Short-Term Sanctions Act (2013 Act 196)

Background Information
And
Suggestions for Testimony and Comment on Proposed Rules

In 2014, the Wisconsin legislature enacted, and Governor Walker signed, the Short-Term Sanctions Act (2013 Act 196) with the intent of reducing revocations for rule violations by those on supervision and probation, and instead applying immediate "short-term sanctions" for the most common violations. A copy of the law is included at the end of this document.

The law requires the Department of Corrections to go through a formal rule-making process to "develop a system of short-term sanctions for violations of conditions of parole, probation, extended supervision, and deferred prosecution agreements that sets forth a list of sanctions to be imposed for the most common violations."

Even though the law was enacted more than 10 years ago, the Department has not implemented the law, despite repeated calls from WISDOM to do so. Now the DOC is proposing rules, but **it is important to note that the rules they are proposing still will not implement the law**. The proposed rules only quote 8 required features stated in the Act that are to characterize the "system of short-term sanctions" established by the law. However, the rules do not quote the portions of the law that require development of a "system of short-term sanctions." This seems like a conscious omission, not an oversight.

DOC staff told us they plan to implement the provisions of the law and rule through subsequent new and revised policies. However, without mentioning a "system of short-term sanctions" incorporating the required 8 features, without redefining short-term sanctions to be something far less than 90 days of incarceration, and without the transparency of "set[ting] forth a list of the sanctions to be imposed for the most common violations," we are concerned that the objective of Act 196 will simply be diluted within their existing Evidence-Based Response to Violations (EBRV) system.

Therefore, it is important that we make pointed testimony at their virtual public hearing on July 8 at 10:00 a.m. and submit thoughtful written comments by August 8 on the inadequacy of the proposed rules, while also making strong recommendations on how DOC's Community Corrections programs need to be changed to create and operate a system that is focused on making those on supervision successful in their communities.

The law requires the Department of Corrections (DOC) to ensure the system of short-term sanctions does all of the following:

- Takes into account the objective to be accomplished in imposing the sanction.
- Takes into account the goals of protecting the public and correcting the offender's behavior.

- Determines when revocation is the required response to the violation.
- Provides flexibility in imposing sanctions but also provides offenders with clear and immediate consequences for the violation.
- Provides examples of high, medium, and low level sanctions and what factors to consider when determining which level of sanction to apply.
- Determines how to reward offenders for compliance with their rules.
- Ensures that efforts to minimize the impact on an offender's employment are made when applying sanctions.
- Ensures that efforts to minimize the impact on an offender's family are made when applying the sanctions.

The last two requirements are potential game-changers in the way the DOC responds to rule violations. Requiring the DOC to consider the impact on a person's employment and family is new; the DOC's Electronic Case Reference Manual (ECRM) says very little about these things.

The ECRM's current section on "Short-Term Sanctions" does not mention employment at all. It considers incarceration of up to 90 days to be a short-term sanction. Yet it is clear to any thinking person that a short-term incarceration of 90, 60, 45, 30, 21, or even 14 days will likely result in loss of employment for anyone on supervision who is employed. Why should our system sabotage such an important element of stability for someone trying to re-enter a community? So the law's requirement that the impact on a person's employment must be considered in applying sanctions is a BIG DEAL.

The conservative American Legislative Exchange Council's model law on short-term sanctions contains this feature to minimize the impact of a short-term incarceration (limited to no more than 5 consecutive days) on a person's employment:

> If the graduated sanction involves confinement in a correctional or detention facility, confinement must be approved by the chief supervision officer, but the supervised individual may be taken into custody for up to [four] hours while such approval is obtained. If the supervised individual is employed, the supervision officer shall, to the extent feasible, impose this sanction on weekend days or other days and times when the supervised individual is not working.

Guidance in a system of short-term sanctions that ensures that the sanction will not adversely affect the person's employment might include the following:

> Before imposing a short-term sanction, the DOC agent shall make efforts to ensure that the length and circumstances of the sanction minimizes any disruption of the client's employment, activities to successfully follow through on an offer of employment, or any training program in which he or she is engaged to prepare for employment, including but not limited to the following:
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> a. For a low violation, consider imposing a short-term sanction that does not restrict the hours that a client could be available for employment or training, such as a verbal reprimand;

b. For a medium or high violation, consider imposing a brief house arrest or a weekend jail sanction of 2 days or less that will not interfere with the client's current or future hours of employment, their pre-employment process, or training;

c. For any violation level and proposed short-term sanction that has the potential to directly impact a client's employment or offered employment, the agent must consult with the client's employer to explain the proposed sanction or restrictions and learn how it might impact the employer and his or her operations and the continued employment of the client before making a final recommendation to their supervisor to assure the restriction will not interfere with current or future employment; If the sanction would interfere with employment, the pre-employment process, or training, then adjust the sanction accordingly.

