

SANCTIONED BY DESIGN

W-2 Punishment Policies That Hurt Families and Best Practice Models That Would Help



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INSTITUTE FOR WISCONSIN'S FUTURE
policy research in the public interest

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Executive Summary

This report details aspects of Wisconsin's welfare sanctions policies that undermine participants' progress toward self-sufficiency, and highlights best practice models from other states that would better serve the program's overall goals.

Wisconsin welfare agencies sanction more than those in almost every other state. Wisconsin's high sanction rate is not an accident; rather it reflects the harsh and punitive nature of policy design. Evidence suggests that sanctions are not imposed in a fair and consistent manner. Participants of color are more likely to be sanctioned than white participants. Furthermore, state audits have uncovered inappropriate sanctions in an alarming number of cases. Sanctions tend to increase the hardships suffered by families on welfare. As a result, implementation problems raise questions about whether sanctions policy meets the broadly stated goal of Wisconsin's welfare reform experiment: *moving families toward self-sufficiency*.

States have discretion over the way they implement sanctions policy, subject only to loose guidelines from the federal government. Wisconsin's policy is among the most severe in the country, both because of key aspects of policy design and because of the way it is implemented on the ground. Penalties for failing to comply with program requirements have taken on heightened importance in the era of *Temporary Assistance to Needy Families* (TANF), because behavior modification is at the heart of the philosophy underlying the new approach to welfare.

Establishing an incentive structure that will reward desired behavior — in this case, progress toward employment — requires careful policy design. Wisconsin's policy fails to guard against key pitfalls. Welfare reform agencies had financial incentives to keep caseloads low. Sanctions were used as a mechanism to do so, rather than a tool for encouraging families to make progress within the system. Furthermore, Wisconsin's policy fails to include adequate protections for participants with disabilities, who may be sanctioned when in fact they need additional services or accommodations.

Generally, Wisconsin's policy establishes rigorous standards for work participation with immediate and strong penalties for missing assigned activities. This approach effectively punishes participants rather than addressing the unidentified needs that are often the root cause of missed activities.

Problems with W-2 policy:

- **Wisconsin's policy allows sanctions for every missed hour of work activity.**

A sanction can be entered against a participant for missing even one hour of activity.

- **Wisconsin eliminated procedures that protected families from unfair treatment.**

Under AFDC, states used two procedures — *conciliation and fair hearing* — to ensure participants were not sanctioned in error. Using the new flexibility permitted by TANF, Wisconsin eliminated both of these practices.

- **A higher proportion of Wisconsin's caseload is subject to potential sanctions than most other states.**

Wisconsin's work requirements are much stricter than federal regulations require, yet no W-2 participants are exempted. Thirty-eight other states enable participants with specific disabilities or difficulties to be exempted from work requirements. Increasingly, nationwide and across Wisconsin, the welfare rolls are populated with individuals with severe barriers to employment.

- **W-2 policy leaves many key aspects of implementation up to the discretion of local agencies, resulting in inconsistency and inequity.**

Because the overall tone of W-2 policy encourages discretion at the expense of standardized procedures, policies requiring screening and assessment have historically been followed in the most cursory fashion. Good cause policies — the procedures that determine who gets an excused absence — are not implemented fairly and consistently across the board.

The absence of policies and procedures that protect participants from improper sanctions is especially troubling given the strong nationwide evidence that participants most affected by sanctions are those with significant life challenges.

The implementation of W-2 fails to meet the challenges that define the new policy environment. Rather than the flexible and responsive system of service provision promised by W-2 policy documents, participants are faced with cookie-cutter

menus of services that may not correspond to their real needs. Unidentified barriers and unmet service needs contribute to the risk of inappropriate sanctions.

The absence of policies and procedures that protect participants from improper sanctions is especially troubling given the strong nationwide evidence that the participants most affected by sanctions are those with significant life challenges (*Pavetti et. al. 2003, Cherlin et. al. 2001, Kaplan 1999, GAO 2000a, Bloom & Winstead 2002*). Studies show that participants who receive sanctions are consistently less likely to have completed high school, less likely to have work experience and job skills, and more frequently coping with physical and mental health problems than participants who are not sanctioned.

These facts suggest that participants may be sanctioned even though they do not meet the federal criteria of *refusal to comply* (Pavetti et. al. 2003). Rather, some participants may have barriers that make it difficult for them to comply. In fact, the very barriers that make it difficult or impossible for welfare participants to succeed in the workforce also interrupt participation in work requirements (Overby 1998, Cherlin et. al. 2001).

Rigorous and punitive sanctions policies are often promoted as a money-saving strategy, but in reality this policy choice is costing taxpayers' money. The current program fails to ensure that low-income parents move off welfare and into work that offers opportunity for long-term self-sufficiency. As a result, low-income parents need more supports when they do work, because they have extremely low earnings. And they are more likely to come back on the rolls when their jobs in seasonal and temporary work end.

More effective use of sanctions would require specific changes to W-2 policy. Many of these changes can be modeled on best practices already tested and proven in other states (Goldberg & Schott 2000).

These best practices include:

- **Improving use of assessments to understand the barriers faced by welfare participants and to provide appropriate services and activities;**
- **Instituting stronger good cause policy guidelines that emphasize connecting low-income parents with needed supports;**
- **Implementing a pre-sanction review process that includes the option of intensive case management for participants who are frequently sanctioned;**
- **Introducing a new tier for W-2 participants with severe barriers, using the 20% exemption clause in federal law;**
- **Requiring post-sanction outreach, including referrals to legal action and to community groups and local resources;**
- **Defining narrowly which activities can be sanctioned;**
- **Creating an ombudsman program so participants who want to challenge policy or implementation have access to independent advocate; and**
- **Strengthening due process protections by reinstating fair hearings.**

While these recommendations do not speak specifically to the issue of racial disparities, they could help alleviate some of the circumstances that have generated disparate racial impact. These policy changes would make the program more responsive to the needs of a variety of participants, providing better services and more appropriate assignments to those who are not served adequately.

Ensuring racial equity in the W-2 program also requires more specific changes to sanctions policy.

