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# Wisconsin Legislative Council

## STUDY COMMITTEE MEMO

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**Memo No. 2**

**TO:** MEMBERS OF THE STUDY COMMITTEE ON INCREASING OFFENDER EMPLOYMENT OPPORTUNITIES

**FROM:** Katie Bender-Olson, Principal Attorney, and Peggy Hurley, Senior Staff Attorney

**RE:** Topics for Committee Discussion

**DATE:** October 14, 2022

This memo identifies potential topics for discussion for the October 21, 2022, meeting of the Study Committee on Increasing Offender Employment Opportunities. Speakers and committee members raised these topics at meetings on August 30 and September 29, 2022.

The list is intended as a starting point for the committee in determining which topics it wishes to review more closely and consider for preliminary bill drafts. The topics do not comprise an exclusive or comprehensive list of options, and do not prevent the committee from considering other items.

### **OBTAINING CRITICAL DOCUMENTATION**

State law requires the Department of Corrections (DOC) to assist individuals in obtaining a Wisconsin driver's license or State Identification Card ("State ID card"), but not other forms of identification. Specifically, state law requires DOC to: (1) determine if an individual has a driver's license or State ID card prior to release from prison; (2) assist an individual without either to apply for a State ID card; (3) determine whether the individual is able to pay any portion of the State ID card fee from his or her general fund account; and (4) pay the State ID card fee for an individual who is unable to do so. [s. [301.286](#), Stats.] DOC social workers or other staff may assist individuals in obtaining critical documentation other than a Driver's License or State ID card, but are not required to do so by state law.

Speakers and committee members discussed the importance of having documentation such as a driver's license, State ID card, birth certificate, and Social Security card for individuals releasing into the community. They noted that certain employers require applicants to have a valid driver's license, whether or not driving is a requirement of the job, and that documentation is typically required to open a bank account for direct deposit of paychecks. Committee members also noted the difficulty of requiring DOC staff to dedicate resources to obtaining documentation, particularly if the documentation must be obtained from out of state.

**Discussion Topic:** The committee could explore methods for obtaining additional documentation, such as birth certificates and Social Security cards, for individuals releasing from incarceration. These options could include creating a Request for Proposal (RFP) for an entity to locate and obtain such documentation for releasing individuals, or requiring DOC to do so. Additionally, DOC or the entity could be required to assist eligible individuals in reinstating expired or revoked driver's licenses.

**Considerations:** Are there any advantages to having social workers or DOC agents work with formerly incarcerated individuals instead of hiring a third party to do this work? Which option would be more efficient and cost-effective? Should the contract be awarded for statewide services, regional services, or otherwise? How will fees for obtaining birth certificates or other documents be paid for by an entity winning the RFP or by DOC? Will a state appropriation be created?

## **EXPANDING THE EARNED RELEASE PROGRAM TO COVER VOCATIONAL TRAINING AND EMPLOYMENT**

Current law creates an Earned Release Program (ERP) that allows eligible inmates to earn early release to extended supervision or parole if they complete a substance abuse program. Only inmates who meet the following conditions are currently eligible for the ERP: (1) the inmate is serving time for a nonviolent crime; (2) the sentencing court deems the inmate eligible; and (3) the inmate successfully completes a DOC substance abuse treatment program. [s. [302.05 \(3\)](#), Stats.]

An inmate who completes the ERP will have his or her sentence modified by a court to convert remaining confinement time in prison to supervised time in the community. The ERP allows for early release while maintaining the total length of an individual's sentence. The program is only available to inmates with substance abuse needs who complete substance abuse programming. Speakers and committee members discussed incentivizing inmates to complete job training and employment by expanding ERP to cover such efforts.

**Discussion Topic:** The committee could consider legislation expanding the ERP to allow early release to supervision for individuals who secure employment or complete certain employment-related training activities.

**Considerations:** Which employment-related activities will qualify an individual for earned release? Do they include completion of vocational training, earning educational credentials, or obtaining employment? Will DOC have rule-making authority to determine the particular training, credentials, or employment types that will qualify for the ERP?

