



# BADGER INSTITUTE

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COMMUNITY  
CORRECTIONS

## Ex-offenders under watch

Revocation study looks at Wisconsin's complex community corrections system and why many on supervision are failing

**By Cecelia Klingele**

Data analysis provides quantitative look at supervision terms

**By Julie Grace  
and Patrick Hughes**

Half of the 23,500 Wisconsinites being held in our prisons today will be out on the streets within two years. All of them will be placed under the supervision of a state Department of Corrections agent tasked with helping them successfully re-enter their communities, re-engage with their families and get jobs.

Far too many will end up back in a cell instead. Almost 40% of those released from prison are typically reincarcerated within three years — a major reason the state is discussing building a new \$400 million prison. Far too many other former prisoners remain free but become dependent on the state and taxpayers in other ways.

Three years ago, we at the Badger Institute set out to discover why so many former inmates — and so many of the Wisconsinites placed on probation by judges every year — fail. This is an enormously consequential question. There are 65,000 Wisconsinites outside of prison but under the supervision of DOC at any given time. We spend \$216 million a year on community corrections. The widespread failure of former inmates to stay out means too many children don't have engaged fathers and too many businesses don't have enough workers.

We wanted to know whose supervision is being revoked, under what circumstances and how the system of community corrections can operate more effectively.

Fortunately, the University of Wisconsin Law School is home to one of the nation's foremost experts in this area, Professor Cecilia Klingele. Working independently but with some Badger Institute assistance in securing records, she thoroughly examined 189 cases from late 2016 in which supervision was revoked.

A few underlying themes emerged: An overwhelming majority (81%) of the individuals had a substance abuse problem that contributed to their revocation; agents have few options to impose meaningful sanctions other than imprisonment; and one of the top non-criminal violations that leads to revocation is simple failure to report to an agent.

Perhaps the most important takeaway, however, is that Wisconsin has unusually long maximum terms of supervision. Many states and the federal government cap lengths of

probation and extended supervision, a period of community supervision after a prison sentence, between three and five years — much shorter than the possible maximum term in Wisconsin. In fact, state law requires extended supervision to equal at least 25% of the total period of initial confinement. In the Badger State, there are ex-inmates under expensive state oversight for decades.

There is little evidence that society benefits from such lengthy periods of supervision. Over 90% of revocations in cases studied by Klingele occurred within the first two years of supervision, suggesting overly lengthy terms are an unnecessary burden on those under supervision, agents and taxpayers.

After reading Klingele's report, the Badger Institute independently partnered with Court Data Technologies to examine the lengths of all 2018 felony supervision sentences in Wisconsin, a total of 21,550 cases. Defendants in over 13,000 of those cases were placed on supervision for more than two years. Over 4,500 were placed on supervision for more than three years — and that's just from 2018.

The state, we think readers will conclude after reading both pieces in this report, should at a minimum take a closer look at the substantial costs and minimal benefits of long periods of supervision.

Revocation is often justified and necessary, and we should avoid overly simplistic initiatives to, for instance, eradicate all "crimeless" revocations. Still, the system is ripe for scrutiny and reform. We hope Professor Klingele's findings and our separate, independent analysis will assist legislators and the array of groups and citizens seeking common-sense reforms that save money, protect victims, bolster the workforce and stabilize communities.

**Mike Nichols** – *Badger Institute President*  
**Julie Grace** – *Policy Analyst*

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*The Badger Institute did not compensate Professor Klingele personally for this research, which is wholly independent, controlled solely by her and not owned or influenced by the Badger Institute. As such, she may incorporate this research and findings into a broader study that could be released in the future with no further involvement by the Badger Institute.*



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# Understanding Revocation from Community Supervision

Study examines nearly 200 revocation cases to look for trends and ways to bring down Wisconsin's high revocation rate

By *Cecelia Klingele*

More than 65,000 Wisconsinites currently live in their communities while serving sentences for past criminal behavior — a number roughly equal to the population of Oshkosh, Wisconsin's ninth-largest city. Some are on probation; others are on extended supervision following release from prison; and a small number are on parole for crimes committed 20 or more years ago (before the state ended the practice of discretionary parole). The number of people on community supervision is more than twice the number of people in Wisconsin's jails and prisons (Wisconsin Department of Corrections 2019).

When supervision succeeds, everyone wins. Taxpayers save money on costly prison cells, and people who commit crimes are held accountable for their behavior while staying connected to their jobs, families and communities.

Unfortunately, every year, a significant number of people do not successfully complete supervision. Instead, they are revoked, a process that removes them from community-based supervision and requires them to serve their sentences behind bars.

Revocation serves an important function in some cases. It can incapacitate people who are causing harm in the community, hold

people accountable for serious rule violations and reinforce the legitimacy of community sentences for those who refuse to be supervised at all. Even so, every time a person on community supervision is incarcerated, the state, the community and the person on supervision lose.

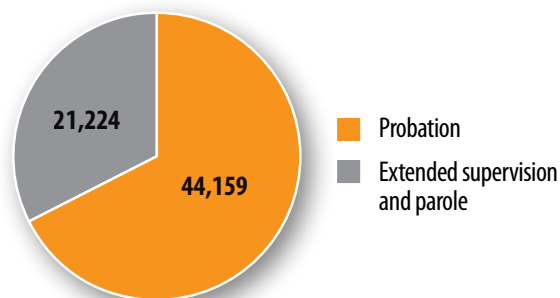
Not only is custody expensive, but it often results in the loss of employment and child custody — losses that are borne not only by the individual and his or her family but also by the state, particularly when corrections has invested in services and programs designed to foster stability for the person being supervised.

Recent research suggests that Wisconsin's rates of post-release revocation are higher than average for similar Midwestern states (Alper 2016). Moreover, revocations rates show high

levels of racial disparity (Columbia Justice Lab 2019), similar to the large disparities seen in other parts of the criminal justice system (Norris 2011).

In response to these facts, many grass-roots organizations around the state have called upon policy-makers to examine revocation more closely. In particular, they have pressed for an end to so-called crimeless revocation — the practice of revoking a person from supervision for rule viola-

## Wisconsin's community supervision population April 2019



tions that do not result in a new criminal conviction (Human Impact Partners 2016).

While data show the scale of supervision and revocation rates within the corrections system, they do not explain why people are revoked and what, if anything, can be done to promote higher rates of successful completion among those serving terms of community supervision.

In order to better understand the causes of failure on supervision in Wisconsin today, this study examined 189 cases

## Terminology

Policy discussions concerning community supervision often are complicated by misuses of legal terminology. Below are several of the most common terms used in Wisconsin, along with their legal definitions.

**Community corrections:** A catch-all term used to refer collectively to the supervision of probationers, parolees and those on extended supervision.

**Extended supervision:** A form of post-prison supervision imposed by the court at sentencing in all cases after 1999 in which a person is sent to prison.

**Parole:** A form of post-prison supervision available to people sentenced before 2000.

**Probation:** Considered an alternative to a sentence, probation is a term of conditional supervision that usually is imposed in lieu of a prison or jail sentence. Oddly, a term of imprisonment of up to one year may be imposed as a “condition of probation,” a practice that creates a form of post-jail supervision in some cases.

**Alternative to revocation (ATR):** 1) any informal sanction or programming requirement used instead of revocation; 2) a formal, short-term program provided by the Wisconsin Department of Corrections, usually in an institutional setting, to address a specific treatment need.

**Hold:** A period of short-term detention, typically five days or less (though potentially as long as 15 days), that allows for investigation of an alleged violation, quick discipline or a place to wait for an open bed in an ATR program.

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

**Sanction:** A period of custody not exceeding 90 days in length, or a program requirement, that is imposed to hold a person on supervision accountable for one or more rule violations.

from late 2016 in which state community supervision officers initiated revocation proceedings against people serving terms of probation (125 cases), extended supervision (59 cases), parole (one case) and mixed supervision terms (four cases). The cases represent all revocation requests made over a three-month period by supervision units from six different regions chosen to include a mix of urban, rural, tribal and suburban counties.

Although these cases may not reflect the full variety of practices and trends seen in supervision units across the state, they do reveal themes and patterns that provide insight into the hidden and often complex dynamics that drive revocation, and they suggest what might be done to improve the effectiveness of community supervision. Where relevant, this report also includes quotations from participants in a separate and ongoing interview project that captures the experiences of people living in the community who, within the past three years, have been on any form of correctional supervision in Wisconsin.

From these study data, five themes emerge:

### • The Challenge of Substance Abuse

In Wisconsin, in any given month, more than one-quarter of adults drink to excess: The state regularly ranks first in the country for binge drinking and for per-capita alcohol consumption (Wisconsin Department of Health Services 2017; Stebbins and Suneson 2018). It is not surprising, then, that abuse of alcohol and other controlled substances is a leading contributor to failure on supervision. In the study sample, alcohol and other drug abuse significantly contributed to failure in 81% of revocations.

Although drug or alcohol use alone was rarely the primary reason for revocation, and referrals for alcohol and other drug addiction (AODA) treatment frequently were offered to those with substance abuse needs, the available treatment resources often did not match the intensity of treatment needed by those on supervision. In the absence of more varied, extended and holistic community-based AODA treatment options, it is predictable that this portion of the community supervision population will continue to face revocation at higher rates than their non-substance-abusing counterparts.

### • Lengths of Supervision

Wisconsin authorizes courts to impose periods of probation and extended supervision that can last for decades, but the vast majority of people who fail on supervision do so within the first few years of active supervision. In the study sample, 72% of revocation requests were made within the first 18 months of active community supervision, and 92% occurred within 24 months.

Extended periods of supervision do little to protect the community and may interfere with the ability of those on supervision to sustain work, family life and other pro-social connections to their communities. Policy-makers should explore the possibility of reducing maximum terms of supervision (particu-

larly for those on extended supervision), prohibiting extensions of probation, expanding opportunities for early termination of supervision by judges and granting compliance credit on a monthly basis to those on supervision who adhere to their court-ordered obligations.

#### • **The Need for Non-Custodial Sanctions**

Some violations require a firm response, particularly when they are persistent or flagrant. When such violations endanger the public, revocation is often justified. But when violations do not threaten public safety, a different response may be more appropriate. Supervising agents in most regions of the state have limited community-based options for sanctioning. As a result, people on supervision who might be better off performing community service or addressing underlying addiction or mental health challenges often are sanctioned with jail or are fully revoked.

