



## Legislative Fiscal Bureau

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May 15, 2003

Joint Committee on Finance

Paper #244

### Population Management Initiatives (DOC - Adult Corrections)

[LFB 2003-05 Budget Summary: Page 119, #17]

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#### GOVERNOR

Reduce prison contract bed funding by \$10,000,000 GPR in 2004-05. Based on current out-of-state contract rates, reduced funding would result in 540 fewer contract beds in 2004-05. According to the Executive Budget Book, the reduction would be achieved by: (a) increasing selected bed capacity at certain institutions; (b) administratively expanding alternatives to the revocation of probation, parole, or extended supervision; (c) expanding the use of earned release programs; and (d) adjusting presentencing investigation reports to reflect the new truth-in-sentencing structure.

Modify statutory language associated with population management as follows:

*Increase Operating Capacity and Age Limit for Inmates at Racine Youthful Offender Correctional Facility.* Allow Corrections to place up to 450 inmates at the Racine Youthful Offender Correctional Facility (RYOCF) and increase the maximum age limit at the facility to 24 years of age. Under current law, Corrections is authorized to place no more than 400 inmates at RYOCF and inmates must be at least 15 years of age, but not more than 21 years of age.

*Earned Release from Drug Abuse Correctional Center Program.* Create an earned release program for eligible inmates who successfully complete the substance abuse treatment program at the Drug Abuse Correctional Center (DACC) in Winnebago.

#### DISCUSSION POINTS

1. Senate Bill 44 contains three provisions related to prison population management (increased institutional capacity, expanded use of alternatives to revocation and an earned release

alcohol and drug abuse program). The fourth item identified by the Governor in the Executive Budget Book (adjusting presentence investigations) is an administrative activity currently being undertaken by the Department of Corrections. This paper addresses the changes in SB 44 in the following sections.

2. It should be noted that the bill does not specify how much of the \$10,000,000 GPR is associated with each of the three provisions. Subsequent to introduction of the bill, however, Corrections has identified the amounts attributable to each provision. In estimating savings, Corrections identified: (a) additional savings in 2003-04 of \$4,567,200 GPR associated with increased bed capacity; and (b) increased costs in 2003-04 and in 2004-05 associated with inmate variable costs for increased bed capacity. Based on reestimated inmate variable costs identified in LFB Paper #236, increased costs would be \$1,108,100 GPR in 2003-04 and \$1,278,200 GPR in 2004-05. The net effect is a reestimate of savings of \$12.2 million in 2003-05, as shown in the table below.

**Revised SB 44 Population Management Savings**

	<u>2003-04</u>		<u>2004-05</u>		<u>Total Savings</u>
	<u>Amount</u>	<u>Beds</u>	<u>Amount</u>	<u>Beds</u>	
Increased Bed Capacity	-\$3,459,100	255	-\$3,982,000	284	-\$7,441,100
ATR Bed Savings	0	0	-4,406,400	238	-4,406,400
DACC Earned Release	<u>0</u>	<u>0</u>	<u>-336,100</u>	<u>18</u>	<u>-336,100</u>
Total	-\$3,459,100	255	-\$8,724,500	540	-\$12,183,600

**Increased Capacity at Certain Institutions**

3. The administration indicates that Corrections will increase capacity at certain institutions. Recently, Corrections has specified the institutions increasing capacities as identified below. Generally, increased capacity is the result of more extensive use of the double celling offenders. It should be noted that bed capacity was decreased at Milwaukee Secure Detention Facility (MSDF) by 112 beds in order to accommodate an increased number of offenders being held for possible probation, parole, or extended supervision violations. Previously, the Department had a contract with the Milwaukee House of Corrections for probation and parole holds. This contract expired in January, 2003. Corrections previously increased bed capacity at Marshall E. Sherrer Correctional Center to account for remodeling that would have added 14 additional beds. The remodeling was never completed.

