



## Legislative Fiscal Bureau

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May 26, 2005

Joint Committee on Finance

Paper #232

### **Sex Offender Registration Fee (DOC -- Adult Corrections)**

[LFB 2005-07 Budget Summary: Page 131, #19]

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#### **CURRENT LAW**

The Department of Corrections is required to maintain a sex offender registry. The registry contains information relating to persons who have been found to have committed a sex offense and persons who have been found to have committed another offense with a sexual motivation.

In 2004-05, Corrections has \$1,400,100 GPR and 16.0 GPR positions (9.0 sex offender registration specialists, 2.0 supervisors, 3.0 program assistants, 1.0 program assistant supervisor, and 1.0 information systems web designer) budgeted for the sex offender registration program.

#### **GOVERNOR**

Authorize Corrections to establish by rule an annual sex offender registration fee not to exceed \$50 for individuals in its custody or under its supervision. Specify that the fee would be used to partially offset the costs of monitoring. Create a continuing program revenue appropriation to deposit revenues from the registration fee. No estimate of expenditures is identified in the bill. Estimated revenue is \$478,200 PR in 2005-06 and \$504,700 PR in 2006-07.

#### **DISCUSSION POINTS**

##### **Background**

1. The sex offender registry contains information relating to persons who have been found to have committed a sex offense and persons who have been found to have committed

another offense with a sexual motivation. The information is generally confidential. Information may be disclosed, however, under specific circumstances to law enforcement agencies, victims, certain entities in a community in which a sex offender is living, attending school or working and the general public.

2. A "sex offense" is a violation, or the solicitation, conspiracy or attempt to commit a violation, of any of the following: (a) sexual contact with a patient or client by a therapist; (b) first-, second- or third-degree sexual assault; (c) incest; (d) sexual assault of a child (a person under 16 years of age); (e) repeated acts of sexual assault of a child; (f) sexual exploitation of a child; (g) causing a child to view or listen to sexual activity; (h) incest with a child; (i) child enticement; (j) soliciting a child for prostitution; (k) using a computer to facilitate a child sex crime; (l) sexual assault of a student by a school instructional staff person; (m) selling, renting, exhibiting, transferring or loaning to a child any harmful material or verbally communicating, by any means, a harmful description or narrative account to a child; (n) possession of child pornography; (o) working or volunteering with children as a child sex offender; (p) abduction of another's child; and (q) false imprisonment or kidnapping, if the victim was a minor and the person is not the minor's parent.

3. A court may also order persons who are convicted of certain offenses, other than the sex offenses listed above, to register as sex offenders if the court determines that the underlying conduct was sexually motivated (one of the purposes for the act was for the person's sexual arousal or gratification) and that requiring the person to register would be in the interest of public protection. This provision applies to convictions for the following offenses: (a) crimes against life and bodily security; (b) crimes against sexual morality; (c) crimes against children; (d) crimes involving invasion of privacy; and (e) criminal damage to property or criminal trespass. Similarly, a court may order a person who has been adjudged delinquent, committed or found not guilty by reason of mental disease or defect for an offense to register as a sex offender.

4. Individuals on the registry generally must comply with registration requirements for 15 years following release from supervision. A person who meets any one of the following conditions, however, is subject to lifetime registration requirements: (a) convicted or found not guilty or not responsible by reason of mental disease or defect for sex offense, or for the solicitation, conspiracy or attempt to commit a sex offense on two or more occasions; (b) convicted or found not guilty or not responsible by reason of mental disease or defect for a violation, or for the solicitation, conspiracy or attempt to commit a violation of first- or second-degree sexual assault, first- or second-degree sexual assault of a child or repeated sexual assault of a child; (c) found to be a sexually violent person, regardless of whether the person is discharged from the sexually violent person commitment, except that the person no longer must comply with the lifetime registration requirements if the finding that the person is a sexually violent person is reversed, set aside or vacated; or (d) is ordered by the court to register as a sex offender and also ordered to comply with registration requirements the rest of their life.

