



## Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873

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Joint Committee on Finance

Paper #412

### **Services for Sexually Violent Persons, Individuals on Conditional Release and Competency Examinations (DHFS -- State-Operated Institutions)**

[LFB 2005-07 Budget Summary: Page 277, #6]

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#### **CURRENT LAW**

*Institutionalization and Supervised Release of Sexually Violent Persons.* Current law provides for the involuntary civil commitment of individuals who are found to be sexually violent persons (SVPs). An SVP is defined in statute as a person who has been convicted of a sexually violent offense, has been adjudicated delinquent for a sexually violent offense, or has been found not guilty of, or not responsible for, a sexually violent offense by reason of insanity or mental disease, defect, or illness, and who is dangerous because he or she suffers from a mental disorder that makes it more likely than not that the person will engage in acts of sexual violence.

If, after a trial, a person is determined to be an SVP, the court must order the person to be committed to the custody of DHFS for control, care, and treatment, until the person is no longer an SVP. SVPs are institutionalized at one of two DHFS facilities: (a) the Sand Ridge Secure Treatment Center (SRSTC) in Mauston, which operates the state's SVP treatment program and oversees the supervised release program; and (b) the Wisconsin Resource Center (WRC) in Oshkosh, which provides services for individuals who are detained but not yet committed and SVPs who refuse to participate in treatment. As of the end of March, 2005, there were 229 SVPs at SRSTC and 57 at WRC.

Unless a person committed as an SVP has been discharged, DHFS must conduct an examination of his or her mental condition within six months after an initial commitment and at least once each 12 months thereafter to determine whether the person has made sufficient progress for the court to consider whether the person should be placed on supervised release or be discharged.

A person committed as an SVP may petition the committing court to modify its order by authorizing supervised release if at least 18 months have elapsed since the initial commitment order was entered, or at least six months have elapsed since the most recent release petition was denied, or the most recent order for supervised release was revoked. The director of the facility in which the individual is placed may file a petition for supervised release on the person's behalf at any time.

Current law establishes two basic criteria for supervised release. Specifically, a court must grant a petition for supervised release unless it is proven by clear and convincing evidence that it is still likely that the person will engage in acts of sexual violence if the person is not continued in institutional care; or that the person has not demonstrated significant progress in his or her treatment or the person has refused treatment. As of April, 2005, there were 18 individuals on supervised release in the community and three who were awaiting placement in the community.

*Conditional Release.* Under the conditional release program, DHFS contracts with the Department of Corrections (DOC) and other entities to provide services to individuals who have been found not guilty by reason of mental disease or defect. Clients are either directly placed on conditional release by the court or are conditionally released from one of the state's MHIs. In 2003-04, the average number of individuals who were on conditional release was 268.

*Competency Examinations.* Examinations to determine a person's competency to stand trial are conducted at the direction of the court and are performed on either an inpatient or outpatient basis. Inpatient examinations are conducted at the state mental health institutions (MHIs) by state staff, while outpatient examinations are administered at the MHIs or inside jails or locked units by state staff or by Wisconsin Forensics Unit (WFU) employees under a contract between the state and WFU's parent company, Behavioral Consultants, Inc. In 2003-04, 997 competency examinations were conducted.

Base funding budgeted for contracted services provided to individuals on supervised release (\$2,491,700) and conditional release (\$3,820,200), competency examinations (\$1,032,000) and supervision services provided by the Department of Corrections (\$463,500) and court services provided by Milwaukee County (\$50,000) are supported from a single, GPR biennial appropriation. Consequently, DHFS can transfer funding between these programs to reflect actual service costs, which may differ from budget projections. In addition, because these programs are supported by a biennial appropriation, unexpended funds budgeted in the first year of the biennium are carried forward to support costs in the second year of the biennium. If the amount of funding budgeted in the first year of the biennium is insufficient to support program costs, DHFS may expend moneys budgeted in the second year of the biennium to fund first-year costs.

