

# The Record-Review

A WISCONSIN HOMETOWN NEWSPAPER

ATHENS

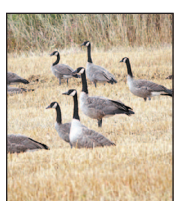
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SEPTEMBER 7, 2022  
VOLUME 60, NO. 36  
TWENTY PAGES



PART ONE OF A TWO-PART SPECIAL INVESTIGATION

## Is this the face of justice?

### County inmates wait weeks, even months for legal representation

#### U.S. Constitution Sixth Amendment

“In all criminal prosecutions, the accused shall...have the assistance of counsel for his defense.”

#### Wisconsin Constitution Section Seven of Article One

“In all criminal prosecutions the accused shall enjoy the right to be heard by himself and counsel....”

All Americans have the right to a lawyer if arrested for a crime. In *Gideon vs. Wainright*, the U.S. Supreme Court in 1963 ruled that Clarence Earl Gideon, too poor to hire an attorney, had to be retried with the benefit of counsel in a case where he was accused of breaking into a bar in Panama City, Fla. Gideon, finally represented by an attorney, was acquitted of the alleged crime in the new trial.

The right to counsel is a basic American freedom. But this right is not necessarily extended to all Marathon County inmates.

Adam Plotkin, legislative liaison for the Wisconsin State Public Defenders Office, reports that on any given day there are approximately eight people sitting in Marathon County Jail who qualify for a state appointed lawyer but who are not provided one.

The reason is simple. Law enforce-



**Nhia Lee**  
**1,173 days in jail pre-sentence**

ment arrests more low income people in Marathon County than there are lawyers to represent them.

The Wisconsin Department of Justice reports that all law enforcement departments in Marathon County ar-

rested 3,859 people in 2020. Among those arrested, the Marathon County District Attorney's Office prosecuted 2,645 individuals for non-traffic crimes: 1,372 people for felonies, another 1,273 for misdemeanors. Among those prosecuted, according to Plotkin, 75 percent were “indigent” or poor enough to qualify for a state-supplied attorney (earning less than \$15,629 a year as a single person without assets). Eighty-five percent of those charged with felonies were “indigent.”

The Wisconsin Public Defenders Office in Wausau has a staff of eight attorneys. They are responsible for competently representing these hundreds of clients.

The result is predictable.

The Marathon County justice system is overwhelmed. There is a waiting list for lawyers. As a consequence, the constitutional right to counsel is recognized, but often delayed to the point of denial. The Wisconsin Supreme Court looks the other way.

Take, for example, the case of Nhia Lee, a 46-year-old Green Bay man. The Marathon County Sheriff's Department arrested Lee on Sept. 1, 2018, and charged him with two felony drug counts and a single count of identity theft.

He had an initial appearance on the day of his arrest. Judge LaMont Jacobson found probable cause to hold Lee in the county jail and set cash bail at \$25,000. It was determined Lee qualified for a public defender.

Wisconsin law requires anyone held in jail on a felony charge with \$500 bail or more must get a prelimi-

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# Is this the face of justice?

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nary hearing within 10 days. This is a proceeding where the state must prove there is sufficient evidence to hold a suspect in jail.

But Lee, lacking a public defender and unable to hire an attorney, did not get a preliminary hearing. Not for 113 days. The court continued to extend “for cause” the time limit for Lee’s preliminary hearing.

During that period, Lee asked Judge Jacobson to dismiss the charges against him. The judge refused. Instead, the local public defenders office sought to find an attorney for Lee. Over 100 lawyers contacted by the office declined to represent him.

Lee finally got his preliminary hearing on Jan. 2, 2019, before Judge Jill Falstad. Lee, now represented by Rothschild attorney Julianne Lennon, asked that charges be dropped. Falstad refused, saying there is no constitutional right to a preliminary hearing. She bound Lee over for trial.