Policy changes that would promote racial equity include:

- **Improving training on racial equity for case managers;**
- **Improving the civil rights compliance plans at the agency level; and**
- **Instituting a racial equity performance standard to encourage agency-level focus on procedures that limit discrimination.**

Evidence of racial disparities in sanctions has emerged at several key points in the history of W-2 implementation, yet to date no specific policy changes have been enacted to address these disparities. Participants continue to be vulnerable to disparate treatment and disparate impact.

Wisconsin is often seen as a laboratory for welfare reform, because the changes instituted in 1996 created a thorough and extensive new approach to welfare. Substantial evidence now exists that state sanctions policy undermines the success of individual participants and the program as a whole. Moreover, the emphasis on discretion in state policy has resulted in sanctions being imposed in a capricious and whimsical fashion, not reflective of the array of the procedural protections available to ensure participants receive fair and equitable treatment. There are more effective models available. Wisconsin should make use of them now.

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Introduction

Participants in W-2 are penalized more often and more severely for missing assigned work activities than participants in most other state welfare replacement programs across the country. Wisconsin's high sanction rate is not an accident; rather it reflects the harsh and punitive nature of policy design. This report details aspects of Wisconsin's welfare sanctions policies that undermine participants' progress toward self-sufficiency, and highlight best practice models from other states that would better serve the program's overall goals.

Welfare sanctions emerged as a key problem with Wisconsin's welfare replacement program "Wisconsin Works" (W-2) in 2001, when a statewide audit showed that some participants were penalized inappropriately. In February 2002, two Wisconsin civil rights organizations filed a complaint with the federal Office of Civil Rights (OCR), arguing that W-2 discriminated against people of color and people with disabilities (Rotker and Hamilton 2002). The complaint articulated concerns that new evidence showed people of color received sanctions more often than white participants. The complaint also pointed out that participants with disabilities tended to be sanctioned when instead they needed accommodations required by the Americans with Disabilities Act. Wisconsin's W-2 advocacy community had already begun to push for reform of sanctions policy. The OCR complaint leveraged new interest in considering these reforms. Key policymakers and staff within the state agency that administers W-2, the Department of Workforce Development (DWD), soon commissioned a broad-based Steering Committee to consider the design, implementation, and outcomes of Wisconsin's sanction policy.

The power to levy sanctions, or cash penalties, against participants who failed to complete assigned activities increased when federal law created a new, work-based approach to welfare in 1996. While sanctions were intended to create stronger incentives for participants to make progress toward full employment, research now shows they do not necessarily work. Evidence from across the country shows that sanctions are often a key component of racial disparities in how welfare programs are implemented. Moreover, they tend to increase hardships experienced by families on welfare. Welfare experts now understand that many families relying on cash assistance have disabilities and other significant barriers to work. Emphasis on sanctions often undermines these participants' progress, either because lost income creates additional barriers, or because sanctioned participants lose access to services that are critical to family well-being. Many analysts also suggest that sanctions do not motivate participants to find work.

Emphasis on sanctions often undermines progress, either because lost income creates additional barriers, or because sanctioned participants lose access to services that are critical to family well-being.

Incorporating sanctions into welfare policy seems simple: assign participants to work activities, and sanction those who fail to do as assigned. In practice, sanction policy is much more complicated. State policymakers who designed welfare programs had to make choices on a range of implementation issues: what threshold of missed

activities would warrant a sanction, what kinds of activities would be subject to a sanction, how to ensure that participants are only sanctioned when they refuse to comply, and how to create opportunities for case managers to get more information about participants who are sanctioned to ensure they are not punished for being unable to comply.

Over seven years after welfare reform was instituted, state welfare programs continue to be adjusted to account for the lessons of this massive social experiment. Research shows that instituting an array of best practices can make sanction policy fairer and more effective. This paper reviews the research on the impact of sanctions, analyzes Wisconsin's sanctions policy, and concludes with concrete recommendations that could improve the circumstances faced by thousands of families who are at risk of being sanctioned.

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From AFDC to W-2

Rigorous state sanctions policies emerged in the era of Temporary Assistance to Needy Families (TANF), the framework created in 1996 with the passage of landmark federal welfare legislation. Under the older welfare system, Aid to Families with Dependent Children (AFDC), states could levy sanctions against families but the magnitude of the penalty was limited and all states had to follow

strict procedures for protecting the rights and interests of low-income families (Bloom & Winstead 2002, GAO 2000a). Specific sanction policies under AFDC included:

- States could not sanction a family's total welfare grant, but were limited to withholding the portion that was designated for the adult caretaker(s).
- Program staff was required to perform a review of every case in which a sanction was being applied, to ensure that participants were not sanctioned when they failed to understand program requirements or as a result of recordkeeping error.
- In cases where the sanction was in dispute, participants continued to receive full benefits until the dispute resolution process was completed.
- When sanctions reduced cash income, family Food Stamps benefits could increase.
- Participants who had health problems, or who were caring for an ill or infirm family member, were exempt from AFDC work programs.

None of these provisions apply today under W-2. Some Wisconsin policymakers believed that these conditions weakened the incentive structure that made it more desirable for low-income parents to work. TANF legislation permitted states the discretion to eliminate provisions that protected welfare recipients from unfair sanctioning.

Penalties for failing to comply with program requirements have taken on heightened importance in the era of TANF, because behavior modification is at the heart of the philosophy underlying the new approach to welfare. AFDC strove to provide a floor below which the monthly incomes of low-income families would not fall, effectively creating a safety net for parents dealing with crisis or job loss. TANF, in contrast, endeavors to change the behavior of low-income parents to make it more likely that they will find and sustain employment. Supportive services are provided to families in an effort to ameliorate the conditions that make it difficult or impossible for low-income parents to work. New work supports, such as subsidized child care, make it easier for low-wage workers to maintain a basic household standard of living. These carrots are complemented by new sticks – penalties for failing to progress toward work readiness.