No less important is the requirement that the impact on the person's family be considered when applying sanctions. A short-term sanction as currently described and practiced (up to 90 days of incarceration) could easily plunge a family into financial disaster if the client loses his or her employment. If the person under supervision is providing care of the children and the spouse is employed, then the spouse may need to quit employment in order to care for the children. Again, this leads to financial disaster and perhaps loss of housing, creating an additional financial burden on public services in addition to paying for another incarceration.

Guidance in a system of short-term sanctions that ensures the sanction will not adversely affect the person's family might include things like the following:

Before imposing a short-term sanction, the DOC agent shall ensure that efforts are taken to minimize the impact of the short-term sanction on the client's family, including but not limited to the following:

a. Assure that any days of an in-custody short-term sanction do not unduly interfere with the clients' days of custodial responsibility for their children, particularly when that custodial care of their children is essential to the spouse's or partner's employment;

b. Avoid imposing a short-term sanction that will cause a client or their family to be at risk of losing their housing;

c. Avoid imposing a short-term sanction that will lead to the client's absence on their birthday or on the birthday of their child or partner, or on a U.S. holiday;

d. Avoid imposing a short-term sanction that will cause the client's absence on the day of the memorial service or funeral of a member of the client's family, including a mother, father, child, sibling, grandparent, uncle, aunt or cousin.

There also does not appear to be any clearly established DOC system or program to "reward offenders for compliance with conditions of parole, of probation, of extended supervision, or of an agreement" as stated in Act 196.

On the very first page of the DOC's EBRV manual, it lists the "Elements of an Evidence-Based Response to Violations." Two of the points are:

- Research suggests programs that are able to incorporate sanctions combined with the use of rewards to reinforce conforming behavior will be more effective than those that rely on sanctions alone.
- Utilize incentives and rewards for compliance and positive behavior (at least 4 rewards for every sanction).

Those are the only places where the word "reward" or "rewards" appears in the EBRV. There are no details or procedures for actually providing rewards, especially at a rate of four rewards for every sanction.

The release of the proposed Act 196 rules for public comment provides a real opportunity to communicate our vision of a Community Corrections system that focuses on restoration, both of affected individuals and the communities in which they and we live. Please take the time to read the law and the proposed rules and make thoughtful comments and recommendations on what the DOC needs to do to create and administer a "<u>system</u> of short-term sanctions" that will meet the requirements of the law, reduce revocations, and make a significant reduction in Wisconsin's state prison population.

Please make the point that what the DOC does affects far more than their staff and the people whose lives they supervise. What they do in adopting policies to implement the Short-Term Sanctions Act affects families, employers, health care providers, schools, social service providers, and many, many more in our communities.

Please plan to speak at the July 8 virtual hearing and also submit written comments by August 8. Make sure the DOC knows that we are watching what they are doing and that we are expecting them to make meaningful changes focused on healing individuals, families, and communities.

State of Wisconsin

Date of enactment: **April 7, 2014**
2013 Assembly Bill 702 Date of publication*: **April 8, 2014**

2013 WISCONSIN ACT 196

AN ACT *to renumber and amend* 301.03 (3); *to amend* 301.068 (5), 302.27 and 961.41 (3g) (am); and *to create* 301.03 (3) (a), (b) and (c), 304.06 (3g), 971.375 and 973.10 (2s) of the statutes; **relating to:** development of a system of short−term sanctions for individuals who violate conditions of extended supervision, parole, probation, or a deferred prosecution agreement, attempt to possess a schedule I or II controlled substance or analog that is a narcotic, and granting rule−making authority.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 301.03 (3) of the statutes is renumbered 301.03 (3) (intro.) and amended to read:

301.03 **(3)** (intro.) Administer parole, extended supervision, and probation matters, except that the decision to grant or deny parole to inmates shall be made by the parole commission and the decision to revoke probation, extended supervision, or parole, in cases in which there is no waiver of the right to a hearing, shall be made by the division of hearings and appeals in the department of administration. The secretary may grant special action parole releases under s. 304.02. The department shall promulgate rules ~~establishing a drug testing program for probationers, parolees and persons placed on extended supervision. The rules shall provide for assessment of fees upon probationers, parolees and persons placed on extended supervision to partially offset the costs of the program.~~ to do all of the following:

SECTION 2. 301.03 (3) (a), (b) and (c) of the statutes are created to read:

301.03 **(3)** (a) Develop a system of short−term sanctions for violations of conditions of parole, probation, extended supervision, and deferred prosecution agreements that sets forth a list of sanctions to be imposed for the most common violations.

