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Testimony on Senate Bill 170

Chairman Wanggaard and members of the Committee, I appreciate the opportunity to testify on Senate Bill 170 which expands the opportunities for earned early release for incarcerated persons.

As you are well aware, our prisons are overcrowded and understaffed. This will help to relieve overcrowding, put less stress on staffing, while increasing public safety by promoting success for returning citizens.

Currently, earned release is only available to inmates with a non-violent offence who completes treatment for Alcohol and Other Drug Abuse (AODA), also called Substance Use Disorder. The Challenge Incarceration Program at St. Croix Correctional Center also operates an early release program which includes AODA treatment.

I am including several pages from the 2022 Primary Programs Report from DOC. The first three charts show the decreased recidivism rate for AODA treatment, and the fourth shows the decrease in recidivism from vocational education. Clearly, marketable job skills have a positive outcome for reentry success.

This will expand the criteria to include the possibility of early release for successfully completing certain vocational training programs. The program will not be open to everyone. The inmate must petition the sentencing court and will only be included in the program if the court grants the petition. The inmate must serve at least two-thirds of the time he or she is sentenced to be in prison, and the time of extended supervision will be extended so that the overall sentence remains the same. The specifics of the program will be promulgated as a rule by the Department of Corrections.

The question sometimes arises as to providing early release credit for earning the High School Equivalency Diploma (HSED). While earning the HSED does decrease recidivism, it is just the starting point. HSED completion is necessary for institutional employment and for participation in vocational education. All inmates are encouraged and incentivized to earn their HSED, yet further vocational education is necessary to compete for good, family-supporting jobs.

Early release for vocational education achievement is not a new concept. It has been discussed for as long as I have served in the Legislature. I truly believe the time has come to make it a reality. Of all the bills that came out of the Legislative Council Study Committee on Increasing Offender Employment Opportunities, this one has the greatest effect in terms of cost and benefit. The vocational education programs are already in place. Presumably, many will be eligible for early release which will greatly reduce the cost to the department. Qualified workers enter the workforce, and individuals return to families and communities ready to contribute financially.

I urge you to pass this bill to move forward to downsize prison population, expand the workforce, and allow a fresh start for individuals.

CHALLENGE INCARCERATION PROGRAM

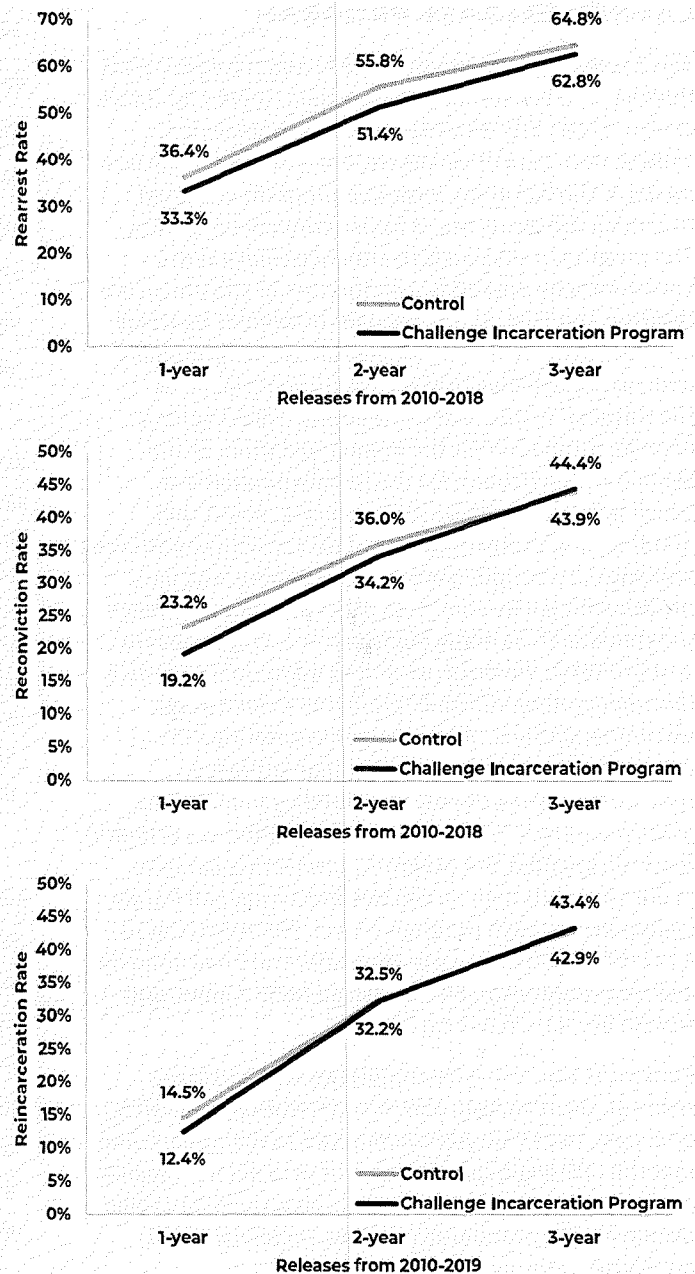
CHALLENGE INCARCERATION PROGRAM

The Challenge Incarceration Program (CIP) is a statutorily established program that allows judges to sentence non-violent, non-assaultive individuals with substance use needs to this full-time intensive program that combines physical fitness and well-being with substance use disorder treatment. The program was designed to focus on the whole person and encourage mental, emotional, and physical well-being for program participants. Program components are structured around treatment, health, and well-being. CIP is offered to both male and female persons in our care.

CIP for male participants began the program redesign process in 2016, and the redesign was completed in 2018. The program redesign included several steps taken to ensure adherence to evidence-based programming practices, including the incorporation of quality assurance measures, evidence-based program curricula, Core Correctional Practices training for all CIP staff, and updates to the CIP policy and handbook. Components of CIP include physical fitness, work assignments designed to give back to the community, individualized educational programming, individualized and group substance use disorder treatment, cognitive-based programming, and military activities to promote self-discipline and self-efficacy.

CIP for female persons in our care was redesigned in 2019, and changes were made to the program to ensure the program is gender responsive. Female persons in our care who participate in CIP are provided substance use disorder treatment, trauma treatment, and cognitive behavioral treatment, as well as participate in physical activity and drill and ceremony on a daily basis. CIP provides trauma-informed treatment that responds to the unique strengths, needs, and challenges faced by women.

Persons in our care who completed CIP had lower rearrest rates after one, two, and three years; and lower reconviction and reincarceration rates after one and two years compared to their peers who met the CIP eligibility criteria, but who did not receive programming. See Appendix B, Tables 10-12 for tables displaying the number of releases, recidivists, and recidivism rates by release year.

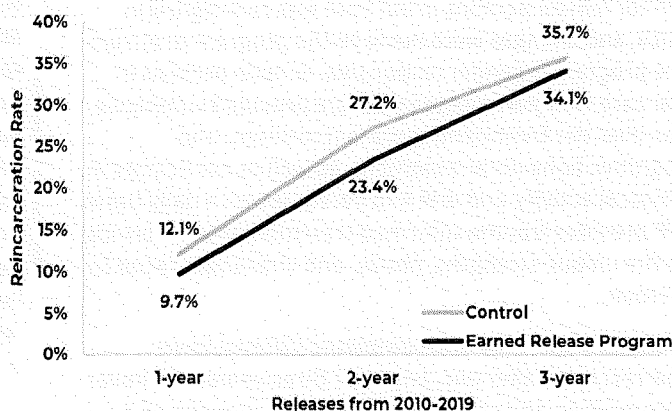
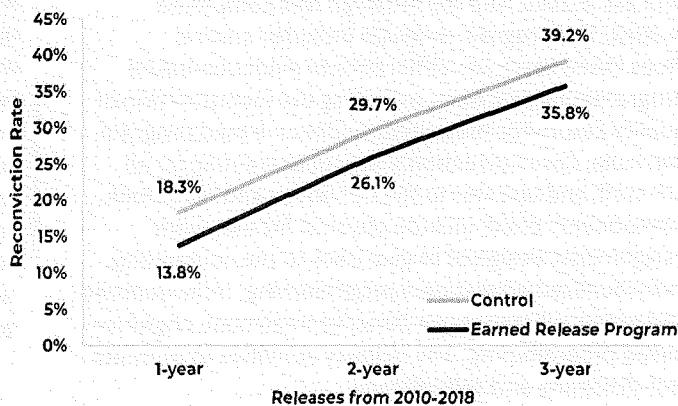
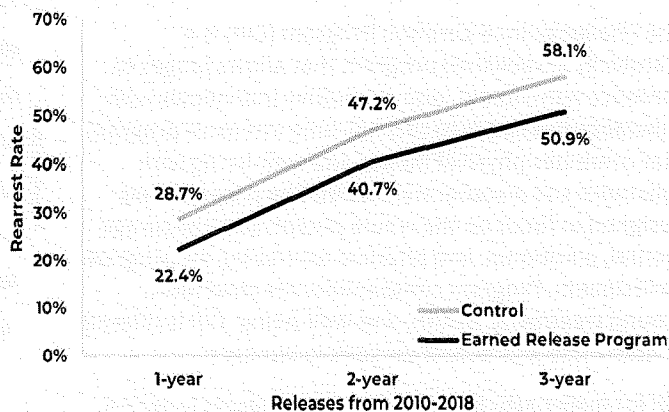


