



SHAE SORTWELL

STATE REPRESENTATIVE • 2nd ASSEMBLY DISTRICT

Hearing Testimony
Assembly Committee on Corrections
October 18, 2023
Assembly Bill 462

Chairman Schraa and members of the Assembly Committee on Corrections – Thank you for giving me the opportunity to speak on AB 462, which would create an immersive work opportunity program for inmates in Wisconsin prisons.

One of my priorities this session has been to alleviate the case backlog that has been stymieing our district attorney and public defender offices for several years. This backlog has consequently resulted in crimes not being prosecuted and people imprisoned waiting longer to have their day in court. According to the Wisconsin Court website, the median age for a felony case in 2022 was 218 days.

I sat down with multiple DAs and the State Public Defender's Office to brainstorm ideas that would help. The bill in front of you today is one of the policies we came up with, closely resembling Colorado and Wisconsin's "Huber Law." Creating better work opportunities for the incarcerated who will soon be released plays a role in reducing the recidivism rate, meaning fewer cases to file in district attorney and public defender offices. It will further expand the pool of workers for businesses facing current workforce shortages.

The program would be administered by the Department of Corrections for eligible inmates in Wisconsin's low- and moderate-security risk prisons. Inmates would have the opportunity to be housed in county prisons or stay at their state prison to be closer to work sites.

To be eligible to participate in the program, an inmate must have been sentenced to a bifurcated sentence and be within six months of his or her release to extended supervision, be of low or moderate security risk and have a behavioral history while incarcerated that indicates that they will not be a danger to the community while released for work, have previously obtained a high school diploma or a high school equivalency diploma or equivalent general education development credential, and agree to follow all DOC and program rules while participating in the program.

In selecting applicants for the program, DOC must consider whether the applicant has strong work history or job skills, an applicant's level of education, an applicant's behavioral history, an applicant's history of mental health challenges, substance abuse issues, or anger management needs, and the proximity of the work site to the applicant's crime victim.

Additionally, Amendment 1 was crafted in tandem with the Badger State Sheriffs' Association to clarify that our county sheriffs have discretion in the program with the inmates they take in and employers that get selected.

I appreciate the opportunity to testify on this legislation and would gladly answer any questions the committee may have.



October 18th, 2023

Representative Schraa, Chair
Members of the Assembly Committee on Corrections

Testimony on 2023 Assembly Bill 462

***Relating to: creating an immersive work opportunity program for persons incarcerated in the state prisons.
(FE).***

Thank you, Chairman Schraa and other members of the committee, for hearing my testimony on Assembly Bill 462 today. One of the goals of our corrections system is rehabilitation. While our Wisconsin Department of Corrections offers various programs designed to help with substance abuse issues, mental and behavioral health treatments, education, and even job readiness prior to release, AB 462 aims to expand these options for those in our facilities.

Under the current system, there is already a work release program established for inmates that meet the following criteria: reside in a minimum security facility, have "community custody" status, and do not have a record of escape or attempted escape in the last year. The existing program also is not dependent on the potential release date of an inmate. The immersive work opportunity program under this bill has a different set of criteria. An inmate can apply for the program within 6 months of their release and can apply for jobs within the community they will be released in. To qualify for this, the inmate must be a low or moderate security risk, have a behavioral pattern that shows they are not a threat to the community, and have obtained a high school diploma or equivalent certification. In addition to these conditions, the department can also consider the inmate's behavioral and mental health history, job skills, level of education, and geographic proximity to the victim of the crime they were convicted of when deciding if the inmate is allowed to participate.

Ending the stigma of being an incarcerated individual is a crucial component to reintegrating former inmates back into their communities, which is why this bill also includes a specific requirement for those who participate in this immersive work program to be treated as any regular employee and paid the market wage of their work. Under this program, the disbursement of their earned market wage post-taxes is as follows: twenty percent will go to any unpaid fees, fines, or restitution owed, ten percent will be given back to the department, and the remaining balance will towards the participant's department account.

Helping inmates find employment before release aims to provide them with stability as they reenter society, and with a stable foundation comes the reduction of potential recidivism. This investment now could save us taxpayer dollars in the future. Thank you, and I will take any questions at this time.

Respectfully,

A handwritten signature in black ink, appearing to read "Jesse James".

