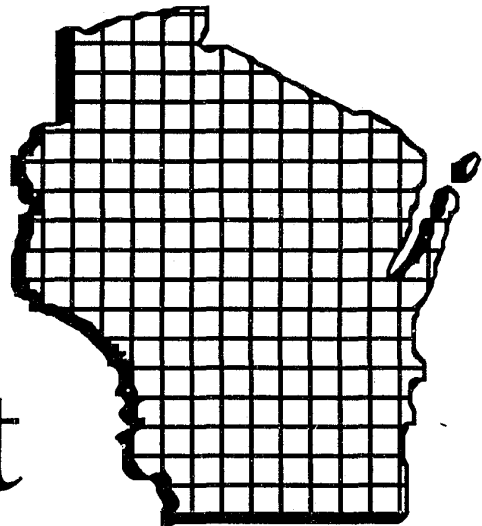


Wisconsin

Policy  
Research  
Institute  
Report



August 1992

Volume 5, No. 4

**PROBATION  
IN  
WISCONSIN**

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143948

## Report from the President:

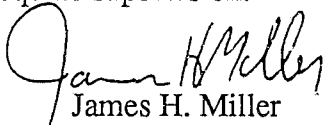
Every day, in the state of Wisconsin, there are approximately forty-five thousand convicted criminals who are still under sentence and are living in our neighborhoods and communities. That is a clear message in this study, *Probation in Wisconsin*.

The author of the study, Anne Piehl, has been a Research Fellow at the Institute for the past year and is currently finishing her dissertation for a Ph.D. at Princeton University. In another study two years ago, she interviewed six percent of Wisconsin's entire prison population.

This report examines the probation system in Wisconsin. In addition to the actual number of persons on probation, this study also examines the characteristics of these criminals and the likelihood that they will end up back behind bars. There are two important findings of this study. First, in Wisconsin's criminal justice budget, only one of every four dollars is actually spent on corrections. Secondly, in terms of other states, Wisconsin spends eighty-nine percent of the national average on noncorrectional criminal justice, but only sixty-three percent of the national average on corrections.

What this tells you is that Wisconsin spends enormous amounts of money arresting and convicting criminals. The problem is that Wisconsin is unwilling to spend enough money once they are sentenced. It does not necessarily mean more prison cells, but it does mean stronger supervision throughout the entire system, especially for those on probation or parole.

Lest we forget, Jeffrey Dahmer was in our probation system. We can't expect to have forty-five thousand people on the streets unless there is very strong supervision in both the probation and parole systems. If we're going to have community release, we must be willing to spend the money to make it effective. It makes no sense to spend large amounts of tax dollars to catch and convict criminals and then let them loose without adequate supervision.

  
James H. Miller

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# Probation in Wisconsin

by

Anne Morrison Piehl

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# PROBATION IN WISCONSIN

by

## Anne Morrison Piehl

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## EXECUTIVE SUMMARY

As of May, nearly 40,000 Wisconsin residents were on probation, serving criminal sentences in the community; they represent over 70 percent of the offenders under the supervision of the Wisconsin Department of Corrections. About 30 percent of offenders admitted to prison in Wisconsin are serving a probation sentence at the time. Nationally, 43 percent of felons sentenced to probation in 1986 were rearrested within three years. These statistics suggest an important link between the two forms of supervision: prison and probation.

As fiscal pressures mount, probation and related cheaper alternatives to imprisonment are promoted and utilized more frequently. The analysis in this paper relies on a survey of prisoners and information on inmates from the Department of Corrections, along with other available national evidence, to describe the probation population and to consider the differences between those who arrive in prison having been under the supervision of a probation agent and the rest of offenders.

Inmates in Wisconsin prisons who were on probation at the time of their arrest for their current offense are younger than other inmates, receive shorter sentences, are less likely to have prior prison experience and are more likely to have committed economic rather than violent offenses. In addition, male probation violators are less likely to have been working, more likely to have been looking for work, less likely to be high-school graduates and less likely to think they'll gain from prison education and training than the rest of the offenders.

Statistical models called probits show that probation violators are not more chronic offenders than other inmates. In fact, male probation violators are less likely, and female probation violators no more likely, than other inmates to return to prison again, taking their backgrounds into account.

The courts and the Department of Corrections seem to have some success in sorting out the more chronic offenders from those who are less likely to commit further crimes. Half of those sentenced to probation are not sent to prison during the term of supervision; without probation state funds would have to pay to incarcerate those individuals. These facts suggest a role for probation in the state's correctional policy. However, whether that role should be as large as 70 percent cannot be answered within the confines of this study. In order to draw broader conclusions as to the value of public spending on probation, further research must focus on the group which does not violate the terms of probation and also on the effects of serving prison time.

## I. INTRODUCTION

Of the more than 50,000 adults under the supervision of the Wisconsin Department of Corrections, 45,000 are on probation and parole<sup>1</sup> while just over 8,000 are in prison. The majority under supervision in the community are on probation.<sup>2</sup> Although legislators, citizens, and the media have paid increasing amounts of attention to issues of crime and criminal control, most of this attention is focused on the imprisoned population.

Nationwide most prisoners have spent some time under community supervision; only 19 percent of 1986 state prison inmates had served no prior sentence.<sup>3</sup> Because most periods of incarceration end with parole, the other 80 percent have spent some time in the probation and parole system.<sup>4</sup> In Wisconsin, about 30 percent of offenders admitted to prison were serving a probation sentence at the time.

In a national study, the Bureau of Justice Statistics found that 43 percent of felons sentenced to probation in 1986 were rearrested for a felony within three years.<sup>5</sup> This high failure rate from probation and the large number of probation violators in prison lead to a perception that probation is an ineffective sanction. If prison is an effective punishment, i.e., deters future criminal activity, and probation is not, the dollars spent on probation are not well-spent, even if it is less costly than imprisonment.

Using two sources of information about prisoners in Wisconsin and their probation experience, this paper investigates the efficacy of probation as a punishment. Focusing on probation violators who are sent to prison allows an investigation of the population for whom probation is least likely to be an effective sanction; further research is necessary to analyze the entire spectrum of experience with the probation system. This analysis finds that probation violators in prison are younger, less employable, and more likely to have committed economic offenses than those not under correctional supervision (on probation or parole) when admitted to prison. In addition, preliminary statistical analysis shows that, for males at least, they are less likely to commit further offenses which result in prison sentences after their release than are their unsupervised counterparts.

Wisconsin residents spend less than the national average on the criminal justice system. Although expenditure on police protection by state and local governments is close to the national average, expenditure on corrections is just 63 percent of the national amount.<sup>6</sup> Thus, Wisconsin relies less heavily on, or under funds, the correctional programs of prison, probation, and parole relative to other states.

---

<sup>1</sup>Probation is a sentence an offender serves in the community, while parole is conditional release from incarceration to complete the sentence in the community. Violations of parole conditions may result in the return to prison to serve out the sentence while violations of probation may lead to admission to a state prison.

<sup>2</sup>On May 1, 1992, there were 39,678 adults on probation and 5,245 on parole. *Adult Offenders Under Institution Supervision*, Department of Corrections, Document 302, May 1, 1992.

<sup>3</sup>*Sourcebook of Criminal Justice Statistics—1988*, U.S. Department of Justice, Bureau of Justice Statistics, Table 6.42.

<sup>4</sup>For further information about parole, see George Mitchell, *Parole in Wisconsin*, Wisconsin Policy Research Institute, June 1992.

<sup>5</sup>Patrick A. Langan and Mark A. Cuniff, "Recidivism of Felons on Probation, 1986-89," *Bureau of Justice Statistics Special Report*, February 1992.