EARNED RELEASE PROGRAM

EARNED RELEASE PROGRAM

The Earned Release Program (ERP) addresses criminal thinking and substance use disorders. Driven by statute similar to CIP, ERP allows judges to sentence non-violent, non-assaultive individuals with substance use needs to this full-time, intensive program designed to reduce the incidence of future criminal behaviors. The program's mission is to enhance safety in the community by providing a continuum of substance use disorder services. At its core, ERP treatment modules include cognitive-based substance use programming, and cognitive behavioral-based curricula (such as the National Institute of Corrections' Thinking for a Change curriculum for the male population, or the Moving On curriculum for the female population), which address cognitive restructuring, social skill building, and problem solving. ERP consists of both core and ancillary/supplemental programming. Ancillary programming may consist of other primary treatment programs such as Anger Management, Employability, and Domestic Violence, as well as additional cognitive-based/cognitive-informed groups to meet dosage recommendations. All participants entering ERP are assigned core programming that addresses their criminogenic needs, identified by the COMPAS assessment tool. Community reintegration is a primary focus throughout the program, connecting persons in our care with their respective Probation and Parole agents during each program phase. ERP is facilitated by certified substance use counselors and overseen by a clinical supervisor. ERP is offered to both male and female persons in our care.

Persons in our care who completed ERP had lower rearrest, conviction, and reincarceration rates after one, two, and three years compared to their peers who met the ERP eligibility criteria, but who did not receive programming. See Appendix B, Tables 13-15 for tables displaying the number of releases, recidivists, and recidivism rates by release year.

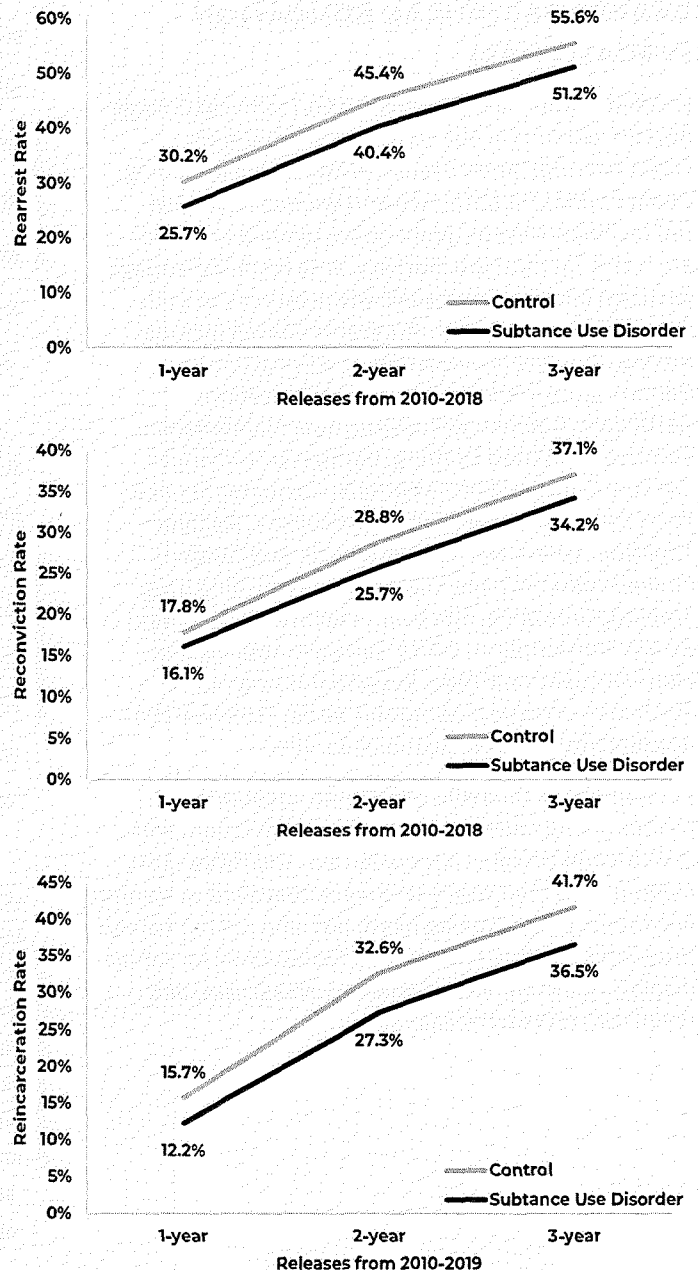


SUBSTANCE USE DISORDER

SUBSTANCE USE DISORDER

Substance Use Disorder programming addresses risky thinking and substance use that could lead to criminal behavior. The program's mission is to enhance safety in the community by providing a continuum of substance use treatment services. Substance Use Disorder programming is offered in both the male and female systems. This program consists of core components and may include additional (ancillary) groups for moderate to high risk offenders. Core components currently include Cognitive-Based Program (CBP) and Substance Use Disorder components. Ancillary groups may consist of other primary programs such as Anger Management, Employability, and Domestic Violence, as well as additional cognitive-based/cognitive-informed groups to meet dosage recommendations. Substance Use Disorder programs are facilitated by certified substance use counselors and overseen by a clinical supervisor with groups of 8 to 14 participants. This program is offered to both male and female persons in our care.

Persons in our care who completed Substance Use Disorder programming had lower rearrest, reconviction, and reincarceration rates after one, two, and three years compared to their peers who were identified as having a substance use disorder need, but who did not receive programming. The Substance Use Disorder program group excludes those who completed ERP or CIP (described earlier in the report). See Appendix B, Tables 16-18 for tables displaying the number of releases, recidivists, and recidivism rates by release year.

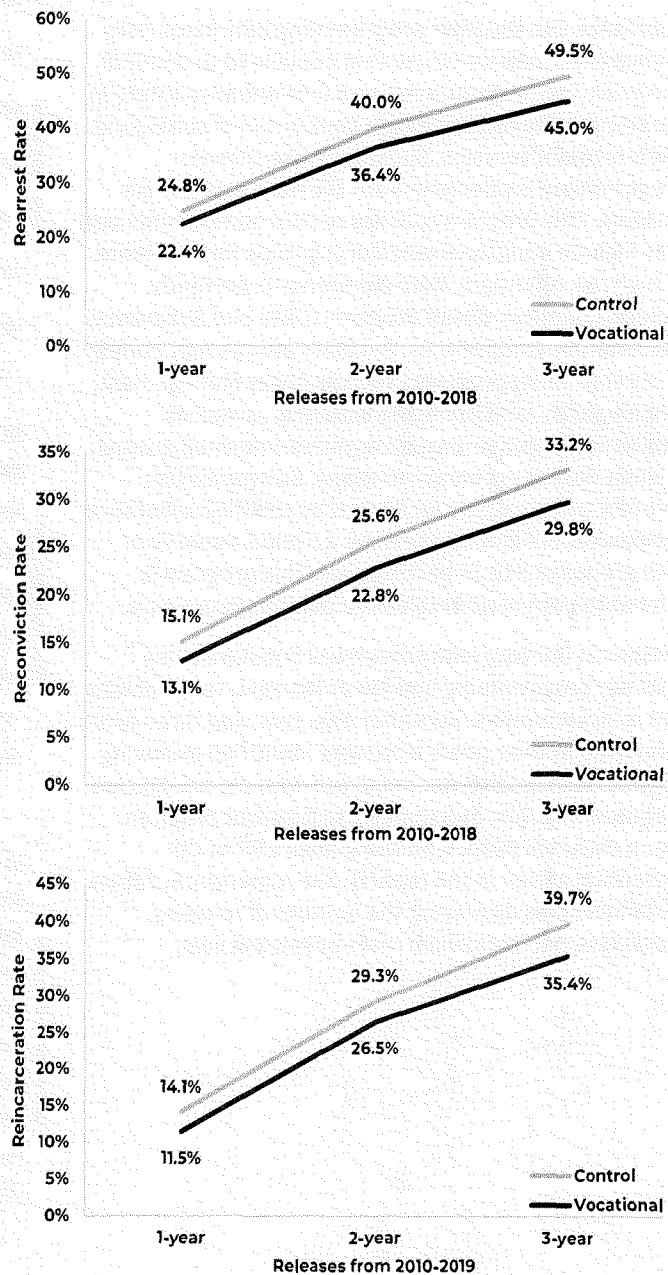


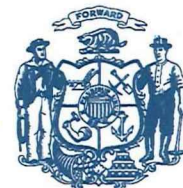
CAREER TECHNICAL EDUCATION

CAREER TECHNICAL EDUCATION (VOCATIONAL)

In collaboration with the Wisconsin Technical College System, persons in our care are provided with credit bearing Career Technical Educational training opportunities for both men and women in several DAI facilities. New program opportunities vary and are based on local job markets, area technical college program offerings, and available resources at each DAI center or institution. Programs offered include: Baking, Building Maintenance and Construction, Barbering/Cosmetology, Business Operations Certificate, Cabinetry, Masonry, Auto Maintenance, Computer Assisted Drafting, Computer Numerical Control, Construction Essentials, Customer Service, Food Service/Culinary Arts, Horticulture, Machine Tool Operations, Marine, Motorcycle and Outdoor Power Products Small Engine Repair, Welding, Dog Training/Grooming, Electromechanical Technology, Braille Transcription, Office Software Applications, Multi-Occupational Aide, Industrial Maintenance Mechanics, Practical Computer Skills, Electrical (Pre-Apprenticeship), and Custodial Service.

