workers in prison enterprise, are kept in their cells and not allowed to go to work or elsewhere. This obviously plays havoc with production schedules. Another difficulty is simple security checks which can also result in fewer hours being worked. Also prisoners can be transferred to other correctional institutions or released, causing a higher than expected turnover rate. This adds to training costs and creates periods of slower production as new workers grow adept at their new positions.

The second major complaint is one of product competition: if labor costs are reduced, companies operating with prison labor should not have to compete in the same markets, or so the argument goes. One institutional response to complaints of unfair competition is to limit prison enterprises to those products and services which do not have local competition. That sounds fine conceptually. But what products and services have no local competition? States have found it increasingly difficult to identify industries without competition, unless they legislatively make it themselves. One such example is office furniture. Many prison enterprises are involved in this industry, and yet there is also a great deal of private-sector competition. The only way that the prisons continue to compete here is because of tradition — they have done it for so long they can claim legitimate title to it, but only if they limit their sales to specific markets, such as other government agencies. In Wisconsin, for example, Badger State Industries is heavily involved in building office furniture. Its market is restricted to state government entities. Within that, many of its sales are still done under competitive bidding. Similar conditions of restricting the market occur in other states as well. When looking beyond a few such industries, it is difficult to find markets in which there is not private sector competition.

The third major complaint about the unfair nature of prison industries comes from those concerned with the competition for jobs. The argument given is that those individuals who have not committed crimes should have the first opportunity to be employed, before those who have committed crimes. If we move private employment into prisons, we encourage those on the outside to pursue crime as a means of getting job training and employment. This tactic seems absurd, if we are trying to promote respect for the law. And at this point in time, as we are trying to place former welfare recipients in the workforce, why should we limit the non-incarcerated workers' options by moving some of their potential employment into prisons? Furthermore, with a large labor supply in prisons, there is little reason to pay more than the minimum wage there; on the outside competition for workers may well force wage rates up. But if there are fewer jobs on the outside due to moving more jobs into prisons, the argument can be made

that this relocation of employment has helped to reduce the pressure in the outside market to raise wages. The impact of prison enterprise on wages may thus be two-fold: lower wages on both the inside and the outside.

A fourth major complaint is the image that prison labor conveys. The US is attempting to block the importation of goods made in prisons in China. How can it, at the same time, promote the production and general distribution of goods made by prison labor in the US? There are differences, such as the rules established in the US to pay inmates the prevailing minimum wage. But the distinctions appear a bit shallow and self-serving to some observers.

### **Why do Firms Seek Prison Labor?**

Having identified some of the difficulties of employing prison labor and the regulatory attempts to overcome these complaints, it is reasonable to ask why private employers nonetheless attempt to use it. Despite the difficulties, including complaints from organized labor and corporate rivals, several employers see particular advantages or answers to specific conditions which they face. The single most common reason for using prison labor is access to labor. In several labor markets, finding workers to do the jobs needed, at the wages offered, is extremely difficult. By putting these jobs in prisons, the labor shortage is thought to be solved. And not only is finding workers no longer an issue, some of the attendant problems identified with low-wage workers is solved. Prisoners are seldom absent, nor are they tardy. Prisoners do not receive holidays off nor special pay for holidays and vacations. Prisoners have few work options, so turnover by worker choice is low. (And the pay to inmates is much higher than they receive in other prison employment, so the inmates work hard to keep that income flowing.) There are problems, however, in some states where DOC decisions move employees of prison industries to other prisons without much, if any, notification to employers. For the most part, however, many aspects of the labor supply and cost equation are solved for particular employers with prison industry enterprise.

Furthermore, specific benefits may accrue to those firms with products competing with imported goods. If a product is largely constructed in the US, the manufacturer can use the phrase, "Made in the USA" on it. The domestic-content labeling increases its marketability. Firms which could produce the product more cheaply abroad can choose the prisons as a way to compete, perhaps paying a little more, but benefiting by the label which accompanies it. Other firms which are competing with imports see themselves benefiting by having more direct control over the product and timing of production than when they ship its production overseas. It is also cheaper to ship something within the US than over the Pacific Ocean or through Central America. Furthermore, the firms see themselves doing some social good by keeping employment in the US rather than hiring others in some far off land. And these employers do not have to pay certain worker benefits. In some instances employers have even rented tailor-made facilities for as little as \$1 per month, and in specific cases, such as Escod Industries in South Carolina, the firms are even given subsidies by the prison to locate their work in correctional facilities.<sup>19</sup>

Although US firms may and often do receive criticism for their participation in prison enterprise, the advantages for a limited number of firms do outweigh the costs and criticisms.

## **III. THE PRESENT STATUS OF PRISONER EMPLOYMENT PROGRAMS**

Having reviewed the many arguments both for and against the employment of inmates for private gain while in prison, it is now time to explore just what is happening in terms of inmate employment programs in both Wisconsin and the rest of the nation. Included is a detailed assessment of inmate employment on recidivism.

### **The Wisconsin Experience: The Bureau of Correctional Enterprises**

The Bureau of Correctional Enterprises (BCE) is the umbrella organization for work activities in the Wisconsin Department of Corrections. The main organization in the Bureau is Badger State Industries, established in 1913, to be responsible for the provision of work opportunities for the inmates of the state. Badger State Industries (BSI) is supposed to be self-supporting with earned revenues providing funds for capital expansion and operating expenses. To the extent possible, it is to operate similarly to a private business. It is to train and employ inmates, providing them with the skills and work experience that will help them be fully employed upon release. BSI is to

operate specific businesses that can sell their products to the state and, in a limited number of instances, to municipalities in the state. In other words, BSI is tightly constrained in terms of what markets it can serve and with whom it must compete. And it is to operate profitably to help to relieve taxpayers of some of the burden of incarceration. The mandate to BSI is shared by the Bureau of Correctional Enterprises. The latter, however, has a broader scope to include not only BSI, but also the Correctional Farms, Inmate Work Programs, and various administrative sections.

BSI has evolved into an active business center. In FY 1997 it generated some \$15.6 million in revenues from a dozen different businesses. This is \$1.6 million larger than in 1996 and resulted in a FY 1997 cash profit of \$1.2 million for BSI. The Correctional Farms generated an additional \$2.4 million in revenue and a modest \$123,716 in cash profit<sup>20</sup> Over the past six years BSI revenues have exceeded expenses by over \$4.1 million which has helped to reduce its debt to the general fund to a mere \$200,000.<sup>21</sup>

The largest BSI businesses involve furniture — systems furniture for the modern office, metal furniture for those offices, and wood furniture. Other businesses include metal stamping (the largest component of which is the making of license plates), and imaging, be it signs, screened printing, printing, or data entry. BSI is also involved in laundry for state institutions and textiles to make inmate clothing, pillows, mattresses, and items such as linens for use in institutions in the state. BSI is continually looking to expand its markets and its products.