Expanding the non-custodial ways in which people can be held accountable for persistent or significant violations would allow agents to enforce important rules without using imprisonment as the default response when there is little or no threat to the public. Community-based sanctions would particularly benefit misdemeanor probationers, who do not qualify for many of the formal alternatives to revocation offered by the Department of Corrections.

#### • **The Challenge of Absent Clients**

Among the top non-criminal violations alleged in revocation petitions are non-reporting, non-compliance with treatment programming and absconding (“disappearing” from supervision). Because people cannot be monitored when they cannot be located, chronic absenteeism and absconding can quickly become serious violations. They are also sometimes preventable.

Missing appointments may indicate an unwillingness to play by the rules, but it also may signal drug relapse, untreated mental illness (particularly anxiety disorders) and general difficulty with executive functioning. Increasing efforts to prevent absenteeism, such as same-day appointment reminders and outreach by agents or peer support staff to re-engage individuals who show signs of disengagement, may reduce the frequency of these particularly challenging categories of non-criminal violations. This would allow agents to intervene before non-reporting becomes a revocation-worthy offense.

#### • **Better Defining When Revocation is Needed**

Sometimes revocation is necessary. When invoked properly, revocation can protect the public and ensure that those on probation, extended supervision and parole do not evade supervision itself. But defining when revocation becomes necessary is difficult. In cases where a person on supervision has injured someone or participated in a serious crime, revocation may be needed to punish the person and protect the community.

Reforms designed to improve the revocation process should be as attentive to what *does* merit revocation as to what does

not. One way to do this is by focusing supervision conditions (and, by extension, supervision itself) on the behaviors that most threaten public safety while eliminating non-essential conditions.

This can be done by reducing the number of rules imposed by the court and required by Wis. Admin. Code DOC § 328.04 as well as by eliminating or reducing additional discretionary conditions imposed by individual supervising agents. Fewer, more safety-focused conditions will lead to fewer unnecessary revocations and more consistency in revocation for people whose behavior poses a serious threat to public safety.

### **How Supervision Works**

There are almost three times more people on supervision in Wisconsin than there are in its jails and prisons (Wisconsin Department of Corrections 2019). In 2016, approximately 24,000 people began serving new terms of probation, and an additional 7,500 people began terms of parole or extended supervision after being released from prison (Wisconsin Division of Community Corrections 2018; Wisconsin Division of Adult Institutions 2017). Ninety-six percent of people on post-prison supervision in Wisconsin today are serving terms of extended supervision, compared with 4% on parole.

In many states, county-level agencies supervise people on probation, and paroling authorities or departments of corrections supervise people on supervision following a prison term. In Wisconsin, the Department of Corrections’ Division of Community Corrections (DCC) oversees all individuals on community supervision, regardless of their supervision status.

DCC agents are organized into eight geographic supervision regions, each with local units that provide general supervision and, in some cases, specialized supervision units for particular categories of people on supervision, such as sex offenders and domestic violence offenders. Within each supervision unit, community corrections agents are tasked with assessing clients’ risks and needs, and with monitoring their compliance with the rules of supervision. In some cases, community corrections officers also connect clients to treatment programs and other local resources, including housing assistance, job training and public benefits.<sup>1</sup> People on supervision are required to visit their agents on a set schedule, and agents also periodically conduct home visits.

People on supervision must follow all rules imposed by the sentencing court as well as standard rules imposed by the Department of Corrections and any special rules deemed appropriate by the supervising agent. See Wis. Stat. § 973.10(1).

Typically, those on supervision must avoid new criminal behavior; report regularly and truthfully to their assigned officers; pay restitution and fees associated with their supervision and court costs; obtain permission to travel outside the state; seek permission before changing jobs or residence, purchasing a car or acquiring credit; agree to warrantless searches of their

homes, phones and vehicles; submit to urine, breath and blood tests when directed; refrain from voting if serving a sentence for a felony; and abide by any additional restrictions imposed by their supervising agents. See Wis. Admin. Code DOC § 328.04. Common additional restrictions include no alcohol consumption, prior approval of all romantic relationships, curfew restrictions and participation in programming designed to improve the person's behavior, thought processes or social relationships.

If a person on supervision violates any of these rules, the department may seek revocation of supervision — though, as a practical matter, the department typically responds to minor and infrequent violations with reprimands, counseling and sanctions short of revocation. When the department does seek revocation, disputes are resolved by administrative law judges (ALJ) in an independent state agency, the Division of Hearings and Appeals.

During revocation hearings, an administrative law judge decides whether a rule violation has occurred and, if so, whether confinement is needed to adequately control the person on supervision, correct his or her behavior and hold him or her accountable for the violation. Additionally, the judge must find that there are no appropriate alternatives to revocation. See *State Ex Rel. Plotkin v. Department of Health & Social Services*, 63 Wis. 2d 535, 544 (1974); Wis. Admin. Code § HA 2.05(7)(b)(3).

Full data detailing how many people successfully complete their terms of supervision and how many are revoked are not publicly available. However, we know that in 2015, approximately 15% of people on supervision were revoked from both probation and post-release supervision (Division of Community Corrections 2015; DOC correspondence on file with author).

In 2016, 5,424 of the people revoked were sent to prison (Division of Adult Institutions, Wisconsin Department of Corrections 2017). The cumulative effects of revocation on the prison population are high: A recent study conducted by the Columbia Justice Lab found that just over half the people in Wisconsin prisons are serving a term of revocation, sometimes combined with one or more other sentences. The annual number of people who are revoked to serve jail sentences (a common disposition for revoked probationers) is not publicly reported; however, such cases accounted for 83 of 118 completed probation revocations within the study sample, including 22 of the 52 felony probation revocations.

It is important to note that even when people on supervision are not revoked, they may spend a significant amount of time behind bars in connection with their supervision cases. Wisconsin law allows a community corrections officer to detain a person on supervision in order to investigate any alleged violation of supervision conditions, to decide whether to begin revocation proceedings after an alleged violation, to discipline, to prevent a possible rule violation or to wait for an opening in a program that may serve as an alternative to revocation. See Wis. Admin. Code DOC § 328.27(2).

Depending on the reason for imprisonment, investigatory holds may last up to 15 days with supervisory approval, and punitive sanctions can last up to 90 days. See Wis. Admin. Code DOC § 328.27(3), (7). This detention authority originated as a way to reduce revocation rates by creating sanctions short of revocation. Existing data do not reveal how often short-term custody is being used or whether it is, in fact, reducing revocations.

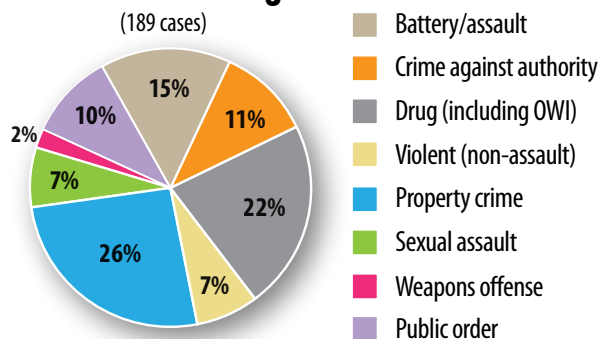
## Causes of Failure

Individuals begin supervision with a wide variety of backgrounds and criminogenic needs (that is, needs connected to risk of future criminal behavior). In the study sample, the most serious crime for which supervision had been imposed was a property offense in 26% of cases; an assaultive offense (including physical battery and sexual assault<sup>2</sup>) in 22% of cases; a drug offense (including drunken driving) in 22% of cases; and a crime against authority (such as obstructing an officer or bail jumping) in 11% of cases.

The strengths and needs of those on supervision were sometimes apparent from the summary of supervision contained in the revocation summaries filed by supervising agents and reviewed in this study. This information was sometimes incomplete, however, either because it had been redacted to protect confidential health information or because it was not relevant to the decision to revoke. Nonetheless, it was clear that people on supervision had widely varied employability, educational attainment, mental functioning, familial support, and physical and psychological stability.

People on supervision range from the young person convicted for the first time of a misdemeanor to the middle-aged adult with a lifetime of felony convictions. Attending appointments, securing housing, maintaining employment and finding reliable transportation are necessary prerequisites to success in the community that are often difficult to achieve. Some on supervision can rely on family, friends or local programs for help. Others have few or no sources of assistance. This is especially true for

## Most serious underlying conviction on which revocation was sought



**I probably do need some of those external controls because I don't necessarily have the internal ones. So it does give me a guide ... as far as how to live my life and to try to, you know, do what 'normal people' do in society. I mean they do work. They do go to school. They do pay bills. They do have families. They have to — they have careers. So that's probably the best thing. It does give me a guideline to go by. — Dave, age 52**

people who have spent many years cycling in and out of jails and prisons, often from a young age.

In one case, an agent noted that Cameron, a 35-year-old client, had been “incarcerated all but approximately four years since he was 12 years old.” (Throughout this report, the names of those on supervision have been changed, as have some non-material details of their cases, to protect their identities and those of supervising agents.)

While not typical, Cameron’s experience also is not isolated. A number of men in the study sample, now in their late 20s and 30s, had been confined in more than 10 different jails and prisons over the course of their late childhood and young adult years — and those statistics do not include time spent in juvenile institutions.

People like Cameron often leave prison or jail motivated to succeed but need a level of assistance that the corrections system is not well-equipped to provide. These high-risk, high-need individuals often benefit from the structure of supervision but lack the skills needed to manage the many competing demands placed upon them as they leave prison.

In the study sample, 52% of the people on extended supervision had been previously revoked in the same case and were facing a return to custody. Many others had been on supervision in the past, sometimes successfully, but often not. Whether or not revocation can be justified, repeated cycles of custody and release indicate that revocation alone does not correct behavior effectively. More, and different, interventions may be needed for people who have limited experience with successful independent living.

Another subcategory of people on supervision at high risk of revocation are those with substance abuse disorders, including alcoholism. This group, more than any other, stands out due its size. More than 80% of the people facing revocation in this sample engaged in persistent, life-impairing use of alcohol and/or other substances, ranging from prescription medications to cocaine, heroin, methamphetamines, and natural and synthetic marijuana. This use was not recreational or intermittent: It

drove interpersonal disputes, motivated thefts and prevented people from ordering their lives in ways that would allow them to succeed in life and on supervision.