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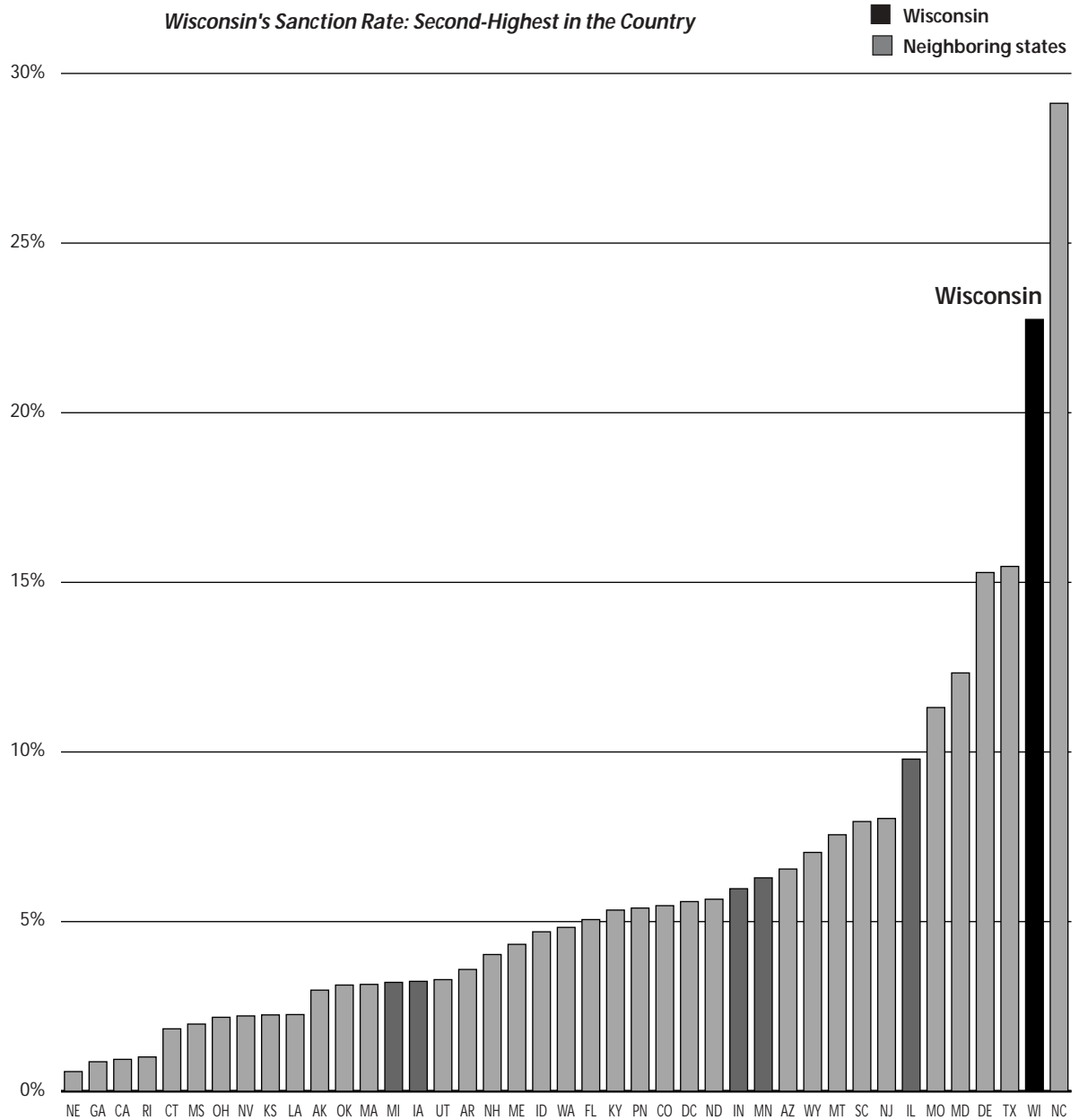
Wisconsin Works, or Gets Sanctioned

Nationwide reports of state sanction practices consistently note that Wisconsin sanctions participants more often and more severely than almost every other state. Increasingly, evidence from a variety of sources points to the prevalence of inappropriate sanctions. Not only is state policy among the most punitive and harsh in the country, but agencies have had specific financial incentives to deny services and maintain the lowest possible caseloads. Sanctions have often been seen as a mechanism for keeping caseloads down, rather than a tool for encouraging families to make progress within the

system. High sanction rates and instances of inappropriate sanctioning are a direct result of policy design and the discretion that is built into implementation.

Outcomes

Wisconsin's unique sanction policies have resulted in one of the highest sanction rates in the country. A report by the US General Accounting Authority (GAO), whose authors admit to underestimating the



Data gathered by the U.S. General Accounting Office (GAO 2000a). Data unavailable for Alabama, Hawaii, New Mexico, New York, Oregon, South Dakota, Tennessee, Virginia, Vermont and West Virginia.

Participants Sanctioned Per Month, 1998

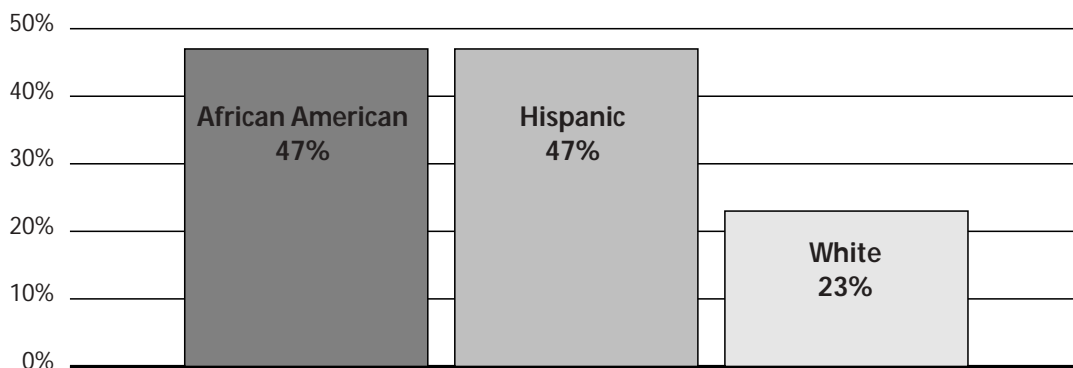
full impact of sanctions in welfare programs nationwide, reports that in an average month in 1998 over 22% of Wisconsin's welfare caseload received a sanction (GAO 2000a, GAO 2000b, Pavetti et. al. 2001). Only three states — Idaho, Wyoming and Florida — levied full-sanctions more often, and only North Carolina sanctioned at a higher rate overall.

