



Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #226

Earned Release Program Expansion (DOC -- Adult Corrections)

[LFB 2005-07 Budget Summary: Page 126, #5]

CURRENT LAW

In 2003 Act 33, the earned release program was created for eligible inmates who successfully complete the substance abuse treatment program at the Drug Abuse Correctional Center (DACC). All inmates are eligible for the DACC 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. 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 will: (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

Specify that Corrections may designate all or any part of any prison as a correctional treatment facility to provide alcohol and other drug abuse (AODA) programs. Provide \$779,700 GPR in 2005-06 and \$1,272,500 GPR in 2006-07 and 22.5 GPR positions annually to expand the use of the earned release program by 200 new beds. Reduce contract bed funding by \$2,093,500 GPR in 2006-07 associated with the expanded program.

DISCUSSION POINTS

Program Description

1. Under current law, the Departments of Corrections and Health and Family Services may designate a section of a mental health institution as a correctional treatment facility for the treatment of substance abuse of inmates. The Drug Abuse Correctional Center is a minimum-security facility on the grounds of the Winnebago Mental Health Institute and is designated to provide substance abuse treatment programs for inmates with serious drug and/or alcohol problems.

2. The 2003-05 biennial budget act created the earned release program, under which an inmate may be released to parole or extended supervision if Corrections determines that the inmate has successfully completed the substance abuse program at DACC. The following statutory provisions apply to the earned release program:

- All inmates are eligible, except inmates who are incarcerated for crimes against life and bodily security (crimes under Chapter 940 of the statutes), or for sex crimes against a child.

- Crimes under Chapter 940 for which inmates are ineligible for the earned release 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 resident; (q) false imprisonment; (r) taking hostages; (s) kidnapping; (t) stalking; (u) duty to aid victim or report crime; and (v) intimidation or attempted intimidation of witnesses or victims. Sex crimes against a child for which inmates are ineligible for the earned release program 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) causing a child to view or listen to sexual activity; (f) incest with a child; (g) child enticement; (h) use of a computer to facilitate a child sex crime; (i) soliciting a child for prostitution; and (j) sexual assault of a student by a school instructional staff person.

- Intensive sanction program participants may be placed in the treatment program, however, intensive sanctions participants are not eligible for earned release.

- For inmates serving a bifurcated sentence, the sentencing court is required to decide at sentencing that the inmate is eligible or ineligible to participate in the earned release program.

- Pre-sentence investigation reports conducted by Corrections must include a recommendation as to whether a defendant is eligible to participate in the program.

- If an eligible inmate serving an indeterminate sentence successfully completes the DACC treatment program, the Parole Commission is required to parole the inmate, regardless of the amount of time the inmate had served. The parolee is required to participate in an intensive

supervision program for drug abusers as a condition of parole.

- If an eligible inmate serving a bifurcated sentence successfully completes the DACC treatment program, the Department must notify the sentencing court. The sentencing court is required to: (a) reduce the prison portion of the bifurcated sentence so that the inmate is 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.

- With Corrections' approval, an inmate serving a bifurcated sentence imposed before July 26, 2003, may petition the sentencing court to determine whether he or she is eligible or ineligible to participate in the DACC earned release program during the term of confinement. Petitioning inmates must meet program eligibility criteria regarding the crimes committed. An inmate must serve a copy of the petition on the District Attorney who prosecuted him or her, and the District Attorney may file a written response. The sentencing court must exercise its discretion in granting or denying the inmate's petition but must do so no later than 90 days after the inmate files the petition. If the court determines that the inmate is eligible to participate in the DACC earned release program, the court must inform the inmate of the process by which the sentence may be modified.

3. To develop and implement the earned release program, the Department established a cross-departmental, multi-agency team, and obtained input from representatives of the judiciary, district attorneys, public defenders, and victim advocacy agencies. The Department also developed prioritization criteria used to determine placement into the program. Placement criteria include:

- Inmates must be classified as minimum-security (DACC is a minimum-security facility).

- Inmates must have served a minimum of 25% or six months of the confinement term of their sentence, or the court imposed minimum confinement time, whichever is more.

- Inmates serving a confinement term of five years or less have priority in participating in the program.

- Inmates in need of sex offender treatment, regardless of conviction, 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 institution adjustment will need to demonstrate appropriate behavior prior to approval of participation. Inmates must volunteer and sign a memorandum of agreement to participate.

