



## Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #253

### **Federal Prison Rape Elimination Act -- Juvenile (Corrections -- Juvenile Corrections)**

[LFB 2017-19 Budget Summary: Page 147, #4]

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#### **CURRENT LAW**

The federal Prison Rape Elimination Act (PREA) was passed in 2003. The purpose of the act was to “provide for the analysis of the incidence and effects of prison rape in Federal, State, and local institutions and to provide information, resources, recommendations and funding to protect individuals from prison rape.” In addition to creating a mandate for significant research from the Bureau of Justice Statistics and through the National Institute of Justice, funding through the Bureau of Justice Assistance and the National Institute of Corrections supported major efforts in many state correctional, juvenile detention, community corrections, and jail systems.

The act also created the National Prison Rape Elimination Commission and charged it with developing draft standards for the elimination of prison rape. Those standards were published in June, 2009, and were turned over to the federal Department of Justice for review and passage as a final rule. That final rule became effective August 20, 2012, and compliance is required by October 1, 2017. In part, the Act requires that all secure juvenile facilities maintain a security staff-to-juvenile ratio of 1:8 during resident waking hours and 1:16 during resident sleeping hours, except during limited and discrete exigent circumstances, which must be fully documented for audit purposes.

#### **GOVERNOR**

Provide \$653,400 PR in 2017-18, and \$656,000 PR in 2018-19 with 8.25 PR positions annually to improve total staff ratio at Lincoln Hills School (LHS) as directed by PREA. The positions provided include 5.0 Youth Counselors and 3.25 Youth Counselor – Advanced

positions.

## DISCUSSION POINTS

1. Each fiscal year, the Governor must certify to the US Attorney General that prison facilities under control of the state executive branch comply with the PREA standards. If the state is non-compliant with PREA standards, it is assessed a penalty of 5% of DOJ grants that would otherwise be received for prison purposes unless the Governor can assure that the 5% will be used to achieve compliance. An estimated reduction of \$35,600 in federal funding could occur if the state is non-compliant with PREA guidelines and the Governor could not provide assurance the funding would be used towards attaining compliance.

2. Youth Counselor (YC) and Youth Counselor – Advanced (YCA) are the position titles of security staff at Lincoln Hills School (LHS) and Copper Lake School (CLS). There are currently 145 YC and YCA positions split between LHS and CLS. A total of 135 security positions are needed to staff current cottage and non-cottage security posts. Correction's Division of Juvenile Corrections (DJC) is not currently holding any positions at LHS vacant due to having a lower average daily population (ADP) than the 269 ADP budgeted between both schools for 2015-17. Copper Lake School and Grow Academy are currently compliant with PREA. It should be noted that there are vacant positions, but these positions are attributable to normal turnover.

3. As of April 28, 2017, there were seven out of 10 open housing units at LHS. There are several factors that are used to determine which housing unit a youth should be placed in, including individual programming needs, security, overall facility population, and available staffing. As of April, 2017, both Krueger and Roosevelt housing units were PREA compliant. Table 1 summarizes the programming by housing unit. Except for Krueger, all housing units have a 2-2-1 staffing pattern (two staff on first shift, two staff on second shift, and one staff on third shift).

**TABLE 1**

### **LHS Housing Units**

<u>Housing Unit</u>	<u>Programming</u>	<u>Staffing Pattern</u>
Black Elk	Older Youth	2-2-1
Douglass	General Population	2-2-1
Rogers	Reception	2-2-1
Du Bois	Substance Use Disorder	2-2-1
Miller	Employability Skills	2-2-1
Krueger	Restrictive Housing Unit	3-3-1
Roosevelt	Restrictive Housing Unit	2-2-1

4. On April 28, 2017, LHS (boys) cabins not yet in compliance averaged a ratio of 1:16 during waking hours and 1:34 during sleeping hours. The 8.25 additional positions proposed under the budget would reduce LHS average ratios to 1:13 during waking hours and 1:29 during resident sleeping hours. Corrections indicates that the additional positions would be utilized to first make the

high-risk cabin that is not currently compliant (Rogers) PREA compliant. Given Corrections' and DOA's recommendation, the Committee may wish to include the Governor's recommendation. [Alternative 1] As a result, the Committee would provide Corrections with \$653,400 PR in 2017-18, and \$656,000 PR in 2018-19 with 8.25 PR positions annually.

