

## 2001 ASSEMBLY BILL 443

June 12, 2001 – Introduced by Representatives JENSEN, RILEY, KESTELL, WALKER, SUDER, FREESE, MUSSER, VRAKAS, LIPPERT, TOWNSEND, KRAWCZYK, OTT, HAHN, LADWIG, ALBERS, MCCORMICK, AINSWORTH, PETTIS, GUNDERSON, LEIBHAM, OWENS, HUEBSCH, NASS and SYKORA, cosponsored by Senators DARLING, WELCH and ROESSLER. Referred to Committee on Corrections and the Courts.

1     **AN ACT** *to repeal* 301.047; *to amend* 15.01 (6), 15.02 (3) (c) 1., 15.105 (title),  
2           20.505 (4) (title), 230.08 (2) (e) 1., 302.11 (1g) (b) 2., 978.03 (3) and 978.05 (8) (b);  
3           **to repeal and recreate** 302.11 (1g) (b) 2.; and **to create** 15.105 (28), 16.235,  
4           20.435 (3) (ft), 20.505 (4) (em), 46.03 (44), 46.72, 59.54 (27), 301.03 (2t), 301.047,  
5           301.065 and 978.044 of the statutes; **relating to:** authorizing the appointment  
6           of assistant district attorneys to provide restorative justice services;  
7           authorizing counties and the department of corrections to contract with  
8           religious organizations for the provision of services relating to delinquency and  
9           crime prevention and the rehabilitation of offenders; inmate rehabilitation;  
10          creating the office of charitable choice implementation; establishing a grant

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- 1 program for a neighborhood organization incubator; distributing funding for  
2 alcohol and other drug abuse services; and making appropriations.
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***Analysis by the Legislative Reference Bureau******Restorative justice district attorney positions***

Current law specifies that each county shall have one district attorney. Current law also authorizes the appointment of one or more deputy district attorneys for certain counties and, subject to the positions being requested by the department of administration (DOA), one or more assistant district attorneys for all counties. This bill authorizes one new assistant district attorney project position each for Dane County, Milwaukee County, and a third county (to be selected by the attorney general in consultation with the department of corrections (DOC)). The bill also requires the district attorney for each of those three counties to assign one assistant district attorney to be a restorative justice coordinator.

Under the bill, the restorative justice coordinator must establish restorative justice programs that provide support to the victim, facilitate the reintegration of the victim into community life, and provide a forum for an offender to: 1) meet with the victim; 2) discuss the impact of the offense on the victim or the community; 3) explore appropriate restorative responses by the offender; and 4) facilitate the reintegration of the offender into community life. The bill also requires each restorative justice coordinator to assist district attorneys in other counties in establishing restorative justice programs. The bill further requires each restorative justice coordinator to maintain records regarding restorative justice activities and to submit to DOA annual reports describing the restorative justice activities that each has undertaken, including the number of victims and offenders served, the types of crimes involved, and the rates of recidivism among offenders, served by restorative justice program. In addition, by October 1, 2004, the legislative audit bureau must conduct a quantitative and qualitative evaluation of the success of restorative justice programs in serving victims, offenders, and communities affected by crime and to report these findings to the legislature.

The assistant district attorney project positions created under the bill expire after June 30, 2005.

***Establishment of the office of charitable choice implementation***

The bill creates an office of charitable choice implementation (OCCI). Under the bill, OCCI is required to assist in the implementation of state and federal laws regarding nondiscrimination against religious organizations by doing all of the following: 1) providing information on laws regarding nondiscrimination against faith-based organizations in the provision of government services; 2) assisting government agencies in using the services of faith-based organizations in the provision of government services; and 3) compiling and providing to the public information on government services available through faith-based organizations. OCCI is to operate for three years, is to be attached to the department of administration, and is to be headed by an executive director. The executive director

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may not be a member of the board of directors, be otherwise involved in the governance or control of, or be employed by any faith-based organization eligible for funding to provide government services under the bill. In addition, the executive director must have experience relevant to the operation of nonprofit organizations or state or local government and must have a demonstrated understanding of state and federal laws regarding nondiscrimination against religious organizations.

***Nondiscrimination against religious organizations***

Current law specifies that the department of health and family services (DHFS) and the department of workforce development may contract with or award grants to religious organizations on the same basis as they do with respect to any other nongovernmental provider. This bill similarly specifies that DOC and counties may contract with or award grants to religious organizations for use in the prevention of delinquency and crime and the rehabilitation of offenders. In particular, the bill: 1) specifies that if DOC or a county is authorized to distribute any grant to or contract with a nongovernmental entity, that nongovernmental entity (the grantee) can be a religious organization, as long as the programs are implemented consistently with the U.S. and Wisconsin constitutions; 2) prohibits DOC and counties from discriminating against an organization because the organization does or does not have a religious character or because of the specific religious nature of the organization; 3) specifies that a grantee retains its independence from federal, state, and local governments, including in its control over the definition, development, practice, and expression of its religious beliefs; 4) specifies that if an individual has an objection to the religious character of a grantee from which the individual would receive assistance from a program supported with funding administered by DOC or a county, DOC or the county must provide the individual assistance of equal value from an accessible nonreligious provider upon the individual's request; 5) requires DOC and counties to provide written information to individuals who are eligible for assistance regarding the availability of assistance from a nonreligious provider; 6) prohibits a grantee from discriminating against an individual in regard to rendering services, funded under any DOC or county program on the basis of religion, a religious belief or a refusal to actively participate in a religious practice; 7) specifies that any grantee is subject to the same laws and rules as other contractors and grantees regarding accounting in accordance with generally accepted auditing principles for the use of these funds; 8) prohibits any grantee from expending any of those funds for sectarian worship, instruction, or proselytization; and 9) requires every grantee providing crime prevention or rehabilitation assistance to eligible recipients to certify in writing that it has complied with the proscription against discrimination and the proscription against the expenditure of public funds for sectarian purposes.

