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The *Wisconsin Defender* welcomes all comments and suggestions for articles. Please submit your comments and article suggestions to Gina Pruski at the address below.

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From the Editor...

I would like to first thank everyone who responded to the *Wisconsin Defender* survey I recently e-mailed to you all. I was pleased with the response rate and, while I have not yet tabulated the results, the surveys appear to provide a lot of useful suggestions. Please know that every comment and suggestion will be considered as the SPD continues to work to improve the *Wisconsin Defender*.

In this issue of the *Wisconsin Defender*, we highlight a few new developments at the Department of Corrections. First, "Earned Release Program: An Overview of the Eligibility Criteria and Program" on **page 4** provides detailed information about the Earned Release Program, which was created in the state's most recent budget.

In addition, information about the Challenge Incarceration Program (boot camp) is on **page 16**. The boot camp, currently available at St. Croix Correctional Facility, is being expanded to Black River Correctional Facility.

Information about the contracts recently signed by the Department of Corrections and several Wisconsin county jails is also included in this issue. These contracts will allow many inmates who are serving their time outside the state to return to Wisconsin facilities.

Finally, trial attorneys will want to read "Appellate News" on **page 10**. Detailed information about perfecting an appeal in the types of cases handled by the SPD is provided there.

Correction: The Spring 2003 issue of the *Wisconsin Defender* (on page 9) mistakenly indicates that the state bond book is written by the Judicial Council. The state bond book is in fact written by the Judicial Conference (not Council).

Agency Mission

To enhance the quality of justice throughout Wisconsin by providing high quality, compassionate, and cost-effective legal representation; protecting the rights of the accused; and advocating as a criminal justice partner for effective defender services and a fair and rational criminal justice system

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Earned Release Program: An Overview of the Eligibility Criteria and Program

By: Tony Streveler*

INTRODUCTION

The 2003-2005 state budget, Wisconsin Act 33, included the creation of an Earned Release Program within the Wisconsin Department of Corrections, Drug Abuse Correctional Center (DACC). This provision of the budget act became effective July 26, 2003, and applies to certain inmates within the adult correctional system and those sentenced on or after the effective date of the act. As proposed by the Governor and adopted by the Legislature, the Earned Release Program will be another tool for the judiciary to provide certain offenders an incentive to actively participate in an intensive alcohol and drug treatment program designed to reduce the incidence of future criminal behavior. The program is designed to be another sentencing option to promote public safety while holding the offender accountable.

Only those offenders who are sentenced to prison will be eligible for the Earned Release Program. The judge at sentencing determines initial eligibility for the program. The program was proposed and adopted as part of a larger set of initiatives in the state budget to control Wisconsin's prison population. While the program is projected to save taxpayer dollars through reduced use of prison bed space, the primary focus of the program will be on public safety, offender accountability, and successful rehabilitation.

Offenders sentenced under the program will be incarcerated initially as they are with the current boot camp program (**See "Challenge Incarceration Program: An Overview" on page 16**). Ultimate participation in the DACC program will be limited to those eligible offenders who demonstrate good behavior within prison. Offenders transferred to the DACC program will be held to high standards in the program, which will include high intensity, evidence-based residential alcohol and drug treatment. If the standards are not met, the offender will be returned to the prison population to serve out the remainder of his or her sentence. Consistent with the principles of Truth in Sentencing and the procedure that exists for boot camp eligibility under current law, only the judge at the time of sentencing can make the determination that the offender is eligible for the Earned Release Program.

While the DOC expects the focus of the program to be on non-assaultive, non-violent offenders, it will be judges who ultimately determine who is eligible for the program, within the limitations prescribed by the legislature. Once the program is fully operational, it will have the capacity to accommodate approximately 400 offenders per year. Because it is a new program, DOC will be establishing standards and measurements to effectively evaluate the program in the future. The program will include a reintegration planning and post-release supervision component that will be carried out by the Division of Community Corrections. It is anticipated that the Earned Release Program will experience a phased-in implementation schedule, with the first group of offenders beginning programming in March of 2004.

The DOC has established a cross-departmental, multi-agency team to develop and implement the program. As part of this process, DOC obtained input from representatives of the judiciary, district attorneys, public

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defenders and victim advocacy agencies. The following includes a brief summary of the legislation and specific criteria that will be used by the DOC in completing Pre-Sentence Investigations (PSIs) and making recommendations for Earned Release Program eligibility as well as criteria that will be used to approve inmate requests to petition the court for consideration for program eligibility. It is anticipated that more detailed and procedural information will be forthcoming

SUMMARY OF THE LAW

Eligibility

Pursuant to section 302.05(3)(a), Stats., offenders sentenced for crimes under Chapter 940 and certain crimes under Chapter 948 (948.02,948.025, 948.03, 948.05, 948.055, 948.06, 948.07, 948.075, 948.08 or 948.095) are not eligible for the program. These exclusionary convictions are the same as those for the Challenge Incarceration Program. (**See "Challenge Incarceration Program: An Overview" on page 16**) There is no age limitation and the program will be available to both male and female offenders.

Offenders Sentenced On or After July 26, 2003

PSI writers are required to make a recommendation regarding the Earned Release Program for those offenders sentenced on or after July 26, 2003.

The court makes a determination of eligibility at the time of sentencing.

Following determination by the court and admission to the Wisconsin Prison System, the department applies placement and prioritization criteria to determine when the inmate is appropriate for placement into the program.

The court places offenders who successfully complete the program on Extended Supervision within 30 days of receiving a completion notice from the DOC. (This is the same process as for the Challenge Incarceration Program). The court shall modify the inmate's bifurcated sentence by reducing the confinement part of the sentence and lengthening the extended supervision, resulting in no change in the total sentence.

Offenders Sentenced Prior to July 26, 2003[1]

TIS offenders sentenced prior to the effective date of Act 33 may petition the court for endorsement of participation in the Earned Release Program provided they meet the statutory requirements and have the approval of the DOC. The court shall exercise its discretion in granting or denying the offender's petition but must do so no later than 90 days after receiving the petition.

Non-TIS offenders may be considered for participation with the approval of the DOC provided they meet the statutory requirements and are eligible for parole.

The DOC may place Intensive Sanctions offenders in the Earned Release Program provided they meet the statutory requirements. These inmates, however, are not eligible for early release.

DOC IMPLEMENTATION CRITERIA

The following are DOC implementation criteria that will be used to make recommendations to the court for eligibility for the program. No inmate will be placed into the Earned Release Program without the sentencing court's determination that the offender is eligible for the program. However, like the Challenge Incarceration

Program, the DOC maintains responsibility, following determination of eligibility, for managing waiting lists and determining priority placements into the program, based on bed availability and inmate custody criteria.

Criteria

The court must determine that the offender is eligible for participation in the program as articulated in the Judgement of Conviction. Offenders who are considered eligible for the program must be deemed by the sentencing court to be prison-bound for sentencing purposes. The Community Corrections Agent assigned to complete a PSI, if ordered, will apply the legal and DOC implementation criteria when providing a recommendation to the court regarding the offender's eligibility to participate in the program.

Rationale

This is consistent with section 302.05(3)(a)2., Stats.

Criteria

Inmates must have an identified substance abuse treatment need, which may include a history of prior community AODA treatment or significant alcohol and/or other drug abuse, and have a nexus of criminal behavior and substance abuse.

Rationale

The intent of the law is to provide intensive AODA treatment to inmates who present with a substance abuse addiction or abuse need combined with criminal behaviors. AODA is a primary problem with criminal behavior inextricably linked to maintaining or continuing the substance abuse or addiction.

Criteria

Inmates must have a bifurcated sentence imposed under s. 973.01 (TIS) and have a sentencing date on or after July 26, 2003.

Rationale

At this time, the DOC will implement the program prospectively (i.e. for TIS sentences on or after July 26, 2003). Inmates convicted under a non-TIS sentence will not be eligible for the Earned Release Program, but can be considered for early release by the Parole Commission.

Criteria

Inmates cannot have previously served adult prison time for a violent or assaultive crime (i.e. the crimes exluded under section 302.05(3)(a)1., Stats.) even if the time for the prior conviction has been completely served.

Rationale

Applying previous convictions for assaultive or violent crimes attempts to address the issue of inmates who currently meet eligibility criteria but have serious assaultive and violent criminal conviction histories.

