



Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873
Email: fiscal.bureau@legis.wisconsin.gov • Website: <http://legis.wisconsin.gov/lfb>

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Joint Committee on Finance

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Sex Offender Tracking (Corrections -- Community Corrections)

[LFB 2019-21 Budget Summary: Page 103, #2]

CURRENT LAW

Under current law, the Department of Corrections is required to maintain global positioning system (GPS) tracking for certain sex offenders and violators of certain temporary restraining orders and injunctions. "GPS tracking" is defined as a system that actively monitors and identifies a person's location and timely reports or records the person's presence at or near a crime scene or in an exclusion zone or the person's departure from an inclusion zone. "Lifetime tracking" is defined as GPS tracking that is required for a person for the remainder of the person's life or until supervision is terminated.

The Department may track a person using lifetime tracking for: (a) certain child sex offenses; (b) when a police chief or sheriff receives a special bulletin notification (SBN) on the person (issued when an offender is released after being convicted or found not guilty or not responsible by reason of mental disease or defect for two or more separate occasions of a sex offense); (c) after a sexually violent person commitment; or (d) if deemed appropriate by the Department. In September, 2017, the Attorney General issued an opinion indicating that the language concerning "two or more separate occasions of a sex offense" refers to the number of convictions, and may be satisfied by one act, if that act results in convictions on multiple counts.

The Department must implement a continuous GPS tracking system (active tracking), except when authorized to provide for passive positioning system tracking. The Department currently only utilizes active tracking due to the accuracy and real time reference to the location of the GPS device. The Department monitored an average daily population of 1,449 individuals by GPS tracking in 2017-18.

GOVERNOR

Provide \$1,593,100 GPR, \$10,900 PR, and 24.0 GPR positions in 2019-20 and \$3,155,000 GPR, \$29,400 PR, and 39.0 GPR positions in 2020-21 to supervise increased sex offender populations under the authority of the Department of Corrections, Division of Community Corrections.

DISCUSSION POINTS

1. The Department's Division of Community Corrections (DCC) operates a monitoring center to provide centralized electronic monitoring services to the Division of Community Corrections, Division of Juvenile Corrections, county and local law enforcement, and county human services departments.

2. In April, 2019, 1,794 individuals were being monitored by the Department (856 on lifetime tracking and 938 on non-lifetime tracking). Of these individuals, 1,369 were sex offenders (including those on the sex offender registry and those not required to register).

3. Under current law, the Department of Corrections is required to provide lifetime GPS tracking for certain sex offenders, as follows:

a. Persons placed on supervised release after a sexually violent person commitment (Chapter 980) or conditional release for a person found not guilty of a serious child sex offense by reason of mental disease or defect (Chapter 971), or discharged under Chapters 980 and 971 of the statutes, for a serious child sex offense on or after the January 1, 2008;

b. Persons placed on lifetime supervision for a serious child sex offense on or after January 1, 2008;

c. Persons for whom a SBN is issued on or after January 1, 2008. Special bulletin notifications are issued when an offender is released to the community, who was convicted, or found not guilty or not responsible by reason of mental disease or defect, on two or more separate occasions of a sex offense;

d. Persons released from prison, or to extended supervision, parole, or on probation on or after January 1, 2008, for one of the following serious child sex offenses: (1) sexual contact or intercourse with a person who is not a relative of the actor and who has not attained the age of 13 years and causes great bodily harm; and (2) sexual intercourse with a person who has not attained the age of 12 years, if the person is not a relative; and

e. Persons convicted, on or after January 1, 2008, who are released from prison, or to extended supervision or parole, for one of the following serious child sex offenses: (1) sexual intercourse with a person who has not attained the age of 16 years by use or threat of force or violence, if the person is not a relative; and (2) sexual contact with a person who has not attained the age of 16 years by use of threat of force or violence, if the person is not a relative and the actor is at least 18 years of age when the sexual contact occurs.

4. If a person is placed on probation, extended supervision, parole, or lifetime supervision for committing a serious child sex offense, but does not fall under one of the previously-described categories, the Department may elect to have the person tracked as a condition of his or her probation, extended supervision, parole, or lifetime supervision. The Department makes this determination by assessing the offender's risk using a standard risk assessment tool.