More recent data released by Wisconsin's Legislative Audit Bureau (LAB) show that Wisconsin continues to sanction at a very high rate. The 2001 comprehensive audit found a December 2000, sanction rate of 21% (LAB 2001). Sanction rates in the Milwaukee area, where on average 80% of the caseload is enrolled, were much higher than in the rest of the state. Furthermore, the audit bureau estimated that sanctions consumed a substantial portion of participants' monthly benefits: W-2 participants were docked 32%-57% of their monthly cash grants as a result of sanctions.

A recent report using more sophisticated measurement techniques found that about 51% of W-2 participants were sanctioned in the first year of the program. While the sanction rate declined in subsequent years, it continued to be very high. Approximately 37% of participants who entered the program in the third year of its existence received a sanction (Wu et. al. 2003).

W-2 participants are sanctioned often, but evidence shows they are not always sanctioned fairly and equitably, nor are all penalties imposed in accordance with state policy. A research brief released jointly by the Institute for Wisconsin's Future and the University of Wisconsin-Milwaukee's Center for Economic Development in October 2002 demonstrated that people of color were much more likely to be sanctioned than white participants. The State's own non-partisan LAB conducted a preliminary investigation of sanctions in December 2002, confirming the earlier report's argument that racial and ethnic minorities were sanctioned more frequently (LAB 2002). Subsequent reports by DWD, the state agency that administers the W-2 program, confirmed these racial and ethnic disparities (BWS/BWI 2003).

***The 2001 Statewide Sanctions Rate for Participants of Color was
Twice as High Than White Participants***



W-2 Sanctions Rate per Ethnic/Racial Group, 2001

The LAB report raised an additional set of concerns: that parents of infants under 12-weeks old had been inappropriately sanctioned at a high rate. Even after W-2 agencies were asked to conduct an independent review of these cases, almost 45% of the cases they certified as being appropriate were in fact sanctioned in error. Finally, the LAB found that potentially inappropriate sanctions were not reviewed and resolved on a timely basis. These findings suggest some agencies did not impose sanctions in accordance with state policy, and did not have proper checks and balances in place to protect participants against hardships created by penalties imposed in error.

Some W-2 participants should not be sanctioned because of their placement. Parents of infants under 12-weeks old, for example, should never be sanctioned because they are excused from work requirements. Participants who are assigned to a work placement may be sanctioned, based on whether they complete all the activities assigned to them.

The LAB conducted a very limited investigation of inappropriate sanctions, identifying only those cases in which a parent was sanctioned despite being in a placement that was not sanctionable. Yet, many participants who are placed in a work placement that is sanctionable may nonetheless be sanctioned inappropriately. Some participants who miss work activities have legitimate excuses, but their paperwork is not processed properly. Some participants are sanctioned even if they did not miss any activities, because the attendance records are incorrect. Other participants are sanctioned for missing activities that they cannot physically complete, because documented disabilities are not considered when work activities are assigned. None of these scenarios in which inappropriate sanctions might occur was included in the LAB report.

Advocates for low-income families have suggested this larger category also warrants investigation. In 2002, three organizations filed a complaint with the federal Office of Civil Rights, arguing that W-2 discriminates against people of color and people with disabilities. Specifically, the complaint argues that instead of accommodating participants with special needs, W-2 agencies required them to perform the same level of activity as other participants and then sanctioned them when they failed to do so.

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Policy Design and Implementation

Wisconsin's sanctions policy is among the harshest and most punitive in the country.

Forty-eight states, including Wisconsin, designed more draconian sanction policies than federal law requires (Goldberg & Schott 2000). Among

these, however, Wisconsin's policy is among the harshest and most punitive in the country.

States have discretion over the way they implement sanctions policy, subject only to loose guidelines from the federal government. Welfare reform legislation requires states to impose pro rata reductions in cash grants for participants who refuse to comply. States can be penalized for sanctioning too

much as well as for sanctioning too little. All other aspects of sanction policy are at the discretion of the state: the magnitude and duration of the penalty, the definition of “refusal to comply,” and the extent of protections for participants (GAO 2000a).

National policy experts have characterized sanction policy according to the extent of the penalty for non-compliance (Goldberg & Schott 2000, Pavetti et. al. 2003, GAO 2000a). Fourteen states enact “partial sanctions.” In those states, policy limits the penalty for noncompliance to a designated portion of the monthly cash grant. Missouri, for example, sanctions only 25% of the cash grant for the first and repeated violations. Texas deducts only \$78 for single-parent families who receive a sanction, regardless of the number of violations of program requirements. California and New York designate an adult portion of the cash grant. In California repeated sanctions can result in increased deductions, but the grant amount calculated for rent and utility expenses can never be sanctioned.

Twenty-two states employ “graduated sanctions,” increasing the intensity of the penalty for repeated violations of policy requirements. In these states, initial sanctions are met with partial reductions, but subsequent instances of non-compliance are punished with full sanctions. Fifteen states, including Wisconsin, implement “full family sanctions,” meaning the full cash grant can be sanctioned for first and repeated instances of non-compliance (GAO 2000a).

In most states, the penalty lasts for one month or until the participant resumes compliance, though a handful of states extend the period of sanction up to six months. While thirty-seven states allow for the entire cash grant to be sanctioned in repeated instances of non-compliance, the majority of welfare participants are not vulnerable to full sanctions, because the three states with the largest welfare caseloads — California, New York, and Texas — do not use full sanctions (GAO 2000a, Bloom & Winstead 2002).

Wisconsin’s policy is among the most severe in the country, both because of key aspects of policy design and because of the way it is implemented on the ground.

The policy itself establishes rigorous standards for work participation with immediate and strong penalties for missing assigned activities. This approach effectively punishes participants rather than responding with supportive services to the unidentified needs that are often the root cause of missed activities.

