



Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #502

Supervised and Conditional Release (DHFS -- Care and Treatment Facilities)

[LFB 2001-03 Budget Summary: Page 384, #7]

CURRENT LAW

Under the *conditional release program*, the Department of Health and Family Services (DHFS) contracts for community-based services for persons who have been found not guilty by reasons of mental disease or defect and either directly placed on conditional release by the court or conditionally released from the state's Mental Health Institutes. Through the first 10 months of this fiscal year, there has been an average of 244 persons on conditional release.

The *supervised release program* serves individuals who have been committed as sexually violent persons (SVPs) and who have been released by the court to community-based treatment under the supervision of DHFS. Currently, there are eight individuals on supervised release.

The conditional and supervised release programs are supported by the same biennial appropriation. In 2000-01, \$4,473,800 GPR is budgeted to support these programs, including \$4,060,300 GPR budgeted in Act 9 and \$413,500 GPR approved by the Committee at its April 24, 2001, s. 13.10 meeting. Since both programs are supported by the same appropriation, DHFS can fund unanticipated costs for one program from surplus funds budgeted for the other program. In addition, since the programs are supported by a biennial appropriation, unanticipated costs in one year of the biennium can be funded with unspent funds budgeted in the other year of the biennium.

GOVERNOR

Provide \$572,400 GPR in 2002-03 to: (a) lease a transitional 10-bed housing facility in southern Wisconsin for sexually violent persons on supervised release (\$482,400 GPR); and (b)

fund projected increases in the cost of providing services to persons on conditional and supervised release (\$90,000 GPR).

As part of its proposed 2001-03 capital budget, the Building Commission has recommended that \$1,295,500 in general fund supported borrowing be provided to construct a community-based residential facility (CBRF) for a transitional halfway house to serve up to 12 individuals on supervised release. This facility would be a 6,500 square feet, single story structure that would include nine individual bedrooms, two apartment units, dining, recreation and support areas for up to 12 residents, staff offices and a counselor station. The facility would be designed for possible future expansion for up to 20 patients.

DISCUSSION POINTS

Current Programs

1. DHFS contracts for services provided under the conditional and supervised release programs. Currently, there are six regional contractors (Dane County, WCS-Milwaukee, ACC-Fox Valley, LSS-Northern, LSS-Western, and WCS-Southeast) that provide oversight, case management and treatment services for persons on conditional release. In 2000-01, \$3,550,300 is budgeted for these contracts. Because of the small number of persons on supervised release, DHFS contracts with individual providers for services under that program. In addition, DHFS contracts with the Department of Corrections (DOC) for supervision services provided by DOC probation and parole agents. This contract is budgeted at \$433,000 in 2000-01, and includes supervision of individuals on conditional and supervised release.

2. A portion of the costs of providing services to persons on conditional release is funded from third parties, such as medical assistance, and from income that program clients may have. The contracted agencies are required to pursue these third-party payments before billing DHFS for the cost of services.

3. The costs of the conditional and supervised release programs have increased over time due to: (a) the steady increase in the number of persons on conditional release; and (b) increases in the cost of services per client. Table 1 provides annual caseload and cost information for the program for state fiscal years 1996-97 through 2000-01.

TABLE 1

**Conditional and Supervised Release Programs
Program Costs and Clients Served
Fiscal Years 1996-97 through 2000-01**

	<u>1996-97</u>	<u>1997-98</u>	<u>1998-99</u>	<u>1999-00</u>	<u>Estimated 2000-01</u>	<u>Average Annual Increase</u>
Program Costs						
Conditional Release Provider Contracts	\$2,128,400	\$2,364,000	\$2,938,800	\$3,088,900	\$3,213,000	
DOC Contract	100,600	0	154,600	265,000	370,500	
Supervised Release Provider Contracts	<u>23,600</u>	<u>64,500</u>	<u>224,500</u>	<u>357,400</u>	<u>331,000</u>	
Total	\$2,252,600	\$2,428,500	\$3,317,900	\$3,711,300	\$3,914,500	
Percent increase over previous year		7.8%	36.6%	11.9%	5.5%	14.8%
Number of Clients						
Conditional Release	220	229	235	240	246	
Percent increase over previous year		4.2%	2.5%	2.1%	2.5%	2.8%
Supervised Release	4	5	8	9	8	
Percent increase over previous year		25.0%	60.0%	12.5%	-11.1%	18.9%
Average Cost Per Person Per Year						
Conditional Release (excludes DOC contract)	\$9,674	\$10,308	\$12,506	\$12,870	\$13,061	
Percent increase over previous year		6.6%	21.3%	2.9%	1.5%	7.8%
Supervised Release (excludes DOC contract)	\$5,893	\$12,902	\$28,063	\$39,711	\$41,375	
Percent increase over previous year		119.0%	117.5%	41.5%	4.2%	62.8%