5. A person required to register as a sex offender based upon a finding that they have committed a sex offense in another jurisdiction must comply with registration requirements while a

resident, a student or employed or carrying on a vocation in Wisconsin or for 10 years from the date of release from prison or date placed on parole, probation, extended supervision or other supervised release for the offense, whichever is less. A person meeting one of the criteria for lifetime supervision must comply with registration requirements while a resident, a student, employed or carrying on a vocation in Wisconsin.

6. Under current law, offenders released to community corrections are required to pay a supervision fee set at \$2 per day. The actual amount of depends on a set of factors, such as the offender's gross monthly income, ability to pay, and increased costs related to supervision and services. In addition, the offender may have other payment obligations, including fines, restitution, or other legal obligations.

### **Assembly Bill 100**

7. Assembly Bill 100 would authorize Corrections to establish by rule an annual sex offender registration fee not to exceed \$50 for individuals in its custody or under its supervision. Statutory language would provide that the fee would partially offset its costs in monitoring persons on probation, parole, or extended supervision. In addition, the bill would create a continuing program revenue appropriation to deposit revenues from the registration fee.

8. Corrections estimates that the annual fee would generate revenue of \$478,200 PR in 2005-06 and \$504,700 PR in 2006-07. The estimated revenue is based on: (a) an estimated 18,000 sex offender registrants in 2005-06 and 19,000 in 2006-07; (b) the assumption that 69% of that population would comply with registry requirements; and (c) the assumption that 77% of the complying offenders would pay the \$50 registration fee. However, it should be noted that no estimated expenditure authority is provided under the bill.

9. In its 2005-07 agency request, Corrections requested \$415,700 PR in 2005-06 and \$468,800 PR in 2006-07 and 8.0 PR positions annually to provide additional staff for the sex offender registry (3.0 program specialists) and for the electronic monitoring unit (5.0 communication operators). Funding for the positions would have been provided from revenue from the new \$50 registration fee. The Department's request for the additional positions was not included in the Governor's recommendations.

10. In its budget request, Corrections indicated that current funding and staffing were insufficient to address the increases in workload resulting from an increasing number of registered sex offenders. During the 2003-04 fiscal year, 1,253 new offenders were entered into the registry. As of April 5, 2005, there were a total of 17,303 sex offenders registered, with 12,080 offenders required to register for life. The total number of registrants increased by 14.3% between 2002 and 2004.

11. In addition to the increasing number of registrants, Corrections indicates that the duties of program specialists have increased. According to the Department, a recent administrative directive expanded program specialists' responsibilities to include locating, registering, and referring

cases for prosecution of non-compliant registrants who are under community supervision (previously the responsibility of probation and parole agents).

12. Since AB 100 does not provide Corrections the additional positions or estimated expenditure authority, it is unclear for what purposes the fee revenue would be used. Further, under the bill, fee revenues are deposited to a continuing PR appropriation. As such, the Department would not be required to seek future expenditure authority increases, but rather would be allowed to expend all revenues received.

13. Given that Correction's biennial budget request to fund an additional 8.0 PR positions was not included in the bill, offenders already pay other supervision fees, and Corrections cannot identify a specific purpose for use of the revenues provided under the bill, the Committee may wish to remove the provision from the bill.

14. On the other hand, it could be argued that since the appropriation language under the bill indicates that the fee would be used to partially offset its costs in monitoring persons on probation, parole, or extended supervision, the Committee could reduce funding in Corrections' GPR appropriation for community supervision equal to the amount that the fee is estimated to generate. As such, the funding would be reduced by \$478,200 GPR in 2005-06 and \$504,700 GPR in 2006-07 in the Department's services for community corrections appropriation.