<sup>6</sup>*Justice Expenditure and Employment in the U.S., 1988*, U.S. Department of Justice, Bureau of Justice Statistics, April 1991.

With nearly 40,000 Wisconsin residents on probation, it is important to understand the impact of this program as well as its interaction with the prison system. More research is needed to draw definitive conclusions about the value of the state's investment in probation. This study shows, however, that probation does not seem to merely postpone incarceration. Over half of the offenders on probation do not return to prison during their supervision. The court system appears to sort out offenders who impose less social cost for probation, sending the more violent offenders directly to prison. On the other hand, the fact that probation violators are less likely to recidivate after a prison term (given their age, education, type of offense and length of time the offender was on the street), even though they have already recidivated from their probation sentence, suggests that incarceration may have an effect. Whether this is due to the "shock" of being in prison, the "growing up" they do while there, or even the skills learned in prison programs, requires further research.

## II. CHARACTERISTICS OF PROBATIONERS IN WISCONSIN

There are several different forms of correctional supervision. A judge may sentence a convicted offender to jail (for terms less than one year), prison (for terms greater than one year), or probation. Jails are generally operated at the county level, prisons by the state. An offender on probation must meet periodically with a probation officer to confirm he or she is meeting the terms of probation. These terms may include staying away from certain activities and individuals which led to previous criminal involvement and maintaining employment or schooling. Thus, probationers are generally responsible for their own actions, with some monitoring by a corrections official. If an individual violates the terms of the probation, he or she can be sent to prison to serve the remainder of the sentence behind bars. Probation violators who commit new crimes receive new sentences from a judge.

### A. Data Description

There are two primary sources utilized in this study to assess probation as it interacts with institutionalization in Wisconsin. The first is the *1990 Wisconsin Prisoner Survey*, a battery of questions regarding inmate opinions, demographic information, and details about criminal and legal economic activity completed by six percent of the state prison population. This is the largest prisoner self-report survey of a single prison system ever conducted. Participation in the survey was offered to a random sample of (male) inmates from the minimum-security prison at Oakhill, the medium-security prison at Oshkosh, and the maximum-security prison at Columbia. Inmates filled out the survey forms with the assistance of three researchers. A total of 424 usable surveys was completed.<sup>7</sup>

Such self-report surveys have been used by researchers repeatedly over the years, most notably by the Rand Corporation. The principal advantages of self-report surveys are the breadth and type of information which can be gathered. For example, the *1990 Wisconsin Prisoner Survey* contains information about crimes committed but not known to authorities, average 'takes' for these crimes, and opinions toward crime and imprisonment. The major drawback in using self-reported information is the possibility of inmates misrepresenting the truth.

The second source is an administrative data file obtained from the Wisconsin Department of Corrections (DOC). These data are in some sense more reliable than the self-reports, but at the same time are potentially more 'contaminated.' The administrative file contains information about each period of incarceration during the 1980s.

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<sup>7</sup>Further information about the survey, as well as the instrument itself and tabulations of the responses, can be found in John J. Dilulio, Jr., *Crime and Punishment in Wisconsin*, Wisconsin Policy Research Institute, December 1990.

It details the offenses for which inmates were incarcerated, their parole or probation status at the time of admission to the system, their dates of release, and some indicators of health and education status. The main advantage is that the information is kept over time, so an offender's relationship to the Wisconsin prison system can be monitored since 1980. However, only limited information about parole or probation supervision can be gleaned.

Yet the DOC information is 'contaminated' by the interaction with the criminal justice system. For example, the type of crime actually committed is not listed, but rather the crime that was pled by the defendant or convicted and sentenced by the judge is reported. By matching the survey responses with the DOC data, some of the drawbacks of each are overcome.

## B. Results

The rest of this section uses the above data files, as well as some national sources, to answer some important questions about probationers and prisoners in Wisconsin.

*How many persons are on probation as compared to in prison?*

Wisconsin is consistent with national trends, where prison populations account for 16 percent of the total population supervised by the correctional community. One can see from Figure 1 that the number of inmates nationally in jail and prison is dwarfed by the number of individuals on probation. The number of individuals on parole is about equal to the number in jails. Note also that each of these populations has been increasing over time.<sup>8</sup>

*How much do we spend on these sanctions, prison and probation?*

In 1988, the per-capita justice expenditure of state and local governments in Wisconsin was \$178, which is 82 percent of the national average.<sup>9</sup> Of that total, \$93 goes to police protection, \$22 to the judicial process, \$11 to legal services and prosecution, \$5 to public defense, and \$46 to the corrections system. These proportions are in general similar to the national breakdown, except for corrections, which is only 63 percent of the national figure. (See Figure 2.) Thus, Wisconsin residents spend less than average on the criminal justice system, especially on corrections.<sup>10</sup>

A closer look at the corrections budget of \$224 million (which accounts for 26 percent of the justice system expenditure) reveals that 79 percent goes to institutions and 12.3 percent supports the probation and parole systems. Recall that less than 20 percent of the supervised population is behind bars.

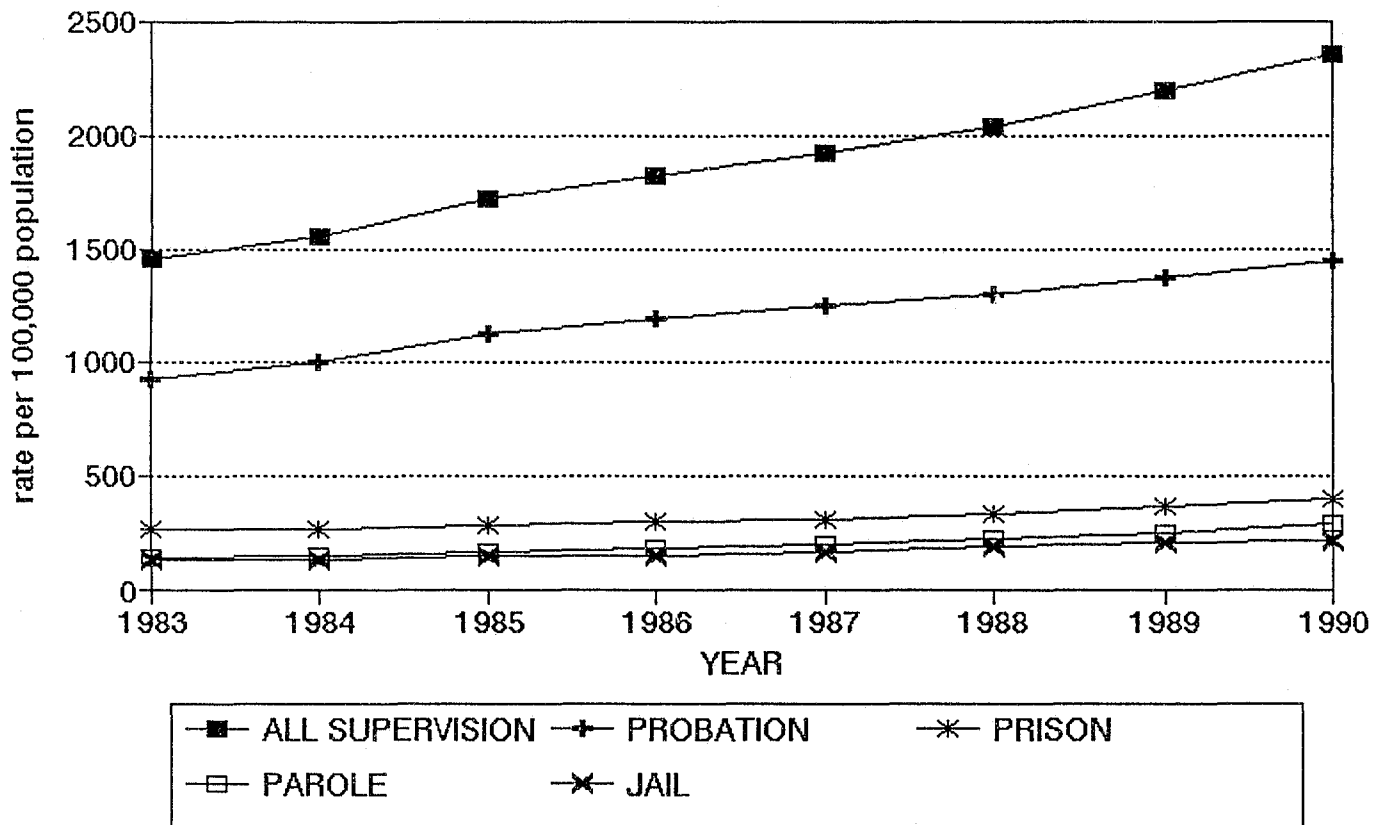
The calculation of costs of particular programs can be controversial. Since it is not the focus of this paper, I will refrain from discussing the particulars here. Estimates for comparing the costs of supervising an individual in prison and on probation are \$22,000-\$25,000 and \$1,000 per year, respectively.