**Bed Capacity Increase  
Under SB 44**

<b>Institution</b>	<u>2003-04</u>	<u>2004-05</u>
Columbia	14	14
Fox Lake	48	48
Green Bay	25	25
Oshkosh	65	65
Prairie du Chien	53	70
Racine	60	60
Racine Youthful Offender Correctional Facility	38	50
Waupun	13	13
<b>Center</b>		
Felmers O. Chaney	10	10
Flambeau	10	10
Gordon	10	10
Kenosha	5	5
McNaughton	10	10
Oregon	5	5
Sanger B. Powers	10	10
Thompson	<u>5</u>	<u>5</u>
Total	381	410

**Bed Capacity Decreases**

<b>Institution/Center</b>	<u>2003-04</u>	<u>2004-05</u>
Marshall E. Sherrer	-14	-14
Milwaukee Secure Detention Facility	<u>-112</u>	<u>-112</u>
Total	-126	-126
<b>Net Bed Capacity Increase</b>	255	284

4. On May 6, 2003, DOA sent a letter to the Committee identifying various revisions and reestimates to the Governor's budget. In a reestimate related to population management, DOA indicated: "The Department of Corrections has identified additional opportunities for better use of existing correctional facilities and the need to revise some of the estimated savings from the provisions included in the Governor's budget. As a result of these revisions, funding should be reduced by \$3.4 million GPR in FY04 and increased by \$1.3 million GPR in FY05."

5. Although SB 44 assumes no contract bed savings until the second year of the biennium, Corrections has already expanded the capacities at the facilities identified above. Since the bed capacities at most of the institutions have already been increased, there would be contract bed savings in 2003-04 in addition to 2004-05 (as indicated in the DOA letter).

6. In 2003-04, based on current out-of-state contract rates, projected savings are \$4,567,200 GPR associated with an increased capacity of 255 beds. Savings would be offset by \$1,108,100 GPR in 2003-04 in increased inmate variable costs associated with placing inmates in-state. Inmate-related costs are reestimated based on costs identified in LFB Paper #236. In 2004-05, projected savings are \$5,260,200 GPR for an increased capacity of 284 beds, offset by \$1,278,200 GPR in increased variable costs. Total savings from increased bed capacity would be \$3,459,100 GPR in 2003-04 and \$3,982,000 GPR in 2004-05.

7. Given that Corrections has already increased capacities at all of the above institutions except RYOFC and Prairie du Chien, the Committee may wish to approve the SB 44 provision as modified by the DOA letter, in order to realize the savings.

8. Under current law, Corrections is authorized to place no more than 400 inmates at the RYOFC, and inmates must be at least 15 years of age, but not more than 21 years of age. These provisions were initially enacted to focus the mission of the facility on a specific number of young offenders. Senate Bill 44 modifies statutory language to allow Corrections to place up to 450 inmates at RYOFC and increase the maximum age limit at the facility to 24 years of age. Corrections indicates that the facility can accommodate the increased number of inmates. Further, expanding the age limit would allow Corrections the ability to place a greater range of offenders in the facility. It could be argued, however, that expanding the capacity of the facility and expanding the age limit could reduce the original focus of RYOFC. If the capacity limit at RYOFC is not increased, reestimated costs would increase by \$510,600 GPR in 2003-04 and \$701,100 GPR in 2004-05 (an increase to the bill of \$926,100 GPR in 2004-05).

### **Expanded Use of Alternatives to Revocation**

9. Currently, offenders who violate their probation, parole, or extended supervision may serve confinement time in prison and receive programming as an alternative to the revocation (ATR) of their probation, parole, or extended supervision. Offenders placed in prison as an ATR generally serve shorter periods of time in prison than offenders whose probation, parole, or extended supervision is revoked. Alternative to revocation programming is commonly between 90 to 120 days.

10. Corrections currently places ATRs in various correctional centers based on offender's need and bed space availability. The type of ATR programming varies by facility but currently includes alcohol and other drug abuse treatment, work and employability skills training, anger management, domestic violence prevention, and education. While bed space availability varies, Corrections has used an average of 119 beds in the past year.

