



Legislative Fiscal Bureau

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February 10, 1998

TO: Members
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Assembly Bill 577: Pharmacological Treatment for Certain Child Sexual Offenders and Certain Sexually Violent Persons

On November 24, 1997, Assembly Bill 577, related to pharmacological treatment for certain child sexual offenders and certain sexually violent persons, was recommended for passage by the Assembly Committee on Criminal Justice and Corrections by a vote of 12 to 1.

BACKGROUND

Under current law, a person sentenced to imprisonment in the state prison system is eligible for release on parole when he or she has served 25% of the sentence imposed for the offense, or six months, whichever is greater. Current law also authorizes the release on parole of a state prison inmate under the mandatory release law. Subject to exceptions, a state prison inmate is entitled to mandatory release on parole when he or she has served two-thirds of the sentence imposed for the crime. Persons on either discretionary parole release or mandatory parole release are subject to conditions of parole set by the Parole Commission and Corrections. Persons on parole may be discharged by Corrections on or after their mandatory release date or after serving two years on parole.

One exception to the mandatory release law applies to persons who have committed a "serious felony," which includes first- and second-degree sexual assault of a child. The mandatory release date is a "presumptive" mandatory release date for an inmate who is serving a sentence for a serious felony committed on or after April 21, 1994. An inmate subject to presumptive mandatory release is not automatically released if he or she reaches his or her

mandatory release date. Instead, the Parole Commission may deny release in order to protect the public or because the person refuses to participate in counseling or treatment.

Current law further provides a procedure for the involuntary civil commitment of sexually violent persons. A sexually violent person is defined as a person who has been convicted of a sexually violent offense, has been adjudicated delinquent for a sexually violent offense, or has been found not guilty of or not responsible for a sexually violent offense by reason of insanity or mental disease, defect or illness, and who is dangerous because he or she suffers from a mental disorder that makes it substantially probable that the person will engage in acts of sexual violence. "Sexually violent offense," as used in the definition of sexually violent person, refers to specific felonies and includes first- and second-degree sexual assault of a child or repeated acts of sexual assault with the same child. First-degree sexual assault of a child is defined as sexual contact or sexual intercourse with a child under the age of 13 years; second-degree sexual assault of a child is sexual contact or sexual intercourse with a child under the age of 16 years.

A person who is found to be a sexually violent person is committed to the Department of Health and Family Services (DHFS) for control, care and treatment. The person may be committed to institutional care in an appropriate facility or the court may order the person to be placed on supervised release. When deciding whether a sexually violent person should be placed on supervised release, the court may consider several factors, including what arrangements are available to ensure that the person has access to and will participate in necessary treatment. If the court finds that the person is appropriate for supervised release, a plan identifying a person's needs for treatment and services must be prepared by DHFS and by the social services department of the county in which the person will reside and the plan must be approved by the court.

SUMMARY OF BILL

Under Assembly Bill 577, a person sentenced to imprisonment for first- or second-degree sexual assault of a child or repeated acts of sexual assault with the same child under the age of 13 years, may be denied mandatory release if the person refuses to participate in pharmacological treatment using an antiandrogen (commonly referred to as "chemical castration"). The bill also authorizes the Parole Commission and Corrections to require a "serious child sex offender" to undergo pharmacological treatment using an antiandrogen as a condition of release on discretionary parole. The bill specifically provides that the grant of authority to require a serious child sex offender to undergo pharmacological treatment as a condition of parole does not prohibit Corrections from requiring pharmacological treatment using an antiandrogen as a condition of probation.

Under the bill, a sexually violent person, who has been convicted, adjudicated delinquent or found not guilty or not responsible by reason of insanity or mental disease, defect or illness for committing first- or second-degree sexual assault of a child or repeated acts of sexual assault with the same child is referred to as a "serious child sex offender." The bill provides that, in

deciding whether to place a sexually violent person, who is a "serious child sex offender," on supervised release, the court may consider what arrangements are available to ensure that the person has access to and will participate in pharmacological treatment using an antiandrogen. In addition, if the court decides that such person is appropriate for supervised release, the bill requires that the treatment and services plan prepared by DHFS and the county department address the person's need for pharmacological treatment using an antiandrogen.