Lee appealed his case to the Wisconsin Supreme Court, who, finding no error in the defendant’s treatment, ruled on May 24 that charges could be dropped and then refiled against him. It also ruled that Marathon County, which could have paid for Lee’s attorney, was under no obligation to secure his Sixth Amendment right.

In her dissent, Supreme Court Justice Rebecca Dallet said the county’s court commissioner erred in repeatedly extending the 10-day time limit for holding a preliminary hearing and that, in simply dismissing Lee’s case, the high court failed to protect the defendant’s Sixth Amendment right.

“The criminal justice system has already failed Nhia Lee twice, and by dismissing his appeal, we fail him as well,” she wrote.

She said circuit courts needed to order local counties to pay for public defender attorneys, especially in cases, like Lee’s, where the courts have improperly extended the time period for a preliminary hearing and a Sixth Amendment right is in jeopardy.

“The facts of this case are concerning, and reflect a breakdown in our system of appointing attorneys for indigent defendants....,” she wrote. “Circuit courts should...seriously consider using their power to appoint counsel at county expense, especially when they find the delay is very, very close to a constitutional violation.”

Her arguments only stirred the ire of Justice Rebecca Grassl Bradley, who, speaking for the high court majority, rejected Dallet’s call for “transformational change” in the state’s justice system. She said the high court should not impose a financial burden on counties.

“The principal policy changes for which Justice Dallet advocates are properly considered by the legislature, which possesses the power of the purse,” she wrote. “We don’t have this power, which is why we should decide cases and leave policy making to the legislature.”

Lee’s case drags on. The Marathon County District Attorney’s Office on June 20 dismissed the two drug-related felony charges and one misdemeanor charge against Lee, but refiled the three charges. The court ordered a cash bond of \$15,000. Lee continues to reside in jail and, having pleaded not guilty, awaits a jury trial. Since his arrest, Lee (as of Sept. 6) has served 221 days in prison (for a probation violation) and 952 days in the Marathon County Jail, a total of 1,173 days. He has been incarcerated for four years.



**Rebecca Dallet**

In Marathon County government, many officials are discussing how low income defendants can’t get lawyers, but not many will take questions from the press about Sixth Amendment rights in the county courthouse.

One official willing to go on the record is Marathon County Sheriff’s Department Chief Deputy Chad Billeb. “The Marathon County Jail has a population of inmates who struggle to obtain legal counsel and are currently using limited space and resources within the jail,” he said. “Marathon County has assigned a court commissioner to assist in reviewing their progress in obtaining an attorney in an effort to move cases forward. Unfortunately a lack of defense attorney resources hampers progress and many of these inmates sit in our facility for very long periods of time.”

Another official, Marathon County Judge Suzanne O’Neill, a former public defender, told members of the county’s Criminal Justice Coordinating Committee on July 21 that the lack of attorneys willing to represent the poor is a big problem, not just for the defendants but for the entire justice system.



**Suzanne O'Neill**

“The public defender situation has been in crisis mode for a decade,” she said.

O’Neill did not respond to a request for an interview with this newspaper. She, however, told the committee that while raising the pay rate for public defenders from \$40 to \$70 per hour in 2019 has helped the state recruit attorneys, it is often impossible to find the needed lawyers for the poor.

O’Neill said Marathon County pays attorneys \$100 an hour to represent low income defendants, but, because the county has a dire shortage of criminal defense and family law attorneys, defendants are often not promptly represented. She advocated a program where the county would incentivize lawyers to move to central Wisconsin.

Marathon County Board of Supervisors vice-chairman Craig McEwen, Schofield, told the same committee meeting that the public defender problem was “at a crisis point right now.” He said the county was unable to afford paying for the health care of county inmates incarcerated for long periods of time. The cost of mental health medicines, he said, was especially troubling to county budget crafters.



**Chad Billeb**

## Behind bars for years, Lee fights for his rights

Nhia Lee, 46, Green Bay, has sat in the Marathon County Jail for four years after a county sheriff’s deputy on Sept. 1, 2018, stopped his car on STH 29 for an expired license plate and used a K-9 drug dog to allegedly help find 42.5 grams of methamphetamine stuffed in the car’s front console.