<sup>8</sup>See also, "Early Releases Triple Since '86," *The Milwaukee Journal*, November 3, 1991.

<sup>9</sup>This figure represents 5.5 percent of state and local general expenditure in that year. The numbers in this and the following paragraph come from *Justice Expenditure and Employment in the U.S., 1988*.

<sup>10</sup>Wisconsin spends 94 percent of the national average per-capita expenditure on police protection, 84 percent of the national average on judicial activities. *Justice Expenditure and Employment*, Table 9.

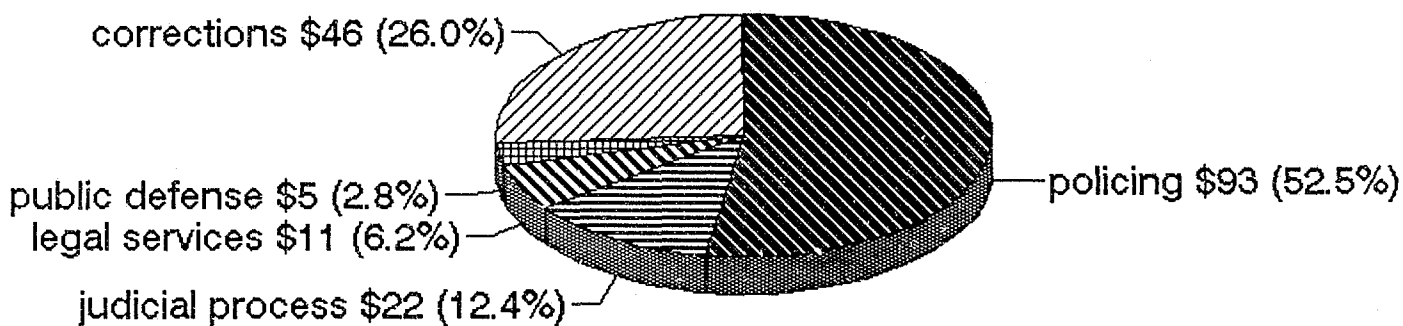
# FIGURE 1: CORRECTIONAL POPULATION PER 100,000 POPULATION



Source: Karen Needels and Anne Morrison Piehl, The Theory of Criminal Deterrence: A Survey, mimeo, Princeton University, October 1991, Figure 5.



## FIGURE 2: PER CAPITA JUSTICE EXPENDITURE, 1988



Source: Justice Expenditure and Employment in the U.S., 1988, U.S. Department of Justice, April 1991.

*Who is in prison? What are they like?*

DOC Data:<sup>11</sup>

- There were 8,055 inmates in the Wisconsin prison system, as of May 1, 1992.
- Nearly 95 percent of Wisconsin prisoners are male. About 54 percent are white, 38 percent are black, six percent are Hispanic and two percent are Native American.
- Among inmates released from Wisconsin prisons in the 1980s, the median length of sentence was 42 months, and the median time served was 16.5 months. (The median is that value at which half of the prisoners had longer sentences and half had shorter ones.)
- About 55 percent have at least one prior felony conviction, and 42 percent have been imprisoned in Wisconsin twice or more.

Survey responses:

- Inmates committed a variety of offenses: in the four months prior to arrest, 21 percent committed burglaries, 18 percent robberies, 17 percent thefts, 12 percent forgery, 29 percent drug dealing, 23 percent sex offenses.
- 51 percent were employed at the time of their arrest.
- At the time they committed the crime they were arrested for, 41 percent thought they would be caught. Nearly 20 percent believe they could do the same crime again without getting caught.
- Among those who committed burglary, robbery, or theft, 46 percent never worked out a plan for the crime in advance. Only 22 percent always did.
- For 48 percent of respondents, getting money for rent, food, and self-support was important to their decision to commit crime; 44 percent said that drinking was important to that decision.
- 51 percent of those who report dealing drugs were not arrested for any of these drug deals.
- 48 percent felt their time in prison would make it easier to keep a regular job because they had grown up.

*How many prisoners were on probation at the time of arrest?*

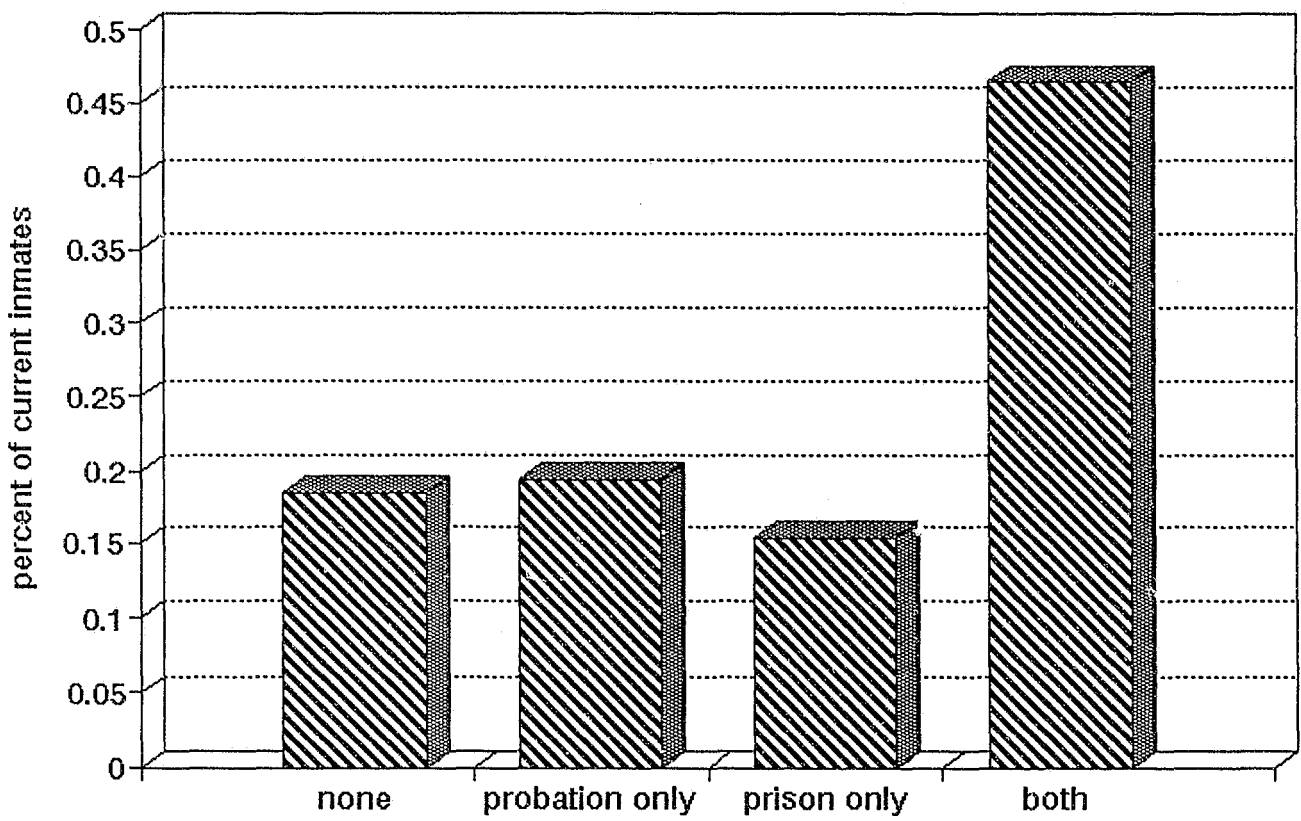
Nationally, as reported in the introduction, only 19 percent of 1986 state prison inmates had served no prior sentence. Figure 3 shows that 67 percent had been on probation before; either on probation alone (20 percent) or both in prison and on probation (47 percent).

