



## Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #295

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

[LFB 2023-25 Budget Summary: Page 134, #1, #2, and #3]

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#### **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 or special circumstances are present that would necessitate quarantine/isolation of inmates, contract bed funding is provided for placements in certain Wisconsin county jails.

##### **A. Population Projections and Variable Costs**

2. The COVID-19 pandemic drastically impacted adult prison populations in 2019-20 and 2020-21 (which had a corresponding decrease to variable cost base funding for the current biennium). However, the total adult prison population has been steadily increasing since Summer, 2021, including more rapid growth in more recent months. As of May, 2023, the adult prison population totaled 21,200, including 19,807 males and 1,393 females.

3. 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 2023-25, the Department followed a similar model, and projected a median monthly growth rate of 0.242% for males and 0.428% for females based on actual Division of Adult Institutions (DAI) population data over a 12 month period (through June, 2022). The growth rate was then applied to the DAI population on June 24, 2022. Using the growth rates identified, the Department forecasted an average daily population (ADP) of 21,097 inmates in 2023-24 and 21,751 inmates in 2024-25. Under the budget bill, the Department of Administration utilized Corrections' estimates.

4. Approximately 10 more months of population data (July, 2022, through April, 2023) is available to reevaluate the population estimates. Populations have grown significantly in the past several months as courts are working to address the backlog of cases incurred during the pandemic. The updated population numbers over a 12 month period (through April 28, 2023) results in a growth rate projection of 0.918% for females and 0.592% for males. If growth continued at this rate throughout the biennium, the DAI population would reach over 24,800 by July, 2025, which is higher than the DAI population has ever been (the average daily adult prison population was at its highest point in 2018-19, at 24,116 individuals; the average daily adult prison population in 2021-22 was 20,138 individuals).

5. While recent growth patterns have been sizable, it is likely that the updated growth rate is too high to continue for the duration of the 2023-25 biennium, and that the recent rapid growth is likely temporary (at some point, the courts will catch up and prison populations will level out and grow at a slower rate).

6. Aside from the court backlog, one additional potential factor that may influence the population projection in the 2023-25 biennium is 2021 enacted legislation, which increased penalties and created additional crimes. These legislative changes may eventually lead to increased prison populations to the extent that offenders either serve new or longer sentences.

7. In reestimating the populations, the projection assumes that the current observed growth rate will continue for the first six months of 2023-24, then will slow by 25% in each of the subsequent six months (75% of the growth rate in January, 2024, 50% in July, 2024, and 25% in January, 2025) as court dockets return to pre-pandemic norms. This assumption is based on the fact that there are more than 40,000 pending felony cases as of May 1, 2023, compared to pre-pandemic pending felony cases of approximately 27,000 in early-2020, and the fact that the number of felony cases has been generally trending downwards in recent months. The assumption, however, is based on pending cases statewide, and specific counties may have a higher or lower backlog of cases, which could necessitate a longer/shorter time period to "return to normal" (for example, as of May 1, 2023, Milwaukee County had 5,043 pending felony cases, but Menominee County only had 53 pending felony cases).

8. Utilizing the above growth rate assumptions, the reestimate assumes a 2023-24 endpoint (June 30, 2024) adult institutional population of 22,851 (1,536 females and 21,315 males) and 23,490 at the end of 2024-25 (1,600 females and 21,890 males). The corresponding ADP would be 22,242 in 2023-24 (1,475 females and 20,767 males) and 23,249 in 2024-25 (1,576 females and 21,673 males).

9. While the reestimated population growth rate is significantly higher than the rate used by Corrections and the Administration, it is based on more updated data and tapers based on slower growth rates throughout the biennium. At no point in the biennium would the estimated female population exceed the female adult prison capacity. However, the estimated male population is anticipated to exceed the adult male prison capacity beginning approximately in November, 2023. As noted by the table below, the 2023-24 revised male population estimate exceeds the DAI male budgeted capacity by 212, and the 2024-25 revised male population estimate exceeds the DAI male budgeted capacity by 1,118.

**Total Adult Male Correctional Facility Average Daily Populations**

	<u>Males</u>
2023-24 Revised Estimated Populations	20,767
2023-24 DAI Capacity*	20,555
2023-24 Number of Inmates Exceeding Capacity	- 212
2024-25 Revised Estimated Populations	21,673
2024-25 DAI Capacity*	20,555
2024-25 Number of Inmates Exceeding Capacity	-1,118

\*Includes Institutions (including the Wisconsin Resource Center), Centers, and 32 Federal contract beds.

10. 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 reestimated populations would require approximately 212 inmates in 2023-24 and 1,118 inmates in 2024-25 to be housed in Wisconsin contract beds (discussed later in this paper) for overcrowding purposes in the biennium. The Department also places inmates at the Wisconsin Resource Center, 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 444 individuals annually).

11. While the Department does not pay variable costs for individuals in contract beds or at the WRC, the Department is responsible for the food and health costs of approximately 425 individuals annually on temporary probation, parole, or extended supervision holds in adult correctional institutions. In combination, the adult institutional populations for which Corrections must provide variable cost funding would be lower than the total reestimated population.