Sometimes these individuals had been convicted of drug-related crimes, such as possession of controlled substances or drug paraphernalia. Other times, they had not. Their criminal records in this regard seemed more an artifact of regional differences in prosecutorial charging practice than an indication of the severity of their underlying addictions.

Kevin was serving a five-year term of extended supervision for burglary (committed to fuel his drug habit) and repeatedly used controlled substances. He finally was revoked after he stole snacks from a store, resisted security officers’ efforts to detain him and was arrested with drug paraphernalia in his bag.

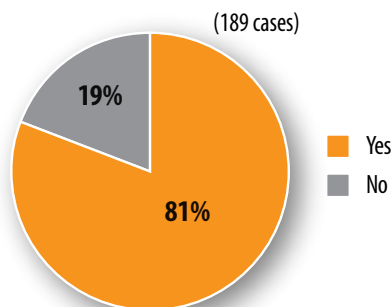
In her revocation summary, Kevin’s agent explained: “For the most part, (Kevin’s) primary concern is doing whatever is necessary so that he can get alcohol and/or drugs. Clearly, there’s an issue relative to his alcohol/drug use, however, one can’t negate the fact that (he) must be held accountable.” Behavior like Kevin’s was common in the sample,

as was the frustration expressed by his agent.

Aaron failed a number of drug tests and at various times openly discussed his struggles with addiction with his supervising agent. Although sympathetic to his needs, the agent’s primary response was to provide Aaron with the times of local Narcotics Anonymous meetings — an intervention that did not match the severity of his condition.

Aaron’s situation illustrates a common problem: Although the Department of Corrections runs its own AODA programming and contracts with local providers to offer drug and alcohol treatment throughout the state, the need for intensive interventions far outstrips the number of programs that help serious addicts reach the point of recovery. Simply put, corrections lacks the resources and capacity to fully treat the substance abuse needs of those under their supervision. And without better tools for managing substance use, custody

### Individuals in sample with pervasive substance abuse needs



easily can become the default response.

Beyond identifying high-needs subgroups within the community corrections population, the study data provide details that are useful in understanding what specific behaviors lead to failure.

For example, although a discrete incident often triggers revocation, that event is not always the most serious rule violation to have occurred during the course of supervision. Often the revocation decision stems from the aggregation of earlier violations, some serious and others not.

Michael, for example, was serving a one-year term of probation for possessing drug paraphernalia. During that year, he was charged with misdemeanor theft (for which he later was convicted), but no action was taken against him in his probation case at that time. It was only when he later tested positive for methamphetamine use that he was revoked from supervision on that basis. His was one of a handful of cases in which criminal charges — and sometimes even full convictions — did not prompt an immediate request for revocation. Even though Michael’s later revocation was nominally premised on a single instance of drug use, his earlier-charged conduct almost certainly influenced that decision.

Another factor that makes it difficult to identify a single cause of revocation is that different people on supervision have different opportunities to succeed. There is tremendous

variation in the number of alternative sanctions and second (or subsequent) chances given to those on supervision. This variation is influenced by many things — from the seriousness of the alleged conduct to the availability of local treatment programs to the quality of the supervisor-supervisee relationship. In many cases, people on supervision are given time to improve their compliance and are held accountable for non-dangerous violations in ways other than revocation.

Jesse, for example, was serving a three-year probation term for burglary. He engaged in multiple rule violations of varying severity, including persistent drug use, probable intermittent drug sales and non-compliance with the rules of several different treatment programs. As a consequence for the violations, Jesse’s agent ordered him at various times to perform community service, write an apology letter, complete reflection journals and sit in jail for periods ranging from eight hours to two days. He finally was revoked more than 18 months into

his supervision when he ran away from the treatment program in which he had been placed as a final alternative to revocation. In Jesse’s case, it is easy to see why his agent decided that enough was enough.

In other cases, “last chance” alternatives to revocation sometimes are given very early in the course of supervision before lesser sanctions have even been tried. Sam was serving conditional jail time while he waited to begin the community portion of his two-year term of probation for joyriding. While in jail, he argued with jailers and otherwise misbehaved in disruptive but non-aggressive ways. When his agent warned him to stop, Sam yelled at her, too, and he was revoked based on that conduct before he ever was released to the community.

In policy discussions, the causes of revocation are frequently divided into two categories: new criminal conduct and “crimeless” (also called “technical”) violations. The former is almost universally seen as an adequate basis for revoking community supervision, while the latter is subject to greater public debate.

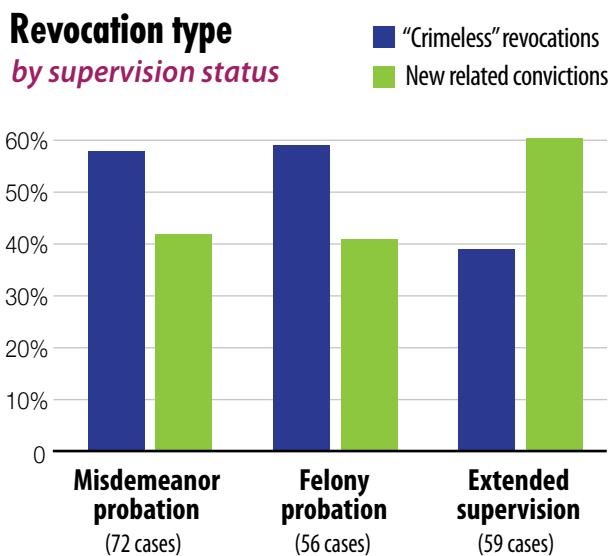
Some states, such as Mississippi and Louisiana, have placed limits on punishment for technical violations, authorizing slowly graduated sanctions for these non-criminal violations while permitting full revocation for new criminal behavior. See Miss. Code § 47-7-37; La. Stat. Ann. § 15:574.9(H).

In this study sample, 49%

of the conduct listed as a basis for revocation later led to a criminal conviction in Wisconsin courts, while 51% did not result in any conviction related to the conduct alleged in the revocation summary.

Throughout the country, critics of crimeless revocation often give examples of cases in which behavior that is minor or wholly unrelated to the crime of conviction leads to revocation. For example, Chris was serving a two-year term of probation for misdemeanor theft. His agent moved for revocation after Chris missed two drug tests and later admitted to drinking so heavily that he passed out in his home and required medical attention. The revocation, which punished behavior that was deeply concerning but not directly related to criminal conduct, is “crimeless” in the purest sense.

Within the study sample, there were very few cases like Chris’ — that is, cases in which people were revoked for behavior that did not suggest criminal activity or attack the legitimacy of supervision itself. Notably, in the handful of such





cases, the Department of Corrections’ request to revoke supervision often was denied.

Adam, for example, was on probation for non-payment of child support. Months before his three-year term of supervision was set to expire, his agent initiated revocation proceedings on the ground that he had not provided proof during his final year of supervision that he was making adequate efforts to find a job during a period of unemployment. In the revocation summary, his agent justified revocation by asserting that Adam had “a responsibility to care for his child and he (was) neglecting that duty.” Nonetheless, Adam was not revoked — likely because the child for whom he owed support payments was 22 years old at the time.

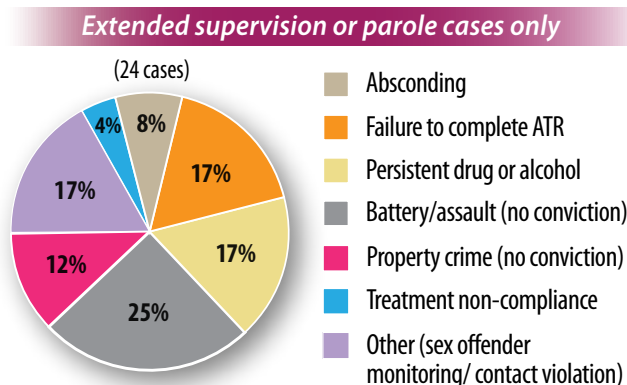
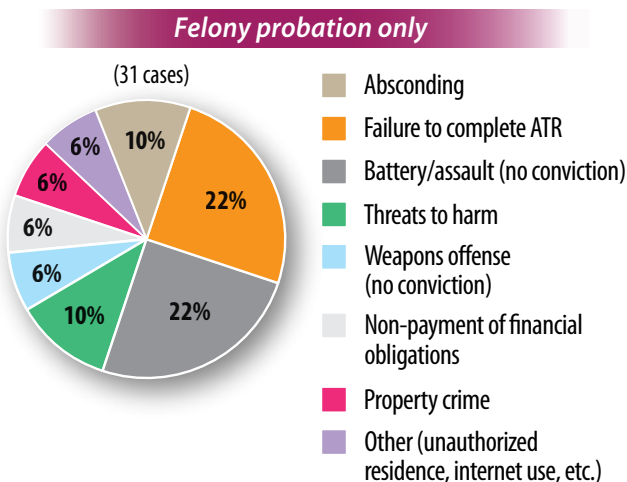
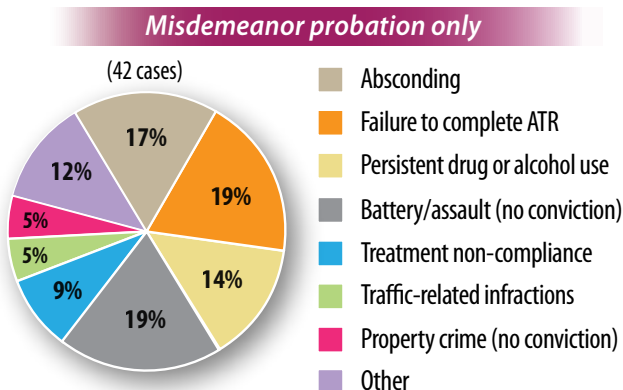
What behavior did lead to revocation in the absence of a new criminal conviction? The most frequent serious allegation made against individuals subject to crimeless revocation was failure to complete the terms of an alternative to revocation. In other words, those on supervision had been offered the opportunity to avoid revocation (often based on serious or persistent rule violations) and had stopped attending or had been terminated from the programs to which they were sent. Among all cases of crimeless revocation, failure to complete an alternative to revocation was the most serious allegation in 20% of cases.