Problems with W-2 policy:

- **Wisconsin sanctions *pro rata* for every missed hour of work activity.**

Every other state establishes a threshold of missed activities. When a participant hits that threshold, she is deemed to be non-compliant. Thus, in all other states, a sanction is a penalty reserved for participants that have missed a substantial portion of work activities, but in Wisconsin a sanction can be entered against a participant for missing even one hour of activity. Policy experts characterize this aspect of W-2 sanction policy as *pay for performance*.

- **Wisconsin eliminated important due process guarantees.**

Wisconsin eliminated the two due process guarantees that all states were required to offer participants under AFDC. Under AFDC, conciliation meetings were scheduled for all families who were facing a sanction. At the meeting, the caseworker explained the unfulfilled requirements. Welfare recipients were given the opportunity to justify noncompliance, contest the facts of the case, agree to comply, or seek an exemption. Caseworkers could decide if the circumstances warranted a sanction or if the recipient had good cause for missing required activities. If the conciliation process did not resolve the issue, sanctions were imposed. Families still had the right to contest the sanction by requesting a fair hearing.

Wisconsin eliminated both of these processes designed to protect the rights of participants, and guard against the imposition of hardship due to record-keeping errors or misunderstandings in case management. Thirty-six states continue to use some form of the conciliation process. Every other state but Wisconsin continues to use the fair hearing process to resolve disputes over sanctions and other aspects of welfare implementation. Wisconsin is the only state that allows W-2 agencies to adjudicate their own disputed cases through a process known as “fact-finding.” Participants who lose a fact-finding can appeal and receive a second-level review through a separate state-level department. When participants do appeal fact-finding decision, they prevail at second-level reviews 70% of the time, but only a fraction of fact-findings are appealed.

- **A higher proportion of Wisconsin’s caseload is subject to potential sanctions than most other states.**

Unlike 38 other states, none of Wisconsin’s W-2 participants are exempt from work activities. Increasingly, nationwide and across Wisconsin, the welfare rolls are populated with individuals with severe barriers to employment. Many policy experts and administrators point out that some of these participants have disabilities too severe to permit them to become self-sufficient through work, but not severe enough to qualify for SSI. Other participants do eventually qualify for SSI, but rely on W-2 to provide income while undergoing the very lengthy application process.

In other states, some participants are exempt from work requirements and offered a different set of activities that are more appropriate to their needs and abilities. Federal regulations permit states to designate up to 20% of their welfare caseloads as exempt from TANF requirements, yet in Wisconsin all W-2 participants are subject to strict work requirements.

Moreover, Wisconsin’s work requirements are much stricter than federal regulations require. TANF law demands that welfare recipients begin work requirements within 24 months of coming onto the system; under W-2, participants are subject to work requirements immediately. TANF law requires participants to complete a minimum of 20 hours of work activity per week; under W-2, participants are expected to complete up to 40 hours of work activity per week.

- **W-2 policy leaves many key aspects of implementation up to the discretion of local agencies, resulting in inconsistency and inequity.**

W-2 policy requires case-workers to conduct initial screening and assessment and agencies to have a process for participants to receive excused absences when they miss work activities. Unfortunately, because the overall tone of the policy encourages discretion at the expense of standardized procedures, these policies are often followed in the most cursory fashion. The problem with assessments is twofold: participants may not be assessed despite indications of disabilities or other problems and assessments may not be used consistently to inform the work activities assigned to participants. As a result, participants may be assigned to activities they are unable to complete, resulting in sanctions.

The policies that determine when participants can get an excused absence from work activities are often referred to as good cause. Good cause policies are not uniform across agencies. Deadlines for submitting documentation may be very short, and the documentation requirements themselves can be unrealistic. Parents of sick children do not always seek medical attention even when the children miss school; thus, they may not have the required doctor's note to justify an excused absence.

The problems with assessment and good cause practices are even more complicated for participants with chronic health problems that vary in intensity day to day. For example, a participant with a back injury may have a doctor's assessment stating they have limitations, but can do four hours a day of work activity. For that participant, however, a flare-up of chronic pain can result in unpredictable periods in which no work activity can be completed. If the assessment does not take that into account, and if good cause policy is too restrictive, the participant will be sanctioned, essentially for having a physical disability.

Additional evidence suggests problems arise for participants because of the way local W-2 agencies implement this policy. The new behavior modification approach to welfare reform entails a heightened implementation role for state-funded welfare agencies. Previously, welfare agencies operated under very strict federal regulations, with the primary function of assessing eligibility and ensuring that monthly payments were issued. Under the new system, welfare agency staff are expected not only to evaluate eligibility for welfare programs, but also to identify barriers to success in the workforce, assign work activities that will improve work readiness, devise connections with employers that will produce new job opportunities for welfare recipients, and develop appropriate responses to participants' noncompliance with program requirements.

The implementation of W-2 fails to meet the challenges created by the new policy environment. Rather than the flexible and responsive system of service provision promised by W-2 policy documents, participants are faced with cookie-cutter menus of services that may not correspond to their real needs. Unidentified barriers and unmet service needs contribute to the risk of inappropriate sanctions.

Impact

The absence of policies and procedures that protect participants from improper sanctions is especially troubling given the strong nationwide evidence that the participants most affected by sanctions are those with significant life challenges (Pavetti et. al. 2003, Cherlin et. al. 2001, Kaplan 1999, GAO 2000a, Bloom & Winstead 2002). In a wide variety of studies that examined the experiences of participants in a multitude of state welfare systems, participants who receive sanctions consistently display the following characteristics.

- They are less likely to have completed high school than those who do not.
- They have more limited work experience and minimal job skills
- They report more frequent incidence of physical and mental health problems.
- They are likely to have more children than participants who do not get sanctioned.
- They are more likely to have transportation difficulties and less likely to own an automobile.