In 1997 BSI employed approximately 600 workers across the state's correctional institutions. Inmates held positions such as welders, sewers, carpenters, upholsterers, data entry clerks, laundry workers, assemblers, and lift drivers. These men and women worked 744,000 hours and earned \$724,326 for their efforts. These workers are in addition to the several thousand who work at more modest wages doing the many tasks, such as food service, janitorial service, and clerking, involved in operating the prisons. Some 113 prisoners at any one point in time also worked on the Correctional Farms, spending some 294,000 hours at their farm labors. In all some 1,600 inmates worked on the farms some time in FY1997.

Not only do these jobs yield work experience, job readiness skills, certain vocational skills, and cash to the inmates, they also save the state money because the prisoners involved do not have to be served by some other alternative programming to occupy the inmates' time. Thus, the jobs benefit the working inmates while they are in prison and give them a better chance of legitimate employment upon release. And they benefit the state by saving money on programming for the inmates, on the cost of purchases of goods and services (estimated to have saved the state just under \$1 million in FY1997),<sup>22</sup> and perhaps in reduced future costs, as some of those who work are less likely to be reincarcerated. Given these many benefits, there is little wonder that BCE would look for additional ways in which it could involve inmates in labor. Besides expansion of existing BSI operations, it has looked to become involved with additional private enterprise within the prison walls.

### **PIE (Private Sector/Prison Industries Enhancement) Program**

Because of many of the complaints and past problems with private industry involvement in prisons discussed above, the federal government established several guidelines that must be met if prisons are to be utilized by private employers. The formal name of the program established is the Private Sector/Prison Industries Enhancement Program, known simply as PIE. If state or local correctional facilities are to become involved with private enterprise, there are several guidelines which must be met. These standards were established in 1979 in order to overcome the many legitimate complaints raised about the concept of using a captive labor force for private gain.

One standard is that inmates involved in any of these enterprises must be paid at least the prevailing local wage for the type of work involved. The standard is set in order to prevent the undermining of the local labor market by cheap prison labor and to preserve competition in the local labor markets. If prison settings are to be attractive for employers, it must not be because of the wage rates paid to the inmates. This standard is also intended to counter the image of prisoners being exploited as they are said to be in China. Another related requirement is that the inmates must not displace workers who are employed outside the prison. This is to prevent employers from moving their operations from outside to inside the prisons; the two settings should not have to compete directly with one another. Although this issue can be ambiguous, the requirement is an attempt to preserve the local job base while still trying to create new opportunities for prisoners.

## **...the inmates must not displace workers who are employed outside the prison.**

Third, industries chosen must not employ the type of labor for which there is a local surplus of labor. Again, this requirement is aimed at preventing the undermining of opportunities and wages for local workers who have remained out of prison. Fourth, local unions must be “consulted” prior to project initiation, so that the prison industry does not come as a surprise. The unions do not have a veto power over any arrangements; they just must be informed and their concerns heard by the prison authorities. It is thought that certain types of complaints would be addressed. Fifth, the state must issue written assurances that the inmate participation is voluntary, that the workers are not being coerced into these work arrangements. Most jurisdictions have waiting lists of prisoners who

want to work in these higher-paying, private-industry jobs, indicating that coercion is not the issue.

Sixth, the state must have the authority to collect and provide financial contributions to crime-victim compensation programs. This is standard practice and is relatively easily met. And seventh, the state must have the authority to provide comparable worker benefits such as health care and worker compensation to the participating inmates.<sup>23</sup> Taken together these requirements are intended to address the major complaints raised about past uses of prison labor in private, profit-seeking activities and to assure everyone that different pools of individuals will benefit from the particular, proposed, prison industry.

Another component of PIE is the structure used to contract with the private employers. Three different “models” were created as acceptable options that were thought to help meet potential complaints. The most common option is one which is called “the customer” model. Under this format, the prison is basically responsible for all aspects of production, from obtaining and paying for raw materials, to training, to producing the finished product. The prison contracts with the private firm to purchase acceptable, finished products for a set price. The prison accepts the risk of work being rejected and of mis-pricing the goods. It can benefit, however, if it successfully trains and organizes workers, minimizes waste, and prices the products appropriately. Companies prefer this option because they do not have to bear much risk: they have a known price for production.

Under the second option, known as the “manpower” model, inmates are employed by and trained by the prison but supervised by the private company. Both partners share the risk and rewards, but the prison has to make greater investments in the work force. The third option, the “employer” model, relies on the private partner to employ, train, and supervise the inmates. The private employer has greater responsibilities and greater risk. It has not been very appealing to employers.

Of the 38 jurisdictions, largely states, that have been approved by the feds to operate private industries in prisons, only two have decided not to be involved in any way. The others have taken mostly modest steps to become involved. As noted earlier, approximately 2,300 inmates were employed in PIE-certified enterprises as of March, 1997. The small scale is not indicative of the enthusiasm felt toward the program; rather, it is reflective of the difficulties in finding industries which can meet the many restrictions which PIE has set. Despite the enthusiasm for the program and the many benefits claimed, it is not an easy program to implement, as the Wisconsin experience to date can illustrate.

### **Wisconsin PIE Experience**

As part of the answer to Wisconsin’s dramatic increase in the number of prisoners in its correctional facilities over the last decade, BCE has been granted the authority to experiment with private industry enterprises. This option is in addition to a budget increase from \$123 million to over \$275 million for the prisons, the expansion of Badger State Industries and the Correctional Farms which currently serve only 5% of the inmate population, and the shipping of prisoners to other states.

As was noted earlier, the Department of Corrections in 1995 was authorized under Act 27 to lease space within state prisons and juvenile correctional institutions to not more than three private businesses which would use inmate labor to make products or components or to provide services that would be for sale on the open market. If the DOC were to participate, it would have to comply with several regulations. One requires the DOC to comply with state procurement laws by soliciting proposals to participate from businesses. A second was that it must conform to the PIE guidelines mentioned above. Third, each potential business must appear before a public hearing organized by the Joint Committee on Finance, and the Prison Industries Board must approve the contract. In accordance with federal law, inmates must be paid at the prevailing local wage for similar work and may have as much as 80% of their earnings withheld for taxes, room, board, court obligations, and victim compensation.

