



Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #240

Inmate Populations, Prison Contract Bed Funding, and Population and Inflationary Costs (Corrections -- Adult Institutions)

[LFB 2021-23 Budget Summary: Page 122, #1; and Page 123, #2 and #3]

CURRENT LAW

The Department of Corrections operates 36 adult correctional facilities, including 20 correctional institutions and 16 correctional centers. In addition, Corrections utilizes prison contract beds to place state inmates in county jails and federal facilities. The Department also places individuals at the Department of Health Services' Wisconsin Resource Center (WRC) for inmates in need of specialized mental health treatment.

DISCUSSION POINTS

1. For each budget cycle, the Department of Corrections projects the total prison population for the upcoming biennium. Generally, population-related costs are budgeted based on the total operating capacity of the prison system, including food, variable non-food costs (such as clothing, laundry, inmate wages, and other supplies), and inmate health care. To the extent that prison population projections exceed the total operating capacity, contract bed funding is provided for placements in certain county jails.

Population Projections and Variable Costs

2. The public health emergency has drastically impacted adult prison populations in 2019-20 and 2020-21. The average daily adult prison population decreased in 2019-20 (to 23,633) for the first time since 2011-12. Current populations are further reduced, and as of May 21, 2021, the adult prison population was at 19,384 (including institutions, centers, and state inmates admitted to and serving time in contract beds). While a recent administrative change to the earned release program (ERP) may reduce institutional populations in the future, the administrative expansion has not been

active long enough to have had significant effects on current populations. As a result, it can be assumed that the population decreases in the current fiscal year were largely, if not wholly, the result of the public health emergency and related policy changes.

3. The Governor declared a public health emergency on March 12, 2020, related to COVID-19. Emergency Order #9 followed on March 23, 2020, which placed a moratorium on admissions to state prisons and juvenile facilities until June 1, 2020. While prison admissions resumed in June, the admission rate has yet to reach pre-pandemic levels (as of May, 2021).

4. In addition, a March 22, 2020, Wisconsin Supreme Court order suspended most in-person court hearings, which caused trial and sentencing delays. While in-person court hearings are starting to resume and remote technology has allowed many hearings to proceed virtually, the courts have incurred a significant criminal case backlog. Given these factors (discussed later in this paper), and the unique and unknown nature of COVID-19, it is difficult to project future prison populations.

5. For prior budgets, the Department of Corrections reviewed its monthly growth rates to determine the appropriate rate to estimate future populations. Regarding the inmate population for 2021-23, the Department attempted to follow a similar model, and projected a median monthly growth rate of -0.028% for males and -0.022% for females based on actual Division of Adult Institutions (DAI) population data over a 72 month period (through February, 2020). Since populations decreased near the end of this period, the growth rate is negative for both males and females. The growth rate was then applied to the most recent pre-public health emergency DAI population (from February 28, 2020), starting in December, 2020, as the Department assumed the population would return to pre-public health emergency levels at that point. Using the negative growth rates, the Department forecasted an average daily population of 23,389 inmates in 2021-22 and 23,311 inmates in 2022-23.

6. Typically, when the Governor introduces budget recommendations, the Department's projections may be further adjusted, depending on any new initiatives included in the bill and/or revised population data. The Department of Administration reestimated Correction's population and diverged from Corrections methodology by using the November 6, 2020, point-in-time population as an average daily base population in both 2021-22 and 2022-23, as opposed to a growth rate projection, as has been done historically, and was done by Corrections in its agency budget request. The Department of Administration projected an ADP of 21,480 annually over the 2021-23 biennium (including 18,597 in institutions, 2,879 in centers, and four in contract beds in federal or other intergovernmental facilities). The Administration assumed COVID-19 impacts and sentencing modifications proposed in the bill would allow the prison population to remain lower than pre-pandemic populations during the biennium. However, the Administration indicates that the sentence modification proposals were not specifically factored into the population estimates, and the population projection was the same for both years of the biennium due to the uncertainty of COVID-19 impacts.

