

FM

JAN 07 2004

2435 N. 131st Street
Brookfield WI 53005
January 6, 2004

Senator Carol Roessler
State Capitol
Madison WI 53707

Yes include
by name
do not
2000
Restorative
Justice
models

Dear Senator,

I am a member of the WISDOM community, serving on the committee which is working on your draft of the Treatment Instead of Prison (T.I.P.) legislation. Because of your interest in creative alternatives to the processing of criminals, I want to share with you a personal reflection on another creative program working toward similar goals. This program, initiated by Milwaukee District Attorney Michael McCann, is called Community Conferencing and is based upon the principles of Restorative Justice.

The enclosed description details the program. Its goal is to hold an offender accountable to the victim and to the community.

YES

I have participated as facilitator in sixteen conferences, and I have been very pleased at the program's success rate. I attribute this success to an excellent volunteer training program as well as the unfolding of the process in a most dignified and respectful manner. It is a way of giving a second chance to an offender, of offering healing to the victim and community, and of fostering understandings.

Want
this
option
to be
a
part
of
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the

I wanted to share this observation with you, because it is a program which has proven itself successful and because of its similarities with the goals of the T.I.P. legislation. Referrals of offenders are made by prosecutors and judges among others. If a defendant refuses to comply with the contract, he or she is sanctioned and, if noncompliance continues, is returned to the judicial system. The moral underpinnings are evident. The fiscal benefits are obvious.

We greatly need more creative alternatives to an expensive judicial process and the even greater cost of incarceration.

Respectfully
Gerhard Fischer

COMMUNITY CONFERENCING PROGRAM

Milwaukee County District Attorney's Office

E. Michael McCann

What is Community Conferencing?

Community Conferencing is a process in which the victim, offender and affected community members sit down together in a safe setting with an impartial facilitator to discuss the facts and impact of a particular crime. During this process the victim can ask questions and express directly to the offender how the crime has impacted his or her life.

Conferencing provides a victim greater access to and voice in the criminal justice process. Conferencing also humanizes the incident more directly for the offender so that he or she may better understand the human consequences of his or her wrongdoing.

How Does Community Conferencing Work?

Referrals to the Community Conferencing Program (CCP) may come from prosecutors, defense attorneys, victim-witness advocates, judges, law enforcement, probation officers, or from victims who wish to speak directly with the offenders. Violent crimes and cases involving drugs or guns will not be accepted.

After a referral is received, the offender is contacted through his/her attorney or, directly, if he or she has no attorney, to determine whether the offender is appropriate for the program. Factors to be considered when making this decision include: acceptance of responsibility for the act, the type of crime, degree of remorse, prior record and the offender's general attitude about meeting with the victim.

If the offender is appropriate, the victim will be contacted to see whether he or she would consider participating. If the victim does not wish to participate in the community conferencing program, the case is processed through regular criminal justice procedures.

The Three Stages of Conferencing...

1. Discussion of the facts
2. Exploration of the impact on affected parties
3. What needs to happen to make the offender accountable for the harm he or she has caused the victim and the community.

Why Would a Victim Choose to Participate?

Through Community Conferencing victims participate *directly* in the justice process. The process is dignified and respectful. Important points about conferencing are:

- Victims have an opportunity to pose questions about the crime directly to the offender.
- Victims can openly express to the offender how the crime has affected them and their families.
- The process helps to facilitate real and agreed upon steps the offender can take to help restore the harm caused to the victim.
- The offender is made more aware just how his or her actions have impacted the victim specifically and, if appropriate, the community generally.

Key Principles of Conferencing

1. The victim is *essential* to the conferencing process.
2. Participation by a victim is entirely voluntary.
3. The participants, consistent with the program process and guidelines, help determine case resolution.



Dsida, Michael

From: Seaquist, Sara
Sent: Tuesday, February 17, 2004 11:02 AM
To: Dsida, Michael
Subject: FW: Add'l Comment re Funding Provision in LRB-3289

CR wants this to be added...

Thanks!

-----Original Message-----

From: Bove, Fredi-Ellen
Sent: Tuesday, February 17, 2004 11:00 AM
To: Roessler, Carol; Seaquist, Sara
Cc: Frank, Matthew J. DOC; Margolies, Robert S. DOC; Morgan, Deirdre A. DOC; Boyce, Katie - Office of Governor Jim Doyle; Santala, Sinikka; Daggett, Cynthia
Subject: Add'l Comment re Funding Provision in LRB-3289

As a follow-up to our meeting this morning, I am providing the technical recommended change to provide the flexibility to use federal or other potential funding sources. The suggested change is as follows:
Revise Section 3 to read as follows: "20.505(6)(kv) Addicted Offender Accountability and Public Safety Act grants. All moneys received for the purpose of making grants to counties under s.16.964(10)." This change will enable the program to utilize all types of potential funding, including funding from DOC and federal grants, such as the Access to Recovery grant, and other future possible federal funding sources as discussed. As currently drafted, the program could only use DOC funding and would not have the flexibility to use federal or other types of funding.

MGD

Seaquist, Sara

From: Asbjornson, Karen
Sent: Monday, February 09, 2004 8:23 AM
To: Seaquist, Sara
Subject: FW: LRB-3289/P1

*Carol,
please review
when you
get the
chance...
thanks!*



Roessler LRB Draft
Alt2Incar F... CR email

Karen Asbjornson
Office of Senator Carol Roessler
(608) 266-5300/1-888-736-8720
Karen.Asbjornson@legis.state.wi.us

-----Original Message-----

From: Easterday, John
Sent: Friday, February 06, 2004 2:28 PM
To: Roessler, Carol
Cc: Frank, Matthew J. DOC; Morgan, Deirdre A. DOC; Streveler, Anthony J. DOC; Lang, Keith; Santala, Sinikka; Bove, Fredi-Ellen; Daggett, Cynthia; Nelson, Helene
Subject: LRB-3289/P1

Hello Senator Roessler,

Attached to this e-mail you will find a Word Document which contains the comments and recommendations of the Department of Corrections and the Department of Health and Family Services to your draft legislation. I was asked to send this document to you by Secretaries Frank and Nelson. Please note that there are few sections of the draft that we would like to discuss in more detail with you directly. These are noted in the combined comments of the two Departments. In particular, this includes the issue of funding. We do hope these comments and suggestions are timely and helpful.

Thank you,

John Easterday, Associate Administrator
DHFS/DDES

what mean

Page 3

Item 13

Senator Roessler's Draft LRB-3289/P1
Departments of Corrections, Health and Family Services and
Office of Justice Assistance
Review Comments- February 6, 2004

(?)

✓ *dk* 1. **Title:** Suggest that the term "addicted" from the title of the act be replaced with "Substance Abuse Offender ~~Accountability~~ Act." - Substance Abuse Act = OK

✓ 2. **Page 2: Lines 1-5:** The draft creates a grant program administered by OJA. The term "dependent" on alcohol and other drugs is used. "Dependent" has a specific clinical meaning that may exclude offenders who should be included in the program.

Yp **Recommendation:** DHFS and DOC recommend changing the language from "dependent" to "criminal offenders who have an alcohol or other drug abuse problem".

3. **Page 2: Lines 1-5:** The grant program established under the draft targets two groups of individuals:

- Alternatives to prosecution
- Alternatives to incarceration

? *Yp* **Recommendation:** DOC and DHFS support this target population. We also recommend that this bill be cross-referenced to current deferred prosecution statutes.

creates generic

4. **Page 2 Drafters Note: Lines 5-6**

✓ *Yp* **Recommendation:** DHFS and DOC agree that the intent should be to address the needs of offenders with alcohol or drug abuse problems and also those with a co-occurring problem (mental health disorder in addition to alcohol and other drug abuse).

covered by 6

✓ *Yp* 5. **Page 2 Lines 8-11**

Recommendation: DHFS and DOC recommend the author consider the following language change: "The county program is designed to meet the needs of a person who has an alcohol or other drug abuse problem and who is believed to have committed or has been charged with or convicted of a crime related to the person's use or abuse of alcohol or other drugs".

6. Page 2 Drafters Note: Lines 11-12

Recommendation: DHFS and DOC recommend the following language: "Applicants must identify in the grant application that their programs are designed to meet the comprehensive needs of clients using a variety of service which will meet goals of decreased recidivism, decreased substance use, improved mental health, gainful employment or education/training, stable housing, family reunification or payment of child support. AODA and mental health treatment services shall be provided by HFS certified treatment agencies that provide evidence-based practices including intensive case management".

7. Page 2: Lines 15 & 16

Discussion:

The bill identifies county program eligibility if a significant number of county residents are in the custody of DOC. The term "significant" is sufficiently vague that counties may not know whether they are eligible to apply or not. On the one hand, we do not want to exclude smaller counties that may develop a really good program (just diverting 10 individuals from the prison system can have a significant impact). On the other hand, there is an interest in having Milwaukee County and/or a few other urban counties as participants. In both cases, the number of programs or counties selected may be limited by the availability of funds.

Important statement

- **Recommendation:** Perhaps the drafters can develop language that certainly makes Milwaukee County eligible to apply yet leaves some discretion in the selection process. Suggest something along the lines that any county may apply and that based on the limits of the funding and the counties applying will include an "appropriate or balanced mix of urban and rural counties".

legislative note

~~of Milwaukee County applications~~ a county over 500,000 applications will provide an appropriate, balanced mix of urban, rural counties.