4. Table 1 indicates that, over the last four years, total program costs have increased at an annual average rate of 14.8%. The number of persons on conditional release has increased at an average annual rate of 2.8%, and the number of persons on supervised release has increased from four in 1996-97 to eight currently. The average cost of serving clients has increased significantly -- a 7.8% annual average increase for conditional release clients and a 62.8% annual average increase for supervised release clients.

5. The state has limited opportunities to control costs under these programs. The state is responsible for providing services to persons on conditional and supervised release, and courts, rather than DHFS, determine whether a person is placed on conditional release or supervised release. If anticipated cost increases are not provided in the biennial budget, it is unlikely that the additional costs will be avoided, since this is not a discretionary service. DHFS would likely submit a request under s. 13.10 if budgeted funds were not sufficient to meet the costs of these programs.

6. Given recent trends, it may be prudent to anticipate and budget for some growth in costs for the conditional release program. Given past trends, it may be appropriate to budget

funding for the program based on a 2.5% projected growth rate in the number of clients and projected average cost increase of 3%.

7. It is very difficult to project costs and participation in the supervised release program. Costs per client rose dramatically between 1996-97 and 1999-00, but appeared to level off in 2000-01. Also, the number of persons on supervised release actually declined in 2000-01 from the previous year, as some clients were returned to institutions. However, it is likely that the number of persons on supervised release will increase, because as persons at Sand Ridge progress through the treatment program, there may be more persons that would be found by the court to be ready for supervised release. Currently, there are four patients that the courts have ordered to be placed on supervised release, but DHFS has not yet found a suitable placement. It may be reasonable to provide for growth to 10 persons in 2001-02 and 14 persons in 2002-03, and allow for a 3% annual increase in average service costs.

8. Based on the assumptions described above, the costs for the conditional and supervised release programs are projected to increase to \$4,199,900 GPR in 2001-02 and \$4,501,000 GPR in 2002-03. This would be an increase of \$139,600 GPR in 2001-02 and \$440,700 GPR in 2002-03 from the base, which is \$490,300 more than the funding provided in the bill for the 2001-03 biennium.

9. Because the conditional and supervised release programs have been operating on an accrual basis, it is possible to obtain one-time savings by moving to a cash-basis system so that DHFS would not encumber funds for bills that arrive after the end of the fiscal year for services provided in that fiscal year. Instead, the lagging bills would be paid from the following year's appropriation, as is done under the medical assistance program.

10. Section 16.52(6) of the statutes directs the Department of Administration to require agencies to budget contracts on an accrual basis by encumbering funds for the expected costs of services received but not paid in the current fiscal year. If the Committee wanted to move to a cash-basis for the conditional and supervised release program, section 16.52(6) of the statutes could be amended to specifically exclude this program from the accrual requirement.

11. The appropriation for conditional and supervised release could be reduced by \$490,300 on a one-time basis if the program was budgeted on a cash basis.

Transitional Housing Facility

12. The bill includes \$482,400 GPR in 2002-03 for DHFS to lease a transitional 10-bed housing facility in southeastern Wisconsin for SVPs on supervised release. In addition, the Building Commission approved the Department's request for \$1,295,500 in general fund supported borrowing to construct a community-based residential facility (CBRF) for a transitional halfway house to serve up to 12 individuals on supervised release.

13. DHFS indicates that this transitional facility would be licensed as a CBRF and has indicated its desire to locate the facility in a non-residential area in southeastern Wisconsin. If the

facility were constructed, DHFS would contract with a provider to operate it.