A public hearing on the first two, private business applicants was held on April 15, 1996 by the Joint Finance Committee. Both were approved: Fabry Glove and Mitten Company of Green Bay and Jorgensen Conveyors of Mequon. Fabry was to locate a sewing operation in the Green Bay Correctional Facility, and Jorgensen was to establish a welding project at the Waupun Correctional Institution. Both companies have followed through.

Under PIE guidelines, three possible models of operation are allowed. The one chosen for these first two Wisconsin firms is described above as the "customer" model. BSI absorbs the cost of material losses associated with the training of new workers, as well as the costs of raw materials and shipping. The pressure is on BSI to choose workers well and to train them quickly and well so as to avoid losses.

#### Jorgensen Conveyors of Mequon

Jorgensen Conveyors' work in Waupun employs about 12 inmates. Each is paid \$8 an hour, the prevailing wage for welders in the Waupun area. Each year the Department of Workforce Development informs BSI of the prevailing wage for welding in the prison's area, and BSI must increase or decrease the wage accordingly. Waupun has a welding training program and a welding industry, related to furniture construction. Most of the inmates working for Jorgensen have come from the BSI furniture business and were attracted by the substantially higher wages that they can earn.

The partnership to date has gone well. Jorgensen had had a very difficult time attracting welders to its Mequon home. It has solved this problem with the inmate population. The quality of the product has also been very well received. Only one conveyor has been returned because the welds were not all completed correctly the first time. Delivery has been timely as well. And, perhaps best of all, Jorgensen has indicated that it will hire any of the welders upon their release.

#### Fabry Glove and Mitten Company

The partnership with Fabry has not gone as smoothly, at least on the outside. The firm and the DOC came under fire immediately upon hiring some inmates at the Green Bay Correctional facility, because, at about the same time, Fabry laid off a comparable number from its factory in Green Bay. This shift of employment appeared to break one of the cardinal rules of the PIE program — that a prison industry must not displace workers from the local labor market. Fabry claims that it did not displace local workers with this shift of work; it actually saved jobs, just not those of the affected workers. At issue is the claim that Fabry was going to close down its Green Bay operation and send the work overseas. Its options were to shut down all local manufacturing or close down some of it, preserve other jobs locally, and shift one operation into the Correctional Facility. Fabry chose the latter route. Whether the situation is as Fabry reported it is still being investigated by the Department of Justice. Regardless of the intent, this case has proven to be embarrassing to those affiliated with the prison-industry movement and has helped to raise questions about any other new firms which may become affiliated with the Wisconsin prison industry enterprise program.

Fabry is in operation in the prison currently. In June of 1997 some 95 inmates were working on Fabry products in the correctional facility at \$5.25 an hour, on average. By the end of 1997 Fabry had some 140 inmates cutting-out and sewing gloves and glove liners in the Green Bay Correctional facility. The work is going well, and both sides are happy with the product. Aside from the issue of possible displacement, all parts of the operation are in compliance with the PIE standards.

But another part of the Fabry contract has raised additional questions of propriety. Unlike Waupun, the Green Bay Correctional Facility did not already have a factory tailored to the new industry. Money needed to be spent on equipment and training. In order to make the deal work, the DOC made a loan of about \$1 million dollars at a very attractive interest rate (just over 4%) to Fabry to seal the deal. Some politicians have taken exception to the terms of the loan, which are well below market rate.<sup>24</sup> DOC has admitted that future partners will not receive such favorable treatment. Fabry did contribute some equipment and helped in the training of new workers. BSI leaders signed the contract because they thought that the firm should be brought into the program and made the necessary arrangements for it to happen.

This arrangement has also created a loss for the state. Since Green Bay Correctional Facility did not have the facilities, the trained workers, or the raw materials, the state had to invest to create them. At the end of 1997, the state was still over \$300,000 in the red on this investment on a cash basis.<sup>25</sup> The state is likely to break even by the end of the first quarter, 1998, because virtually all raw material (initially worth \$500,000) will be used up. But the initial losses illustrate the point that arrangements with private employers are not without their risks and costs up front.

Another embarrassing moment came when Reebok, which has contracts with Fabry for gloves, announced that it would not buy any products assembled in the Correctional Facility.<sup>26</sup> Reebok was attempting to distance itself from the criticism that competitor Nike has received for its low-paid labor in Southeast Asia. Despite the PIE rules, Reebok did not want to be associated with even the hint of impropriety. Such events make finding appropriate partners difficult for the Wisconsin DOC.

#### Other Firms

With the signing of the state Budget for FY1998, BCE received permission to expand its contracts with private industries to a total of six. Negotiations continue with one candidate, Jacobs Trading Company. This firm has been on the list for a year. It operates a consumer goods reclamation service at the Apple Valley Corrections Facility in Minnesota. There it employs about 400 inmates who take returned goods and refurbish them for resale. Many of the items are electronics that did not work the first time. Whether Jacobs will be allowed to establish a similar operation in a Wisconsin prison remains to be seen. BCE in the meantime is looking elsewhere to fill the newly available slots. Steve Kronzer, head of BCE, expects to have all six slots filled by the year 2000. In an interview he cautioned that some attempts will be failures, with some states experiencing partnership failures as high as 50%.<sup>27</sup> Most new Wisconsin partnerships are likely to be small in scale. The biggest limitation is the availability of space in the prisons themselves. Prisons like Oshkosh have been enlarged in bed capacity but not in program space. Thus, as Oshkosh grew from 300 to 1,500 beds, it added no space to employ or otherwise service the inmates. New prisons have space, but existing ones do not. Just what the yet-to-be-built prisons will have remains to be seen, and no names of potential firms as employers in any prisons have surfaced in the media.

### Experience in Other Jurisdictions

The use of prison labor is a well accepted practice across the US. The leading proponent is the Federal Bureau of Prisons. It employs approximately 20% of its inmates, both male and female, in various prison industries.<sup>28</sup> Some 45 states have their own version of prison industries. In 31 of these states, the prison industries are solely financed by self-sustaining revolving funds and annual sales. The average budget per state is in the neighborhood of \$26 million while the US Federal Prison Industries has a budget of \$405,000,000. These figures are given to illustrate the scale of activity in this area.