***Inmate AODA rehabilitation***

Under current law, DOC must provide alcohol and other drug abuse (AODA) treatment programs at certain prisons. As is the case with other correctional services and programs, DOC may provide AODA treatment programs by contracting with a public or voluntary agency. This bill authorizes DOC to permit one or more nonprofit community-based organizations to operate an inmate rehabilitation

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program in DOC's Milwaukee AODA treatment facility if: 1) DOC determines that operation of the program does not constitute a threat to the security of the facility or to the safety of inmates or the public; 2) DOC determines that operation of the program is in the best interest of the inmates; and 3) the organization submits to DOC a detailed proposal for the operation of the program. The organization must also agree in writing: 1) not to receive compensation from DOC for services provided in the rehabilitation program; 2) not to deny an inmate the opportunity to participate in the program for any reason related to the inmate's religious beliefs or nonbelief; 3) to permit an inmate to withdraw from participation in the program at any time; and 4) to provide community-based aftercare services for each inmate upon the inmate's release if he or she completes the program and resides in the area in which the organization is providing such services. In addition, if the organization promotes religious activity in connection with the program, DOC must allow all other religious organizations meeting the requirements of the bill to operate an inmate AODA program.

DOC must provide reasonable access to inmates by an organization operating an inmate rehabilitation program established under the bill and must designate a specific portion of the facility for operation of the program. To the extent possible, inmates participating in the program must be housed in the portion of the facility in which the program is operated. DOC, however, may not require an inmate to participate in an inmate rehabilitation program established under the bill, nor may it base any decision regarding an inmate's conditions of confinement on his or her participation or nonparticipation in such a program. The bill also provides that DOC may restrict an inmate's participation in such a program only if necessary for the security of the facility or the safety of the inmates or the public. In addition, the bill requires DOC to evaluate, or contract with a private or public agency for an evaluation of, the effectiveness of the program in reducing recidivism and AODA.

The provisions described in this section of the analysis expire two years after an inmate rehabilitation program established under the bill begins operation.

***Distribution of AODA funding***

Under current law, DHFS administers various programs that provide funding for AODA intervention and treatment services. Under the bill, DHFS and DOC must: 1) develop one or more methods to evaluate the effectiveness of, and develop performance standards for, AODA intervention and treatment services that each department administers; 2) adopt policies to ensure that, to the extent possible under state and federal law, all funding for AODA intervention and treatment services that each of them administers is distributed giving primary consideration to the effectiveness of the services in meeting department performance standards for AODA services; 3) require every application for department funding for AODA intervention or treatment services to include a plan to evaluate the effectiveness of the services in reducing AODA by recipients of services; and 4) require recipients of AODA funding from each department to provide that department the results of its evaluation.

**ASSEMBLY BILL 443*****Establishment of a neighborhood organization incubator grant program***

The bill authorizes DHFS to award a grant to a private nonprofit or public organization that is community based (an agency) to enable the agency to help neighborhood social service organizations secure funding and become more effective. As a condition of receiving the grant, the agency is required to: 1) provide information to neighborhood organizations about sources of public and private funding; 2) assist neighborhood organizations in obtaining funding and other assistance from public and private entities; 3) act as a liaison between the neighborhood organizations and the public and private funding sources; 4) provide appropriate training and professional development services to members of neighborhood organizations; 5) engage in outreach efforts to inform neighborhood organizations of the services available from the agency; 6) undertake other activities to facilitate the effectiveness and development of neighborhood organizations; and 7) submit to DHFS, within 90 days after spending the entire grant, a report detailing the use of the grant proceeds. This grant program sunsets on June 30, 2005.

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***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

- 1           **SECTION 1.** 15.01 (6) of the statutes is amended to read:
- 2           15.01 **(6)** “Division,” “bureau,” “section,” and “unit” means mean the subunits
- 3 of a department or an independent agency, whether specifically created by law or
- 4 created by the head of the department or the independent agency for the more
- 5 economic and efficient administration and operation of the programs assigned to the
- 6 department or independent agency. The office of justice assistance and the office of
- 7 charitable choice implementation in the department of administration and the office
- 8 of credit unions in the department of financial institutions have the meaning of
- 9 “division” under this subsection. The office of the long-term care ombudsman under
- 10 the board on aging and long-term care and the office of educational accountability
- 11 in the department of public instruction have the meaning of “bureau” under this
- 12 subsection.
- 13           **SECTION 2.** 15.02 (3) (c) 1. of the statutes is amended to read:

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1           15.02 (3) (c) 1. The principal subunit of the department is the “division”.” Each  
2           division shall be headed by an “administrator”.” The office of justice assistance and  
3           the office of charitable choice implementation in the department of administration  
4           and the office of credit unions in the department of financial institutions have the  
5           meaning of “division<sub>.”</sub> and the executive staff director of the office of justice  
6           assistance and the executive director heading the office of charitable choice  
7           implementation in the department of administration and the director of credit  
8           unions have the meaning of “administrator” under this subdivision.