Persons in our care who completed vocational programming had lower rearrest, reconviction, and reincarceration rates after one, two, and three years compared to their peers who were identified as having a vocational programming need, but who did not receive programming. See Appendix B, Tables 25-27 for tables displaying the number of releases, recidivists, and recidivism rates by release year.





January 3, 2024

Chairman Wanggaard and members of the Senate Committee on Judiciary and Public Safety,

I had the honor to serve on the 2022 Joint Legislative Council Study Committee on Increasing Offender Employment Opportunities. Thank you to Chair Felzkowski, Vice-Chair Schraa, as well as fellow legislative members Senator Taylor and Representatives Stubbs and Petryk. As always, the Committee also benefited from the experiences and perspectives of the non-legislative members.

The Committee took on an ambitious task. The re-entry landscape is complicated and the needs of the individuals returning from our care are diverse and many. We learned about a great variety of policy solutions, their efficacy, and how Wisconsinites would benefit from them. One of the hardest tasks was to focus on just a few ideas. At times, I worried the effort would not result in draft legislation simply because the magnitude of the task makes it difficult to know where to start.

Senate Bill 170 is one of four pieces of legislation our Committee wrote and introduced. SB 170 is relatively straight forward – it expands which programs inside our prisons are eligible under an existing program called the Earned Release Program (ERP), which is also titled the Wisconsin Substance Abuse Program and is defined in Wis. Stat. §305.05.

ERP has existed for decades and operates as follows:

First, an individual defendant must be convicted of and sentenced under an eligible offense, which is defined in Wis. Stat. §305.05(3)(a)1 as:

The inmate is incarcerated regarding a violation other than a crime specified in ch. 940 or s. 948.02, 948.025, 948.03, 948.05, 948.051, 948.055, 948.06, 948.07, 948.075, 948.08, 948.085, or 948.095.

Second, the sentencing court must determine whether the individual is eligible for ERP under Wis. Stat. §973.01(3g):

The court shall, as part of the exercise of its sentencing discretion, decide whether the person being sentenced is eligible to participate in the earned release program under s. 302.05(3) during the term of confinement in prison portion of the bifurcated sentence.

Third, the individual must successfully complete qualifying substance use treatment programming. Following completion, the Department of Corrections notifies the sentencing court and the court may then modify the individual's term of incarceration. It is important to note that any decrease in the confinement period will be tacked onto the individual's community supervision term to be completed after release.



Senate Bill 170 retains all of current law's procedure and eligibility, but adds the completion of an "employment readiness training program" for the court's consideration to reduce the individual's confinement time. An additional provision was added that would require individuals in custody to serve no less than two-thirds of their confinement time prior to being released. Like ERP, any reduction in confinement time would be added to community supervision.

At least 23 states have similar laws expressly allowing a reduction of confinement time for successful completion of education/vocation training. To ensure the new law is implemented and works as intended, the bill also requires public reports, filed with the Legislature, documenting the recidivism rates of participants.

Senate Bill 170 is a measured, but important step in safely addressing Wisconsin's growing prison population. Covid-19 caused a major change to prisons and prison populations across the country. Wisconsin, like other states, has seen a reduction in prison population during the height of the virus and a steady growth in the prison population since.

As of Friday, December 29th, 2023, we had roughly 22,000 individuals in our care. That is up from 20,600 at the end of 2022 and up from the 20,000 at the end of 2021. During the current budget debate, the Legislative Fiscal Bureau estimated our prison population to grow over the biennium to 23,490 at the end of fiscal year 2024-25. As a result, the Legislature approved an increase of \$12 million to fund additional contract beds (on top of the base \$19 million) to handle the increased need beyond the capacity our prisons can hold. Over this biennium we will pay \$31 million to house individuals in local jails because there is no more room in our prisons.

If this growth continues unabated we will face even more difficult and more expensive decisions. Senate Bill 170 will help avoid those undesired choices by building off of a working system and targeting job readiness and employment skills to meet the needs of employers across our state. This is a win-win for Wisconsinites.

Thank you for the opportunity to testify in support of Senate Bill 170 and I am happy to answer any questions you have.

Sincerely,

A handwritten signature in black ink, appearing to read "Evan Goyke".

State Representative Evan Goyke
18th Assembly District

Department of Corrections
 Persons in Our Care on 12_29_2023

TOTAL PROBATION/PAROLE POPULATION (as of 10/31/2023)	63,149
TOTAL PERSONS IN OUR CARE (PIOC) POPULATION (DAI)	22,043
TOTAL FACILITY YOUTH POPULATION (DJC)	86
TOTAL FIELD YOUTH POPULATION (DJC)	116

	Design Capacity ¹	Total Population ²	DAI	DCC
ADULT INSTITUTIONS	17,565	22,108	22,043	65
Institutions, Centers, MSDF AODA, PIOC's & Trans. Units	16,950	21,493	21,465	28
WRC	399	399	362	37
Contract Facilities	216	216	216	0
SUBTOTAL-MALES (ALL LOCATIONS)	16,598	20,615	20,563	52
MAXIMUM SECURITY INST.	3,838	4,444	4,438	6
Dodge	1,165	1,652	1,646	6
Waupun	882	904	904	0
Green Bay	749	993	993	0
Columbia	541	453	453	0
WSPF	501	442	442	0
MEDIUM SECURITY INST.	9,104	11,059	11,044	15
Fox Lake	979	1,311	1,311	0
Jackson	837	1,004	1,004	0
Kettle Moraine	783	929	929	0
New Lisbon	950	1,052	1,052	0
Oshkosh	1,494	2,050	2,050	0
Racine	1,171	1,660	1,645	15
Racine Youthful Offender Correctional Facility	400	460	460	0
Redgranite	990	1,023	1,023	0
Stanley	1,500	1,570	1,570	0
MINIMUM SECURITY INST.	2,621	3,962	3,962	0
Chippewa Valley Corr. Treatment Facility	450	491	491	0
Oakhill	409	789	789	0
Prairie du Chien	326	520	520	0
Sturtevant Transitional Facility	150	147	147	0
Center System	1,286	2,015	2,015	0
Black River	66	130	130	0
Drug Abuse Center	125	286	286	0
Felmers O. Chaney	100	110	110	0
Flambeau	50	95	95	0
Gordon	52	85	85	0
John Burke Correctional Center	186	291	291	0
Kenosha	60	116	116	0
Marshall E. Sherrer	32	58	58	0
McNaughton	55	110	110	0
Oregon	78	96	96	0
Sanger B. Powers	60	120	120	0
St. Croix	94	106	106	0
Thompson	118	121	121	0
Winnebago	210	291	291	0

	Design Capacity ¹	Total Population ²	DAI	DCC
CONTRACT BEDS	216	216	216	0
Interstate Corrections Compact (ICC) (up to 50 beds)		32	32	0
Columbia County Jail		0	0	0
Douglas County Jail		0	0	0
Dunn County Jail		0	0	0
Fond du Lac County Jail		1	1	0
Forest County Jail		0	0	0
House of Correction		0	0	0
Jefferson County Jail		0	0	0
Juneau County Jail		0	0	0
Langlade County Jail		0	0	0
Marquette County Jail		0	0	0
Oneida County Jail		61	61	0
Outagamie County Jail		0	0	0
Ozaukee County Jail		12	12	0
Racine County Jail		39	39	0
Rock County Jail		0	0	0
Sauk County Jail		0	0	0
Vernon County Jail		50	50	0
Vilas County Jail		21	21	0
Winnebago County Jail		0	0	0

WRC (DDES FACILITY)	399	399	362	37
(Female)	40	40	34	6
(Male)	359	359	328	31

Milwaukee Secure Detention Facility - PIOC Beds	462	577	577	0
(Female)	2	2	2	0
(Male)	460	575	575	0

	Design Capacity ¹	Total Population ²	DAI	DCC
SUB-TOTAL FEMALES (ALL LOCATIONS)	967	1,493	1,480	13
DODGE INFIRMARY		0	0	0
TAYCHEEDAH	653	862	860	2
MINIMUM SECURITY INST.	272	589	584	5
Milwaukee Women's Center	42	101	101	0
Robert E. Ellsworth Center	230	488	483	5

	Total	Male	Female
Occupied Beds per s.301.055	21,992	20,504	1,488

	Total	Probation	Parole
ADULT COMMUNITY CORRECTIONS			
Adults on Community Supervision as of 10/31/2023	63,149	40,878	22,261

	Design Capacity ¹	Total Population ²	DAI	DCC
PROBATION AND PAROLE IN CUSTODY		764	0	764
Milwaukee Secure Detention Facility - Community Corr. Beds	578	317	0	317
(Male)	538	296	0	296
(Female)	40	21	0	21
Wisconsin County Jails - Short Term Sanctions	500	447	0	447

	Total Capacity ⁴	Total Supervised Population	
DIVISION OF JUVENILE CORRECTIONS			
Total On-Grounds Population³	603	86	
SUBTOTAL-MALES	574	78	
Lincoln Hills School	519	52	
Mendota Juvenile Treatment Center	43	21	
Grow Academy	12	5	
SUBTOTAL-FEMALES	29	8	
Copper Lake School	29	8	
	Total	Males	Females
Juvenile Field Population⁵	116	110	6
Community Supervision	92	89	3
Milwaukee	61	61	0
Madison	18	17	1
Wausau	13	11	2
Fox Valley	0	0	0
Interstate Compact Youth (From other States)	24	21	3
Milwaukee	8	6	2
Madison	10	9	1
Wausau	6	6	0
Fox Valley	0	0	0

¹ Design capacity is defined as the original design capacity of the institution, based on industry standards, plus modifications and expansions. It excludes beds and multiple bunking that were instituted to accommodate crowding.