- Inmates with physical limitations will be reviewed and approved on a case-by-case basis. Inmates with psychological limitations and/or who are on any psychotropic medication will

be reviewed and approved on a case-by-case basis. The Department indicates that health and clinical services are limited at DACC, and an inmate's need for off-site care may significantly interrupt programming. Likewise, inmates with significant dental needs should have these needs resolved prior to transfer.

4. According to the Department, the six-month program offers three drug and alcohol program tracks (summarized below). In addition, the Department has established a reintegration program component to the earned release program: "The core of the reintegration process, starting at admission to the program, [focuses] on developing a comprehensive reintegration plan that addresses all critical success factors (housing, employment, social support, treatment, and supervision), while actively engaging the inmate, their family and community support network in an effort to better prepare the inmate for successful release and reintegration into the community." The program tracks include:

- "Social Skills Approach Core Component" - communication and social skills training, intensive AODA education/dependency treatment, AODA relapse prevention, adult children of alcoholics and family dysfunction, correcting criminal thinking, interpersonal skills and values clarification.

- "Cognitive-Behavioral Approach Core Component" - intensive AODA education/abuse education and treatment, AODA relapse prevention, correcting criminal thinking, interpersonal relationships, and employment readiness.

- "OWI 5th Offense Core Component" - intensive AODA education/dependency and addiction treatment, AODA relapse prevention, modification of high risk and thrill seeking behavior, interpersonal relationships, responsible decision making, and community service.

5. The DACC program began in March, 2004, and 2003 Act 33 assumed that the six-month program would initially have 60 participants with a 60% successful completion rate, resulting in a reduction in sentence length by an average of 1.65 years per offender. The Department has been increasing the number of beds available at DACC for the earned release program, and, at full capacity, the facility will have up to 244 beds for the program. In addition, the Department began a 30-bed earned release program for female inmates at the Robert E. Ellsworth Correctional Center in September, 2004.

6. As of April, 2005, 1,316 inmates have been determined by sentencing courts to be eligible for the earned release program. Of those, 150 offenders have finished the program either successfully or unsuccessfully, 173 offenders are currently enrolled in the program, 125 are eligible for placement when a program slot becomes available, and 274 will be eligible for program placement within one year (after serving a minimal amount of time as specified by the sentencing court, or required by Corrections' policies). The remaining 594 inmates either: (a) are not eligible for program placement for at least one year; or (b) have failed to meet the Department's placement criteria.

7. Of offenders who have finished the program, 114 inmates have successfully completed and 36 have failed (76% successful completion rate). The resulting average sentence length reduction of 0.72 years per offender. Since the program is relatively new, it is unknown at this point how many offenders who complete the program may return to prison for new offenses. Further, since those who have completed the program thus far have had relatively short court-imposed confinement times (66.7%, had confinement times under 24 months) and relatively few individuals have completed the program, it is unknown how much total prison confinement time will be reduced. Corrections has, however, established a protocol that will be used for program tracking, evaluation and outcome, including monitoring estimated bed savings after program completion and recidivism rates.

8. On April 6, 2005, testimony before the Joint Committee on Finance, the Department of Corrections indicated there was judicial support for the earned release program: "One measure of the program's success... is its demand. Judges have already made over 1,200 offenders eligible for the program in counties across the state." Further, in February and March, 2005, the Wisconsin Sentencing Commission held a series of focus groups with state judges to determine their likely use of proposed substance abuse treatment programs in lieu of incarceration. According to the Sentencing Commission's results of the focus groups, judges "were supportive of the programs if the programs warranted their confidence in their effectiveness for offenders and for public safety." Several judges indicated that they imposed longer prison or probation sentences simply to ensure that offenders would receive treatment, for which there are long waiting lists. Although the discussions of the focus groups involved treatment options available in the community as opposed to prisons, the judge's comments could be taken in consideration when examining the earned release program.