Lee knows he can plead guilty to an offense, cut a deal with prosecutors and would likely leave the Marathon County Jail in a short period of time. That’s what happened, after all, with his two co-defendants also arrested in the traffic stop. One spent only a month in jail; the other left jail after 10 months.

But he won’t cut a deal. Lee has entered a not guilty plea to Class D repeater felony charges of methamphetamine possession with intent to deliver.

“It’s tempting to make a plea deal because it has been a long, hard fight,” he said. “But I believe in my rights. They violated a lot of my rights, my right to counsel and a speedy trial.”

After his arrest, Lee, who was found eligible for a state public defender, was incarcerated for 113 days without a lawyer. In that time, he was given no preliminary hearing as required by state law. The Wisconsin Supreme Court ruled that although Lee was denied a timely preliminary hearing, he could be retried for the drug crimes. The court dismissed arguments that Marathon

Court should have paid for his legal counsel.

To date, Lee, who is now represented by Rothschild attorney Julianne Lennon, faces continued prosecution. A pre-trial conference was slated for this week.

Lee, interviewed Aug. 15 in the county jail, said he feels like a victim of the county justice system.

“It sucks,” he said. “It’s not fair... not fair.”

The inmate said many other county prisoners must wait in jail without access to a public defender. He estimated the number “in the dozens.”

Lee said the Marathon County justice system is dysfunctional. “The system is a breakdown,” he said. “The state public defenders office has the power to do what needs to be done to fix things...the short pay, the short staff.”

Lee said he supports the idea of Marathon County hiring attorneys to represent poor county jail inmates.

“We should all be able to have the right to counsel,” he said.

Lee, unemployed at the time of his arrest with a career history as a house painter and mason, said that access to a social worker and counseling would have been helpful and put him on a different path.

In jail, he said, he receives no counseling or drug treatment. “My life is kind of stuck,” he said. “It’s not good.”

McEwen also declined to be interviewed by this newspaper.

### No comment

The Marathon County justice system holds defendants accountable for wrongdoing. Law enforcement arrests suspects. The District Attorney’s Office prosecutes them. Judges sentence the guilty to jail and order fines be paid.

But what happens when the justice system itself is overwhelmed and fails to guarantee the basic rights of defendants? Is the system itself accountable?

We asked leadership in the county justice system for comment on this story. Marathon County Presiding Judge Michael Moran, Sheriff Scott Parks and District Attorney Theresa Wetzsteon all declined comment.

The county board rules approved in April that task the Public Safety Committee with “evaluating programs and services to foster the fair and impartial administration of justice.” All members of the committee, including its chairman Matt Bootz, town of Texas, however, de-

clined comment.

The county board rules further say that it is the responsibility of the Executive Committee to review the work of the standing committees, including the Public Safety Committee. County board chairman Kurt Gibbs, town of Cassel, who chairs the Executive Committee, declined comment on this story.

It is the job of the Assembly Committee on Criminal Justice and Public Safety to oversee justice systems in all 72 state counties, including Marathon County. Chair of that committee is local assemblyman Rep. John Spiros (R-Marshfield). The legislator was asked for his viewpoint on the shortage of county public defenders. He declined comment on this story.

It was local supervisor Chris Dickinson, Stratford, who wordsmithed the county rule approved earlier this year talking about the county justice system providing “fair and impartial administration of justice.”

But would Dickinson respond to questions about whether the county was following the very rule he drafted?

The supervisor said he had no comment.



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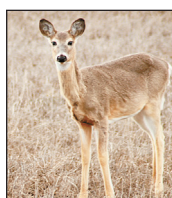
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SEPTEMBER 14, 2022  
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PART TWO OF A TWO-PART SPECIAL INVESTIGATION

## Is this the face of justice?

A county jail crisis starts with City of Wausau policing patterns

Marathon County's justice system operates at the brink of crisis. The mass of people arrested by county law enforcement agencies are low income, unable to afford an attorney. The local state public defenders office often fails to promptly provide these "indigent" defendants with lawyers. These inmates must wait for their day in court. People with mental health issues are also arrested in large numbers. Unable to get treatment, these defendants return to jail again and again. The county jail in Wausau overflows with inmates.