## **CREATING A STATE WORK OPPORTUNITY TAX CREDIT**

Federal law provides a federal income tax credit to employers who hire qualifying individuals with criminal convictions, but no similar state income tax credit currently exists under state law. The federal Work Opportunity Tax Credit (WOTC) is available to employers who hire individuals from targeted groups, including "qualified ex-felons." To be a qualified ex-felon, an individual must: (1) have a state or federal felony conviction; and (2) have been hired within one year after being released from prison, or within one year after the conviction if the individual did not serve prison time. [26 U.S.C. s. 51 (d) (4).]

Taxable employers claim the credit as a general business credit against their income taxes, while tax-exempt employers claim the credit against their payroll taxes. The WOTC may equal 40 percent of up to \$6,000 of wages paid to an individual during his or her first year of employment, if the individual meets certain requirements. An employer will receive the full credit equaling \$2,400 if: (1) the employee is certified by DWD as being part of a targeted group; (2) the employee is in his or her first year of employment; and (3) the employee works at least 400 hours for the employer. If the individual only works between 120 and 400 hours, then the employer will receive a credit of 25 percent of the wages for that employee (equal to \$1,500). [26 U.S.C. s. 51.]

**Discussion Topic:** The committee could consider legislation creating a state tax credit for employers who hire individuals with criminal convictions.

**Considerations:** Would a state tax credit use the same eligibility criteria as the federal WOTC? How much could an employer claim against state income tax (e.g., \$2,400 as under federal law, 50 percent of the federal WOTC an employer claims, some other amount)?

## PEER MENTORING FOR REENTRY SUCCESS

State law places few limits on contact between individuals who are currently incarcerated or on supervision and volunteers who wish to provide mentoring or other services to these individuals. However, certain DOC “anti-fraternization” policies generally prohibit volunteers from associating with, corresponding with, or having personal contacts with inmates, individuals under DOC supervision, family, friends, or associates of an inmate or individual under DOC supervision, or individuals who have been discharged from incarceration or supervision within the prior two years.<sup>1</sup>

State law does not currently require DOC to run a mentorship program, though the agency reports that the Division of Adult Institutions has a certified peer specialist program, and the Division of Community Corrections has a statewide contract for peer supporters, though they are not located in every region of the state.

One speaker suggested facilitating peer mentorship programs between individuals who are incarcerated and those with prior convictions who are experiencing reentry success. He noted, however, that current DOC “anti-fraternization” policies may provide an obstacle to such programs.

**Discussion Topic:** The committee could consider methods for encouraging the creation or expansion of peer mentorship programs. These could include creating a statutory grant program for nongovernmental entities to run a mentorship program, mandating that DOC facilitate a mentorship program, or creating a limited preemption of DOC fraternization policies in state law for purposes of a peer mentoring program.

**Considerations:** Will funding be provided for mentorship programs (e.g., via grants for nongovernmental entities or as a new DOC appropriation for the agency to run programs)? How should a potential statutory preemption of DOC anti-fraternization policies be worded to limit impact on security within DOC institutions?

## IMPLEMENTING AN EARLIER TIMELINE FOR REENTRY PROGRAMMING

State law requires DOC to prepare a proposed release plan for each inmate, but does not specify a timeline for when that plan must be completed. [s. [DOC 328.05](#), Wis. Adm. Code.] DOC currently provides prerelease programming for individuals who are six to nine months from their scheduled dates of release to prepare those individuals for reentry into the community. Social workers and treatment specialists within DOC assist individuals who are subject to community supervision<sup>2</sup> with completing

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<sup>1</sup> A more detailed discussion of DOC anti-fraternization rules can be found in [Memo No. 1, Background Information on Topics Raised at First Study Committee Meeting](#) (page 5), which was prepared for the September 22, 2022 meeting of the study committee.

<sup>2</sup> Individuals who are scheduled to be released without continuing community supervision (i.e., individuals released after serving the maximum number of years of their sentences while incarcerated) are not required to complete a COMPAS reentry assessment or a DOC-0745. However, social workers and treatment specialists are available to them

the COMPAS (the Correctional Offender Management Profiling for Alternative Sanctions) assessment tool, in order to determine an individual's criminogenic risk, assess the individual's needs for treatment or assistance, and create a comprehensive post-release case plan.