8. Page 2 Drafters Note: Line 19

Recommendation: DHFS and DOC recommend the author consider including language that defines the intended target population as non-violent and non-assaultive offenders. However, we also recommend consideration and reference to existing language related to the Challenge Incarceration Program (s. 302.045) or the new Earned Release Program (s. 973.01(3g)).

YK
7OK

9. Page 3: Lines 5 - 9

Recommendation: DHFS and DOC suggest that the wording be changed from "the program is..." to "the program shall be..."

This recommendation is based on the bill's intent to develop support and participation from a wide variety of agencies including the criminal justice system, AODA treatment and human service entities within a county applying for funding. It is also recommended that DOC representation be added as a required entity as well as county agencies responsible for child welfare, mental health, W-2 and social services.

YK

10. Page 3 Drafters Note: Lines 9-10

Recommendation: The program design should address local needs and they will be unique depending upon the demographics, urban vs. rural etc. ~~Local input from the recovery community should be encouraged and~~ include a representative from DOC. ~~no~~ already done

11. Page 3 Drafters Note: Lines 11-12

Recommendation: If the intent is to fund this program with the President's Access to Recovery grant, the state applicant agency will be required to address the following elements:

- Demonstrated need based on data.
- Documentation of approaches consistent with voucher program guidelines
- Eligibility criteria for providers and clients.
- Criteria for matching clients with treatment and services.
- Standard cost reimbursement mechanisms and treatment modalities.
- Effective approaches to address those with special needs.

These unique requirements are best addressed in an RFP. However DHFS and DOC recommend that statutory language include the requirement that any program receiving funding must comply with state audits and report to the funding agency on an annual basis the impact of the program on jail and prison diversion.

*already done
in 3/1
4/10*

include this

ok

12. Page 3 Drafters Note: Line 20: Reference recommendation for #10, lines 9-10.

13. Page 4 Lines 8-18 & Page 7 Lines 7-11

Recommendation: These sections of the proposed legislation relate to appropriations for the program. We would prefer to discuss the funding issues and options in person given the potential complexity.

??

14. Page 6 Lines 20-22: Subsections 2,3,4 and 5 address inclusion of persons arrested for intoxicated operation of a motor vehicle, boat, or all terrain vehicle in this legislation.

Recommendation: DHFS and DOC recommend these cases not be included in the community treatment options created by this bill. Current law and administrative code, developed by DHFS and DOT, address intoxicated operation of vehicles and provide for systematic evaluation and treatment of individuals convicted of the offense. Including these offenders would require extensive revision of DHFS and DOT administrative code and would not greatly enhance the capacity of the state to treat or provide sanctions.

*already done
4/10*

afford

15. Page 6 Lines 24-25/Page 7 Lines 1-5: The draft requires that 50 FTE probation/parole/extended supervision agents be assigned to work with program participants in Milwaukee County. This provision in the draft bill will have a significant fiscal impact.

Recommendation: DHFS and DOC recommend the author consider deleting this section from the proposed legislation.

*already addressed
yes*

16. Page 11: Drafter Note Lines 13-14: The drafter asks if a circuit court judge presiding over a case in a county with a diversion program created under this statute may proceed independent of the program under this section or sections 961.47 or 961.475.

Recommendation: Allow judges to dispose of cases independent of the program alternatives created under this bill or utilizing s.961.47 or 961.475 as an alternative to dispositions under this bill.

*leave in
now*

17. Page 12: Lines 3 – 12

This section, as written, may be inconsistent with current practices within the Division of Community Corrections and DOC needs to review it.

absolutely

18. Page 12: Drafters Note Lines 7-8: The drafter indicates, as written, other counties not funded for programs under s. 16.964 (10) (a) would still be able to establish similar programs, but treated differently for the purpose of ss.967.055 (3) and 971.39. Is that okay?

Recommendation: Recommend agreement with drafter. Intent of the bill is not to decrease judicial flexibility in counties not applying for this program funding. Recommend no change of current legal alternatives for counties. Limiting current legal alternatives for non-participating counties serves no sound criminal justice purpose.

yes

19. Page 12: Line 20: - Page 13: Line 9: This section appears to have taken the wording from s. 961.475 "treatment option" in present legislation. It appears to be limiting in light of the intent of the bill and the fact that each county applying for funding is to develop a program based on a RFP yet to be developed.

Recommendation: Language in this section should be rewritten so as to allow the court to place an individual in the program developed and funded under s. 16.964 (10) (a). The draft language should emphasize "treatment is the core" of this program while not limiting the dispositions or treatment options available to a county program.

20. Page 13: Drafters Note Lines 9-10: The drafter asks a legal question regarding constitutional delegation of power. This is a question that should be addressed by others.

21. Page 13: Drafters Note Line 15

Leave as is for now!

Discussion: We note that the drafter has limited expungement to this program. There is, however, the fundamental question whether expungement should be made available in this bill for only a couple of counties versus addressing the issue of expungement separately and state-wide. We believe that this issue should be discussed with the author.

22. Page 13: Drafter's Note Line 17

Discussion: The drafter's note asks questions regarding who is responsible for determining whether a person successfully completed the program. This issue or question posed by the drafter brings up a larger issue that is not addressed or is unclear in the proposed legislation. How is a person legally determined eligible for the program and who is responsible for determining or granting successful completion of the program? Under the currently proposed language the following questions arise:

all 3 = DA PD? yes

- Would prosecution diversion cases involve the District Attorney deciding both eligibility for the program and, in conjunction with the treatment provider, granting successful completion of the program?
- Would jail diversion cases involve the sentencing judge deciding eligibility for the program and the treatment provider, in conjunction with the judge, granting successful completion of the program?

~~... since we are not recommending including ATR cases in the target population, would recommend deleting this~~ DA PD

- Would prison diversion cases involve the sentencing judge deciding eligibility for the program and the treatment provider granting successful completion of the program?

Recommendation: DHFS and DOC recommend that additional discussions occur to clarify the author's intent and determine the legal necessity of addressing the above procedural/legal issues. These issues are also directly related to the sections of the legislation dealing with expungement.

23. Page 14: Drafter's Note Line 8

Not now.

Recommendation: DHFS and DOC suggest that the author consider more specific language on which types of offenders are eligible for expungement under this legislation. While expungement is viewed as appropriate in certain circumstances and a good inducement for participation, it is undetermined as to when it applies.

Dsida, Michael

From: Dsida, Michael
Sent: Monday, February 23, 2004 9:11 AM
To: Seaquist, Sara
Subject: SAOAPSA

1. Based on our discussions with the Office of the Public Defender, the "P2" version of the bill (which is attached) includes provisions regarding alternatives to revocation. But I just noticed over the weekend that Item 22 of the comments from DOC, DHFS, and OJA indicates that the agencies do not want the bill to cover ATR cases in the target population. The relevant language has an "X" through it and an "OK" alongside of it, so I'm not sure how you want me to handle that issue. Please let me know (but look at the next item first).

2. If you do want to cover ATR cases, I am concerned that the provisions of the bill as currently drafted suffer from the same constitutional problems that affected the expungement provisions. Under section 11 of the bill, for example, if a person's extended supervision is revoked because of his or her use of alcohol or drugs, and the person resides in a county that has established an approved substance abuse treatment program, the court can either return the person to prison or override the revocation and keep the person on extended supervision (by requiring the person to participate in the program). If, however, the county has not established such a program, the court is required to return the person to prison. This will certainly lead to challenges under the equal protection clause by persons whose extended supervision is revoked in non-program counties, and I think their argument will be a relatively strong one.

You might be able to get around this by having the alternatives to revocation provisions apply in all counties but only in cases in which the "reviewing authority" (the entity hearing the the revocation proceeding initially -- i.e., either an administrative law judge or DOC) or the court finds that there is an qualified/suitable substance abuse treatment program in the county. Then, you could include a provision that specifies that an OJA-approved treatment program is, by definition, such a program. (This would still leave the reviewing authority and the court the obligation to find out if there are openings and to consider whether the program is right for the person.)

Please let me know what you think.

3. Elliott suggested that program participants who receive inpatient treatment should be given credit for time served in the same way that OWI offenders are. Sen. Roessler agreed. But that proposal is also beset by the problem described in Item 2. Since it is less central to the bill, I have not yet included it. Please let me know if I should.

4. In response to the second ****NOTE on page 2 of the "P1" draft, you indicated that the bill should not specifically require counties to provide other types of services. But DHFS and DOC recommend that the bill require that counties' programs meet the needs of clients with respect to decreased recidivism, decreased substance use, improved mental health, gainful employment or education/training, stable housing, family reunification, and payment of child support. I can add such language at the end of page 3, line 10 if you want me to ("The program shall meet clients' needs with respect to...."), but I want to be sure what you want before I do so.

5. Based on Sen. Roessler's instructions, I have drafted some language to allow the Volunteers in Probation program to be used for diversion agreements (not just deferred prosecution agreements as under current law). But current law contains two provisions that restrict when the program can be used with respect to deferred prosecution agreements that I thought you should be aware of. First, current law requires that a judge approve a person's participation in the program. Second, the program can only be used if the offense is a misdemeanor. You certainly do not need to amend these provisions if you don't want to, but I know that Sen. Roessler likes this program, so she might want to consider lifting one or both of these restrictions so that the program can be used more frequently for offenders who participate in AOAPSA programs via deferred prosecution.