The second most common reason for initiating crimeless revocation was an alleged assaultive crime (more on that later). Next was absconding — that is, an ongoing and complete failure to attend meetings, respond to all agent communications and, in some cases, fleeing the jurisdiction for a prolonged period. Among the examples of crimeless revocation in the study sample, absconding was alleged in 35% of cases and was the most serious alleged violation in 13% of those cases.

As the charts on this page show, when supervision is divided into three main categories — misdemeanor probationers, felony probationers and those on extended supervision or parole — failure to complete an alternative to revocation and battery are among the top three most serious alleged violations in all three categories. Absconding is a leading driver of revocation for both categories of probationers. For those on extended supervision, while absconding was not often the most serious allegation, it was an alleged violation in 21% of crimeless revocation requests for this subgroup.

Failure to complete an alternative to revocation and absconding are violations that present similar problems. In both instances, agents feel obliged to enforce the legitimacy of supervision and the court order itself, in one case because the individual’s “last chance” has failed and in the other because the person on supervision has disappeared. The trouble is that in both instances, violations can range in severity. In revocation requests, agents characterize as absconding everything from several weeks of non-responsiveness to fleeing the jurisdiction for 16 years. Among the full sample, 32% of people allegedly absconded for some period of time. In half of those cases, the

## Most serious allegations in “crimeless” revocation requests



alleged absconding lasted for less than three months — and often for less than six weeks.

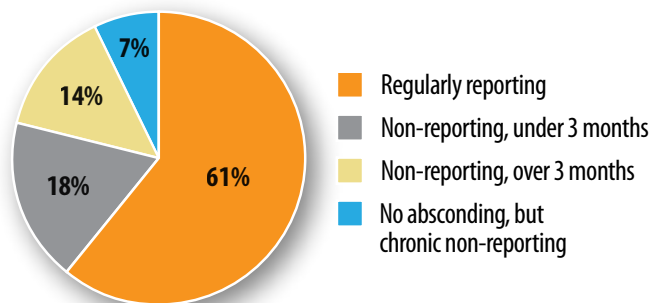
In a similar way, there were important distinctions among those who failed to comply with the terms of an alternative

to revocation. In some cases, people were terminated from programs due to unruly behavior. Matt, for example, urinated in another person's room, while Scott "talked loudly at night" and repeatedly threw objects, such as cups, at people's heads.

Others were terminated from ATR programs for positive drug screens, and still others were terminated for failing to attend nonresidential programs or escaping from an institution-based program while on a medical pass.

In many — though not all — cases, the study records suggest that non-reporting was met with passivity. If a client did not report, a notation was made in the file and a new appointment was scheduled, but no proactive steps were taken to locate the client, uncover the underlying cause of disengagement (relapse, transportation problems, etc.) and problem-solve with the client to prevent continued violations. Instead, the usual response was to sanction chronic non-reporting or absconding, with revocation used in cases of prolonged disengagement.

### Absconding and non-reporting



Notably, in almost one-quarter of crimeless revocation requests, the most serious alleged violation was a physical assault. People on supervision can be accused of assault and not convicted for many reasons. Sometimes an individual is not charged with or convicted of a new crime because it simply did not happen: The evidence is weak, incomplete or convincingly refutable. In these cases, neither charging nor revocation is appropriate.

In other cases, the reasons for non-conviction are more complex. This is especially true when romantic partners or family members are targets of the alleged physical assault. Amy was serving a one-year probation term for battery when she got into a drunken fight with her sister. Both later acknowledged that during the fight they hit each other and made threats. After police were summoned, Amy ran away and hid from her agent for three weeks before she was arrested and revoked. No new charges were brought against Amy or her sister.

Damian was serving a two-year term of extended supervision for damaging property when he got angry with his girlfriend and drove his car in a way that caused her to fall out of the

moving vehicle, injuring her. Police documented the incident, and bystanders witnessed it. Nonetheless, no new charges were brought against Damian, likely because his girlfriend did not wish to testify against him.

Both Damian's and Amy's cases are good examples of situations in which action by a supervising agent may be appropriate, particularly in light of each client's criminal history. In cases like these, whether or not a district attorney pursues new charges, Amy's and Damian's conduct warrants a response: The question is whether full revocation is the right one.

To make the answer turn solely on whether the prosecutor decides to charge Amy with disorderly conduct or to charge Damian with recklessly endangering safety is to abdicate correctional discretion in favor of prosecutorial discretion. A better approach might be to formally coordinate decision-making between agencies (as sometimes occurs on an ad hoc basis now) or devise clearer guidance on the kind of behavior and the appropriate amount of evidence needed to initiate full revocation when injury to others is the alleged violation.

### Policy Implications

The previous discussion hints at the complex array of individual behavior, available community-based resources and legal decisions by prosecutors, judges and corrections agents that lead up to a request for revocation. Every revocation is part of a distinct story, involving different facts, personalities and contexts that make it difficult to offer any easy fix or singular solution to the problem of high rates of revocation.

Nonetheless, five themes emerge from the study data that invite more focused public discussion and suggest changes in law and policy that might improve the quality of supervision and reduce some of the most common causes of failure.

#### • The Challenge of Substance Abuse

In 2016, the Department of Corrections' Correctional Offender Management Profiling for Alternative Sanctions (COMPAS) risk-and-needs assessment indicated that 71% of people on supervision had a substantial need for substance abuse treatment.<sup>3</sup> That rate was higher among those facing revocation in the study sample: Substance abuse permeated nearly every instance of supervision failure.

Importantly, substance use alone was almost never the primary cause of revocation: Agents usually managed relapses and incidental drug use through informal counseling, short-term sanctions and referrals to both community-based and prison-based residential drug programs. Even so, substance abuse was a constant theme, motivating thefts, fueling assaults and explaining why individuals failed to attend required meetings, drug tests and treatment programs. Of the 189 revocation cases examined, 81% contained evidence that the person on supervision engaged in persistent, life-impairing abuse of alcohol or other substances. How to respond to the overwhelming prevalence of substance abuse among the commu-

nity corrections population is a question that deserves greater attention from policy-makers and the public.

To understand the scale of the problem, it is helpful to examine substance abuse in Wisconsin more broadly.

Approximately one-quarter of Wisconsin adults engage in binge-drinking<sup>4</sup> — a form of excessive alcohol consumption linked to a host of social problems, including car accidents and interpersonal violence (Wisconsin Department of Health Services 2017; Centers for Disease Control and Prevention 2010).

That number is well above the national average of 17% and is consistent with other measures, such as per-capita alcohol consumption, that mark Wisconsin as the No. 1 state for problem drinking.

In addition to alcohol abuse, many Wisconsin residents struggle with other forms of substance abuse. Opioids are the fastest-growing drug for which patients are seeking treatment: The state's rate of opioid overdose deaths exceeds the national average (Wisconsin Department of Health Services 2017). Methamphetamine continues to be a problem in the state's rural northwestern counties and is reported as a growing problem in the southern and eastern regions as well (Wisconsin Department of Health Services 2017).

Consistent with the patterns of substance abuse found in the general Wisconsin population, in the study sample, neither the meth crisis nor the opioid epidemic was the leading substance abuse problem among those on supervision. Instead, alcohol was by far the substance most abused — and most linked to problematic behavior, such as intoxicated driving and physical assault — among those in the sample group.

People in jails, prisons and on community supervision suffer from rates of substance abuse far higher than do people outside the criminal justice system. In 2015 alone, the Wisconsin Department of Corrections released almost 3,000 people with identified substance abuse disorders who were in need of aftercare in their local communities. Although 67% of those receiving substance abuse treatment in Wisconsin have been ordered to obtain treatment, available resources do not match the level of need.

Wisconsin counties have reported unavailable resources and unmet needs in the areas of medication-assisted treatment, residential programming, intensive outpatient counseling, regular outpatient counseling, sober housing and case management as well as gaps in treatment for special populations, such as youth and those with disabilities (Wisconsin Department of Health Services 2017).

When it comes to substance abuse programming, com-

munity corrections not only refers clients to local treatment programs but operates its own as well. The Department of Corrections facilitates or operates programs that include residential treatment, intensive outpatient care, relapse intervention and prevention, and aftercare — though the availability of particular programs varies widely throughout the state.<sup>5</sup>

The Treatment Alternatives and Diversion (TAD) program, created by 2005 Wisconsin Act 25 and expanded by 2015 Wisconsin Act 388, provides some financial support for county

programming that diverts or treats people whose substance abuse is linked with their criminal offending but is limited to programs that serve people convicted of nonviolent offenses. Recently, the Department of Corrections began a pilot program offering medication-assisted treatment for opioid addiction (authorized and funded by 2015 Act 55). By mid-2017, it had provided treatment to 166 individuals in select portions of the state (Wisconsin Department of Corrections 2017). This welcome development signals a new openness to medication management of some forms of addiction, a practice that in the past often has been prohibited by correctional agencies around the country.<sup>6</sup>

Despite the department's efforts to utilize community resources and build its own infrastructure for managing substance abuse among those on supervision, the scale of the problem vastly outstrips available resources. The “treatment gap” — that is, the percentage of Wisconsinites who need treatment and do not receive it — is high throughout the state, due in large part to the fact that resources are thin (Wisconsin Department of Health Services 2017).

National studies on the provision of substance abuse treatment to corrections-involved individuals suggest that such programming is not accessible for many and tends to be lower in intensity than the needs of this population demand (Taxman et al. 2007). Simply put, for all their best efforts, corrections is poorly positioned to manage what is widely regarded as a public health crisis.

Once understood solely as a matter of inadequate self-control, addiction is increasingly seen by the medical community as a “medical disorder that affects the brain and changes behavior,” compromising the ability of addicted individuals to refrain from use (National Institute on Drug Abuse 2018). Although recovery is certainly possible, and individuals can be more or less motivated to change their behavior, this new framework for understanding addiction complicates the punishment of substance use within the criminal justice system broadly and within the context of community supervision particularly.

**H**ad I not gone through AODA, had I not gone through the (residential drug treatment program), I would not be where I'm at right now. I would not. Even though I relapsed afterwards, those (programs) were huge in my life.

— Heather, age 34

To the degree that addiction represents a serious medical need, it is implausible to expect correctional departments — rather than public health agencies — to “own” the problem of addiction and its treatment. In addition, understanding addiction as a disease and recovery as a process complicates the ways in which supervising agents respond to drug use when the medical disorder manifests in behavior that violates the law.