Criteria

Inmates cannot be facing, at time of sentencing, a conviction for an offense involving a weapon, (i.e. endangering safety by use of dangerous weapon, possession of a firearm, carrying a concealed weapon).

Rationale

The program is intended for non-violent, non-assaultive offenders.

BRIEF OVERVIEW OF PROPOSED TREATMENT PROGRAM

The following provides a general overview of the primary components of the program. Note that the Earned Release Program location, design and components for female offenders are currently under development.

Program Capacity: Assuming full capacity, the DACC will have up to 244 Earned Release beds available.

Program Length: 6 months of intensive residential programming.

Program Hours: Total of 35 hours of structured activity per week (7 hours per day, Monday through Friday) of which a minimum of 30 hours is spent in intensive AODA treatment.

Program Tracks: The following three specific intensive drug and alcohol program tracks will be offered to Earned Release Program offenders:

1. *Social Skills Approach Core Component*: Communication and social skills training, rational behavior training, intensive AODA education/dependency treatment, AODA relapse prevention, adult children of alcoholics and family dysfunction, corrective thinking, interpersonal skills and values clarification.

- Offender Alcohol and Drug Usage Pattern – Alcohol primary; although may have used marijuana, amphetamines, barbiturates, early cocaine. No injection drugs.

- AODA Treatment Experience – Prior AODA treatment experience. Limited social skills may have influenced treatment experience.

- Offender Attitude Toward Treatment – Accepting or mixed; may minimize the need.

- Predatory Nature of the Offender – Typically non-predatory. Tends to be a follower. Limited social skills; demonstrates lack of common sense.

- Level of Criminal Sophistication – Crimes not sophisticated; often occur due to lack of common sense or limited social skills. Criminal activity often occurs following intoxication or gets intoxicated to get courage to do the crime. Crimes often unplanned.

- Assaultive and Controlling Characteristics – Typically becomes intoxicated first then assaultive or aggressive. Tends to keep frustrations in, then becomes intoxicated and releases emotions via violence. Limited social skills may adversely influence appropriate ways to deal with emotions.

2. *Cognitive-Behavioral Approach Core Component*: Intensive AODA education/abuse education and treatment, AODA relapse prevention, rational behavior training, criminal thinking, interpersonal relationships, employment readiness.

- Offender Alcohol and Drug Usage Pattern – Alcohol and/or illicit drugs which may include injection drugs. Increasing criminal attitude may have influenced treatment.

- AODA Treatment Experience – Prior AODA treatment experience or prior treatment recommended that was refused or avoided.

- Offender Attitude Toward Treatment – Accepting or mixed acceptance; may minimize the need.

- Predatory Nature of the Offender – Developing predatory features. Limited concern for others. Domestic violence or relationship issues tied with cognitive power and control over another person. May use physical, emotional, financial or intellectual force to control others.

- Level of Criminal Sophistication – Increasing in criminal sophistication and leadership. Developing career criminal characteristics. Would likely do the crime whether intoxicated or not.

- Assaultive and Controlling Characteristics – Assaultive/aggression displayed. Attempts to show power and control over others.

3. *OWI 5th Offense Core Component*: Intensive AODA education/dependency and addiction treatment, AODA relapse prevention, modification of high risk and thrill seeking behavior, interpersonal relationships, rational behavior training, responsible decision making, and community service.

Reintegration Program Component: The Earned Release Program will include an intensive "reach-in" community reintegration component. This component of the program will cover basics such as securing a social security card and a form of identification, working with the family and formal community support linkages, finding employment and appropriate housing, prior to the inmate's successful completion of the program and release to the community. The core of the reintegration process, starting at admission to the program, will focus on developing a comprehensive reintegration plan that addresses all critical success factors (housing, employment, social support, treatment, and supervision), while actively engaging the inmate, the inmate's family and community support network in an effort to better prepare the inmate for successful release and reintegration into the community. Victims and their family members who are enrolled with the DOC will be provided notification upon entry and prior to release from the Earned Release Program.

Program Evaluation: The treatment interventions and program design will be predicated on evidence-based research and standards set forth in the area of correctional alcohol and drug treatment. Specific program goals and objectives as well as outcome measures will be included in the overall program design. The DOC will conduct content and outcome measures over time to document the overall effectiveness of the program.

Endnotes

[1]For purposes of initial implementation of the program, the DOC will be implementing this law prospectively from the effective date of the law. In other words, inmates who were sentenced before July 26, 2003 will not be considered for the program at this time. ■

ASSIGNED COUNSEL DIVISION NEWS

SPD Private Bar Advisory Committee Raises Issues and Gets Answers

The recently created Private Bar Advisory Committee has raised issues that are important to private practitioners taking public defender appointments. The committee is made up of members appointed by the Criminal Law Section of the State Bar and WACDL. All members are also active members of the private bar panel.

Although the committee has only had three meetings, their work has already paid off. The committee recommended that the SPD offer more low cost/no cost training. In response, the SPD mailed out conference discount coupons to the 250 most active private bar members. Replays of the Truth in Sentencing training cost only $30 for those attorneys who have taken 20 or more cases in 2003. Other training scheduled for 2004 will likewise be offered at low or no cost. A training program is being designed for the private bar on how to represent other lawyers in OLR grievances. This program came in response to concerns from the committee about dealing with OLR grievances filed by public defender clients.

Other issues raised by the committee are projects in progress. Providing an SPD listserv or forum is under development. The SPD has had preliminary discussions with the State Bar about a "basics of criminal practice" training seminar for new attorneys. The agency continues to work on the ongoing problems with collect calls. A number of issues regarding misdemeanor contracts have been raised and will be addressed next Spring when the contracts are renewed.

If you want to learn more about the work of the committee, check the SPD website **http://www.wisspd.org**. Minutes of each meeting are posted and contact information for committee members is available. ■

NEWS BRIEFS

State Agreements with County Jails Will Help Bring Some Inmates Back to Wisconsin

Department of Corrections and eleven county sheriffs have reached agreements to house state prisoners. These agreements will allow an additional 250 inmates to return to Wisconsin from out of state prisons in 2004.

The Department will contract for bed space in Florence, Forest, Langlade, Sheboygan, Manitowoc, Outagamie, Vilas, Oneida, Winnebago, Columbia and Waushara counties for a total of 491 jail beds. Currently, the Department of Corrections has contracts with five Wisconsin counties for jail beds: Columbia, Manitowoc, Oneida, Outagamie, and Vilas totaling 210 beds. The Department will be paying the counties $49.96 per inmate per day under the new contracts.

In addition, these new contracts contain provisions allowing the Department of Corrections to establish a new transition pilot project in two counties. The Department, in consultation with the sheriff, would move an inmate to a county jail six months prior to their release from prison. Probation and parole agents would work with law enforcement, community resources and the offender's family to promote a successful transition into the community. ■

WEBSITE OF THE MONTH

http://www.wi-doc.com/index.htm

In this issue of the *Wisconsin Defender*, we feature the Wisconsin Department of Corrections' website. The DOC's website contains a wide variety of information about the DOC and its operations. From the homepage, you can click on one of several specific sections, such as Juvenile Corrections or Community Corrections, for more detailed information about that topic.

Each section contains contact information for the division offices in Madison. The Community Corrections section also contains addresses and phone numbers for all of the DOC's regional and local offices. The Adult Institutions section has links to specific information about each of the prisons, correctional centers, and correctional facilities. The Juvenile Corrections page includes links to information about all of the juvenile facilities, as well as descriptions of various juvenile programs. One new feature is the Wisconsin Youth Mentoring Program Directory.

Announcements of the latest DOC programs, grants and initiatives are located in the News Release portion of the website. In the Special Reports section it is possible to find the cost per inmate per day at each of the correctional facilities, weekly institution population details, and many other detailed reports created by the Department. Items under Related Topics include the DOC's administrative code and links to additional federal and state corrections-related websites.

Thank you to Peter Anderson, Training Officer for the SPD, for this issue's featured website. ■

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APPELLATE NEWS

Perfecting Appeals in Wisconsin Public Defender Cases

The following is intended to provide trial level attorneys with the information necessary to perfect an appeal in the types of cases handled by the Wisconsin State Public Defender (SPD). In most instances, the trial attorney must file a "Notice of Intent to Pursue Postconviction [or Postdisposition] Relief (NOI) or a Notice of Appeal (NOA). No appeal can proceed unless a written judgment or order has been entered. A judgment or order is deemed "entered" when it is filed in the clerk's office. Except in certain extraordinary circumstances, the clerk's file-stamp date is controlling. This date may or may not be the same date the judgment or order was signed by the judge. A premature NOI is insufficient to perfect an appeal. Note, too, that the circuit court may take certain actions listed in Wis. Stat. § 808.075 after an appeal has commenced (e.g. bail or sentence credit issues).