Of the 250 female offenders and 3,481 male offenders admitted to the Wisconsin prison system in 1990, 30 percent were probation violators. Of the women probation violators, 40 percent were given new sentences (for new crimes) while the rest were sent to prison because of technical violations of the terms of the probation sentence. The breakdown is similar for the men, where 44 percent of probation violators received new sentences. (See Figures 4 and 5.) During the 1980s, there were 11,073 men admitted with new sentences who were not returned from probation, parole, mandatory release, or other special programs.

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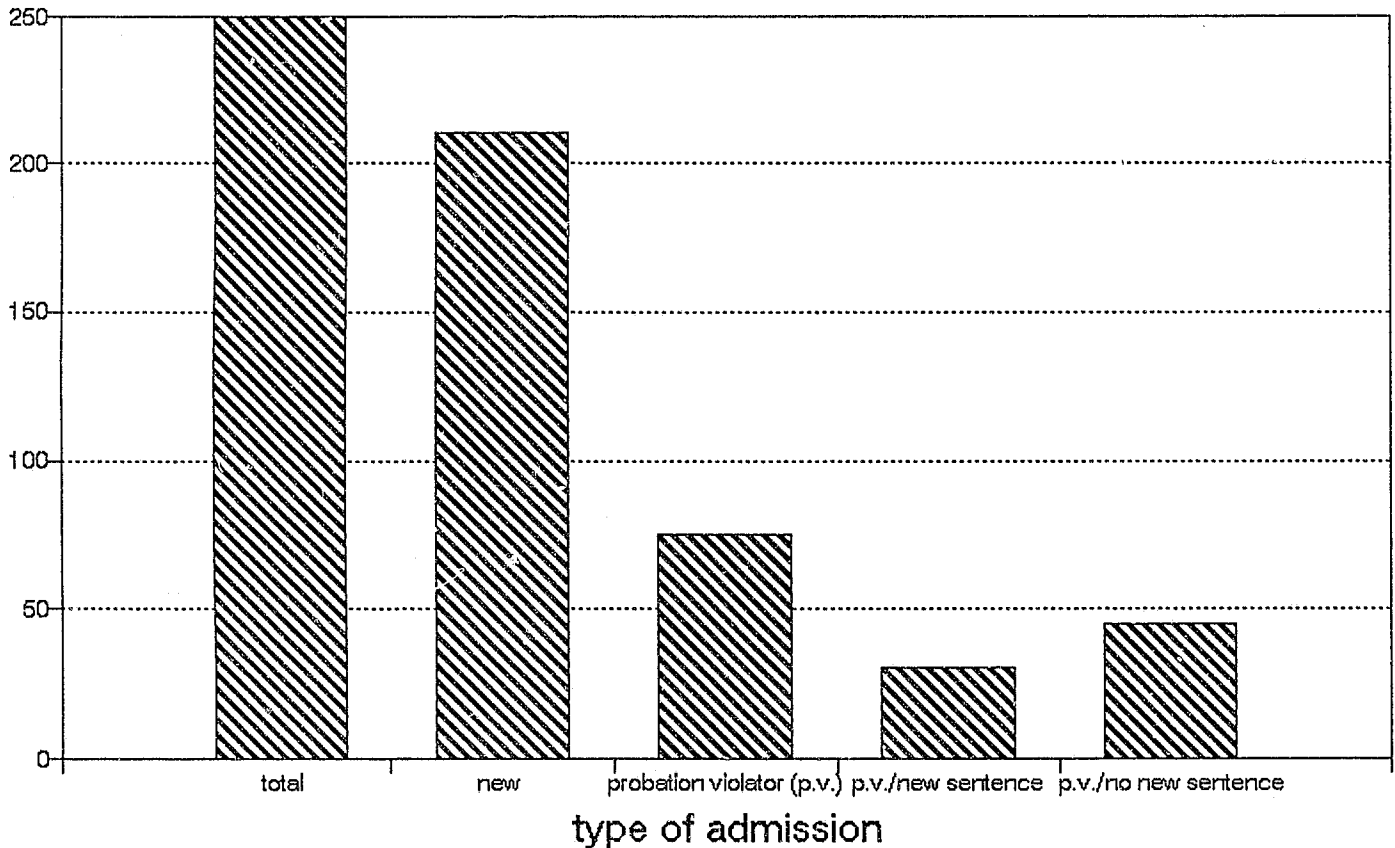
<sup>11</sup>This section draws from DiIulio, p. 10-11.