15. Alternatively, the Committee may wish to provide the positions requested by Corrections, which would be funded through revenue from the new fee. As indicated above, funding would be \$415,700 PR in 2005-06 and \$468,800 PR in 2006-07 to provide for 3.0 program specialists for the sex offender registry and 5.0 communication operators for the electronic monitoring unit. Additional positions would allow the Department to manage the increased workload resulting from an increasing number of registered sex offenders.

16. If the Committee creates the annual sex offender registration fee, the type of appropriation created for receipt of the fee must be considered. Under the Governor's recommendations, a continuing PR appropriation would be created to deposit revenue from the new fee. Continuing appropriations are appropriations that are expendable until fully depleted or repealed by subsequent action of the Legislature. Amounts in a continuing PR appropriation consist of the balance in the appropriation at the end of the previous fiscal year, if any, together with any revenues received during the fiscal year. The dollar amounts shown in the appropriation schedule represent the most reliable estimates of the expenditures for the fiscal year. Generally, expenditures made from a continuing program revenue appropriation are limited only by the availability of the revenues supporting the appropriation.

17. By contrast, annual appropriations are expendable only up to the amount shown in the appropriation schedule and only for the fiscal year for which made. At the end of the fiscal year, the unencumbered balances in a program revenue appropriation remain in that appropriation if the statutes indicate the monies are to be credited to the account for that appropriation.

18. Under a continuing appropriation, legislative oversight of expenditures is decreased because the dollar amounts in the appropriations schedule are merely estimates of the amount of funds that the agency expects to spend for these purposes. By having a continuing appropriation for these purposes, expenditures that agencies wish to make are not limited by any legislatively-established appropriation level. Rather, an agency may expend as much as the accumulated revenue in the appropriation level will allow.

19. While a continuing appropriation may provide an agency greater flexibility in administration, it could be argued that creation of continuing appropriations lessens the Legislature's ability to review, monitor and evaluate the financial status of the appropriation. Further, the 14-day review process under s. 16.515 is available for increased expenditure authority for annual appropriations. As such, if the fee is to be authorized, the Committee could modify the bill to change the continuing appropriation to an annual appropriation.

**ALTERNATIVES**

**A. Sex Offender Registration Fee**

1. Approve the Governor's recommendation to authorize Corrections to establish by rule an annual sex offender registration fee not to exceed \$50 for individuals in its custody or under its supervision. Specify that the fee would be used to partially offset the costs of monitoring. Estimated revenue is \$478,200 PR in 2005-06 and \$504,700 PR in 2006-07.

2. In addition to Alternative A1, provide \$478,200 PR in 2005-06 and \$504,700 PR partially to offset the costs of probation, parole and extended supervision. Further, decrease GPR funding by a corresponding amount (\$478,200 GPR in 2005-06 and \$504,700 GPR).

<u>Alternative A2</u>	<u>GPR</u>	<u>PR</u>	<u>TOTAL</u>
<b>2005-07 FUNDING</b> (Change to Bill)	- \$982,900	\$982,900	\$0

3. In addition to Alternative A1, provide \$415,700 PR in 2005-06 and \$468,800 PR in 2006-07 and 8.0 PR positions annually to provide additional staff for the sex offender registry (3.0 program specialists) and for the electronic monitoring unit (5.0 communication operators). Funding for the positions would be provided through the sex offender registration fee.

<u>Alternative A3</u>	<u>PR</u>
<b>2005-07 FUNDING</b> (Change to Bill)	\$884,500
<b>2006-07 POSITIONS</b> (Change to Bill)	8.00

4. Delete provision.

<b><u>Alternative A4</u></b>	<b><u>PR</u></b>
<b>2005-07 REVENUE</b> (Change to Bill)	- \$982,900

**B. Program Revenue Appropriation**

1. Approve the Governor's recommendation to create a continuing program revenue appropriation to deposit revenues from the registration fee.
2. Create an annual (rather than a continuing) program revenue appropriation to deposit revenues from the registration fee.
3. Delete provision.

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