11. During the period from January, 2002, to December, 2002, there were 11,830 admissions to state correctional facilities. Of these admissions, 4,058 (34%) were for a new sentence. The remaining admissions were as a result of a revocation of probation, parole or extended supervision (3,206 or 27%), temporary probation and parole holds (3,982 or 34%), alternative to revocation placements (520 or 4%), and other admission types (64 or 1%).

12. Senate Bill 44 assumes that Corrections will use an additional 150 beds for ATR programming beginning in May, 2004. The Governor's budget in brief indicates that the new ATR programs "will conduct 90-day intensive programming efforts to reform and rehabilitate nonviolent offenders and avoid the most expensive and less productive option of sending them to prison. On an annualized basis, this program should divert approximately 400 nonviolent offenders who would otherwise be sent to prison."

13. Since ATRs generally serve shorter periods of time in prison than offenders whose probation, parole, or extended supervision is revoked, Corrections estimates that the 90-day programming will reduce offenders' sentences by an average of 1.65 years, with an estimated success rate of 70%. (This estimate is generally based on experience from the St. Croix Correctional Center boot camp program.)

14. In 2004-05, estimated bed savings under SB 44 from expanded ATR programming would be 238 beds, with reduced contract bed funding of \$4,406,400. The need for contract beds is reduced as a result of offenders serving less time in prison as an ATR. While SB 44 estimates ATRs will serve 90 days, it should be noted that the average length for ATR programs currently is 110 days. Although final plans for the 90-day programming have not been completed, Corrections indicates that the intent is for programming to be more concentrated and intensive than current programming provided to ATRs.

15. The design and details of the expanded ATR program are not currently complete. While Corrections indicates that programming would be more intensive than current programming, it is not known whether sentence length reductions similar to the boot camp can be achieved from ATR programming. If this provision were to be deleted from the budget, funding under the bill would need to be increased by \$4,406,400 GPR in 2004-05.

### **Drug Abuse Correctional Center Earned Release Program**

16. The Drug Abuse Correctional Center (DACC) is a minimum-security facility on the grounds of the Winnebago Mental Health Institute and is designated to provide substance abuse treatment programs for inmates with serious drug and/or alcohol problems. Under current law, Corrections and DHFS are required to ensure that residents of the facility and in the program: (a) have access to all those facilities which are available at the institution and are necessary for the treatment programs designated by the departments; and (b) are housed in separate wards. On May 9, 2003, DACC had 275 inmates.

17. Under SB 44, statutory language is modified to create an earned release program for eligible inmates who successfully complete the substance abuse treatment program at DACC. The design of the early release program is similar to that of the boot camp under current law. Under the bill, an inmate may be released to parole or extended supervision if the Department determines that the inmate has successfully completed the AODA treatment program. The following provisions would apply:

- All inmates would be eligible for the DACC earned release program, except inmates who are incarcerated for crimes against life and bodily security (crimes under Chapter 940 of the statutes), or for sex crimes against a child.

- Crimes under Chapter 940 for which inmates are ineligible for the earned release program include: (a) homicides; (b) felony murder; (c) mutilating or hiding a corpse; (d) assisting suicide; (e) abortion; (f) partial-birth abortion; (g) batteries; (h) mayhem; (i) sexual exploitation by therapist; (j) sexual assault; (k) reckless injury; (l) injury by negligent handling of dangerous weapon, explosives or fire; (m) injury by intoxicated use of a vehicle; (n) abuse of vulnerable adults or residents of penal facilities; (o) failure to render aid by a law enforcement officer; (p) abuse and neglect of patients and residents; (q) false imprisonment; (r) taking hostages; (s) kidnapping; (t) stalking; (u) duty to aid victim or report crime; and (v) intimidation or attempted intimidation of witnesses or victims. Sex crimes against a child for which inmates are ineligible for the earned release program include: (a) sexual assault of a child; (b) engaging in repeated acts of sexual assault of the same child; (c) physical abuse of a child; (d) sexual exploitation of a child; (e) causing a child to view or listen to sexual activity; (f) incest with a child; (g) child enticement; (h) use of a computer to facilitate a child sex crime; (i) soliciting a child for prostitution; and (j) sexual assault of a student by a school instructional staff person.