# FIGURE 3: PRIOR SENTENCES OF STATE PRISON INMATES, 1986



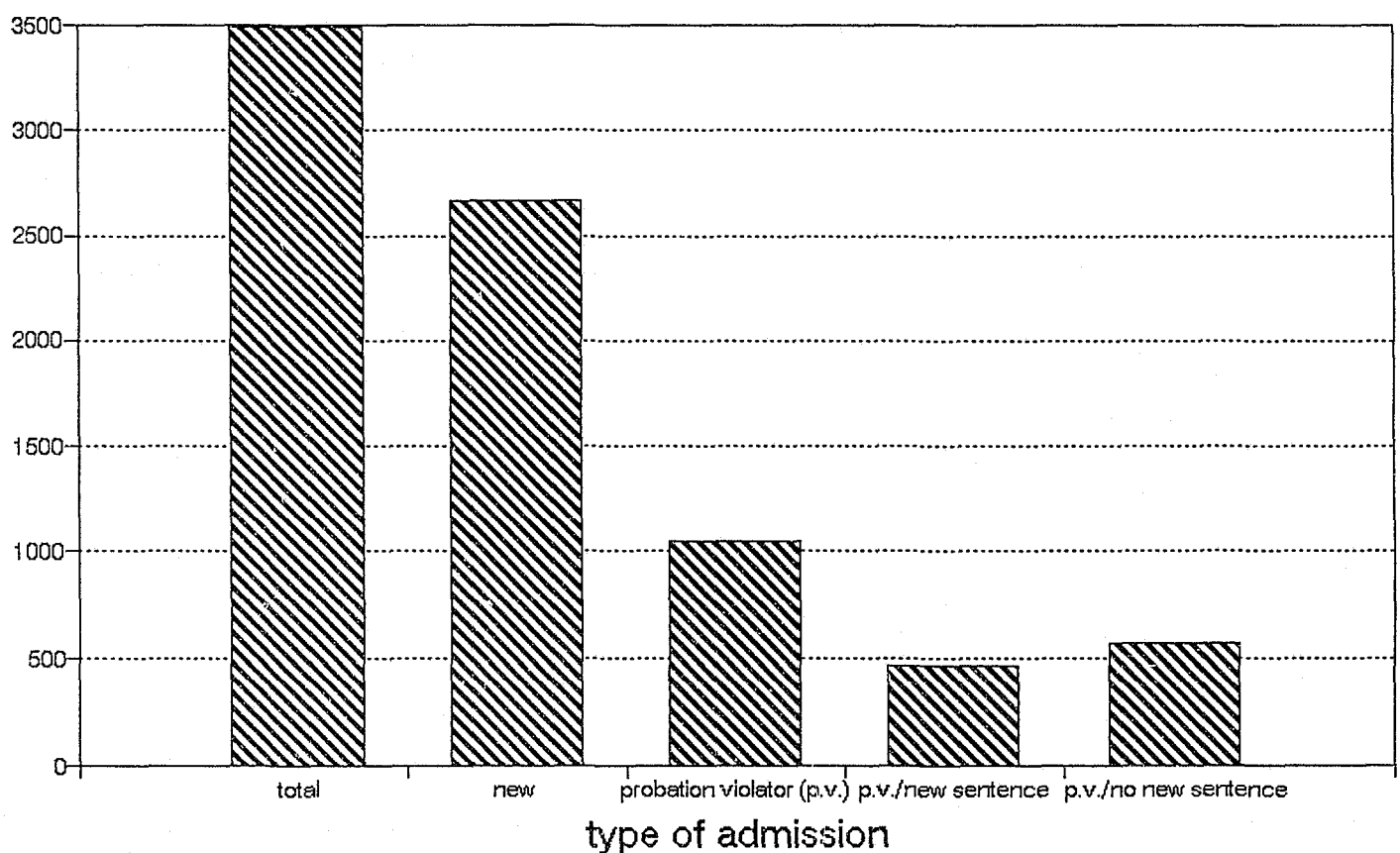
Source: Sourcebook of Criminal Justice Statistics --1988, U.S. Department of Justice, 1989, Table 6.42.

## FIGURE 4: FEMALE OFFENDERS ADMITTED TO WISCONSIN PRISONS, 1990



Source: Offenders Admitted to Adult Correctional Institutions: 1990, Wisconsin Department of Corrections, June 1991.

# FIGURE 5: MALE OFFENDERS ADMITTED TO WISCONSIN PRISONS, 1990



Source: Same as Figure 4.

Over the same period, 6,382 men were admitted while serving a probation sentence in the community. For women the numbers are 868 and 473, respectively.

The 424 inmates who participated in the survey generally constitute a subset of the men admitted during the 1980s. Of this group, 35 percent answered that they were on parole or probation in the month they were arrested for their current sentence.<sup>12</sup> I will call this group the supervised sample for the remainder of this discussion. (It is impossible to tell the programs apart from the survey responses.<sup>13</sup>)

*How do probation violators differ from the rest of the prison population?*

DOC Data:

- Probation violators are younger than the new admission population (those unsupervised individuals who are serving time for new crimes).
- Probation violators receive shorter sentences.
- Fewer male probation violators have prior penal experience or prior felony convictions.
- Probation violators are more likely to have committed so-called economic offenses (e.g., robbery, theft, fraud) and less likely to have committed violent or sex offenses.

Survey results:

- As above, the supervised sample, with a mean age of 31, is somewhat younger than those who were not on either probation or parole, with average age 35. This relationship also holds for the age at which the offenders were admitted to the prison.
- The supervised sample is less likely to be working at the time of arrest, and more likely to be looking for work.
- Supervised individuals are less likely to be high-school graduates at admission.
- Supervised individuals are more likely to think they could do the same crime again and not get caught.
- Unsupervised individuals are twice as likely to have hired their own lawyer.
- Supervised inmates are more likely to report having committed crimes out of economic need, but equally likely to report committing crime due to opportunity, wanting money for a high life style, or due to drug use. The social cost, for those committing economic crimes, is equal across the two groups.

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<sup>12</sup>That the proportion supervised in the flow into the system (the numbers in the previous paragraph) could be greater than the proportion supervised in a sample of those present at a given time (the numbers in the current paragraph) is easy to reconcile: probation and parole violators serve less time per admission than non-supervised persons. This occurs because some of violators of the terms of supervision are serving time on prior sentences as a result of technical violations. Time served for a technical violation is generally less than that for a new crime. The disparity may be further influenced by the types of crimes committed by the two groups.

<sup>13</sup>In point of fact, the two measures of supervision, probation status from the DOC data and "supervised sample" from the survey, are highly correlated and give similar results in what follows.

- Inmates in the supervised sample are less likely to report that it will be easier to get a regular job as a result of prison education and/or training. They were more likely to say they would be better able to keep a regular job as a result of having 'grown up' while in prison, though the difference is not statistically significant.

Considering their opinions along with the types of crimes committed, these results indicate that the crimes of the supervised sample are more likely to be economically motivated than those of other inmates. Moreover, the people under supervision at the time of arrest seem less able to achieve economically in the legal economy. The latter conclusion derives from other work in economics, which shows that, all other things equal, people who are older and more highly educated earn higher wages and have higher chances of being employed. Also, the low proportion of the supervised sample who hired their own lawyer may reflect lower family wealth.<sup>14</sup>

#### *How many prisoners commit further crimes?*

In the DOC data, only the crimes for which people are caught and convicted are known. Restricting the analysis to male offenders released in 1982 to allow them time to commit further crimes, 44 percent had returned to Wisconsin prisons by mid-1990.<sup>15</sup> Those who returned to prison were on the streets an average of 13 months.

Multivariate probit models show that people with the following characteristics were more likely to be readmitted to prison during the sample period: young, less educated, those with prison experience prior to the current admission, and those who committed economic (rather than violent) crimes. Interestingly, male probation violators are less likely, by two percentage points, than those who enter with new sentences to return to prison another time, controlling for these other factors. There is no statistically significant difference in recidivism for women by probation status.<sup>16</sup>

Thus, people whom we would expect to achieve less well in the outside world are more likely to return to prison. In addition, people who serve longer sentences are less likely to recidivate. This may be due to a prison effect, or it may be that people who commit crimes that carry long sentences are less likely to offend again anyway. For example, many assaults happen while the offender is intoxicated. Learning the effects of alcohol may be enough to prevent it from recurring. Many homicides are acts of 'passion' or high emotion and are unlikely to be repeated.

#### *How many probationers commit further crimes?*

As previously cited, 43 percent of felons sentenced nationally to probation in 1986 were rearrested for a felony within three years. Nearly two-thirds had been either arrested for a new felony or charged with violating the terms of their supervision.<sup>17</sup>

The Wisconsin Division of Probation and Parole is uncomfortable thinking in terms of summary statistics and, therefore, does not record how many probationers go to prison during the term of their supervision. (This number is often called a 'failure' rate in the corrections literature.) The Division points out that a probationer sent to prison because the agent feels he is headed for trouble is not a failure of the system. Similarly, a person who completes the sentenced period of supervision and commits another crime six months later is not a success.

<sup>14</sup>See the data appendix for more detail about these comparisons.

<sup>15</sup>Note that this calculation covers only those offenders who re-enter Wisconsin institutions. Released inmates who are admitted to federal prisons, prisons in other states, or local jails are not counted as recidivists. Thus, this figure necessarily understates recidivism.

<sup>16</sup>See data appendix.