² Population counts include PIOC's physically present at 12:00 A.M. plus reported beds held. This reporting policy applies to all DOC adult PIOC facilities and both in- and out-of-state contracted beds.

³ Midnight Count includes all juvenile Persons in Our Care (on & off grounds) for each institution at 12:01 A.M. Friday morning.

⁴ Total Capacity is a count of every bed in the facility, including security beds. Beds in security are not used to house general population youth.

⁵ Population includes youth who are AWOL, youth who are being supervised in other states, and DJC youth that are currently in an Adult Facility.



Legislative Fiscal Bureau

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June 6, 2023

Joint Committee on Finance

Paper #295

Inmate Populations, Prison Contract Bed Funding, and Population and Inflationary Costs (Corrections -- Adult Institutions)

[LFB 2023-25 Budget Summary: Page 134, #1, #2, and #3]

CURRENT LAW

The Department of Corrections operates 36 adult correctional facilities, including 20 correctional institutions and 16 correctional centers. In addition, Corrections utilizes prison contract beds to place state inmates in county jails and federal facilities. The Department also places individuals at the Department of Health Services' Wisconsin Resource Center (WRC) for inmates in need of specialized mental health treatment.

DISCUSSION POINTS

1. For each budget cycle, the Department of Corrections projects the total prison population for the upcoming biennium. Generally, population-related costs are budgeted based on the total operating capacity of the prison system, including food, variable non-food costs (such as clothing, laundry, inmate wages, and other supplies), and inmate health care. To the extent that prison population projections exceed the total operating capacity or special circumstances are present that would necessitate quarantine/isolation of inmates, contract bed funding is provided for placements in certain Wisconsin county jails.

A. Population Projections and Variable Costs

2. The COVID-19 pandemic drastically impacted adult prison populations in 2019-20 and 2020-21 (which had a corresponding decrease to variable cost base funding for the current biennium). However, the total adult prison population has been steadily increasing since Summer, 2021, including more rapid growth in more recent months. As of May, 2023, the adult prison population totaled 21,200, including 19,807 males and 1,393 females.

3. For prior budgets, the Department of Corrections reviewed its monthly growth rates to determine the appropriate rate to estimate future populations. Regarding the inmate population for 2023-25, the Department followed a similar model, and projected a median monthly growth rate of 0.242% for males and 0.428% for females based on actual Division of Adult Institutions (DAI) population data over a 12 month period (through June, 2022). The growth rate was then applied to the DAI population on June 24, 2022. Using the growth rates identified, the Department forecasted an average daily population (ADP) of 21,097 inmates in 2023-24 and 21,751 inmates in 2024-25. Under the budget bill, the Department of Administration utilized Corrections' estimates.

4. Approximately 10 more months of population data (July, 2022, through April, 2023) is available to reevaluate the population estimates. Populations have grown significantly in the past several months as courts are working to address the backlog of cases incurred during the pandemic. The updated population numbers over a 12 month period (through April 28, 2023) results in a growth rate projection of 0.918% for females and 0.592% for males. If growth continued at this rate throughout the biennium, the DAI population would reach over 24,800 by July, 2025, which is higher than the DAI population has ever been (the average daily adult prison population was at its highest point in 2018-19, at 24,116 individuals; the average daily adult prison population in 2021-22 was 20,138 individuals).

5. While recent growth patterns have been sizable, it is likely that the updated growth rate is too high to continue for the duration of the 2023-25 biennium, and that the recent rapid growth is likely temporary (at some point, the courts will catch up and prison populations will level out and grow at a slower rate).

6. Aside from the court backlog, one additional potential factor that may influence the population projection in the 2023-25 biennium is 2021 enacted legislation, which increased penalties and created additional crimes. These legislative changes may eventually lead to increased prison populations to the extent that offenders either serve new or longer sentences.

7. In reestimating the populations, the projection assumes that the current observed growth rate will continue for the first six months of 2023-24, then will slow by 25% in each of the subsequent six months (75% of the growth rate in January, 2024, 50% in July, 2024, and 25% in January, 2025) as court dockets return to pre-pandemic norms. This assumption is based on the fact that there are more than 40,000 pending felony cases as of May 1, 2023, compared to pre-pandemic pending felony cases of approximately 27,000 in early-2020, and the fact that the number of felony cases has been generally trending downwards in recent months. The assumption, however, is based on pending cases statewide, and specific counties may have a higher or lower backlog of cases, which could necessitate a longer/shorter time period to "return to normal" (for example, as of May 1, 2023, Milwaukee County had 5,043 pending felony cases, but Menominee County only had 53 pending felony cases).

8. Utilizing the above growth rate assumptions, the reestimate assumes a 2023-24 endpoint (June 30, 2024) adult institutional population of 22,851 (1,536 females and 21,315 males) and 23,490 at the end of 2024-25 (1,600 females and 21,890 males). The corresponding ADP would be 22,242 in 2023-24 (1,475 females and 20,767 males) and 23,249 in 2024-25 (1,576 females and 21,673 males).

9. While the reestimated population growth rate is significantly higher than the rate used by Corrections and the Administration, it is based on more updated data and tapers based on slower growth rates throughout the biennium. At no point in the biennium would the estimated female population exceed the female adult prison capacity. However, the estimated male population is anticipated to exceed the adult male prison capacity beginning approximately in November, 2023. As noted by the table below, the 2023-24 revised male population estimate exceeds the DAI male budgeted capacity by 212, and the 2024-25 revised male population estimate exceeds the DAI male budgeted capacity by 1,118.

Total Adult Male Correctional Facility Average Daily Populations

	<u>Males</u>
2023-24 Revised Estimated Populations	20,767
2023-24 DAI Capacity*	20,555
2023-24 Number of Inmates Exceeding Capacity	- 212
2024-25 Revised Estimated Populations	21,673
2024-25 DAI Capacity*	20,555
2024-25 Number of Inmates Exceeding Capacity	-1,118

*Includes Institutions (including the Wisconsin Resource Center), Centers, and 32 Federal contract beds.

10. While the Department pays a daily contract bed rate for state inmates serving sentences in Wisconsin County jails, the Department is not responsible for the variable costs of inmates in contract beds. The reestimated populations would require approximately 212 inmates in 2023-24 and 1,118 inmates in 2024-25 to be housed in Wisconsin contract beds (discussed later in this paper) for overcrowding purposes in the biennium. The Department also places inmates at the Wisconsin Resource Center, but the facility is operated by the Department of Health Services, and Corrections is not responsible for inmate variable costs at WRC (which has a capacity of 444 individuals annually).

11. While the Department does not pay variable costs for individuals in contract beds or at the WRC, the Department is responsible for the food and health costs of approximately 425 individuals annually on temporary probation, parole, or extended supervision holds in adult correctional institutions. In combination, the adult institutional populations for which Corrections must provide variable cost funding would be lower than the total reestimated population.

12. The population estimate under the bill would result in corresponding population and inflationary cost changes of -\$1,674,600 GPR in 2023-24 and \$13,409,600 GPR in 2024-25 to reflect population-related cost adjustments for prisoners in DAI facilities including: (a) food and food equipment costs; (b) variable non-food costs, such as inmates wages, bedding, clothing, kitchen utensils, and other supplies; and (c) inmate non-food health services. The recommendation for inmate health services assumed that per capita adult inmate costs will increase from an estimated \$5,089 in 2022-23 to \$5,474 in 2023-24 and to \$5,890 in 2024-25. Health care costs include pharmaceutical

costs, third party administrator costs, and contracting costs with the University Hospital and Clinics, the University of Wisconsin Medical Foundation, Waupun Memorial Hospital, St. Agnes Hospital, and other community hospitals.