.pdf

Mike Dsida
Legislative Reference Bureau
608/266-9867
michael.dsida@state.legis.wi.us

P/C from Sara

ATR's out

VIP out

3. As is

4. Ok + other issues est'd by committee

Dsida, Michael

From: Bove, Fredi-Ellen
Sent: Tuesday, February 24, 2004 11:22 AM
To: Dsida, Michael; Seaquist, Sara; Santala, Sinikka
Cc: Daggett, Cynthia
Subject: Re: FW: Add'l Comment re Funding Provision in LRB-3289

All--

Sinikka asked that I respond to the question below. (I am the DHFS Budget Director and participated in the most recent round of discussions on the bill.)

As discussed at the Feb. 17 mtg. in Senator Roessler's office, there is strong interest in having DHFS apply for federal grants, and if awarded the grant(s), providing a portion of the grant to OJA for the program specified in LRB-3289.

In such cases, the entire federal grant would be received by DHFS and in its entirety budgeted as FED in a DHFS budget appropriation. If DHFS transmits a portion of the federal funding to another agency, i.e., OJA, the receiving agency (OJA) must receive and budget the funds in a PRS appropriation. (This is required budgeting practice when any types of funds are transferred between agencies to avoid the funding being "double-counted" in the state budget.)

The two existing OJA appropriations cited below, s.20.505(6)(m) and s.20.505(6)(i), are FED and PR appropriations respectively. Neither are PRS appropriations and therefore neither can be used as an appropriation for receiving and budgeting funding received from DHFS.

The new appropriation created in the LRB-3289, 20.505(6)(kv) would be a PRS appropriation and could be used by OJA to receive and budget funding received from DHFS (including funding that DHFS received from the federal government); provided the statutory language for s.20.505(6)(kv) permitted OJA to receive funding from sources other than DOC. The revision we forwarded in our Feb. 17 e-mail would change the statutory language in s.20.505(6)(kv) to make it broad enough to accept any type of funding from any agency. Funding from more than one agency can be accepted and budgeted in the same OJA PRS appro.

The federal funding that DHFS receives (and subsequently transfers to OJA) could be budgeted in a number of DHFS appropriations depending on the nature of the federal funding. In addition, it may be possible that in future years there would be PR funding in DHFS that could be transferred to OJA for the program. For these reasons, we recommended that the s.20.505(6)(kv) stat. language be drafted broadly and not state specific sending appropriation(s) from DHFS.

Please contact me if you have further questions.

>>> Seaquist, Sara 02/24/04 09:04AM >>>

Sinnika,

Below are emails that Mike Dsida, the drafter for the Substance Abuse Offender Accountability & Public Safety Act, & I have been exchanging. He has a question that I believe you will be able to answer. Thanks for your help!

Sara Seaquist
Office of Senator Carol Roessler
1-888-736-8720/ (608) 266-5300
Sara.Seaquist@legis.state.wi.us

-----Original Message-----

From: Dsida, Michael
Sent: Monday, February 23, 2004 2:17 PM
To: Seaquist, Sara
Subject: RE: Add'l Comment re Funding Provision in LRB-3289

Can you find out from DHFS which of its federal aid appropriations it would use for this? Alternatively, I can call someone at DHFS myself, but you might need to give me the name of someone with whom I can start.

Thanks.

-----Original Message-----

From: Dsida, Michael
Sent: Monday, February 23, 2004 1:35 PM
To: Seaquist, Sara
Subject: RE: Add'l Comment re Funding Provision in LRB-3289

OJA already has general "gifts and grants" (s. 20.505 (6) (i)) and "federal aid" (s. 20.505 (6) (m)) appropriations. These provide OJA a way to use funding from those sources for SAOAPSA programs, so you don't need any changes to the appropriation provision in the bill -- unless other state agencies besides DOC (such as DHFS) will be providing money for the grants.

-----Original Message-----

From: Seaquist, Sara
Sent: Tuesday, February 17, 2004 4:09 PM
To: Dsida, Michael
Subject: RE: Add'l Comment re Funding Provision in LRB-3289

Okay, if that's what we need to do, that's fine...

-----Original Message-----

From: Dsida, Michael
Sent: Tuesday, February 17, 2004 3:50 PM
To: Seaquist, Sara
Subject: RE: Add'l Comment re Funding Provision in LRB-3289

I'm no expert on ch. 20, but I think you need to keep money from received from the federal government in one appropriation (see s. 20.001 (2) (e)), money received from DOC in another (see s. 20.001 (2) (c)), and money received from other sources in a third.

-----Original Message-----

From: Seaquist, Sara
Sent: Tuesday, February 17, 2004 11:02 AM
To: Dsida, Michael
Subject: FW: Add'l Comment re Funding Provision in LRB-3289

CR wants this to be added...

Thanks!

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To: Roessler, Carol; Seaquist, Sara
Cc: Frank, Matthew J. DOC; Margolies, Robert S. DOC; Morgan, Deirdre A. DOC; Boyce, Katie - Office of Governor Jim Doyle; Santala, Sinikka; Daggett, Cynthia
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other future possible federal funding sources as discussed. As currently drafted, the program could only use DOC funding and would not have the flexibility to use federal or other types of funding.



State of Wisconsin
2003 - 2004 LEGISLATURE

LRB-3289/P2

MGD:kmg:pg

13

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Sen. Cat

1 AN ACT *to repeal* 302.113 (9) (at); *to renumber* 973.10 (2) (a) and 973.10 (2) (b);
2 *to renumber and amend* 302.113 (9) (ag), 302.113 (9) (am), 973.10 (1) and
3 973.10 (2) (intro.); *to amend* 20.410 (1) (a), 302.113 (7), 302.113 (9) (b), 302.113
4 (9) (c), 302.43, 808.075 (4) (g) 3., 973.032 (6), 973.15 (2m) (a) 3., 973.15 (2m) (e),
5 973.155 (1) (b) and 973.155 (3); *to repeal and recreate* 961.472 (5); and *to*
6 *create* 16.964 (10), 20.505 (6) (kv), 301.062, 302.113 (9) (ag) 1., 302.113 (9) (am)
7 2., 302.113 (9) (am) 3., 302.113 (9) (ar), 304.06 (3b), 973.10 (1d), 973.10 (2) (bm),
8 973.10 (2) (c), 973.10 (2b), 973.10 (2e) and 973.155 (1m) of the statutes; **relating**
9 **to:** grants to counties for providing alternatives to prosecution and
10 incarceration for persons who abuse alcohol or other drugs, violations of

2

1 probation, extended supervision, or parole by persons who abuse alcohol or
2 other drugs, and making an appropriation.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.

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

3 **SECTION 1.** 16.964 (10) of the statutes is created to read:

4 16.964 (10) (a) In this subsection:

5 1. "County department" means a county department under s. 51.42 or 51.437
6 that provides substance abuse treatment services.

7 2. "Violent offender" means a person to whom one of the following applies:

8 a. The person has been charged with or convicted of an offense in a pending case
9 and, during the course of the offense, the person carried, possessed, or used a
10 dangerous weapon, the person used force against another person, or a person died
11 or suffered serious bodily harm.

12 b. The person has one or more prior convictions for a felony involving the use
13 or attempted use of force against another person with the intent to cause death or
14 serious bodily harm.

15 (b) The office shall make grants to county departments to enable them to
16 establish and operate programs, including suspended and deferred prosecution
17 programs, that provide alternatives to prosecution and incarceration for criminal
18 offenders who abuse alcohol or other drugs. The office shall collaborate with the
19 departments of corrections and health and family services in establishing this grant
20 program.

INS 2/17 ✓

1 (c) A county department shall be eligible for a grant under par. (b) if all of the
2 following apply:

3 1. The county department's program is designed to meet the needs of a person
4 who abuses alcohol or other drugs and who may be or has been charged with or who
5 has been convicted of a crime related to the person's use or abuse of alcohol or other
6 drugs.

7 2. The program is designed to promote public safety, reduce prison and jail
8 populations, reduce prosecution and incarceration costs, reduce recidivism, and
9 improve the welfare of clients' families by meeting the comprehensive needs of
10 clients. participants

11 3. The program establishes eligibility criteria for a person's participation. The
12 criteria shall specify that a violent offender is not eligible to participate in the
13 program.

14 4. The program is consistent with the best practices in substance abuse
15 treatment and mental health and provides intensive
16 case management

17 5. The program uses graduated sanctions and incentives to promote successful
18 substance abuse treatment.

19 6. The program provides holistic treatment to its participants for

20 7. The program is designed to integrate all mental health services provided to
21 program participants by state and local government agencies and other
22 organizations. The program shall require regular communication between a
23 participant's substance abuse treatment providers and any probation, extended
supervision, and parole agent assigned to the participant.

24 8. The program requires participants to pay a reasonable amount for their
25 9. treatment, based on their income and available assets.

INS 3/23 ✓

INS 3/16

10 ✓
9.