- Intensive sanctions program participants may be placed in the treatment program, however, intensive sanctions participants are not eligible for earned release.

- For inmates serving a bifurcated (truth-in-sentencing) sentence, the sentencing court would be required to decide at sentencing that the inmate is eligible to participate in the earned release program.

- Pre-sentence investigation reports conducted by Corrections would have to include a recommendation as to whether a defendant would be eligible to participate in the program.

- If an eligible inmate serving an indeterminate sentence successfully completes the DACC treatment program, the Parole Commission would be required to parole the inmate, regardless of the amount of time the inmate had served. The parolee would be required to participate in an intensive supervision program for drug abusers as a condition of parole.

- If an eligible inmate serving a bifurcated sentence successfully completes the DACC treatment program, the Department would notify the sentencing court. The sentencing court would be required to: (a) reduce the prison portion of the bifurcated sentence so that the inmate would be released to extended supervision within 30 days of the date on which the court received notice; and (b) lengthen the term of extended supervision so that the total length of the bifurcated sentence would not change.

- With Corrections' approval, an inmate serving a bifurcated sentence imposed before the effective date of the bill petition the sentencing court to determine whether he or she is eligible or ineligible to participate in the DACC earned release program during the term of confinement.

Petitioning inmates must meet program eligibility criteria regarding the crimes committed. An inmate must serve a copy of the petition on the District Attorney who prosecuted him or her, and the District Attorney may file a written response. The sentencing court must exercise its discretion in granting or denying the inmate's petition but must do so no later than 90 days after the inmate files the petition. If the court determines that the inmate is eligible to participate in the DACC earned release program, the court must inform the inmate of the process by which the sentence may be modified.

18. Based on admissions to the state prisons in 2001-02, 67% of male offenders (4,825) have AODA treatment needs. Corrections indicates that of those with treatment needs, 74% are appropriate for residential treatment. It is not known how many of these offenders would meet the requirements of the program under SB 44. However, the Governor's budget in brief indicates that the DACC program is intended to provide "a similar earned release option for nonviolent offenders with serious alcohol or other drug abuse problems as is provided under the Challenge Incarceration Program."

19. Senate Bill 44 assumes that the DACC earned release program would begin in July, 2004, have approximately 60 participants, and be of a six-month duration. Based on a lower program completion rate than from the boot camp program (60% successful completion compared to 70%), it is estimated that the contract bed costs can be reduced by \$336,100 GPR in 2004-05 associated with 36 offenders being released under the DACC earned release program. If it is assumed that the average sentence length reduction realized by the DACC earned release program is similar to that that has been seen from the boot camp program (1.65 years), on an annualized basis, the DACC earned release program would reduce prison populations by 119 offenders.

20. It is currently unknown if, and how frequently, judges would allow an offender to be eligible for the DACC earned release program. Further, Corrections is unable to identify how many offenders currently in the institutions might be eligible for the earned release program. The Department has, however, indicated that the program will be directed to eligible offenders serving sentences of two to five years. According to Corrections, in 2001-02, 550 offenders were admitted to prison for drug and property offenses under truth-in-sentencing. The average sentence length for these offenders was 2.4 years for drug offenders and 2.25 for property offenders.

21. Bifurcated sentencing was intended in part to assure that judges, at sentencing, could determine that an offender being sentenced would serve the amount of time directed by the judge. To the extent that the DACC earned release program is recommended by the sentencing judge (either at sentencing or upon petition), offenders are serving the amount of time recommended by the court. However, SB 44 allows Corrections to place inmates in the program who are sentenced under an indeterminate sentence and requires the Parole Commission to release participants to parole upon successful completion of the program. The DACC earned release program is generally targeted to offenders serving sentences of less than five years. Offenders serving indeterminate sentences committed these offenses prior to December 31, 1999. If it is assumed that the majority of these offenders were sentenced by mid-2000, most would have already been released from prison and been placed on parole.