9           **SECTION 3.** 15.105 (title) of the statutes is amended to read:

10          **15.105** (title) **Same; attached boards, commissions and office offices.**

11          **SECTION 4.** 15.105 (28) of the statutes is created to read:

12          **15.105 (28)** OFFICE OF CHARITABLE CHOICE IMPLEMENTATION. There is created an  
13          office of charitable choice implementation, headed by the executive director, which  
14          is attached to the department of administration under s. 15.03. The executive  
15          director shall be nominated by the governor, and with the advice and consent of the  
16          senate appointed, to serve at the pleasure of the governor. The executive director  
17          may not be a member of the board of directors of, be otherwise involved in the  
18          governance or control of, or be employed by any faith-based organization eligible for  
19          contracts or grants under s. 59.54 (27) or 301.065. The executive director shall have  
20          experience relevant to the operation of nonprofit organizations or state or local  
21          government and shall have a demonstrated understanding of state and federal laws  
22          regarding nondiscrimination against religious organizations. This subsection does  
23          not apply after November 1, 2004.

24          **SECTION 5.** 16.235 of the statutes is created to read:



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1           **16.235 Office of charitable choice implementation.** (1) The office of  
 2 charitable choice implementation shall do all of the following to assist in the  
 3 implementation of federal and state laws regarding nondiscrimination against  
 4 religious organizations in the provision of government services:

5           (a) Provide information to state agencies, local governments, and other  
 6 interested persons about laws regarding nondiscrimination against faith-based  
 7 organizations in the provision of government services.

8           (b) Assist state and local governments in using the services of faith-based  
 9 organizations in the provision of government services.

10           (c) Compile and provide to the public information on state and local government  
 11 services available through faith-based organizations.

12           **(2)** This section does not apply after November 1, 2004.

13           **SECTION 6.** 20.005 (3) (schedule) of the statutes: at the appropriate place, insert  
 14 the following amounts for the purposes indicated:

				<b>2001-02</b>	<b>2002-03</b>
15					
16	<b>20.435</b>	<b>Health and family services, department</b>			
17		<b>of</b>			
18	(3)	CHILDREN AND FAMILY SERVICES			
19	(ft)	Neighborhood organization incu-			
20		bator grants	GPR    A	100,000	100,000

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**2001-02**

**2002-03**

1 **20.505 Administration, department of**

2 (4) ATTACHED DIVISIONS, BOARDS, COUNCILS,  
3 COMMISSIONS, AND OFFICE

4 (em) Office of charitable choice imple-  
5 mentation

GPR A 67,600 77,400

6 **SECTION 7.** 20.435 (3) (ft) of the statutes is created to read:

7 20.435 (3) (ft) *Neighborhood organization incubator grants.* The amounts in  
8 the schedule for neighborhood organization incubator grants under s. 46.72.

9 **SECTION 8.** 20.505 (4) (title) of the statutes is amended to read:

10 20.505 (4) (title) ATTACHED DIVISIONS, BOARDS, COUNCILS ~~AND~~, COMMISSIONS AND  
11 OFFICE.

12 **SECTION 9.** 20.505 (4) (em) of the statutes is created to read:

13 20.505 (4) (em) *Office of charitable choice implementation.* The amounts in the  
14 schedule for the general program operations of the office of charitable choice  
15 implementation.

16 **SECTION 10.** 46.03 (44) of the statutes is created to read:

17 46.03 (44) PERFORMANCE EVALUATIONS FOR ALCOHOL AND OTHER DRUG ABUSE  
18 INTERVENTION AND TREATMENT SERVICES. Promote efficient use of resources for alcohol  
19 and other drug abuse intervention and treatment services by doing all of the  
20 following:

21 (a) Developing one or more methods to evaluate the effectiveness of, and  
22 developing performance standards for, alcohol and other drug abuse intervention  
23 and treatment services that are administered by the department.



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1 (b) Adopting policies to ensure that, to the extent possible under state and  
2 federal law, funding for alcohol and other drug abuse intervention and treatment  
3 services that are administered by the department is distributed giving primary  
4 consideration to the effectiveness of the services in meeting department performance  
5 standards for alcohol and other drug abuse services.

6 (c) Requiring every application for funding from the department for alcohol and  
7 other drug abuse intervention or treatment services to include a plan for the  
8 evaluation of the effectiveness of the services in reducing alcohol and other drug  
9 abuse by recipients of services.

10 (d) Requiring every person receiving funding from the department for alcohol  
11 and other drug abuse intervention or treatment services to provide the department  
12 the results of the evaluation conducted under par. (c).

13 **SECTION 11.** 46.72 of the statutes is created to read:

14 **46.72 Neighborhood organization incubator grants. (1) DEFINITIONS.** In  
15 this section:

16 (a) “Agency” means a private nonprofit or public organization that is  
17 community based.

