



Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #441

Outpatient Competency, Conditional Release, and Supervised Release Contracted Services (DHFS -- Institutions)

Bill Section

[LFB 2007-09 Budget Summary: Page 335, #3]

CURRENT LAW

Outpatient Competency Examinations. Under current law, whenever there is reason to doubt a criminal defendant's competency to stand trial, the court appoints an examiner to report upon the person's condition. These competency-to-stand-trial examinations can be conducted either on an inpatient basis at one of the state mental health institutes, or on an outpatient basis, in which case the examination is conducted in a jail or a locked unit of a facility. In 2005-06, virtually all (97%) of competency examinations were conducted on an outpatient basis.

DHFS is responsible for the outpatient competency examination program. In recent years, DHFS has contracted with an outside vendor, Wisconsin Forensics Unit, to perform these outpatient competency examinations. In 2005-06, a total of 1,183 outpatient examinations were performed at an average cost of \$1,077 per examination.

Conditional Release. Current law provides that if a person is found not guilty by reason of mental disease or defect, the court shall commit that person to DHFS. The court's commitment order shall order institutional care if the court finds by clear and convincing evidence that the conditional release of the person would pose a significant risk of bodily harm to himself or herself or to others, or of serious property damage. If the court does not make that finding, it must order conditional release. In addition, persons who have been committed to institutional care can petition the committing court to modify its order by authorizing conditional release. The court shall grant the petition for conditional release unless the court finds by clear

and convincing evidence that the person would pose a significant risk of bodily harm to himself or herself or to others, or of serious property damage, if conditionally released.

DHFS administers the conditional release program. Program expenditures include costs related to housing, medication, psychiatric care, intensive case management, staff, and services. In addition, DHFS contracts with the Department of Corrections (DOC) for the supervision of persons who are conditionally released into the community. In 2005-06, the average daily population (ADP) of persons on conditional release was 268, at an average cost of \$14,749 per person.

Supervised Release. Chapter 980 of the statutes provides that if an individual is found to meet the statutory definition of a sexually violent person (SVP), the court must commit that individual to the custody of DHFS until such time as they are determined to no longer be an SVP. Individuals committed as SVPs are placed into the custody of DHFS and are housed as inpatients at either the Sand Ridge Secure Treatment Center (SRSTC) or the Wisconsin Resource Center (WRC).

Following their commitment, and consistent with the timelines set forth in statute, an SVP can petition the committing court to grant him supervised release into the community. The court can grant the petition for supervised release only if finds that all of the following criteria are met: (1) the person has made significant progress in treatment and that progress can be sustained while on supervised release; (2) it is substantially probable that the person will not engage in an act of sexual violence while on supervised release; (3) treatment that meets the person's needs and a qualified provider of the treatment are reasonably available; (4) the person can be reasonably expected to comply with his or her treatment requirements and with all of his or her conditions or rules of supervised release imposed by the court or by DHFS; and (5) a reasonable level of resources can provide for the level of residential placement, supervision, and ongoing treatment needs required for the safe management of the person while on supervised release.

These criteria reflect changes to Chapter 980, enacted as part of 2005 Wisconsin Act 434, which went into effect August 1, 2006. Prior to that date, courts were authorized to grant supervised release unless the state proved by clear and convincing evidence that it was likely the person would engage in acts of sexual violence if they were not continued in institutional care, and that the person had not demonstrated significant progress in his or her treatment, or had refused treatment.

As of February 28, 2007, there were 16 SVPs in community supervised release.

The costs of the supervised release program include housing, monitoring, transportation, case management, and other services. DHFS currently contracts with several outside vendors to provide these comprehensive services to SVPs on supervised release. In addition, DHFS contracts with DOC to provide supervision through DOC probation and parole agents. Effective July 1, 2007, 2005 Wisconsin Act 431 will require lifetime global position system (GPS)

tracking of any person placed on supervised release under Chapter 980. DHFS implemented active GPS tracking of all persons on supervised release as of December 1, 2005. Also effective July 1, 2007, Chapter 980 will require that a person on supervised release be restricted to their home during the first year of their supervised release, except for outings that are under the direct supervision of a DOC escort and that are for employment purposes, for religious purposes, or for caring for the person's basic living needs. The supervised release program also includes scheduled and unscheduled monitoring checks, polygraph examinations, and escorted transportation for supervised activities.