The state with the largest private industry involvement is Florida. Up to this point, however, Florida has operated very differently from the other states. All prison industries are operated by a private, non-profit corporation, PRIDE. It has followed its own rules and guidelines as to which industries it can utilize in prison. It has but one industry, contract embroidery, which meets PIE guidelines and is certified. The firm involved had 25 inmates as employees in March of 1997. Overall, PRIDE employed 4,293 inmates in 2,605 inmate jobs in 43 industries in FY 1996.<sup>29</sup>

PRIDE (Prison Rehabilitative Industries & Diversified Enterprises, Inc.) is a not-for-profit 501(c) 3 business which is responsible for the job skill training of incarcerated individuals in Florida state prisons. It is under contract with the Florida Department of Corrections to manage and operate the state's prison industries. PRIDE was initially given \$2 million by the state when it was launched in 1981, but ever since it has had to be self-sufficient. To generate income and inmate positions, it has continually increased the number and scale of businesses it operates. Because it is an independent entity, its employees are not on the state payroll. They are employees of PRIDE. PRIDE is believed to be the only non-profit organization in the country solely responsible for inmate training for its home state.

Sales by PRIDE industries in 1996 were in excess of \$72.8 million. Of these revenues \$2.4 million were spent on inmate training and support; \$1.6 million were spent on inmate wages; and \$726,000 were given to the Department of Corrections to help offset the housing and feeding costs of the inmates.<sup>30</sup> Unlike PIE-certified programs which require the payment of at least the minimum wage, PRIDE pays between \$.15 and \$.40 per hour.<sup>31</sup> That does not allow a big cash build-up for the inmates nor for the restitution fund. But under special arrangements inmates contributed some \$242,758 in FY1996 to the restitution fund.<sup>32</sup>

The Annual Report for 1996 lists 120 different occupations for which 4,293 different inmates were trained in one year. Their 43 different industries ranged from citrus operation to seafood processing, aquaculture/fish farming, heavy vehicle refurbishing, printing, office seating, dress uniforms, and so forth. The list is long. The industries do sell either to government agencies or, very recently, to either public or private buyers in other countries. PRIDE is attempting to use its operations in seafood processing and aquaculture to stimulate private market activity in specific areas of Florida; in other words, it is experimenting with an attempt to use this for economic development. PRIDE also must bid competitively on all of its sales to state agencies. Sometimes they lose, which helps to keep them competitive. Some outside vendors, however, claim that PRIDE is more than competitive, especially given the very low wages it pays. But PRIDE officials point to additional costs which PRIDE must bear because of lockdowns, inmate transfers, extra security, and the like. In any event PRIDE is a unique approach which may have lessons for others.

#### Additional States

There is a huge variety of industries employing inmate labor across the country. There is the fairly commonplace food, license plate, and furniture production and the unusual tourism call center (Iowa), "prison blues," a blue jean with a unique manufacturing history (Oregon), asbestos abatement (Ohio and Utah), and CAD work (Washington). The list goes on and on. Some states are more restricted in which industries they can compete than others, but most have a range of options. While agriculture is not likely to lead directly to farming employment upon release and license plate stamping is not likely to lead to similar employment elsewhere, many of the other industries do have potential links by industry and occupation to jobs which are commonly in demand on the outside.

To expand the industry options and to seek additional revenues, many states have also explored bringing private sector industries into the prisons. As of March 1997, some 35 states and 3 counties have been approved to run PIE-certified prison industry programs, and 28 states had at least one business in operation.<sup>33</sup> The largest operations are the states of California, Washington, Nevada, and Texas. California had 20 businesses, employing some 335 inmates. The largest employers were a firm that made T-shirts (64 employees), a TWA reservation center (45 employees), and a manufacturer of faucets (42 employees). Other products ranged from circuit boards to garbage recycling and from plastic assembly to sheet metal duct assembly.

Washington had the next largest involvement with private industry. It had 15 employers who employed some 267 inmates. Their larger industries include telemarketing and manufacturing of shrink-wrap, cargo nets, and carabiners for rock climbing. Each firm employs between 40 and 50 inmates. Nevada has 211 inmates in PIE industries. Their largest employers build water beds and restore antique motor vehicles. Texas has but two firms, but together they employ 168 inmates. One of these firms, however, is notorious for their involvement. Lockhart Technologies, which produces electronic circuit boards, has been under fire for what others see as a clear-cut case of local labor displacement. The firm closed down a factory in Austin, Texas, which employed 150 persons as it ramped up its employment in the rural, Lockhart correctional facility. A great deal of debate has surrounded the move, but

the firm continues its prison operation and has permission to expand. A representative of the AFL-CIO in Texas revealed that the closing of the Austin facility was legal under Texas law. But that law has since been amended to ensure that the state check not only the local county affected but a much larger area, the region, to be sure that no jobs are lost by the move of a firm into a state prison.<sup>34</sup>

Most PIE activities in midwestern states are not on the same scale as on the west coast or in Texas. The largest private-industry involvement comes in Minnesota. The state has five different businesses involved in its prisons. The largest is the Jacobs Trading Company, the firm which is trying to earn the third spot in Wisconsin. Jacobs Trading had 78 employees (March 1997) salvaging damaged merchandise in the privately operated prison in Appleton, Minnesota. This is the same industry they have proposed for Wisconsin. Other employers are smaller and include one which makes fishing lures, another which assembles bird feeders, and a third which does metal fabrication. Minnesota hopes to expand the PIE program to more prisons. It is seeking employers to move into the new prison that will open in Rush in the year 2000, and it is negotiating with companies to become involved in other existing prisons. It has stated, however, that the PIE program must be profitable to the state by the year 2001 or it will drop the program. Its target is to employ 280 inmates, not counting those at the Appleton prison.

Iowa has three private firms which employ some 29 inmates in total. Illinois and Michigan are not involved. Ohio has but one industry, having lost at least two others which were recently operating. State officials in Ohio had hoped to have more — rather than fewer — employers, but they have encountered a lot of opposition from the state's unions.

#### **IV. EVALUATION OF THE CURRENT PROGRAMS**

The question to now be answered is whether the rewards that are said to come from the employment of inmates, especially the employment of inmates in private industries in prisons, actually occur. And if they do, do they do so on a sufficient scale to warrant ignoring the many complaints about the concept? In this section we review the evidence to date and reach a conclusion on the relative merits of private industry enterprises for Wisconsin. The examination begins with a detailed review of the evidence on the supposed reduction in recidivism.

##### **Do the Expected Benefits Materialize?**

The case for private prison industries is built on the premise that several benefits will accrue to the parties involved. By examining the record of the firms active in prisons in Wisconsin and elsewhere we can derive an assessment of the degree to which the inclusion of the private sector has realized the gains promoted. By examining the brief histories of the states with programs and the general histories of the inmates, we can better judge whether the supposed benefits for the state and inmates have appeared. The degree to which all parties are satisfied with the arrangements will affect just how much larger the program will grow. If employers are struggling or if the inmates and prison systems do not come out measurably ahead, then it is unlikely that we will see much expansion in this approach. Nor should we see it.