5. For lifetime tracking, the Department utilizes a system that actively monitors and identifies a person's location and timely reports or records the person's presence near or at a crime scene or in an exclusion zone or the person's departure from an inclusion zone. The Department currently contracts with Behavior Interventions Technologies Inc. (BI Technologies) for GPS tracking services and equipment. The BI Technologies unit is tethered to the offender via a hypoallergenic band on a limb, typically the leg, but can be placed on the wrist if medically necessary. If the device band is cut or stretched, the monitoring center is notified with an alert. Every minute, the tracking device sends the cumulative data to the Department, which tracks the unit's movements and conveys the information to Department staff through a computer application. If an offender is in an exclusion zone or departs from an inclusion zone, an alert is issued immediately. The Department assesses all alerts and notifies the probation and parole agent or law enforcement, if further investigation is warranted. For active GPS tracking, BI Technologies currently charges the Department \$4.40 per day, per unit.

6. The Department is also piloting a new GPS bracelet device through BI Technologies called "Loc8" at a daily cost of \$5.00 per bracelet. Compared to the typical GPS bracelet, a Loc8 device is smaller in size, can connect to area Wi-Fi signals, incorporates a "proximity event" feature (which notifies the monitoring center if the transmitter is away from the limb that it is intended to be tethered to), and includes a vibration feature and removable batteries. The Loc8 devices are being piloted by a subset of sex offenders on lifetime tracking (as of March, 2019, there were 34 Loc8 devices in use).

7. The existing contract with BI Technologies expires on June 30, 2019. In January, 2019, the Department chose Attenti US Inc. as the successor company to contract with for GPS equipment. BI Technologies protested this award and is working with the Department to come to a resolution. The Department requested a waiver through DOA to extend the contract with BI Technologies past the June 30, 2019 date, until the protest is resolved. Until there is a resolution, the Department will continue to be charged existing rates with BI Technologies. It will take at least one year for the new contract to be implemented, should the Department switch contract providers.

8. While the Department is statutorily authorized to utilize passive positioning system monitoring in certain, narrow situations, the Department indicates that, because of the time sensitive reference to the location of active GPS devices, Corrections utilizes active GPS technology for all of its monitoring.

9. For each person subject to tracking, Corrections must determine the costs of GPS tracking for the individual and how much of the costs that the individual is able to pay (juveniles are exempt from the tracking fee). Under statutory authority, a person subject to tracking may be required to pay a monthly tracking fee up to \$240, depending on their financial resources, earning potential, and the needs and earning potential of the person's dependents, among other factors. For individuals

on conditional release or supervised release, DHS must pay the GPS tracking costs to the extent that costs are not covered by any required payments by individuals. Any monies collected are utilized for expenditures related to GPS tracking. As of March, 2019, 430 of the 1,221 offenders on GPS monitoring were charged a monthly fee. Of the 430 charged, only 174 made any payments between January, 2018 and March, 2019.

10. A person subject to lifetime GPS tracking may petition for the termination of lifetime tracking with the circuit court in the county in which he or she was convicted or found not guilty or not responsible by reason of mental disease or defect. However, the person may not file a termination petition earlier than 20 years after the date on which their lifetime tracking began. Since the practice of lifetime GPS tracking began on January 1, 2008, 2028 is the earliest an individual could petition for termination of lifetime tracking. Further, the following individuals are prohibited from filing for termination from lifetime tracking: (a) a person who was convicted of any crime during the period of lifetime tracking; (b) a person who has been placed supervised release under Chapter 980 of the statutes; or (c) a person placed on parole or discharged under Chapter 975.

11. A petition for termination may be requested on behalf of the person subject to lifetime GPS tracking by the Department if the person is permanently physically incapacitated. This process requires affidavits from at least two physicians that explains the nature of the person's permanent physical incapacitation. As of April, 2019, there has been one medical release from lifetime GPS since the practice began, and there is currently one medical release request pending.

12. The Department's GPS tracking populations have steadily increased each year since the creation of the program, as follows:

	<u>Average Daily Population</u>	<u>% Increase</u>
2008-09	158	
2009-10	246	55.7%
2010-11	370	50.4
2011-12	499	34.9
2012-13	632	26.7
2013-14	775	22.6
2014-15	914	17.9
2015-16	1,168	27.8
2016-17	1,387	18.8
2017-18	1,449	4.5
2018-19*	1,558*	7.5*
2019-20*	2,087*	34.0*
2020-21*	2,302*	10.3*

*Department of Corrections' projections

13. The Department currently has a budgeted capacity for up to 1,920 individuals on GPS tracking. In its agency budget request, the Department projected that the 1,920 budgeted capacity figure would be surpassed after the first quarter of 2019-20 and additional funding would be needed

for 167 individuals in 2019-20 and 215 more individuals in 2020-21. These projections were calculated based on actual average monthly increases and decreases of the GPS monitored population over the past three years. Lifetime GPS tracked populations have been steadily increasing since no individuals are currently eligible to petition for termination and the Department has successfully petitioned for termination on behalf of a permanently physically incapacitated individual on only one occasion.