1 The program is developed with input from one or more circuit court judges,
2 the district attorney, the state public defender, local law enforcement officials, the
3 county department, the departments of corrections and health and family services,
4 private social services agencies, and substance abuse treatment providers.

5 10. The county department complies with other eligibility requirements
6 established by the office to promote the objectives listed in subds. 1. and 2.

7 (d) A county department for a county with a population of 500,000 or more shall
8 apply for a grant from the office under par. (b). After ensuring that the county
9 department's program meets the requirements of par. (c), the office shall award the
10 county department a grant under par. (a).

11 (e) In selecting among competing grant proposals from county departments
12 other than a county department applying under par. (d), the office shall give priority
13 to counties that have more residents in the custody of the department of corrections
14 as a result of crimes or violations of extended supervision, parole, or probation
15 relating to substance abuse. *the largest number of* of alcohol or other drugs

16 (f) A county department that receives a grant under this subsection shall create
17 an oversight committee to advise the county department in administering and
18 evaluating its program. Each committee shall consist of a circuit court judge, the
19 district attorney or his or her designee, the state public defender or his or her
20 designee, a local law enforcement official, a representative of the county department,
21 representatives of the departments of corrections and health and family services, a
22 representative from private social services agencies, a representative of substance
23 abuse treatment providers, and other members to be determined by the county
24 department.

INS
4/3

INS
4/24

INS 4/20

1 (g) Two or more county departments may jointly apply for and receive a grant
 2 under this subsection. If county departments submit a joint application, they shall
 3 include with their application a written agreement specifying each county
 4 department's role in developing, administering, and evaluating the proposed
 5 program. The oversight committee established under par. (c) shall consist of
 6 representatives from each county department.

7 (h) The office shall assist a county department receiving grants under this
 8 subsection in obtaining funding from other sources for ^{its} ~~those~~ programs.

9 (i) The office shall inform any county department that is applying for a grant
 10 under this subsection whether the county department meets the requirements
 11 established under par. (c), regardless of whether the county department receives a
 12 grant.

13 **SECTION 2.** 20.410 (1) (a) of the statutes is amended to read:

14 20.410 (1) (a) *General program operations.* The amounts in the schedule to
 15 operate institutions and provide field services and administrative services and for
 16 the purpose of transferring the amount specified under s. 301.062 to the
 17 appropriation account under s. 20.505 (6) (kv). No payments may be made under this
 18 paragraph for payments in accordance with other states party to the interstate
 19 corrections compact under s. 302.25.

****NOTE: I included this provision, the next provision, and s. 301.062 as
 placeholders more than anything else, since you have not yet decided how to fund the
 grants.

Ⓛ for substance abuse treatment programs
 for criminal offenders

20 **SECTION 3.** 20.505 (6) (kv) of the statutes is created to read:

21 20.505 (6) (kv) ~~Addicted~~ ^{Substance Abuse} ~~Offender Accountability and Public Safety Act~~ grants

22 All moneys received from the department^s of corrections ~~under s. 301.062~~ for the
 23 purpose of ~~making grants to counties under s. 216.964 (10)~~

[Handwritten signature]

Ⓛ INS 5/22

1 SECTION 4. 301.062 of the statutes is created to read:

2 **301.062 Substance-abusing Offenders Accountability and Public**
3 **Safety Act grants funding.** The department shall transfer \$100 annually from the
4 appropriation account under s. 20.410 (1) (a) to the appropriation account under s.
5 20.505 (6) (kv) to enable the office of justice assistance to make grants to county
6 departments under s. 16.964 (10) (b).

***NOTE: See the ***NOTE following s. 20.410 (1) (a).

7 SECTION 5. 302.113 (7) of the statutes, as affected by 2001 Wisconsin Act 109,
8 is amended to read:

9 302.113 (7) Any inmate released to extended supervision under this section is
10 subject to all conditions and rules of extended supervision until the expiration of the
11 term of extended supervision portion of the bifurcated sentence. The department
12 may set conditions of extended supervision in addition to any conditions of extended
13 supervision required under s. 302.116, if applicable, or set by the court under sub.
14 (7m) or s. 973.01 (5) if the conditions set by the department do not conflict with the
15 court's conditions. The reviewing authority, as defined in sub. (9) (ag) 2., may set or
16 modify conditions under sub. (9) (am) 2. or 3.

17 SECTION 6. 302.113 (9) (ag) of the statutes, as created by 2001 Wisconsin Act
18 109, is renumbered 302.113 (9) (ag) (intro.) and amended to read:

19 302.113 (9) (ag) (intro.) In this subsection "reviewing:

20 2. "Reviewing authority" means the division of hearings and appeals in the
21 department of administration, upon proper notice and hearing, or the department
22 of corrections, if the person on extended supervision waives a hearing.

23 SECTION 7. 302.113 (9) (ag) 1. of the statutes is created to read:

1 302.113 (9) (ag) 1. "Approved substance abuse treatment program" means a
2 substance abuse treatment program that meets the requirements of s. 16.964 (10)
3 (c), as determined by the office of justice assistance under s. 16.964 (10) (i).

4 **SECTION 8.** 302.113 (9) (am) of the statutes, as affected by 2001 Wisconsin Act
5 109, is renumbered 302.113 (9) (am) (intro.) and amended to read:

6 302.113 (9) (am) (intro.) If a person released to extended supervision under this
7 section violates a condition of extended supervision, the reviewing authority may
8 ~~revoke~~ do one of the following:

9 1. Revoke the extended supervision of the person.

10 ~~(ap) If the extended supervision of the person is revoked, the person shall be~~
11 ~~returned to the circuit court for the county in which the person was convicted of the~~
12 ~~offense for which he or she was on extended supervision, and the court shall order~~
13 ~~the person to be returned to prison for any specified period of time that does not~~
14 ~~exceed the time remaining on the bifurcated sentence~~ reviewing authority shall
15 make a recommendation to the court concerning the period of time for which the
16 person should be returned to prison. The recommended time period may not exceed
17 the time remaining on the bifurcated sentence, which is the total length of the
18 bifurcated sentence, less time served by the person in confinement under the
19 sentence before release to extended supervision under sub. (2) and less all time
20 served in confinement for previous revocations of extended supervision under the
21 sentence. A court order returning a person to prison under this subdivision shall
22 provide the person whose extended supervision was revoked with credit in
23 accordance with ss. 304.072 and 973.155.

24 **SECTION 9.** 302.113 (9) (am) 2. of the statutes is created to read:

1 302.113 (9) (am) 2. If the violation relates to the person's use of alcohol or other
2 drugs, the person resides in a county that has an approved substance abuse
3 treatment program, and the person meets the requirements for being admitted into
4 the program, order the person to participate in the program as a condition of
5 extended supervision.

6 **SECTION 10.** 302.113 (9) (am) 3. of the statutes is created to read:

7 302.113 (9) (am) 3. If the person is required to participate in an approved
8 substance abuse treatment program as a condition of extended supervision and the
9 violation relates to the person's participation in the program, establish, maintain, or
10 modify conditions of extended supervision relating to the person's participation in
11 the program.

12 **SECTION 11.** 302.113 (9) (ar) of the statutes is created to read:

13 302.113 (9) (ar) If a person is returned to court under par. (ap) after revocation
14 of extended supervision, the court shall do one of the following:

15 1. Order the person to be returned to prison for any specified period of time that
16 does not exceed the time remaining on the bifurcated sentence, as calculated under
17 par. (ap). A court order returning a person to prison under this subdivision shall
18 provide the person whose extended supervision was revoked with credit in
19 accordance with ss. 304.072 and 973.155.

20 2. If the violation relates to the person's use of alcohol or other drugs, the person
21 resides in a county that has an approved substance abuse treatment program, and
22 the person meets the requirements for being admitted into the program, vacate the
23 reviewing authority's decision to revoke the person's extended supervision and order
24 the person to participate in the program as a condition of extended supervision.

1 3. If the person is required to participate in an approved substance abuse
2 treatment program as a condition of extended supervision and the violation relates
3 to the person's participation in the program, vacate the reviewing authority's
4 decision to revoke the person's extended supervision and establish, maintain, or
5 modify conditions of extended supervision relating to the person's participation in
6 the program.

7 **SECTION 12.** 302.113 (9) (at) of the statutes, as created by 2001 Wisconsin Act
8 109, is repealed.

9 **SECTION 13.** 302.113 (9) (b) of the statutes, as affected by 2001 Wisconsin Act
10 109, is amended to read:

11 302.113 (9) (b) A person who is returned to prison after revocation of extended
12 supervision shall be incarcerated for the entire period of time specified by the court
13 under par. ~~(am)~~ (ar) 1. The period of time specified under par. ~~(am)~~ (ar) 1. may be
14 extended in accordance with sub. (3). If a person is returned to prison under par. ~~(am)~~
15 (ar) 1. for a period of time that is less than the time remaining on the bifurcated
16 sentence, the person shall be released to extended supervision after he or she has
17 served the period of time specified by the court under par. ~~(am)~~ (ar) 1. and any periods
18 of extension imposed in accordance with sub. (3).