Funding for the outpatient competency examination, conditional release, and supervised release programs, and other related contracted services are budgeted in a single DHFS appropriation. Base funding for these programs is \$7,927,500 GPR in 2006-07.

GOVERNOR

Provide \$398,300 GPR in 2007-08 and \$1,492,600 GPR in 2008-09 to increase funding for the outpatient competency examination, conditional release, and supervised release programs as follows: (1) provide \$339,200 in 2007-08 and \$499,000 in 2008-09 for projected cost increases in the outpatient competency examination program; (2) reduce funding by \$101,600 in 2007-08 and increase funding by \$511,900 in 2008-09 for the projected costs of the conditional release program; (3) decrease funding by \$89,500 in 2007-08 and increase funding by \$142,200 in 2008-09 for the supervised release program; and (4) increase funding by \$250,200 in 2007-08 and by \$339,500 in 2008-09 for contract services provided by DOC related to supervision, escort transportation, and GPS equipment rental.

DISCUSSION POINTS

Outpatient Competency Examinations

1. As noted, DHFS contracts with an outside vendor, Wisconsin Forensics Unit, to perform all outpatient competency-to-stand-trial examinations. To project the amount of GPR needed to support the program during the 2007-09 biennium, the administration estimated that 1,285 outpatient competency examinations would be performed in 2006-07. The administration then estimated that the number of examinations would increase by 7%, to 1,375, in 2007-08, and by 7%, to 1,471, in 2008-09.

2. More recent data obtained from DHFS indicates, however, that through February, 2007, there had been 778 examinations conducted. If that figure is annualized, it generates an estimate of 1,167 for the total number of outpatient competency examinations to be performed in 2006-07. By using this revised estimate as the number of outpatient competency examinations that will be conducted in 2006-07, and applying the administration's other assumptions regarding the rate at which that number will increase during the 2007-09 biennium and the cost per examination during that period (assumptions that appear reasonable based on recent experience), the amount of

GPR required to support the outpatient competency examination program would be \$144,300 lower than the amount that would be provided in the Governor's bill for 2007-08, and \$158,800 lower than the Governor's recommended 2008-09 funding amount.

Conditional Release

3. The bill assumes the average daily population (ADP) of persons on conditional release will increase at the rate of 10% per year during the 2007-09 biennium. That rate of increase appears somewhat aggressive, however, given that the average annual rate of increase during the five-year period 2001-02 through 2005-06 was 2%, not 10%. Moreover, the program's ADP through March 14, 2007, has been 278, an increase of approximately 4% from the prior year.

4. On a year-to-year basis, the ADP of persons on conditional release has varied substantially. For instance, in 2004-05, the program's ADP increased by 8.6% from the prior year. During 2005-06, however, the ADP declined by 7.9%. Given this annual variability, it is difficult to project the program's future populations. Based on the considerations identified above, however, the Committee could decide that a reasonable estimate of the annual rate of increase in the program's ADP during the 2007-09 biennium will be 5%, rather than 10% as assumed by the administration. Using that lower assumption, the projected ADP of persons on conditional release would be 288 in 2007-08, and 302 in 2008-09.

5. Conversely, current actual expenditure data suggests that the average cost of serving persons on conditional release, when annualized (\$16,848), is higher than the cost per person in 2006-07 (\$14,749), and higher than the bill's projections for 2007-08 (\$15,390), and 2008-09 (\$15,850). DHFS attributes these increased costs to the fact that beginning in 2005-06, a concerted effort was made to release more clients from the state's mental health institutes into the conditional release program. DHFS believes that while this effort has helped address capacity issues at the mental health institutes, and is consistent with the requirement to treat patients in the least restrictive environment, it has also resulted in more challenging patients participating in the conditional program, thereby increasing such program costs as supervision and medications. DHFS has also indicated that these higher per person costs for persons on conditional release are likely to continue in the upcoming biennium.