##### **Recidivism**

One of the most compelling claims made about the private sector employment of inmates is that it can help to reduce the rate at which these individuals return to prison. The argument is that these workers get more training, are held to more rigorous standards in prison work, have better behavior records, and have skills that are directly transferable to the private world of work. Furthermore, these individuals who have more directly seen the rewards for work (higher prison pay and a bigger pot of money in their account to help smooth the transition to employment on the outside) should be more likely to find and keep better paying jobs which in turn will reduce their interest in and need for illegal activity.

The PRIDE program in Florida claims that all of this is true and that the recidivism rate for their alumni, inmates who have worked in private industries in their prisons, is 12.6% for the two years following their release.<sup>35</sup> As the reader will see below, other estimates of recidivism range from about 20% to over 60%. If the 12.6% is accurate and if the difference in recidivism rate can be attributed to the experience with private prison work and not the

in-prison selection process for the private-sector jobs, then a very strong case could be made for the impact of private enterprise in prisons. Even if the selection is biased toward those inmates less likely to recidivate, the fact that these individuals have been given these work experiences and have made the most of them may well suggest that it is the combination which leads to the lower rates of recidivism for the participants.

Furthermore, if the lower recidivism rate among participants is accurate, then the states should also see fewer of these prisoners again. That means that the prison population will grow more slowly, reducing the demand for additional prison construction. If, as a result of a better prison work experience, convicts recidivate less often, then the approach has substantial payoffs to the entire criminal justice system. (These are noted in the next section.) The first issue is whether we can point to conclusive evidence which shows that work experience in prison, most notably work in private industries in prisons, produces lower rates of recidivism.

Try as we might, we could not find any studies which have systematically examined this particular population. The PRIDE program claims its low reincarceration rate, but there is no publicly available study to corroborate these claims. And many officials in other states doubt their validity, given their own experience with inmate labor. Since Florida is the one jurisdiction that is making such claims for the impact of private enterprise in prisons (although a South Carolina representative informally made a claim of 2%),<sup>36</sup> it appears that the only way to begin to validate the rate is to look more generally at the evidence available on the rates of recidivism among the inmate population at large and the sub-population which has worked while in prison.

Before examining the results, it is important to discuss what is meant by recidivism and to warn the reader that much confusion arises because of the varying definitions utilized. Depending upon the study, both the definition of recidivism and the period of time over which it is measured can and do vary. For example, a national study of the 108,580 persons released from prisons in 11 states in 1983 tracked these individuals for the following six years. The authors found that 62.5% were rearrested (one definition of recidivism) for a felony or serious misdemeanor within three years; some 48.8% were reconvicted (a second definition); and almost two fifths (41.4%) of the population were returned to prison or jail ( a third definition — one which is more inclusive than many because it includes jails and prisons, and jails and prisons in all states, not just the state of the original incarceration).<sup>37</sup> Many statistics used in recidivism studies report on one or two years rather than three, and most are limited geographically to one jurisdiction, commonly one state. Furthermore, parole violators are often not counted among the reincarcerated because they are seen by some as merely being returned to prison to serve out the remainder of their original sentence. To make valid comparisons among recidivism rates, it is best to use a common definition and time period. This, unfortunately, is not always possible.

In a 1995 study of recidivism among federal prison releasees, some 40.8% of the former inmates had been rearrested or had their parole revoked within three years of their release in 1987.<sup>38</sup> This population was tracked either through the automated criminal histories maintained by 21 states or through the FBI's National Criminal Information Center automated criminal history files. The implication is that the 40.8% figure does not include incarceration in local jails, and it may not have been able to follow prisoners in some states whose records are not fully automated. The result is that the figure, while for a different population, federal rather than state convicts, is likely to somewhat understate the recidivism when compared to the 1983-1989 study referred to in the preceding paragraph, even though the rates of reincarceration are very comparable.

A RAND study of California revealed even higher rates of recidivism.<sup>39</sup> This study focused on the 70% of California prisoners who were released to probation. During the 40-month study period following their release in 1980, 65% of the total sample were rearrested and 53% were officially charged. Probation was originally intended for offenders who posed little threat to society and who were believed to be capable of rehabilitation through a productive, but supervised, life in society. These numbers suggest otherwise.

Not surprisingly, Wisconsin's figures for recidivism do not correspond with California's. A study covering the 1980-1987 period in the state, released in early 1990, tracked all inmates released from Wisconsin prisons to determine what percentage were reincarcerated in Wisconsin prisons during the 1980-1989 period. This study found that within 3 years of release 36% of inmates were reincarcerated in Wisconsin prisons.<sup>40</sup> This figure excludes sentences in local jails, prisons in other states, or federal prison. Furthermore, it does not count parolees who violate and are recommitted but who are processed under the state's Alternative To Parole program.<sup>41</sup> If former Wisconsin

convicts were tracked to include all of these exceptions, it seems reasonable to guess that the Wisconsin rate would be at least as high as the 41% rate of recidivism found in both the federal and multi-state prison populations.

More recent figures on recidivism in Wisconsin are only available for one or two years from time of release. If we examine the inmates released in 1993, we find a range of rates depending on the status at time of release. Among those with an intensive sanctions release (defined as those released but with electronic monitoring or released to a halfway house), only 23.8% were said to have recidivated within 24 months of their release. For those with a release from prison that involved more traditional probation and parole, with less contact with corrections officials, the recidivism rates (return to Wisconsin state prisons) range from 20.2% for those released on parole to 27.3% among the limited number who were released on some form of the Alternative To Release program.<sup>42</sup> It is hard to make these rates comparable to any others because of the more limited time periods and the more limited definition of recidivism. If we compare these two-year rates to those tabulated for the Federal prisons (31.7%), the state rates still appear to be lower. But then again the definition of recidivism used in calculating the Wisconsin numbers is more limited than that used for the federal study. It would appear likely that there are few differences between recidivism in Wisconsin and elsewhere.

#### Differential Rates of Recidivism By Inmate Characteristics

Although the overall rates of recidivism among varying prison populations appear to be somewhat similar, using triangulation among the varying definitions employed, what may be of greater interest is the degree to which those individuals who have specific characteristics and work experience in prison have lower recidivism rates upon release. If these characteristics and work experiences can be specified, then it may be possible to make a stronger case for expanding particular types of work options in prison, perhaps including private enterprise employment.

If we go back to the study of the 108,580 persons released from state prisons in 1983, we glean several pieces of relevant information. First, one-in-four of the released prisoners were rearrested within the first six months of release and two-of-five within the first year.<sup>43</sup> In the Federal prison study, the reincarceration rate was 11.3% within six months and 20.3% within the first year after release.<sup>44</sup> These facts indicate how important an alternative to crime is during the initial months of release.