19 **SECTION 14.** 302.113 (9) (c) of the statutes, as affected by 2001 Wisconsin Act
20 109, is amended to read:

21 302.113 (9) (c) A person who is subsequently released to extended supervision
22 after service of the period of time specified by the court under par. ~~(am)~~ (ar) 1. is
23 subject to all conditions and rules under subs. (7) and, if applicable, (7m) until the
24 expiration of the remaining extended supervision portion of the bifurcated sentence.
25 The remaining extended supervision portion of the bifurcated sentence is the total

1 length of the bifurcated sentence, less the time served by the person in confinement
 2 under the bifurcated sentence before release to extended supervision under sub. (2)
 3 and less all time served in confinement for previous revocations of extended
 4 ~~supervision under the bifurcated sentence.~~

5 SECTION 15. 302.43 of the statutes is amended to read:

6 302.43 Good time. Every inmate of a county jail is eligible to earn good time
 7 in the amount of one-fourth of his or her term for good behavior if sentenced to at
 8 least 4 days, but fractions of a day shall be ignored. An inmate shall be given credit
 9 for time served prior to sentencing under s. 973.155, including good time under s.
 10 973.155 (4). An inmate who violates any law or any regulation of the jail, or neglects
 11 or refuses to perform any duty lawfully required of him or her, may be deprived by
 12 the sheriff of good time under this section, except that the sheriff shall not deprive
 13 the inmate of more than 2 days good time for any one offense without the approval
 14 of the court. An inmate who files an action or special proceeding, including a petition
 15 for a common law writ of certiorari, to which s. 807.15 applies shall be deprived of
 16 the number of days of good time specified in the court order prepared under s. 807.15

17 (3). This section does not apply to a person who is incarcerated under a substance
 18 abuse treatment program that meets the requirements of s. 16.964 (10) (c), as
 19 determined by the office of justice assistance under s. 16.964 (10) (i).

20 SECTION 16. 304.06 (3b) of the statutes is created to read:

21 304.06 (3b) (a) "Approved substance abuse treatment program" means a
 22 substance abuse treatment program that meets the requirements of s. 16.964 (10)
 23 (c), as determined by the office of justice assistance under s. 16.964 (10) (i).

24 (b) If a parolee violates a condition of parole, the violation relates to the
 25 parolee's use of alcohol or other drugs, the parolee resides in a county that has an

In this ^{sub} section

*confined in the county jail
 in connection with his or her
 participation in*

1 approved substance abuse treatment program, and the parolee meets the
2 requirements for being admitted into the program, the division of hearings and
3 appeals in the department of administration or, if the parolee waives the final
4 administrative hearing, the secretary of corrections may, in lieu of revoking parole,
5 order the parolee to participate in the program as a condition of parole.

6 (c) If a parolee is required to participate in an approved substance abuse
7 treatment program as a condition of parole and the parolee violates a condition of
8 parole that relates to the parolee's participation in the program, the division of
9 hearings and appeals in the department of administration or, if the parolee waives
10 the final administrative hearing, the secretary of corrections may, in lieu of revoking
11 parole, establish, maintain, or modify conditions of parole relating to the person's
12 participation in the program.

13 **SECTION 17.** 808.075 (4) (g) 3. of the statutes is amended to read:

14 808.075 (4) (g) 3. Imposition of sentence upon revocation of probation under s.
15 ~~973.10 (2) (2b) (c) 1. or (2e) (a) 1.~~

16 **SECTION 18.** 961.472 (5) of the statutes is repealed and recreated to read:

17 961.472 (5) The court is not required to enter an order under sub. (2) if any of
18 the following applies:

19 (a) The court finds that the person is already covered by or has recently
20 completed an assessment under this section or a substantially similar assessment.

21 (b) The person is participating in a substance abuse treatment program that
22 meets the requirements of s. 16.964 (10) (c), as determined by the office of justice
23 assistance under s. 16.964 (10) (i).

24 **SECTION 19.** 973.032 (6) of the statutes is amended to read:

INS 11/23 ✓

1 973.032 (6) CREDIT. Any sentence credit under s. 973.155 (1) or (1m) applies
2 toward service of the period under sub. (3) (a) but does not apply toward service of
3 the period under sub. (3) (b).

4 ~~SECTION 20. 973.10 (1) of the statutes is renumbered 973.10 (1j) and amended~~
5 to read:

6 973.10 (1j) Imposition of probation shall have the effect of placing the
7 defendant in the custody of the department and shall subject the defendant to the
8 control of the department under conditions set by the court or, under sub. (2), by the
9 department or the division of hearings and appeals in the department of
10 administration and under rules and regulations established by the department for
11 the supervision of probationers, parolees and persons on extended supervision.

12 SECTION 21. 973.10 (1d) of the statutes is created to read:

13 973.10 (1d) In this section, "approved substance abuse treatment program"
14 means a substance abuse treatment program that meets the requirements of s.
15 16.964 (10) (c), as determined by the office of justice assistance under s. 16.964 (10)
16 (i).

17 SECTION 22. 973.10 (2) (intro.) of the statutes is renumbered 973.10 (2) (a) and
18 amended to read:

19 973.10 (2) (a) If a probationer violates the conditions of probation, the
20 department of corrections may initiate a proceeding before the division of hearings
21 and appeals in the department of administration. Unless waived by the probationer,
22 a hearing examiner for the division shall conduct an administrative hearing and
23 enter an order either revoking or not revoking probation. Upon request of either
24 party, the administrator of the division shall review the order. If the probationer
25 waives the final administrative hearing, the secretary of corrections shall enter an

1 order either revoking or not revoking probation. ~~If probation is revoked, the~~
2 ~~department shall:~~

3 **SECTION 23.** 973.10 (2) (a) of the statutes is renumbered 973.10 (2b) (c) 1.

4 **SECTION 24.** 973.10 (2) (b) of the statutes is renumbered 973.10 (2b) (c) 2.

5 **SECTION 25.** 973.10 (2) (bm) of the statutes is created to read:

6 973.10 (2) (bm) If the violation of probation relates to the probationer's use of
7 alcohol or other drugs, if the probationer resides in a county that has an approved
8 substance abuse treatment program, and if the probationer meets the requirements
9 for being admitted into the program, the division of hearings and appeals in the
10 department of administration or, if the probationer waives the final administrative
11 hearing, the secretary of corrections may, in lieu of revoking probation, order the
12 probationer to participate in the program as a condition of probation.

13 **SECTION 26.** 973.10 (2) (c) of the statutes is created to read:

14 973.10 (2) (c) If the probationer is required to participate in an approved
15 substance abuse treatment program as a condition of probation and he or she violates
16 a condition of probation that relates to his or her participation in the program, the
17 division of hearings and appeals in the department of administration or, if the
18 probationer waives the final administrative hearing, the secretary of corrections
19 may, in lieu of revoking probation, establish, maintain or modify conditions of
20 probation relating to the person's participation in the program.

21 **SECTION 27.** 973.10 (2b) of the statutes is created to read:

22 973.10 (2b) If a person's probation is revoked, the department shall proceed
23 under par. (c) if any of the following applies:

24 (a) The person is not required to participate in an approved substance abuse
25 treatment program as a condition of probation and one of the following applies:

1 1. The revocation does not relate to the probationer's use of alcohol or other
2 drugs.

3 2. The person does not reside in a county that has an approved substance abuse
4 treatment program.

5 3. The county has established such a program but the person does not meet the
6 requirements for being admitted into it.

7 (b) The person is required to participate in an approved substance abuse
8 treatment program as a condition of probation but the violation does not relate to his
9 or her participation in the program.

10 (c) If par. (a) or (b) applies, the department shall do one of the following:

11 **SECTION 28.** 973.10 (2e) of the statutes is created to read:

12 973.10 (2e) (a) If a person's probation is revoked but neither sub. (2b) (a) nor
13 sub. (2b) (b) applies, the department shall order that the person be brought before
14 the court. The court shall then do one of the following:

15 1. If the person has not already been sentenced, impose sentence without
16 further stay under s. 973.15.

17 2. If the person has already been sentenced, vacate the stay of the sentence.
18 The term of a sentence under this subdivision shall begin on the date on which the
19 person enters the prison.

20 3. Rescind the order revoking the person's extended supervision and order the
21 person to participate in an approved substance abuse treatment program in his or
22 her county of residence as a condition of probation or, if the person is already required
23 to participate in such a program as a condition of probation, establish, maintain, or
24 modify conditions relating to the person's participation in the program.



1 **SECTION 29.** 973.15 (2m) (a) 3. of the statutes, as created by 2001 Wisconsin Act
2 109, is amended to read:

3 973.15 (2m) (a) 3. "Period of confinement in prison," with respect to any
4 sentence to the Wisconsin state prisons, means any time during which a person is
5 incarcerated under that sentence, including any extensions imposed under s. 302.11
6 (3), 302.113 (3), or 302.114 (3) and any period of confinement in prison required to
7 be served under s. 302.113 (9) (am), 2001 stats., or s. 302.11 (7) (am), 302.113 (9) (~~am~~)
8 (ar) 1., or 302.114 (9) (am).

9 **SECTION 30.** 973.15 (2m) (e) of the statutes is amended to read:

10 973.15 (2m) (e) *Revocation in multiple sentence cases.* If a person is serving
11 concurrent determinate sentences and extended supervision is revoked in each case,
12 or if a person is serving a determinate sentence concurrent with an indeterminate
13 sentence and both extended supervision and parole are revoked, the person shall
14 concurrently serve any periods of confinement in prison required under those
15 sentences under s. 302.113 (9) (am), 2001 stats., or s. 302.11 (7) (am), 302.113 (9) (~~am~~)
16 (ar) 1., or 302.114 (9) (~~am~~).