<sup>17</sup>Langan and Cunniff, p. 1.

The degree of attention the parole and probation officers expend on individual cases is laudable. It allows tailoring supervision patterns to the assessed needs of the offender. However, it also makes evaluation of the system difficult. Further research in this area is needed.

### III. PROBATION AS PART OF THE OVERALL CORRECTIONAL SYSTEM

#### A. The Wisconsin Debate

Given the costs of incarceration, recently there has been much discussion about the need for intermediate sanctions.<sup>18</sup> Uses of the terms "alternatives to incarceration" and "intermediate sanctions" generally refer to programs implemented by various state Departments of Corrections to better integrate prisoners into the community and to alleviate crowded facilities. These are known by the names of community supervision, half-way houses, early release, and others.

In Wisconsin, this concern received prominence in the report of the Wisconsin Correctional System Review Panel, released in June, 1991. The panel was appointed by Assembly Speaker Walter Kunicki and chaired by law professor Frank Remington. This report led to legislation which established the Division of Intensive Sanctions in the Department of Corrections (DOC).

The intensive sanctions program was promoted as an alternative to substantially increased prison construction; the DOC projects prison populations will increase by 86 percent between 1990 and 2000.<sup>19</sup> The Review Panel report identifies types of offenders which would be appropriate for diversion to non-confined punishment. "The Panel does not recommend that violent or high risk offenders be eligible for the 'intermediate sanction or punishment program.'" (p.7) There are three points of entry to the Division of Intensive Sanctions: direct sentencing from a judge, the parole board, or as an alternative to revocation of parole. Thus, intermediate sanctions will serve as an alternative to both probation and parole, as well as prison. Similar programs have been suggested in many jurisdictions. Advocates promote intensive sanctions as a new solution to both prison overcrowding and lax supervision of offenders in the community. Yet they are not a new idea. The programs are an attempt to return probation and parole programs to their intended level of supervision after years of erosion by tightening budgets and increasing supervision populations.

The panel concludes that "The total cost of an intermediate punishment program is 75 percent less than prison construction and 33 percent less in operating costs." (p. 7)<sup>20</sup> Whether such alternatives will show substantial savings to taxpayers depends on several factors:

- i) the feasibility of diverting significant numbers into such a program, i.e., the presence of low-risk offenders,
- ii) the diversion of participants to alternative sanctions from prisons rather than from cheaper parole and probation programs, and
- iii) the degree to which sanctions "work" rather than merely postponing an offender's entry to a secured institution.

<sup>18</sup>See, for example, Penelope Lemov's article in the December 1991 issue of *Governing*, "The Next Best Thing to Prison."

<sup>19</sup>As reported in the *State of Wisconsin Correctional System Development Plan*, December 1990, Chapter II., p. 4.

<sup>20</sup>The primary determinant of cost is the caseload per supervision officer, which can vary widely across programs. The Wisconsin Correctional System Review Panel suggested \$8,300 per offender for the new Division of Intensive Sanctions.



The Remington report (particularly Appendix 4) establishes the first point; there are many low-risk offenders currently in the system. To quote, "Between 1986 and 1990, the vast majority (72%) of the net growth in prison population was from the group of offenders who had no prior felony convictions." (p. 26) Additionally, of the offenders admitted on new sentences in 1990, 24 percent were drug offenders. "Over 60% of [these] drug offenders...had no prior felonies." (p.28) It is possible, though not obvious, that these offenders could be diverted into less costly sanctions.<sup>21</sup>

Intermediate sanctions are cheaper to administer than prison for a particular person. One reason intermediate sanctions look so attractive in some jurisdictions is that those offenders with the lowest risk to the community are assigned to the program. They are the individuals least likely to commit further offenses, as it is on this basis they are chosen for the program from among their peers. Thus, there is a limit to how extensively the programs can be utilized. We do not want to spend \$8,300 per year on intensive supervision when regular probation or parole (at a cost of about \$1,000) would have achieved the same results. This is point (ii) above.

Point (iii) describes the 'opposite' circumstance. It is possible that probation is not an effective deterrent to crime for some, though prison would be. In this case, the time on probation is 'wasted' in some sense; he or she will continue to commit crime until sentenced to prison, which triggers the end to illegal activity. It is also possible that some individuals will grow out of their affinity for committing crime. The latter conclusion is suggested by the well documented (negative) relationship between age and the rate of crime commission.<sup>22</sup> That is, as people grow older they commit fewer crimes. In this case, sentencing an individual to probation leaves him on the street while he is committing crime at a rapid rate, only to lock him up at the point at which he would naturally quit.

## B. Other Evidence

Because, as far as I am aware, there is no other available analysis of the Wisconsin probation system, some information for such an evaluation will necessarily come from sources outside the state. When analyzed in conjunction with the results of the characteristics of Wisconsin offenders presented above, it appears that probation sentences are reasonably meted out in Wisconsin.

### (1.) prisons

The research on the cost and benefit of incarceration shows that the 'return' to imprisonment is highly variable, depending on the rate at which the individual is committing crimes. A few offenders commit a large number of crimes, while many individuals commit a few crimes each. From the *1990 Wisconsin Prisoner Survey*, we learned that the mean (simple average) rate of crime commission is 141 per year, while the median rate (where half of offenders commit fewer and half more) is 12 per year.<sup>23</sup> Because the distribution of offense rates is so skewed, the evaluation of the benefit of incarceration depends upon the person considered. Prison makes economic sense for the highest rate offenders but not for low-rate offenders. Thus, the efficiency of the system hinges on the ability to differentiate among offenders by offense rate.

<sup>21</sup>One problem is that adequate drug treatment facilities are often available only to an imprisoned population. Therefore, if a judge wants to require that an offender receive treatment, he or she must sentence the offender to a prison term. Also, there is some evidence that treatment is more effective during incarceration.

<sup>22</sup>For a review of this literature, see Darrell Steffensmeier, Emily Anderson Allan, Miles D. Harer and Cathy Streifel, "Age and the Distribution of Crime," *American Journal of Sociology*, 1989.

<sup>23</sup>These calculations are likely overestimates of the true rate. For an explanation of the methodology, see John J. DiIulio, Jr. and Anne Morrison Piehl, "Does Prison Pay?" *The Brookings Review*, Fall 1991.

Selective incapacitation is a theory developed in the early 1980s suggesting that the same crime rate could be achieved using fewer tax dollars if we identified and incarcerated only those high-rate offenders.<sup>24</sup> The conclusion from a decade of literature on selective incapacitation is that it is difficult to identify high-rate offenders with information generally available to the criminal justice system.

One might expect that the probation/prison system could aid the process of identifying those who commit crimes at a high rate. For instance, consider two otherwise identical offenders arrested at the same time and sentenced to probation. The higher rate offender is more likely to continue committing crimes and may thus be more likely to be rearrested. Then we would expect that being a probation violator would be an indicator of a high offense rate. Yet we saw earlier that the social cost imposed by probation violators is indistinguishable from that of new admissions. In addition, probation violators are less likely to recidivate. Therefore, the preliminary evidence provided by this paper does not support the interpretation that violating probation indicates an individual is a high-rate offender.

### (2.) probation

Two sets of authors have looked directly at the costs of probation for a sample of burglars in Maricopa County, Arizona.<sup>25</sup> Haynes and Larsen found that probation costs more than prison, when the costs of probation include the costs of the crime, arrest, and sentencing for further crimes committed while on probation. Gray and Olson analyzed the same data and arrived at the opposite conclusion, finding a rehabilitative effect of a prison sentence, i.e., offenders sent to prison committed more crimes after their term than those on probation. Taken together, these two analyses show that results are sensitive to outliers (i.e., really high-rate offenders) and depend most on the frequency of high-rate recidivists and the extent of debilitation.