22. If the DACC earned release provision is removed from the bill, funding would increase by \$336,100 GPR in 2004-05.

## ALTERNATIVES

1. Approve the Governor's recommendation to reduce prison contract bed funding by \$10,000,000 GPR in 2004-05. The reduction would be achieved by: (a) increasing selected bed capacity at certain institutions; (b) administratively expanding alternatives to the revocation of probation, parole, or extended supervision; and (c) expanding the use of earned release programs. Further, modify statutory language to create an earned release program for eligible inmates who successfully complete the substance abuse treatment program at the Drug Abuse Correctional Center in Winnebago. Modify statutory language to allow Corrections to place up to 450 inmates at the Racine Youthful Offender Correctional Facility and increase the maximum age limit at the facility to 24 years of age.

2. Modify the Governor's recommendation to provide inmate-related costs associated with the increase of prison capacity and provide increased contract bed savings as follows: (a) increased prison bed capacity, -\$3,459,100 GPR in 2003-04 (-\$4,567,200 GPR associated with contract beds and \$1,108,100 GPR for inmate-related costs) and -\$3,982,000 GPR in 2004-05 (-\$5,260,200 GPR associated with contract beds and \$1,278,200 GPR for inmate-related costs); (b) alternatives to revocation, -\$4,406,400 GPR in 2004-05; and (c) the Drug Abuse Correctional Center earned release program, -\$336,100 GPR in 2004-05. The net change to the bill would be -\$3,459,100 GPR in 2003-04 and \$1,275,500 GPR in 2004-05.

<u>Alternative 2</u>	<u>GPR</u>
2003-05 FUNDING (Change to Bill)	-\$2,183,600

3. Modify Alternative 2 to reduce prison contract bed funding by deleting any of the following.

a. *Institutional Bed Capacities.* Delete savings of \$3,459,100 GPR in 2003-04 and \$3,982,000 in 2004-05 associated with contract bed savings from increasing bed capacity at certain institutions and centers. Remove the provision to allow Corrections to place up to 450 inmates at the Racine Youthful Offender Correctional Facility and increase the maximum age limit at the facility to 24 years of age. [Based on the original \$10 million savings, this alternative would result in an increase to the bill of \$5,257,500 GPR in 2004-05.]

<u>Alternative 3a</u>	<u>GPR</u>
2003-05 FUNDING (Change to Bill)	\$5,257,500

b. *Racine Youthful Offender Correctional Facility.* Delete savings of \$510,600 GPR in



2003-04 and \$701,100 GPR in 2004-05 associated with contract bed savings from increasing capacity at the Racine Youthful Offender Correctional Facility. Remove the provision to allow Corrections to place up to 450 inmates at the facility and increase the maximum age limit at the facility to 24 years of age. [Based on the original \$10 million savings, this alternative would result in an increase to the bill of \$926,100 GPR in 2004-05. This alternative may not be selected with Alternative 3a.]

<u>Alternative 3b</u>	<u>GPR</u>
<b>2003-05 FUNDING</b> (Change to Bill)	\$926,100

c. *Expanded Use of Alternatives to Revocation.* Delete contract bed savings of \$4,406,400 GPR in 2004-05 associated with expanded use of alternatives to the revocation of probation, parole, or extended supervision.

<u>Alternative 3c</u>	<u>GPR</u>
<b>2003-05 FUNDING</b> (Change to Bill)	\$4,406,400

d. *Earned Release from Drug Abuse Correctional Center Program.* Delete contract bed savings of \$336,100 GPR in 2004-05 associated with the Drug Abuse Correctional Center earned release program. Remove the provision creating the program.

<u>Alternative 3d</u>	<u>GPR</u>
<b>2003-05 FUNDING</b> (Change to Bill)	\$336,100

4. Delete provision.

<u>Alternative 4</u>	<u>GPR</u>
<b>2003-05 FUNDING</b> (Change to Bill)	\$10,000,000

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