Case Type: Criminal Convictions
Method of Appeal: NOI
Procedure: Appeal is commenced by filing a NOI with the clerk of courts of the county of conviction within 20 days after the date of sentencing [or entry of a final order in non-criminal NOI cases]. The prosecutor and any other party to the action must be served. *See* Wis. Stat. Rule 809.30(2)(a). Content of the NOI must comply with Rule 809.30(2)(b). The NOI must include a statement on whether trial counsel was appointed by the SPD and whether the person's financial circumstances have materially changed since the initial eligibility determination. Trial counsel should send a file-stamped copy of the NOI, along with a completed SPD Appellate Questionnaire, to the Madison Appellate Office as soon as practicably possible but in all instances within a week after filing the NOI. If NOI is properly filed by trial counsel, the clerk of courts will supply the SPD Appellate Division with the rest of the information necessary to appoint appellate counsel. If a defendant timely requests an appeal, but trial counsel fails to file a NOI within the 20-day time limit, trial counsel must file a motion to enlarge the time for filing a NOI. The motion must be filed in the court of appeals. *See* Rule 809.82

Case Type: Sentencing After Revocation
Method of Appeal: NOI
Procedure: Same as above—NOI filed within 20 days of entry of sentencing order. Only sentencing issues may be raised on appeal. *See State v. Drake*, 184 Wis. 2d 396, 515 N.W.2d 923 (Ct. App. 1994).

Case Type: Ch. 938 Juvenile Dispositions
Method of Appeal: NOI
Procedure: Rule 809.30(2)(a) Notice of Intent to Seek Postdisposition relief should refer to "juvenile," not "defendant." Otherwise, same procedure as "Criminal Convictions" above.

Case Type: Juvenile Waiver (or reverse waiver)
Method of Appeal: Petition for Leave to Appeal
Procedure: Appeal of a juvenile waiver is a permissive (interlocutory) appeal under § 808.03(2). *See State ex rel. A.E. v. Green Lake County Cir. Ct.*, 94 Wis. 2d 98 (1980) (Per Curiam S. Ct. opinion "urge[s]" the court of appeals to accept review in such cases). Same as other permissive appeals—Petition must be filed within 14 days after entry of the order you want to appeal.

Case Type: CHIPS
Method of Appeal: NOI
Procedure: See "Juvenile Dispositions" above—NOI within 20 days after entry of final order.

Case Type: Termination of Parental Rights

Method of Appeal: NOI
Procedure: Notice of Intent to Appeal must be filed within 30 days *after* the date of entry of judgment or order you want to appeal. § 808.04(7m). The **30-day deadline is non-extendable**. NOI requirements for a TPR appeal are found in Rule 809.107(a).

Case Type: Ch. 51 and 55 Commitments or Orders for Forced Meds. or Treatment
Method of Appeal: NOI
Procedure: Rule 809.30(2)(a) Notice of Intent to Seek Postdisposition relief. Otherwise, same procedure as "Criminal Convictions" above. Unless a commitment order and order for forced medication or treatment are imposed at the same time, they must be appealed separately.

Case Type: NGI
Method of Appeal: NOI
Procedure: Same as "Criminal Convictions" above except NOI to seek postdisposition relief filed within 20 days after entry of final order. The same applies for appeal from denial of petitions for conditional release or termination under §§ 971.17(4) or (5).

Case Type: Permissive or Interlocutory Appeals
Method of Appeal: Petition for Leave to Appeal
Procedure: Appeals from all non-final judgments or orders require permission from the court of appeals [Final orders appealable as a matter of right are defined in § 808.03(1)]. It is trial counsel's responsibility to file a Petition for Leave to Appeal in the court of appeals. *See* § 808.03(2) and Rule 809.50. The Petition must be filed within 14 days after the entry of the order you want to appeal. Oral orders must be reduced to writing. An order is not "entered" until it is signed and filed. Requirements for PLA are found in Rule 809.50. If the Petition is denied, the decision is not subject to review. If the Petition is granted, you should **contact the Madison Appellate Office Intake Unit immediately**. Ordinarily, a permissive appeal is litigated by the trial attorney unless the appellate division agrees to take the case.

Case Type: Probation or Parole Revocations
Method of Appeal: Admin. Appeal; Certiorari; NOA
Procedure: Trial counsel is responsible for representation through final hearing, administrative appeal, and Writ of Certiorari in the circuit court. If a Writ is denied, the appeal is governed by the rules of civil procedure [NOI does *not* perfect a civil appeal]. NOA must be filed within 90 days of the entry of the final, written order determining the petition for the Writ (unless Written Notice of Entry of Final Judgment is entered within 21 days of the final order, in which case NOA must be filed within 45 days).This deadline is non-extendable.There is no right to counsel in certiorari appeals. **Do not file a Notice of Appeal from the order denying a revocation certiorari petition unless directed by the Appellate Division to do so**. Requests to appoint counsel to appeal in Milwaukee County cases should be sent to the FA in the Milwaukee Appellate Office; all others should be sent to the Madison Appellate Office Intake Unit. Because of the short time limits, trial counsel who wants to appeal should immediately forward to the appropriate appellate office all documents relevant to the appointment decision, including: the Revocation Warrant and Summary, the decision of the ALJ, the decision of the administrator on administrative appeal, the writ of certiorari, any brief filed on the writ, the circuit court order deciding the writ, and any other information helpful to the appointment decision. Trial counsel should also inform the Appellate Office whether a Written Notice of Entry of Final Judgment was entered.

Case Type: Extended Supervision (ES)Revocation (TIS cases)
Method of Appeal: NOI orAdmin. Appeal; Certiorari; NOA
Procedure: Because ES revocation results in entry of an amended judgment, Truth-in-Sentencing Extended Supervision revocation **sentences** are appealed by filing a NOI under Rule 809.30. See "Criminal Convictions" above—NOI filed within 20 days of entry of amended judgment. This procedure applies to

sentences from revocation actions **commenced after February 1, 2003**. Appeal of the revocation itself or appeal of sentences from ES revocation actions commenced prior to that date, occurs by means of administrative appeal, writ of certiorari, and NOA—same as "Parole or Probation Revocations" above.

Case Type: Ch. 980 SVP Proceedings
Method of Appeal: NOA (Refer to Appellate Division)
Procedure: Chapter 980 appeals are governed by civil rules of appellate procedure. **Do not file a NOI.** If a Ch. 980 client decides to appeal, **trial counsel should contact the Madison Appellate Office Intake Unit *immediately* after the verdict or the court's decision in a case tried to the court**. Trial counsel should provide the following information: name, number and county of the case; client's DOB; client's address; the SPD appellate questionnaire; financial eligibility information; date verdict was rendered; judgment date and name of judge; commitment order, date of filing and whether Written Notice of Entry of Judgment was entered; any materials received from the clerk's office, and dates and court reporters for court hearings (if known). Because Ch. 980 cases are civil appeals, in jury cases trial counsel must file a post verdict motion raising all issues to be raised on appeal. Failure to include an issue in a post verdict motion could result in waiver of that issue for appeal, even with an on-the-record objection at trial. A post verdict motion must be filed and served within 20 days after the verdict, although the court may enlarge this time. *See* Rule 805.16(1). This time limit is jurisdictional. In cases tried to the court, the equivalent of the post verdict motion is a motion to reconsider. *See* Rule 805.17 (3). A motion to reconsider must be filed no later than 20 days after the court renders its judgment. Motions not decided within 90 days of the verdict or court's decision are deemed denied and judgment is entered. *See* Rules 805.16(3) and 805.17(3). Trial counsel should contact the Madison Appellate Office Intake Unit immediately after any motion is decided and provide a copy of the motion, date of filing and copy of any order entered. In all cases, NOA must be filed within 90 days after entry of the final order (45 days if Notice of Entry of Judgment is properly filed and served). **This deadline is non-extendable**. *See* § 808.04. **Once a post verdict motion has been decided or judgment or final order is entered, trial counsel should *immediately* contact the Madison Appellate Office Intake Unit. Trial counsel should not file a NOA unless the deadline is imminent or unless directed to do so by the Appellate Division First Assistant**.Persons committed under ch. 980 have the right to appellate counsel to appeal from the denial of a petition for supervised release [§ 980.08] and of the first petition for discharge [§ 980.09]. Appointment for appeal of subsequent petitions under § 980.10 is discretionary. In all supervised release or discharge appeals, forward the order denying discharge or release to the appropriate appellate office *immediately*. The same time limits listed above apply.

