



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 #233

Earned Release Program Expansion (Corrections -- Adult Corrections)

Bill Agency

[LFB 2007-09 Budget Summary: Page 108, #7]

CURRENT LAW

The earned release program was created in 2003 Act 33 for eligible inmates who successfully complete the substance abuse treatment program at the Drug Abuse Correctional Center and the Robert E. Ellsworth Correctional Center. All inmates are eligible for the earned release program, except inmates who are incarcerated for crimes against life and bodily security (crimes under Chapter 940 of the statutes), or for certain crimes against a child. Inmates in the intensive sanctions program may participate in the program but are not eligible for earned release. For inmates with bifurcated sentences who successfully complete the program, the sentencing court must: (a) reduce the prison portion of the bifurcated sentence so that the inmate will be released to extended supervision within 30 days after the court was notified of the completion; and (b) lengthen the term of extended supervision so that the total length of the bifurcated sentence does not change.

GOVERNOR

Modify current law to require the Departments of Corrections and Health and Family Services to provide a substance abuse treatment program for inmates at any correctional facility that the Departments determine is appropriate for the purposes of the earned release program. Provide \$1,565,000 GPR in 2007-08 and \$1,896,500 GPR in 2008-09 and 31.5 GPR positions annually to expand utilization of the earned release program. As a result of the changes, SB 40 estimates contract bed savings of \$1,657,400 GPR and 88 beds in 2007-08 and \$11,570,300 and 616 contract beds in 2008-09.

DISCUSSION POINTS

Program Description

1. Under current law, the Departments of Corrections and Health and Family Services (DHFS) may designate a section of a mental health institution as a correctional treatment facility for the treatment of substance abuse of inmates, known as the Wisconsin substance abuse program ("earned release program"). 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. In addition, statutes provide that the female facility Robert E. Ellsworth Correctional Center (REECC) may provide substance abuse treatment for the purposes of the earned release program.

2. The earned release program was created under the 2003-05 biennial budget, Act 33. Under the program, an inmate may be released to parole or extended supervision if Corrections determines that the inmate has successfully completed the substance abuse program at DACC or REECC. The following statutory provisions apply to the earned release program:

- All inmates are eligible, 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 resident; (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 sanction program participants may be placed in the treatment program, however, intensive sanctions participants are not eligible for earned release.

- For inmates serving a bifurcated sentence, the sentencing court is required to decide at sentencing that the inmate is eligible or ineligible to participate in the earned release program.

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

- If an eligible inmate serving an indeterminate sentence successfully completes the treatment program, the Parole Commission is required to parole the inmate, regardless of the amount of time the inmate had served. The parolee is 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 treatment program, the Department must notify the sentencing court. The sentencing court is required to: (a) reduce the prison portion of the bifurcated sentence so that the inmate is 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 does not change.

- With Corrections' approval, an inmate serving a bifurcated sentence imposed before July 26, 2003, may petition the sentencing court to determine whether he or she is eligible or ineligible to participate in the 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 grant or deny the inmate's petition later than 90 days after the inmate files the petition. If the court determines that the inmate is eligible to participate in the earned release program, the court must inform the inmate of the process by which the sentence may be modified.

3. The Department has developed suitability/placement criteria for the earned release program. If the court determines an individual is eligible for the earned release program, Corrections will use the criteria to determine program suitability and the person's readiness for placement in the program. Suitability criteria include:

- Inmates must be classified as minimum-security (DACC and REECC are minimum-security facilities).

- Inmates must have an identified substance abuse treatment need linked with their criminal behavior.

- Inmates who have served prison sentences for violent/assaultive crimes are not eligible for earned release.

- Inmates in need of sex offender treatment and who have engaged in assaultive or violent behaviors are not appropriate for participation.

- Inmates who have refused to participate or failed to complete the challenge incarceration program are not eligible for earned release.

- Inmates with poor institution adjustment need to demonstrate appropriate behavior prior to approval of participation. Inmates must volunteer and sign a memorandum of agreement to participate.