The justice system can't handle all of these defendants. The system grinds to a crawl, cases linger and the cost of running the jail escalates.

The result is that justice is delayed to the point of denial. The county jail is filled with people not serving a sentence, only waiting for trial or routine hearings. Marathon County Sheriff's Department Corrections Division administrator Sandra LaDu reports that out of 283 inmates in the Marathon County Jail on Aug. 5, only 63 were serving sentences.

County leadership has tried to address the problem. Over the past few years, law enforcement has dramatically cut back on people it sends to jail. Many low risk defendants are not transported to jail, only given a date to show up in court.

The county hires lawyers for low income individuals. The county in 2021 spent \$724,422 on legal assistance for resource-strapped people, including \$310,820 on criminal attorney appointments.

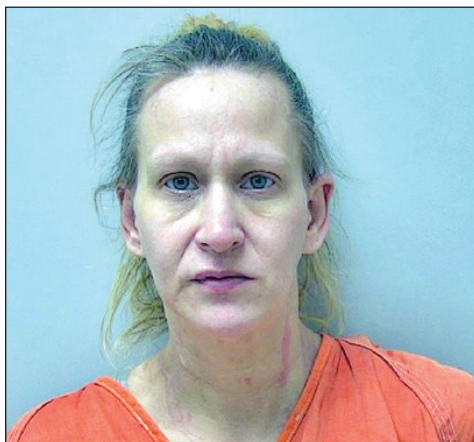
Still, the county jail overflows with inmates. Unable to find room for pris-



**Paul Osterman**  
718 days in jail pre-sentence



**Alan Wilson**  
935 days in jail pre-sentence



**Rebecca Erickson-Boe**  
862 days in jail pre-sentence



**Jesse Ingalls**  
683 days in jail pre-sentence

oners in its downtown Wausau jail, the county houses defendants in the Columbia, Taylor, Lincoln and Marquette

county jails. On Aug. 4, there were 13 inmates who had spent over a year in jail, including one who had been there

for 1,152 days.

Jail overcrowding puts pressure on the county budget. The cost to house, feed and provide health care for people awaiting trial is proving increasingly burdensome. The monthly cost of providing medications (including mental health prescriptions) to Marathon County inmates soared to \$44,195 in July of this year. The cost of providing mental health medicine for one inmate in a single month was \$6,600.

### Root causes

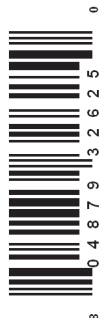
The causes for the courthouse backlog are complex. Some originate in the courthouse. Cases with police officer video camera footage, for example, require more time to prepare, slowing the wheels of justice. The COVID-19 pandemic created a court calendar backlog not just in Marathon County, but statewide.

Other causes, however, are outside the courthouse. They originate in who law enforcement arrests.

In Marathon County, a key reason behind the courthouse's clogged court docket is that law enforcement, specifically the Wausau Police Department, arrests and brings to jail more low income defendants than the local eight-attorney public defenders office can represent in a timely manner.