The federal study also indicated a mollifying role for employment. Persons who had been employed full time or who had attended school for at least six months within the two-year period before they entered prison had a recidivism rate of 25.6% compared to 60.2% for those without such experience.<sup>45</sup> Furthermore, those releasees who made arrangements for post-release employment prior to their release had lower rates of recidivism than those who did not do so. Those with the employment arrangements recidivated at a rate of 27.6% while those without had a rate of 53.9% for the three-year, post-release period. These differentials suggested to the author of the federal study that, "any policy, operation, or program such as prison industries, education programs, and halfway-house release that promotes post-release employment will reduce recidivism among Federal prison releasees."<sup>46</sup> While not a ringing endorsement of private industry operations in prisons it is at least a statement of support for this and other prison activities that can help insure employment for inmates upon their release.

To help examine the role of employment while in prison four other studies give some insights. One is a study done by Ohio. A second is a study of the federal prison employment and training experience. The third is by Kathleen Maguire. A fourth, related study is one by Richard Freeman who argues for employment and training via an analysis of who it is that is imprisoned and how greater attachment to the work force would reduce the incidence of crime and incarceration.

One of the more supportive studies was that done on 7,000 federal prisoners who were incarcerated in federal prisons sometime between 1983 and 1987.<sup>47</sup> This study, known as PREP—the Post-Release Employment Project — tracked the inmates up to five years before incarceration and up to 12 years after. It attempted to correct for selection bias (because inmates could not be randomly assigned to work) and employed a strong inference design (explicitly stating what the theoretical mechanisms are through which the program intervention is expected to be effective). Its basic findings, despite the design constraints to limit or eliminate the effect of differences among the pools of inmates, strongly support the impact of prison work, training, or both. In the 12 months after release, 6.6% of the study group members (those with prison work, prison training or both) and 10.1% of the comparison group

members had had their supervision revoked. In other words, the study-group members were 35% less likely to recidivate than the comparison group members. The difference was statistically significant.

In 1995 the authors revisited the sample and sought to find what percentage of each pool had been recommitted to a federal facility for a new offense or for violation of the conditions of their release. The fact that this did not study the possible commitment of releasees to other types of penal facilities was thought not to matter because no one group had members that were any more or less likely to have been committed to non-federal jurisdictions. The authors found that women recidivated much less commonly than men and, therefore, had to be treated separately. Women did, however, recidivate much sooner, if they were to recidivate at all.

More to the point, when the authors undertook a statistical analysis of the members of the two pools, they discovered that inmates who worked in prison industries were 24% less likely to recidivate throughout the observation period. Those who participated in either vocational training or apprenticeship training were 33% less likely to recidivate over the study period.<sup>48</sup> Such findings are taken by some observers as strong evidence that these programmatic alternatives do make a difference.

The only issue is whether the study design was sufficient to completely account for differences in motivation between the study group that participated in work-related activities in prison and the control group. Certainly, on background characteristics and criminal history and the like, the groups were made comparable. But the unmeasured ingredient, individual motivation, may be too strong to set aside with the study design. The authors contend that they succeeded in doing so, but not all readers agree. Nevertheless, the study does provide some evidence of the merits of work in prison, at least among federal inmates. If the findings are valid, it is likely that they would apply to state prisoners as well.

One study in Utah which examined those individuals released during 1983, found that the return-to-prison rate for all releasees was 29% by August of 1984 and only 13% for those who had participated in the correctional industries program.<sup>49</sup> This study, however, is no longer available, and the authors at the time admitted that while they controlled for some differences between the two populations they did not attempt to control for motivational differences nor a number of other factors.<sup>50</sup>

A more recent (1995) study of Ohio prisoners purports to show that those who worked in the Ohio Prison Industries (OPI) program were 18% less likely to recidivate than those prisoners who did not participate.<sup>51</sup> According to this study, prisoners who had participated in a prison-industry job for at least 90 days had a recidivism rate of 24.6% compared to the general prison population which had a rate of 29.9%. Furthermore, those releasees who had high-skill OPI jobs had recidivism rates that were one half those of the general prison population. Additionally, males and blacks benefited more than females or whites. And those between the ages of 26 and 40 at release, those who committed crimes against persons, and those who were incarcerated for the first or second time all seemed to benefit more from the experience than others.

The author of the OPI study used a methodology similar to that of the federal (UNICOR) study. Despite the positive nature of the conclusion, the study is open to the same types of criticisms that the federal study has received: the most basic of these is the difficulty of taking into account the motivation levels of the various participants. The author himself acknowledges as much in a section on caveats. He points out that the reported differences are real but that he may not have been able to identify the reasons why different rates of reincarceration exist.<sup>52</sup> It may be the inmates' specific characteristics, but it may also be a stronger internal desire to do something different with their lives. (Prisoners do volunteer for most work assignments.) Prison work experience may further allow inmates to act on that desire, but the prison job itself may not be the factor responsible for the different outcome.

**...study-group members were 35% less likely to recidivate than the comparison group members.**

Not unexpectedly in public-policy research, other studies of recidivism are not as supportive of the role of prison employment. An earlier study by Basinger (1985) of the Ohio prison population and those who had participated in the Ohio Prison Industries program (OPI) concluded that he could not say that OPI participation made a difference in rates of reincarceration within the first year after inmate release.<sup>53</sup> An examination of a sample of inmates in seven New York state maximum-security prisons was published in 1988. This study attempted to control for a variety of variables among those who worked in prison industries and those who did not. Having done as best they could, the authors concluded that the industry participation variable was the least important of any they examined and was not statistically significant in determining recidivism.<sup>54</sup> They went on to say that their research indicated that the time involved in work in prison for participants was truncated in terms of hours per week (an average of only 26) and in months (an average of 18), and that such a limited involvement should not be expected to overcome a lifetime of other, often negative influences.<sup>55</sup> They also posited that whatever the merits of prison-industry programs, the positive benefits may never be sufficient to overcome the barriers to legitimate employment faced by ex-convicts.<sup>56</sup> This pessimistic note was made not to denigrate the prison industries but to attribute some of their seeming failure to help ex-cons to factors largely beyond the employment program's control.