Once an individual is released from Corrections or DHFS supervision, the person could no longer be compelled to continue treatment.

The bill also requires two reports to be prepared concerning the extent to which pharmacological treatment using an antiandrogen has been required as a condition of probation or parole (Corrections prepares the report) or as a condition of supervised release under the sexual predator law (DHFS prepares the report) and the effectiveness of the treatment in the cases in which its use has been required. The bill requires the reports to be submitted to the Legislature by the first day of the 37th month beginning after the effective date of the act.

FISCAL EFFECT

No funding is provided in the bill. However, fiscal notes were submitted by the Department of Corrections, State Public Defender, State Prosecutor's Office, the Director of State Courts and the Department of Health and Family Services.

Department of Corrections. The bill gives the Parole Commission and Corrections the discretion to determine which serious child sexual offenders would be required to participate in pharmacological treatment as a condition of probation or parole. In its fiscal note to AB 577, Corrections indicates that it is unable to project the fiscal effects of the bill because it is unknown how many offenders may be found to be medically appropriate for chemical castration. However, the Department estimates that the annual cost per offender would range between \$7,900 and \$10,600, depending on the treatment that was utilized. Based on average length of parole supervision for sexual offenders and the number of serious child sexual offenders placed on parole in 1996, Corrections indicates that the treatment population of parolees could reach 563 after 27 months. As a result, treatment costs could range from \$4,447,700 to \$5,967,800 annually, if all eligible parolees were included. To the extent that individuals are determined to not be appropriate for treatment or opt to remain incarcerated rather than undergo treatment, costs under the bill would be less.

In addition to the treatment costs, Corrections also estimates that it would need to annually evaluate 250 offenders to determine if pharmacological treatment is appropriate. These psychiatric evaluations would include an interview, baseline medical examination, writing of appropriate prescriptions and dictating medical records. The Department estimates that this would result in annual costs of \$165,000.

In order to administer the chemical castration program, Corrections indicates that the following two staff positions would be necessary:

Administrative Assistant (\$46,300 annually and 1.0 position). The administrative assistant would work with treatment providers, develop policies and procedures for release planning, identify sexual offenders reaching parole eligibility or being placed on probation, schedule evaluations and work with probation and parole agents monitoring offenders.

Program Assistant (\$38,600 annually and 1.0 position). The program assistant would provide: (a) administrative support for the chemical castration program in Corrections; and (b) program monitoring.

Corrections estimates that in the first year of operation, these two positions would cost \$102,800 (including \$19,000 in one-time costs). On an annual basis, the positions are estimated at \$84,900.

The Committee should note that Corrections' fiscal note related to treatment and examination costs only assumes that future parolees will participate in the program. The Department notes, however, that 372 offenders annually are placed on probation for the same offenses. In addition, there are 813 parolees and 2,709 probationers currently in the community for these offenses. The bill does not limit the applicability of the chemical castration program to only future offenders or parolees. To the extent that probationers and current parolees and probationers are placed in the program, costs could be higher. The Department has indicated that if funding is not provided to support the program or a pilot test of the program, provisions of the bill could not be implemented.

Other Justice Agencies. The authorization of pharmacological treatment as a condition of probation or supervised release under AB 577 is not expected to have significant impact on the Courts, District Attorneys or the Public Defender. It should be noted that in a fiscal estimate submitted by the Public Defender, the agency indicated that there may be additional costs from increases in the number of probation or parole revocation cases resulting from people refusing to receive the treatment authorized under the bill. However, the number of people refusing to receive this type of treatment as opposed to treatment or counseling provided under current law is unknown. The Public Defender also cited a potential for increased costs relating to persons committed under Chapter 980 (Commitment of Sexually Violent Persons) due to: (1) longer hearings to address the new treatment issue; and (2) increases in the number of petitions filed for supervisory release, under the new treatment option. While there may be some increase in the length of hearings initially, it would be expected that this would decrease over time as the technicalities of the bill are worked out. In addition, under the bill, petitions for supervisory release would continue to be restricted to one every six months, as under current law, thereby limiting any increase. There could, however, be some costs to these agencies resulting from legal challenges to the constitutionality of using pharmacological treatment as a condition of probation or parole. The extent of future litigation cannot be measured.