14. The Governor's proposal to build and contract for the operation of this facility is intended to address a problem DHFS has finding community placements for individuals on supervised release. DHFS cites one example of a person who was ordered by a court to be placed on supervised release in 1994, but for whom DHFS has not yet found a placement. For some cases, DHFS has been charged with contempt-of-court and has had to demonstrate that it is doing everything it can do to implement the community placement. The Department's request and the provision of funding for a transitional facility can demonstrate the state's effort to place persons ordered for supervised release.

15. DHFS has been successful in finding a placement for a few high-risk individuals. For example, the Department has used a correctional halfway house for housing a higher-risk patient. However, there are only a limited number of halfway houses in the state, and there is demand from the Department of Corrections for use of these facilities. In addition, a facility that is dedicated to serving only SVPs may be able to provide a better and more cost effective program.

16. If the state is continually unable to comply with court orders for supervised release, it is possible that eventually courts would find that an individual's constitutional rights are being violated, and may, as a consequence, order that person to be released completely from custody. Also, it is possible that a court could find that the state's sexually violent person law is unconstitutional if it continually fails to provide the appropriate level of confinement.

17. A second argument for funding the transitional facility is that such a facility can provide an intermediate step before a less-restrictive placement is made in the community. The transitional facility can provide a more secure setting to test the individual's reaction to a less-restrictive setting, and can benefit from economies of scale in providing security and treatment due to housing a number of similar individuals in one location.

18. DHFS estimates that it would cost between \$90,000 and \$135,000 annually to provide equivalent security and services for a patient who is placed in independent supervised apartment living, compared to the transitional facility. When the department housed a higher-risk patient in a correctional halfway house alone, the cost was \$135,000 annually. The cost per patient decreased to \$100,000 annually when two persons on supervised release were living in this halfway house. The Department estimates that the annual cost per patient for the proposed transitional facility would be approximately \$84,000. This figure does not include the debt service costs of building the facility.

19. If a 20-year bond for \$1,295,500 at a 5% interest rate were issued, the annual debt service costs would be approximately \$100,000.

20. DHFS intends to include alarmed doors and windows in the facility, as well as a control desk that can view all access points to the facility. Clients would receive treatment at the transitional facility.

Treatment Status of Institutionalized SVPs

21. The importance of creating and operating the transitional facility depends on the number of potential patients that might be found by a court to be appropriate for supervised release. Although a court could order a supervised release placement at any stage of the treatment program, depending on individual circumstances, persons who have worked through all of the progressive phases of the treatment program would be most likely to be ordered into supervised release.

22. The main treatment program for institutionalized SVPs has four main phases and two potential subsequent phases that continue the treatment to achieve additional risk reduction. The Department would expect that a patient would have to complete the four main phases before they would be ready for supervised release. However, completion of the four main phases may not be sufficient to warrant supervised release if there has not been sufficient risk reduction, based on individualized assessment. In addition, there are two specialty programs which adapts the program for two groups: (a) developmentally/mentally disabled; and (b) persons who are highly destructive (cognitive behavior intervention). The group that is most likely to be ready for supervised release is the rolling or extended groups.

TABLE 2

Status in Treatment Program of Persons Committed as Sexually Violent Persons

	<u>Number in Program</u>	<u>Number Waiting to Enter Program</u>
Main Treatment Program		
1. Orientation	7	
2. Enhanced Thinking Skills	10	26
3. Corrective Thinking	20	8
4. Core	48	5
5. Rolling	0	13
6. Extended	0	
Specialty Programs		
Developmentally/Mentally Disabled	26	6
Cognitive Behavior Intervention	18	
Others		
Refuse Treatment	51	
Total	<u>180</u>	<u>58</u>

Determining Supervised Release Placements

23. A factor that may be important for the decision to establish a transitional facility is

the process for determining who is placed on supervised release, as well as the community notifications requirements when a placement is made.

24. Each year an individual committed as an SVP is evaluated and the court reviews that evaluation to decide if supervised release is appropriate for that person. Local district attorneys can participate in the court review and can argue against supervised release. The attorney for the patient can hire an outside evaluator to support their case for supervised release. If a court decides that a patient should be placed under supervised release, the Department has 45 days to set up a plan for supervised release. The plan must be reviewed and approved by the court.

25. Once the plan for supervised release is developed and approved by the court, the Department, as required by state law, must notify the local sheriff and police of the planned placement and must provide a risk profile of that person. The local police decide the appropriate level of notification based on their assessment of the level of risk. They can provide no community or neighborhood notification if they decide that the risk is low.