Additionally, all individuals releasing to supervision complete a Release Plan Information Form (DOC-0745). This form provides information to DOC regarding the individual's residence plans, employment plans, and education or treatment plans upon release. Using this DOC form, individuals facing release can inform DOC about any financial or health concerns, transportation and clothing needs, and whether they need assistance obtaining critical documents. Social workers and treatment specialists use this information to make referrals to appropriate outside agencies in order to meet health care needs (i.e., Social Security benefits, health insurance), to secure transportation and specialized clothing, and to obtain appropriate critical documents.

**Discussion Topic:** The committee could consider legislation requiring DOC to amend its reentry process by beginning the programming earlier than six-nine months before release, or by performing certain elements of its prerelease programming (i.e., the COMPAS assessment) earlier in order to implement appropriate education or treatment options for a longer time period than under current practice.

**Considerations:** Which elements of prerelease programming should begin earlier? Would an earlier timeline for prerelease planning require DOC to redirect its personnel from other duties? Should earlier prerelease planning be implemented on a pilot basis, or for a specified subset of releasing inmates (e.g., those in medium security institutions, or certain types of inmates), rather than statewide?

## PROVIDING A CENTRAL HOTLINE FOR EMPLOYERS

Employers that are interested in offering employment to persons on work release or to persons who have been released from incarceration may contact individual correctional institutions, the Department of Workforce Development (DWD), or a regional workforce development board for assistance. Currently, there is no single dedicated resource for assisting employers who are unaware of available options, have concerns about laws or rules relating to employing incarcerated or recently released individuals, or are unsure how to connect with individuals who have been trained to work in their industries. Committee members discussed the creation of a centralized, "one stop" informational hub for employers who are interested in hiring incarcerated or recently released individuals.

**Discussion Topic:** The committee could consider legislation to create a central hotline for employers in the state to call for information and assistance relating to employing individuals who are on work-release or who are on community supervision and are seeking employment.

**Considerations:** Which agency should create and administer the hotline, or should the hotline be subject to Requests for Proposals and administered by a private party? Should there be a statewide hotline or several, regional ones?

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for assistance in obtaining housing, health care, transportation and clothing, and obtaining appropriate vital documents.

## **PROMOTING AND EXPANDING THE USE OF THE QUALIFICATION FOR EMPLOYMENT CERTIFICATE**

State law creates a process allowing a person convicted of a nonviolent crime to apply for and receive a Certificate of Qualification for Employment (CQE). A CQE generally provides the person's employer with immunity from liability for the intentional acts or omissions of the employee, for any acts of the employee outside the course of the employee's employment, and for any claim for negligent hiring, retention, training, or supervision of the employee. [ss. [895.492](#) and [973.25](#), Stats.]

To qualify for a CQE, an individual must make an application to the Council on Offender Employment, and must have served either: (1) at least 24 consecutive months of a term of confinement in prison; or (2) at least 12 consecutive months of a term of confinement in prison and at least 12 consecutive months of a term of extended supervision. The council must review information provided to it by DOC relating to the individual's highest level of education, treatment completed, performance evaluations, risk and needs assessment reports, and other requested information.

Following this review, the council must grant a CQE if it finds that the applicant is not likely to pose a risk to public safety, the CQE will substantially assist the offender in obtaining employment or occupational licensing or certification, and the offender is less likely to commit an additional crime if he or she obtains a CQE. State law requires a court to revoke an individual's CQE if the individual is convicted of a felony, a Class A misdemeanor, or Class B misdemeanor, or if the individual's probation, parole, or extended supervision was revoked for the commission of a crime.

Speakers indicated that the CQE process is underutilized, with very few individuals applying for a CQE and few employers aware of the liability immunity it affords. The CQE process has been available since March 2020, but only two CQEs have been granted to date.

**Discussion Topic:** The committee could consider legislation intended to increase the number of individuals who obtain a CQE, to encourage employers to hire individuals with CQEs, and to expand the immunity provided. Immunity from liability could be expanded for employers or for other individuals who engage with CQE holders, such as landlords.