### (3.) intensive supervision programs

As part of the movement toward alternative sanctions discussed at the beginning of this paper, intensive supervision (in both probation and parole) has enjoyed some popularity. Results are in from some experiments, from which two conclusions emerge<sup>26</sup>:

- intensive supervision is more expensive than its traditional counterparts because of the increased administrative costs and due to the higher rate of observed technical violations, and
- intensive supervision seems to work better than traditional probation or parole, but the results are poor once an imprisoned population is diverted to the program.

<sup>24</sup>See Peter Greenwood with Allan Abrahamse, *Selective Incapacitation*, Report R-2815-NIJ, Rand Corporation, 1982.

<sup>25</sup>Peter Haynes and Clark R. Larsen, "Financial Consequences of Incarceration and Alternatives: Burglary," *Crime & Delinquency*, 1984 and Tara Gray, Clark R. Larsen, Peter Haynes and Kent W. Olson, "Using Cost-Benefit Analysis to Evaluate Correctional Sentences," *Evaluation Review*, 1991.

<sup>26</sup>See Joan Petersilia and Susan Turner, *Intensive Supervision for High-Risk Probationers: Findings from Three California Experiments*, RAND Corporation, December 1990.

### C. Assessment

This study has shown that probation violators are not more chronic offenders than the average Wisconsin prison inmate. In fact, probation violators receive shorter sentences than those admitted with new sentences. Probation violators are younger, less employable, and their crimes are more economically motivated.

Probation violators are less likely to return to prison, though it is impossible at this point to distinguish between an age-effect and a prison-effect. The fact that probation violators are no worse in terms of criminality than the average person on the street about to commit crime speaks well of the ability of the Wisconsin criminal justice system to sort out individuals.<sup>27</sup>

How one values economic relative to violent offenses will affect dramatically the interpretation of these results. Some feel that violent offenses are the worst kind, because of the harm they inflict on victims and on the fear instilled in the broader community. Others may argue that economic crimes such as theft and burglary undermine society's moral fabric and harm the business environment. It is useful to consider that society implicitly places values on crimes (more precisely, places value on avoiding crimes) by the sentences attached to these offenses. Thus, I interpret the economic offenses, with their attached shorter sentences, as less socially damaging. Therefore, an individual entering prison from probation is no 'worse' in terms of criminality than the average new admission to prison, and is actually less likely to return to prison for further offenses.

As discussed in the last section, the results from other research point out the difficulties in evaluating the experience of the 'average' inmate or probationer. They also show that there are limits to the applicability of various punishments to different offenders and argue in favor of a range of available sanctions. Some individuals offend at such a high rate that it would be very costly in social terms to supervise them in the community at any level of intensity. On the other hand, it saves the taxpayers money to have the half of probationers who do not recidivate serve their sentences in the community rather than behind bars. For example, an individual given a three year sentence who does not recidivate would cost \$27,000 if he spent one year in prison (at \$25,000) and two years on parole (at \$1,000) as opposed to \$3,000 for three years on probation.

## IV. CONCLUSIONS

The study of probation is pertinent to several fields of inquiry in addition to direct analysis of the social value of investing in the program. Careful consideration of such an alternative to incarceration is integral, for example, to the work assessing the costs and benefits of prison.<sup>28</sup> Another philosophical reason for assessing probation is raised by Wisconsin judge Ralph Adam Fine in his 1986 book *Escape of the Guilty*, in which he questions the efficacy of the practice of plea bargaining. He feels that plea bargaining undermines the justice system, though a compelling argument can be made that a reasonable and acceptable punishment is arrived at through the bargaining process. Understanding how probation operates as a punishment will shed some empirical light on this debate.

This preliminary report has pointed to many areas in which our understanding is lacking, and thus calls for further research. An obvious extension to this work is to analyze the data the DOC holds

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<sup>27</sup>Other evidence of sorting comes from a national study cited earlier. Langan and Cunniff found that offenders not recommended for probation in 1986 but sentenced to probation nonetheless were nearly twice as likely to be returned to prison. In addition, Wisconsin inmates released on mandatory parole rather than at the discretion of the Department of Corrections are more likely to return to prison. (Results available from the author.)

<sup>28</sup>See, e.g., DiIulio and Piehl.

on probationers. If information is available on the type of crimes and technical violations committed by those under supervision, it would be possible to calculate costs of readmitting these offenders to the correctional system.<sup>29</sup> Information following offenders over time through the different systems of supervision would be useful for answering different sorts of questions, for example, the long-term effects of various sanctions. It will be difficult to obtain corroborating data from self-reports for logistical reasons and lower likelihood of free yet supervised individuals acknowledging their criminal activities. Another promising source of information for the future is the new Division of Intensive Sanctions (DIS). If the program is unsuccessful at diverting prison populations into community supervision, program results could give some insight into the effectiveness of probation. A comparison of the experiences of those sentenced directly from DIS with those sent by the parole board will be interesting, yet possible only if the program is large enough and records a broad range of information.

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<sup>29</sup>An excellent place to begin is with Billy L. Wayson and Gail S. Funke, *What Price Justice?* National Institute of Justice Research Report, August 1989.

## DATA APPENDIX

Table I contains some averages from the 1990 Wisconsin Prisoner Survey. An asterisk (\*) denotes that the supervised sample is statistically significantly different from the non-supervised sample at the five percent level. In the survey, "supervised" indicates that the (male) inmate responded that he was on either parole or probation during the month in which he was last arrested.

TABLE I. 1990 WISCONSIN PRISONER SURVEY: MEANS

|                        | Not<br><u>Supervised</u> | <u>Supervised</u> |
|------------------------|--------------------------|-------------------|
| observations           | 197                      | 148               |
| age (years)            | 34                       | 31 *              |
| age at admission       | 30                       | 25 *              |
| black                  | 34%                      | 28%               |
| working at arrest      | 55%                      | 43% *             |
| in maximum security    | 40%                      | 33%               |
| high school graduate   | 59%                      | 47% *             |
| did drug crimes        | 29%                      | 32%               |
| hired a lawyer         | 31%                      | 16% *             |
| criminal take (median) | \$8,863/year             | \$3,415/year      |
| wages (\$/hour)        | \$ 7.61                  | \$6.83            |

*Note: Asterisk (\*) indicates the two columns are statistically significantly different at the five percent level.*

Of the 345 men who answered the question on the survey, 148 reported that they were under community supervision (probation or parole) during the month in which they were last arrested. The comparisons in the table above are for those men relative to the 197 who reported not being under supervision. The supervised population is younger, less likely to have been employed, less likely to have been high-school graduates, and less likely to have hired his own lawyer to defend him against the charges for which he was serving time.

In the other comparisons the two groups are statistically equivalent: likelihood of being black, likelihood of committing drug offenses, and wages for those employed.

The variable "criminal take" is the sum of the amounts inmates said they made from engaging in various types of crimes. The way it was constructed makes it likely to be an overestimate of the amount actually earned from crime. Note that there is a lot of variation in this measure, that is, some people made a great deal of money while many earned just a small amount. This variation makes it impossible to conclude that, in a statistically reliable sense, supervised individuals made less than those not supervised.

Table II reports data from the Department of Corrections sample of all persons admitted to the Wisconsin prison system during the 1980s. It shows the averages of a number of variables for three groups of men: those with new sentences for new crimes, probation violators, and parole violators. The lower panel shows means of the same variables for women with new sentences for new crimes and probation violators. The comparison for women only makes sense for these two groups, as the number of parole violators is so small. An asterisk (\*) indicates that the number in the column is statistically significantly different from the number in the column to its left.