13. Using the reestimated inmate average daily populations and adjusting for contract beds and WRC inmates, associated variable costs would be \$6,158,200 GPR in 2023-24 and \$16,776,800 GPR in 2024-25 as follows: (a) \$5,987,100 GPR in 2023-24 and \$6,761,100 GPR in 2024-25 for food and food equipment costs; (b) \$2,929,600 GPR in 2023-24 and \$3,055,500 GPR in 2024-25 for variable non-food costs; and (c) -\$2,758,500 GPR in 2023-24 and \$6,960,200 GPR in 2024-25 for non-food health services. [Alternative A1]

14. However, in addition to population changes that have occurred since the introduction of the budget bill, Corrections has incurred increased inmate healthcare costs due to an inability to hire contracted medical staff at the preexisting pay rates. For example, between September, 2022, and March, 2023, 67 applications for nursing positions were received, but 42 of the candidates were only willing to be hired with escalated rates. Given the high vacancy rates in medical positions within Corrections, in March, 2023 (subsequent to the introduction of the budget bill), the Department agreed to post certain medical positions at a higher pay rate. The change in pay seems to have increased interest, as an additional 142 applications for nursing positions have been received between March and early-May, 2023. The rate changes vary by job title, but range from a 33.3% increase (physicians, going from \$180 per hour to \$240 per hour) to a 100% increase (certified nursing assistants, going from \$25 to \$50 per hour). To account for the inflated costs, the Committee could additionally provide \$5,675,100 GPR annually to the costs identified in Alternative A1. In total, with the inflated healthcare costs, the variable costs relative to the reestimated population would require \$11,833,300 GPR in 2023-24 and \$22,451,900 in 2024-25. [Alternative A2]

B. Contract Beds

15. The Department currently contracts with counties to house state inmates at a per diem rate of \$51.46 for all county facilities. Further, for individuals under the age of 18 who have been convicted as adults, the Department contracts with the Division of Juvenile Corrections (DJC) at a statutory daily rate (for an estimated 10 beds per year). The Department also currently contracts for temporarily lock-up and federal beds at a per diem rate of \$60. Base funding for the contract bed appropriation is \$19,296,300 (note that in 2021, the base budget for the contract bed appropriation was \$32,890,800 GPR, but was reduced in the 2021-23 biennium as a result of pandemic-related population decreases).

16. In total, the budget bill projects a need of 618 contract beds annually. These beds include: (a) 100 beds annually for state inmates in Wisconsin County jails; (b) 500 beds annually used by the Division of Community Corrections (DCC) for extended supervision sanctions; and (c) 18 beds annually the Department would use for inmates in intergovernmental facilities, adult inmates in DJC facilities, and temporary lock-ups of inmates from correctional centers. For the purposes of assessing contract beds for adult institutional inmates, the focus of this paper is on the 100 beds for DAI inmates in Wisconsin Counties.

17. Based on the population estimates under the bill, additional contract beds would largely

not be needed for overcrowding purposes, as the original population projection remains below the institutional capacity until approximately June, 2025. Instead, under the bill, the 100 contract beds would be provided annually to allow Corrections flexibility to manage the DAI population, as needed. The additional contract beds, beyond those needed for overcrowding, could be used for: (a) isolation/quarantine purposes; and/or (b) inmates with a short period of time remaining on their prison sentence.

18. According to Corrections, a "quarantine" bed separates and restricts the movement of people who were potentially or directly exposed to a contagious disease to see if they become sick. An "isolation" bed separates sick people experiencing symptoms related to a contagious disease from people who are not sick. When an outbreak occurs among the correctional population, it often impacts entire housing units or institutions, including Corrections staff, and is difficult to contain. In 2021-22, Corrections utilized an average of 210 contract beds per day, statewide, to flexibly manage the DAI population, even as total populations largely remained below the DAI capacity.

19. However, due to the population reestimate and as noted by the earlier table, an estimated 212 Wisconsin county contract beds would be needed in 2023-24 and 1,118 Wisconsin county contract beds would be needed in 2024-25 for overcrowding purposes alone. Funding 730 contract beds in 2023-24 (including 212 Wisconsin county contract beds) and 1,636 contract beds in 2024-25 (including 1,118 Wisconsin county contract beds) would require adjustments of -\$959,100 GPR in 2023-24 and \$16,089,000 GPR in 2024-25. [Alternative B1] This alternative provides 112 more Wisconsin county contract beds in 2023-24 and 1,018 more Wisconsin county contract beds in 2024-25 when compared to the budget bill, but unlike the budget bill, the Wisconsin county contract beds identified in Alternative B1 were based only on anticipated DAI overcrowding.

20. However, the Department's current contracts with Wisconsin counties allow for an approximate maximum of 650 total contract beds. If 1,118 county contract beds were necessary in 2024-25, the Department would need to reach out to additional counties to gauge interest in contracting for beds, add additional beds to existing contracts (if possible), and/or find another solution to house the overcrowded inmates, beyond the 650 currently available contract beds in counties (for example, the Department may be able to create temporary space in existing DAI facilities, so long as staffing, safety, and equipment allows -- this option, however, would require a corresponding increase in variable costs). Beyond the uncertainty of inmate placement, the population at the end of the biennium is anticipated to be higher than it ever has been. Note that while the estimate is based on recent trends, it is unknown exactly what the population will be at the end of the biennium. Given these uncertainties, the Committee could adopt Alternative B1, but for 2024-25, place \$8,790,400 GPR of the funding in the Committee's supplemental appropriation. [Alternative B2] This amount corresponds to 468 contract beds, which represents the difference in anticipated beds needed in 2024-25 (1,118) and current number of beds counties are willing to contract for (650). The Department could request the funding at a later date, once it is known where the additional inmates are able to be housed and if the population trends support the need for additional beds.

21. Similar to Alternative B1, Alternative B2 would also provide funding to the Department for the extended supervision sanctions, intergovernmental facilities, adult inmates in DJC, and temporary lock-up contract beds identified in discussion point 16.

22. In addition to Alternatives B1 or B2, the Committee may choose to provide funding for a greater number of Wisconsin county contract beds for additional flexibility in managing the DAI populations, beyond just for overcrowding (for example, if quarantine/isolation of inmates would be appropriate). Given that the population reestimates anticipate male adult facilities to hit the maximum capacity in the 2023-25 biennium, any contagious illness outbreak would likely be more difficult to contain if inmates cannot be isolated/quarantined.

23. If the Committee wished to provide 50 more contract beds annually for added population management flexibility, the total contract bed costs would increase by \$941,700 GPR in 2023-24 and \$939,100 GPR in 2024-25. [Alternative B3a.]. An additional 100 beds annually, as recommended under the budget bill, would increase contract bed costs by \$1,883,400 in 2023-24 and \$1,878,300 GPR in 2024-25 [Alternative B3b.] The amounts identified in both B3a. and B3b. would be placed in the Committee's supplemental appropriations, given that: (a) populations may not grow as anticipated, and contract beds provided for overcrowding could instead be utilized for any additional population management needs; and (b) the number contract beds provided for overcrowding are significantly more than recommended under the budget bill (which projected a lower population growth based on less recent data).

ALTERNATIVES

A. Population Projections and Variable Costs

1. *Population Reestimate.* Reestimate average daily populations in adult correctional facilities to be 22,242 in 2023-24 and 23,249 in 2024-25, and provide \$6,158,200 GPR in 2023-24 and \$16,776,800 in 2024-25 for associated inflationary costs.

ALT A1	Change to Base
GPR	\$22,935,000

2. *Population Reestimate and Increased Healthcare Staffing Contracting Costs.* Reestimate average daily populations in adult correctional facilities to be 22,242 in 2023-24 and 23,249 in 2024-25, and provide \$11,833,300 GPR in 2023-24 and \$22,451,900 GPR in 2024-25 for associated inflationary costs, including anticipated increased expenses for healthcare.

ALT A2	Change to Base
GPR	\$34,285,200

B. Contract Beds

1. *Contract Beds Based on Population.* Provide adjustments of -\$959,100 GPR in 2023-24 and \$16,089,000 GPR in 2024-25 for 730 contract beds in 2023-24 (including 212 Wisconsin county contract beds for overcrowding) and 1,636 contract beds in 2024-25 (including 1,118 Wisconsin county contract beds for overcrowding).

ALT B1	Change to Base
GPR	\$15,129,900

2. *Contract Beds Based on Population with Funding Partially Reserved in 2024-25.* Provide the amount of contract bed funding identified in Alternative B1, but place \$8,790,400 GPR of the funding in 2024-2025 (equivalent to 468 Wisconsin county contract beds) into the Committee's supplemental appropriation. The Department of Corrections would be provided -\$959,100 GPR in 2023-24 (including 212 Wisconsin county contract beds for overcrowding) and \$7,298,600 GPR in 2024-25 (including 650 Wisconsin county contract beds for overcrowding) under this Alternative. The Department could request release of additional contract bed funding from the Joint Committee on Finance under s. 13.10.

ALT B2	Change to Base
GPR	\$15,129,900

3. *Flexible Contract Bed Funding Placed in Reserve.* In addition to Alternatives B1 or B2, funding could be provided in the Committee's supplemental appropriation for additional contract beds to allow the Department added flexibility in managing adult prison populations. Note that Alternative B3a. or B3b. can only be chosen in addition to either Alternative B1 or B2, and not as stand-alone options. In addition, note that the change to base amounts identified with Alternatives B3a. and B3b. reflect only the additional increase in costs (and not also the costs associated with either Alternative B1 or B2).

a. *50 Additional Beds.* \$941,700 GPR in 2023-24 and \$939,100 GPR in 2024-25 for 50 additional contract beds annually for miscellaneous purposes in the Committee's supplemental appropriation. The Department could request release of additional overtime funding from the Joint Committee on Finance under s. 13.10.