Case Type: State's Appeal
Method of Appeal: NOA (Refer to Appellate)
Procedure: Under circumstances listed in § 974.05 and Chs. 48 and 938, the state must file a NOA within 45 days after the entry of the order or judgment it wants to appeal. *See* § 808.04(4). In all state appeals, trial counsel should **contact the Madison Appellate Office Intake Unit immediately,** and fax or send a copy of the state's NOA and the order being appealed.

Case Type: Section 974.06 Motions
Method of Appeal: NOA
Procedure: Appeals from orders denying motions under § 974.06 are civil appeals. NOA must be filed within 90 days of entry of the order (45 days if Notice of Entry of Judgment is properly filed and served). This deadline is non-extendable. Ordinarily, both the motion and appeal are handled by a lawyer appointed by the SPD Appellate Division. There is no right to counsel for § 974.06 motions or for appeals from their denial. The Appellate Division makes a discretionary decision to appoint in each case. Requests for discretionary appointment should be sent to the First Assistant in the appropriate appellate office (Milwaukee Appellate for Milwaukee County cases and Madison Appellate for all other cases).

Case Type: Sentence Modification or Sentence Adjustment Motions
Method of Appeal: NOA
Procedure: SPD-appointed counsel may file a sentence modification or sentence adjustment motion only if it is timely filed as part of the direct appeal under Rule 809.30. Consequently, such motions are ordinarily handled by appellate counsel. NOA must be filed within 20 days of entry of the order denying the motion. *See* Rule 809.30(2)(j). Sentence modification motions filed at any other time are civil appeals—NOA filed within 90 days of entry of final order (45 days if Notice of Entry of Judgment is properly entered and served). *See* § 808.04. Note: A sentence modification motion filed under § 973.19 waives a defendant's right to a direct appeal of the conviction and sentence, and there is no right to counsel to file the motion—it is difficult to imagine a scenario where this would be a wise course of action.

Case Type: Contempt
Method of Appeal: NOI or NOA
Procedure: Contempt that is "prosecuted by the state" may be appealed by filing a NOI under Rule 809.30 within 20 days of entry of the contempt order. *See* § 785.03(3). Summary contempt (a punitive sanction imposed by the court for contempt occurring in the court's presence) is not "prosecuted by the state." Appeals from summary contempt orders are civil appeals governed by the non-extendable deadlines of § 808.04 (NOA filed within 90 days of entry of final order; 45 days if Notice of Entry of Judgment is properly filed and served). For summary contempt appeals where the client is the subject of the contempt order, you should forward a copy of the contempt order to the Madison Appellate Office as soon as practicably possible. If *you* are the subject of the contempt order, you should inform your supervisor and work with the Office of Legal Counsel in the Madison Administration office.

Case Type: Sentence Credit
Method of Appeal: NOI
Procedure: If sentence credit was requested, the credit issue was properly preserved and credit was denied before the entry of the judgment of conviction, the credit issue can be raised on direct appeal by filing NOI within 20 days after sentencing. *See* "Criminal Convictions" above. If sentence credit is sought at any other time under § 973.155, appeal is commenced by filing NOI to Pursue Postdisposition Relief within 20 days of entry of the order denying relief. *See* § 973.155(6).

Case Type: Review of Release Pending Appeal Order
Method of Appeal: Motion
Procedure: It is trial counsel's responsibility, in appropriate cases, to request release pending appeal from the circuit court and to seek review of orders denying release in the court of appeals. Review is accomplished under Rule 809.14 by filing a motion and supporting memorandum in the court of appeals within 21 days after the entry of the circuit court order regarding release. A detailed list of filing requirements is found in Rule 809.31(5). Trial counsel must order and provide necessary transcripts. Transcripts must be ordered within 7 days of the entry of the order regarding release.

Case Type: Appeal to Wisconsin Supreme Court
Method of Appeal: PFR
Procedure: An appeal to the Wisconsin Supreme Court from an adverse court of appeals decision is a permissive appeal, accomplished by filing a Petition for Review (PFR) in the supreme court. The PFR must be filed within 30 days of the date of the decision of the court of appeals. *See* Rule 809.62. **This is a non-extendable deadline**. It is the responsibility of counsel who provided representation in the court of appeals to file the Petition for Review. If no issue of arguable merit exists that fits the review criteria [*See* Rule 809.62], counsel must inform client of the no-merit petition for review option and file the petition if the client so requests. *See* Rule 809.32(4).

Case Type: Appeal to United States Supreme Court
Method of Appeal: Certiorari
Procedure: Appeal to the United States Supreme Court is accomplished by filing a Writ of Certiorari in the U.S. S. Ct. within 90 days after the entry of the Wisconsin Supreme Court decision to be appealed. There is no right to counsel for such writs. The Appellate Division makes a discretionary decision to appoint in each case. Requests for discretionary appointment should be sent to the First Assistant in the appropriate appellate office (Milwaukee Appellate for Milwaukee County cases and Madison Appellate for all other cases).

Case Type: Collateral Review
The types of extraordinary writs and collateral review procedures available in certain circumstances are too numerous and diverse to cover in detail in this document. All such litigation in SPD cases requires a separate discretionary appointment of counsel. Questions should be directed to the Trial or Appellate Division First Assistants. ■

LEGISLATIVE UPDATE

2003 Wis Act 49 http://www.legis.state.wi.us/2003/data/acts/03Act49.pdf
This act makes possession or attempted possession of methamphetamine a Class I felony. This act went into effect on September 3, 2003.

2003 Wis Act 50 http://www.legis.state.wi.us/2003/data/acts/03Act50.pdf
This act makes it a Class A misdemeanor to commit certain "peeping tom" offenses. *See* new sections 942.08 (2)(b), (c), and (d). A person convicted of or adjudicated delinquent for such an offense *may* be required to register as a sex offender if ordered by the court. The act also contains provisions related to expunging a delinquency adjudication or a conviction based on one of the peeping tom offenses. Specifically, the court *must* expunge a juvenile's delinquency adjudication if the peeping tom offense was the juvenile's first offense and he or she has complied with the dispositional order. Likewise, the court *must* expunge the record of a person's peeping tom conviction upon successful completion of his or her sentence if the person was under the age of 18 at the time of the offense. This act went into effect on September 5, 2003 and first applies to offenses committed on that date.

2003 Wis Act 51 http://www.legis.state.wi.us/2003/data/acts/03Act51.pdf
This act makes it second degree sexual assault (a Class C felony) for "correctional staff members" (defined as persons who work at a correctional institution, including volunteers) to have sexual contact or sexual intercourse with a person who is confined in a correctional institution. Likewise, it is second degree sexual assault for probation, parole, or ES agents to have sexual contact or sexual intercourse with persons they supervise. Consent is not an issue in these offenses. This act went into effect on September 5, 2003.

2003 Wis Act 52 http://www.legis.state.wi.us/2003/data/acts/03Act52.pdf
This act makes it a Class H felony for sex offenders to change their name while subject to the sex offender reporting requirements. Such an offense is a misdemeanor, however, if it is the person's first such offense *and* the offense for which the person is required to report was a misdemeanor. This act went into effect on September 5, 2003.

2003 Wis Act 53 http://www.legis.state.wi.us/2003/data/acts/03Act53.pdf
This act makes the following offenses Class H felonies: failure to register as a sex offender and violating the restrictions on establishing/changing residence. Such offenses are misdemeanors, however, if the offense for which the person is required to report was a misdemeanor *and* the person has not previously been convicted of failure to register/violating the restrictions on establishing/changing residence. This act went into effect on September 5, 2003.

2003 Wis Act 74 **http://www.legis.state.wi.us/2003/data/acts/03Act74.pdf**
This act increases the penalties for hit and run. Specifically, the act makes it a Class E felony if the accident resulted in great bodily harm to the person and a Class D felony if the accident involved death to the person. This act applies to offenses occurring on or after November 27, 2003.