- Inmates with physical limitations will be reviewed and approved on a case-by-case basis. Inmates with psychological limitations and/or who are on any psychotropic medication will be reviewed and approved on a case-by-case basis. The Department indicates that health and clinical services are limited at DACC, and an inmate's need for off-site care may significantly interrupt programming. Likewise, inmates with significant dental needs should have these needs resolved prior to transfer.

4. According to the Department, the six-month program offers three drug and alcohol program tracks (summarized below). In addition, the Department has established a reintegration program component to the earned release program: "The core of the reintegration process, starting at admission to the program, [focuses] on developing a comprehensive reintegration plan that addresses all critical success factors (housing, employment, social support, treatment, and supervision), while actively engaging the inmate, their family, and community support network in an effort to better prepare the inmate for successful release and reintegration into the community." The program tracks include:

- "Social Skills Approach Core Component" - communication and social skills training, intensive AODA education/dependency treatment, AODA relapse prevention, adult children of alcoholics and family dysfunction, correcting criminal thinking, interpersonal skills and values clarification.

- "Cognitive-Behavioral Approach Core Component" - intensive AODA education/abuse education and treatment, AODA relapse prevention, correcting criminal thinking, interpersonal relationships, and employment readiness.

- "OWI 5th Offense Core Component" - intensive AODA education/dependency and addiction treatment, AODA relapse prevention, modification of high risk and thrill seeking behavior, interpersonal relationships, responsible decision making, and community service.

5. The DACC program began in March, 2004, and currently has a program capacity of up to 200 beds. The REECC program began in September, 2004, and has a program capacity of 30 beds. As of May 1, 2007: (a) 3,848 male inmates and 351 female inmates have been determined by sentencing courts to be eligible for the earned release program; (b) 688 males and 89 females have successfully completed the program; (c) 168 males and 48 females have failed the program; (d) 166 males and 30 females are currently participating in the program; and (e) 187 males and 68 females are scheduled to start the program at a future date.

6. In 2006, the Department asked the University of Wisconsin Population Health Institute to evaluate its earned release program. The UW institute evaluated the program from March, 2006, through February, 2007, and issued its report in February, entitled "Evaluation of the Earned Release Program." The evaluation included documenting program implementation, analyzing participants' recidivism after release, examining the effectiveness of the "reach-in" or re-entry component, and examining patterns in program termination and drop-outs.

7. The report's executive summary identified the earned release program's (ERP) strengths, as follows:

- "• ERP provides gender-specific residential substance abuse treatment.
- ERP is actively working to meet each of the goals and objectives set forth for the program.
- ERP meets DOC's AODA contact standards for the level of residential treatment provided to program participants.
- The experienced program staff have worked to implement, clarify and enhance the program goals/objectives, program structure and procedures, participant assessment processes, and substance abuse treatment services.
- ERP is supported by an active Oversight Committee that addresses both system-level and program-level issues as they arise. [The Oversight Committee members include a Corrections policy initiatives advisor, a community corrections regional chief, the DACC and REECC superintendents, and a researcher from the UW Population Health Institute.]
- ERP meets its program objective of successfully graduating more than 60 percent of admissions, with an overall graduation rate of 75 percent (77 percent for males and 60 percent for females).
- One of the principal strengths of ERP is that the program saved prison bed days through the early release of non-violent offenders. Examination of releases through June 30, 2006 revealed that ERP saved 136,604 prison bed days through early release of graduates. Based on DOC's average cost for incarceration in 2005, this results in an estimated savings of \$9,818,669 since the program's inception.
- Overall, 22 percent of ERP releases were reincarcerated after release since program start. ERP participants who had been at risk in the community for six months or less revealed that 10 percent were reincarcerated. Of those who had been in the community for 12 months or less, overall 25 percent were reincarcerated within 12 months of release.
- Overall, the average number of days to first reincarceration was 259 days for those releases who were reincarcerated.
- The vast majority of participants surveyed also felt that ERP had numerous strengths which helped them in their recovery from substance abuse. Participants indicated that ERP's strengths included helping them to better understand themselves and their past behaviors, the dedicated staff, the opportunity for early release, community service opportunities, victim impact sessions, and the change to focus on their addiction with others in a group setting."