Options for increasing the number of individuals who obtain or retain a CQE include revising the criteria for applying for a CQE, requiring DOC to determine whether to recommend or require an individual to apply for CQE as a condition of release, and revising the conditions for revoking a CQE.

Options for encouraging employers and others to hire or otherwise engage with CQE holders could include implementing an awareness campaign for employers and others or expanding liability immunity to cover negligence related to renting a residence or admitting a student to an educational program. Additional options could include creating an incentive program for hiring, housing, or otherwise engaging individuals with a CQE, or requiring state and local governmental employers to consider CQE holders for public employment, regardless of whether an individual with a prior conviction would otherwise be prohibited.

**Considerations:** What are the barriers for persons who might qualify for a CQE but do not apply for one? Is the lack of immunity for liability a barrier to offender employment, housing, or education?

## “BAN THE BOX” LEGISLATION

Under the Wisconsin Fair Employment Act, employers are generally prohibited<sup>3</sup>from discriminating against applicants and employees on the basis of an arrest or conviction record. [s. [111.322](#), Stats.] The committee heard testimony that, despite nondiscrimination laws, applicants for employment are commonly asked to indicate whether they have been convicted of a crime when they fill out an application form or otherwise inquire about employment. The committee received information relating to the high levels of unemployment among individuals with criminal records, and heard testimony that some studies have linked an initial inquiry relating to an arrest or conviction record with a higher level of unemployment. The committee heard additional testimony that some states have taken a variety of legislative actions to prohibit employers from inquiring, at varying stages of the hiring process, into an applicant’s criminal history.

**Discussion Topic:** The committee could consider legislation to “ban the box,” i.e., to prohibit employers from inquiring into an applicant’s criminal history at certain stages of the application process. The committee may consider whether to prohibit this inquiry for public employers only, or for public and private sector employers.

Additionally, the committee may consider legislation that would provide exceptions when an employment opportunity is substantially related to a particular offense, allow for an inquiry into a criminal history at a certain point in the hiring process, or prohibit inquiries into criminal convictions that occurred more than a certain number of years prior to the offer of employment.

Finally, if the committee determines that housing providers and educational programs require applicants to disclose criminal history in a manner that affects employment opportunities, the committee may also consider “banning the box” on applications for housing and educational or other programs.

**Considerations:** Could legislation achieve the positive effects observed in other states that have enacted “ban the box” prohibitions, without triggering the other negative effects experienced in those states? Would a pilot program or a statewide ban be appropriate? Should initial legislation be limited to public employers?

## CENTRALIZED REENTRY SERVICES PILOT

Current law does not require or establish a centralized physical location where individuals releasing from incarceration may access all available reentry services. These individuals typically must travel to multiple locations to visit a DOC probation and parole agent, obtain critical identification documents, open a bank account, access housing and food assistance, obtain educational and vocational training information, connect with mental health services, and access job center services. The committee heard testimony suggesting that reentry services be coordinated to smooth an individual’s transition back into the community, potentially as a pilot project in one or two locations.

**Discussion Topic:** The committee may consider legislation creating a grant program to pilot a centralized reentry services location in one or more sites throughout the state.

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<sup>3</sup> An employer may make an employment decision on the basis of an arrest or conviction for a crime that “substantially relates” to the job in question. Additionally, current law prohibits persons convicted of certain crimes from specific types of employment or licensing. [s. [111.335](#), Stats.]



**Considerations:** Would the state create a competitive grant for which a nonprofit entity or local government could apply? How many grants would be awarded? In what amount and for how many years? Would one grant be reserved for an effort in an urban county and one in a more rural county? What requirements and conditions would apply to a grant recipient (e.g., reporting to DOC on numbers served and recidivism rates for participants, specified minimum services that would need to be provided at the location)?

## RECORD CLEARING

Speakers addressed efforts undertaken by other states to offer persons convicted of certain crimes an opportunity to clear or conceal their criminal records after a period of time. In Wisconsin, expungement is the most common means by which a court record relating to a particular conviction is sealed, destroyed, or otherwise removed from view. When a record of a particular criminal conviction is expunged, no record of the case, other than the case number, will be available on the court system's public-facing database, commonly referred to as "CCAP." [s. [973.015](#), Stats., and SCR [72.05 \(2\) \(L\) and 72.06](#).]