The number of low income people arrested in the county is surprisingly large. While the U.S. Census only counts 6.7 percent of county residents in poverty, the Wisconsin State Public Defenders Office reports that 85 percent of those prosecuted for felonies and 65 percent of those charged with misdemeanors are poor enough to

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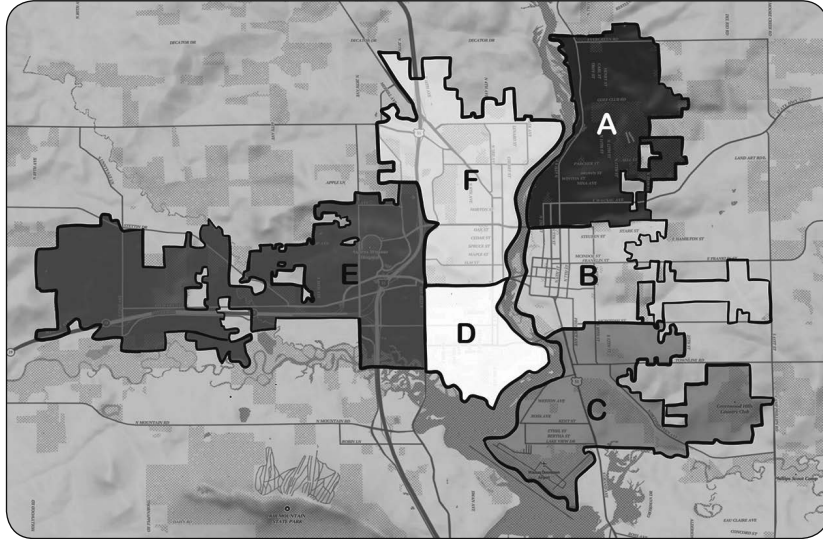
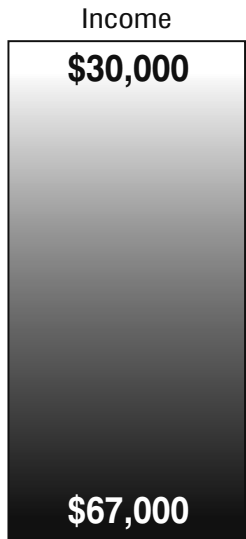
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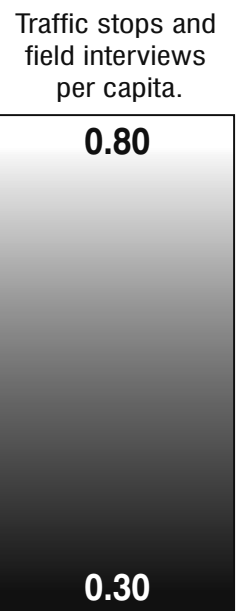
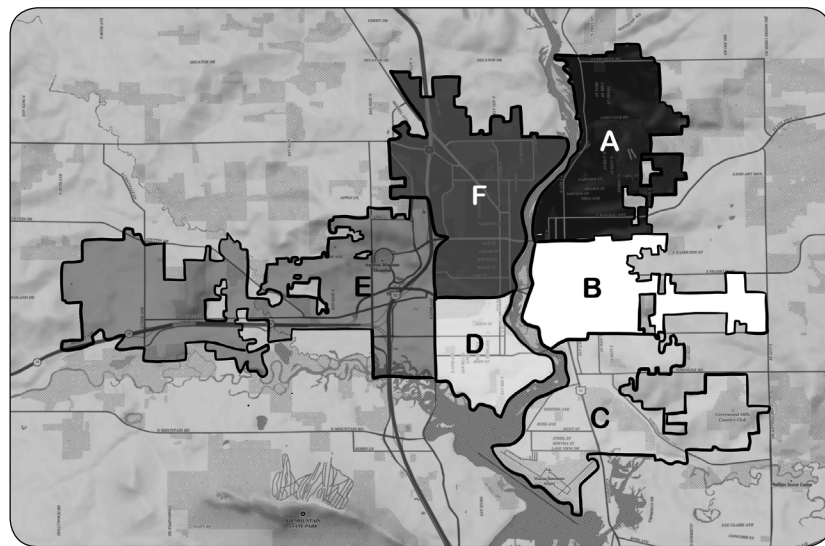


**WAUSAU POLICE SECTORS COMPARED: INCOME AND SELF-INITIATED EVENTS**



The City of Wausau's lowest income neighborhoods include police sectors B and D...

...These are the same police sectors that have the most traffic stops and field interviews per capita.