In the study sample, only 6% of people on supervision facing revocation were on supervision solely for possession of controlled substances or drug paraphernalia. Although the sample was too small to generalize with respect to this subcategory of people on supervision, there did appear to be significant regional variation in where these charges were being filed and in how correctional agents were responding to drug use by people on supervision for these offenses.

Not surprisingly, when probationers were being supervised for possessing controlled substances, agents often responded more harshly to drug use during the supervision period than they did when people on probation for other kinds of offenses violated supervision by using drugs. Further study is warranted to better understand the interplay between crimes of conviction and community correctional agents’ responses to alcohol and drug use by people on supervision.

What does the scale of addiction mean for success on community supervision? Many responses are possible.

One option would be to reduce the role that community corrections plays in monitoring the use of alcohol and other drugs by people on supervision, leaving the management and treatment of substance use to public health agencies. Another option would be to continue developing the infrastructure of community corrections by increasing the number, kind and intensity of treatment offered by correctional staff and their contracting partners.

In this approach, resources directed to the Department of Corrections might serve the needs of the correctional population by enabling corrections to create more seamless transitions to post-imprisonment aftercare, support sober housing and offer treatment that meets the specific needs of women and those with co-occurring substance abuse and mental health challenges (many of whom can be found in the correctional population).

Yet another option might be to develop different responses by corrections to drug violations for people convicted of drug-related crimes and those convicted of other types of offenses, providing monitoring for those whose crimes of conviction are substance-related and less or no monitoring of substance use for those whose crimes are unrelated to substance use.

Whatever approach policy-makers prefer, it is important to confront the inefficiency and implausibility of using imprisonment as a substitute for medical care for people with diagnosed substance abuse disorders. While jail and prison cells are more readily available than treatment programs in many parts of Wisconsin, they are an ineffective and costly substitute.

#### • Lengths of Supervision

National research repeatedly has found that recidivism and reincarceration most commonly occur in the early years of supervision (Zgoba and Salerno 2017). That was true in this study as well.

A full 40% of revocations were initiated within six months of a person’s release from custody or court, and 72% occurred within 18 months of release.<sup>7</sup> When revocation was based on alleged criminal conduct, rather than on reporting violations, it was almost always detected in the course of ordinary police work, not by supervising agents.

Nonetheless, periods of lengthy supervision are commonly imposed. The maximum term of probation turns on whether a person has a felony or a misdemeanor conviction and how many of each such crime the person has committed. In general, misdemeanor probation cannot be shorter than six months or longer

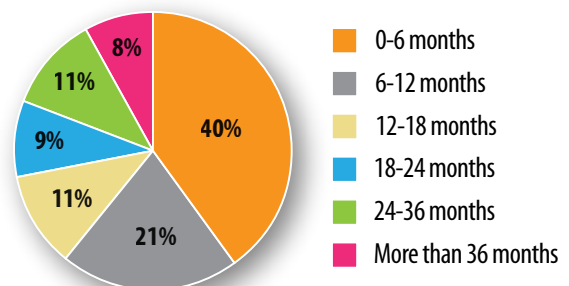
than 24 months for a single count, though each additional count can add one year (and sometimes two). See Wis. Stat. § 973.09(2)(a). Felony probation sentences must be at least one year and can last up to the maximum permitted period of initial confinement authorized for the crime of conviction (ranging from three to 40 years). See Wis. Stat. § 973.09(2)(b).

In addition, a court may extend probation for a variety of reasons, the most common of which is non-payment of financial obligations by the end of the original supervision term. See Wis. Stat. § 973.09(3).<sup>8</sup> Periods of extended supervision must follow

**T**hey need more drug treatment to be available. Immediately, not in 2-3 weeks. There's so many waiting lists for everything. If (people) need help, they need help. Drug addiction won't, doesn't, wait for nobody.  
— Johnny, age 47

#### Time to failure

Measured from date of community access to date of incident triggering revocation request.



**I**t's a big thing that people don't get credit for the time they do. Well, you know, you could be doing well for two years and have a slip-up and then it's — it's the same as like if you never did well. It doesn't seem like there's a lot — much — incentive to improve people's lives. As much as just, you know, run you through the system. ... I guess it's easy to fall through the cracks, you know? And the cracks are probably pretty big. — **Toby, age 46**

any term of imprisonment and must last at least 25% of the length of confinement. See Wis. Stat. § 973.01(d). In most cases, terms of extended supervision can equal up to the maximum sentence allowed by law for any felony conviction, minus any time spent in prison. See Wis. Stat. § 973.01(d).

Neither probationers nor those on extended supervision are given credit against their sentence length for time spent in successful compliance with the terms of community supervision. That means a person on supervision serving a five-year term of extended supervision who has attended treatment programs, paid supervision fees and reported as directed for three years would, upon revocation for a new violation at the end of year three, face the same five years' imprisonment as would a person serving the same term who is revoked only one month into his or her term of supervision.

Several studies have found that Wisconsin has significantly longer average lengths of post-prison supervision than do other states — up to twice the national average (Alper 2017; Columbia Justice Lab 2019). This largely results from extremely long terms of extended supervision. (Of the 64 people on extended supervision included in the study sample, for example, six people were serving terms of 10 years or more, including one 15-year term for an arson conviction.)

The average lengths of probation in Wisconsin are not reported, though Wisconsin permits much longer maximum terms of probation than do many other states (Mitchell et al. 2014). In the study sample, probation terms averaged 2.4 years for probationers (with a range of one to eight years), and 4.3 years for those on extended supervision (with a range of one to 15 years). In this sample, 6% of probation cases were extended at least once and sometimes twice.

An increasing body of evidence — as well as lived experience — indicates that rewarding success is more effec-

tive in promoting behavioral change than is sanctioning failure (Wodahl et al. 2011). Under Wisconsin law, a probationer may be discharged from supervision early if the Department of Corrections supports the request for early termination and the person has served more than half the term of supervision, has complied with all conditions, has paid all legal financial obligations and is not subject to sex offender registration. See Wis. Stat. § 973.09(d). There is no mechanism for early termination of extended supervision by either the department or the courts. See Wis. Stat. § 973.01(7).

There is no evidence that extended periods of supervision protect the community, but there is significant evidence that they can interfere with the ability of those on supervision to successfully focus on work, family life and other pro-social connections to their communities (Scott Hayward 2011). Assuming the low rates of late-in-time revocation seen in the study sample are similar statewide, it is worth considering whether periods of supervision longer than 18 to 24 months for proba-

tioners and two to three years for those on extended supervision are worth the social and financial costs they impose.

Policy-makers should consider the possibility of reducing maximum terms of supervision (particularly for those on extended supervision), prohibiting extensions of probation, expanding opportunities for early termination of supervision by judges and granting compliance credit to people on supervision who follow the rules and comply with their court-ordered obligations.

#### • **The Need for Non-Custodial Sanctions**

The perceived legitimacy of probation, extended supervision and parole turn in part on their ability to ensure that those on supervision materially comply with their court-ordered conditions of release. One important component of this oversight is providing accountability for non-trivial violations of release conditions. Review of the

**I**t's hard enough, you know, coming out of prison. Trying to re-establish your life and get going again. Trying to get your family back together. ... And I wish there was some way that they could be encouraged to — or be given the discretion to be able to push the people along that they say, 'All right, this guy, you know, I'm going to take a chance on this guy. And you know, get him out of here. He's proven this or he's done this, all this.'

— **Luke, age 41**

study sample suggests that some revocations could be avoided if there were more available community-based sanctions for non-dangerous rule violations.

Within the study sample, most minor violations (for example, a missed appointment or a positive drug test) are managed primarily through counseling, referrals for services and assignments designed to promote better future decision-making. Violations that endanger the community (such as assaults or burglaries) are managed through revocation. More difficult are the “in-between” violations: intermittent but persistent absenteeism from required meetings and programs, cheating a drug test, uncharged but disorderly behavior in the community, consensual contact with prohibited individuals (often former romantic partners), etc. These types of violations can undermine confidence in a person’s ability to remain safely in the community but do not, in themselves, pose any clear danger.

Currently, agents confronting intermediate violations have two main options: to refer the person on supervision to structured treatment of some kind (an option that is not appropriate for all clients) or to confine the person for a period of time, up to and including a full revocation. Within this intermediate category of violation, agents often default to custody, not because it is necessary for public protection but because it is often the only readily available punishment.

Carol was on probation for disorderly conduct and damage to property. Addicted to alcohol, throughout her course of supervision she intermittently missed treatment sessions and relapsed repeatedly. Although she did “well at times,” she continued to periodically drink to excess. On one occasion, her breath alcohol level was over 0.03. When drunk, Carol was prone to be disruptive verbally, and on at least one occasion police were summoned to manage her behavior, though she was not charged with a new crime. Her agent struggled to find a way to punish Carol’s “aggressive and abusive behaviors when intoxicated” and sought revocation based on the fact that she needed “to be held accountable.”

Jason was on supervision for injuring someone while driving drunk. As a result of his conviction, his license was suspended, and he was required to install an ignition interlock device (IID) on his vehicle before could legally drive again. Nonetheless, he drove his car — without an IID or a valid license — to the grocery store to buy a pack of diapers one night when his family discovered they had none left.

Jason had twice previously driven a car on supervision. The first time, he was ticketed by police and admonished by his agent to take a cab in the future. The second time, he was placed in custody on a one-week hold. On this third occasion, the agent requested revocation. In the revocation summary, his agent explained that to not revoke Jason “would show the Department of Corrections is not concerned with his continued non-compliance.”

In Carol’s and Jason’s cases, it seems clear that supervising

agents felt a duty to respond to Carol’s disruptive behavior when drunk and to Jason’s repeated decision to drive when his license had been revoked as punishment for his crime. It is also true that, despite references in the revocation summaries to the need to protect “public safety,” the immediate behaviors at issue did not threaten the public. Rather, they threatened the legitimacy of the court order.

Violations like Jason’s and Carol’s (and there were many) place agents in the difficult position of choosing to imprison people for conduct that is not immediately dangerous or to look the other way when clients’ behavior flaunts important rules. Whether the agent uses a hold, a short-term sanction or seeks revocation, any form of custody threatens to disrupt employment and housing, and potentially undo any stability the person has achieved under supervision. At the same time, ignoring such offenses reduces the legitimacy of the supervision enterprise.