18 (b) “Neighborhood organization” means a private nonprofit organization that  
19 is community based and that provides any of the following services or programs  
20 primarily to residents of the area in which the organization is located:

- 21 1. Crime prevention programs.
- 22 2. After-school and recreational programs for youth.
- 23 3. Child abuse and domestic abuse prevention services.
- 24 4. Alcohol and other drug abuse counseling and prevention services.
- 25 5. Programs for diversion of youth from gang activities.

**ASSEMBLY BILL 443****SECTION 11**

1           6. Inmate and ex-offender rehabilitation or aftercare services.

2           **(2) GRANTS.** From the appropriation under s. 20.435 (3) (ft), the department  
3 shall award grants to agencies to enable them to provide services described under  
4 sub. (3) to neighborhood organizations. An agency application for a grant shall  
5 contain a plan detailing the proposed use of the grant.

6           **(3) REQUIREMENTS FOR GRANT RECIPIENTS.** An agency receiving a grant under  
7 this section shall do all of the following:

8           (a) Provide information to neighborhood organizations about funding and other  
9 assistance that may be available to neighborhood organizations from private and  
10 public entities.

11           (b) Assist neighborhood organizations in obtaining funding and other  
12 assistance from public and private entities.

13           (c) Act as a liaison between neighborhood organizations and public and private  
14 entities.

15           (d) Provide appropriate training and professional development services to  
16 members of neighborhood organizations.

17           (e) Engage in outreach to neighborhood organizations to inform them of the  
18 services available from the agency.

19           (f) Undertake other activities that will increase the effectiveness and facilitate  
20 the development of neighborhood organizations.

21           **(4) REPORT.** An agency receiving a grant under this section shall submit to the  
22 department within 90 days after spending the full amount of the grant a report  
23 detailing the actual use of the proceeds of the grant.

24           **(5) SUNSET.** This section does not apply after June 30, 2005.

25           **SECTION 12.** 59.54 (27) of the statutes is created to read:

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1           59.54 (27) RELIGIOUS ORGANIZATIONS; CONTRACT POWERS. (a) *Definition.* In this  
2 subsection, “board” includes any department, as defined in s. 59.60 (2) (a).

3           (b) *General purpose and authority.* The purpose of this subsection is to allow  
4 the board to contract with, or award grants to, religious organizations, under any  
5 program administered by the county dealing with delinquency and crime prevention  
6 or the rehabilitation of offenders, on the same basis as any other nongovernmental  
7 provider, without impairing the religious character of such organizations and  
8 without diminishing the religious freedom of beneficiaries of assistance funded  
9 under such program.

10          (c) *Nondiscrimination against religious organizations.* If the board is  
11 authorized to contract with a nongovernmental entity, or is authorized to award  
12 grants to a nongovernmental entity, religious organizations are eligible, on the same  
13 basis as any other private organization, to be contractors and grantees under any  
14 program administered by the board so long as the programs are implemented  
15 consistently with the first amendment to the U.S. Constitution and article I, section  
16 18, of the Wisconsin constitution. Except as provided in par. (L), the board may not  
17 discriminate against an organization that is or applies to be a contractor or grantee  
18 on the basis that the organization does or does not have a religious character or  
19 because of the specific religious nature of the organization.

20          (d) *Religious character and freedom.* 1. The board shall allow a religious  
21 organization with which the board contracts or to which the board awards a grant  
22 to retain its independence from government, including the organization’s control  
23 over the definition, development, practice, and expression of its religious beliefs.

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1           2. The board may not require a religious organization to alter its form of  
2 internal governance or to remove religious art, icons, scripture, or other symbols to  
3 be eligible for a contract or grant.

4           (e) *Rights of beneficiaries of assistance.* 1. If the board contracts with, or  
5 awards grants to, a religious organization for the provision of crime prevention or  
6 offender rehabilitation assistance under a program administered by the board, an  
7 individual who is eligible for this assistance shall be informed in writing that  
8 assistance of equal value and accessibility is available from a nonreligious provider  
9 upon request.

10           2. The board shall provide an individual who is otherwise eligible for assistance  
11 from an organization described under subd. 1. with assistance of equal value from  
12 a nonreligious provider if the individual objects to the religious character of the  
13 organization described under subd. 1. and requests assistance from a nonreligious  
14 provider. The board shall provide such assistance within a reasonable period of time  
15 after the date of the objection and shall ensure that it is accessible to the individual.

16           (f) *Employment practices.* To the extent permitted under federal law, a religious  
17 organization's exemption under 42 USC 2000e–1a regarding employment practices  
18 is not affected by its participation in, or receipt of funds from, programs administered  
19 by the board.

20           (g) *Nondiscrimination against beneficiaries.* A religious organization may not  
21 discriminate against an individual in regard to rendering assistance that is funded  
22 under any program administered by the board on the basis of religion, a religious  
23 belief or nonbelief, or a refusal to actively participate in a religious practice.

24           (h) *Fiscal accountability.* 1. Except as provided in subd. 2., any religious  
25 organization that contracts with or receives a grant from the board is subject to the

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1 same laws and rules as other contractors and grantees regarding accounting, in  
2 accord with generally accepted auditing principles, for the use of the funds provided  
3 under such programs.