8. The report identified the program's challenges, as follows:

"• The diverse population of ERP admissions with varying needs and problem severity has been a challenge for ERP. Treating offenders with distinct addictions (i.e. alcohol vs. methamphetamine), use patterns (i.e., chronic user vs. drug dealer), mental health needs (none vs. anti-social personality disorder), and functioning levels (i.e., high vs. lower functioning) in the same program groups can diminish the effectiveness of treatment.

• Staff at DACC and REECC have utilized a variety of assessment tools to assist in treatment planning for participants at the time of program admission. However, treatment staff reported that the process should be improved. . .

• The program continues to address issues relating to program eligibility and internal suitability/placement criteria. The ERP Oversight Committee is actively working to modify the suitability criteria to improve both the appropriateness of admissions and to increase the potential pool of inmates available for admission.

• ERP has also experienced challenges related to treatment program staffing. Treatment staff at both program sites indicated that additional professional staff are necessary to effectively provide treatment.

• A barrier to successful implementation at DACC has been the presence of temporary hold inmates housed at the facility. These inmates are extremely disruptive to the treatment process and interfere with treatment provision to ERP participants.

• Challenges related to the reach-in component have also impacted the program. Both ERP staff and agents reported barriers related to completion of the three required pre-release contacts, communication and collaboration (unreturned telephone calls and emails), transfer of cases from agent to agent without sufficient briefing of the new agent, and a lack of familiarity with ERP policies and procedures on the part of some agents.

• It is difficult to assess ERP's impact on criminal recidivism (reconviction for a new offense) at this early stage in the program's implementation. As recidivism is a function of time, and as the majority of ERP graduates have been in the community after their release for less than one year most would not have been out of prison long enough to have had a new case processed through the criminal justice system."

9. The report included the following recommendations for improving the earned release program:

System-Level Issues

• Limit admission for earned release to those with at least a sixth-grade reading level or develop separate programming for lower functioning offenders.

• Reevaluate program staffing patterns, particularly for the REECC program, "which has experienced a decline in the number of staff positions available to operate the program while

maintaining the same program capacity. The gender-specific therapeutic community model implemented for female ERP participants requires a more staff-intensive approach to providing treatment than the standard residential AODA treatment model utilized for the males at DACC."

- Further examine the impact of race upon treatment completion: "While ERP provides gender-specific treatment, the cultural appropriateness of ERP for the wide range of program admissions has not been assessed. It does not appear that race is a primary factor in completion, but rather is associated with other factors (offense type and mental health) that do impact likelihood of completion."

- Convert the temporary hold beds at DACC to earned release beds in order to eliminate the disruptions caused by temporary hold inmates.

Treatment Program Issues

- Develop consistent data collection procedures and improve participant assessments for program admission.

- Increase the speed with which participants are admitted and released to the program.

- Consider modifying curriculum to further emphasize employment: "Many of the agents, graduates, and current participants felt that the pre-release activities that focused on employment were extremely valuable to participants. While ERP must retain its focus on treatment issues, greater support of continuum of care and employment issues that impact success after release could be considered."

- Explore options to enhance the pre-release, transition/aftercare components.

- Continue to address participant retention issues and program improvement. Increase consistent enforcement of treatment program rules.

Reach-in/Transition Component

- Conduct agent training sessions to increase agent knowledge of earned release practices and procedures. As an alternative, designate specific agents to supervise earned release graduates.

- Systematically document the frequency of reach-in contacts to monitor adherence to the program's contact standards.

Ongoing Evaluation of Participant Outcomes

- Develop a reporting system for agents to record selected outcome indicators (i.e., employment, substance use, treatment involvement, living stability, and family support) at specified intervals after release via an electronic database. This reporting system "could also be viewed as a pilot test for potential implementation system-wide to collect post-release outcomes for all DAI releases."

- Develop a plan for ongoing program evaluation, and develop a matched comparison group of offenders who do not participate in earned release.

- "This series of recommendations should be viewed as a compilation of potential options for program improvement. Administrative staff should work with the ERP Oversight Committee to assess the feasibility of each recommendation, prioritize the recommendations, and develop an action plan for implementation of the appropriate modifications."

