



## Legislative Fiscal Bureau

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May 26, 2009

Joint Committee on Finance

Paper #276

### **Earned Release and Challenge Incarceration Program Expansions (Corrections -- Sentencing Modifications)**

[LFB 2009-11 Budget Summary: Page 212 to 214, #2 and #3]

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#### **CURRENT LAW**

The Department of Corrections currently operates the earned release program for eligible inmates at the Drug Abuse Correctional Center, the Robert E. Ellsworth Correctional Center, the Chippewa Valley Treatment Facility, and the Racine Correctional Institution. Inmates who successfully complete the substance abuse program for earned release may be released to parole or extended supervision.

The challenge incarceration program operates at the Black River Correctional Center and the St. Croix Correctional Center. The program provides eligible inmates with manual labor, personal development counseling, substance abuse treatment and education, military drill and ceremony, and counseling.

#### **GOVERNOR**

Expand the earned release and challenge incarceration programs to include inmates who are assessed with treatment or rehabilitation needs not just those related to substance abuse treatment.

#### **DISCUSSION POINTS**

##### **Current Law**

1. The Wisconsin substance abuse program ("earned release") was created in 2003 Act 33. Under the program, the Departments of Corrections and Health Services must provide a

substance abuse treatment program for the purposes of earned release at any correctional facility that the Departments determine is appropriate. The following statutory provisions apply to the earned release program:

- For inmates serving a bifurcated sentence, the sentencing court is required to decide at sentencing that the inmate is eligible or ineligible to participate in the earned release program.
- Pre-sentence investigation reports conducted by Corrections must include a recommendation as to whether a defendant is eligible to participate in the program.
- All inmates are eligible, except inmates who are incarcerated for crimes against life and bodily security (crimes under Chapter 940 of the statutes), or for sex crimes against a child.
- Crimes under Chapter 940 for which inmates are ineligible for the earned release program include: (a) homicides; (b) felony murder; (c) mutilating or hiding a corpse; (d) assisting suicide; (e) abortion; (f) partial-birth abortion; (g) batteries; (h) mayhem; (i) sexual exploitation by therapist; (j) sexual assault; (k) reckless injury; (l) injury by negligent handling of dangerous weapon, explosives or fire; (m) injury by intoxicated use of a vehicle; (n) abuse of vulnerable adults or residents of penal facilities; (o) failure to render aid by a law enforcement officer; (p) abuse and neglect of patients and resident; (q) false imprisonment; (r) taking hostages; (s) kidnapping; (t) stalking; (u) duty to aid victim or report crime; and (v) intimidation or attempted intimidation of witnesses or victims. Sex crimes against a child for which inmates are ineligible for the earned release program include: (a) sexual assault of a child; (b) engaging in repeated acts of sexual assault of the same child; (c) physical abuse of a child; (d) sexual exploitation of a child; (e) causing a child to view or listen to sexual activity; (f) incest with a child; (g) child enticement; (h) use of a computer to facilitate a child sex crime; (i) soliciting a child for prostitution; and (j) sexual assault of a student by a school instructional staff person.
- If an eligible inmate serving a bifurcated sentence successfully completes the treatment program, the Department must notify the sentencing court. The sentencing court is required to: (a) reduce the prison portion of the bifurcated sentence so that the inmate is released to extended supervision within 30 days of the date on which the court received notice; and (b) lengthen the term of extended supervision so that the total length of the bifurcated sentence does not change.
- If an eligible inmate serving an indeterminate sentence successfully completes the treatment program, the Parole Commission is required to parole the inmate, regardless of the amount of time the inmate had served. The parolee is required to participate in an intensive supervision program for drug abusers as a condition of parole.
- With Corrections' approval, an inmate serving a bifurcated sentence imposed before July 26, 2003, may petition the sentencing court to determine whether he or she is eligible or ineligible to participate in the earned release program during the term of confinement. Petitioning inmates must meet program eligibility criteria regarding the crimes committed. An inmate must serve a copy of the petition on the District Attorney who prosecuted him or her, and the District

Attorney may file a written response. The sentencing court must grant or deny the inmate's petition later than 90 days after the inmate files the petition. If the court determines that the inmate is eligible to participate in the earned release program, the court must inform the inmate of the process by which the sentence may be modified.

2. The challenge incarceration program ("boot camp") provides participants with manual labor, personal development counseling, substance abuse treatment and education, military drill and ceremony, and counseling in preparation for release to parole or extended supervision. The program is required to provide strenuous physical exercise for participants who have not attained the age of 30 as of the date on which they begin participating in the program, or age-appropriate strenuous exercise for all other participants. The following statutory provisions apply to the boot camp program:

- Inmates are eligible for boot camp if they: (a) volunteer for the program; (b) have not attained the age of 40 as of the beginning of the program; (c) are not incarcerated for any ineligible crimes (identical to those of the earned release program); (d) have been determined by the Department, during assessment and evaluation, to have a substance abuse problem; (e) have been determined by the sentencing court to be eligible; and (f) have been determined by the Department to not have any psychological, physical or medical limitations that would preclude program participation.