2003 Wis Act 80 **http://www.legis.state.wi.us/2003/data/acts/03Act80.pdf**
This act makes failure to pay for gasoline or diesel fuel a Class D forfeiture and, depending on the number of prior offenses for the same offense, either permits or requires to the court to order a license suspension. This act went into effect on December 6, 2003.

2003 Wis Act 81 **http://www.legis.state.wi.us/2003/data/acts/03Act81.pdf**
This act allows county jails in Wisconsin to detain persons who are detained by a county jail in Michigan if the Michigan county borders Wisconsin.

2003 Wis Act 82 **http://www.legis.state.wi.us/2003/data/acts/03Act82.pdf**
This act requires dispositional orders in truancy cases to specify what constitutes a violation of the order and directs schools to notify the court and the agency supervising the juvenile of any violation of the order.

The act also requires a municipal court to open its records of a juvenile for inspection by parents/guardians/ legal custodians; juveniles (if 14 years old or older); third persons (with permission by the parent/guardian/ legal custodian or juvenile 14 or over); juvenile courts; other municipal courts; municipal court or juvenile court prosecutors; or an attorney or GAL for a party for purposes of proceedings in that juvenile or municipal court; or by a family court or an attorney or GAL in a family court proceeding for purposes of considering the custody of the juvenile.

The act also requires a juvenile court to open its records of a juvenile to a municipal court; prosecutors in municipal court; or attorneys or GALs for a party for purposes of proceedings in that municipal court. This act went into effect on December 6, 2003.

2003 Wis Act 87 **http://www.legis.state.wi.us/2003/data/acts/03Act87.pdf**
This act limits the recovery for damages for convicted felons who are injured while involved in the commission of a felony. This act went into effect on December 11, 2003.

2003 Wis Act 97 **http://www.legis.state.wi.us/2003/data/acts/03Act97.pdf**
This act prohibits a person from operating a motor vehicle, ATV, snowmobile, or motorboat or operating or going armed with a firearm if the person has a detectable amount of a “restricted controlled substance” in his or her blood. “Restricted controlled substance” is defined as a Schedule I controlled substance (other than marijuana) or controlled substance analog, cocaine, methamphetamine, or delta-9-THC.

The act provides a defense to prosecution in situations where the person has a valid prescription for methamphetamine, delta-9-THC, or GHB. This act applies to offenses occurring on or after December 19, 2003, but does not preclude the counting of prior convictions for purposes of sentencing or action by the DOT.

2003 Wis Act 104 **http://www.legis.state.wi.us/2003/data/acts/03Act104.pdf**
This act makes it a Class I felony to threaten to release or disseminate radioactive material, a toxic chemical, or a biological agent. This act goes into effect on December 30, 2003. ■

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Challenge Incarceration Program: An Overview

By: Timothy A. Nelson*

The mission of the Challenge Incarceration Program is to provide inmates the opportunity to gain the personal resources needed to return to the community, to successfully complete parole or extended supervision, and to remain crime and drug free.

This is to be accomplished in an environment which affords safety for staff, inmates, and the community, as well as allows inmates the opportunity to make the needed changes in their lives. These changes will be effectuated through participation in physical exercise, military drill and ceremony, manual labor, personal development counseling, substance abuse treatment, education group interaction and release preparation. The Challenge Incarceration Program also provides an additional alternative to revocation (ATR) option for probation and parole.

The mission is also to be accomplished while maintaining a recidivism rate equal to or better than similar inmate populations that are released through other release mechanisms.

OVERVIEW

The Challenge Incarceration Program is designed for inmates at both Black River Correctional Center and St. Croix Correctional Center. Black River will have male inmates and St. Croix has both males and females. It is also an appropriate program for probation and parole clients as an ATR. The program is designed in a manner in which a participant may successfully complete all program components in a minimum of 180 days. Program components are structured around discipline and treatment. Inmates are given an opportunity to develop life skills needed for successful, crime and drug free return to the community. The program includes rigorous physical activity; manual work assignments; regimentation and discipline; instruction on military bearing; intensive AODA treatment; individualized educational programming; and in depth group interaction addressing rational thinking and responsible behavior.

The Challenge Incarceration Program is voluntary. However, all program elements are mandatory. Many of the existing administrative rules governing procedural matters for the general inmate population have been waived by Challenge Incarceration Program participants in order that behaviors and consequences can be dealt with in a manner consistent with the mission.

ADMISSION CRITERIA

The Wisconsin Legislature, Department of Corrections administrators, and St. Croix Correctional Center and Black River Correctional Center administrators have established the criteria to determine the appropriateness for participation.

***Timothy A. Nelson** is the Superintendent of the Black River Correctional Center. He has extensive experience in the criminal justice field and has held various correctional officer positions at Columbia Correctional Center, St. Croix Correctional Center, and Black River Correctional Center before his promotion to Superintendent. He is a graduate from the Chippewa Valley Technical College with an Associates Degree in Criminal Justice. He also graduated from the Wisconsin Department of Corrections Supervisory Training Program and Leadership Development Program. He was formerly a member of the United States Army Reserve and is currently a member of the American Correctional Association.

Enrollment is subject to the following criteria:

- Inmates must volunteer and sign the Memo of Agreement.

- Inmates sentenced on or after July 26, 2003 must be under the age of 40 on the date of admission. Inmates sentenced prior to July 26, 2003 must be under the age of 30 on the date of admission

- Inmates must have an identified substance abuse treatment need.

- Inmates must not have any physical limitation. They must be medically approved for "any activity" and capable of performing strenuous work and rigorous exercise. Inmates with asthma are not eligible.

- Inmates cannot be currently convicted of crimes against life or bodily security (Chapter 940), crimes involving physical or sexual assault to a child (Sections 948.01 – 948.095)

- Offense and convictions before December 31, 1999 ("New Law") convictions only: Inmates convicted of armed or assaultive offenses will be screened on a case by case basis.

- TIS convictions only: Inmates must be deemed eligible for participation by the sentencing judge. If the inmate meets all other requirements, they will be allowed to participate when Program Review Committee and Classification deem them appropriate for placement in a minimum-security facility.

- Both New Law and Truth in Sentencing convictions: Inmates must meet the criteria established for both New Law and TIS convictions.

- Inmates must not have any psychological limitations that would preclude participation in a confrontational-style program. Inmates may not currently be on any psychotropic medication. Those previously on such medication must be off of the medication for a minimum of three months and must be cleared by clinical services. Challenge Incarceration program staff will discuss these cases with clinical services for verification. Inmates in need of sex offender treatment, regardless of conviction, are not appropriate for participation.

- Inmates with significant dental needs should have these needs resolved prior to transfer to the Challenge Incarceration Program.

- All inmates will be reviewed by the Correctional Centers, to maintain consistency in determining eligibility for participation in the Challenge Incarceration Program. The Program Review Committee at their current institution may review inmates, who have been found appropriate for the program. The inmates will then be PRC'd to either St. Croix Correctional Center, or Black River Correctional Center, with a possible temporary placement at Jackson Correctional Institution or Stanley Correctional Institution (for male inmates) or John Burke Correctional Center (for women inmates going to St. Croix), if the Program Review Committee find them as an appropriate candidate for the Challenge Incarceration Program. The Bureau of Offender Classification and Movement will have the final determination of all inmates PRC'd to the Challenge Incarceration Program. Once the Bureau of Offender Classification and Movement has approved an inmate, the inmates' name will be added to the Challenge Incarceration Program pending transfer list. This list will serve as the waiting list for both St. Croix and Black River Centers. Inmates will be transferred to the Challenge Incarceration Program on a seniority basis with those that have been on the list the longest being transferred first.

- Inmates who have poor institution adjustment will need to demonstrate appropriate behavior for being approved for participation in the Challenge Incarceration Program. The Program Review Committee and

the Bureau of Offender Classification and Movement will determine when this adjustment has been demonstrated.

Currently, the program is designed to accommodate 132 inmates at St. Croix and 100 male inmates at Black River. Upon successful completion of the program, the inmate is granted parole under New Law convictions and extended supervision under Truth-in-Sentencing convictions. The inmate must further be involved in a high-risk supervision program after release. All Challenge Incarceration Program graduates released on parole shall have AODA aftercare as part of their case planning to the extent possible based on community availability of treatment.