12. The population estimate under the bill would result in corresponding population and inflationary cost changes of -\$1,674,600 GPR in 2023-24 and \$13,409,600 GPR in 2024-25 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 assumed that per capita adult inmate costs will increase from an estimated \$5,089 in 2022-23 to \$5,474 in 2023-24 and to \$5,890 in 2024-25. 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.

13. Using the reestimated inmate average daily populations and adjusting for contract beds and WRC inmates, associated variable costs would be \$6,158,200 GPR in 2023-24 and \$16,776,800 GPR in 2024-25 as follows: (a) \$5,987,100 GPR in 2023-24 and \$6,761,100 GPR in 2024-25 for food and food equipment costs; (b) \$2,929,600 GPR in 2023-24 and \$3,055,500 GPR in 2024-25 for variable non-food costs; and (c) -\$2,758,500 GPR in 2023-24 and \$6,960,200 GPR in 2024-25 for non-food health services. [Alternative A1]

14. However, in addition to population changes that have occurred since the introduction of the budget bill, Corrections has incurred increased inmate healthcare costs due to an inability to hire contracted medical staff at the preexisting pay rates. For example, between September, 2022, and March, 2023, 67 applications for nursing positions were received, but 42 of the candidates were only willing to be hired with escalated rates. Given the high vacancy rates in medical positions within Corrections, in March, 2023 (subsequent to the introduction of the budget bill), the Department agreed to post certain medical positions at a higher pay rate. The change in pay seems to have increased interest, as an additional 142 applications for nursing positions have been received between March and early-May, 2023. The rate changes vary by job title, but range from a 33.3% increase (physicians, going from \$180 per hour to \$240 per hour) to a 100% increase (certified nursing assistants, going from \$25 to \$50 per hour). To account for the inflated costs, the Committee could additionally provide \$5,675,100 GPR annually to the costs identified in Alternative A1. In total, with the inflated healthcare costs, the variable costs relative to the reestimated population would require \$11,833,300 GPR in 2023-24 and \$22,451,900 in 2024-25. [Alternative A2]

## **B. Contract Beds**

15. 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 10 beds per year). 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 \$19,296,300 (note that in 2021, the base budget for the contract bed appropriation was \$32,890,800 GPR, but was reduced in the 2021-23 biennium as a result of pandemic-related population decreases).

16. In total, the budget bill projects a need of 618 contract beds annually. These beds include: (a) 100 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) 18 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 100 beds for DAI inmates in Wisconsin Counties.

17. Based on the population estimates under the bill, additional contract beds would largely

not be needed for overcrowding purposes, as the original population projection remains below the institutional capacity until approximately June, 2025. Instead, under the bill, the 100 contract beds would be provided annually to allow Corrections flexibility to manage the DAI population, as needed. The additional contract beds, beyond those needed for overcrowding, could be used for: (a) isolation/quarantine purposes; and/or (b) inmates with a short period of time remaining on their prison sentence.

18. 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. When an outbreak occurs among the correctional population, it often impacts entire housing units or institutions, including Corrections staff, and is difficult to contain. In 2021-22, Corrections utilized an average of 210 contract beds per day, statewide, to flexibly manage the DAI population, even as total populations largely remained below the DAI capacity.

19. However, due to the population reestimate and as noted by the earlier table, an estimated 212 Wisconsin county contract beds would be needed in 2023-24 and 1,118 Wisconsin county contract beds would be needed in 2024-25 for overcrowding purposes alone. Funding 730 contract beds in 2023-24 (including 212 Wisconsin county contract beds) and 1,636 contract beds in 2024-25 (including 1,118 Wisconsin county contract beds) would require adjustments of -\$959,100 GPR in 2023-24 and \$16,089,000 GPR in 2024-25. [Alternative B1] This alternative provides 112 more Wisconsin county contract beds in 2023-24 and 1,018 more Wisconsin county contract beds in 2024-25 when compared to the budget bill, but unlike the budget bill, the Wisconsin county contract beds identified in Alternative B1 were based only on anticipated DAI overcrowding.

20. However, the Department's current contracts with Wisconsin counties allow for an approximate maximum of 650 total contract beds. If 1,118 county contract beds were necessary in 2024-25, the Department would need to reach out to additional counties to gauge interest in contracting for beds, add additional beds to existing contracts (if possible), and/or find another solution to house the overcrowded inmates, beyond the 650 currently available contract beds in counties (for example, the Department may be able to create temporary space in existing DAI facilities, so long as staffing, safety, and equipment allows -- this option, however, would require a corresponding increase in variable costs). Beyond the uncertainty of inmate placement, the population at the end of the biennium is anticipated to be higher than it ever has been. Note that while the estimate is based on recent trends, it is unknown exactly what the population will be at the end of the biennium. Given these uncertainties, the Committee could adopt Alternative B1, but for 2024-25, place \$8,790,400 GPR of the funding in the Committee's supplemental appropriation. [Alternative B2] This amount corresponds to 468 contract beds, which represents the difference in anticipated beds needed in 2024-25 (1,118) and current number of beds counties are willing to contract for (650). The Department could request the funding at a later date, once it is known where the additional inmates are able to be housed and if the population trends support the need for additional beds.