Department of Health and Family Services. In its fiscal note, DHFS projects additional costs in two areas. First, costs at the Wisconsin Resource Center would increase because 30 days prior to being placed on supervised release, some sexually violent persons (SVPs) would be placed on the drug at the Wisconsin Resource Center and be evaluated weekly (polygraph and plethysmograph exams) to determine the effectiveness of the drug. DHFS projects that 14 to 70 persons would be placed on supervised release annually, which implies annual costs for these pre-release activities of: (a) \$5,400 to \$29,100 annually for drug costs; (b) \$48,100 for 1.0 psychologist to conduct the weekly examinations; and (c) one-time costs of \$10,000 to purchase the equipment.

When persons from the WRC are placed in supervised release, DHFS would incur additional community treatment costs for those persons. Depending on which of the two drugs is used, the annual cost would range from \$7,700 to \$10,600 per person, which would cover drug costs and office visits to administer the drugs. The cost of treating 14 to 70 persons on supervised release are estimated to range from \$107,800 to \$742,000 annually. Treatment costs for persons on supervised release are not funded under the WRC appropriation. Costs for persons on supervised release and for persons on conditional release (persons released from the state's mental health institutes) are funded from a separate DHFS biennial appropriation, funded at \$2,803,400 in 1997-98 and \$3,479,500 in 1998-99.

The key factor behind the wide range of costs is the uncertainty as to the number of persons that would be on supervised release and that would utilize the drugs. Currently, there are five persons on supervised release (one of whom is about to be revoked) and four other persons that have orders to be placed on supervised release. Last year, there were four persons on supervised release. Currently, there are 153 sexually violent persons held by DHFS at the WRC and Mendota. Under current conditions, there has been little growth in the supervised release group. One factor behind this slow growth is that most individuals do not participate in treatment, which makes their case for supervised release difficult to justify. If courts are required to consider this alternative of drug treatment, it is possible that the number of persons placed on supervised release could increase. However, individuals cannot be forced to undergo this treatment, and most persons are not participating in treatment currently. Further, not everyone on supervised release would be required to participate in the drug treatment. For this reason, it may be reasonable to assume that the number of persons on supervised release undergoing drug treatment would be in the low end of the range.

Further, since DHFS's fiscal note only includes the drug costs as an impact on the costs of supervised release, the implication is that the number of persons on supervised release would not be affected by the bill. However, it is possible that enactment of the bill could increase the number of persons on supervised release, since courts would be required to consider this option and such drug treatment may make community placement more secure and feasible. If there is an increase in number of persons on supervised release, all of the treatment and other placement costs should be part of the fiscal impact. Under Act 27, it was projected that persons on supervised release would have annual costs of \$10,000 to \$20,000 per placement. Although the bill has the potential to increase the number of persons placed on supervised release, the general

lack of participation in treatment by the residents of WRC suggest that the impact may be small.

If enactment of the bill increases the number of SVPs on supervised release, WRC would have fewer sexually violent persons to treat. Any potential savings from serving fewer sexually violent persons, however, would probably be offset by a greater number of prison inmates sent to the WRC for treatment from DOC. Thus, any savings from institutional care arising from an increase in the number of persons on supervised release would probably accrue to DOC, rather than DHFS.

If it is assumed that the number of persons on supervised release that would be subject to the drug treatment would be on the low end of the range, it is unlikely that DHFS would need a full-time psychologist to conduct the pre-release weekly examinations. An additional 0.25 psychologist (\$12,000 annually) could be sufficient to conduct weekly examinations for a month for 20 persons. The drug costs for 20 persons for a month would not exceed \$15,000 annually. Including the one-time equipment costs, the fiscal impact on the WRC from providing pre-release drug treatment to 20 persons would be \$32,000 GPR in 1998-99, of which \$10,000 is one-time equipment costs.

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BURKE	<input checked="" type="radio"/>	N	A
DECKER	<input checked="" type="radio"/>	N	A
JAUCH	<input checked="" type="radio"/>	N	A
SHIBILSKI	<input checked="" type="radio"/>	N	A
COWLES	<input checked="" type="radio"/>	N	A
PANZER	<input checked="" type="radio"/>	N	A
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