7. Both DOA and Corrections' projections assumed that one construction project will impact inflationary costs and contract bed usage: the Oakhill Correctional Institution Assisted Needs Facility. Under 2017 Act 59, Corrections was approved for \$7,000,000 in general fund-supported borrowing for the construction of a geriatric correctional facility. The facility will be a 65-bed barracks bunk-style housing unit providing limited medical services to assist male inmates with daily living

activities. The project is being built on the Oakhill Correctional Institution grounds in Oregon, Wisconsin and is anticipated to open in October, 2021. As such, the 65 additional beds were factored into the budgeted capacity.

8. However, DOA's population estimates diverged from the Department's in that its base population was based on an actual point-in-time population from November 6, 2020, plus state inmates awaiting admission in county jails (at the time, 672 males and six females). The November 6, 2020, population appears to have been selected in an attempt to factor in COVID-19 impacts. Ultimately, DOA's estimates were lower than the Department's by 1,909 in 2021-22 and by 1,831 in 2022-23.

9. Approximately six more months of population data (November, 2020, through mid-May, 2021) and additional public health emergency trends are now available to reevaluate the population estimates. In addition to more-recently available data, the November 6, 2020, populations reflected the height of Corrections COVID-19 staff and inmate outbreak and also assumed a stagnant population for both years of the biennium, which may not be the most accurate predictor of future populations. Further, Corrections assumed populations would increase to pre-pandemic numbers by December, 2020, which did not occur (and has still not occurred in May, 2021). Based on a review of these factors, the prison population projections should be reestimated.

10. There are two factors, aside from COVID-19, that may influence population projections in the 2021-23 biennium. First, while current prison populations are significantly reduced, legislation from the 2019 session (which increased penalties and created additional crimes) may eventually lead to increased prison populations to the extent that offenders either serve new or longer sentences. No legislation was passed in the 2019 session that could cause a significant decrease in populations. Second, an administrative ERP expansion implemented by Corrections in 2020-21 is currently in process and is separate from the proposals to expand ERP under AB 68/SB 111. The Department indicates that the 2020-21 ERP expansion will reduce prison populations when fully implemented. However, Corrections indicates that "it is going to take some time to ramp up this expansion." The expansion began in April, 2021, so the first participants won't graduate until the end of July, 2021, and the second group will not graduate until 16 to 20 weeks later. In addition, COVID-19 impacted institutional programming. Given that the total population and time period impacted by these potential factors is unknown, it is assumed that these two minor factors offset.

11. Ultimately, the majority of the current population decrease is the result of COVID-19 impacts and related policies. As a result, it may be estimated that prison populations will return to pre-public health emergency levels at some point in the future under current law. While the point-in-time in which the public health emergency will no longer impact Corrections operations is difficult to estimate, there are signs that Corrections is returning to pre-pandemic norms. For example, positive cases of COVID-19 have decreased by over 90% since November, 2020. As of May 20, 2021, 10,976 inmates had a positive COVID-19 diagnosis, but only 12 cases were active.

12. In addition, on March 29, 2021, the Corrections Secretary sent a letter to Wisconsin Sheriffs noting that admissions backlogs "should be reduced, if not eliminated, within the next few months" as the admissions rate has been steadily increasing since Fall, 2020. As of April 9, 2021, weekly institutional populations (19,470) did not decrease for the first time in several months. [Note

that subsequent to this date, populations did decline slightly.]

13. While admissions to prison are increasing and COVID-19 positive cases are decreasing, the biggest lingering COVID-19 impact on the adult prison population relates to court operations. Case backlogs due to COVID-19, including trials and sentencing hearings, will likely take some unknown amount of time to address.