4 2. If the religious organization segregates funds provided under programs  
5 administered by the board into separate accounts, only the financial assistance  
6 provided with those funds shall be subject to audit.

7 (i) *Compliance.* Any party that seeks to enforce its rights under this subsection  
8 may bring a civil action for injunctive relief against the entity that allegedly commits  
9 the violation.

10 (j) *Limitations on use of funds for certain purposes.* No funds provided directly  
11 to religious organizations by the board may be expended for sectarian worship,  
12 instruction, or proselytization.

13 (k) *Certification of compliance.* Every religious organization that contracts  
14 with or receives a grant from the county board to provide delinquency and crime  
15 prevention or offender rehabilitation services to eligible recipients shall certify in  
16 writing that it has complied with the requirements of pars. (g) and (j) and submit to  
17 the board a copy of this certification and a written description of the policies the  
18 organization has adopted to ensure that it has complied with the requirements under  
19 pars. (g) and (j).

20 (L) *Preemption.* Nothing in this subsection may be construed to preempt any  
21 provision of federal law, the U.S. Constitution, the Wisconsin constitution, or any  
22 other statute that prohibits or restricts the expenditure of federal or state funds by  
23 or the granting of federal or state funds to religious organizations.

24 **SECTION 13.** 230.08 (2) (e) 1. of the statutes is amended to read:

25 230.08 (2) (e) 1. Administration — ~~12~~ 13.

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1           **SECTION 14.** 301.03 (2t) of the statutes is created to read:

2           301.03 **(2t)** (a) Develop one or more methods to evaluate the effectiveness of,  
3 and develop performance standards for, alcohol and other drug abuse intervention  
4 and treatment services that are administered by the department.

5           (b) Adopt policies to ensure that, to the extent possible under state and federal  
6 law, funding for alcohol and other drug abuse intervention and treatment services  
7 that are administered by the department is distributed giving primary consideration  
8 to the effectiveness of the services in meeting department performance standards for  
9 alcohol and other drug abuse services.

10           (c) Require every application for funding from the department for alcohol and  
11 other drug abuse intervention or treatment services to include a plan for the  
12 evaluation of the effectiveness of the services in reducing alcohol and other drug  
13 abuse by recipients of the services.

14           (d) Require every person receiving funding from the department for alcohol and  
15 other drug abuse intervention or treatment services to provide the department the  
16 results of the evaluation conducted under par. (c).

17           **SECTION 15.** 301.047 of the statutes is created to read:

18           **301.047 Inmate rehabilitation and aftercare. (1) PROGRAM.** The  
19 department may permit one or more nonprofit community-based organizations  
20 meeting the requirements of this section to operate an inmate rehabilitation  
21 program in the Milwaukee alcohol and other drug abuse treatment facility  
22 enumerated in 1997 Wisconsin Act 27, section 9107 (1) (b) 1., if the department  
23 determines that operation of that program does not constitute a threat to the security  
24 of the facility or the safety of inmates or the public and that operation of the program  
25 is in the best interest of the inmates.



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1           **(2) PROGRAM REQUIREMENTS.** (a) An organization seeking to operate a  
2 rehabilitation program under sub. (1) shall submit to the department a detailed  
3 proposal for the operation of the program. The proposal shall include all of the  
4 following:

5           1. A description of the services to be provided, including aftercare services, and  
6 a description of the geographic area in which aftercare services will be provided.

7           2. A description of the activities to be undertaken and the approximate daily  
8 schedule of programming for inmates participating in the program.

9           3. A statement of the qualifications of the individuals providing services.

10          4. A statement of the organization's policies regarding eligibility of inmates to  
11 participate in the program.

12          5. A statement of the goals of the program.

13          6. A description of the methods by which the organization will evaluate the  
14 effectiveness of the program in attaining the goals under subd. 5.

15          7. Any other information specified by the department.

16          (b) An organization seeking to operate a rehabilitation program under sub. (1)  
17 shall agree in writing to all of the following:

18          1. The organization may not receive compensation from the department for  
19 services provided in the rehabilitation program.

20          2. The organization may not deny an inmate the opportunity to participate in  
21 the program for any reason related to the inmate's religious beliefs or nonbelief.

22          3. An inmate may stop participating in the program at any time.

23          4. Upon the inmate's release, the organization shall provide community-based  
24 aftercare services for each inmate who completes the program and who resides in the  
25 geographic area described in par. (a) 1.

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1           **(3) DUTIES AND AUTHORITY OF THE DEPARTMENT.** (a) The department shall  
2 establish policies that provide an organization operating a rehabilitation program  
3 under sub. (1) reasonable access to inmates.

4           (b) The department shall designate a specific portion of the facility for  
5 operation of a rehabilitation program, if one is established, under sub. (1). To the  
6 extent possible, inmates participating in the program shall be housed in the portion  
7 of the facility in which the program is operated.

8           (c) The department may not require an inmate to participate in a rehabilitation  
9 program under sub. (1).

10           (d) The department may not base any decision regarding an inmate's conditions  
11 of confinement, including discipline, or an inmate's eligibility for release, on an  
12 inmate's decision to participate or not to participate in a rehabilitation program  
13 under sub. (1).