17 **SECTION 31.** 973.155 (1) (b) of the statutes is amended to read:

18 973.155 (1) (b) The categories in par. (a) and sub. (1m) include custody of the
19 convicted offender which is in whole or in part the result of a probation, extended
20 supervision or parole hold under s. 302.113 (8m), 302.114 (8m), 304.06 (3), or 973.10
21 (2) placed upon the person for the same course of conduct as that resulting in the new
22 conviction.

23 **SECTION 32.** 973.155 (1m) of the statutes is created to read:

24 973.155 (1m) A convicted offender shall be given credit toward the service of
25 his or her sentence for all days spent in custody as part of a substance abuse

1 treatment program that meets the requirements of s. 16.964 (10) (c), as determined
2 by the office of justice assistance under s. 16.964 (10) (i) for any offense arising out
3 of the course of conduct that led to the person's placement in that program.

4 **SECTION 33.** 973.155 (3) of the statutes is amended to read:

5 973.155 (3) The credit provided in sub. (1) or (1m) shall be computed as if the
6 convicted offender had served such time in the institution to which he or she has been
7 sentenced.

8 ~~**SECTION 34. Initial applicability.**~~

9 ~~(1) EXTENDED SUPERVISION REVOCATION PROCEEDINGS. The treatment of section
10 302.113 (7) and (9) (ar), (at), (b), and (c) of the statutes, the renumbering and
11 amendment of section 302.113 (9) (ag) and (am) of the statutes, and the creation of
12 section 302.113 (9) (ag) 1. and (am) 2. and 3. of the statutes first apply to extended
13 supervision revocation proceedings pending on the effective date of this subsection.~~

14 ~~(2) PAROLE REVOCATION PROCEEDINGS. The treatment of section 304.06 (3b) of the
15 statutes first applies to parole revocation proceedings pending on the effective date
16 of this subsection.~~

17 ~~(3) PROBATION REVOCATION PROCEEDINGS. The treatment of section 973.10 (2)
18 (intro.), (a), (b), (bm), and (c), (2b), and (2e) of the statutes first applies to probation
19 revocation proceedings pending on the effective date of this subsection.~~

20 **SECTION 35. Effective date.**

21 (1) This act takes effect on the first day of the 4th month beginning after
22 publication.

23 (END)

2003-2004 DRAFTING INSERT
FROM THE
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LRB-3289/P3ins
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No R and programs based on principles of restorative justice

INSERT 3/18 ✓

No R and provides them services that may be needed, as determined under ^{the} program, to eliminate or reduce their use of alcohol or other drugs, improve their mental health, facilitate their gainful employment or enhanced education or training, provide them stable housing, facilitate family reunification, ensure payment of child support, and achieve other **objectives** selected under subd. 10.

INSERT 3/23 ✓ **STET**

8. The program provides substance abuse and mental health treatment services exclusively through providers that are certified by the Wisconsin alcoholism and drug abuse counselor certification board or the department of health and family services.

INSERT 4/3 ✓

No R other county agencies responsible for providing social services, including services relating to child welfare, mental health, and the Wisconsin works program,

INSERT 4/20 ✓

No R a representative of each other county agency responsible for providing social services, including services relating to child welfare, mental health, and the Wisconsin works program,

INSERT 4/24 ✓

1 2. A county department that receives a grant under this subsection shall
2 comply with state audits and shall submit an annual report to the office regarding
3 the impact of the program on jail and prison populations.

4 INSERT 5/22 ✓

5 (No R) and health and family services that are provided to enable the office to make
6 grants to counties under s. 16.964 (10) for the purpose of making such grants.

7 INSERT 11/23 ✓

8 SECTION 1. 967.11 of the statutes is created to read:

9 **967.11 Alternatives to prosecution and incarceration; monitoring**
10 **participants.** (1) In this section, "approved substance abuse treatment program"
11 means a substance abuse treatment program that meets the requirements of s.
12 16.964 (10) (c), as determined by the office of justice assistance under s. 16.964 (10)
13 (i).

14 (2) A court or a district attorney may require a person participating in an
15 approved substance abuse treatment program to submit to electronic monitoring or
16 to participate in a day reporting program as a condition of participation.

Dsida, Michael

From: Seaquist, Sara
Sent: Tuesday, February 17, 2004 11:44 AM
To: Dsida, Michael
Subject: RE: One option

Yes, that's a great option. And then eliminate the rest of the def prosecution items, right?

I asked Senator Roessler and she definitely wants to take out expungement. I asked her about def prosecution and she said take that out too...but I think she would really like to add the language you suggested.

Thanks!

-----Original Message-----

From: Dsida, Michael
Sent: Tuesday, February 17, 2004 11:32 AM
To: Seaquist, Sara
Subject: One option

Maybe after "programs" on page 2, line 2, you can add:

", including deferred and suspended prosecution programs,".

Mike Dsida
Legislative Reference Bureau
608/266-9867
michael.dsida@state.legis.wi.us

Dsida, Michael

From: Seaquist, Sara
Sent: Monday, February 23, 2004 3:26 PM
To: Dsida, Michael
Subject: RE: Item 9

Carol said yes, they should be included. Thanks!

-----Original Message-----

From: Dsida, Michael
Sent: Monday, February 23, 2004 2:40 PM
To: Seaquist, Sara
Subject: Item 9

The people providing input in the program's formation (subd. 9. on p. 4) are all represented in the oversight committee (par. (f) on p. 4). The memo requests that the program be developed with input from county agencies responsible for child welfare, mental health, W-2 and social services, but it does not indicate that those agencies should be involved in oversight. Should they be?

(I think this is all for now.)

Mike Dsida
Legislative Reference Bureau
608/266-9867
michael.dsida@state.legis.wi.us

Dsida, Michael

From: Seaquist, Sara
Sent: Monday, February 23, 2004 1:36 PM
To: Dsida, Michael
Subject: RE: Add'l Comment re Funding Provision in LRB-3289

DHFS may be providing \$ for the grants...especially if the federal grant comes through. So, do we need to add the language then?

-----Original Message-----

From: Dsida, Michael
Sent: Monday, February 23, 2004 1:35 PM
To: Seaquist, Sara
Subject: RE: Add'l Comment re Funding Provision in LRB-3289

OJA already has general "gifts and grants" (s. 20.505 (6) (i)) and "federal aid" (s. 20.505 (6) (m)) appropriations. These provide OJA a way to use funding from those sources for SAOAPSA programs, so you don't need any changes to the appropriation provision in the bill -- unless other state agencies besides DOC (such as DHFS) will be providing money for the grants.

-----Original Message-----

From: Seaquist, Sara
Sent: Tuesday, February 17, 2004 4:09 PM
To: Dsida, Michael
Subject: RE: Add'l Comment re Funding Provision in LRB-3289

Okay, if that's what we need to do, that's fine...

-----Original Message-----

From: Dsida, Michael
Sent: Tuesday, February 17, 2004 3:50 PM
To: Seaquist, Sara

Subject: RE: Add'l Comment re Funding Provision in LRB-3289

I'm no expert on ch. 20, but I think you need to keep money from received from the federal government in one appropriation (see s. 20.001 (2) (e)), money received from DOC in another (see s. 20.001 (2) (c)), and money received from other sources in a third.

-----Original Message-----

From: Seaquist, Sara
Sent: Tuesday, February 17, 2004 11:02 AM
To: Dsida, Michael
Subject: FW: Add'l Comment re Funding Provision in LRB-3289

CR wants this to be added...

Thanks!

-----Original Message-----

From: Bove, Fredi-Ellen
Sent: Tuesday, February 17, 2004 11:00 AM
To: Roessler, Carol; Seaquist, Sara
Cc: Frank, Matthew J. DOC; Margolies, Robert S. DOC; Morgan, Deirdre A. DOC; Boyce, Katie - Office of Governor Jim Doyle; Santala, Sinikka; Daggett, Cynthia
Subject: Add'l Comment re Funding Provision in LRB-3289

As a follow-up to our meeting this morning, I am providing the technical recommended change to provide the flexibility to use federal or other potential funding sources. The suggested change is as follows:
Revise Section 3 to read as follows: "20.505(6)(kv) Addicted Offender Accountability and Public Safety Act grants. All moneys received for the purpose of making grants to counties under s.16.964(10)." This change will enable the program to utilize all types of potential funding, including funding from DOC and federal grants, such as the Access to Recovery grant, and other future possible federal funding sources as discussed. As currently drafted, the program could only use DOC funding and would not have the flexibility to use federal or other types of funding.

Dsida, Michael

From: Seaquist, Sara
Sent: Tuesday, February 17, 2004 2:14 PM
To: Dsida, Michael

Fyi...I spoke w/ Dede and informed her that we are definitely taking out the deferred prosecution stuff, adding in your suggested language, and definitely taking out expungement.

Thanks!

Dsida, Michael

From: Lang, Keith
Sent: Thursday, February 26, 2004 7:54 AM
To: Dsida, Michael
Subject: RE: Sen. Roessler's bill - Item 6 of DHFS/DOC/OJA memo

That looks good.