ALT B3a.	Change to Base
GPR	\$1,880,800

b. *100 Additional Beds.* \$1,883,400 GPR in 2023-24 and \$1,878,300 GPR in 2024-25 for 100 additional contract beds annually for miscellaneous purposes in the Committee's supplemental

appropriation. The Department could request release of additional overtime funding from the Joint Committee on Finance under s. 13.10.

ALT B3b. Change to Base	
GPR	\$3,761,700

Prepared by: Shannon E. Huberty



WISCONSIN DEPARTMENT OF CORRECTIONS

Governor Tony Evers / Secretary Kevin A. Carr

To: Chairman Wanggaard, Senate Committee on Judiciary and Public Safety

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

Date: January 3, 2024

RE: Support for Senate Bill 170: *Relating to: earned release for inmates upon the completion of an employment readiness training program and granting rule-making authority.*

The Department of Corrections (DOC) has been a vocal advocate for increasing resources and programs to assist the Persons in our Care with finding and maintaining meaningful employment, and becoming law-abiding members of their communities. The Legislative Council Study Committee on Increasing Offender Employment Opportunities sought out creative solutions to assist the agency in meeting these goals. The committee's thoughtful attention and recognition of the barriers in place for justice-involved individuals assisted in drafting bills that offer promising practices for our state, such as SB-170.

DOC currently operates an Earned Release Program (ERP) for individuals with substance use disorders (SUD). The current program is used as a mechanism to incentivize justice-involved individuals to engage in evidence-based programming and treatment, which upon completion, offers early release from incarceration to serve their remaining time on community supervision.

Some form of ERP has existed in Wisconsin since the 1980s, with the current statute written in 2003. The law indicates a person is eligible for consideration for early release under ERP if they meet the following criteria:

- The conviction, and associated incarceration, is for non-violent, non-assaultive offense
- The person is serving a bifurcated sentence (portion in confinement, portion on supervision)
- The person has identified substance abuse issues and treatment needs

In addition to successfully operating an earned release program, over the last decade, DOC has worked to implement evidence-based practices to reduce recidivism and increase employability for the Persons in our Care through strategies and programs such as:

- Windows to Work (W2W)
- Career and Technical Education (CTE) Initiatives
- DOC Mobile Labs
- Community Corrections Employment Program (CCEP)
- Institution Job Centers

DOC has a well-established foundation in place with SUD ERP. Incorporating DOC's employment readiness strategies into the ERP framework, and adding an earned release program related to employment readiness is a logical next step for our agency and our state. Doing so will benefit employers by helping to fill in-demand jobs in our communities. It will also save taxpayers approximately \$40,000 per person for every year we are able to reduce the length of incarceration and safely transition them to community supervision. Finally, it will help the Persons in our Care acquire employability skills to assist them in providing for themselves and their families upon release, while connecting them to their community in a meaningful way.

DOC is grateful to the study committee for seeking out information from our agency to identify the needs of the population, and believes this bill represents how bipartisan efforts can make a positive difference. DOC offers their support for SB-170 and looks forward to working with members of this legislature and our partner agencies as it moves forward.



WISCONSIN CATHOLIC CONFERENCE

TO: Senator Van Wanggaard, Chair
Members, Senate Committee on Judiciary & Public Safety

FROM: Tia Izzia, Associate Director for Human Life & Social Concerns

DATE: January 3, 2024

RE: Support for Senate Bill 170 Earned Release

The Wisconsin Catholic Conference (WCC), the public policy voice of the Catholic bishops of Wisconsin, urges you to support Senate Bill 170, which offers incarcerated individuals the opportunity for earned release upon the completion of an employment readiness training program. We thank all the members of the Study Committee on Increasing Offender Employment Opportunities for helping to bring this bill forward.

Others here before the committee today will speak to how this bill will help build supports for people exiting incarceration. What the WCC would like to speak to is the paramount importance of reintegrating those involved with the criminal justice system back into our communities.

In 1998, Wisconsin's Catholic bishops convened a 15-member Task Force on Corrections to review the state's criminal justice system. The Task Force included a formerly incarcerated person, several crime victims, a former Supreme Court Justice, the director of a community program that helps place formerly incarcerated persons in jobs and housing, an assistant district attorney for Milwaukee County, a prison chaplain, a retired county sheriff, a former probation officer, and priests who ministered to both the incarcerated and to victims. The Task Force heard testimony from Department of Corrections officials, incarcerated persons, victims of crime, theologians, and advocates for judicial and prison reform.

With the findings of the Task Force, the bishops then published *Public Safety, the Common Good, and the Church: A Statement on Crime and Punishment in Wisconsin*. Their statement called for a statewide evaluation of criminal justice policies to determine how they convey respect for the human person, serve the common good, exercise an option for the poor and marginalized, serve the end of restoration, and foster the principle of solidarity among all in the community. As they stated: "Policies must be assessed in terms of their capacity to assure that offenders will live a productive and peaceful life in the community to which they return."¹ Nearly 25 years after this report was published, and after countless efforts to improve Wisconsin's criminal justice system, much remains to be done. All too often, men and women are released from jails and prisons with little, if anything, to their name, and without a healthy community to call home.

Everyone deserves the opportunity to participate in dignified work. Yet, when exiting incarceration, many individuals have a massive gap in their resume, a criminal record, fewer social connections, and perhaps little work experience. In the words of Pope Francis: "Many times, once released from prison,



the person has to deal with a world that is foreign to him, and which also does not recognize him as worthy of trust, even going so far as to exclude him from the possibility of working to obtain a decent livelihood. Preventing people from recovering the full exercise of their dignity, these people remain once again exposed to the dangers that accompany a lack of opportunities for development, amidst violence and insecurity.”²

This bill will help people returning to our communities to build a career, provide for their families, and contribute to the common good of our communities. Senate Bill 170 will make reentry in Wisconsin more humane and individuals more successful. This bill demonstrates what can be accomplished through careful deliberation, stakeholder involvement, and bipartisan cooperation. We thank you for hearing this bill today and respectfully urge you to support it.

¹ *Public Safety, the Common Good, and the Church: A Statement on Crime and Punishment in Wisconsin by Wisconsin's Roman Catholic Bishops.* Wisconsin Catholic Conference, 1999.

² *Pope Francis Speech to the International Meeting for Regional and National Managers of Prison Pastoral Care.* November 8, 2019. https://www.vatican.va/content/francesco/it/speeches/2019/november/documents/papa-francesco_20191108_pastorale-carceraria.html.

January 5th, 2024

Chairman Wanggaard and Committee Members,

Thank you for the opportunity to testify at the hearing on Wednesday January 3rd to offer my reserved support for SB170 based upon concerns over application and the DOC's authority to promulgate rules. Per your request, I am supplementing my oral testimony with this written response. At the end of this response I have included a draft of specific statutory language I would for the Committee to consider adopting.

The intent and outcomes for which SB170 was drafted is worthwhile and therefore a most certainly needed piece of legislation. The bill has every potential to increase the public safety, mitigate the existing challenges and failures of our current correctional system, and equally important, demand accountability from incarcerated people to use their confinement to facilitate personal growth, rehabilitation, and reentry success. SB170 will, if drafted to demand specific and targeted accountability from the Department of Corrections, the judiciary, and incarcerated individuals, will create meaningful avenues to achieve the goals of our criminal-legal-correctional system.

Even so, there are several challenges within the existing language of the bill that I believe need to be remedied for SB170 to accomplish its intended aims, goals, and outcomes. Perhaps the most important of these concern the responsibilities of the DOC to develop, implement, and execute the delivery of rehabilitative, programming, treatment, and reentry services for those incarcerated.

By and large, the department has, and continues to fail, in creating and carrying out systems and structures capable of providing quality services for individuals that would demand, foster, and advance commitments to authentic rehabilitation and reentry success. Under current law, the existing earned release program is one the department cannot even effectively deliver. We have thousands of men and women who are statutorily eligible, yet the overwhelming majority are not even offered the program until, on average, s/he is eighteen months away from release. There are currently thousands of men and women who are presently eligible, but remain stuck precisely because the department consistently refuses to leverage the resources (technological, community, personnel), that would offer treatment the courts deemed both necessary and available to them. And we must not overlook the fact that for the vast majority of the person's incarceration, s/he is left warehoused in a correctional facility without opportunity to partake of the very programming/treatment services that have been proven and validated as promoting authentic rehabilitation/reentry.

To assume the department has the capacity and competence to take ownership of a new initiative that reflects the intent of the legislature without incorporating specific accountability language is, frankly, naïve. The relatively effective tactic of the DOC has been to con the legislature into believing it does not have enough staff, enough money, or enough resources. These claims are the absolute farthest from the truth, and I feel it important to address each one in turn.

The department's staffing need levels, specific to uniformed employees, is vastly exaggerated. I will allow the numbers to speak for themselves. The department has communicated it requires the

following uniformed staffing levels at the following facilities. Please note this number does not include security supervisors where, on average, there are about 17 per facility.