10. Since the report's release, the Department has updated the program's suitability/placement criteria, eliminated temporary hold beds at DACC, and worked to improve agent contact with participants and data collection. Corrections indicates that the additional funding and staffing provided in SB 40 is intended to address the staffing issues at REECC. For the other recommendations, the Oversight Committee has developed an action plan to address these issues.

Senate Bill 40

11. Senate Bill 40 would provide \$1,565,000 GPR in 2007-08 and \$1,896,500 GPR in 2008-09 and 31.5 GPR positions annually to expand the use of the earned release program by 425 beds. The Department would convert beds for use for the earned release program at each of the following facilities: Chippewa Valley Correctional Treatment Facility (200 beds), Racine Correctional Institution (200 beds), and REECC (25 beds).

12. The bill would require that Corrections and DHFS provide a substance abuse treatment program for inmates for the purpose of earned release at any correctional facility the Departments determine is appropriate. The provision notably modifies current law in two respects: (a) the program could be provided at any correctional facility, determined appropriate; and (b) both Corrections and DHFS would provide treatment services for the earned release program. Corrections indicates that, while actual implementation of the earned release programs are done by the Department, Corrections uses DHFS substance abuse standards for its AODA programs and regularly consults with DHFS on AODA programming issues.

13. It should be noted that supporting material provided by Corrections for earned release identifies Taycheedah Correctional Institution, not REECC, to receive funding and staffing for earned release. The Department indicates this is in error and the intent is to provide funding to strengthen the existing program at REECC. Under the bill, this funding is \$287,400 GPR in 2007-08 and \$349,700 GPR in 2008-09 and 5.5 GPR positions annually. Positions would include 0.5 psychologist, 1.0 treatment specialist, 1.0 corrections program specialist, and 3.0 social workers.

14. For the Chippewa Valley Correctional Treatment Facility (CVCTF), the bill would provide funding of \$651,700 GPR in 2007-08 and \$790,800 GPR in 2008-09 and 13.0 GPR positions annually. For Racine Correctional Institution, the bill would provide funding of \$625,900 GPR in 2007-08 and \$756,100 GPR in 2008-09 and 13.0 GPR positions annually. The new positions at CVCTF would include 1.0 psychologist, 1.0 treatment specialist, 1.0 corrections program supervisor, 9.0 social workers, and 1.0 office operations associate. Positions at Racine

would include 1.0 treatment specialist, 11.0 social workers, and 1.0 office operations associate.

15. The CVCTF and Racine facilities were chosen for the expanded earned release program because these facilities already have existing staffing for AODA programming (13.0 positions at each facility) that can be utilized with the additional positions provided in SB 40 for the program.

16. In expanding the earned release program, the bill estimates contract bed savings of \$1,657,400 GPR (88 beds) in 2007-08 and \$11,570,300 GPR (616 beds) in 2008-09. Contract bed savings estimates assume an 80% success rate, resulting in a reduction of sentence length of 1.25 years per offender. The UW Population Health Institute report determined that the success rate for male inmates in the program was 77%. If the Committee were to modify savings based on the report's identified success rate, contract bed savings would be \$1,595,300 GPR (85 beds) in 2007-08 and \$11,136,400 GPR (593 beds) in 2008-09. This reestimate would modify the bill by \$62,100 GPR in 2007-08 and \$433,900 GPR in 2008-09.

17. It may be noted that, while the UW report identifies *prison bed* savings attributed to earned release, any bed savings resulting from the program would currently be *contract bed* savings. The report identified a total of approximately 136,600 days saved for the 502 participants who completed earned release (an average of 272 days per participant) since the start of the program through June, 2006. The report then multiplied the saved days by the average cost for DAI incarceration and estimated correctional savings of \$9.8 million as a result of earned release. Prison bed savings will not be realized, however, until prison populations decline to the point where staffing and/or other operational costs for institutions may be reduced. As of May 18, 2007, the prison system was operating at a capacity of 132%. The savings figure, therefore, is more illustrative of contract bed costs not incurred as a result of the program.