Senator Jesse James
23rd Senate District
Sen.James@legis.wisconsin.gov



To: Members, Assembly Committee on Judiciary
From: Badger State Sheriffs' Association (BSSA)
Wisconsin Sheriffs and Deputy Sheriffs Association (WS&DSA)
Date: October 18, 2023
RE: Testimony For Information Only on Assembly Bill 462

Chairman Schraa and Members of the Committee:

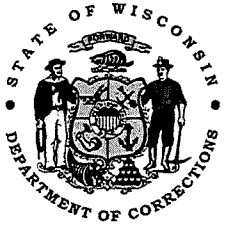
The Badger State Sheriffs' Association and Wisconsin Sheriffs and Deputy Sheriffs Association respectfully submit this statement for information only on Assembly Bill 462, which creates a new immersive work opportunity program for eligible inmates in low and moderate security risk prisons.

Our organization represents Sheriffs that do contract with the Department of Corrections currently for "contract beds" for DOC inmates. This legislation allows DOC to utilize contract beds for the purpose of housing inmates to participate in this new work opportunity program. While not addressed in this bill, but related, BSSA/WS&DSA continues to advocate for additional reimbursement for the contract bed rate (currently at a per diem rate of \$51.46) as well as additional reimbursement for medical and pharmaceutical costs – something that can be a big cost driver that is not currently reimbursed under the DOC Contract Bed agreements.

That being said, if a Sheriff chooses to contract with DOC for the purposes of this work opportunity program, our organizations request that there should be some additional clarification added to the bill to ensure that the Sheriff, who is Constitutionally responsible for maintaining the jail, have the ability to approve the program participant, select an employer and have the discretion for the Sheriff to return the program participant to DOC prison within 10 days.

BSSA/WS&DSA has provided this feedback to the bill's Assembly author and continues to work collaboratively to develop an amendment to address our concerns.

The Badger State Sheriffs' Association represents all of Wisconsin's 72 elected county sheriffs. The Wisconsin Sheriffs and Deputy Sheriffs Association is a professional organization representing over 1,000 members, including sheriffs, deputies, and jail officers. Our organizations have a joint legislative committee and work closely on public safety issues of concern to our members.



WISCONSIN DEPARTMENT OF CORRECTIONS

Governor Tony Evers / Secretary Kevin A. Carr

To: Chairman Schraa, Assembly Committee on Corrections

From: Anna Neal, Legislative Advisor, Wisconsin Department of Corrections

Date: October 18, 2023

RE: Information Only

- *Assembly Bill 447 Relating to: definition of "sex" for the purpose of placing prisoners and conducting strip searches.*
- *Assembly Bill 462 Relating to: creating an immersive work opportunity program for persons incarcerated in the state prisons.*

AB 447: In 2003, Congress enacted the Prison Rape Elimination Act (PREA), which set a zero-tolerance standard for sexual abuse and sexual harassment of those criminally confined to a federal, state or local facility. National standards took effect in 2012, establishing clear requirements to prevent, detect, and respond to sexual abuse and sexual harassment in confinement. In addition, PREA has national standards regarding the placement and strip searching of transgender individuals in a confined setting. This bill is in conflict with those standards.

Under this bill, DOC would be prohibited from placing, keeping together, or knowingly permit to be kept together persons in our care of different sexes (as defined in the bill) except to participate together in treatment or in educational, vocational, religious or athletic activities or to eat together, under supervision. As written, the bill would require DOC to be in violation of PREA standard 115.42, which created the following language:

(c) In deciding whether to assign a transgender or intersex inmate to a facility for male or female inmates, and in making other housing and programming assignments, the agency shall consider on a case-by-case basis whether a placement would ensure the inmate's health and safety, and whether the placement would present management or security problems.

(d) Placement and programming assignments for each transgender or intersex inmate shall be reassessed at least twice each year to review any threats to safety experienced by the inmate.

(e) A transgender or intersex inmate's own views with respect to his or her own safety shall be given serious consideration.

(f) Transgender and intersex inmates shall be given the opportunity to shower separately from other inmates.

(g) The agency shall not place lesbian, gay, bisexual, transgender, or intersex inmates in dedicated facilities, units, or wings solely on the basis of such identification or status, unless such placement is in a dedicated facility, unit, or wing established in connection with a consent decree, legal settlement, or legal judgment for the purpose of protecting such inmates.