This table gives a consistent picture of the differences between the supervised and non-supervised samples. For men, probation violators are again younger than those who were unsupervised and also younger than parole violators. They are also less likely to have had penal experience prior to this sentence: 25 percent of men serving time for new crimes who were not supervised at the time had prior penal experience, 16 percent of probation violators, and 28 percent of parole violators. Probation violators were more likely to commit economic offenses such as robbery and fraud, less likely to commit violent offenses such as assault and homicide, and less likely to be convicted sex offenders. Probation violators also received the shortest sentences. Probation violators and those with new sentences have similar average education profiles, both in terms of highest grade attended and in tested educational achievement. The proportion non-white is also similar across the two groups.

Among women the same pattern arises. Somewhat fewer of the differences are statistically significant, which is to be expected with the smaller samples. Note particularly that probation violators are younger, their crimes are more likely economic in nature, and their sentences are shorter.

TABLE II. DOC DATA: MEANS

|                             | <u>New<br/>Sentence</u> | <u>Probation<br/>Violator</u> | <u>Parole<br/>Violator</u> |
|-----------------------------|-------------------------|-------------------------------|----------------------------|
| MEN:                        |                         |                               |                            |
| observations                | 11,073                  | 6,382                         | 1,348                      |
| age at admission            | 27.7                    | 25 *                          | 26 *                       |
| highest grade completed     | 11.39                   | 11.44                         | 11.34                      |
| tested grade level          | 7.81                    | 7.86                          | 7.85                       |
| non-white                   | 36%                     | 36%                           | 36%                        |
| admission sentence (months) | 466                     | 102 *                         | 296 *                      |
| prior penal experience      | 25%                     | 16% *                         | 28% *                      |
| prior felony conviction     | 70%                     | 58% *                         | 70% *                      |
| terms eventually served     | 1.2                     | 1.2                           | 1.9 *                      |
| economic offense            | 54%                     | 68% *                         | 67%                        |
| violent offense             | 18%                     | 6% *                          | 11% *                      |
| sex offense                 | 17%                     | 8% *                          | 9%                         |
| miscellaneous offense       | 12%                     | 17% *                         | 12% *                      |
| WOMEN:                      |                         |                               |                            |
| observations                | 868                     | 473                           |                            |
| age at admission            | 29.4                    | 28 *                          |                            |
| highest grade completed     | 11.53                   | 11.46                         |                            |
| tested grade level          | 8.39                    | 8.44                          |                            |
| non-white                   | 43%                     | 48%                           |                            |
| admission sentence (months) | 306                     | 62 *                          |                            |
| prior penal experience      | 18%                     | 14%                           |                            |
| prior felony conviction     | 50%                     | 60%                           |                            |
| terms eventually served     | 1.1                     | 1.1                           |                            |
| economic offense            | 60%                     | 81% *                         |                            |

|                       | <u>New<br/>Sentence</u> | <u>Probation<br/>Violator</u> |
|-----------------------|-------------------------|-------------------------------|
| WOMEN: (cont.)        |                         |                               |
| violent offense       | 24%                     | 7% *                          |
| sex offense           | 4%                      | 2%                            |
| miscellaneous offense | 12%                     | 9%                            |

*Note: Asterisk (\*) indicates the two columns are statistically significantly different at the five percent level.*

Table III reports results from probit analyses of men and women who entered the prison system in the 1980s as either probation violators or with new sentences for new crimes. The analysis was performed on 10,743 men and 597 women. The variable being explained in this case is the probability of returning to prison. In this group, 26 percent of men and 12 percent of women released from prison during the 1980s returned by July 1990.

A negative number in the second or third column indicates that higher values of that variable act to lessen the probability of recidivism. The opposite is true for a positive value. The coefficients have been converted so they can be interpreted as probabilities. For example, a probation violator is 2.2 percent less likely to return to prison in Wisconsin than an offender who arrived under no correctional supervision. T-statistics for the original coefficients, which help in interpreting the reliability of these estimates, are in parentheses. An asterisk (\*) indicates that the effect is statistically significant at the five percent confidence level.

The table includes many variables that appear in the tables above. The non-white variable is 0 if the offender is white, 1 if he or she is of another race (mostly black in this sample). Likewise, the offense indicators take on the value 1 if the inmate was convicted of an offense which falls into that category. Many offenses can be in more than one category, for example robbery is both economic and assaultive and rape is both a sex offense and an assaultive one. Miscellaneous offenses include arson and disorderly conduct.

The probit models show that people with the following characteristics are more likely to be readmitted to prison during the sample period: youth, lower test scores, prior penal experience, and economic (as opposed to assaultive) crimes. Male probation violators are less likely to return to prison a second time than those who enter with new sentences, controlling for those other attributes. The statistical model controls for the amount of time prior offenders are on the street, in a sense giving each individual an equal chance at being arrested for committing another offense. This prevents us from drawing conclusions based solely on opportunity.

TABLE III. PROBITS USING DOC DATA

| <u>VARIABLE</u>          | <u>MEN</u>         | <u>WOMEN</u>      |
|--------------------------|--------------------|-------------------|
| intercept                | 0.454*<br>(12.56)  | .178<br>(1.03)    |
| age at admission (years) | -.021*<br>(10.04)  | -.008<br>(0.70)   |
| age squared              | .0002*<br>(6.74)   | .00004<br>(0.21)  |
| tested grade level       | -.006*<br>(5.29)   | -.007<br>(1.56)   |
| non-white                | .010<br>(1.325)    | -.037<br>(1.37)   |
| prior penal experience   | .054*<br>(4.76)    | .032<br>(0.93)    |
| prior felony experience  | .018*<br>(4.81)    | .017<br>(1.65)    |
| economic offense         | .028*<br>(2.74)    | -.004<br>(0.10)   |
| sex offense              | -.019<br>(1.36)    | .032<br>(0.49)    |
| miscellaneous offense    | -.029*<br>(2.67)   | -.015<br>(0.44)   |
| assaultive offense       | -.056*<br>(6.62)   | -.038<br>(1.14)   |
| drug offense             | -.079*<br>(5.63)   | -.041<br>(0.909)  |
| months on the street     | -.0002*<br>(36.64) | -.0002*<br>(5.90) |
| probation violator       | -.022*<br>(3.09)   | .005<br>(0.197)   |

*Note: Changes in probability are calculated at the mean. T-statistics of the probit  $\beta$  parameters are in parentheses.*

The results are stronger for men than for the sample of women. This is largely due to the small number of women admitted to prison in the 1980s and the fact that many of the women were admitted near the end of that period and thus had little opportunity for recidivism.

Other results which are not reported but are available from the author show that these conclusions are generally unchanged if (i) run on a sample of only those without prior penal experience, (ii) run on all admissions to the prison system, not just those who have committed new crimes, and (iii) run on a subsample of only burglars. This robustness to the choice of sample raises the confidence placed in the estimates. Consistently, young economic offenders with less educational achievement are more likely to return to prison for another term. Non-white offenders are more likely to recidivate in some specifications but not in others. Male probation violators are less likely to recidivate, while female probation violators show no difference in return probabilities from other offenders.



# ABOUT THE INSTITUTE

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The Wisconsin Policy Research Institute is a not-for-profit institute established to study public policy issues affecting the state of Wisconsin.

Under the new federalism, government policy increasingly is made at the state and local level. These public policy decisions affect the lives of every citizen in the state of Wisconsin. Our goal is to provide nonpartisan research on key issues that affect citizens living in Wisconsin so that their elected representatives are able to make informed decisions to improve the quality of life and future of the State.

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