



Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #231

Earned Release Program Expansion (Corrections -- Adult Corrections)

[LFB 2017-19 Budget Summary: Page 138, #4]

CURRENT LAW

The earned release program was created in 2003 Act 33 for eligible inmates who successfully complete the substance abuse treatment program. Inmates are eligible for the earned release program, other than those 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 funding by -\$875,500 GPR in 2017-18 and -\$2,832,300 GPR in 2018-19 and provide 16.25 GPR positions annually to expand the earned release program at the Department's correctional centers. Positions would include 15.0 treatment specialists and 1.25 correctional sergeants, with associated funding of \$803,700 GPR in 2017-18 and \$952,500 GPR in 2018-19. Of the positions, 5.0 treatment specialists and 1.25 correctional sergeants would be at the Drug Abuse Correctional Center, while the remaining 10.0 treatment specialists would be placed at one of the other correctional centers (not yet determined). In addition, funding of \$294,200 GPR in 2017-18 and \$663,000 GPR in 2018-19 would be provided for supplies and services for anticipated increased community supervision costs as a result of increased admissions into the community. The bill assumes that funding associated with staffing and community supervision costs would be offset by contract bed savings of -\$1,973,400 GPR in 2017-18 and -\$4,447,800 GPR in 2018-19.

DISCUSSION POINTS

Program Description

1. Under current law, the Departments of Corrections and Health Services (DHS) 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"). 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.

2. Crimes under Chapter 940 for which inmates are ineligible for the 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 residents; (q) false imprisonment; (r) human trafficking; (s) taking hostages; (t) kidnapping; (u) stalking; (v) duty to aid victim or report crime; and (w) intimidation or attempted intimidation of witnesses or victims. Crimes against a child for which inmates are ineligible 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) human trafficking of a child; (f) causing a child to view or listen to sexual activity; (g) incest with a child; (h) child enticement; (i) use of a computer to facilitate a child sex crime; (j) soliciting a child for prostitution; (k) sexual assault of a child placed in substitute care; and (l) sexual assault of a student by a school instructional staff person.

3. For inmates serving a bifurcated sentence, the sentencing court must decide at sentencing whether or not an inmate is eligible for the program. Inmates serving a bifurcated sentence prior to the creation of the program must petition the sentencing court to determine eligibility. The sentencing court must rule on the inmate's petition no later than 90 days after the petition is filed. Eligible inmates serving an indeterminate sentence may be placed in the earned release program by the Department.

4. If the Department determines that an inmate serving a bifurcated sentence has successfully completed the earned release program, the Department must inform the sentencing court. The sentencing court then will: (a) reduce the prison portion of the bifurcated sentence so that the inmate will be 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. Inmates in the program serving indeterminate sentences may be paroled upon successful completion and must be placed in an intensive supervision program for drug abusers as a condition of parole.

5. The Department established 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.
- 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 institutional 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, medical, and/or psychological limitations will be reviewed and approved on a case-by-case basis, as any off-site care needs due to limited health and clinical services at the facility may significantly interrupt programming.

6. The earned release program is designed as a 16-week, half-day program for low risk inmates, and a 20-week, full-day program for medium and high risk inmates. According to the Department, earned release treatment modules "include cognitive-based substance abuse programming, cognitive behavioral-based curriculum such as NIC's [National Institute of Corrections] Thinking for a Change which addresses cognitive restructuring, social skills building and problem solving. It additionally addresses an individual's needs as they pertain to family dynamics, anger management and employability. Community reintegration is a primary focus throughout the program connecting offenders with the respective probation and parole agents during each program phase."

7. Currently, Corrections operates an earned release program for minimum-security inmates at the following institutions: Black River Correctional Center, Chippewa Valley Treatment Facility, the Drug Abuse Correctional Center, Milwaukee Women's Correctional Center, Prairie du Chien Correctional Institution, Racine Correctional Institution, and the Robert E. Ellsworth Correctional Center. Total staffing the Department has allocated for the earned release program is 87.0 positions (56.0 social worker, 28.0 treatment specialists, and 3.0 contracted staff). The below table identifies the staffing as of April, 2017, although Corrections indicates that staffing is occasionally transferred between institutions depending on need and geographic availability.

<u>Facility</u>	<u>Social Worker</u>	<u>Treatment Specialist</u>	<u>Contracted Staff</u>	<u>Total</u>
Black River Correctional Center	3.00	1.00		4.00
Chippewa Valley Treatment Facility	21.00	10.00		31.00
Drug Abuse Correctional Center	18.00	4.00	1.00	23.00
Milwaukee Women's Correctional Center	1.00	1.00		2.00
Prairie du Chien Correctional Institution	2.00	2.00		4.00
Racine Correctional Institution	8.00	6.00		14.00
Robert E. Ellsworth Correctional Center	3.00	4.00	2.00	<u>9.00</u>
				87.00

8. In fiscal year 2015-16, 1,400 inmates participated in an earned release program, with 1,248 inmates successfully completing the program. According to the Department, inmates are placed on a program eligibility list within three years of their release. As of the end of February, 2017, there were 3,562 inmates with three years or less remaining on their prison sentence. During 2015-16, 3,331 inmates were admitted to prison who are eligible for the program.

Budget Bill

9. Under the bill, the Governor would recommended \$803,700 GPR in 2017-18 and \$952,500 GPR in 2018-19 for 16.25 GPR positions annually to expand the earned release program. Additionally, \$294,200 GPR in 2017-18 and \$663,000 GPR in 2018-19 would be provided for supplies and services for anticipated increased community supervision costs as a result of increased admissions into the community. As a result of the program expansion, the bill also assumes contract bed savings of -\$1,973,400 GPR in 2017-18 and -\$4,447,800 GPR in 2018-19. The overall fiscal effect of the provision would be -\$875,500 GPR in 2017-18 and -\$2,832,300 GPR in 2018-19 and 16.25 GPR positions annually.