21. Similar to Alternative B1, Alternative B2 would also provide funding to the Department for the extended supervision sanctions, intergovernmental facilities, adult inmates in DJC, and temporary lock-up contract beds identified in discussion point 16.

22. In addition to Alternatives B1 or B2, the Committee may choose to provide funding for a greater number of Wisconsin county contract beds for additional flexibility in managing the DAI populations, beyond just for overcrowding (for example, if quarantine/isolation of inmates would be appropriate). Given that the population reestimates anticipate male adult facilities to hit the maximum capacity in the 2023-25 biennium, any contagious illness outbreak would likely be more difficult to contain if inmates cannot be isolated/quarantined.

23. If the Committee wished to provide 50 more contract beds annually for added population management flexibility, the total contract bed costs would increase by \$941,700 GPR in 2023-24 and \$939,100 GPR in 2024-25. [Alternative B3a.]. An additional 100 beds annually, as recommended under the budget bill, would increase contract bed costs by \$1,883,400 in 2023-24 and \$1,878,300 GPR in 2024-25 [Alternative B3b.] The amounts identified in both B3a. and B3b. would be placed in the Committee's supplemental appropriations, given that: (a) populations may not grow as anticipated, and contract beds provided for overcrowding could instead be utilized for any additional population management needs; and (b) the number contract beds provided for overcrowding are significantly more than recommended under the budget bill (which projected a lower population growth based on less recent data).

## ALTERNATIVES

### A. Population Projections and Variable Costs

1. *Population Reestimate.* Reestimate average daily populations in adult correctional facilities to be 22,242 in 2023-24 and 23,249 in 2024-25, and provide \$6,158,200 GPR in 2023-24 and \$16,776,800 in 2024-25 for associated inflationary costs.

ALT A1	Change to Base
GPR	\$22,935,000

2. *Population Reestimate and Increased Healthcare Staffing Contracting Costs.* Reestimate average daily populations in adult correctional facilities to be 22,242 in 2023-24 and 23,249 in 2024-25, and provide \$11,833,300 GPR in 2023-24 and \$22,451,900 GPR in 2024-25 for associated inflationary costs, including anticipated increased expenses for healthcare.

ALT A2	Change to Base
GPR	\$34,285,200

## B. Contract Beds

1. *Contract Beds Based on Population.* Provide adjustments of -\$959,100 GPR in 2023-24 and \$16,089,000 GPR in 2024-25 for 730 contract beds in 2023-24 (including 212 Wisconsin county contract beds for overcrowding) and 1,636 contract beds in 2024-25 (including 1,118 Wisconsin county contract beds for overcrowding).

ALT B1	Change to Base
GPR	\$15,129,900

2. *Contract Beds Based on Population with Funding Partially Reserved in 2024-25.* Provide the amount of contract bed funding identified in Alternative B1, but place \$8,790,400 GPR of the funding in 2024-2025 (equivalent to 468 Wisconsin county contract beds) into the Committee's supplemental appropriation. The Department of Corrections would be provided -\$959,100 GPR in 2023-24 (including 212 Wisconsin county contract beds for overcrowding) and \$7,298,600 GPR in 2024-25 (including 650 Wisconsin county contract beds for overcrowding) under this Alternative. The Department could request release of additional contract bed funding from the Joint Committee on Finance under s. 13.10.

ALT B2	Change to Base
GPR	\$15,129,900

3. *Flexible Contract Bed Funding Placed in Reserve.* In addition to Alternatives B1 or B2, funding could be provided in the Committee's supplemental appropriation for additional contract beds to allow the Department added flexibility in managing adult prison populations. Note that Alternative B3a. or B3b. can only be chosen in addition to either Alternative B1 or B2, and not as stand-alone options. In addition, note that the change to base amounts identified with Alternatives B3a. and B3b. reflect only the additional increase in costs (and not also the costs associated with either Alternative B1 or B2).

a. *50 Additional Beds.* \$941,700 GPR in 2023-24 and \$939,100 GPR in 2024-25 for 50 additional contract beds annually for miscellaneous purposes in the Committee's supplemental appropriation. The Department could request release of additional overtime funding from the Joint Committee on Finance under s. 13.10.

ALT B3a.	Change to Base
GPR	\$1,880,800

b. *100 Additional Beds.* \$1,883,400 GPR in 2023-24 and \$1,878,300 GPR in 2024-25 for 100 additional contract beds annually for miscellaneous purposes in the Committee's supplemental

appropriation. The Department could request release of additional overtime funding from the Joint Committee on Finance under s. 13.10.

<b>ALT B3b. Change to Base</b>	
GPR	\$3,761,700

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