14. The Department's projections utilized actual populations through August, 2018. Utilizing more recent data (through April, 2019) populations increased more than anticipated by the Department and the 1,920 threshold is projected to be reached at the end of the 2018-19 fiscal year. As a result, it is now estimated that additional funding would be needed earlier in 2019-20 to supervise an additional 251 individuals in 2019-20 and 215 more individuals in 2020-21.

15. Further, the Attorney General's September, 2017, opinion, interpreting the "two or more separate occasions" language under current law (related to requiring lifetime GPS tracking), has impacted the GPS-tracked sex offender population. Prior to the Attorney General's opinion, the Department defined "two or more separate occasions" as meaning two or more judgement of convictions (two or more cases). Under the AG's opinion, however, "two or more separate occasions" may be satisfied by a single case, with sex offense convictions on at least two counts. According to the Department of Corrections, "an additional 190 offenders are anticipated to be placed on GPS during the [2019-21] biennium due to this change." These 190 offenders are included in the biennial projections, above.

16. At the end of the 2017-18 fiscal year, the Division of Community Corrections had 1,710.58 employees in its eight DCC regions, including 1,206.68 probation and parole agents. In addition to the DCC regions, the Division also had 85.0 employees in the monitoring center, 31.0 employees in the sex offender registry program (SORP), and 73.50 employees in central office or records positions.

17. The Department assesses probation and parole agent staffing needs via a point system, whereby each agent's workload averages approximately 187 points per month. Points are allocated based on an offender's classification. Both points and classifications are determined by the 2014 Case Classification/Staff Development (CCSD) study (the most recent study conducted) and the CCSD formula changes implemented in March, 2015 (as a result of a 2015 workload study). For the GPS tracked population, the updated CCSD formula is applied to three classifications, as follows: (a) GPS 1 is 8.23 points (for offenders who have been on GPS tracking for 90 days or less); (b) GPS 2 is 9.43 points (for offenders who have been on GPS tracking between 90 and 180 days); and (c) GPS 3 is 6.69 points (for offenders who have been tracked for 180 days or more). Utilizing this point system for probation and parole agents, in conjunction with the Department's staffing ratios of agents to various supervisor positions, the Department would require the staffing as recommended under the bill.

18. In addition to probation, parole, and extended supervision positions, the bill includes 6.0 positions annually for the SORP (including 2.0 corrections program specialists, 1.0 corrections services supervisor, 1.0 program and policy analyst, and 2.0 office operations associates). The SORP employees manage the sex offender registry and oversee case identification, tracking, development,

and dissemination of the special bulletin notifications. Employees also work with law enforcement officials to plan and conduct local community meetings designed to address public concerns related to a sex offender's release into the community. While there has been a 17% increase in sex offender registrants since 2010, the SORP staffing has remained unchanged. The additional 6.0 SORP positions increase the SORP full-time employee total proportionate to the increase in sex offender registrants. As of March, 2019, 25,369 individuals were subject to the registry's requirements.

19. Further, the bill includes 6.0 positions for the monitoring center in 2019-20 and 10.0 positions for the monitoring center in 2020-21. The bill provides funding and positions only for the population that the Department is statutorily required to monitor using GPS tracking. The monitoring center positions are based on a ratio of one post (equivalent to 5.0 corrections communications operator (CCO) positions and 1.0 supervising CCO position) per 250 pieces of equipment monitored. The projected increased need for GPS equipment is 251 pieces in 2019-20 and 465 pieces in 2020-21. This equipment need corresponds to one additional monitoring center post in 2019-20 (equivalent to 5.0 CCOs and 1.0 CCO supervisor, annually) and 1.86 additional posts in 2020-21 (equivalent to approximately 9.0 CCOs and 1.0 CCO supervisor, annually). The budget recommendations are consistent with this formula. These positions would be phased in throughout the biennium, in three-month increments, as the GPS-tracking population increases.

20. Given the population projections and Corrections' staffing workload study, the Committee may wish to provide \$1,593,100 GPR, \$10,900 PR, and 24.0 GPR positions in 2019-20 and \$3,155,000 GPR, \$29,400 PR, and 39.0 GPR positions in 2020-21 associated with supervising increased sex offender populations, as recommended under the bill. Staffing for sex offender tracking would include: 12.0 positions for probation, parole, and extended supervision in 2019-20 (including 7.0 probation and parole agents) and 23.0 positions for probation, parole, and extended supervision in 2020-21 (including an additional 8.0 probation and parole agents), 6.0 positions annually for the sex offender registry program, and 6.0 positions for the monitoring center in 2019-20 and 10.0 positions for the monitoring center in 2020-21. On an annualized basis, this alternative would cost \$3,612,200. [Alternative 1]