GOALS

- Provision of a safe and secure correctional environment for the public, staff and inmates
- Provision of productive inmate programs and work activities that allow inmates the opportunity to gain the resources needed to remain crime and drug-free upon release
- Maintenance of a positive correctional institution living and working environment for public, staff, and inmates
- Management of human and fiscal resources allocated to Black River Correctional Center
- Maintenance of a positive impact on overcrowding that exists in Wisconsin's adult correctional institutions
- Maintenance of a recidivism rate equal to or better than similar inmate populations released through other prison release mechanisms

CORE PRINCIPLES

The following statements are the fundamental program principles, which will govern the operation of the Challenge Incarceration Program. The statements are meant to apply equally to staff and inmates.

- Every individual is entitled to be treated with respect and dignity.
- Every individual is responsible for their thoughts, feelings and actions.
- Every individual is capable of positive change.
- Every individual needs to identify with a positive reinforcing group.
- Every individual makes good and poor choices.
- Positive change occurs in an environment that promotes honesty and risk taking.
- Role modeling, self-discipline, and self-respect are all components of positive change and responsible behavior.
- The fundamental components and concepts of the Challenge Incarceration Program are reinforced throughout all program activities and by all staff.

Program activity is focused in the following areas:

Military Bearing: This includes intensive instruction in military bearing, courtesy, drills and physical exercise. The inmates are oriented to this activity by Drill Instructors; however all staff reinforce concepts that support military bearing.

Group: Both individual and group counseling approaches are an integral part of the program. Inmates participate in group activities a minimum of 9.5 hours each week. Group and individual counseling focuses on criminal thinking and rational behavior therapy. At the end of each day, all inmates are required to complete a structured entry in their journals. The social workers are the primary case planners; however, treatment activities are facilitated by both treatment and security staff. Inmates who have completed the majority or their treatment needs and are in their final phase of the Challenge Incarceration Program are utilized in the peer treatment groups established for inmates in the early phases of the Challenge Incarceration Program.

An added element of the treatment process is that each inmate and the inmates collectively in their squad set individual and group goals to be accomplished while in the Challenge Incarceration Program. The movement towards these individual and group goals will be monitored by treatment and security staff.

Education: A structured education program is part of every inmate's program. Emphasis is on ABE and HSED skill development. Those inmates who are already at or above these levels have individualized educational programs. The education planning is done by the education staff, with supportive services provided by treatment and security staff. Educational activities involve a minimum of 9.5 hours of classroom each week. Each squad is held back two and a half days each week for educational and group counseling. There is also time set aside on the weekend for study time. Finally, due to the nature of the Challenge Incarceration Program education program, inmates with severe learning disabilities are not admitted to Challenge Incarceration Program.

AODA: A condition of placement in the Challenge Incarceration Program is a chemical abuse assessment and subsequent treatment and education. Treatment is abstinence oriented. It is provided by certified AODA staff through contract and is facilitated by all staff. A minimum of 9.5 hours each week per inmate is dedicated to AODA treatment. Additional one-to-one and assignment work is completed outside of the group setting.

Work: Every inmate involved in Challenge Incarceration Program must also be involved in meaningful work on a daily basis. This work, coordinated by a Supervisor and supervised by a correctional officer, involves a minimum of 10 hours a week for each inmate. It does not include the inmate's requirement to keep his specific personal area neat and clean. It is important for inmates to accept the role as a working member of a community. Such work also enhances their sense of self-worth, group identity, and provides them an opportunity to "pay back" the community in some limited fashion, for the expenses the community has incurred for their past criminal behavior. Work tasks include manual unskilled labor for non-profit organizations.

Evaluation: Inmates are closely supervised and rated daily by the following staff: correctional officers, social workers, and AODA counselors. Standardized evaluation forms are used to assess the inmate's overall progress. The results of the evaluations are tabulated on a weekly basis so patterns of behavior can be monitored. Additionally, regular staff meetings and individual interviews are conducted to review the inmate's progress in meeting program goals. Disciplinary violations, general negative behavioral trends, or refusal to cooperate to the inmate's fullest capabilities in the Challenge Incarceration Program can result in the termination of a participant's enrollment. Prior to the end of the 180-day program, a staffing committee makes a recommendation as to the appropriateness of release. Each inmate successfully completing the program will receive a certification of completion and a formal graduation ceremony.

Level System: All inmates entering the Challenge Incarceration Program will move through a level or step system. The level system will be composed of the following stages:

Orientation - Weeks 1 –2
Phase I - Weeks 3-10
Phase II - Weeks 11-20
Phase III - Weeks 21-26
Phase IV - Graduates pending release

Specific activities are designed to each phase. Failure to complete a phase can/will result in removal from Challenge Incarceration Program.

As inmates move through the phases, performance expectations placed on them are increased in terms of their military bearing/drill expertise, education/AODA/treatment goals, and their ability to be leaders for the earlier phase inmates. An inmate's phase status is identified by specific clothing characteristics.

Squad Basics: Inmates will be admitted in intake groups of 8-15 inmates. Two intake groups will be identified as a squad. Inmates remain with their squad for all Challenge Incarceration Program activities: treatment, education, recreation, etc. The squad becomes the basis for the inmate's reference group. It is within this setting that the positive peer activities take place.

Treatment Teams: One treatment team will be assigned two inmate squads. Each treatment team will consist of a Supervisor, teacher, Alcohol/Drug counselor, social worker and security staff. Teams will develop individual inmate case plans. Additionally, regular team meetings and individual interviews are conducted to review the inmate's progress in meeting program goals.

Clinical Services: Clinical services are available at the Challenge Incarceration Program on a limited basis. Any staff member can refer an inmate for clinical services. All referrals are coordinated through the social worker. The reports of the clinician are considered in staffing decisions.

Medical: Significant medical needs are met on an as needed basis. Inmates, due to the nature of the work/exercise required of them will have minor complaints. The complaints cannot serve as the basis for avoiding work assignments. Sick call is held four times a week to meet these minor complaints. All authorized medications are given out by staff and not allowed on the inmate's person.The Challenge Incarceration Program is a non-smoking program.

Release Planning: All inmates are involved with their release plans from the onset. Upon release, parole agents conduct sessions to orient the inmate to release obligations and expectations. Upon release each inmate will be subject to high-risk supervision for a minimum of six months. Parole agents provide critical transitional services between Challenge Incarceration Program and the Division Community Corrections.

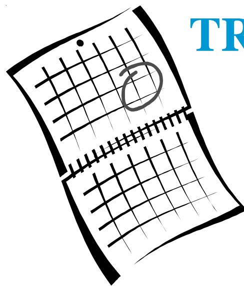
TYPE AND LOCATION

The Challenge Incarceration Program is currently available at St. Croix Correctional Center and will begin in Black River Correctional Center in January 2004. The Black River facility is located 11 miles east of Black River Falls, located in the midst of Jackson County Forest and Department of Natural Resources land. The site has been in existence since 1962 and was first used as a Boys Camp for troubled juvenile offenders. In the 1970's it was adapted to house younger inmates that were 17 to 24 years of age. Education has always been the focus at Black River as well as developing a work ethic with the community work crews. Black River has administrative and staff offices, inmate dormitory, inmate rooms, food services, dining hall, laundry, gymnasium and general support facilities.

The St. Croix facility is in the City of New Richmond, located in a farming community, and was styled into the Challenge Incarceration Program in January 1991. The site consists of a 40,000 square foot metal fabricated structure, completed in 1994, which houses the Center's administrative and staff offices, inmate dormitories, food services, combined dining hall/gymnasium, laundry, and general support facilities. The original modular structure, built in 1978 and expanded in 1985, is used for educational programs and housing. A modular structure was also built in 2003 to house female offenders in separate dormitories.

It is beneficial to operate the Challenge Incarceration Program in a rural environment away from the influences presented by a more urban setting. This is a time for inmates to be reflective concerning their past behavior and given instruction on needed behavioral and cognitive changes. This is a critical time and they shouldn't have to deal with unreasonable outside pressure.