18. As indicated previously, statutory provisions currently limit the earned release program to the DACC and REECC facilities. The bill would allow the Department to establish an earned release program at any facility. No legislative review would be required to expand the program. Therefore, the Committee may wish to consider deleting the provision allowing earned release at any correctional facility, and instead specifically designate the facilities for which funding is provided. On the other hand, it could be argued that the Department's ability to expand earned release would provide more flexibility for Corrections to pursue programmatic opportunities and bed savings.

19. Given that the earned release program is still a relatively new program and, as indicated in the UW report, the impact on criminal recidivism is still unclear, the Committee may wish to expand the program, but by a fewer number of beds. The Department indicated that staffing already exists at CVCTF and Racine Correctional Institution for AODA programming that can be utilized for earned release. The Committee could direct the Department to operate 100-bed programs at CVCTF and Racine Correctional Institution, instead of 200-bed programs, and provide 1.0 psychologist and 1.0 treatment specialist at CVCTF and 1.0 treatment specialist at Racine for proportional treatment staffing for the programs.

20. Under the above alternative, the bill would be modified by -\$176,200 GPR in 2007-08 and \$7,055,000 GPR in 2008-09. This alternative assumes that the additional funding and positions for REECC would be approved in order to address the staffing issues raised in the UW evaluation.

21. If the earned release provision is removed from the bill, funding would increase by \$92,400 GPR in 2007-08 and \$9,673,800 GPR in 2008-09 and decrease by 31.5 GPR positions annually. Deleting the provision increases funding as a result of removing contract bed savings.

ALTERNATIVES TO BILL

1. Approve the Governor's recommendation to modify current law to require the Departments of Corrections and Health and Family Services to provide a substance abuse treatment program for inmates at any correctional facility that the Departments determine is appropriate for the purposes of the earned release program. Provide \$1,565,000 GPR in 2007-08 and \$1,896,500 GPR in 2008-09 and 31.5 positions annually to expand utilization of the earned release program. As a result of the changes, the Department estimates contract bed savings of \$1,657,400 GPR and 88 beds in 2007-08 and \$11,570,300 and 616 contract beds in 2008-09.

ALT 1	Change to Bill		Change to Base	
	Funding	Positions	Funding	Positions
GPR	\$0	0.00	-\$9,766,200	31.50

2. Modify the Governor's recommendation by \$62,100 GPR in 2007-08 and \$433,900 GPR in 2008-09 as a result of reestimating contract bed savings, based on the program's success rate identified in the UW Population Health Institute evaluation.

ALT 2	Change to Bill		Change to Base	
	Funding	Positions	Funding	Positions
GPR	\$496,000	0.00	-\$9,270,200	31.50

3. Modify the Governor's recommendation by deleting the funding and positions provided for Chippewa Valley Correctional Treatment Facility (CVCTF) and Racine Correctional Institution, except for 1.0 psychologist and 1.0 treatment specialist at CVCTF and 1.0 treatment specialist at Racine, to operate 100-bed earned release programs, instead of 200-bed programs.

Funding and positions under this alternative would include: (a) CVCTF, \$116,100 GPR in 2007-08 and \$143,000 GPR in 2008-09 and 2.0 GPR positions annually; (b) Racine Correctional Institution, \$49,000 GPR in 2007-08 and \$59,200 GPR in 2008-09 and 1.0 GPR position annually; and (c) Robert E. Ellsworth, \$287,400 GPR in 2007-08 and \$349,700 GPR and 5.5 GPR positions

annually. As a result, estimated contract bed savings would be \$797,600 GPR (42 beds) in 2007-08 and \$5,568,200 GPR (296 beds) in 2008-09.

ALT 3	Change to Bill		Change to Base	
	Funding	Positions	Funding	Positions
GPR	\$4,404,800	- 23.00	- \$5,361,400	8.50

4. In addition to any of the above alternatives, specify that the Department may provide the earned release program at the following facilities: Drug Abuse Correctional Center, Robert E. Ellsworth Correctional Center, Chippewa Valley Correctional Treatment Facility, and Racine Correctional Institution.

5. Delete provision.

ALT 5	Change to Bill		Change to Base	
	Funding	Positions	Funding	Positions
GPR	\$9,766,200	- 31.50	\$0	0.00

Prepared by: Chris Carmichael