>>> Dsida, Michael 02/25/04 04:21PM >>>
Thanks.

I think it probably makes sense just to use the following language (without reference to the code):

(c) A county department shall be eligible for a grant under par. (b) if all of the following apply:

...

8. The program provides substance abuse and mental health treatment services through providers that are certified by the department of health and family services.

-----Original Message-----

From: Lang, Keith
Sent: Wednesday, February 25, 2004 4:13 PM
To: Dsida, Michael
Cc: Hammes, Oren; Ritacca, Vincent
Subject: RE: Sen. Roessler's bill - Item 6 of DHFS/DOC/OJA memo

The only current certification body for AODA counselors is the Wisconsin Certification Board. It is the same board that is referenced in HFS 75.02 (84) that defines "substance abuse counselor".

>>> Dsida, Michael 02/25/04 03:31PM >>>
Bills generally do not include references to specific provisions of the Administrative Code. State agencies can amend, renumber, or repeal a code provision, but they cannot amend the statutes to make any changes that are needed as a result, which may leave the statutes with an incorrect cross-reference. But more importantly, I did not find anything in ch. 75 that relates to certification of AODA providers other than by Wisconsin certification board, Inc. (Is that the same as the Wisconsin alcoholism and drug abuse counselor certification board referred to in HFS 105.23?) If there is a particular provision that I should look at please let me know.

Thanks.

-----Original Message-----

From: Lang, Keith
Sent: Wednesday, February 25, 2004 1:36 PM
To: Dsida, Michael
Cc: Seaquist, Sara; Hammes, Oren; Ritacca, Vincent
Subject: Re: Sen. Roessler's bill - Item 6 of DHFS/DOC/OJA memo

It should read something like this:

" The program providing substance abuse or mental health services must be certified by the Wisconsin Department of Health and Family Services under HFS 75 and HFS61."

HFS 75 is the code for substance abuse treatment programs and HFS 61 addresses

mental treatment.

>>> Dsida, Michael 02/25/04 10:57AM >>>
Does this language work?

8. The program provides substance abuse and mental health treatment services exclusively through providers that are certified by the Wisconsin alcoholism and drug abuse counselor certification board or the department of health and family services.

Thanks.

Mike Dsida
Legislative Reference Bureau
608/266-9867
michael.dsida@state.legis.wi.us

-----Original Message-----

From: Seaquist, Sara
Sent: Wednesday, February 25, 2004 9:54 AM
To: Dsida, Michael
Subject: FW: FW: Item 6 of DHFS/DOC/OJA memo

-----Original Message-----

From: Lang, Keith
Sent: Wednesday, February 25, 2004 9:47 AM
To: Seaquist, Sara
Subject: Re: FW: Item 6 of DHFS/DOC/OJA memo

Sara, did you get this question answered yet? The reference is to HFS 75 which is the DHFS administrative code used to certify alcohol and other drug abuse treatment programs in Wisconsin. In order for a program to receive HFS 75 certification, it must employ professionals who are credentialed as certified counselors by the Wisconsin Certification Board. Hope this helps.

>>> Seaquist, Sara 02/23/04 12:23PM >>>
Hi Keith,

Below is a question from the drafter...I think he's right, but just wanted to double check w/ you first.

Thanks!

Sara

-----Original Message-----

From: Dsida, Michael
Sent: Monday, February 23, 2004 12:22 PM
To: Seaquist, Sara
Subject: Item 6 of DHFS/DOC/OJA memo

I assume that (with respect to AODA treatment) the reference to HFS certification means a provider certified by the Wisconsin alcoholism and drug abuse counselor certification board. If that isn't right, please let me know.

Mike Dsida
Legislative Reference Bureau
608/266-9867
michael.dsida@state.legis.wi.us

Dsida, Michael

From: Bove, Fredi-Ellen
Sent: Wednesday, February 25, 2004 10:50 AM
To: Dsida, Michael
Cc: Seaquist, Sara; Santala, Sinikka; Daggett, Cynthia
Subject: RE: FW: Add'l Comment re Funding Provision in LRB-3289

We concur with your suggested stat. language.

>>> Dsida, Michael 02/24/04 12:45PM >>>

Thanks for clarifying this. (Your original email led me to think that you wanted the OJA appropriation to cover money from sources other than DOC and DHFS.)

In view of your comments, I will revise the appropriation provision in the bill to say "All moneys received from DOC or DHFS that are provided to enable the office to make grants to counties under s. 16.964 (10) for the purpose of making such grants." (The "that are provided to enable office to make grants to counties under s. 16.964 (10)" language ensures that DOC and DHFS remain free to transfer money to OJA for other purposes.) Please let me know if that works.

Thanks.

Mike Dsida
Legislative Reference Bureau
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State of Wisconsin
2003 - 2004 LEGISLATURE

LRB-3289/P3
MGD:kmg:jf

FRIDAY

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Gen. Cont.

1 AN ACT to amend 302.43, 973.032 (6), 973.155 (1) (b) and 973.155 (3); to repeal
2 and recreate 961.472 (5); and to create 16.964 (10), 20.505 (6) (kv), 967.11 and
3 973.155 (1m) of the statutes; relating to: grants to counties for providing
4 alternatives to prosecution and incarceration for persons who abuse alcohol or
5 other drugs and making an appropriation.

Analysis by the Legislative Reference Bureau

Insert

{ This is a preliminary draft. An analysis will be provided in a later version.

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

- 6 SECTION 1. 16.964 (10) of the statutes is created to read:
7 16.964 (10) (a) In this subsection:
8 1. "County department" means a county department under s. 51.42 or 51.437
9 that provides substance abuse treatment services.
10 2. "Violent offender" means a person to whom one of the following applies:

1 a. The person has been charged with or convicted of an offense in a pending case
 2 and, during the course of the offense, the person carried, possessed, or used a
 3 dangerous weapon, the person used force against another person, or a person died
 4 or suffered serious bodily harm.

5 b. The person has one or more prior convictions for a felony involving the use
 6 or attempted use of force against another person with the intent to cause death or
 7 serious bodily harm.

*The office shall make the grants
 from the appropriation under
 s. 20.505 (6) (kv)*

8 (b) The office shall make grants to county departments to enable them to
 9 establish and operate programs, including suspended and deferred prosecution
 10 programs and programs based on principles of restorative justice, that provide
 11 alternatives to prosecution and incarceration for criminal offenders who abuse
 12 alcohol or other drugs. } The office shall collaborate with the departments of
 13 corrections and health and family services in establishing this grant program.

14 (c) A county department shall be eligible for a grant under par. (b) if all of the
 15 following apply:

16 1. The county department's program is designed to meet the needs of a person
 17 who abuses alcohol or other drugs and who may be or has been charged with or who
 18 has been convicted of a crime related to the person's use or abuse of alcohol or other
 19 drugs. *in that county*

20 2. The program is designed to promote public safety, reduce prison and jail
 21 populations, reduce prosecution and incarceration costs, reduce recidivism, and
 22 improve the welfare of participants' families by meeting the comprehensive needs of
 23 participants.

1 3. The program establishes eligibility criteria for a person's participation. The
2 criteria shall specify that a violent offender is not eligible to participate in the
3 program.

4 4. The program is consistent with the best practices in substance abuse and
5 mental health treatment and provides intensive ^{case} ~~case~~ management.

6 5. The program uses graduated sanctions and incentives to promote successful
7 substance abuse treatment.

8 6. The program provides holistic treatment to its participants and provides
9 them services that may be needed, as determined under the program, to eliminate
10 or reduce their use of alcohol or other drugs, improve their mental health, facilitate
11 their gainful employment or enhanced education or training, provide them stable
12 housing, facilitate family reunification, ensure payment of child support, and
13 achieve other objectives selected under subd. 10.

14 7. The program is designed to integrate all mental health services provided to
15 program participants by state and local government agencies and other
16 organizations. The program shall require regular communication between a
17 participant's substance abuse treatment providers and any probation, extended
18 supervision, and parole agent assigned to the participant.

19 8. The program provides substance abuse and mental health treatment
20 services exclusively through providers that are certified by the Wisconsin alcoholism
21 and drug abuse counselor certification board or the department of health and family
22 services.

23 9. The program requires participants to pay a reasonable amount for their
24 treatment, based on their income and available assets.

1 10. The program is developed with input from one or more circuit court judges,
2 the district attorney, the state public defender, local law enforcement officials, the
3 county department, other county agencies responsible for providing social services,
4 including services relating to child welfare, mental health, and the Wisconsin works
5 program, the departments of corrections and health and family services, private
6 social services agencies, and substance abuse treatment providers.

7 11. The county department complies with other eligibility requirements
8 established by the office to promote the objectives listed in subds. 1. and 2.

9 (d) A county department for a county with a population of 500,000 or more shall
10 apply for a grant from the office under par. (b). After ensuring that the county
11 department's program meets the requirements of par. (c), the office shall award the
12 county department a grant under par. (a).

13 (e) In selecting among competing grant proposals from county departments
14 other than a county department applying under par. (d), the office shall give priority
15 to counties that have the largest number of residents in the custody of the
16 department of corrections as a result of crimes or violations of extended supervision,
17 parole, or probation relating to the abuse of alcohol or other drugs.