State Law on Citing a CBRF

26. Another factor that may influence the decision to fund the transitional facility is the process and restrictions that apply to citing this type of facility.

27. DHFS has indicated that the transitional facility would be established as a CBRF for mental health. All of the halfway houses used by the Department of Corrections are licensed as CBRFs. Adult family homes can only serve up to four persons, and residential care apartment complexes require individual apartments. Any other type of licensed residential facility, such as an inpatient hospital or nursing home, have more extensive staffing requirements.

28. State law includes a number of special provisions relating to establishing a CBRF. Section 59.69(15)(b) of the statutes requires that community living arrangements (which include CBRFs, foster homes, and adult family homes) must be permitted in each municipality without restriction as to the number of facilities, so long as the total capacity of the community living arrangements does not exceed 25 or 1% of the municipality's population, whichever is greater. If the capacity of the community living arrangements in the municipality reaches that total, the municipality may prohibit additional community living arrangements from locating in the municipality. This restriction of 25 or 1% also applies to individual aldermanic districts in a city. Agents of a facility may apply for an exception to this requirement, and such exceptions may be granted at the discretion of the municipality. State law also prohibits the establishment of any community living arrangement within 2,500 feet, or any lesser distance established by an ordinance of the municipality, of any other such facility. Agents of the facility may apply for an exception to this requirement and exceptions may be granted at the discretion of the municipality.

29. Although the court case is still active, it appears that limitations on the placement of a CBRF may be superceded in the case of facilities housing disabled persons, based on the Fair Housing Act and the Americans with Disabilities Act (ADA). A CBRF, housing disabled persons,

sued the municipalities of Greenfield and Greendale because it was refused a variance from the 2,500 feet limit.

30. It is uncertain whether the ADA or the Fair Housing Act would apply to persons under supervised release. Persons committed under Chapter 980 are found to have a mental disorder, but this is not the same as a mental illness. Disability under the ADA is defined as having a physical or mental impairment that substantially limits one or more major life activities. The ADA specifies that the term "disability" does not include "...pedophilia ...or other sexual behavior disorders." Although a number of the persons committed as a sexually violent person are developmentally disabled or mentally disabled, many are high functioning individuals.

31. The statutes specify that a community living arrangement with a capacity of nine to 15 persons that meets the other restrictions (1% and 2,500 feet restrictions) and is licensed or operated under the authority of DHFS, is entitled to locate in any residential area except areas zoned exclusively for single-family or two-family residences, except that not less than eleven months nor more than 13 months after initial licensure and every year thereafter, the common council or village or town board may make a determination as to the effect of the community living arrangement on the health, safety or welfare of the residents of the municipality. If it is found to be a threat to the health, safety or welfare, the municipality may order the community living arrangement to cease operation unless special zoning permission is obtained. Such an order would be subject to judicial review. Municipalities are authorized to grant special zoning permission at its discretion for community living arrangements with a capacity of nine to 15 persons to locate in areas zoned exclusively for single-family or two-family residences.

32. State law relating to the licensure of CBRFs includes two requirements that involve notification of the local community. Prior to initial licensure of a CBRF, the applicant for licensure must make a good faith effort to establish a community advisory committee consisting of representatives from the proposed CBRF, the neighborhood in which the proposed CBRF will be located and a local unit of government. The purpose of the committee is to serve as a forum for communication for those persons interested in the proposed CBRF. Any committee that is established is required to continue in existence after licensure to make recommendations about the impact of the CBRF on the neighborhood. DHFS is required to determine compliance with this requirement both before and after initial licensure.

33. DHFS is also required, within 10 working days after receipt of an application for initial licensure of a CBRF, to notify the municipal planning commission or other appropriate agency, if there is no planning commission, of receipt of the application. DHFS must request that the planning commission or agency send to DHFS, within 30 days, a description of any specific hazards, which may affect the health, and safety of the residents of the CBRF. No license may be granted to a CBRF until the 30-day period has expired or until DHFS receives the response, whichever is sooner.

Funding Level for the Transitional Facility

34. The Governor's budget would provide \$482,400 GPR for the operation of the transitional facility in 2002-03. This amount of funding would support approximately eight months of operation for 10 persons. Since it will take time to cite the facility and to build it, funding for this number of months may be appropriate.