After viewing the attempts to judge the impact of prison work as a factor in reducing the probability of a prisoner recidivating, it is difficult to state, as several others have, that prison employment is conclusively a positive factor in reducing recidivism. The evidence is not there to categorically make this statement. Therefore, the evidence is not there to make the case that in general prison employment and the resulting reduction in recidivism can be quantified and used to estimate the potential dollar savings a state might expect from reduced needs for incarceration following the creation of additional prison jobs. There may be (and are) other benefits from having prison employment opportunities, but lower recidivism rates attributable to the existence of these jobs is too much of a stretch for the research to date to support. For those inmates so motivated, the existence of the jobs no doubt assists them both with the time in prison and their post-release activities. But to say that the jobs are the difference is not wholly supportable at this time. The data are, nonetheless, suggestive.

It may be possible that the links of employment to lower rates of recidivism are stronger if it is *private* industry which is running the jobs in the prisons. The facts that these jobs pay more, create a some savings for inmates, and are in occupations for which there is a demand all suggest reasons which might reinforce the benefits of private industry enterprise work. But the evidence to support this supposition has yet to surface.

### **The Other Arguments for Prison Industries**

While claims of lower recidivism rates and fewer future demands being placed on prisons by inmates who have prison work experience are not conclusive, several other reasons to enlarge the use of prison industries do exist. One reason involves prison-inmate safety. Prison systems work to safely contain their prisoners. One strategy to do so is to occupy inmate time. If that use of time can be otherwise productive, be it in education, training, exercise, drug rehabilitation, or employment, the correctional system's job is made somewhat easier. But most of these uses of time are expensive. To set up and operate an exercise area can be costly. Even more costly are education, training, and counseling. Prison employment for inmates may also be costly to establish, but it also can pay rewards when the products and services produced can be sold. In all cases the time involved means that the inmates are not idle, scheming on ways to disrupt the system or each other.

Unlike counseling or training, however, one of the strongest arguments for prison industries is that they generate additional revenue for the prisons. In many cases they not only pay for themselves, they generate a surplus, helping to offset the other costs of incarceration. If the products and services are of sufficient quality and quantity, then the prison system can actually come out ahead fiscally as well as programmatically. Such has been the case in recent years in Wisconsin. In six of the last seven years, on a cash basis, Wisconsin Correctional Enterprises has generated more revenue than it has expended. With sales in FY1997 of over \$15.6 million, it generated a surplus of \$1.22 million which it then used to pay down debt and reinvest in capital equipment so that it can enhance its future return.<sup>57</sup>

Ohio has had a similar experience. In 1995 OPI goods and services generated \$33.8 million in revenue for the state of Ohio. OPI's largest sales came from furniture making (\$12 million), license plates (\$5.6 million), garments (\$5.0 million), and printing (\$2.1 million).<sup>58</sup> All sales were to the state of Ohio. It appears to have generated a

profit as well. But its main contributions to the state are the additional jobs it provided and the correctional benefits its operation provided to the Department of Rehabilitation and Correction.

Florida has similar claims. As was revealed earlier, its PRIDE program, which operates all of its prison industries, generated a whopping \$72.9 million in sales in 1996 with an unusual earnings loss of \$.5 million due to the expansion into new industries.<sup>59</sup> PRIDE involved almost 4,300 inmates in its operations and employed an additional 371 persons from outside.<sup>60</sup> The state of Washington's Correctional Industries had prison industry sales of some \$28 million and employed over 1,500 inmates in FY1996. The state additionally employed over 5,500 inmates in positions which assisted in the operation of the prison. Indiana had a prison industry budget of an estimated \$27 million while Minnesota exceeded \$16 million in 1997. Indiana's had \$1.3 million in private sector sales while Minnesota had \$2.5 million.<sup>61</sup>

Numerous other states can make a similar claim. But beyond the numbers, prison employment reduces the need for other expenditures because it contributes to the maintenance of order within the prisons. Inmates who want to participate are more manageable, requiring less oversight. Inmates who want to participate are more likely to sign-up for education and training programs to better qualify themselves for prison and post-prison jobs, removing potentially idle time and temptation. The inmates who want to participate are a leavening influence on their institutions because they do not want to be involved in any trouble. Besides, whether they are preparing to work or doing it, the time spent means they are being productive.

If the 1995 Ohio study findings are accurate and certain types of prisoners who participate in prison industries are much less likely to recidivate than others, an argument can be made that giving these types of individuals a work option at least helps them to make a better transition to a life without crime even if it cannot be proven that the prison employment is what made the difference in the outcome. If blacks, those incarcerated for the first or second time, those serving longer (two or more years) terms are less likely to recidivate if they have had at least 90 days of prison-industry experience, then steer these individuals who volunteer for it into the job slots.

These individuals may indeed be different from their counterparts, but those differences may not be sufficient to show in lower recidivism rates without the boost from prison industry experience. This is difficult to prove. But given some of the scale of difference in recidivism rates between the workers and those who did not, e.g. those with four or more years of a sentence recidivated at 24.3% if they worked in prison v. 40.8% if they did not, and those in prison for the first time and worked recidivated at a rate of 22.9% versus 33.3% for those in for the first time who did not work, it seems logical that certain types of inmates are more likely to benefit from the work experience.<sup>62</sup> Betting on inmates with such characteristics is taking a chance that their post-release behavior will be related to prison work. But with a program that usually at least breaks even fiscally and yields other monetary and non-monetary benefits, it is not an expensive bet.

With the many benefits of prison employment, efforts to expand these opportunities seem a natural. But many Departments of Correction do not have the resources to expand their operations. That is a role that the use of private enterprises in prisons can help meet. If there is an outside operator, it can pay for the creation of additional jobs. True, there may be some start-up costs. But usually those costs can be recovered over time as the private employer reaps the rewards of employing a captive workforce. Private enterprises are, thus, available as an additional source of jobs for the inmates.

### **Stumbling Blocks**

Since there seem to be a number of benefits of prison industries, their expansion would seem warranted. Even though this may be the case, expansion is difficult, whether the expansion is public industries or private. This difficulty, however, is most obvious when attempting to engage private enterprises in the prisons. Wisconsin has only been able to engage two firms to date. The third is still struggling in the approval process. In Ohio, which had very high hopes for the private-sector program, only one firm remains involved, and the state is not optimistic about its ability to identify others. The state notes a very strong objection from unions. The result is that this option may completely disappear in Ohio.

But even the expansion of public sector industries is challenging. Wisconsin has been able to identify several different industries in which it can offer services or products to the governments of Wisconsin. It is involved not only in office furniture, but also printing, signs, data entry, laundry, and farms. It has slowly expanded the services it offers, but it has done so very carefully. It cannot just identify a growing industry and jump into it; it must move slowly and gain approval on the way. The result is a very limited number of industries in which it can operate. Wisconsin's BCE can be more aggressive within its industries and increase the sales volume, which it has been doing. But to jump to new industries remains very difficult. The same constraints apply in other states. Florida, for example, has been able to find only one industry which can qualify for PIE certification. Despite the benefits of prison industries, the constraints limit the expansion of this correctional option.