## GOVERNOR

Reduce funding by \$879,900 GPR in 2005-06 and provide \$950,400 GPR in 2006-07, and provide 14.25 GPR positions in 2005-06, and an additional 19.0 GPR positions (for a total of 33.25 GPR positions) in 2006-07 to reflect the net cost of: (a) opening additional units at SRSTC and WRC for individuals who are committed as SVPs); (b) reestimates of costs for contracts relating to services to individuals on supervised release and conditional release, and reestimates of the costs of conducting competency evaluations.

*SVPs -- Institutional Services.* Provide \$988,600 GPR in 2005-06 and \$1,400,600 GPR in 2006-07 and 14.25 GPR positions beginning in 2005-06, to staff two existing, but unstaffed, 25-bed units at SRSTC. Provide \$865,900 GPR in 2006-07 and 19.0 GPR positions, beginning in 2006-07, to staff one 30-bed unit at WRC for SVPs who refuse treatment.

*SVPs -- Supervised Release Services.* Reduce funding by \$1,537,200 GPR in 2005-06 and \$1,311,400 GPR in 2006-07 to support services for SVPs who are on supervised release.

*Conditional Release Services.* Increase funding by \$165,700 GPR in 2005-06 and by \$427,800 GPR in 2006-07 to reflect reestimates of the costs of funding services to persons who are on conditional release.

*Competency Examinations.* Increase funding by \$16,500 GPR in 2005-06 and by \$81,000 GPR in 2006-07 to reflect reestimates of the costs of funding competency examinations.

*DOC and Milwaukee County Contracts.* The bill would delete base funding that DHFS provides to support supervision services provided by DOC probation and parole agents (-\$463,500 GPR annually) and court services provided by Milwaukee County relating to individuals on conditional and supervised release (-\$50,000 GPR annually). The administration indicates that it did not intend to eliminate funding for these contracts in the bill.

## DISCUSSION POINTS

1. 2003 Wisconsin Act 187 amended the statutory definition of an SVP, in part, to mean a person who is dangerous because the person suffers from a mental disorder that makes it *more likely than not* that the person will engage in acts of sexual violence. Before Act 187, the law defined an SVP, in part, to mean a person who is dangerous because the person suffers from a mental disorder that makes it *substantially probable* that the person will engage in acts of sexual violence.

2. Act 187 also amended the statutory standard for challenging the release or discharge of an SVP from a civil commitment. Act 187 provided that in order to oppose the release or discharge, the state must prove by clear and convincing evidence *either* that: (a) it is still *more likely than not* that the person will engage in acts of sexual violence if the person is not continued in institutional care; or (b) that the person has not demonstrated significant progress in his or her

treatment or the person has refused treatment. Before Act 187, the law provided that in order to oppose the release or discharge, the state must prove by clear and convincing evidence that it is still *substantially probable* that the civilly committed person will engage in acts of sexual violence if the person is not continued in institutional care.

3. DHFS expects the Act 187 changes to the language regarding SVP commitment and release to have the combined effect of making commitment of persons as SVPs more likely and the release of SVPs from institutional care less likely. Consequently DHFS expects the SVP institutional average daily population to grow by an additional 15 SVPs each year over the historical annual growth of SVPs. The projected 15 SVP increase is a combination of a projected increase in the number of commitments (11) and an increase in the number of persons denied release (4). The average annual growth of the institutional SVP populations over the past five years is approximately 15. Therefore, DHFS expects a combined growth impact of nearly 30 SVPs annually, given the anticipated effect of the Act 187 changes.

4. Act 187 took effect on April 22, 2004. DOC begins screening inmates for their potential to be committed as SVPs one year before their mandatory release dates. DOC incorporated the Act 187 commitment criteria into its screening criteria upon passage of Act 187. Because inmate SVP reviews begin at DOC one year prior to their release dates, the impact of Act 187 on institutional populations of SVPs would not likely be fully incorporated until approximately May of 2005 -- or one year after Act 187 took effect. An increase in the number of persons referred for evaluation as potential future SVP commitments by DOC's End of Confinement Review Board (ECRB) since passage of Act 187, however, supports projections for a future increase in the number of persons committed as SVPs.