5. As the recommended positions would not make all cabins at LHS PREA compliant before the October 1, 2017, deadline, a different number of positions could be appropriate. For example, as of April 28, 2017, an additional 24 posts would be necessary to achieve PREA compliance in each of the LHS housing units. Each post requires 1.75 positions to provide coverage seven days per week, 365 days per year, totaling 42.0 positions to staff all 24 additional posts. Of the 42.0 positions required to staff those posts, approximately 60 percent would be YCs with the remaining 40 percent YCAs. Given that 42.0 positions would make LHS PREA compliant, the Committee may wish to provide more than the recommended 8.25 positions. [Alternative 2] As a result, the Committee would provide Corrections with \$2,596,000 PR in 2017-18, and \$2,941,100 PR in 2018-19 with 42.0 PR positions annually. This would be a 33.75 PR position change to the bill.

6. Given that 21.0 positions would balance the need to make LHS PREA compliant with the need to moderate the daily rate increases, the Committee may wish to provide more than the recommended 8.25 positions. [Alternative 3] As a result, the Committee would provide Corrections with \$1,300,400 PR in 2017-18, and \$1,472,300 PR in 2018-19 with 21.0 PR positions annually. This would be a 12.75 PR position change to the bill.

7. Daily rates for juvenile care in a given biennium are specified in statute by fiscal year for juvenile correctional facilities. These daily rates are calculated based on the projected annual cost and the estimated average daily population. Counties pay the daily rate to house juveniles at LHS and CLS, and the state pays the daily rate through the SJO program and the contract bed rate for juveniles under 18 years of age with adult sentences.

8. While acknowledging that a lower number of positions may not make LHS PREA compliant by the October, 2017, deadline, providing more security positions would increase the statutory daily rate. Therefore, providing GPR funding for the additional 8.25 positions could be considered. [Alternative 4] As a result, the Committee could provide \$653,400 GPR in 2017-18, and \$656,000 GPR in 2018-19 with 8.25 GPR positions annually. This alternative would have the effect of reducing the daily rate, contract bed funding need, and SJO rate.

9. Although a lower number of positions may not make LHS PREA compliant by the October, 2017, deadline, providing more security positions would increase the statutory daily rate. Therefore, providing GPR funding for the additional 21.0 positions could be considered. [Alternative 5] As a result, the Committee could provide \$1,296,800 GPR in 2017-18, and \$1,472,000 GPR in 2018-19 with 21.0 GPR positions annually. As with Alternative 3, this alternative would have the effect of reducing the daily rate, contract bed funding need, and SJO rate.

10. Providing sufficient security positions to achieve PREA compliance would increase the daily rate. Therefore, providing GPR funding for half of the additional 42.0 positions could be considered. [Alternative 6] As a result, the Committee could provide \$1,268,400 GPR in 2017-18, and \$1,447,200 GPR in 2018-19 with 21.0 GPR positions annually and \$1,342,000 PR in 2017-18,

and \$1,495,700 PR in 2018-19 with 21.0 PR positions annually. This would provide positions to be PREA compliant and, as with Alternative 3, have the effect of reducing the daily rate, contract bed funding need, and SJO rate.

11. As providing more positions would increase the daily rate, the Committee may decide not to provide any new positions. [Alternative 7] Not providing additional positions would result in lower DJC costs and moderate the anticipated increase in the statutory daily rate. However, while the reduction in federal funding that could occur if the state is non-compliant with PREA guidelines is relatively small, LHS and CLS are still under an open federal investigation. In addition, noncompliance may present further risk of litigation.