14. By way of example, both of the state's two most populous counties (Dane and Milwaukee) have incurred significant backlogs as a result of the pandemic. According to recent news articles, Dane County first started hearing jury trials on June 1, 2021, (more than a year after trials were first suspended) and currently has a backlog of more than 8,000 open criminal cases. Similarly, in Milwaukee County, the District Attorney notes that the pandemic has caused criminal cases to potentially take up to two years longer than usual to be resolved. According to the Milwaukee County DA, more than 3,000 suspects are awaiting official criminal charges and the courts are only operating at 30 to 40% capacity due to COVID-19 precautions (as of April, 2021). Milwaukee County courts ceased hearing criminal trials from March, 2020, through late July, 2020, and only 60 criminal jury trials were heard in the past year, down "hundreds" from a typical year.

15. Backlogs exist in rural counties as well. For example, news outlets indicate Marathon County will not fully reopen until Fall, 2021, and a District Attorney from the area said "it could take years to get back to normalcy." In addition, the Director of State Courts Office (DSCO) indicates that the number of pending felony cases increased by 80% in Columbia County in 2020 (statewide, the number of felony cases pending in circuit court increased by 9,991 (approximately 35%) across all counties).

16. According to DSCO, estimating how long it will take to address case backlog "is very difficult to answer because there are so many factors that go into calculating the backlog and recovery, and this is [the courts'] first experience with a backlog of this magnitude. In addition we don't know what the new normal will look like or how long it will take to get there." Given the difficulty in projecting the pace at which charges are brought and assessed and cases are scheduled (which differs by county), in addition to the unknown number of cases that will be dismissed or conclude with a plea deal as opposed to a jury trial, it is unknown when courts will be able to address the backlog of criminal cases.

17. In reestimating the populations, the projection assumes that under current law, Corrections populations will return to pre-pandemic levels by the end of the 2021-23 biennium. This assumption is based on the fact that COVID-19 accounted for most, if not all, of the decrease in current population numbers, and most COVID-related impacts are lessening (admissions rates are going up, and courts are starting to hear jury trials and address backlogs). The assumption, however, assumes that it will take up to 24 months to fully "return to normal." Milwaukee County indicated that backlog may take up to two additional years to address; further, the Department of Corrections Secretary indicated that the admissions rate to prison has increased to 110 individuals per week, but the pre-pandemic admission rate was closer to 160 individuals per week.

18. Utilizing the above assumptions, the estimate assumes a 2022-23 endpoint (June 30, 2023) adult institutional population of 23,471 (1,530 females and 21,941 males), to match the most

recent pre-pandemic institutional populations from late-February, 2020 (this date was also used in the Corrections projection). Given that the population as of May 21, 2021, is at 19,384 (1,246 females and 18,138 males), a monthly growth rate of 0.90% for females and 0.83% for males would apply, resulting in an institutional population of 21,241 (1,375 females and 19,867 males) at the end of 2021-22, and 23,471 at the end of 2022-23 (1,530 females and 21,941 males). The corresponding ADP would be 20,300 in 2021-22 and 22,431 in 2022-23.

19. The reestimated ADP is 1,180 fewer individuals in 2021-22 and 951 more individuals in 2022-23 than as estimated in AB 68/SB 111. While the reestimated population growth rate is significantly higher than the rate used to reestimate populations in the 2019-21 biennium (0.26% for females and 0.12% for males), the increasing rate of prison admissions and criminal court hearings will likely cause a prison populations increase at a rate that will result in a return to pre-pandemic levels.

Total Adult Correctional Facility Average Daily Populations (Male and Female)

	<u>Total</u>
2021-22 Revised Estimated Populations	20,300
2021-22 DAI Capacity*	23,240
2021-22 Number of Inmates Exceeding Capacity	- 2,940
2022-23 Revised Estimated Populations	22,431
2022-23 DAI Capacity*	23,240
2022-23 Number of Inmates Exceeding Capacity	- 809

*Includes Institutions and Centers (including the Oakhill Assisted Needs Facility, set to open in October, 2021, and WRC).

20. As noted by the table, the 2021-22 revised estimate is below the Division of Adult Institution capacity by 2,940, and the 2022-23 revised estimate is below the budgeted capacity by 809.