14           (e) The treatment of inmates, including the provision of housing, activities in  
15 which an inmate may participate, freedom of movement, and work assignments,  
16 shall be substantially the same for inmates who participate in a rehabilitation  
17 program under sub. (1) and inmates who do not participate in such a program.

18           (f) The department may restrict an inmate's participation in a rehabilitation  
19 program under sub. (1) only if the restriction is necessary for the security of the  
20 facility or the safety of the inmates or the public.

21           (g) The department may suspend or terminate operation of a rehabilitation  
22 program under sub. (1) if the organization operating the program fails to comply with  
23 any of the requirements under this section and shall suspend or terminate the  
24 operation of a program if the department determines that suspension or termination

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1 of the program is necessary for the security of the facility or the safety of the inmates  
2 or the public or is in the best interests of the inmates.

3 (h) 1. Except as provided in subd. 2., if an organization operating a  
4 rehabilitation program under sub. (1) promotes or informs the department that the  
5 organization intends to promote sectarian worship, instruction, or proselytization in  
6 connection with the rehabilitation program, the department shall permit all other  
7 religious organizations meeting the requirements of this section to operate an  
8 inmate rehabilitation program under sub. (1).

9 2. The department is not required under subd. 1. to permit a religious  
10 organization to operate an inmate rehabilitation program under sub. (1) if the  
11 department determines that the organization's operation of that program  
12 constitutes a threat to the security of the facility or the safety of the inmates or the  
13 public.

14 (4) EVALUATION. The department shall evaluate or contract with a public or  
15 private agency for an evaluation of the effectiveness of a rehabilitation program  
16 operated under sub. (1) in reducing recidivism and alcohol and other drug abuse  
17 among program participants. The department shall collect the data and information  
18 necessary to evaluate the program. No later than 3 years from the date of the notice  
19 published under 2001 Wisconsin Act ... (this act), section 24, the department shall  
20 submit a report of the evaluation to the governor and to the appropriate standing  
21 committees of the legislature, as determined by the speaker of the assembly and the  
22 president of the senate, under s. 13.172 (3).

23 (5) SUSPENSION OR TERMINATION OF AN INMATE'S PARTICIPATION. Notwithstanding  
24 sub. (2) (b) 2., an organization operating a rehabilitation program under sub. (1) may  
25 suspend or terminate an inmate's participation in a program for reasons unrelated

**ASSEMBLY BILL 443****SECTION 15**

1 to religious beliefs, including the inmate's failure to participate meaningfully in the  
2 program.

3 **SECTION 16.** 301.047 of the statutes, as created by 2001 Wisconsin Act ... (this  
4 act), is repealed.

5 **SECTION 17.** 301.065 of the statutes is created to read:

6 **301.065 Religious organizations; contract powers. (1) RELIGIOUS**  
7 ORGANIZATIONS; LEGISLATIVE PURPOSE. The purpose of this section is to allow the  
8 department to contract with, or award grants to, religious organizations, under any  
9 program administered by the department relating to the prevention of delinquency  
10 and crime or the rehabilitation of offenders, on the same basis as any other  
11 nongovernmental provider, without impairing the religious character of such  
12 organizations, and without diminishing the religious freedom of beneficiaries of  
13 assistance funded under such program.

14 **(2) NONDISCRIMINATION AGAINST RELIGIOUS ORGANIZATIONS.** If the department is  
15 authorized under ch. 16 to contract with a nongovernmental entity, or to award  
16 grants to a nongovernmental entity, religious organizations are eligible, on the same  
17 basis as any other private organization, to be contractors and grantees under any  
18 program administered by the department so long as the programs are implemented  
19 consistently with the first amendment to the U.S. Constitution and article I, section  
20 18, of the Wisconsin constitution. Except as provided in sub. (11), the department  
21 may not discriminate against an organization that is or applies to be a contractor or  
22 grantee on the basis that the organization does or does not have a religious character  
23 or because of the specific religious nature of the organization.

24 **(3) RELIGIOUS CHARACTER AND FREEDOM. (a)** The department shall allow a  
25 religious organization with which the department contracts or to which the

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1 department awards a grant to retain its independence from government, including  
2 the organization's control over the definition, development, practice, and expression  
3 of its religious beliefs.

4 (b) The department may not require a religious organization to alter its form  
5 of internal governance or to remove religious art, icons, scripture, or other symbols  
6 to be eligible for a contract or grant.

7 **(4) RIGHTS OF BENEFICIARIES OF ASSISTANCE.** (a) If the department contracts with  
8 or awards grants to a religious organization for the provisions of crime prevention  
9 or offender rehabilitation assistance under a program administered by the  
10 department, an individual who is eligible for this assistance shall be informed in  
11 writing that assistance of equal value and accessibility is available from a  
12 nonreligious provider upon request.

13 (b) The department shall provide an individual who is otherwise eligible for  
14 assistance from an organization described under par. (a) with assistance of equal  
15 value from a nonreligious provider if the individual objects to the religious character  
16 of the organization described under par. (a) and requests assistance from a  
17 nonreligious provider. The department shall provide such assistance within a  
18 reasonable period of time after the date of the objection and shall ensure that it is  
19 accessible to the individual.

20 **(5) EMPLOYMENT PRACTICES.** To the extent permitted under federal law, a  
21 religious organization's exemption under 42 USC 2000e-1a regarding employment  
22 practices is not affected by its participation in, or receipt of funds from, programs  
23 administered by the department.