5. SRSTC has a total of 300 beds, among a dozen 25-bed units, two of which are not currently open or staffed. DHFS projects an average daily population of 255 SVPs in 2005-06 and 270 SVPs in 2006-07 at SRSTC. To accommodate the increased SVP population at SRSTC, the administration has proposed to open one additional unit in December, 2005, and a second unit in April, 2006, so that all 300 beds at the facility would be available. DHFS proposes to staff the two units with a combined 14.25 FTE, which include psychiatric care supervisors and technicians, a therapist, a teacher, a licensed practical nurse, and a 0.25 FTE psychiatrist. The staff would begin employment two months before the units open to allow time for training. The proposed staffing at SRSTC is less than might be expected because infrastructure and training staff are already in place and some treatment will be contracted. Given the projected SVP institutional population increases, this appears to be a reasonable timetable for opening the two units.

6. WRC currently operates two, 30-bed units for SVPs who refuse treatment and persons not yet committed as SVPs. An additional 30-bed unit exists at WRC, but is currently closed. The remainder of WRC operates as a prison, with the primary mission to treat mentally ill inmates. To accommodate the additional persons awaiting commitment as SVPs and additional SVPs who refuse treatment at WRC, the administration has proposed to open an additional unit at WRC in November, 2006. The administration has proposed an additional 19.0 FTE for the additional 30-bed unit, consisting of 13.50 FTE psychiatric care technicians, 2.0 FTE psychiatric

care supervisors, 1.0 FTE nurse clinician, 0.50 FTE social worker, and a 1.0 FTE recreation leader. The staff would begin employment two months before the unit opened.

The projected increases in institutional SVP populations appear to warrant an additional unit at WRC. However, the need for an additional SVP unit at WRC is arguably less critical than the need for the two additional units at SRSTC, given that WRC is not a treatment unit, and given that if the number of SVP treatment refusers and persons awaiting commitment as SVPs exceeds capacity at the two existing WRC units for SVPs, persons can still be held at WRC -- although they may be assigned a bed that DOC would otherwise use for a mentally ill inmate at the facility. Finally, since there remains uncertainty regarding future SVP populations, and, under AB 100, this unit would be staffed to open in November, 2006, the Committee could defer approving this component of the administration's proposal. The matter could be addressed in subsequent legislation or under the procedures specified in s. 13.10 of the statutes.

### **Outpatient Competency Examinations**

7. Competency examinations ordered by courts may be conducted on either an inpatient or an outpatient basis. Outpatient examinations include a comprehensive clinical interview, psychological testing, a review of medical and court records, and interviews with other parties. Inpatient examinations consist of a 15-day intensive evaluation at a MHI, including a full admission assessment, ongoing observation, a review of medical and court records, and a formal interview and assessment. Inpatient examinations are only conducted when: (a) the individual is considered dangerous to himself or herself or to staff members; or (b) the individual refuses to participate in an outpatient competency examination.

8. Outpatient competency examinations increased over the years, from 539 examinations in calendar year 1996 to 997 in 2003-04. In 2003-04, 94% of all competency examinations were performed on an outpatient basis.

9. The amount of funding in the bill that would be budgeted for outpatient competency examinations reflects the administration's estimate that the following number of outpatient competency examinations will be conducted at the following costs per evaluation: 1,030 in 2005-06 at \$1,018 per evaluation, and 1,161 in 2006-07 at \$1,049 per evaluation.

10. Based on data through December, 2004, DHFS has revised its estimates of the number of outpatient competency examinations that will be conducted in the 2005-07 biennium, as well as the projected costs per evaluation. DHFS' revised projections are as follows: 1,133 evaluations in 2005-06 at \$1,025 per evaluation, and 1,167 evaluations at \$1,056 per evaluation in 2006-07. Attachment 1 compares the costs associated with these estimates to the amounts contained in AB 100.

### **Conditional and Supervised Release**

11. The average number of individuals on conditional release has increased from 231 in 1999-2000, to 268 in 2003-04. As of April, 2005, there were 18 SVPs participating in the

supervised release program with another three SVPs awaiting placement in the community. 2003 Act 187 changed the statutory standard for challenging the release or discharge of an SVP from a civil commitment. DHFS expects that, due to Act 187, fewer SVPs will be placed on supervised release than would have been placed had Act 187 not been enacted. However, DHFS also reports that a number of individuals have made it to the advanced stages of their treatment at SRSTC and it is reasonable to assume that small, but increasing numbers of them will attain treatment progress sufficient to meet the criteria for supervised release.