What might help in these cases is to create more ways to impose proportional, non-custodial punishment on those who engage in flagrant or persistent rule violations that do not immediately endanger the public. More structured, supervised community supervision programs designed to be used as sanctions could hold people accountable for such violations while providing a measure of community restoration. Other formal non-custodial sanctions could be imagined that would allow agents to ensure accountability and avoid unnecessary revocations and other uses of costly detention.

Although the Department of Corrections sponsors formal alternative to revocation programs that operate within state prisons, these programs are not open to misdemeanants or to felony offenders who do not have one of the limited number of treatable conditions the institutional ATRs address. And although there are a few jail-based ATRs, cases in the study sample report wait lists of five to six months — a duration that exceeds the remaining time to serve for many probationers. Many more rule violators, especially those serving terms of probation, would benefit from a broader array of non-custodial alternatives to revocation.

The development of more non-custodial sanctions would benefit all categories of supervisees but might have the greatest effect on misdemeanants. Misdemeanants typically have engaged in less serious criminal behavior than felony offenders and, therefore, are subject to shorter terms of supervision and shorter sentences upon revocation.

Ironically, it is these short periods of supervision that often make it difficult to provide formalized alternatives to revocation for misdemeanants who need specialized programming or other support to comply with their supervision conditions. Wait lists and treatment program lengths (which typically run 90 days) make it difficult to provide timely intervention to misdemeanants. This makes misdemeanants uniquely vulnerable to revocation for conduct that would result in alternative responses for felony offenders.

What form might community sanctions take? Many jurisdictions in the United States and abroad have experimented with supervised community service opportunities that allow people to restore their communities by providing manual labor or other volunteer assistance to local community organizations or by contributing to public works. Individuals are matched to service opportunities based on their skills, known safety risks, interests and needs.

Ideally, service is matched to the behavior that led to sanctioning: A person who violated supervision by damaging property might clean up graffiti in a park or help rebuild a fence in a nature preserve, while a person whose violations involved antisocial behavior might be assigned to work at a nonprofit that offers mentoring or other support to people coming out of prison. If these community-based sanctions are kept reasonable in length (so as not to interfere with clients' ability to work and remain connected to their families), they can become powerful tools for enforcing the legitimacy of supervision while strengthening supervisees' connections to their communities and in some cases have been linked to lower levels of recidivism (McDonald 1984; Wermink 2010).

Unlike jail sanctions, which cost money and provide no commensurate good for either the community or the person on supervision, community sanctions can improve neighborhoods and connect those on supervision to people who can offer natural support once supervision has ended. Importantly, these sanctions can accommodate larger numbers of people at low cost and can be carried out in a much shorter period than is required to provide alternatives such as residential treatment.<sup>9</sup>

#### • The Challenge of Absent Clients

As discussed previously, among the leading causes of crimeless revocation are violations that indicate disengagement with the core requirements of supervision: repeated failure to meet with agents, failure to attend and complete programming (including formal alternatives to revocation) and failure to comply with testing or other monitoring. Over time, many of these violations can lead to full-fledged absconding. Because people cannot be supervised when they cannot be located, repeated violations of this kind prevent supervising agents not only from monitoring clients' behavior but from offering the support and assistance that quality supervision provides.

While not all instances of non-compliance and absconding are preventable, many may be. A few weeks of non-reporting often signals a drug relapse, personal crisis, anxious avoidance or other challenge that there is sometimes a resource to address. In some cases, any degree of absenteeism is dangerous and should not be tolerated. But for low-risk offenders who may be required to visit their agents only infrequently, short periods of absconding may be more of a reason to reach out than to revoke.

A variety of measures might reduce the odds of absconding and improve engagement in supervision. Simple reminder notes, calls and texts have been used in many contexts to im-

prove appearances at everything from dental appointments to court hearings (Bornstein et al. 2013). Reminders of upcoming home and office visits might similarly reduce non-appearance at supervision check-ins. Un-scheduled home visits and collateral contacts with known family members and friends might assist agents in locating reluctant clients and offering a path forward for re-engagement before sanctions and revocation become necessary responses.

Most importantly, re-engagement efforts should begin with engagement efforts: Officers should be given the time and tools needed to build meaningful rapport with clients. Enabling community corrections agents to connect proactively with clients in community settings would increase their effectiveness and improve their clients' prospects of long-term success. Alternately, or in addition, peer mentors or supervised community volunteers in some cases could provide the hands-on encouragement and

support many individuals need to access community services, problem-solve their transportation and dependent care needs, and feel supported in the process of reintegration into the law-abiding community.

For many people on supervision, peer mentors of this kind can serve as a bridge between worlds, helping those on supervision understand the expectations of the criminal justice system and helping system actors, such as community supervision agents, better understand the obstacles preventing supervisees from keeping up with those expectations.

There will always be cases in which re-engagement fails, and sanctioning is necessary. There also are some cases when absconding lasts long enough to become a de facto rejection of

**M**y agent's big thing is — he says it every ... time and it drives me nuts, 'Are there any other resources I can help you with?' ... [laughs]. But it's cool, and even when he does home visits, he asks my roommates who aren't even on probation, 'Is there anything I can help you with?' ... He just always wants, you know, you to keep looking forward to you doing something that's more positive in life, which is pretty cool.

— Alex, age 27

supervision. (For example, four people in the study sample were apprehended after having absconded from supervision more than two years previously and one after 16 years.) In these cases, revocation may be a necessary way to reflect the reality that supervision has failed entirely. Nonetheless, attentiveness to early signs of disengagement and pro-active, early efforts to support reluctant clients may reduce the need for later revocation for individuals who engage in this class of crimeless violations.

#### • **Better-Defining When Revocation is Needed**

Reducing unnecessary revocations is an important and achievable goal. It presupposes, however, that we know what “necessary” means. Reforms designed to improve the revocation process should be as attentive to what *does* merit revocation as to what does not.

When invoked properly, revocation can protect the public and ensure the legitimacy of the community sentence. In the study sample, 42% of revocations involved alleged physical assaults and other non-assaultive crimes of violence, such as armed robbery. In many of these cases, victims of assault were hospitalized with serious injuries. In other cases, those on supervision were revoked for dealing drugs while armed, stealing

**This program has a lot of people here that have been through things that a lot of the younger people who come to this program have been through, so they can better relate to it and better understand, and they just know where we're coming from. And since they've been where we've been, they know how to communicate with us.**

— Paul, age 39

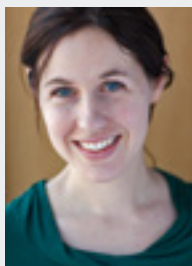
and having threatening contact with their former victims in violation of court-ordered no contact orders.

Using revocation to hold people accountable in these cases can prevent further harm to members of the community and to the supervisees themselves. Additionally, when a person is unwilling to make reasonable efforts to be supervised at all and community-based sanctions fail to motivate compliance, a custodial sentence may be the only way to end the case.

Still, as this report has shown, revocation is not the solution to every kind of violation. One way to reduce unnecessary revocations is to focus on supervision conditions. Any condition imposed by the court may later serve as a ground for conviction; therefore, eliminating boilerplate conditions unrelated to

public safety also will eliminate revocations predicated on such non-essential conditions. Judges and correctional officers have discretion to reduce some conditions of supervision (including the Department of Corrections' standard supervision rules for sex offenders). Others are embedded in law. Streamlining the standard conditions found in Wis. Admin. Code DOC § 328.04, for example, would require lawmakers to revise the code accordingly.

## About the author



**Cecelia Klingele** is an associate professor at the University of Wisconsin Law School in Madison, where she teaches courses in criminal law, constitutional criminal procedure, policing, and sentencing and corrections. She is also a faculty associate of the Frank J. Remington Center, the La Follette School of Public Affairs and the Institute for Research on Poverty.

Klingele's academic research focuses on criminal justice administration, with an emphasis on community and institutional corrections.

After receiving her J.D. from the University of Wisconsin Law School in 2005, Klingele served as a law clerk to Chief Judge Barbara B. Crabb of the United States District Court for the Western District of Wisconsin, Judge Susan H. Black of the United States Court of Appeals for the 11th Circuit and Associate Justice John Paul Stevens of the Supreme Court of the United States. She returned to UW in 2009 as a visiting assistant professor and has been a permanent faculty member since 2011.



# Community Supervision in Wisconsin

Data analysis provides quantitative look at supervision terms and suggests ideas for reform and future research

*By Julie Grace and Patrick Hughes*

## Executive Summary

Every year in Wisconsin, thousands of people are released from prison and placed under active supervision of the Department of Corrections (DOC) in the form of extended supervision. Thousands of others are sentenced to probation — an alternative to incarceration where offenders spend their sentence in the community. All told in 2018, 44,784 Wisconsinites were on probation and another 21,412 were on extended supervision, many for more than three years.

These forms of community corrections are not unique to our state. But as highlighted in University of Wisconsin Law Professor Cecelia Klingele’s accompanying study and previous research, Wisconsin is unique in the relatively long terms of supervision that many offenders serve as part of their sentences.

After examining the results of Klingele’s study, we were interested in independently determining exactly how long offenders are spending under supervision and evaluating whether the DOC’s Division of Community Corrections

(DCC) uses its resources in the most effective way. The objective of this research is to provide a comprehensive, quantitative look at community supervision in Wisconsin and to present ideas for reform and further research that likely would increase public safety, provide better outcomes for offenders and reduce taxpayer spending.

We partnered with researchers at Court Data Technologies in Madison to examine the lengths of supervision for all 2018 felony sentences.<sup>1</sup> This totaled 21,550 cases — 14,177 that were sentenced to probation and 7,373 to extended supervision. As expected, we found that generally the more serious (and lesser charged) crimes are paired with longer terms of supervision, while the less serious crimes correlate with shorter supervision terms.

However, the data still reveal takeaways that warrant further policy discussions and research, such as whether long terms of supervision make communities safer or how Wisconsin’s sentencing process could be simplified and more equitable.

## Background on Extended Supervision and Probation in Wisconsin

The purpose of supervision is to enhance public safety by reducing and managing offender risk in the community. Once offenders are placed on community supervision, they must follow a set of rules imposed by the DOC and the sentencing court. These rules are mostly tied to the crime they committed.

Offenders are also assigned a probation or parole agent, who assists them in addressing behavioral patterns through alcohol and

other drug abuse treatment, employment opportunities, domestic violence treatment, anger management classes or other services. Agents also ensure that offenders follow the rules of their supervision; agents may implement sanctions, holds or revocation proceedings if individuals under their supervision fail to comply with the requirements.