6. For these reasons, the Committee could conclude that the ADP of persons on conditional release in 2007-09 will be lower than projected by the administration, but that the cost of serving those individuals will be higher than initially estimated under the bill. Applying these two sets of revised assumptions (lower ADPs but higher per person costs) would increase the amount of GPR required for the conditional release program by \$230,200 in 2007-08, and decrease the GPR requirement by \$141,000 in 2008-09, relative to the Governor's recommendations.

Supervised Release

7. As of February 28, 2007, there were 16 SVPs on community supervised release under Chapter 980. As the following table indicates, the average monthly population (AMP) of

persons on supervised release has changed very little during the past several fiscal years.

**Average Monthly Population (AMP) of Persons
on Community Supervised Release**

| <u>Fiscal Year</u> | <u>AMP</u> |
|----------------------|------------|
| 2003 | 15 |
| 2004 | 13 |
| 2005 | 15 |
| 2006 | 16 |
| 2007 (thru February) | 16 |

8. In addition, effective August 1, 2006, a court must find that all of the following criteria are satisfied before an SVP can be granted supervised release: (1) the person has made significant progress in treatment and that progress can be sustained while on supervised release; (2) it is substantially probable that the person will not engage in an act of sexual violence while on supervised release; (3) treatment that meets the person's needs and a qualified provider of the treatment are reasonably available; (4) the person can be reasonably expected to comply with his or her treatment requirements and with all of his or her conditions or rules of supervised release imposed by the court or by DHFS; and (5) a reasonable level of resources can provide for the level of residential placement, supervision, and ongoing treatment needs required for the safe management of the person while on supervised release. Prior to that date, courts were authorized to grant supervised release unless the state proved by clear and convincing evidence that it was likely the person would engage in acts of sexual violence if they were not continued in institutional care, and that the person had not demonstrated significant progress in his or her treatment, or had refused treatment. These statutory changes, in and of themselves, suggest that the rate at which SVPs are granted supervised release under Chapter 980 may decrease relative to recent experience.

9. The Governor's bill, however, assumes the AMP of SVPs on community supervised release will rise to 22 in 2007-08, and to 25 in 2008-09. While acknowledging that the recent changes to Chapter 980 arguably make it more difficult for SVPs to be granted supervised release, the administration expects that the effect of those changes will be offset by an increased number of SVPs who are in the final phase of their inpatient treatment. Balancing those competing influences, the administration estimates that the number of persons on community supervised release during the 2007-09 biennium will increase at the rate by which that number increased during the two-year period, June 30, 2004 (11 SVPs on supervised release) through June 30, 2006 (16 SVPs on supervised release). The Committee could determine, however, that this two-year period does not provide a reasonable basis for projecting future population increases, given that the month selected by the administration as the initial date of its comparison period, June, 2004, had the lowest number

of people on community supervised release of any month during the past four and one-half years.

10. For the reasons identified above, the Committee could decide that it is reasonable to assume the AMP of persons on community supervised release will rise less quickly, to an AMP of 19.5 in 2007-08 (rather than 22, as estimated by the administration), and to 23.5 in 2008-09 (rather than 25, as estimated by the administration.) While slightly lower than the administration's projections, the Committee could decide these revised projections are more consistent with historical population trends, and with the recent changes to Chapter 980.

11. Applying these revised population estimates to the administration's estimate of the supervised release program's per person costs in 2007-08 and 2008-09 (\$61,800 and \$63,700, respectively), the program's projected costs would be \$154,500 less than the Governor's bill in 2007-08, and \$95,500 less than the Governor's bill in 2008-09.

Contract Costs with DOC

12. In addition to the contracted services described above, DHFS contracts with DOC to provide supervision, escort, and GPS-related services for persons on conditional release and supervised release.

13. For the conditional release program, the bill includes DOC supervision costs of \$525,000 in 2007-08, and \$550,000 in 2008-09. For the supervised release program, the bill includes \$81,300 for 2007-08, and \$92,400 for 2008-09.

14. The Governor's bill includes equipment rental costs paid to DOC for the equipment needed to conduct GPS monitoring on all SVPs on community supervised release, as well as several persons on conditional release for whom such GPS monitoring is required (in both 2007-08 and 2008-09, the administration estimates there will be two persons on conditional release who require GPS monitoring). The projected rental cost of that GPS equipment is \$9.00 per person per day. The bill would provide a total \$77,800 for GPS equipment rental costs in 2007-08, and \$87,500 for those costs in 2008-09.