18 (f) 1. A county department that receives a grant under this subsection shall
19 create an oversight committee to advise the county department in administering and
20 evaluating its program. Each committee shall consist of a circuit court judge, the
21 district attorney or his or her designee, the state public defender or his or her
22 designee, a local law enforcement official, a representative of the county department,
23 a representative of each other county agency responsible for providing social
24 services, including services relating to child welfare, mental health, and the
25 Wisconsin works program, representatives of the departments of corrections and

1 health and family services, a representative from private social services agencies, a
2 representative of substance abuse treatment providers, and other members to be
3 determined by the county department.

4 2. A county department that receives a grant under this subsection shall
5 comply with state audits and shall submit an annual report to the office regarding
6 the impact of the program on jail and prison populations.

7 (g) Two or more county departments may jointly apply for and receive a grant
8 under this subsection. If county departments submit a joint application, they shall
9 include with their application a written agreement specifying each county
10 department's role in developing, administering, and evaluating the program. The
11 oversight committee established under par. (c) shall consist of representatives from
12 each county department.

13 (h) The office shall assist a county department receiving grants under this
14 subsection in obtaining funding from other sources for its program.

15 (i) The office shall inform any county department that is applying for a grant
16 under this subsection whether the county department meets the requirements
17 established under par. (c), regardless of whether the county department receives a
18 grant.

19 **SECTION 2.** 20.505 (6) (kv) of the statutes is created to read:

20 20.505 (6) (kv) *Grants for substance abuse treatment programs for criminal*
21 *offenders.* All moneys received from the departments of corrections and health and
22 family services that are provided to enable the office to make grants to counties under
23 s. 16.964 (10) for the purpose of making such grants.

24 **SECTION 3.** 302.43 of the statutes is amended to read:

1 **302.43 Good time.** Every inmate of a county jail is eligible to earn good time
2 in the amount of one-fourth of his or her term for good behavior if sentenced to at
3 least 4 days, but fractions of a day shall be ignored. An inmate shall be given credit
4 for time served prior to sentencing under s. 973.155, including good time under s.
5 973.155 (4). An inmate who violates any law or any regulation of the jail, or neglects
6 or refuses to perform any duty lawfully required of him or her, may be deprived by
7 the sheriff of good time under this section, except that the sheriff shall not deprive
8 the inmate of more than 2 days good time for any one offense without the approval
9 of the court. An inmate who files an action or special proceeding, including a petition
10 for a common law writ of certiorari, to which s. 807.15 applies shall be deprived of
11 the number of days of good time specified in the court order prepared under s. 807.15
12 (3). This section does not apply to a person who is confined in the county jail in
13 connection with his or her participation in a substance abuse treatment program
14 that meets the requirements of s. 16.964 (10) (c), as determined by the office of justice
15 assistance under s. 16.964 (10) (i).

16 **SECTION 4.** 961.472 (5) of the statutes is repealed and recreated to read:

17 961.472 (5) The court is not required to enter an order under sub. (2) if any of
18 the following applies:

19 (a) The court finds that the person is already covered by or has recently
20 completed an assessment under this section or a substantially similar assessment.

21 (b) The person is participating in a substance abuse treatment program that
22 meets the requirements of s. 16.964 (10) (c), as determined by the office of justice
23 assistance under s. 16.964 (10) (i).

24 **SECTION 5.** 967.11 of the statutes is created to read:

1 **967.11 Alternatives to prosecution and incarceration; monitoring**
2 **participants. (1)** In this section, “approved substance abuse treatment program”
3 means a substance abuse treatment program that meets the requirements of s.
4 16.964 (10) (c), as determined by the office of justice assistance under s. 16.964 (10)
5 (i).

6 (2) ~~INS~~ ^{INS 7/6} court or a district attorney may require a person participating in an
7 approved substance abuse treatment program to submit to electronic monitoring or
8 to participate in a day reporting program as a condition of participation.

9 **SECTION 6.** 973.032 (6) of the statutes is amended to read:

10 973.032 (6) CREDIT. Any sentence credit under s. 973.155 (1) or (1m) applies
11 toward service of the period under sub. (3) (a) but does not apply toward service of
12 the period under sub. (3) (b).

13 **SECTION 7.** 973.155 (1) (b) of the statutes is amended to read:

14 973.155 (1) (b) The categories in par. (a) and sub. (1m) include custody of the
15 convicted offender which is in whole or in part the result of a probation, extended
16 supervision or parole hold under s. 302.113 (8m), 302.114 (8m), 304.06 (3), or 973.10
17 (2) placed upon the person for the same course of conduct as that resulting in the new
18 conviction.

19 **SECTION 8.** 973.155 (1m) of the statutes is created to read:

20 973.155 (1m) A convicted offender shall be given credit toward the service of
21 his or her sentence for all days spent in custody as part of a substance abuse
22 treatment program that meets the requirements of s. 16.964 (10) (c), as determined
23 by the office of justice assistance under s. 16.964 (10) (i) for any offense arising out
24 of the course of conduct that led to the person’s placement in that program.

25 **SECTION 9.** 973.155 (3) of the statutes is amended to read:

1

analysis INSERT

Under current law, ^{the} Department of Health and Family Services (DHFS) funds and oversees the Treatment Alternative Program. Through this program, DHFS is required to make grants to enable grantees (who may be county, tribal, or nonprofit agencies) to provide assessments of and treatment for alcohol and other drug abuse, as an alternative to incarceration, to a person who: 1) is involved with the criminal justice system, either as ^a defendant or as a party to a diversion agreement; or 2) is currently or has previously been determined drug dependent. Current law requires DHFS to distribute the grants so that the program serves people in a variety of geographic locations. Current law also imposes certain requirements regarding: 1) communication between grantees and actors in the criminal justice system; 2) early identification of eligible participants; 3) assessment, referral, treatment, and monitoring procedures; and 4) data collection for program management and evaluation.

This bill establishes a new program, administered by the Office of Justice Assistance (OJA) in collaboration with DHFS and the Department of Corrections, that provides grants to county departments which currently provide substance abuse treatment services. Under the program, grants are provided to enable county departments to establish programs that provide alternatives to prosecution and incarceration for criminal offenders who abuse alcohol or other drugs. In order for a county department (or a group of county departments applying jointly) to be eligible for a grant, its (or their) program must: 1) meet the needs of people who abuse alcohol or other drugs and who may be or have been charged with or who have been convicted of a crime related to the use or abuse of alcohol or other drugs; 2) be designed to promote public safety, reduce prison and jail populations, reduce prosecution and incarceration costs, reduce recidivism, and improve the welfare of participants' families by meeting the comprehensive needs of participants (including needs relating to mental health, employment, stable housing, and family reunification); 3) establish eligibility criteria for participants (which must exclude persons charged with or convicted of a violent offense); 4) be consistent with the best practices in substance abuse and mental health treatment and provide intensive case management through DHFS-certified providers; 5) use graduated sanctions and incentives; 6) integrate all mental health services provided to participants by state and local government agencies and other organizations; 7) require participants to pay a reasonable amount for their treatment, based on their income and available assets; and 8) be developed with input from a variety of specified individuals and agencies. The bill also specifies that a program that meets these requirements (regardless of whether it receives a grant) may entail participants being required to submit to electronic monitoring or participating in a day reporting program as a condition of participation.

Under the bill, a county department for a county with a population of 500,000 or more (currently only Milwaukee County) must apply for a grant, and OJA must award it a grant if its program meets the requirements established under the bill.

In selecting other grantees, OJA must give priority to counties that have the largest number of residents in state prisons for crimes or violations of extended supervision, parole, or probation relating to the abuse of alcohol or other drugs.

A county department that receives a grant under the bill must create an oversight committee to advise the county department in administering and evaluating its program. It must also comply with state audits and submit an annual report to OJA regarding the impact of the program on jail and prison populations.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

- 1
- 2
- 3
- 4

INSERT 7/6 ✓

(No R) If a county department establishes an approved substance abuse treatment program and the program authorizes the use of electronic monitoring or day reporting programs, *a*

Barman, Mike

From: Barman, Mike
Sent: Monday, March 01, 2004 7:55 AM
To: Seaquist, Sara; Sen.Roessler
Subject: FE request for 03-3289/1

Sara -

I submitted your FE request to DOA for assignment. If the draft is scheduled for a hearing or floor action ... let me know and I will pass the information on.

Mike Barman

Mike Barman - Senior Program Asst. (PH. 608-266-3561)
(E-Mail: mike.barman@legis.state.wi.us) (FAX: 608-264-6948)

State of Wisconsin
Legislative Reference Bureau - Legal Section - Front Office
1 East Main, Suite 200 Madison, WI 53703

-----Original Message-----

From: Northrop, Lori
Sent: Friday, February 27, 2004 4:34 PM
To: Barman, Mike
Subject: FW: 03-3289

-----Original Message-----

From: Dsida, Michael
Sent: Friday, February 27, 2004 4:13 PM
To: LRB.Legal
Subject: 03-3289

Sara in Sen. Roessler's office just called and asked if we can expedite the fiscal estimate for this bill. Can you let her know what, if anything, we can do?

Thanks.

Mike Dsida
Legislative Reference Bureau
608/266-9867
michael.dsida@state.legis.wi.us