24 **(6) NONDISCRIMINATION AGAINST BENEFICIARIES.** A religious organization may not  
25 discriminate against an individual in regard to rendering assistance that is funded

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1 under any program administered by the department on the basis of religion, a  
2 religious belief or nonbelief, or a refusal to actively participate in a religious practice.

3 **(7) FISCAL ACCOUNTABILITY.** (a) Except as provided in par. (b), any religious  
4 organization that contracts with, or receives a grant from, the department is subject  
5 to the same laws and rules as other contractors and grantees regarding accounting,  
6 in accord with generally accepted auditing principles, for the use of the funds  
7 provided under such programs.

8 (b) If the religious organization segregates funds provided under programs  
9 administered by the department into separate accounts, only the financial  
10 assistance provided with those funds shall be subject to audit.

11 **(8) COMPLIANCE.** Any party that seeks to enforce its rights under this section  
12 may bring a civil action for injunctive relief against the entity that allegedly commits  
13 the violation.

14 **(9) LIMITATIONS ON USE OF FUNDS FOR CERTAIN PURPOSES.** No funds provided  
15 directly to religious organizations by the department may be expended for sectarian  
16 worship, instruction, or proselytization.

17 **(10) CERTIFICATION OF COMPLIANCE.** Every religious organization that contracts  
18 with, or receives a grant from, the department to provide delinquency and crime  
19 prevention or offender rehabilitation services to eligible recipients shall certify in  
20 writing that it has complied with the requirements of subs. (6) and (9) and submit  
21 to the department a copy of this certification and a written description of the policies  
22 the organization has adopted to ensure that it has complied with the requirements  
23 under subs. (6) and (9).

24 **(11) PREEMPTION.** Nothing in this section may be construed to preempt any  
25 provision of federal law, the U.S. Constitution, the Wisconsin constitution, or any



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1 other statute that prohibits or restricts the expenditure of federal or state funds by  
2 or the granting of federal or state funds to religious organizations.

3 **SECTION 18.** 302.11 (1g) (b) 2. of the statutes is amended to read:

4 302.11 **(1g)** (b) 2. Refusal by the inmate to participate in counseling or  
5 treatment that the social service and clinical staff of the institution determines is  
6 necessary for the inmate, including pharmacological treatment using an  
7 antiandrogen or the chemical equivalent of an antiandrogen if the inmate is a serious  
8 child sex offender as defined in s. 304.06 (1q) (a). The parole commission may not  
9 deny presumptive mandatory release to an inmate because of the inmate's refusal  
10 to participate in a rehabilitation program under s. 301.047.

11 **SECTION 19.** 302.11 (1g) (b) 2. of the statutes, as affected by 2001 Wisconsin Act  
12 .... (this act), is repealed and recreated to read:

13 302.11 **(1g)** (b) 2. Refusal by the inmate to participate in counseling or  
14 treatment that the social service and clinical staff of the institution determines is  
15 necessary for the inmate, including pharmacological treatment using an  
16 antiandrogen or the chemical equivalent of an antiandrogen if the inmate is a serious  
17 child sex offender as defined in s. 304.06 (1q) (a).

18 **SECTION 20.** 978.03 (3) of the statutes is amended to read:

19 978.03 **(3)** Any assistant district attorney under sub. (1), (1m) or (2) must be  
20 an attorney admitted to practice law in this state and, except as provided in s. ss.  
21 978.043 and 978.044, may perform any duty required by law to be performed by the  
22 district attorney. The district attorney of the prosecutorial unit under sub. (1), (1m),  
23 or (2) may appoint such temporary counsel as may be authorized by the department  
24 of administration.

25 **SECTION 21.** 978.044 of the statutes is created to read:

**ASSEMBLY BILL 443****SECTION 21****1           978.044 Assistants to perform restorative justice services. (1)**

2       DEFINITIONS. In this section:

3           (a) “Crime” has the meaning given in s. 950.02 (1m).

4           (b) “Offender” means an individual who is, or could be, charged with  
5 committing a crime or who is, or could be, the subject of a petition under ch. 938  
6 alleging that he or she has committed a crime.

7           (c) “Victim” has the meaning given in s. 950.02 (4).

8           **(2) DUTIES.** The district attorneys of Dane and Milwaukee counties and of the  
9 county selected under sub. (4) shall each assign one assistant district attorney in his  
10 or her prosecutorial unit to be a restorative justice coordinator. An assistant district  
11 attorney assigned under this subsection to be a restorative justice coordinator shall  
12 do all the following:

13           (a) Establish restorative justice programs that provide support to the victim,  
14 help reintegrate the victim into community life, and provide a forum where an  
15 offender may meet with the victim or engage in other activities to do all of the  
16 following:

17               1. Discuss the impact of the offender’s crime on the victim or on the community.

18               2. Explore potential restorative responses by the offender.

19               3. Provide methods for reintegrating the offender into community life.

20           (b) Provide assistance to the district attorney in other counties relating to the  
21 establishment of restorative justice programs, as described in par. (a).

22           (c) Maintain a record of all of the following:

23               1. The amount of time spent implementing the requirements of pars. (a) and

24               (b).