Facility	Incarcerated Population	Needed Uniform Staff
Columbia Correctional Institution (CCI) (Max)	413	303.20
Fox Lake Correctional Facility (FLCI) (Med)	1,126	330.00
Milwaukee Secure Detention Facility (MSDF) (Med)	790	290.00
Oakhill Correctional Institution (OCI) (Min)	779	210.00
Prairie Du Chein (PDCI) (Min)	501	115.00
Waupun Correctional Institution (WCI) (Max)	1,001	434
Green Bay Correctional Institution (GBCI) (Max)	950	321

The additional staffing ratios should also be noted. On average, at medium custody facilities, there is 1 uniformed employee for every 3 incarcerated people; 1 clerical/administrative support employee for every 18 incarcerated people; 1 supervisor/manager/administrator/bureaucratic functionary for every 27 incarcerated people; and 1 direct service provider (excluding health service staff) for every 41 incarcerated people.

For the facilities the department claims are so critically understaffed, the issue is not a lack of employees, but the reality is those facilities are so viciously cruel, unfit for human occupation, that people simply do not want to work in them.

As a final note about the staffing “crisis” portrayed by the DOC, and for which the legislature authorized millions more dollars to be allocated to the DOC, we are now seeing waves of clerical support staff, direct service providers, and functionaries leaving their current positions to benefit from the pay raises that are unconscionable. The consequences are that the needed rehabilitative and reentry services so allegedly “vital” to the DOC’s mission and work are being subsumed under an entirely unaccountable personnel structure the department has created and continues to advance.

As to the claims of requiring additional money and resources, these are equally false narratives. The department spends an incredibly high percentage of its programming/treatment budgetary resources into crafting operational and policy structures that severely inhibit the outcomes for which the various initiatives (i.e. educational, vocational, behavior modification) were created and designed to achieve. I will provide you with two case-in-point examples.

The Department’s current application of its educational policies preclude individuals from pursuing post-secondary academic education utilizing mainstream technology resources to support distance education. The department requires such opportunities to be formatted according to a paper-pencil correspondence model that is almost universally obsolete within institutions of higher learning. The incredibly select few **accredited** schools who continue to offer a paper-pencil distance learning format do not make financial aid available and have substantially high tuition rates. The vast majority of incarcerated people, by virtue of their confinement, are unable to participate in these programs. I would also note that UW-Platteville recently discontinued this model as they recognize

it is academically, economically, and operationally unsustainable. This means no Wisconsin school offers the model required by department policy.

The department, in a claim of advancing post-release employability, launched a multi-million dollar contract with the Department of Workforce Development meant to provide *Job Center* services within its facilities. Sounds terrific, right? The reality is that individuals are only allowed to access the *Job Center* at the three-month mark prior to release, and the entire scope of the program involves individuals accessing approved employment search engines (Indeed, Monster, Zip Recruiter, etc...) to look for and apply for jobs. The individual can also type out his/her employment documents. Once, and if lucky, twice per week, the individual can check an email controlled by the DWD contracted employee who operates as a security monitor to see if s/he received messages from potential employers. The very problem with this initiative is that these types of services are readily and easily available within existing DOC resources (facility libraries, educational classrooms).

The Department loves to provide tours to lawmakers, community members, and other external stakeholders showing off its classrooms, computer equipment, and other visually appealing resources. But again, the reality is there is a massive chasm between what the DOC purports to be providing, and what resources incarcerated people are actually receiving to support reentry and rehabilitative success. What rehabilitative/reentry good is it for a facility to have seventy-four computers that are ostensibly available to incarcerated people when, on average, 98% of those computers go unused during the day, and when over 50 of those computers are only usable to help incarcerated people file lawsuits? How does it benefit a person's rehabilitation when the department crafts statistics narrating its employment training programs are largely effective when as part of such data, those who receive government dependence are classified as employed? How does it help to have individuals warehoused for approximately 90% of their sentence, followed by two or three classes made available within the 18 months or so until s/he releases?

This question leads me to my second and final concern (for the purposes of this testimony) over this bill as it currently stands. The standard is that individuals will complete an employment readiness program, and that is deemed sufficient. As stated in my oral testimony, individuals do not generally get rehabilitated, nor does his/her reentry needs just magically become fixed overnight. It requires an ongoing process that meaningfully opens avenues of opportunity. And the wealth of research shows that when wrap-around and comprehensive services are integrated into the person's confinement, the likelihood of rehabilitation and reentry success skyrockets. It is for this reason, SB170 needs to lay out clear objective criteria defining the incarcerated individual's eligibility for early release as well as the Department's statutory responsibilities to ensure individuals can satisfy such criteria. As such, I would urge the Committee to consider the following language for inclusion into SB170.

Legislative Intent

The express intent of the legislature is that incarcerated individuals shall use their confinement to pursue avenues to foster rehabilitation and reentry success upon return to their communities. This legislation is specifically crafted to encourage personal transformation and accountability.

It is further the intent of the legislature that eligibility for, and the granting of early release, shall not be determined solely on the basis of completing a specific program and/or curriculum. Rather, the

granting of early release shall be based on ongoing and sustained engagement with a variety of rehabilitative and reentry oriented programming which reflects a genuine commitment to personal growth.

Finally, in the creation of this legislation, it is the explicit intent of the legislature to mitigate the state's burgeoning incarceration rates, and to establish a more equitable, just, and cost-effective correctional system which achieves the public safety by commitments to incarcerated person reentry and rehabilitation.

Criteria for Early Release

An incarcerated individual shall be granted early release upon having served two-thirds of their sentence, subject to the following criteria, with a requirement to meet a majority combination of the following:

- a) Demonstrated compliance with the individual's personalized case plan.
- b) Positive institutional adjustment, as evidenced by behavioral records and assessments.
- c) Ongoing engagement in educational and vocational training programs.
- d) Active participation in life skill development classes or programs.
- e) Consistent engagement with reentry training programs.
- f) Sustained participation in institution work assignments and/or volunteer activities.
- g) Regular accessing of mental health or behavioral health services, as deemed appropriate and necessary.
- h) Participation in community-led programming, facilitating a connection with community resources and support networks.

Department Mandates and Delivery Requirements

The department is mandated to provide a robust and comprehensive programmatic structure capable of facilitating the criteria outlined above. The department shall make all of the following rehabilitative, reentry, and programmatic opportunities available sufficiently in advance of an individual's eligibility date for early release so as to authentically support such eligibility, and shall assure the following are provided on an on-going and consistent basis.

The DOC shall offer comprehensive, wrap-around, and mainstream programmatic opportunities, that include, but are not limited to:

- a) Educational and academic instruction, encompassing both secondary and post-secondary opportunities that offer opportunities for the attainment of a degree or certification;
- b) Vocational, employment, and career instruction and development programs which lead to the attainment of a certification possessing intrinsic value within the mainstream workforce;
- c) Institution and Community-based work assignments (requiring appropriate custody levels), and volunteer work assignments, all of which must reflect value and transferability within the mainstream of employment;

- d) Structured faith programming which includes opportunities for ministry, skill, and behavior modification development as well as community integration.
- f) Clinical treatment services which shall include mental health and substance abuse treatment, and involve modalities including individual and group therapy/counseling, education, support groups, and therapeutic intervention.
- g) Case management/social work services which shall include at a minimum, regular meetings with the incarcerated individual, case plan development, goal planning, progress reviews, and pre-release planning.
- h) Life skill development programs that may include but are not limited to, budgeting, conflict resolution, time management consumer/home economics, recreation and leisure, cultural competence, civic literacy, emotional intelligence, relationship building, goal planning, and communications.
- i) Technology/digital literacy which shall include basic and advanced hands-on training in word processing, effectively using the internet, email, device management, and other platforms facilitating professional/employment competence.

Thank you for the opportunity to draft this written response. I would welcome the opportunity to dialogue about my testimony further, and to answer any questions, comments, or concerns you may have about this testimony and/or my recommendations.

Be well and have a great start to the New Year's!

James Wilbur

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Wisconsin

January 3, 2024

Chair Wanggaard, Vice-Chair Jacque, and Honorable Members of the Senate Committee on Judiciary and Public Safety:

The American Civil Liberties Union of Wisconsin appreciates the opportunity to provide written testimony on Senate Bill 170, Senate Bill 384, and Senate Bill 789.

ACLU-WI Supports SB-170

In Wisconsin, approximately 1.4 million people have a criminal record, which can result in many collateral consequences that can make successful re-entry a daunting task.¹ People often struggle mightily to land a stable job, secure housing, access public benefits, get an education, and more. A Wisconsin Watch report cites statistics from the Prison Policy Initiative which found that while 93% of formerly incarcerated people between the ages of 25 and 44 actively seek work, they are five times more likely to be unemployed than the average American.² Taking into account the scope and scale of our criminal legal system, mass joblessness among the 1.4 million Wisconsinites with a criminal record has profound implications for our economy.

The thoughtful work and recommendations of the Legislative Council Study Committee on Increasing Offender Employment Opportunities culminated in a package of legislation centering around addressing these obstacles faced by Wisconsinites transitioning back to the community from incarceration. As multiple presentations during Study Committee meetings illuminated, employment reduces recidivism, and incentives for individuals to seek employment matter. SB-170 is one necessary component of that package that will increase self-sustaining job opportunities for formerly incarcerated people in our state and keep our communities safe by reducing recidivism.