- If the Department determines an inmate serving an indeterminate sentence successfully completed the boot camp program, the Parole Commission will parole the inmate, with the requirement that the individual participate in an intensive supervision program for drug abusers as a condition of parole.

- If the Department determines an inmate serving a bifurcated sentence successfully completes the treatment program, the Department must notify the sentencing court. The sentencing court is required to: (a) reduce the prison portion of the bifurcated sentence so that the inmate is released to extended supervision within 30 days of the date on which the court received notice; and (b) lengthen the term of extended supervision so that the total length of the bifurcated sentence does not change

### **Assembly Bill 75**

3. Related to the earned release program, AB 75 would delete statutory language associated with the Departments of Corrections and Health Services to designate a section of a mental health institute as a correctional treatment facility for the earned release program. When the program was first created in 2003, the intent was to limit the program to the Drug Abuse Correctional Center, which is the only facility that qualifies under that requirement. Statutory language has since been added to allow the earned release program to operate at other correctional facilities, but the original language related to the Department of Health Services and mental health institute has remained.

4. Further, AB 75 would expand the earned release program from a treatment of substance abuse program to a "rehabilitation" program. The Department indicates that the current earned release program "that focuses upon substance abuse treatment will not change. The Department is seeking the ability to expand the program to be able to address the primary needs of offenders determined eligible by the court but whose primary needs are not drug and alcohol treatment. The proposed change allows the Department to create new tracks within existing rehabilitative programs to address offenders' primary needs, even if those needs are not completely substance abuse related (e.g., education, employment readiness training)."

5. Related to the boot camp program, the bill would specify that the program provide, according to each participant's assessed needs, substance abuse treatment and education, including intensive intervention when indicated, personal development counseling, education, employment readiness training, and other treatment options that are directly related to the participant's criminal behavior. The bill would delete the eligibility requirement for the Department to determine, during assessment and evaluation, that the inmate has a substance abuse problem. Instead, the bill would require the Department to determine, using evidence-based assessment instruments, that one of the following applies:

a. The inmate has a substance abuse treatment need that requires an intensive level of treatment;

b. The inmate has a substance abuse treatment need that does not require an intensive level of treatment but does require education or outpatient services, and the inmate's substance use is not a key factor in his or her criminal behavior; or

c. The inmate has one or more treatment needs not related to substance use that is directly related to his or her criminal behavior.

6. Details on how the Department would expand of the earned release and boot camp programs are still unknown, including for how many offenders, at which facilities, or for what targeted needs. The Department indicates that it has recently begun a workgroup to develop a design for the program, but no final recommendations have been made. Even though there is limited information about how the expansions will be implemented, the bill assumes prison bed savings as a result of the expansion of 57 beds in 2009-10 and 377 beds in 2010-11. These population reductions were incorporated into the AB 75 prison population projections.

7. Since information about how the expanded programs will be implemented is currently limited, the Committee may wish to delete the provisions. As a result, prison populations would be higher than estimated in AB 75 and \$833,100 GPR in 2009-10 and \$5,338,900 in 2010-11 would be necessary for increased contract bed funding (for male inmates) and population-related costs (for female inmates). [Alternative 3]

8. Alternatively, if the Committee wishes to pursue these program changes, but believes that more information about how it will be implemented is necessary, the Committee could

delete the provision, but retain the contract bed savings in the second year. Under this alternative, the Committee would direct the Department to submit statutory language to the Legislature by December 31, 2009, for expanding the programs, including a plan on how the Department will implement the program expansions, including the type of programs, the length of time for each program, the number of participants for each program, and at which facilities. The provisions for expanding the programs could be enacted at that time. This alternative would modify funding in AB 75 by \$833,100 GPR in 2009-10, as a result of losing contract bed and population-related cost savings in 2009-10. [Alternative 2]

## ALTERNATIVES

1. Approve the Governor's recommendation to modify the earned release program from a treatment program to a rehabilitation program and the challenge incarceration program from a substance abuse treatment program to a treatment program that addresses needs directly related to the inmate's criminal behavior.

2. Delete the provisions. Increase contract bed funding and population-related costs in 2009-10 by \$833,100 GPR. Direct the Department to submit statutory language by December 31, 2009 to expand the earned release and challenge incarceration programs, as in the Governor's recommendation, along with a plan on implementation of the expansions including: (a) the types of programs; (b) program length; (c) the number of program participants; and (d) at which facilities the programs would be operated.

<b>ALT 2</b>	<b>Change to Bill Funding</b>
GPR	\$833,100

3. Delete provision.

<b>ALT 3</b>	<b>Change to Bill Funding</b>
GPR	\$6,172,000

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