21. While the Department pays a daily contract bed rate for state inmates serving sentences in Wisconsin County jails, the Department is not responsible for the variable costs of inmates in contract beds. The estimated revised populations would include approximately 22 inmates in contract beds (discussed later in this paper) for overcrowding purposes in 2022-23. The Department also places inmates at the Wisconsin Resource Center (WRC), but the facility is operated by the Department of Health Services, and Corrections is not responsible for inmate variable costs at WRC (which has a capacity of 402 individuals annually). The adult institutional populations for which Corrections must provide variable cost funding, therefore, would be lower than the total reestimated population.

22. The population estimate under the bill would result in corresponding population and inflationary cost changes of -\$7,358,200 GPR in 2021-22 and \$3,863,000 GPR in 2022-23 to reflect population-related cost adjustments for prisoners in DAI facilities including: (a) food and food equipment costs; (b) variable non-food costs, such as inmates wages, bedding, clothing, kitchen utensils, and other supplies; and (c) inmate non-food health services. The recommendation for inmate

health services assumes that per capita adult inmate costs will increase from an estimated \$4,814 in 2020-21 to \$5,269 in 2021-22 and \$5,767 in 2022-23. Health care costs include pharmaceutical costs, third party administrator costs, and contracting costs with the University Hospital and Clinics, the University of Wisconsin Medical Foundation, Waupun Memorial Hospital, St. Agnes Hospital, and other community hospitals.

23. Using the reestimated inmate average daily populations and adjusting for contract beds and WRC inmates, variable costs would be -\$16,437,100 in 2021-22 and \$11,552,400 in 2022-23 as follows: (a) -\$2,781,200 in 2021-22 and \$647,700 in 2022-23 for food and food equipment costs; (b) -\$2,599,300 in 2021-22 and -\$312,600 in 2022-23 for variable non-food costs; and (c) -\$11,056,600 in 2021-22 and \$11,217,300 in 2022-23 for health services costs.

Contract Beds

24. The Department currently contracts with counties to house state inmates at a per diem rate of \$51.46 for all county facilities. Further, for individuals under the age of 18 who have been convicted as adults, the Department contracts with the Division of Juvenile Corrections (DJC) at a statutory daily rate (for an estimated 20 beds per year). While the Department calculated the daily rate at \$803 in 2021-22 and \$820 in 2022-23, the DJC daily rate will be reestimated, and the contract rate for these 20 beds will be corrected, under the Department of Corrections, Division of Juvenile Corrections. The Department also currently contracts for temporarily lock-up and federal beds at a per diem rate of \$60. Base funding for the contract bed appropriation is \$32,890,800 GPR.

25. In total, the bill projects a need of 728 contract beds annually. These beds include: (a) 200 beds annually for state inmates in Wisconsin County jails; (b) 500 beds annually used by the Division of Community Corrections (DCC) for extended supervision sanctions; and (c) 28 beds annually the Department would use for inmates in intergovernmental facilities, adult inmates in DJC facilities, and temporary lock-ups of inmates from correctional centers. For the purposes of assessing contract beds for adult institutional inmates, the focus of this paper is on the 200 beds for DAI inmates in Wisconsin Counties.

26. Based on the population estimates under the bill, additional contract beds would not be needed for overcrowding purposes, as the population projection is below the institutional capacity. However, under the bill, 200 contract beds would be provided annually for quarantine/isolation purposes, as needed. According to Corrections, a "quarantine" bed separates and restricts the movement of people who were potentially or directly exposed to a contagious disease to see if they become sick. An "isolation" bed separates sick people experiencing symptoms related to a contagious disease from people who are not sick. As of May 20, 2021, 952 inmates were in quarantine and 17 inmates were isolated. The 728 prison contract beds annually, including 200 contract beds for Wisconsin Counties, would require adjustments of -\$13,514,500 GPR in 2021-22 and -\$13,390,400 GPR in 2022-23.