Interpretive guidance issued by the United States Department of Justice (USDOJ) on 3/24/2016 further states, “Any written policy or actual practice that assigns transgender or intersex inmates to gender-specific facilities, housing units, or programs based solely on their external genital anatomy violates the standard. A PREA-compliant policy must require an individualized assessment...The policy must allow for housing by gender identity when appropriate.”

The PREA standards also govern cross-gender viewing and searches. The federal Department of Justice updated its PREA guidance as of May 2023 to address how transgender staff and non-binary staff be classified for the purposes of complying with cross-gender viewing and search prohibitions established in PREA Standard 115.15. In the guidance, they stated:

The PREA Standards do not provide specific guidance regarding the classification of transgender and nonbinary staff; however, it is important to note that the PREA Standards do not prohibit facilities from classifying transgender employees consistent with their gender identity with regard to all aspects of their employment, including those related to PREA Standard 115.15. For example, it does not violate the PREA standards for a staff member who is a transgender man to conduct strip searches of male inmates.

If for a reason other than the PREA Standards, a facility does not classify a transgender employee consistent with their gender identity, facilities should make an individualized determination based on the gender identity of the staff member and not solely based on the staff member's sex assigned at birth, the gender designation of the facility or housing unit to which the staff member is assigned, the related and required job duties of the specific staff member, the limits to cross-gender viewing and searches in PREA Standard 115.15, and the goal of the PREA Standards to prevent trauma and sexual abuse. This determination should be made at the request of, and in conjunction with, the transgender or non-binary staff member. Agencies should be aware that the determination of assignment in the facility may change at the request of and in conjunction with the employee as part of an ongoing adjustment process or as the staff member gains experience living consistently with their gender identity.

AB 462: The Department of Corrections (DOC) has been a vocal advocate for increasing resources and programs to assist the persons in our care with finding and maintaining meaningful employment. Under the Evers' Administration, we have been able to increase the number of DWD Job Centers within our facilities,

expand Windows to Work in partnership with the Workforce Development Boards, and increase postsecondary educational opportunities with the expansion of Pell Grants.

While we support the concept behind this bill, we feel it is duplicative of our current work release program as well as 2017 Wisconsin Act 89 which created the following language:

302.27 (2) Inmates who are confined or detained under sub. (1) may be granted the privilege of leaving the facility during necessary and reasonable hours to engage in employment-related activities including seeking employment, engaging in employment training, working at employment, performing community service work, or attendance at an educational institution, or for any other activity designated in the contract under sub. (1). The sheriff, superintendent of the house of correction, or tribal chief of police, in conjunction with the department, shall determine inmate eligibility to participate in such activities and may terminate participation or return an inmate to state facilities, or both, at any time.

Eligible persons in our care, with the permission of the Sheriff, can serve up to their last 12 months of confinement at the jail in the county they plan to release to. They may also be granted Huber privileges. We have several agreements with counties in place that implement the provisions of Act 89.

The bill language is not clear if the intent is to expand our current work release program to individuals classified at medium or minimum custody. DOC has 4 custody classifications for persons in our care: maximum, medium, minimum, and minimum community. Currently, a person must be classified at minimum community to be eligible for work release. We have significant security concerns should these types of work opportunities be expanded to individuals at our medium facilities.

The bill would provide eligibility to persons in our care who are within 6 months of release. Our current work release opportunities go far beyond 6 months. Current code/policy does not specify a cut-off timeframe; however, we have many individuals on work release who still have several years left to serve and they are able to pay child support, restitution, other court fees and save for release while still serving their confinement time.

The bill includes a list of additional factors to be considered when providing this opportunity to persons in our care. For example, if someone has a strong work history they should be favored; if someone has a technical diploma they should be favored; and mental health or substance use disorder problems should disfavor someone. Additionally, individuals with mental health challenges or substance use disorders can still successfully hold a job and will likely need to once released. This provision could be viewed as discriminating against those with mental health or substance use disorder diagnoses, which may result in challenges from the ACLU, Disability Rights Wisconsin or other advocacy organizations.

We look forward to working with members of the legislature on any revisions that may be needed, and with our partner agencies anywhere our work may intersect.