21. The most recent CCSD study noted that the "results [of the study] could have been skewed by a small number of cases that required significantly more time than the majority of other GPS 2 cases (outliers)." The actual number of hours agents spent on GPS 1, 2, and 3 cases were much closer to one another than the CCSD suggested, with the median times at 4.2 hours per week for a GPS 1 client, 4.1 hours per week for a GPS 2 client, and 3.4 hours per week for a GPS 3 client. These median times translate to fewer point equivalents for GPS 1, GPS 2, and GPS 3 supervision. These closer point differences seem appropriate, given that the differences between the GPS 1 to GPS 3 categories is solely dependent on how long a person has been on GPS tracking. When applying the amended point values to the updated projected increase in the GPS-tracked population, the probation and parole agent need increases by 2.0 agents in 2019-20. In total, the revised agent staffing estimate includes 9.0 agents in 2019-20 and 15.0 agents (6.0 additional positions) in 2020-21. [The bill provides 7.0 agents in 2019-20 and 15.0 agents (8.0 additional positions) in 2020-21.] The modification to agent positions does not affect the agents-to-supervisory staff position ratios.

22. The probation, parole, and extended supervision positions are phased in throughout the

biennium as new populations are phased in. Given that the 1,920 threshold will be reached earlier than expected under the revised population estimates, the revised staffing estimates will phase agents in earlier than expected in the first year, proportionate to the population increases. Specifically, in 2019-20, the revised estimates include nine months of funding for 5.0 agents, six months of funding for 2.0 agents, and three months of funding for 2.0 agents, compared to nine months of funding for 3.0 agents, six months of funding for 3.0 agents, and three months of funding for 1.0 agent in 2019-20 under the bill. In 2020-21, the revised estimates include 12 months of funding for 9.0 agents, nine months of funding for 2.0 agents, six months of funding for 2.0 agents, and three months of funding for 2.0 agents, compared to 12 months of funding for 7.0 agents, nine months of funding for 2.0 agents, six months of funding for 3.0 agents, and three months of funding for 3.0 agents in 2020-21 under the bill.

23. Using the median times worked in the revised CCSD and the updated population projections, the Committee could increase the recommended funding and staffing by \$125,900 GPR (associated with 2.0 more agent positions and earlier phase-in of agent positions) in 2019-20 and \$41,200 GPR (associated with earlier phase-in of agent positions) in 2020-21. [In total, this alternative would provide \$1,719,000 GPR and 26.0 GPR positions and \$10,900 PR in 2019-20 and \$3,196,200 GPR and 39.0 GPR positions and \$29,400 PR in 2020-21]. On an annualized basis, this alternative would cost \$3,612,200. [Alternative 2]

24. In its 2019-21 agency budget request, Corrections did not request additional funding for sex offender tracking. The Committee may, therefore, wish to maintain current law. [Alternative 3] However, given the significant increase in the population subject to tracking the Department would likely be unable to adequately monitor these individuals without an increase in resources.

ALTERNATIVES

1. Provide \$1,593,100 GPR, \$10,900 PR, and 24.0 GPR positions in 2019-20 and \$3,155,000 GPR, \$29,400 PR, and 39.0 GPR positions in 2020-21 to supervise increased sex offender populations.

ALT 1	Change to Base		Change to Bill	
	Funding	Positions	Funding	Positions
GPR	\$4,748,100	39.00	\$0	0.00
PR	<u>40,300</u>	<u>0.00</u>	<u>0</u>	<u>0.00</u>
Total	\$4,788,400	39.00	\$0	0.00

2. Provide \$1,719,000 GPR, \$10,900 PR, and 26.0 GPR positions in 2019-20 and \$3,196,200 GPR, \$29,400 PR, and 39.0 GPR positions in 2020-21 to supervise increased sex offender populations.

ALT 2	Change to Base		Change to Bill	
	Funding	Positions	Funding	Positions
GPR	\$4,915,200	39.00	\$167,100	0.00
PR	<u>40,300</u>	<u>0.00</u>	<u>0</u>	<u>0.00</u>
Total	\$4,955,500	39.00	\$167,100	0.00

3. Take no action.

ALT 3	Change to Base		Change to Bill	
	Funding	Positions	Funding	Positions
GPR	\$0	0.00	- \$4,748,100	- 39.00
PR	<u>0</u>	<u>0.00</u>	<u>- 40,300</u>	<u>0.00</u>
Total	\$0	0.00	- \$4,788,400	- 39.00

Prepared by: Shannon E. Huberty