The attachment to this paper compares the costs associated with these estimates to the AB 100 amounts.

12. DHFS currently contracts with DOC, ATTIC Correctional Services, Inc., and other providers for services rendered under the conditional and supervised release programs. The DOC contract provides for the statewide supervision of conditional release clients, as well as for the representation of DHFS in related revocation hearings. Conditional release contract providers are responsible for general program oversight and the provision of services identified in a client's treatment plan. These services may include case management, medication administration and monitoring, the development of comprehensive treatment plans, crisis response, and staff resources.

13. ATTIC Correctional Services, Inc. provides case management and residency search services to individuals on supervised release. DHFS is responsible for reimbursing the actual costs of services provided to individuals and billed monthly by ATTIC for these charges.

14. It is difficult for DHFS to control costs under the conditional release, supervised release, and competency examination programs, since the state is responsible for providing services to persons under these programs, and courts, rather than DHFS, determine if individuals require services under these programs, and the level of services they receive. If sufficient funding is not provided in the biennial budget to meet the costs of these programs, DHFS would probably have to submit a request for supplemental funding in 2006-07 for these programs under s. 13.10 of the statutes.

15. The Governor's bill would delete base funding for the contracts with DOC and Milwaukee County. However, these services will continue to be required in the 2005-07 biennium.

16. In summary, three alternatives are presented for the Committee to consider. The first alternative would provide the funding level for all of these programs that was recommended by the Governor. However, based on population and cost data available through December 2004, this funding would likely be insufficient to support the supervised release, conditional release, and competency examination programs in the 2005-07 biennium. Further, this funding level would not enable DHFS to support contracts with DOC or Milwaukee County. The administration is aware that the funding budgeted for these programs in AB 100 would be insufficient to fully fund projected contracted costs in the 2005-07 biennium.

17. Due in part to lower than expected numbers of persons on conditional release and

fewer outpatient competency exams in 2003-04, and due largely to lower than expected numbers of SVPs on supervised release in 2003-04 and 2004-05, DHFS will lapse funding appropriated for these programs in the current biennium to the general fund. Projections for the number of SVPs on supervised release in 2003-05 were well above the actual numbers. Further, the 2003-05 budget projections assumed that SVPs would be placed on supervised release in a transitional facility for SVPs in Milwaukee at a cost expected to exceed the costs of releasing SVPs to supervision elsewhere. No decision has been made regarding a site for the Milwaukee transitional facility. A recommendation to the administration from a committee created pursuant to Act 187 to assist the state in determining a location for the facility is expected at the end of April, 2005. Based on population and expenditure data for the 2003-05 biennium through March, 2005, it appears that DHFS may lapse over \$2.7 million to the general fund from the appropriation that funds these services at the end of the current biennium. Any amount lapsed will increase the general fund's opening balance for 2005-06.

18. The second alternative would increase funding in the bill by \$1,255,600 GPR in 2005-06 and by \$1,386,200 GPR in 2006-07 GPR to reflect population and cost data available through December, 2004, and restore funding for contracted services provided by DOC and Milwaukee County. This alternative would fully fund the projected costs of contracted services in the 2005-07 biennium and support the Governor's recommendation to provide additional staff at SRSTC and WRC to serve projected SVP populations at these facilities.

19. Third, the Committee could fully fund the current estimated costs of contracted services (\$1,255,600 GPR in 2005-06 and \$1,386,200 GPR in 2006-07), but delete funding the administration has proposed for staffing the new unit at WRC (-\$865,900 GPR and -19.00 GPR positions in 2006-07) for the reasons identified in Discussion Point 6. Under this alternative, DHFS would be required to review base funding and staffing at WRC to determine whether base resources could be reallocated to support the new unit. If DHFS is unable to support the new unit through reallocations, then additional funding to establish the unit at WRC could be provided under s. 13.10 if the current population increases occur as projected.