(b) Ensure that the system of short−term sanctions developed under par. (a) does all of the following:

1. Takes into account the objective to be accomplished by imposing the sanction, considers the level of intensity necessary to achieve the objective, and considers the extent to which sanction imposition is likely to accomplish the objective.

2. Takes into account the goals of protecting the public, correcting the offender's behavior, and holding the offender accountable.

3. Determines when revocation is the required response to the violation.

4. Provides flexibility in imposing sanctions but also provides offenders with clear and immediate consequences for violations.

5. Provides examples of high, medium, and low level sanctions and what factors to consider when determining which level of sanction to apply.

6. Determines how to reward offenders for compliance with conditions of parole, of probation, of extended supervision, or of the agreement.

* Section 991.11, WISCONSIN STATUTES: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication."

7. Ensures that efforts to minimize the impact on an offender's employment are made when applying sanctions.

8. Ensures that efforts to minimize the impact on an offender's family are made when applying the sanctions.

(c) Perform reviews of sanctions imposed under the system to assess disparities among sanctions, to evaluate the effectiveness of sanctions, and to monitor the impact of sanctions on the number and type of revocations for violations.

SECTION 3. 301.068 (5) of the statutes is amended to read:

301.068 **(5)** The department shall provide to probation, extended supervision, and parole agents training and skill development in reducing offenders' risk of reoffending and intervention techniques and shall by rule set forth requirements for the training and skill development. The department shall develop policies to guide probation, extended supervision, and parole agents in the supervision and revocation of offenders on probation, extended supervision, and parole and develop practices regarding alternatives to revocation of probation, extended supervision, or parole. To the extent practicable, the department shall incorporate the practices into the system developed under s. 301.03 (3) (a).

SECTION 3k. 302.27 of the statutes is amended to read:

302.27 Contracts for temporary housing for or detention of persons on probation or prisoners. The department may contract with local governments for temporary housing or detention in county jails or county houses of correction for persons placed on probation or sentenced to imprisonment in state prisons or to the intensive sanctions program. The rate under any such contract may not exceed $60 per person per day. Nothing in this section limits the authority of the department to place persons in jails under s. 301.048 (3) (a) 1.

SECTION 4. 304.06 (3g) of the statutes is created to read:

304.06 **(3g)** If a paroled prisoner signs a statement admitting a violation of a condition or rule of parole, the department may, as a sanction for the violation, confine the prisoner for up to 90 days in a regional detention facility or, with the approval of the sheriff, in a county jail. If the department confines the prisoner in a county jail under this subsection, the department shall reimburse the county for its actual costs in confining the prisoner from the appropriations under s. 20.410 (1) (ab) and (b). Notwithstanding s. 302.43, the prisoner is not eligible to earn good time credit on any period of confinement imposed under this subsection.

SECTION 4g. 961.41 (3g) (am) of the statutes is amended to read:

961.41 **(3g)** (am) *Schedule I and II narcotic drugs.* If a person possesses or attempts to possess a controlled substance included in schedule I or II which is a narcotic drug, or ~~possesses~~ a controlled substance analog of a controlled substance included in schedule I or II which is a narcotic drug, the person is guilty of a Class I felony.

SECTION 5. 971.375 of the statutes is created to read:

971.375 Deferred prosecution agreements; sanctions. The district attorney may subject a defendant to sanctions as provided in the system developed under s. 301.03 (3) (a) if the defendant violates a condition of a deferred prosecution agreement.

SECTION 6. 973.10 (2s) of the statutes is created to read:

973.10 **(2s)** If a probationer signs a statement admitting a violation of a condition or rule of probation, the department may, as a sanction for the violation, confine the probationer for up to 90 days in a regional detention facility or, with the approval of the sheriff, in a county jail. If the department confines the probationer in a county jail under this subsection, the department shall reimburse the county for its actual costs in confining the probationer from the appropriations under s. 20.410 (1) (ab) and (b).

SECTION 7. Initial applicability.

(1) This act first applies to violations occurring on the effective date of this subsection.