Those on community supervision often must pay restitution

and other fees as well. After restitution to victims and families has been fully paid, offenders are required to contribute toward their supervision costs, which vary based on their monthly income.

The two main types of community supervision in Wisconsin that are addressed in this data are extended supervision and probation. Extended supervision is a form of post-prison supervision enacted under truth in sentencing, a set of reforms passed nearly 20 years ago that eliminated parole and created the current criminal sentencing system. Lengths of extended supervision must be at least 25% of the total period of initial confinement but can

be as long as the maximum sentence minus the period of initial confinement. Probation is a period of supervision that is usually given instead of a prison sentence.

Community corrections — both extended supervision and probation — serves an important role in offender rehabilitation and reintegration to society. However, resources should be used to promote public safety, victim restitution and offender rehabilitation in the most cost-effective ways. Analysis of the data highlights a few areas that should be addressed through future research and potential policy change.

## Data Analysis

According to our data,<sup>2</sup> 21% of all felony cases (or 4,554 individuals) in 2018 were sentenced to more than three years of supervision. This includes 28.7% of all extended supervision sentences and 17.1% of all probation sentences. Prior research indicates that most revocations, the legal termination of supervision that results in reincarceration, occur soon after offenders are released from prison. In Klingele's study sample, for instance, 72% of the revocations occurred within the first 18 months after release to the community from custody, and 92% of revocations occurred within the first two years after community release.

While Klingele's sample was only 189 cases, her findings and those from other studies indicate that the public safety benefit of supervising individuals for a long period of time — as is the norm in Wisconsin — is inconsequential. If offenders are going to violate their conditions of supervision, they are much more likely to do so shortly after their release from prison than they are five or more years down the road.

It is important to note, however, that revocations based on alleged criminal conduct (and not supervision violations) are typically detected by police, not by probation and parole agents. New crimes are usually detected in the same way regardless of whether they're committed by someone on or off supervision.

Supervising these individuals for long periods of time is also costly for taxpayers. The DOC estimates that it costs roughly \$3,153 a year, or \$8.64 a day, to provide community supervision per individual. So if an offender is sentenced to 10 years of extended supervision, taxpayers foot that \$31,530 bill. Reducing the number of offenders on supervision by just a few percentage points could save millions of tax dollars annually.

The cost of supervising individuals for long periods of time includes the valuable resources described above, as well as agents' time and attention. Based on Klingele's findings on when revocation typically occurs, it would seem more effective to prioritize attention and services for those recently released to community supervision. Yet according to the data, 4,554 Wisconsinites were sentenced to three years supervision or longer in 2018. And 2,031 of these individuals, or 44.6%, committed lower-level felonies (Classes G, H or I).

Another unique aspect about Wisconsin's supervision laws is

how supervision lengths are determined in the case of a revocation. If offenders violate a condition of their supervision at any point during their term in the community, they do not get credit for time already served in compliance with the conditions of supervision. Upon revocation, their supervision term starts anew, regardless of when their violation occurred. This reality is not reflected in the Court Data Technologies data, however, since only first dispositions were included.

Our data also show a generally linear relationship between the severity of the crime and length of supervision. However, length of supervision can vary greatly even among the same felony classes. For example, if you're convicted of a Class G felony and sentenced to extended supervision, you are as likely to be sentenced to one to two years as you are to be sentenced to two to three years or three to five years. Similarly, if you're convicted of a Class D felony and sentenced to extended supervision, you're just as likely to get three to five years as you are five to 10 years. And those with a Class H felony are equally as likely to get one to two years as they are to get two to three years.

Obviously, other felonies have varied lengths of supervision assigned across individual cases, although these examples present near equal chances of getting much different sentences. The only major exception to this is Class I felonies, where 1046, or nearly 79%, of the 1,332 extended supervision cases were sentenced to one to two years.

Highlighting these inconsistencies among sentences is not meant to downplay the importance of judicial discretion or the uniqueness of each criminal case. However, the difference of even one or two years on community supervision is significant — for the offender, their families, agents and taxpayers.

Interestingly, there was a small set of cases included in the

### WISCONSIN COSTS

**\$8.64**

Daily cost of supervising one offender

**\$3,153**

Annual cost of supervising one offender

**\$208.7 million**

Cost of supervising the state's 66,196 offenders in community corrections in 2018

## Wisconsin's felony classifications: Examples of crimes and punishments

### Class A felonies

First-degree intentional homicide

**Statutory maximum penalty:** Life imprisonment

- Life imprisonment does not include an extended supervision term.

### Class B felonies

Second-degree intentional homicide

First-degree reckless homicide

Kidnapping with serious bodily harm to the victim

First-degree sexual assault

**Statutory maximum penalty:** Imprisonment not to exceed 60 years

- Maximum initial confinement: 40 years
- Maximum extended supervision: 20 years

### Class C felonies

Armed robbery

Robbery of a financial institution

Manufacture, delivery or distribution of more than 50 grams of heroin

**Statutory maximum penalty:** Fine not to exceed \$100,000 or imprisonment not to exceed 40 years, or both

- Maximum initial confinement: 25 years
- Maximum extended supervision: 15 years

### Class D felonies

Homicide by intoxicated use of a vehicle

First-degree reckless injury

Manufacture, delivery or distribution of more than 10 grams but not more than 50 grams of heroin

**Statutory maximum penalty:** Fine not to exceed \$100,000 or imprisonment not to exceed 25 years, or both.

- Maximum initial confinement: 15 years
- Maximum extended supervision: 10 years

### Class E felonies

Operating a motor vehicle under the influence of an intoxicant or other drug, 10 or more violations

Aggravated battery

Manufacture, distribution or delivery of heroin, more than 3 grams but not more than 10 grams

Robbery

**Statutory maximum penalty:** Fine not to exceed \$50,000 or imprisonment not to exceed 15 years, or both.

- Maximum initial confinement: 10 years
- Maximum extended supervision: 5 years

### Class F felonies

Burglary

Injury by intoxicated use of a vehicle

Manufacture, distribution or delivery of heroin, 3 grams or less

**Statutory maximum penalty:** Fine not to exceed \$25,000 or imprisonment not to exceed 12.5 years, or both

- Maximum initial confinement: 7.5 years
- Maximum extended supervision: 5 years

### Class G felonies

Felony intimidation of a witness

Theft, property value between \$10,000 and \$100,000

**Statutory maximum penalty:** Fine not to exceed \$25,000 or imprisonment not to exceed 10 years, or both.

- Maximum initial confinement: 5 years
- Maximum extended supervision: 5 years

### Class H felonies

False income tax return; fraud

Fleeing an officer resulting in bodily harm or damage to property

Forgery

Perjury

**Statutory maximum penalty:** Fine not to exceed \$10,000 or imprisonment not to exceed 6 years, or both

- Maximum initial confinement: 3 years
- Maximum extended supervision: 3 years

### Class I felonies

Fleeing an officer

Possession of burglarious tools

Issuing worthless checks for more than \$2,500

**Statutory maximum penalty:** Fine not to exceed \$10,000 or imprisonment not to exceed 3.5 years, or both.

- Maximum initial confinement: 1.5 years
- Maximum extended supervision: 2 years

### Class U felonies

An unclassified felony is a crime whose maximum sentence is independent from the maximum sentences applicable to classified felonies under Wis. Stat. section 939.50(3). Examples include intentional disclosure of confidential mental health records for pecuniary gain and operating an automobile while intoxicated with a minor passenger as a third offense.

Note: The term "imprisonment" as used in Wisconsin statutes describes the combined periods of initial confinement and extended supervision possible for criminal punishment. A full list of felony classes and imprisonments may be found at Wis. Stat. 939.50(3).

data where individuals were sentenced to supervision terms longer than the statutory maximum allowed for that particular felony. We determined that in these cases, the judges inadvertently

sentenced individuals to longer terms than permitted. The DOC has established a process in which these cases are reviewed and eventually corrected by sentencing courts.

## Ideas for Reform and Future Research

Based on our data analysis and some of the findings from Klingele’s study, we arrived at a few policy areas within community corrections that warrant further examination. We believe this research and subsequent policy changes would improve public safety, provide better outcomes for offenders and reduce taxpayer spending.

**Lengths of supervision:** As previously stated, Wisconsin imposes relatively long terms of community supervision for offenders compared with other states. In a 21-state survey conducted by the University of Minnesota Law School’s Robina Institute,<sup>3</sup> 14 states indicated that they cap their felony probation supervision terms at some length of time. Eight of the 14 states (plus the federal government) cap felony probation at five years, while others (Utah, Maine, Florida and Washington) cap felony probation at even shorter terms. Washington’s cap is just one year, and Florida’s is two years.

Perhaps a more comprehensive, 50-state analysis of felony supervision caps would assist Wisconsin lawmakers in determining whether to statutorily limit all probation and extended supervision terms to no more than five years, for instance. Although a full survey is not currently available, capping felony supervision at five years would seem to align Wisconsin with numerous other states, as well as the federal government. In cases where offenders pose serious risks to public safety or have a high risk

of reoffending, judges should continue to have the discretion to impose longer prison sentences rather than probation or long extended supervision terms.

**Simplify the sentencing process:** There are two unique factors related to how community supervision sentences are calculated in Wisconsin. The first is that it is possible to be on probation for longer than extended supervision. Under current law, probation sentences can be as long as the maximum confinement terms under truth in sentencing. So, if you’re convicted of a Class F felony for burglary (Wis. Stat. 943.10 (1m)), you could be sentenced to 7.5 years of probation, which is the maximum time you could be incarcerated for that crime.

Because extended supervision sentences are served post-incarceration, in most cases they cannot be any longer than the difference between the maximum authorized sentence for a crime and the time the person is ordered to serve in prison.

So if you are convicted of a Class F felony for burglary, you could be sentenced to a maximum 7.5 years of initial confinement in prison and five years of extended supervision for a maximum imprisonment of 12.5 years. This is less time under community corrections than the 7.5 years of maximum probation cited above.

Lawmakers should consider harmonizing probation and extended supervision terms so that the maximum length of probation matches the maximum length of extended supervision. This would reduce complexity in the sentencing process for the

### Length of community supervision by felony class

14,177 felony cases in Wisconsin were sentenced to probation in 2018. Here is the breakdown by felony class and term length.