12. The table below shows the effect of providing requested positions on the daily rate, SJO funding, and contract beds for juveniles under 18 with adult sentences:

Alternative	# of Positions	Annual Amount		Bill Modification to Daily Rate		Annual SJO Modification		Annual Contract Bed Modification	
		2017-18	2018-19	2017-18	2018-19	2017-18	2018-19	2017-18	2018-19
1	8.25 PR	\$653,400	\$656,000	\$0.00	\$0.00	\$0	\$0	\$0	\$0
2	42 PR	2,596,000	2,941,100	24.19	28.46	415,000	550,500	309,100	363,500
3	21 PR	1,300,400	1,472,300	8.06	10.17	138,200	196,700	102,900	129,900
4	8.25 GPR	653,400	656,000	-8.14	-8.17	-139,600	-158,000	-104,000	-104,400
5	21 GPR	1,296,800	1,472,000	-8.14	-8.17	-139,600	-158,000	-104,000	-104,400
6	21 GPR	2,597,200	2,944,300	-8.14	-8.17	-139,600	-158,000	-104,000	-104,400
7	21 PR 0	-653,400	-656,000	-8.14	-8.17	-139,600	-158,000	-104,000	-104,400

## ALTERNATIVES

1. Include the Governor's recommendation to provide \$653,400 PR in 2017-18, and \$656,000 PR in 2018-19 with 8.25 PR positions annually to improve total staff ratio at Lincoln Hills School (LHS) as directed by the Federal Prison Rape Elimination Act (PREA).

ALT 1	Change to Base		Change to Bill	
	Funding	Positions	Funding	Positions
PR	\$1,309,400	8.25	\$0	0.00

2. Provide \$2,596,000 PR in 2017-18, and \$2,941,100 PR in 2018-19 with 42.0 PR positions annually to improve total staff ratio at Lincoln Hills School (LHS) as directed by the Federal Prison Rape Elimination Act (PREA).

ALT 2	Change to Base		Change to Bill	
	Funding	Positions	Funding	Positions
PR	\$5,537,100	42.00	\$4,227,700	33.75

3. Provide \$1,300,400 PR in 2017-18, and \$1,472,300 PR in 2018-19 with 21.0 PR positions annually to improve total staff ratio at Lincoln Hills School (LHS) as directed by the

Federal Prison Rape Elimination Act (PREA).

ALT 3	Change to Base		Change to Bill	
	Funding	Positions	Funding	Positions
PR	\$2,772,400	21.00	\$1,463,000	12.75

4. Provide \$653,400 GPR in 2017-18, and \$656,000 GPR in 2018-19 with 8.25 GPR positions annually to improve total staff ratio at Lincoln Hills School (LHS) as directed by Federal Prison Rape Elimination Act (PREA).

ALT 4	Change to Base		Change to Bill	
	Funding	Positions	Funding	Positions
GPR	\$1,309,400	8.25	\$1,309,400	8.25
PR	<u>0</u>	<u>0.00</u>	<u>- 1,309,400</u>	<u>- 8.25</u>
Total	\$1,309,400	8.25	\$0	0.00

5. Provide \$1,296,800 GPR in 2017-18, and \$1,472,000 GPR in 2018-19 with 21.0 GPR positions annually to improve total staff ratio at Lincoln Hills School (LHS) as directed by Federal Prison Rape Elimination Act (PREA).

ALT 5	Change to Base		Change to Bill	
	Funding	Positions	Funding	Positions
GPR	\$2,768,800	21.00	\$2,768,800	21.00
PR	<u>0</u>	<u>0.00</u>	<u>- 1,309,400</u>	<u>- 8.25</u>
Total	\$2,768,800	21.00	\$1,459,400	12.75

6. Provide \$1,268,400 GPR in 2017-18, and \$1,447,200 GPR in 2018-19 with 21.0 GPR positions annually and \$1,342,000 PR in 2017-18, and \$1,495,700 PR in 2018-19 with 21.0 PR positions annually to improve total staff ratio at Lincoln Hills School (LHS) as directed by Federal Prison Rape Elimination Act (PREA).

ALT 6	Change to Base		Change to Bill	
	Funding	Positions	Funding	Positions
GPR	\$2,715,600	21.00	\$2,715,600	21.00
PR	<u>2,837,700</u>	<u>21.00</u>	<u>1,528,300</u>	<u>12.75</u>
Total	\$5,553,300	42.00	\$4,243,900	33.75

7. Maintain current position authority.

ALT 7	Change to Base		Change to Bill	
	Funding	Positions	Funding	Positions
PR	\$0	0.00	- \$1,309,400	- 8.25

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