10. The 16.25 positions would include 15.0 treatment specialists and 1.25 correctional sergeants. Of the positions, 5.0 treatment specialists and 1.25 correctional sergeants would be at the Drug Abuse Correctional Center, while the remaining 10.0 treatment specialists would be placed at one of the other correctional centers (not yet determined). Under the expanded earned release program, each treatment specialist would provide services to 10 offenders at a time in the 20-week program. In calculating contract bed savings, resulting from more inmates participating in the program and being released earlier, Corrections assumed a program success rate of 84.7% based on 2014-15 data, with an overall reduced average daily population of 105 inmates in 2017-18 and 237 inmates in 2018-19.

11. While the program expansion was not requested by the Department in their agency request, the Corrections Secretary expressed support for the provision in his remarks before the Committee at the March 28, 2017, agency briefing.

12. According to the Department, additional staffing of 16.25 positions is sought to expand the program "as much as it felt was reasonable:"

"The DOC was concerned about having adequate programming space for staff to provide ERP [earned release program] treatment to inmates. The DOC felt it could reasonably accommodate 15.00 FTE additional ERP treatment staff in its institutions. Second, the DOC has had some challenges hiring staff with the requisite AODA certification to provide ERP, so there were concerns about adding too many treatment positions and then not having the ability to fill them... Third, the DOC has been making ERP available only to minimum security inmates and did not want to expand eligibility to medium security inmates at this time, adding too many additional FTE would have required this policy be expanded in order to avoid having unfilled program groups."

13. If the Committee wished to provide funding and positions for a differing level of staff, funding would be modified by one of the following below. [Alternative 2] At staffing levels less than provided in the bill, fewer additional inmates could be served and prison population reductions would be lower. At higher staffing levels, while Corrections' concerns regarding hiring and staffing may be more prominent, contract bed savings would be more significant.

Earned Release Program Staffing Alternatives

	<u>Staffing*</u>	<u>Biennial Funding**</u>	<u>Biennial Change to Bill</u>	
			<u>FTE</u>	<u>Amount</u>
a.	6.25	-\$1,120,300	-10.00	\$2,587,400
b.	11.25	-2,414,100	-5.00	1,293,600
c.	21.25	-5,001,700	5.00	-1,294,000
d.	26.25	-6,295,400	10.00	-2,587,700
e.	31.25	-7,589,300	15.00	-3,881,600

*All alternatives include 5.0 treatment specialists and 1.25 correctional officers for the Drug Abuse Correctional Center.

**Funding alternatives adopt similar assumptions as the bill, with monies for: (a) staffing; (b) community correctional costs; and (c) contract bed savings.

14. In addition to expressing support for the program expansion, some have inquired as to expanding the program beyond the perimeters of a substance abuse program. Under the 2009-11 biennial budget, 2009 Act 28, statutory provisions were modified for the earned release program to be expanded from a "substance abuse treatment program" to a "rehabilitation program." As such, the program would no longer be limited to offenders with substance abuse treatment needs, allowing Corrections to expand the program to addressing treatment needs not related solely to drug and alcohol treatment, such as mental health, education, or employment. These modifications expanding the program from a substance abuse treatment program to a rehabilitation program were repealed under the 2011-13 biennial budget, 2011 Act 32.

15. If the Committee wished, the bill could be modified to reinstate the expansion enacted under the 2009-11 biennial budget. [Alternative 3] To the extent the Department would have more flexibility in determining different types of rehabilitation programming for inmates to participate in for earned release, it is possible that additional bed savings would occur. While the type of programming and additional cost savings would be unknown at this time, the impact of expanding

the earned release program would likely be seen during the 2019-21 biennial budget deliberations, while reviewing prison population data and future forecasts. Under this alternative, inmates serving bifurcated sentences who would be newly eligible for the program would need to petition the sentencing court in order to be placed in the program.

16. If the Committee did not wish to expand the program at this time, the provision could be deleted. [Alternative 4]

ALTERNATIVES

1. Approve the Governor's recommendation to modify funding by -\$875,500 in 2017-18 and -\$2,832,300 in 2018-19 and provide 16.25 positions annually to expand the earned release program at the Department's correctional centers.

ALT 1	Change to Base		Change to Bill	
	Funding	Positions	Funding	Positions
GPR	-\$3,707,800	16.25	\$0	0.00

2. Approve the Governor's recommendation to expand the earned release program at the Department's correctional centers, but modify funding and staffing by one of the following, Alternatives 2a thru 2e.

ALT 2	Change to Base		Change to Bill	
	Funding	Positions	Funding	Positions
a. GPR	-\$1,120,300	6.25	\$2,587,400	- 10.00
b. GPR	-\$2,414,100	11.25	\$1,293,600	- 5.00
c. GPR	-\$5,001,700	21.25	-\$1,294,000	5.00
d. GPR	-\$6,295,400	26.25	-\$2,587,700	10.00
e. GPR	-\$7,589,300	31.25	-\$3,881,600	15.00

3. In addition to providing staffing and funding under Alternatives 1 or 2, move to modify the earned release program from a substance abuse treatment program to a rehabilitation program that addresses needs directly related to the inmate's criminal behavior. Specify that newly eligible inmates serving bifurcated sentences would be required to petition the sentencing court for placement in the program.

4. Delete provision.

ALT 4	Change to Base		Change to Bill	
	Funding	Positions	Funding	Positions
GPR	\$0	0.00	\$3,707,800	- 16.25

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