Probation	Under 1 year	1-2 years	2-3 years	3-5 years	5-10 years	Over 10 years	Totals
<b>Class B</b>	0	0	1	0	0	0	1
<b>Class C</b>	0	3	10	38	28	3	82
<b>Class D</b>	0	7	28	33	16	0	84
<b>Class E</b>	1	31	128	155	35	0	350
<b>Class F</b>	5	125	496	405	87	0	1118
<b>Class G</b>	20	184	610	362	25	0	1201
<b>Class H</b>	127	1572	3048	669	95	0	5511
<b>Class I</b>	257	2226	2614	415	40	0	5552
<b>Class U</b>	18	129	102	26	3	0	278
<b>Totals</b>	<b>428</b> 3.02%	<b>4277</b> 30.17%	<b>7037</b> 49.64%	<b>2103</b> 14.83%	<b>329</b> 2.32%	<b>3</b> 0.02%	<b>14177</b>

7,373 felony cases in Wisconsin were sentenced to extended supervision in 2018. Here is the breakdown by felony class and term length.

Extended Supervision	Under 1 year	1-2 year	2-3 years	3-5 years	5-10 years	Over 10 years	Totals
<b>Class B</b>	0	0	3	4	35	35	77
<b>Class C</b>	1	25	50	199	149	34	458
<b>Class D</b>	10	29	48	131	116	0	334
<b>Class E</b>	13	106	165	276	2	0	562
<b>Class F</b>	75	254	424	680	6	0	1439
<b>Class G</b>	74	420	433	421	0	0	1348
<b>Class H</b>	262	728	721	3	1	0	1715
<b>Class I</b>	281	1046	5	0	0	0	1332
<b>Class U</b>	51	20	10	9	16	2	108
<b>Totals</b>	<b>767</b> 10.40%	<b>2628</b> 35.64%	<b>1859</b> 25.21%	<b>1723</b> 23.37%	<b>325</b> 4.41%	<b>71</b> 0.96%	<b>7373</b>

**BY THE NUMBERS**

**4,554**  
Wisconsin offenders sentenced in 2018 to three or more years of extended supervision

**44.6%**  
Percentage of those offenders convicted of lower-level felonies

courts and offenders. It also may reduce the maximum length of probation terms for some offenders.

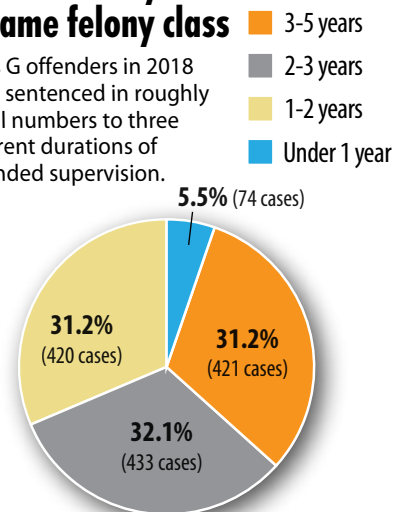
Community supervision sentences in Wisconsin are also unique in how the incarceration terms are determined after a revocation occurs. When offenders on supervision are revoked during their term in the community, they do not receive credit for time already served in compliance — regardless of how far into their term they are.

Suppose offenders are sentenced to three years in prison and three years of extended supervision. After they finish their three-year incarceration, they must serve the three-year extended supervision in the community. If they violate the terms of their supervision and are revoked, they could be sentenced to three years back in prison, regardless of whether they were revoked two weeks after leaving prison or two years and 11 months into their supervision term.

**Early release practices:** A final policy area for consideration

### Sentences vary even in same felony class

Class G offenders in 2018 were sentenced in roughly equal numbers to three different durations of extended supervision.



or further research is early release. The DOC has the authority to petition courts for early discharge from probation. To be eligible, probationers must have served at least 50% of their term, satisfied all conditions of their supervision and fulfilled all financial obligations to victims, the court and the DOC. Registered sex offenders are not eligible for early release.

While the DOC does not have the authority to expand early release to offenders on extended supervision, the department could review all eligible probationary cases. If used more widely, this practice of early release after a mandatory review could reduce caseloads for agents and incentivize offenders' compliance with the rules and conditions of their supervision.

Of course, DCC regional chiefs still would have the authority to override petitions or eligibility if they determined that an individual was still a threat to public safety. This practice might be more widely used if agents were required to review early release eligibility for those on supervision after they had served 50% of their supervision time.

## Potential Benefits of Reform or Additional Research

Community corrections certainly serves a valuable role in rehabilitating offenders and helping them transition back into society. However, as this data and Klingele's research show, there could be potential benefits and cost savings from a few reforms, with no trade-off in public safety. While more research is likely needed before implementing large policy changes, new procedures should be guided by the following goals.

**Reduced cost for taxpayers:** The DOC estimates it costs approximately \$8.64 a day to provide community supervision to an offender. In 2018, the department provided supervision to over 66,000 offenders. A 5% reduction in the number of offenders on supervision could result in more than \$10 million in cost savings per year. While this calculation of cost savings is unlikely to result in an immediate reduction in expenditures, it eventually would return savings to taxpayers. Additionally, more research is needed to determine what impact changes in maximum terms of supervision might have on offender populations and subsequent DOC expenditures.

**Reduced caseload for agents:** Shorter community supervision terms would provide DOC probation and parole agents with more time to focus on offenders recently released from prison or sentenced to probation. This time period is critical to providing offenders with the support required to succeed in the community. It also would allow agents to devote more time to working with law enforcement on locating absconders and supervising offend-

ers who have failed to follow the conditions of their supervision.

**Improved reintegration for offenders:** Several offenders in Klingele's study described the stress and challenges of moving on from past criminal behavior that long-term community supervision creates. Required meetings with agents may disrupt work schedules, and offenders must get approval from agents for mundane activities such as purchasing an automobile or borrowing money. While the majority of offenders serve supervision terms of less than five years, many serve longer terms that often do not have a clear public safety benefit to the offenders or their community.

### About the authors



**Julie Grace** is a Badger Institute policy analyst. **Patrick Hughes**, former Wisconsin Department of Corrections assistant deputy secretary, is a corrections consultant for the institute.

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## Endnotes: Understanding Revocation from Community Supervision

<sup>1</sup> A full 63% of the Department of Corrections' budget for goods and services is spent on residential service program, treatment and other housing supports for people under supervision (Wisconsin Division of Community Corrections 2018).

<sup>2</sup> Sex offenders in Wisconsin are subject to additional conditions of supervision that may lead to higher rates of crimeless revocation for this group; consequently, sex-offender specific units were excluded from this study. Nonetheless, 13 people supervised in non-specialized supervision units, and therefore included in the study sample, were serving probation or extended supervision sentences for sex crimes.

<sup>3</sup> Corrections at a Glance FY 2016, Wisconsin Division of Community Corrections, Wisconsin Department of Corrections 2016, <https://doc.wi.gov/DataResearch/ArchivedReports/AtAGlanceBrochures/1216DCCAtAGlance.pdf>

This figure suggests that alcohol or other drug abuse may be more prevalent among the supervised and is consistent with statewide health estimates that suggest that 63% of state prisoners and 35% of jail inmates suffer from a substance abuse disorder. "Wisconsin Mental Health and Substance Use Needs Assessment" (2018), 95, <https://www.dhs.wisconsin.gov/publications/p00613-17.pdf>

<sup>4</sup> The Centers for Disease Control and Prevention define binge drinking as consuming four or more drinks per occasion for women or five or more drinks per occasion for men.

<sup>5</sup> To better visualize the distribution of programming for substance abuse and other needs, consult the maps and charts included in the Wisconsin Division of Community Corrections' "Purchase of Offender Goods and Services (POGS) Treatment Programs" guide, which includes not only lists of available service providers by region but also data on the number of individuals each program is able to serve annually.

<sup>6</sup> In the study sample, several revocation cases involved allegations that the supervisee was taking either suboxone or methadone — both medications prescribed to manage substance addiction. Although both cases also alleged more substantial grounds for revocation, the inclusion of those medications as violations invites questions about whether agents have uniformly accepted the trend toward medical management of substance addiction.

<sup>7</sup> In calculating "time to failure" among individuals in this study, the operative hazard period was calculated from the time the supervisee was released from jail or prison on community supervision to the date on which the incident triggering the request for revocation was alleged to have occurred.

<sup>8</sup> The alternative to extending supervision that is used in most cases is to convert any unpaid restitution, surcharges and other financial obligations to a judgment that may be collected like any other civil judgment, including through wage garnishment and tax intercepts. Wis. Stat. § 973.09(3)(b), (bg)(4) and (bm)(4); Wisconsin Crime Victims Council 2017, "Crime Victim Restitution Collection in Wisconsin" (2017), <https://www.doj.state.wi.us/sites/default/files/ocvs/specialized/Restitution%20Collection%20A%20Guide%20to%20Help%20Victims.pdf> (last accessed April 13, 2019).

<sup>9</sup> Of course, sanctions should not replace treatment access for those in need of substance abuse or behavioral health interventions. Such services should be offered in cases where they are therapeutically appropriate. Treatment should not, however, be used as punishment, and punishment should be separated from treatment. Presently, the two are often conflated. While a community service sanction might have positive, therapeutic value for both supervisees and the community at large (McDonald 1984), any community-based sanctioning program should be devised to require the minimal amount of involuntary work hours needed to sanction a particular rule violation or pattern of conduct.

## Endnotes: Community Supervision in Wisconsin

<sup>1</sup> Our data includes first disposition only (no resentencing based on probation violations, appeals, etc.).

<sup>2</sup> This data does exclude registered sex offenders, defined as all "sex offenses" in Wis. Stat. 301.45 and anyone forced to register under 301.45. These are likely outliers that may skew data on average terms of supervision and rates of revocation. By virtue of their crimes of conviction, they are likely to receive longer terms of supervision and be subject to more intensive rules of supervision.

<sup>3</sup> Alexis Lee Watts, "Probation In-Depth: The Length of Probation Sentences," Robina Institute of Criminal Law and Criminal Justice (2016), [https://robinainstitute.umn.edu/sites/robinainstitute.umn.edu/files/probation-in-depth\\_final.pdf](https://robinainstitute.umn.edu/sites/robinainstitute.umn.edu/files/probation-in-depth_final.pdf)

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