Finally, both locations are such that work is readily available for the inmate crews. It is expected that up to 50 inmates at each site will be involved in supervised crew style work details on a daily basis. Community support in terms of medical, dental and other daily support services are all within reasonable commuting distance from the Centers. ■



TRAINING CALENDAR

For more information about these and other training events, please contact the SPD's Office of Training and Development at:
training@mail.opd.state.wi.us

Objection Noted: Evidence Law-Video Seminar
State Bar of Wisconsin
January 9, 2004
Statewide Video Locations

Building for Success: The Ultimate 'How-to' Seminar For New (and not so new) Lawyers
State Bar of Wisconsin
January 14, 2004 Milwaukee
January 15, 2004-Madison
January 30, 2004-Wausau

Legal Ethics 2003-Video Seminar
State Bar of Wisconsin
January 21, 2004
Statewide Video Locations

I Object: Evidence for the Criminal Defense Lawyer
Office of the Wisconsin State Public Defender
February 26, 2004-Racine
February 27, 2004-Milwaukee
March 4, 2004-Madison
March 11, 2004-Milwaukee
March 12, 2004-Appleton
March 25, 2004-Wausau
March 26, 2004-Eau Claire

Return to In This Issue

Our Children of Poverty

By: Honorable Joseph R. Wall*

I am a children's court judge in Milwaukee County and I have seen the future. He is a fourteen-year old boy, and although he is a composite, he is known and familiar to all of us here. I am about to sentence him for his third felony offense in two years.

His father is in prison. His mother is a drug addict and convicted prostitute. I have no idea where she is. At his sentencing, there will be no family member in court to support him or speak on his behalf. No father, no mother, no uncle, no grandparent will appear. This young man is full of rage and anger. He doesn't know why. He doesn't go to school - no one tells him to. He has no guidance, no role models, and no direction. He feels no love. He has no hope. Also, frighteningly, because he has nothing, he no longer has anything to lose.

His older brother, now nineteen, is in prison serving a 40-year sentence for second-degree intentional homicide - a street robbery gone awry. His sixteen-year-old sister has been in a juvenile corrections facility - a prison for kids - since she was fourteen, for battering a classmate over the affections of an older boy. Because she cannot follow the rules of the correctional facility, she will likely remain incarcerated there until her eighteenth birthday.

This young man I will sentence has a seven-year-old brother. I know a bit about him. He's happy and smiles all the time. He loves his friends and loves playing outside. He is full of hope. For him, the world is one of infinite possibilities. He has no idea of what's to come.

My professional education has been a bit backwards. For seventeen years I was a state and federal prosecutor pursuing adults who committed crimes. For a time, I specialized in drug cases. My cases then were often the *result* of something that occurred much earlier. Now, as a children's court judge, I see how those cases began, and why, I fear, they will continue on into the foreseeable future.

In Milwaukee County, children's court judges hear a variety of cases involving children, but there are three main categories of cases.

The first category is juvenile delinquency cases. These cases concern children who have committed crimes. If the child is convicted, a judge can sentence him or her to a term of probation, a term of probation with a stayed period in corrections, or straight corrections, the children's prison. Corrections orders can be up to two years, but are renewable until a child reaches eighteen. At that point, of course, the child is eligible for the adult criminal justice system.

The second category is foster care cases. These are cases in which children have been abused, abandoned, or neglected by their parents. These children enter the foster care system and, if families are available, are placed in a foster home. If families are not available, the children are placed in shelters or group homes. Children can remain in foster care until a parent corrects the problems that led to the child's removal from the home, or until they are eighteen, whichever comes sooner.

**The Honorable Joseph R. Wall is a Circuit Court Judge currently assigned to Milwaukee County Children's Court. He is also a certified public accountant. This piece is adapted from an address Judge Wall gave on October 14, 2003 at the Tenth Annual Forum on Youth Violence. This article was originally published in the Milwaukee Journal Sentinel on November 2, 2003. It is reprinted here with Judge Wall's permission.*

The third category is termination of parental rights cases. In cases in which the parent is unlikely to remedy their problems, and a foster family is willing to adopt the child, the state can file a petition to terminate the mother's and father's parental rights. If the parents' rights are terminated, the child will be adopted, and the parent has no right to ever see the child again.

The three types of cases I just outlined share a common thread: poverty.

I cannot describe my job without talking about poverty and its dreadful impact on our children.

I have never seen a child from a middle-class background enter foster care. Almost without exception, these children are the products of extremely poor families. No child from wealth or privilege ever encounters the full force of the foster care system.

I have never seen a petition for termination of parental rights filed against a parent of means. Only the poor have their parental rights terminated.

Finally, the overwhelming majority of children in the delinquency system come from the poverty rolls. In only the rarest of circumstances will a child of wealth or privilege see the inside of a corrections facility.

Bear with me a moment, and consider the following harsh, but well-established, facts about our community:

- A 2003 Census Bureau Report shows that the poverty rate in Milwaukee rose by 14% in 2002. Last year, 125,000 Milwaukee residents lived under the federal poverty limit, an increase of 16,000 from the year before. Those numbers translate into roughly 22% of our city's residents.

- A 2003 study by the Wisconsin Council on Children and Families found that in 2002 more than 54,000 City of Milwaukee children under eighteen, or 34.4% of all children in the city, were living in poverty. The study showed that African-American children were six times more likely to live in poverty than white children.

- That same study showed stark racial differences in child poverty: the statewide poverty rate in 2000 for white children was 6.9%; for African-American children the rate was 41.7%. The study determined that almost one-fourth of Hispanic, Native American, and Asian children lived in poverty in 2000.

- This past year, and for more than a decade, Wisconsin has ranked last in the country in percentage of children who receive a school breakfast. Studies show that when schools serve breakfasts, a child's attendance, classroom behavior, and academic performance all improve.

- A 2003 study released by Harvard University's Civil Rights Project shows that Wisconsin is one of the ten most segregated schools for African-American students. The same study showed that Milwaukee posted the second-largest increase of African-American students in the district over the last twenty years.

- For the past two years, Wisconsin has ranked last in the nation in high school graduation rates for African-American students. The study, by the Manhattan Institute, showed a 41% graduation rate for African-Americans students compared to an 87% rate for white students.

- According to that same study, for the third straight year, Wisconsin leads the nation in failing African-American students.

- In a 2003 study, the Annie E. Casey Foundation found that among the 50 largest cities in the country, Milwaukee ranks sixth in its percentage of teen births.

- This year, African-Americans were 4.79 times more likely than whites to be turned down for mortgages. This is the second year in a row Milwaukee led the nation, according to a 2003 study of 115 metropolitan areas just released by the Association of Community Organizations for Reform Now.

- And, despite alternate interpretations, the most recent census study shows that Milwaukee remains one of the most segregated cities in the country.

In the City of Milwaukee there are not only neighborhoods, but square mile swaths of city blocks of people living in abject poverty. Walk through the north side, if you dare. You will observe living conditions that are shamed by that of some third world countries. This is our city. These are our neighbors. These are our children. Shame on us.

Consider again, my fourteen-year old. A large portion of the generation above him is lost. Right now, we are losing his generation to the same cycle.

Some of the younger children in the delinquency and foster care system who can envision a future, will, when asked, tell me they want to be doctors, teachers, nurses, and even lawyers. They just don't know the path. Nor do they realize that unless there is a dramatic change in their lives, they don't have a chance at any of those careers.

It's shocking to see such a lack of resources, and consequently for judges, a lack of options, for these children of poverty. It appears at times that we, as a community, as a society, have given up on the futures of these children. We are content to pay for their placement in foster care or shelters, and when that fails, we are content to pay for beds in a corrections facility or, eventually, a prison. And, when we lack beds in our prisons, we don't grumble about building more prisons. I have never seen a taxpayer revolt over the building of additional prisons.

What we seem unprepared to do though, is spend the money on them on the front end - by making sure they have the finest education available; by ensuring that they have a safe and comfortable school environment - one they want to participate in; by ensuring their facilities are up-to-date; and by ensuring that after school and on the weekends, they have safe and comfortable surroundings to which they can turn for recreation, training, companionship, mentoring, and learning. If families are failing, and they are, we, the community, need to assume a larger role in the every-day lives of these children. They are, at the end of the day, our children.

It is, partially, an issue of race, and the effects of long-standing institutional discrimination. More accurately, though, it is simply of question of economics - the fiscal impact of poverty. Until we seriously address poverty, and the cycle of poverty, we cannot address its consequences - drug abuse, mental illness, child abuse and neglect, and, especially crime, always crime. Until we address the cycle of poverty, we cannot address the cycle of crime. Few things in court are as sobering as a foster care hearing in which both a father and his teenage son are in secure custody.