27. As indicated previously, reestimated average daily populations are 20,300 in 2021-22 and 22,431 in 2022-23. Inflationary variable costs for this population would require adjustments of -\$16,437,100 GPR in 2021-22 and \$11,552,400 GPR in 2022-23. In addition, the bill projected a total need of 728 prison contract beds annually, including 200 contract beds annually for Wisconsin

Counties, which would require adjustments of -\$13,514,500 in 2021-22 and -\$13,390,400 in 2022-23. In combination, the projected variable cost and quarantine/isolation bed needs would require adjustments of -\$29,951,600 GPR in 2021-22 and -\$1,838,000 GPR in 2022-23. [Alternative 1a.]

28. While it is difficult to estimate how many isolation/quarantine contract beds may be needed in the future, it is likely that fewer than 200 isolation/quarantine contract beds would be needed in 2021-22, as the projected population is significantly below the budgeted capacity, allowing Corrections to isolate/quarantine some inmates within certain institutions. In addition, it is likely that fewer than 200 isolation/quarantine contract beds would be needed in 2022-23, as more individuals are vaccinated against COVID-19. As of May 5, 2021, 10,913 vaccine doses for inmates have been administered, and vaccination eligibility is currently open to all Wisconsin residents age 12 or older. However, as populations increase to pre-pandemic levels, less institutional space will be available to isolate and quarantine inmates. In addition, some inmates may choose to remain unvaccinated, and it is unknown if or when new variants of the virus may create future outbreaks.

29. In addition, the reestimated populations are higher than the population estimates under the bill as introduced in 2022-23. While the 2022-23 average daily population (22,431) is below the institutional capacity (23,240), the projected 2022-23 endpoint population (23,471) is above the institutional capacity, necessitating contract beds for overcrowding purposes. The revised estimate projects the population to exceed the capacity by May and June, 2023. Specifically, 37 contract beds would be needed in May, 2023, and an additional 194 in June, 2023 (for a total of 231 in June, 2023). On an average daily basis, just over 22 Wisconsin County contract beds per day for overcrowding purposes are estimated to be needed.

30. As a result, the Committee may wish to provide for 100 Wisconsin County contract beds in 2021-22 for quarantine/isolation purposes (for a total of 628 contract beds), and provide for 50 Wisconsin County contract beds in 2022-23 (for a total of 578 contract beds) (approximately half would be used to address overcrowding and half for isolation/quarantine, if needed) (for a total adjustment of -\$15,392,800 GPR in 2021-22 and -\$16,207,900 GPR in 2022-23). As the population and COVID-19 trends change, the Department may end up utilizing a different proportion of the available beds in 2022-23 for each purpose, but funding for the beds would be available for either, or both, purposes as needed. When combined with the inflationary costs related to the reestimated population projection for prisoners in DAI facilities (-\$16,437,100 GPR in 2021-22 and \$11,552,400 GPR in 2022-23) this alternative would require -\$31,829,900 in 2021-22 and -\$4,655,500 in 2022-23. [Alternative 1b.]

31. If the Committee takes no action, the contract bed base budget and variable cost base budgets would remain unchanged, and not be reflective of estimated 2021-23 populations. [Alternative 2]

ALTERNATIVES

1. Reestimate average daily populations in adult correctional facilities to be 20,300 in 2021-22 and 22,431 in 2022-23, and provide -\$16,437,100 GPR in 2021-22 and \$11,552,400 GPR in 2022-23 for associated inflationary costs. In addition, choose one of the following options to fund

contract beds:

a. *728 Contract Beds Annually.* Provide -\$13,514,500 GPR in 2021-22 and -\$13,390,400 in 2022-23 for 728 contract beds annually (including 200 annual contract beds for state inmates in Wisconsin County jails).

ALT 1a.	Change to Base
GPR	- \$31,789,600

b. *628 Contract Beds/578 Contract Beds.* Provide -\$15,392,800 GPR in 2021-22 and -\$16,207,900 GPR in 2022-23 for 628 contract beds in 2021-22 (including 100 contract beds for state inmates in Wisconsin County jails) and 578 contract beds in 2022-23 (including 50 contract beds for state inmates in Wisconsin County jails).

ALT 1b.	Change to Base
GPR	- \$36,485,400

2. Take no action.

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