Current law requires a judge to order expungement at the time a person is sentenced. If a person did not receive an order of expungement that takes effect when the person completes his or her sentence, the person may not go back to the court and request expungement.<sup>4</sup>

Additionally, in order for a court to order expungement, all of the following must be true: (1) the person must have been under the age of 25 when he or she committed the offense for which expungement is sought; (2) the offense has a maximum penalty of six or fewer years of imprisonment, meaning only misdemeanors and Class H and I felonies may be expunged<sup>5</sup>; (3) the person successfully completed his or her sentence; and (4) the sentencing court determined that the person will benefit from record expungement and that society will not be harmed by it. [s. [973.015](#), Stats.]

Expungement does not vacate or set aside a conviction, so it does not restore eligibility for licensing or employment for which an individual is otherwise ineligible. Additionally, expungement seals access to court records, but not to information or records held by the Department of Justice's Crime Information Bureau, DOC, law enforcement agencies, or the Department of Transportation. A person conducting a background check or other investigation on an individual can still obtain information about an expunged conviction from these other sources.<sup>6</sup>

**Discussion Topic:** The committee could consider legislation to expand the scope of expungable crimes, increase access to expungement opportunities for offenders when appropriate, or expand the effects of expungement.

Legislation to expand the scope of expungable crimes could eliminate or amend the age limit for expungement or amend the types of crime eligible for expungement. Legislation that increases the opportunity for expungement could eliminate or amend the requirement that a judge order

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<sup>4</sup> A victim of human trafficking for the purpose of a commercial sex act may request expungement of a court record for prostitution at any time after conviction. [s. [973.015 \(2m\)](#), Stats.]

<sup>5</sup> A court cannot expunge a Class H or I felony if the individual has a prior felony conviction or the offense falls into certain categories. A Class H felony cannot be expunged if the offense is stalking, intentional or reckless physical abuse of a child, sexual assault by a school staff member or volunteer, or is defined as a violent offense. A Class I felony cannot be expunged if the offense is concealing the death of a child or is defined as a violent offense. [s. [973.015 \(1m\) \(a\) 3.](#), Stats.]

<sup>6</sup> See *State v. Leitner*, 2002 WI 77, 253 Wis. 2d 449, and *State v. Braunschweig*, 2018 WI 113, 384 Wis. 2d 742.

expungement at the time of sentencing and create a process by which a criminal record may be expunged after a certain period of time.

Finally, legislation expanding the effects of expungement could extend the sealing of records in other agencies, or specify that a crime for which the record has been expunged may not be considered for purposes of hiring, educational opportunities, or issuing a license or credential.

**Considerations:** Which crimes, and which offenders, should have an opportunity for expungement? If legislation creates a process by which a criminal record may be expunged after a certain period of time, what is the appropriate period, and what criteria is appropriate for determining whether a criminal record should be expunged?

Should expungement occur automatically if certain criteria are met, or should the person who seeks expungement be required to apply for it? If an expunged record may not be used for purposes of hiring, educational opportunities, or issuing a license or credential, should there be exceptions for certain types of crimes or certain types of employment, education, licensing, or credentialing?

## **LANDLORD INCENTIVES**

The committee has expressed an interest in determining whether landlords are reluctant to rent to individuals with a criminal record and, if so, whether certain economic incentives may be offered in order to increase the availability of housing for individuals seeking housing after release from incarceration.

**Discussion Topic:** The committee could consider legislation providing a financial incentive to landlords who rent to individuals with criminal records. Incentives could be offered in the form of tax credits, reimbursement for certain costs associated with renting to individuals with criminal records (e.g., certain repair or rehabilitation costs), or reimbursement for certain costs waived by the landlord (e.g., application fees, background search fees, or security deposit). Additionally, the committee may draft legislation that would guarantee a portion of rent due, for a certain period of time, for each rental unit occupied by a person with a criminal record.

**Considerations:** What are the primary barriers for landlords? Should any incentive program be statewide, regional, or designed as a pilot? Which costs should be covered by the state, and which agency should administer an incentive program?

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