Even traditional public-sector industries are not immune from these objections of competition either from firms or from labor. Office furniture, where the long history of prison production reduces objections, can be subject to private competitor complaint if the state suddenly starts buying larger quantities of furniture and the private purveyors feel they are losing part of an even larger market. If those objection-to-competition barriers can be overcome, then there are problems such as having sufficient space in the prison buildings to house the industry. As we have said, Wisconsin, which has had to expand bed space in several of its prisons, has added beds without concomitantly increasing the program space for the prisoners. It then becomes very difficult to add more jobs when the space is not there.

Another political barrier to expansion beyond selecting appropriate industries is gaining political support for creating jobs in prisons that might otherwise be held by non-incarcerated individuals on the outside. The question is asked as to why inmates should be rewarded with work when former welfare recipients and many inner-city residents are struggling to find jobs on which they can survive. Furthermore, when prison industries must make capital expenditures to make the prison setting appropriate for industry, those expenditures can be questioned. This is especially true when the prison appears to be taking a loss on (subsidizing) a private industry to locate in a prison, as in the case of Fabry Glove in Wisconsin.<sup>63</sup> Even though the logic of paying for up-front capital costs over time is compelling in the private sector, such instances where the government is involved in assisting the private sector with these initial costs tend to cloud the picture and reduce the support for such investments when undertaken in the prison context.

## V. CONCLUSION

The idea of private industry operating in prisons — training prisoners for legitimate jobs on the outside, giving inmates the opportunity to generate a small savings to better help them make a smooth transition to work, offsetting some of the costs of imprisonment by earning higher in-prison wages that allow the state to withhold costs associated with room and board, generating payments to victim funds and to family support funds from wages earned, generating tax revenues from inmate wages, helping inmates have a lower recidivism rate than those who do not participate, and so forth — sounds like a very worthwhile idea. The seeming number of benefits makes a strong case for its utilization in Wisconsin and elsewhere. It appears to be a win-win situation for the inmates and the state.

As should be clear by now, however, the reality is not quite as appealing as the concept. For one, attempting to find industries that can satisfy the many constraints on products is rather difficult. Second, the issues brought forward concerning Fabry Glove and Mitten's involvement in Wisconsin, although it appears to be a positive experience for both the company and the correctional facility, has muddied the waters for other firms to become involved. All of the next partnerships will be even more closely scrutinized. Third, the older prisons do not have the physical space available for any large-scale enterprise. This inhibits any sizable expansion of prison industries in these facilities. Fourth, the proof that inmate participation in work reduces recidivism among participants is not as strong as some have alleged. There is no question but that those inmates who participate in prison employment have lower levels of recidivism. But there is no way to show conclusively that it is the work experience rather than the internal desire to work, to go straight, to learn skills that will aid in going straight upon release that makes the difference in recidivism rates possible. Therefore, the argument that this prison employment will reduce the future need for prisons does not have enough research support to make it a compelling reason to overcome the political opposition, much less the financial problems of providing space, which have developed.

Prison industry employment and, more specifically, private prison industry employment, may have greater payback for certain types of individuals. In the research that has been undertaken it appears that inmates with certain characteristics have had much reduced recidivism rates when compared with the general inmate population. Again the existence of a difference in motivation has not been taken into account. But if individuals with certain characteristics (such as being black, those learning a higher-level skill, being a first- or second-time offender) are more likely to benefit from the experience and do end up with lower rates of recidivism, a good case can be made for targeting those types of individuals. While it is inconclusive that the employment experience makes the difference, the logic is strong that it does contribute. This can be especially true if a greater effort is made to connect inmates upon release to specific jobs, so that they begin to work immediately and they build upon the experience they had in prison.

Given the potential payoffs and the known, direct, cost reductions to the prison system for those inmates who are employed in private prison industry, it seems prudent to seek to expand the private prison industry program in Wisconsin. The barriers are substantial. The program is physically limited, besides being politically limited. But the evidence of a payback is sufficient that further efforts should be made to expand the program at least to its legislative limit of six firms. It creates more program options for the DOC. It saves the DOC money in the long run with the reduction in the costs of room and board for the inmates participating, as well as the role it plays as an incentive in helping to maintain order. Badger State Industries must be careful in its selection of partners. But the rewards it will receive for so doing should more than compensate it for the care it takes. What should also occur is that a special study of the participants and a control group of those who volunteered but were not chosen be undertaken to see what the long term effects are of participation in private prison industries. Not enough is known: only experience, monitored and evaluated experience, will be able to tell us whether the rewards to the participants and the state are truly there.

Given the size of the inmate pool in Wisconsin, there are undoubtedly a number of motivated individuals who would be aided by their employment while in prison industries. Even if the employment cannot be proven to be the key, the opportunity such work provides for personal development, work habits and skills, and attitude adjustment cannot be said to hurt and very likely does help to keep recidivism lower among this population. When added to the other advantages, such as having some "walking" money, some direct ties to potential employers, and more months and years of keeping out of trouble (avoiding it in prison so they would qualify for and then not lose their job), these prison industry programs have appeal. On top of that, whether it is public or private, it saves the state money. And if it is private and it succeeds as intended, it not only saves the state money, it generates additional revenue.

Building and operating more prisons is extremely expensive. Alternatives that have some research support showing that they may reduce the number of inmates returning to prison, thereby reducing the demand for prison space, should be utilized to the degree possible. Enlarging the number of spaces in such enterprises, given the many constraints, is a challenge. But given the abysmal success to date of alternatives, and given the net, low cost of operation, modestly expanding the opportunities for private enterprise in Wisconsin's prisons makes sense.

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# ABOUT THE INSTITUTE

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Under the new federalism, government policy increasingly is made at the state and local levels. These public-policy decisions affect the life of every citizen in the state. Our goal is to provide nonpartisan research on key issues affecting Wisconsinites, so that their elected representatives can make informed decisions to improve the quality of life and future of the state.

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We believe that the views of the citizens of Wisconsin should guide the decisions of government officials. To help accomplish this, we also conduct regular public-opinion polls that are designed to inform public officials about how the citizenry views major statewide issues. These polls are disseminated through the media and are made available to the general public and the legislative and executive branches of state government. It is essential that elected officials remember that all of the programs they create and all of the money they spend comes from the citizens of Wisconsin and is made available through their taxes. Public policy should reflect the real needs and concerns of all of the citizens of the state and not those of specific special-interest groups.