STAFF GRAPHIC/SAMANTHA YOCIUS

# Is this the face of justice?

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qualify for a state-appointed lawyer (earning less than \$15,629 per year for a single person without assets).

The Wausau Police Department arrests a large number of low income people because of defendant behavior, but also because of how it polices the city. Low income parts of the city are policed more than more affluent areas.

In Wausau, the police, in a practice tracing back to the 1960's, patrol the city in six sectors labeled A through F.

Data obtained from the Wausau Police Department shows that the department expends more effort policing the city's lowest income sectors, B and D, compared with its more affluent sectors. The effort tracks with a higher crime rate in these sectors, but is out of sync with citizen calls for service.

Self-initiated Wausau police events (i.e. traffic stops and field interviews) in 2021 were 24 percent higher than calls for service in Sector B, which includes the city's downtown and adjacent lower income neighborhood to the east. That can be compared to the police effort documented in the more affluent Sector E on the city's far west side, which includes strip malls and an industrial park. This sector experienced 17 percent fewer police self-initiation events than calls for service. The

gap in police effort between Sectors B and E is 41 percent. The median household income in Sector E is 34 percent higher than in Sector B.

This pattern of policing has, if only indirectly, a racial outcome. Like many other police departments across Wisconsin, the Wausau Police Department arrests many more black people, for instance, than occurs as a percentage of the general population. The Wisconsin Incident Based Reporting System reports that in 2020 black people accounted for 14 percent of Wausau Police Department arrests, although black people are less than one percent of the population.

The City of Wausau GIS department reports that the highest number of minorities, including Asians, blacks, Hispanics and Native Americans, live in the city's three less affluent sectors, B, D and F. These are where crime rates are highest and where the police expend most of its effort.

Wausau Police Chief Ben Bliven acknowledged in a May interview that different sectors of Wausau get different levels of policing.

"Your data is accurate," he said. "Nothing is inaccurate."

Bliven said, however, that he could not comment on the disparity without more information. He said his depart-



**Ben Bliven**



**UNDER SCRUTINY**-Pictured is a streetscape in Sector B in the City of Wausau, which gets more police self-initiated events (i.e. field interviews and traffic stops) than calls for service.

ment planned to hire the Collaborative Reform Initiative for Technical Assistance (CRI-TAC) in Washington, D.C. to review its arrest history. He added that the city's sector policing practice would also be reviewed by the Wisconsin Law Enforcement Command College at UW-Madison.

Bliven stressed, however, that offi-

cer racial bias has nothing to do with his department arresting a greater percentage of minorities, including blacks, Hispanics and Native Americans, than the general population.

"I am confident that the disparities in arrests are not the result of racist police officers," he said. "We hold our officers to a high level of accountabil-



# Is this the face of justice?

Continued from page 1

ity. I know for a fact that we don't have racist police officers."

## Compounding the problem

There is a second, non-courthouse reason for a backed-up county justice system. It is that police, again, specifically the Wausau Police Department, don't just arrest mostly poor people, but it also arrests many mentally ill people. These people tend to repeatedly cycle through the jail.

The Wausau Police Department might be thought of as a crime fighting agency. That's not quite true. It is more a mental health unit.

Department data documents that in 2021 Wausau police officers responded to 822 significant crime events (within the categories of burglary, criminal theft, fraud, robbery, sexual assault, theft from a motor vehicle, threat with a weapon and stolen vehicle). The agency in the same year, however, dealt with more cases of mental illness. It responded to 856 cases of "mental subject."

The data shows that in Sectors B, C and E, police responded to more cases of "mental subject" than significant crime, while it was the opposite in the other sectors.

On July 14, Marathon County Sheriff's Department Chief Deputy Chad Billeb told county board supervisors that mentally ill people are a significant part of the county's jail problem.

## Edgar will research commercial lawn mowing

The Edgar Village Board on Monday voted to gather quotes from commercial lawn mowing businesses as it figures out how to budget for village mowing in 2023.