These facts suggest that participants may be sanctioned even though they do not meet the federal criteria of *refusal to comply* (Pavetti et. al. 2003). Rather, some participants may have barriers that make it difficult for them to comply. In fact, the very barriers that make it difficult or impossible for welfare participants to succeed in the workforce also interrupt participation in work requirements (Overby 1998, Cherlin et. al. 2001). Heidi Goldberg and Liz Schott argue that “[e]vidence after four years of TANF... indicates that families sanctioned for noncompliance with work requirements are not primarily those that refuse work, but rather those that face substantial barriers to employment” (CBPP 2000, 2). A report on efforts to reform the sanctioning process in Tennessee notes that “there was substantial evidence that many families did not understand what they were required to do” (Overby 1998). An

Some participants may have barriers that make it difficult for them to comply; the very barriers that make it difficult or impossible for welfare participants to succeed in the workforce also interrupt participation in work requirements.

evaluation of Delaware’s welfare reform experiment notes that “[p]ersonal and family characteristics associated with sanction

receipt suggest that family circumstance made it difficult for some clients to meet [program] rules, whereas others may not have completely understood the requirements” (Fein & Lee 1999, i).

Research on welfare programs in Minnesota, Arizona, and Wisconsin shows that sanctions disproportionately affect participants of color (Wu et. al. 2004, Wagner et. al. 2002, BWI/BWS 2003, Fendt & Mulligan-Hansel 2002). Policy experts claim that this pattern applies to almost all of the state systems which have been studied to date (Pavetti et. al. 2003). Wisconsin’s Department of Workforce Development has undertaken a broad research project to develop a better understanding of why

racial and ethnic disparities appear in sanction rates. Regardless of the underlying cause, the data suggest that the system is designed to help families who fit a certain profile, rather than providing services and supports that bridge the gap to work for all communities.

As currently constructed, Wisconsin's sanctions policy has a demonstrably negative impact on families. In all cases, sanctions results in loss of cash income, resulting in more hardships for families. The impact of these hardships is often to undermine the participant's progress toward self-sufficiency and work. As a result, a sanction is not just a penalty for non-compliance, in many cases it works against the broader goal of welfare reform (Lee et. al. 2004). There is no evidence that sanctions motivate welfare participants to behave differently (Pavetti et. al. 2003).

In studies conducted across the country, sanctioned families more often reported experiencing hardships. Sanctioned families report more often not having enough food, or lacking a working telephone at home. They report more often problems paying for food, medical care and household needs. Moreover, they are less likely to remain employed, have lower earnings when they do work, and are more likely to come back onto the welfare rolls than participants who do not get sanctioned (Bloom & Winstead 2002, Kaplan 1999). One landmark study also reported that sanctions have a troubling impact on children's health. Children in families that received a sanction were 30% more likely to have been hospitalized in the past, 90% more likely to be hospitalized during a future emergency room visit, and 50% more likely to live in a household that reported lack of sufficient food (C-SNAP 2002).

Wisconsin should adjust its welfare program to integrate sanctions policy more effectively into the overall system of service provision, in pursuit of better wage and employment outcomes for low-income parents.



Best Practices: Improving W-2 Services and Outcomes

Rigorous and punitive sanctions policies are often promoted as a money-saving strategy, but in reality this policy choice is costing taxpayers' money. The current program fails to ensure that low-income parents move off welfare and into work that offers opportunity for long-term self-sufficiency. As a result, low-income parents need more supports when they do work, because they have extremely low earnings. And they are more likely to come back on the rolls when their jobs in seasonal and temporary work end.

More effective use of sanctions would require specific changes to W-2 policy. Many of these changes can be modeled on best practices already tested and proven in other states (Goldberg & Schott 2000).

These best practices include:

- **Improving use of assessments to understand the barriers faced by welfare participants and to provide appropriate services and activities;**

- **Instituting stronger good cause policy guidelines that emphasize connecting low-income parents with needed supports;**
- **Implementing a pre-sanction review process that includes the option of intensive case management for participants who are frequently sanctioned;**
- **Introducing a new tier for W-2 participants with severe barriers, using the 20% exemption clause in federal law;**
- **Requiring post-sanction outreach, including referrals to legal action and to community groups and local resources;**
- **Defining narrowly which activities can be sanctioned;**
- **Creating an ombudsman program so participants who want to challenge policy or implementation have access to independent advocate; and**
- **Strengthening due process protections by reinstating fair hearings.**

While these recommendations do not speak specifically to the issue of racial disparities, they could help alleviate some of the circumstances that have generated disparate racial impact. Under current policy, case managers and their supervisors have tremendous discretion in deciding when and why to impose a sanction. Discretion creates the opportunity for individual attitudes about race to become a factor in this decision. By establishing limits on discretion these policy changes would limit the potential for individual racist attitudes to influence implementation. Additionally, the current policy gives lip service to individualized service, but in many ways tends toward cookie-cutter work assignments. These policy changes would make the program more responsive to the needs of a variety of participants, providing better services and more appropriate assignments to those who are not served adequately.

Ensuring racial equity in the W-2 program also requires more specific changes to sanctions policy.

Policy changes that would promote racial equity include:

- **Improving training on racial equity for case managers;**
- **Improving the civil rights compliance plans at the agency level; and**
- **Instituting a racial equity performance standard to encourage agency-level focus on procedures that limit discrimination.**

Evidence of racial disparities in sanctions has emerged at several key points in the history of W-2 implementation, yet to date no specific policy changes have been enacted to address these disparities. Participants continue to be vulnerable to disparate treatment and disparate impact.

National and state-level policy experts have documented specific practices that tend to use sanctions as a tool for helping families make progress toward self-sufficiency, rather than simply imposing

penalties without addressing the underlying dynamics that cause families to miss assigned work activities. These practices fall within four broad categories: assessment, good cause policy, pre-sanction review, and post-sanction outreach (Goldberg & Schott 2000, Kaplan 1999, Mannix 2002).

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Assessments

Sanctions should only be levied when it is clear that the participant has refused to comply, and should not be levied when participants' life challenges make it impossible for them to complete assigned activities.

A policy that emphasizes *thorough and ongoing assessments* can ensure that barriers are identified, and help to identify appropriate activities that will help

move participants toward job-readiness without compromising their need for special services.