15. The Governor's bill also includes contract costs of \$50,000 each year in the 2007-09 biennium to cover part of the cost of a position with Justice 2000, which is an organization in Milwaukee that provides various pre-trial and other mental health services to the Milwaukee court/jail system. This position, a court liaison position designed to help with DHFS forensic patients in Milwaukee, is jointly funded by Justice 2000 and DHFS. The contract has been in place since 2003-04 and the cost has not changed since that time.

16. Finally, the Governor's bill includes additional contract costs to DOC for supervision and escort costs associated with the statutory requirement, effective July 1, 2007, that will restrict a person to their home during the first year of their supervised release, except for outings that are under the direct supervision of a DOC escort and that are for employment purposes, religious purposes, or for caring for the person's basic living needs. The bill includes \$43,500 in 2007-08, and \$87,000 in 2008-09 for projected additional escort and transportation costs.

17. The contract costs DHFS pays DOC for these services are based in part on the estimated population of persons on conditional release and supervised release requiring those services. Applying the re-estimated conditional release and supervised release populations, as discussed above, the DOC contract costs would be \$8,600 more than the Governor's bill in 2007-08, and \$57,000 less than the Governor's bill in 2008-09. The estimated increase in DOC contract costs or 2007-08, relative to the Governor's bill, stems from the fact the administration's estimate incorrectly assumed the change to Chapter 980 regarding the supervision of persons during the first year of their supervised release went into effective January 1, 2008, rather than July 1, 2007.

ALTERNATIVES TO BILL

A. Outpatient Competency Examinations

1. Approve the Governor's recommendations.

| ALT A1 | Change to Bill Funding | Change to Base Funding |
|---------------|-----------------------------------|-----------------------------------|
| GPR | \$0 | \$838,200 |

2. Modify the Governor's recommendations by reducing funding for outpatient competency examinations by \$144,300 GPR in 2007-08, and by \$158,800 GPR in 2008-09. This modification is based on lower estimates of the number of examinations that will occur during those two years, relative to the Governor's bill.

| ALT A2 | Change to Bill Funding | Change to Base Funding |
|---------------|-----------------------------------|-----------------------------------|
| GPR | -\$303,100 | \$535,100 |

B. Conditional Release

1. Approve the Governor's recommendation.

| ALT B1 | Change to Bill Funding | Change to Base Funding |
|---------------|-----------------------------------|-----------------------------------|
| GPR | \$0 | \$410,300 |

2. Modify the Governor's recommendation by increasing funding for the conditional release program by \$230,700 GPR in 2007-08, and by reducing funding for the program by \$141,000 GPR in 2008-09.

| ALT B2 | Change to Bill Funding | Change to Base Funding |
|---------------|-----------------------------------|-----------------------------------|
| GPR | \$89,200 | \$499,500 |

C. Supervised Release

1. Approve the Governor's recommendation.

| ALT C1 | Change to Bill Funding | Change to Base Funding |
|---------------|-----------------------------------|-----------------------------------|
| GPR | \$0 | \$52,700 |

2. Modify the Governor's recommendations by decreasing funding for the program by \$154,500 GPR in 2007-08 and by \$95,500 GPR in 2008-09.

| ALT C2 | Change to Bill Funding | Change to Base Funding |
|---------------|-----------------------------------|-----------------------------------|
| GPR | -\$250,000 | -\$197,300 |

D. Contract Costs with DOC

1. Approve the Governor's recommendation.

| ALT D1 | Change to Bill Funding | Change to Base Funding |
|---------------|-----------------------------------|-----------------------------------|
| GPR | \$0 | \$589,700 |

2. Modify the Governor's recommendation by increasing funding for DHFS to contract with DOC to provide supervision, escort, and other services to the conditional release and supervised release program by \$8,600 GPR in 2007-08, and by reducing funding for these purposes by \$57,000 GPR in 2008-09.

| ALT D2 | Change to Bill Funding | Change to Base Funding |
|---------------|-----------------------------------|-----------------------------------|
| GPR | -\$48,400 | \$541,300 |

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