Currently, the village owns a \$40,000 lawn mower and hires an employee to cut lawn in the village's numerous parks.

Trustees said, however, they were open to seeing what it would cost to have a private firm do the work.

"I'd rather have numbers in front of us," said trustee

Jon Streit.

The trustee said he wanted the village to explore options now rather than wait until April 2023.

"I want our back sides covered," Streit explained.

At present, the village hires village resident Donna Denfeld to mow the village's parks. Village administrator



**Jon Streit**

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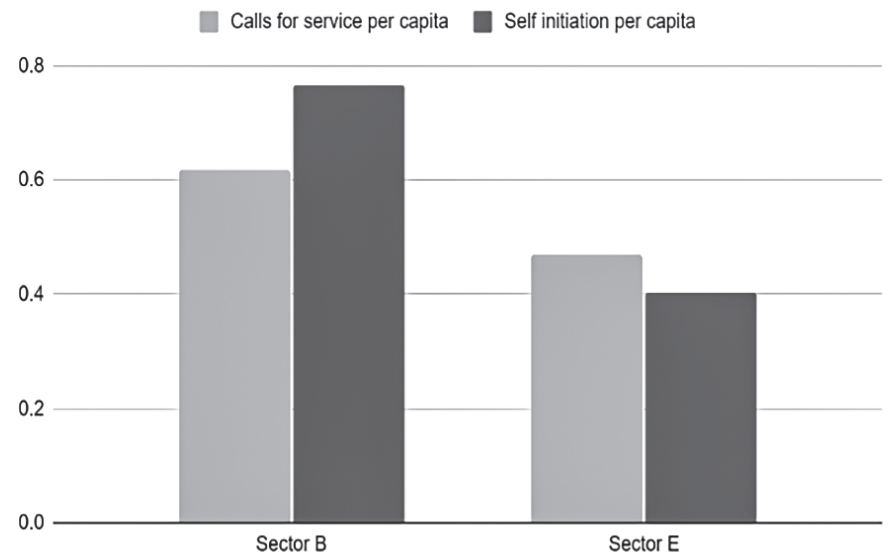
At present, the village hires village resident Donna Denfeld to mow the village's parks. Village administrator

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## A tale of two sectors: different levels of policing

Self initiated police events per person are 24% higher than calls for service in Sector B, which is low income, high crime and has the city's highest percentage of black, Hispanic and Native American residents. In Sector E, which has higher income, low crime and the lowest percentage of black, Hispanic and Native Americans, police self-initiation events were 17% less than calls for service. The gap in police effort between Sectors B and E is 41%. Median household income is 34 percent lower in Sector B than in Sector E.

Calls for service per capita and self initiation per capita



He said these defendants "get lost in the shuffle" and sit in jail waiting for court hearings, all the while being stabilized by costly taxpayer-funded prescriptions.

Billeb said these individuals, many dealing with illegal drug addictions, are heavy users not just of resources at the jail, but at North Central Health Care, the Aspirus Health Care emergency room and the Wausau Fire Department.

The chief told supervisors these in-

dividuals cannot live independently and, once released from jail, reoffend and return to jail.

"Police are dealing with that [mentally ill] person over and over and over again," he said.

Billeb said the sheriff's department and Wausau Police Department have two Crisis Intervention Team officers, but the needed case management for mentally ill, poor defendants is not available.

"Case management with North Cen-

tral Health Care is nonexistent," he said.

Given all of these problems, supervisor Tony Sherfinski, Schofield, asked Billeb whether the criminal justice system was performing well.

"With all good intentions, is what we are doing working?" he asked the chief deputy.

"No," said Billeb flatly.



## Silent 9/11 walk

The Marathon City Fire Department on Sunday hosted a silent walk up the village's hill on Main Street to commemorate the terrorist attack of Sept. 11, 2001. Approximately 300 people turned out for the event. Participating in the walk were firemen and EMS personnel from the Maine, Athens, Tomahawk, Hamburg and Edgar fire departments.