**ALTERNATIVES**

*It should be noted that the anticipated increase to the AB 100 general fund opening balance of \$2.7 million, identified in Point #17, is not reflected in the alternatives.*

1. Adopt the Governor's recommendation.
2. Increase funding in the bill by \$1,255,600 GPR in 2005-06 and by \$1,386,200 GPR in 2006-07 to reflect current estimates of contracted services, to restore funding for services provided by DOC and court services provided by Milwaukee County, and to fund the additional institutional staff recommended by the Governor.

<u>Alternative 2</u>	<u>GPR</u>
<b>2005-07 FUNDING</b> (Change to Bill)	\$2,641,800

3. Increase funding in the bill by \$1,255,600 GPR in 2005-06 and by \$1,386,200 GPR in 2006-07 to reflect current estimates of contracted services. In addition, reduce funding in the bill by \$865,900 GPR and delete 19.00 GPR positions in 2006-07 to eliminate funding for the additional 30-bed unit at WRC.

<b><u>Alternative 3</u></b>	<b><u>GPR</u></b>
<b>2005-07 FUNDING</b> (Change to Bill)	\$1,775,900
<b>2006-07 POSITIONS</b> (Change to Bill)	- 19.00

Prepared by: Eric Ebersberger  
Attachment

## ATTACHMENT

### Services for SVPs, Individuals on Conditional Release, and Competency Examinations Funding Summary

<u>Program Summary</u>	Assembly Bill 100		Current Estimates		Change to AB 100	
	<u>2005-06</u>	<u>2006-07</u>	<u>2005-06</u>	<u>2006-07</u>	<u>2005-06</u>	<u>2006-07</u>
<b>Supervised Release</b>						
Funding	\$954,500	\$1,180,300	\$1,136,300	\$1,449,100	\$181,800	\$268,800
Est. Clients	20	24	21	26	1	2
Avg. Cost/Client	47,725	49,179	54,110	55,734	6,385	6,555
<b>Conditional Release</b>						
Funding	\$3,985,900	\$4,248,000	\$4,433,400	\$4,718,600	\$447,500	\$470,600
Est. Clients	288	298	300	310	12	12
Avg. Cost/Client	13,840	14,255	14,778	15,221	938	966
<b>Competency Examinations</b>						
Funding	\$1,048,500	\$1,113,000	\$1,161,300	\$1,232,400	\$112,800	\$119,400
Evaluations	1,030	1,061	1,133	1,167	103	106
Avg. Cost/Client	1,018	1,049	1,025	1,056	7	7
<b>Other Contracts</b>						
DOC Contract	\$0	\$0	\$463,500	\$477,400	\$463,500	\$477,400
Pre-trial Court Costs (Milwaukee)	<u>0</u>	<u>0</u>	<u>50,000</u>	<u>50,000</u>	<u>50,000</u>	<u>50,000</u>
<b>Total -- Contracted Services</b>	\$5,988,900	\$6,541,300	\$7,244,500	\$7,927,500	\$1,255,600	\$1,386,200
<b>Residential Services</b>						
Sand Ridge						
Funding	\$988,600	\$1,400,600	\$ 988,600	\$1,400,600	\$0	\$0
Positions	14.25	14.25	14.25	14.25	0.00	0.00
Wisconsin Resource Center						
Funding	0	865,900	0	865,900	\$0	\$0
Positions	0	19.00	0	19.00	0.00	0.00
<b>Total Residential Services</b>						
Funding	\$988,600	\$2,266,500	\$988,600	\$2,266,500	\$0	\$0
Positions	14.25	33.25	14.25	33.25		
<b>Grand Total -- Contracted and Residential Services -- Change to Base</b>	<b>-\$879,900</b>	<b>\$950,400</b>	<b>\$375,700</b>	<b>\$2,336,600</b>	<b>\$1,255,600</b>	<b>\$1,386,200</b>
Biennial GPR Change		<b>\$70,500</b>		<b>\$2,712,300</b>		<b>\$2,641,800</b>