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1           2. The number of victims and offenders served by programs established under  
2 par. (a).

3           3. The types of offenses addressed by programs established under par. (a).

4           4. The rate of recidivism among offenders served by programs established  
5 under par. (a) compared to the rate of recidivism by offenders not served by such  
6 programs.

7           **(3) REPORT TO DEPARTMENT OF ADMINISTRATION.** Annually, on a date specified by  
8 the department of administration, the district attorneys of Dane and Milwaukee  
9 counties and of the county selected under sub. (4) shall each submit to the  
10 department of administration a report summarizing the records under sub. (2) (c)  
11 covering the preceding 12-month period. The department of administration shall  
12 maintain the information submitted under this subsection by the district attorney.

13           **(4) SELECTION OF 3RD COUNTY.** The attorney general, in consultation with the  
14 department of corrections, shall select a county other than Dane or Milwaukee  
15 county in which restorative justice services are to be provided under sub. (2).

16           **(5) EXPIRATION.** This section does not apply after June 30, 2005.

17           **SECTION 22.** 978.05 (8) (b) of the statutes is amended to read:

18           978.05 **(8)** (b) Hire, employ, and supervise his or her staff and, subject to s. ss.  
19 978.043 and 978.044, make appropriate assignments of the staff throughout the  
20 prosecutorial unit. The district attorney may request the assistance of district  
21 attorneys, deputy district attorneys, or assistant district attorneys from other  
22 prosecutorial units or assistant attorneys general who then may appear and assist  
23 in the investigation and prosecution of any matter for which a district attorney is  
24 responsible under this chapter in like manner as assistants in the prosecutorial unit  
25 and with the same authority as the district attorney in the unit in which the action

**ASSEMBLY BILL 443**

1 is brought. Nothing in this paragraph limits the authority of counties to regulate the  
2 hiring, employment, and supervision of county employees.

**SECTION 23. Nonstatutory provisions; administration.**

3  
4 (1) ASSISTANT DISTRICT ATTORNEYS FOR RESTORATIVE JUSTICE SERVICES. The  
5 authorized FTE positions for the department of administration are increased by 3.0  
6 GPR project positions for the period beginning on January 1, 2002, and ending on  
7 December 31, 2005, to be funded from the appropriation under section 20.475 (1) (d)  
8 of the statutes, for the purpose of providing one assistant district attorney for Dane  
9 County, one assistant district attorney for Milwaukee County, and one assistant  
10 district attorney for the county selected under section 978.044 (4) of the statutes, as  
11 created by this act, to perform restorative justice services under section 978.044 of  
12 the statutes, as created by this act.

13 (2) OFFICE OF CHARITABLE CHOICE IMPLEMENTATION. The authorized FTE  
14 positions for the department of administration are increased by 1.0 GPR project  
15 position to be funded from the appropriation under section 20.505 (4) (em) of the  
16 statutes, as created by this act, for the purpose of administering the office of  
17 charitable choice implementation under section 15.105 (28) of the statutes, as  
18 created by this act, beginning on November 1, 2001, and ending on October 31, 2004.

**SECTION 24. Nonstatutory provisions; corrections.**

19  
20 (1) CERTIFICATION REGARDING INMATE REHABILITATION PROGRAM. No more than 7  
21 days after an inmate begins receiving services through a program established under  
22 section 301.047 (1) of the statutes, as created by this act, the department of  
23 corrections shall certify to the revisor of statutes that the program has commenced  
24 operations. Upon the certification, the revisor of statutes shall publish notice in the  
25 Wisconsin Administrative Register of that fact.

**ASSEMBLY BILL 443****SECTION 25. Nonstatutory provisions; legislative audit bureau.**

(1) EVALUATION AND REPORT TO LEGISLATURE. By October 1, 2004, the legislative audit bureau shall evaluate, on a quantitative and qualitative basis, the success of restorative justice programming in Dane and Milwaukee counties and the county selected under section 978.044 (4) of the statutes, as created by this act, in serving victims, offenders, and communities affected by crime and shall report its findings to the appropriate standing committees of the legislature, as determined by the speaker of the assembly and the president of the senate, under section 13.172 (3) of the statutes.

**SECTION 26. Appropriation changes; administration.**

(1) ASSISTANT DISTRICT ATTORNEYS FOR RESTORATIVE JUSTICE SERVICES. In the schedule under section 20.005 (3) of the statutes for the appropriation to the department of administration under section 20.475 (1) (d) of the statutes, as affected by the acts of 2001, the dollar amount is increased by \$151,500 for fiscal year 2001–02 and the dollar amount is increased by \$151,500 for fiscal year 2002–03 to fund 3.0 FTE GPR project positions authorized under SECTION 23 (1) of this act.

**SECTION 27. Effective dates.** This act takes effect on the day after publication, or the 2nd day after publication of the 2001–03 biennial budget act, whichever is later, except as follows:

(1) The repeal of section 301.047 of the statutes and the repeal and recreation of section 302.11 (1g) (b) 2. of the statutes take effect on the first day of the 25th month beginning after the certification described in SECTION 24 of this act occurs.

(2) The treatment of sections 978.03 (3), 978.044, and 978.05 (8) (b) of the statutes and SECTION 23 (1) of this act take effect on January 1, 2002.

(END)