The success of efforts to prescribe activities that will move low-income parents into work hinges on using reliable assessments to identify participants' barriers to work. W-2 participants especially need access to a credible assessment process for several reasons. First, assessment is necessary to determine the appropriate placement and activities. There are two cash-assistance tiers that require work activities, W-2T and CSJ. Requirements differ among the tiers, as does the amount of cash assistance. Moreover, within each tier, the composition of activities in participants' employability plans can vary widely. Two participants, both assigned to a CSJ placement, can be required to complete very different sets of activities.

Sanctions should only be levied when it is clear that the participant has refused to comply, and should not be levied when participants' life challenges make it impossible for them to complete assigned activities. Without appropriate assessments, program staff cannot be sure that participants are capable of completing the activities which they have been assigned.

From the inception of W-2 until 2003, there were no requirements that participants be offered the opportunity for systematic and thorough assessment. In an effort to address concerns that participants with disabilities were being sanctioned when they were assigned activities they could not complete, the State of Wisconsin in 2003 instituted a new standardized screening procedure, known as the Barrier Screening Tool (BST). Participants are invited to complete the BST during their first few months on W-2, though it is always administered after the participant has already been placed in a cash assistance tier and typically after the work activities have been assigned. Participants can decline the BST if they do not wish to disclose sensitive information. The tool asks participants to share information that might suggest problems with domestic violence, alcohol or other drug abuse, learning disabilities, physical disabilities, mental health problems, or the presence in the home of a child with a disability. Indications that the participant is coping with any of these issues can result in a referral for a more in-depth, professional assessment.

Wisconsin's Department of Workforce Development plans a thorough evaluation of the BST, but it is too soon to know whether or how it has changed participants' experiences of work requirements and sanctions. Advocates for low-income parents have expressed concern that the information gathered through the BST does not yet regularly inform placement and work activity assignments.

Even if the BST is functioning precisely as intended, it is not realistic to expect that all problems within the household can be readily identified when participants enter the welfare system. Rather, assessment must be an ongoing process. Participants should be invited to receive additional screening anytime they exhibit difficulty complying with work requirements, or when the case manager receives new information that might change the composition of work activities they are required to complete.

Assessment policies should include:

- Initial screening and frequent opportunities for participant to disclose information pertinent to her case;
- More in-depth investigation triggered by repeated sanctions, or instances of severe sanction;
- Modified work plans that include special services for participants with disabilities or severe barriers;
- Requirements to ensure that the results of assessments are used to determine placement and activities assigned.

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AN EXAMPLE: New Mexico

New Mexico's TANF program offers special arrangements for participants whose health-related barriers make it difficult for them to work, but who do not qualify for federal disability benefits (SSI). Assessments are required for all participants that fit this profile. The Incapacity Review Unit (IRU) monitors and reviews all medical documentation for participants with potential disabilities or health-related barriers to success. The IRU has the ability to change the participant's employability plan based on medical documentation, sometimes working directly with service providers to identify activities that are within the capacity of the participant. Alternatively, the IRU can issue waivers from work requirements (Goldberg & Schott 2000).

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Good Cause Policy

A fair and uniform good cause policy can safeguard participants against being penalized for the very life challenges that have made it difficult for them to find employment.

Policies that outline how and when participants can qualify for an excused absence from work activity are often labeled good cause policies. Ideally, good cause policies would invite W-2 participants to protect themselves from unfair sanctions while also providing new information about needs not being addressed by the program.

In reality, good cause policies vary greatly across the state, but some reports suggest that they can provide another layer of requirements that participants have difficulty meeting. In some agencies, supervisory staff are required to approve any sanctions before they can be entered. In others, case managers have the power to impose sanctions. In some agencies, the case manager checks in weekly with the worksite supervisors who oversee work activities, recording attendance and entering sanctions where egregious absences have occurred. In other agencies, attendance data is collected through a separately contracted system and even the case manager may not know that a sanction is being imposed until the participant brings the issue to light. In some agencies, the tendency is to grant good cause, unless there are strong signs of refusal to comply. In other agencies, receiving a good cause excuse for missing work requirements is a difficult process. Agencies can require extensive documentation that is onerous for the participant to secure, and they can set rigorous deadlines for submitting documentation so that many participants will fail.

These variations speak, in part, to the underlying philosophy that agencies bring to the good cause policy. Good cause can operate as a parallel to the real world of work, in which employees with benefits can call in sick or use personal time without doctor's excuses or other

AN EXAMPLE:

Arizona

As part of the settlement of a lawsuit, the Arizona Department of Economic Security made substantial changes to its TANF programs in an effort to avoid unfair sanctions and promote participation. Among these sweeping changes was a new approach to defining and administering good cause. The new approach focuses on identifying barriers to success, providing appropriate services where available and protecting participants from inappropriate sanctions.

Under the new policies, implemented in 2002, the justification for good cause excuses for missing work activities was greatly expanded. The new definition specifically identifies a range of factors beyond the participant's control which might interfere with work participation. The factors include, but are not limited to: barriers for which services are not available; participant illness; participant required to care for ill or infirm family member; participant or her children had appointments that could not be rescheduled; family emergency, including loss of housing; temporary lack of transportation; and inclement weather.

Additionally, the changes included improvements in the process by which good cause is established. Under the new approach, case managers notify participants of circumstances for which they might be sanctioned. This notification is provided in writing, and includes the specific dates and times of non-compliance, the consequences of non-compliance, specific examples of good cause excuses and an explanation of how to demonstrate good cause. The case manager must help the participant secure good cause if requested, and the participant's owned signed statement is sufficient if other documentation is not available (Mannix 2002).

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documentation. Alternatively, good cause policy can complement the punitive dimensions of some approaches to sanctions, by occupying itself more with deadlines and documents than with the needs and intentions of participants and their children.

The best good cause policies:

- Have limited documentation requirements;
- Enable participants to submit a signed affidavit when other written documentation is not easily obtained;
- Prioritize family needs over procedure (e.g., deadlines);
- Offer a limited number of hours of personal time, for which no documentation is required (mirroring the real world of work);
- Offer participant numerous opportunities to submit evidence of good cause.