The Earned Release Program (ERP) has existed in some form in Wisconsin since the 1980s. Under current law, a person may be eligible for reduced confinement time converted to community supervision time if they are incarcerated for a crime other than a specified violent crime, the sentencing court deems the person eligible, and the person successfully completed a Department of Corrections (DOC) substance use treatment program.

¹ "A Fresh Start: Wisconsin's Atypical Expungement Law and Options for Reform," Wisconsin Policy Forum (June 2018), <https://wispolicyforum.org/research/a-fresh-start-wisconsins-atypical-expungement-law-and-options-for-reform/>.

² "Convictions bar Wisconsinites from many jobs, making re-entry 'a real struggle,'" Wisconsin Watch (May 29, 2021), <https://wisconsinwatch.org/2021/05/convictions-bar-wisconsinites-from-many-jobs-making-re-entry-a-real-struggle/>.

SB-170 expands this existing program to eligible individuals who complete an employment readiness training program. If the individual petitions the sentencing court to determine eligibility to participate in an employment readiness training program and the court determines the individual is eligible to participate, completion of the program provides the incentive of converting confinement time to community supervision time provided that they have served at least two-thirds of their confinement time of a bifurcated sentence prior to their release to community supervision.

Under the bill, Wisconsin would join Arkansas, California, Colorado, Delaware, Florida, Illinois, Indiana, Kansas, Kentucky, Maryland, Massachusetts, Mississippi, Nevada, New Hampshire, New Jersey, New Mexico, New York, Ohio, Oklahoma, Rhode Island, South Carolina, Tennessee, Texas, and West Virginia in authorizing a reduction of confinement time for completion of vocation or educational training programs.³ The ACLU of Wisconsin appreciates the Study Committee's work and strongly urges committee members to support this legislation.

ACLU-WI Opposes SB-384

There are roughly 159,000 immigrants living in Wisconsin who are not yet U.S. citizens—many have been living here for years or even decades.⁴ Their immigration status runs from permanent resident, DREAMER, refugee, to holders of work and student visas, as well as those who are undocumented. They work in a wide variety of jobs, including being the backbone of the state's dairy and farming industry. They live in communities throughout Wisconsin and are our neighbors, friends and family members. And all of them run the risk of being deported through some contact with the criminal justice system. In addition to exacerbating Wisconsin's jail-to-deportation pipeline,⁵ SB-384 would invite racial profiling and ultimately undermine public safety by diminishing immigrant communities' trust in law enforcement.

Similar to Arizona's "show me your papers" law that inspired it, SB-384 would create a scheme requiring local law enforcement officers to verify the immigration status of individuals stopped by police and cited, arrested, or charged, regardless of the nature of the allegations, functionally compelling all people in the state of Wisconsin, citizens and non-citizens alike, to carry identification documents on them at all times, just in case they are cited by police officers and asked to prove their citizenship or immigration status.

³ "Good Time and Earned Time Policies for People in State Prisons," National Conference of State Legislatures (December 2020), <https://documents.ncsl.org/wwwncsl/Criminal-Justice/Final-Sentence-Credit-50-State-Chart-2020.pdf>.

⁴ "immigration Data Profile for State of Wisconsin," Migration Policy Institute, <https://www.migrationpolicy.org/data/state-profiles/state/demographics/WI>.

⁵ "Report: Wisconsin's Jail-to-Deportation Pipeline," ACLU of Wisconsin (August 25, 2022), <https://www.aclu-wi.org/en/publications/report-wisconsins-jail-deportation-pipeline>.

SB-384 would require law enforcement officers to verify the immigration status of anyone who is arrested for or charged with any crime or cited for any civil infraction that may result in the imposition of a forfeiture. As the bill is written, the basis for the arrest or citation triggering SB-384's verification requirements could include allegations of disorderly conduct, truancy, underage drinking, or not wearing a seat belt. For context, municipal court statistics published by the Wisconsin Court System estimate a total of 390,004 municipal citations for civil infractions were issued in 2022 alone.⁶ The Wisconsin Department of Justice Uniform Crime Reporting Data indicates 190,300 arrests were made across the state in 2022.⁷

If an officer alleges that a person is not lawfully present based on reasonable suspicion, and the person cannot provide documentary proof of lawful presence, the officer must attempt to verify the person's immigration status with the federal government. Even if someone who is stopped by police has one of the acceptable forms of identification, local law enforcement officers are not trained to identify the validity of the items outlined in Section 1 of the bill.

While the text of the bill states, "A law enforcement officer may not consider race, color, or national origin in the enforcement of this section except to the extent permitted by the U.S. and Wisconsin Constitutions," in practice SB-384 would absolutely invite racial profiling. Law enforcement might find a reason to stop people for minor infractions based on the way they look, and then demand to see their papers. Alternatively, enforcement may stop them for an unbiased reason and then, based on appearance or accent, demand their papers and decide to subject them to a lengthy investigation of their immigration status.

By telling police officers to investigate the citizenship or immigration status of anyone they stop when they have "reasonable suspicion," the law invites police officers to rely on stereotypes when determining who is and who is not in the country lawfully. Police officers are put in the position of relying on race, ethnicity, or accent to decide whose status to investigate.

Ultimately, SB-384 undermines public safety by diminishing trust in law enforcement by immigrants and others who may be presumed to be "foreign." Immigrants will not come forward with vital information about crimes for fear that they or their family members will be subject to detention and investigation. Everyone's safety, including citizens', is put in jeopardy when victims and witnesses don't feel safe coming forward with critical information about crimes committed against them, their families, or members of the larger community. Police depend on the cooperation and trust of these communities to ensure public safety. If enacted,

⁶ "Municipal court statistics," Wisconsin Court System, <https://www.wicourts.gov/publications/statistics/municipal/municipalstats.htm>.

⁷ "UCR Arrest Data," Wisconsin Department of Justice, <https://www.doj.state.wi.us/dles/bjia/ucr-arrest-data>.

the bill would prohibit local law enforcement agencies and communities from maintaining policies that prioritize public safety and welfare over immigration enforcement.

ACLU-WI Opposes SB-789

Under current law, a government official or agency may charge a fee to a requester of public records for the actual, necessary, and direct cost incurred to locate, if the cost exceeds \$50, copy, and mail public records in response to the request. Under the ruling in the 2012 Wisconsin Supreme Court case *Milwaukee Journal Sentinel v. City of Milwaukee*, state public records law does not allow an authority to impose fees on a requester for the costs of redacting information from a record.⁸ As the opinion in the case highlighted, fees related to obtaining public records impacts access:

This case is not about a direct denial of public access to records, but the issue in the present case directly implicates the accessibility of government records. The greater the fee imposed on a requester of a public record, the less likely the requester will be willing and able to successfully make a record request. Thus, the imposition of fees limits and may even serve to deny access to government records. In interpreting the Public Records Law, we must be cognizant that the legislature's preference is for “complete public access” and that the imposition of costs, as a practical matter, inhibits access.⁹

The opinion also included text of the Wisconsin Public Records Law “Declaration of Policy”¹⁰ in its entirety.

SB-789 would authorize law enforcement and corrections agencies to charge a requester a fee for the actual, necessary, and direct cost of redacting, whether by pixelization or other means, recorded video content disclosed in response to a public records request to the extent redaction is necessary to comply with applicable constitutional, statutory, or common law. While enactment of this proposal would change the law interpreted in the case above, it would not change the reality that additional imposition of fees limits and may even serve to deny access to government records in the possession of law enforcement and corrections agencies.

Records—including reports and body camera footage—containing evidence of officer misconduct, disciplinary records, or officer use of force or other critical incidents are implicated by SB-789. While the proliferation of police worn body cameras was intended to increase transparency and accountability, especially in circumstances when an individual is killed by law enforcement, a recent investigation by Pro Publica found that release of footage had not occurred over a year after the incident in the

⁸ *Milwaukee Journal Sentinel v. City of Milwaukee*, 341 Wis.2d 607 (2012).

⁹ *Id.* at 613.

¹⁰ Wis. Stat. § 19.31.

vast majority of cases.¹¹ In some circumstances, the video was available but at a cost prohibitive fee.

In Wisconsin, one detective explicitly acknowledged that excessive fees are used as a tactic to deter public requests for police records. In an email he stated, “He said that trying to fight the release of the personnel file would be a waste of time/money and it’s rarely successful. He said many departments combat the issue by charging a high price to fill those requests, so maybe that’s something to look at in the future.”¹²

Lack of transparency and police accountability creates further distrust in law enforcement, making community engagement with law enforcement more fraught and less effective. Ultimately, proposals like SB-789 could allow law enforcement to shirk their obligation to be publicly accountable, and further erode the belief that police protect communities rather than their only their own.

¹¹ Umar Farooq, “Body Cameras Were Sold as a Tool of Police Reform. Ten Years Later, Most of the Footage is Kept From Public View,” Pro Publica (December 18, 2023),

<https://www.propublica.org/article/body-camera-videos-police-killings-remain-hidden-from-public>.

¹² Isiah Holmes, “Internal email suggests Tosa PD use high fees to ‘combat’ record requests,” Wisconsin Examiner (November 23, 2020), <https://wisconsinexaminer.com/2020/11/23/internal-email-suggest-tosa-pd-use-high-fees-to-combat-records-requests/>.