35. It is uncertain whether the court would order enough persons on supervised release to use the funding provided in the bill, since the number of persons on supervised release has not changed significantly over the last two years. Currently, there are four persons that have been ordered to be placed on supervised release by a court, but DHFS has not been able to find a suitable placement. There are 13 institutionalized SVPs that are waiting to enter the fifth phase of the treatment program (the extended phase), and have finished the four main components of the treatment program. In addition, there currently are 48 SVPs in the fourth phase (CORE) of the treatment program. The final decision, however, on a supervised placement will be made by the court and will include an individualized assessment on the degree of risk that the individual poses in such a placement, and will not be limited to the progress in the treatment program.

36. The staffing pattern upon which the estimated operating cost for the facility is based is a relatively enhanced level of staffing, and would include 1.50 psychologists, 2.0 social workers, 0.5 job coordinator and 16.5 residential counselors. The Department intends to continue the treatment program in this facility, and staff is needed to escort clients to various activities, such as appointments, family visits or jobs, as well as to ensure that the clients are remaining at a site outside the facility, such as a job. Since this would be the first transitional facility for SVPs, it is somewhat uncertain what the appropriate staffing should be. However, given the high-risk nature of this group, it may be prudent to allow for a more enhanced staffing pattern initially. Also, given that the transitional facility would only be funded for eight months, DHFS would need to submit a budget request in the next biennium to fully fund the operation. Since the operation of the facility would be contracted out, annualized funding would not be part of a standard budget adjustment.

37. If, the Committee wished to approve funding for the facility but reduce costs in the 2001-03 biennium, it could delay the starting date for operation of the facility. This decision may be appropriate because there may be difficulties in finding a site for the facility due to local opposition, and as a result, it may take additional time before construction can begin. Also, in terms of providing a system that will meet constitutional requirements, the important factor will be to provide for the building of the facility and establishing an effective program, rather than ensuring that operation begin on a specific date. The drawback of delaying the start date is that DHFS may have to resort to more expensive and less effective placements since the transitional facility would not yet be available.

38. If funding is not provided for the transitional facility, it may be appropriate to provide additional funding for individual placements under supervised release in 2002-03. An additional \$300,000 in 2002-03 could support two or three higher risk placements.

ALTERNATIVES TO BILL

A. Funding of Conditional and Supervised Release Services

1. Modify the Governor's recommendation by increasing funding in the bill by \$139,600 GPR in 2001-02 and \$350,700 GPR in 2002-03 for funding projected increases in contract costs for the conditional and supervised release programs.

Modification	GPR
2001-03 FUNDING (Change to Bill)	\$490,300

2. Adopt the modification. In addition, modify current law to exempt the conditional and supervised release programs from the requirement that reimbursement of contracts be operated on an accrual system, beginning in 2001-02. Reduce funding in the bill by \$490,300 GPR for the 2001-02 supervised and conditional release programs to reflect this change.

B. Transitional Housing Facility -- Operating Costs

1. Approve the Governor's recommendation to provide \$482,400 GPR in 2002-03 to lease a transitional 10-bed housing facility in southern Wisconsin for sexually violent persons on supervised release. This funding level assumes a starting date of November 1, 2002.

2. Reduce funding in the bill by \$120,100 GPR in 2002-03 to lease a transitional 10-bed housing facility, based on a January 1, 2003, start date.

Alternative B2	GPR
2001-03 FUNDING (Change to Bill)	- \$120,100

3. Reduce funding in the bill by \$240,900 GPR in 2002-03 to lease a transitional 10-bed housing facility, based on a March 1, 2003, start date.

Alternative B3	GPR
2001-03 FUNDING (Change to Bill)	- \$240,900

4. Delete funding for a transitional facility but provide an additional \$300,000 in 2002-03 to support individual placements under supervised release.

Alternative B4	GPR
2001-03 FUNDING (Change to Bill)	- \$182,400

5. Delete funding for a transitional facility.

Alternative B5	GPR
2001-03 FUNDING (Change to Bill)	- \$482,400

Note: If funding for a transitional facility is deleted, then it may be appropriate to delete authorization for general fund supported borrowing for construction of the facility when the Committee considers the capital budget recommendations.

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