Pre-sanction Review

A **pre-sanction review** process can ensure that lost income is not a result of recordkeeping errors, and can use incidences of non-participation as an opportunity to investigate the family's circumstances and adjust program requirements. Thirty-one states require some form of pre-sanction notification and offer families the opportunity to correct the problems that would lead to a sanction (GAO 2000a).

Pre-sanction reviews offer an opportunity to correct administrative errors that might otherwise result in reduced payments to families, but they can also do much more. Several states have created pre-sanction review processes that go beyond merely checking the facts, using reviews to investigate whether noncompliance is the result of inappropriate assignments, the presence of undetected barriers, or other circumstances that may put families into crisis. In these states, an incident

AN EXAMPLE:

El Paso County, Colorado

In Colorado, counties have the power to establish the philosophy and policy principles of welfare programs. El Paso County endeavors to use TANF programs to address child poverty and minimize families' need for child protective services. Within the welfare system, the County program is organized around the philosophy that the use of sanctions reflects the case management team's failure to develop an appropriate employability plan or to make necessary modification to address the needs and concerns of the participants. Before a sanction can be imposed, supervisory staff reviews the appropriateness of the participant's employability plan, with the goal of ensuring that activities are specific, measurable, attainable and realistic.

Participants are mailed two invitations to demonstrate compliance or establish good cause before any sanction can be imposed. A Sanctions Prevention Team provides intensive case management to all cases that receive a sanction. The Sanctions Prevention Team functions as an advocate for the family. All sanctioned families are invited to a meeting with their case-worker and the Sanctions Prevention Team. The Team has the right to renegotiate the employability plan if deemed appropriate. If phone contact is insufficient, the Team employs home visits as a case management tool (Hutson 2003).

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that might lead to sanction is treated as an opportunity to engage the participant more deeply by seeking to understand family circumstances.

Several states have created pre-sanction review processes that go beyond merely checking the facts, using reviews to investigate whether noncompliance is the result of inappropriate assignments, the presence of undetected barriers, or other circumstances that may put families into crisis.

There are two types of pre-sanction reviews. A **cursory review** provides an opportunity to check the attendance record and invite the participant to claim a good cause excuse. The intent of a cursory review is to ensure that administrative errors do not result in improper sanctions.

An **in-depth review** uses the incidence of a sanction to deepen the case-manager's understanding of what is going on in the family. In-depth case management reviews often include home visits, an invitation to the participant to receive additional assessment, and the opportunity to revise the employability plan on the basis of new information. Incorporating an in-depth pre-sanction review into state welfare programs acknowledges that service provision is an ongoing learning experience. Families who rely on welfare are often dealing with multiple social systems. They may be unwilling or unable to disclose the nature and extent of barriers they are dealing with up-front. Instead of punishing families who have failed to identify or disclose their own barriers, state programs use pre-sanction reviews to gather information about the case that can help point to needed services and supports.

The best pre-sanction review policies include:

- Record check to ensure attendance reports are correct;
- Opportunities for participant to come into compliance before sanction is issued;
- Independent investigations of sanction cases to determine whether appropriate services have been offered and whether further assessment or modification of work plan is warranted;
- Opportunities for intensive case management for families with more severe barriers.

National studies show that when pre-sanction reviews, sometimes called conciliation, are used, noncompliance problems have been reduced. Policymakers in Rhode Island report that 36% of noncompliance problems are resolved without a sanction because of the effectiveness of their conciliation process (GAO 2000a).

Post-sanction Outreach

Post-sanction outreach can ensure that reductions in income due to sanctions do not throw families into irrevocable crises due to loss of housing or other basic needs. Additionally, post-sanction outreach programs ensure that participants understand what is required to comply with work requirements and invite them to continue participating in their employability plans, with the goal of achieving work-readiness (Kaplan 2004).

Participants who get sanctioned face significant material hardships. Once a sanction has been imposed, it is important to maintain contact with the family to help minimize the hardships imposed on children and the disruptions in services that can occur if families sever contact with the welfare system. Post-sanction outreach should accomplish the following goals:

- Review program requirements and ensure the participant knows how to comply;
- Ensure that the family continues to receive federal entitlements, including Medicaid and Food Stamps;
- Connect the family to other services in the community so that they can ensure basic level of household well-being (i.e. food pantries, neighborhood services, etc.);
- Refer to free or reduced-fee legal services or other advocacy organizations, so participants have access to process to challenge sanctions they believe are inaccurate.

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AN EXAMPLE:

Cuyahoga County, Ohio

Cuyahoga County's Safety Net program works with sanctioned families. Program staff make home visits and phone calls to families who have received a sanction. The program has several goals: help sanctioned participants understand what they need to do to comply, conduct an assessment and identify any hidden barriers to success, and connect the family to resources that will help them survive the sanction period (Goldberg & Schott 2000).

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Conclusion

Sanctions should be used as one tool available to welfare case-managers, as part of a larger strategy to help families become self-sufficient. Under Wisconsin's current welfare rules, sanctions provide merely one more layer of punishment that can be used to deny services and funding to families in need. After almost seven years of implementation of W-2, the research shows that this approach has failed to produce the pathway out of poverty that W-2's proponents promised. Revising the welfare program's sanction policy is a critical step towards improving the wages and well-being of W-2 participants and their families.

Four other states have modified sanctions policy since experiments with welfare-to-work programs began in the 1990s, incorporating some of the new policy approaches detailed in this report (GAO 2000a).

- Indiana, Minnesota and New Hampshire decided not to implement full-family sanctions in their TANF policies, though all three states permitted full sanctions in pre-TANF welfare reform experiments.
- Arkansas eliminated full sanctions in 1999, reportedly because of concerns that children were adversely affected by them.

Wisconsin is often seen as a laboratory for welfare reform, because the changes instituted in 1996 created a thorough and extensive new approach to welfare. Substantial evidence now exists that state sanctions policy undermines the success of individual participants and the program as a whole. Moreover, the emphasis on discretion in state policy has resulted in sanctions being imposed in a capricious and whimsical fashion, not reflective of the array of the procedural protections available to ensure participants receive fair and equitable treatment. There are more effective models available. Wisconsin should make use of them now.

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