Recently, I heard a public figure decry four-year-old kindergarten as "tax-payer subsidized day care." I thought to myself: we don't need four-year-old kindergarten, we need three-year-old kindergarten, staffed with energetic, well-trained, appropriately compensated, and highly motivated teachers who will begin to teach these children before they even start school. We need to get these children of poverty out of their

environments, which are too often unsafe and unhealthy, and place them into vibrant centers of learning and training.

We need to make a massive investment into our schools, and into our teachers. We must pay our teachers well, and make teaching attractive - why do most of the best students go into engineering, or to law school, or to medical school, and not go on to educate our children? Is teaching our children any less important than the work of these professions?

We must make a massive investment in after-school and weekend programming for children in our cities. We must support the existing Boys and Girls Club, and strive to create more such facilities and programs. We must attract mentors and educators to these programs - people who can teach our children and teens how to use a computer, how to write a clear and persuasive paragraph, how to balance a checkbook - and then the books of a company, how to build cabinets, install plumbing in a new home - or wire it for electricity, and fix any car that limps into the garage.

The Safe and Sound program is a wonderful example of after-school mentoring. We need to make a larger investment in these programs.

Who will pay for all this, you ask? *You* will. And *I* will. We should pay for it because it is the right thing, the moral thing, to do. But, we must pay for it because it is the fiscally responsible thing to do. That is, we can pay for it now, tomorrow, or in ten years. But, we will pay for it, and the sooner we do, the less expensive it will be.

Compare the *cost* to our community of a child who enters foster care at a young age to the *contribution* to our community of a child who is well cared for and well educated, who then uses his stability, education, training, and experience to become a businessman who trains and employs others.

The cost of not making this investment in our children is staggering. Calculate, if you can, the cost of poverty and crime. Every working day, all day, eight judges work at Children's Court in Milwaukee. Consider a one-hour foster care hearing for an abused or neglected child. An attorney represents each child - and, when there are multiple children, they often have their own separate attorneys. The children have an assigned State social worker, or two.

As assistant district attorney attends the hearing. If the parents appear, each receives appointed counsel. If a parent is incarcerated, and often one or both are, they must be transported by armed sheriffs back and forth from prison for every court appearance. Oftentimes, doctors, psychologists, and other treatment professionals attend the court hearings. We frequently see additional community-based social workers who are appointed to assist the children. One or sometimes two Sheriff's Deputies, a clerk, a court reporter, and a judge staff the court itself. Multiply this situation by hundreds of times a week, thousands of times a year. Add to the expense of all this, the tangible and intangible costs to the community from the impact of crime. Then, add payments to foster parents (from $450 to more than $800 a month for each child), the cost of probation agents (more than five million dollars a year), and the cost of our juvenile correction facilities (currently $68,255 a year for each child). Finally, consider the cost to society if these children turn to crime as adults, as many of them do. Who pays for all this now? You do. And I do.

In the past few years, we have spent more than six hundred million dollars to build one sports stadium, and to renovate another. We have spent over one hundred million dollars to create an addition to our Art Museum - and we will see another thirty million investment in a new maritime facility. I'm not quarreling with these expenditures, but instead enumerate them for context.

At its core, poverty is a moral issue. But, just as compelling, it is an economic issue with long-term financial consequences for our community.

Almost forty years ago, Senator Robert F. Kennedy spoke of poverty saying:

Of all our problems, the most immediate and pressing, the one that threatens to paralyze our capacity to act, to obliterate our vision of the future, is the plight of [the urban poor], and the violence that has exploded as its product - jumping and spreading across the country, sending fear and anger before it, leaving death and devastation behind. We are now, as we may well be for some time to come, in the midst of what is rapidly becoming the most terrible and urgent domestic crisis to face this nation since the Civil War. Its consequences reach into every home, bringing the sure knowledge that failure to deal with this problem could mean failure in dealing with all the other elements of our urban crisis.

In the forty years since, we have lost the generation Robert Kennedy spoke about, and the two generations following. Right now, we are losing to poverty the grandchildren of that generation.

I don't envy our governor, and his task of balancing the State budget. I don't envy our county executive, and his efforts to reassemble and then balance the County budget. And, I don't envy our mayor, and his work in balancing the City budget. I'm not trained in their difficult business, and I'm inadequately qualified to advise them, or in any way criticize them.

But, be clear, that when we hear, and feel seduced by, the terms "tax cuts," or "tax freeze," we must think instead, "service cuts," and "program cuts." And realize, that the programs that will be cut are the ones meant to benefit the poorest, the neediest, the youngest and the oldest, and the most disabled and weak of our community. In the end, our children of poverty will suffer the most.

Understand the consequences of these program and service cuts - today, and tomorrow, but especially, in ten years when those to whom we have turned our collar and denied opportunities begin making their own opportunities - outside of society, and outside of the law. We will pay then, not dollars for school breakfast and lunch programs, not hundreds of dollars for new books and computers, not thousands of dollars for additional teachers, more mentors, and newer facilities, but, for each forgotten and discarded soul, and the cost he or she inflicts on society, tens of thousands and hundreds of thousands of dollars in tangible costs, and an equal measure, or greater, in intangible costs.

And, following all that, we will face yet another lost generation. ■

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CASE DIGEST

By: Bill Tyroler*

**Bill Tyroler has been with the SPD's Appellate Division since 1978. He obtained his law degree from the University of Wisconsin Law School in 1974 and a degree in sociology from the University of North Carolina-Chapel Hill in 1971.*

This Case Digest includes United States Supreme Court and Wisconsin appellate decisions released/ published July 12, to October 17, 2003.

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¶67. Based on the foregoing considerations, we conclude that a citizen's desire to exercise the right to keep and bear arms for purposes of security is at its apex when undertaken to secure one's home or privately owned business.…
¶68. If the constitutional right to keep and bear arms for security is to mean anything, it must, as a general matter, permit a person to possess, carry, and sometimes conceal arms to maintain the security of his private residence or privately operated business, and to safely move and store weapons within these premises.

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For Knapp: Robert G. LeBell
¶182. The evidence at issue in this case connects Brunner and Maas to the crime in a number of ways: (1) It establishes that Brunner lied to investigators about his whereabouts at the time of the murder; (2) Maas was with Brunner at the time his [Brunner's] wife was murdered, and Maas was observed a short time after Mrs. Brunner's death carrying a paper bag and getting into Brunner's waiting truck; and (3) most importantly, the evidence puts Brunner in Watertown in relative proximity to the location where the homicide occurred and near the time of the murder.
¶183. Based upon that information, we hold that the circuit court correctly determined that the evidence established Brunner's motive, opportunity and connection to the crime. Further, we hold that the circuit court applied the proper legal standard and appropriately exercised its discretion in admitting this evidence under Denny.

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For Knapp: Robert G. LeBell
¶184. We find no clear error in the circuit court's determination that the third-party hearsay evidence in item 21(a) of Knapp's offer of proof comes within the recent perception exception under Wis. Stat. § 908.045(2), to the hearsay rule. Farrell's inability to recall, 12 years after the fact, exactly when Borchardt made the statements to her does not undermine the requirements of the exception. The focus should be on the circumstances when the statement was originally made. Further, the lack of clarity as to timing is almost certainly due to the failure to prosecute this case earlier.

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For Daniel T.: Leonard Kachinsky, Tajara Dommershausen
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For Larson: Rex Anderegg
¶16. To determine if probable cause exists, the court must consider whether “the totality of the circumstances within the arresting officer’s knowledge at the time of the arrest would lead a reasonable police officer to believe ... that the defendant was operating a motor vehicle while under the influence of an intoxicant.” *State v. Nordness*, 128 Wis. 2d 15, 35, 381 N.W.2d 300 (1986). At the time of his arrival, Zuhlke knew only that two tipsters had called dispatch, alleging that the driver of the maroon and silver truck parked outside the apartment building was driving while intoxicated. Zuhlke had not yet smelled the odor of intoxicants on Larson’s breath, detected his slurred speech, or even obtained his concession that he had been driving the maroon and silver truck. Consequently, we do not believe that it can be reasonably maintained that at the moment Zuhlke put his foot inside the doorway he had probable cause to arrest Larson.

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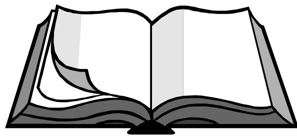

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