Assembly Bill 100

9. Assembly Bill 100 would provide \$779,700 GPR in 2005-06 and \$1,272,500 GPR in 2006-07 and 22.5 GPR positions annually to expand the use of the earned release program by 200 new beds. Statutory language would be modified to allow Corrections to designate any or all of a state prison as a correctional treatment facility to provide an earned release program. The Department would convert 40 beds for use for the earned release program at each of the following facilities: Thompson Correctional Center (Dane County), Oregon Correctional Center (Dane County), Robert E. Ellsworth Correctional Center (Racine County), Kenosha Correctional Center (Kenosha County), and Marshall E. Sherrer Correctional Center (Milwaukee County). Each program would have 40 inmate participants and be staffed by 3.0 social workers, 1.0 psychologist, and 0.5 program assistant. Contract bed savings as result of expanding the program would be \$2,093,500 in 2006-07 (111 beds), assuming a 60% successful completion rate.

10. Corrections indicates that the five correctional centers staffed in the bill were chosen because either: (a) the earned release program is currently operating at the facility (R. E. Ellsworth Correctional Center for female offenders); or (b) the center is located in or near one of the counties currently most responsible for admissions to the program (Milwaukee, Dane and Racine Counties). In addition, southern Wisconsin counties committed the majority of inmates to prison during 2003-

04. Milwaukee, Dane, Kenosha, Racine, Waukesha, Rock, and Walworth counties committed 68% of male and 71% of female inmates. According to 2004 data, these seven counties represent 42.7% of the state's total population.

11. Under the bill, Corrections would be allowed to designate all or part of any prison as a correctional treatment facility and provide, at that facility, programs for treating the abuse of alcohol or other drugs by inmates. No limitation is placed on the Department's facility designation authority.

12. Regarding the statutory language modifications, there are two items the Committee could consider: gender equity in the earned release program and the designation of facilities for the program. First, under current law, the earned release program is limited to a facility designated by Corrections and DHFS at "a mental health institute as a correctional treatment facility for the treatment of substance abuse of inmates transferred from Wisconsin state prisons." This designation currently applies only to the Drug Abuse Correctional Center for male offenders. While the earned release statutes apply to female offenders, and judges have made 187 females eligible for the program, no mental health institute has been designated as a correctional treatment facility for females to receive substance abuse treatment.

13. As indicated previously, the Department is already administering a program for female inmates at the Robert E. Ellsworth Correctional Center. In August, 2004, DHFS and Corrections entered into a memorandum of understanding (MOU) specifying that the Departments would cooperatively administer an earned release program for female offenders. The MOU states: "Any such program established at DOC designated female correctional facilities shall be on an interim basis, until such time as the current DACC facility can be modified or a new treatment facility can be developed on the grounds of a DHFS Mental Health Institute." On equity grounds it could be argued that authorizing the program at Ellsworth is appropriate.

14. Secondly, under the bill, the Department would be provided with the unlimited ability to establish earned release programs at any facility. No legislative review would be required to expand the program. Therefore, the Committee may wish to consider deleting the provision allowing any state prison to be designated and instead specifically designate the facilities for which funding is provided. On the other hand, it could be argued that the Department's ability to expand earned release would provide more flexibility for Corrections to pursue programmatic opportunities and bed savings.

15. Given that the earned release program is a relatively new program and information on the effectiveness of the program is limited, the Committee may wish to expand the program by a fewer number of beds. The following table identifies funding, staffing, associated contract bed savings, and the change to the bill if the Committee wished to adjust the size of the expansion. As under the bill, the figures assume that the expanded program(s) would begin in January, 2006.

<u>Expanded Program Beds</u>	<u>2005-06</u>	<u>2006-07</u>	<u>FTE</u>	<u>Contract Bed Savings</u>	<u>Total Funding</u>	<u>Change to Bill*</u>	
						<u>Funding</u>	<u>FTE</u>
AB 100 (200 beds)	\$779,700	\$1,272,500	22.50	-\$2,093,500	-\$41,300	-	-
160 beds	623,600	1,018,000	18.00	-1,507,100	134,500	\$175,800	-4.50
120 beds	467,700	763,500	13.50	-1,131,400	99,800	141,100	-9.00
80 beds	311,800	509,000	9.00	-755,800	65,000	106,300	-13.50
40 beds	155,900	254,500	4.50	-380,100	30,300	71,600	-18.00

*Although funding and staffing decrease as a result of a smaller expansion, the net effect is an increase to funding under AB 100 since associated contract bed savings are also reduced.

16. If the Committee provides for a lower number of earned release beds than is provided in the bill and chooses to specifically designate the facilities at which the program would occur, a reduced number of facilities could be selected. Conversely, the Committee could provide lower staffing, but still designate all five of the facilities as facilities at which the earned release program could operate. Under this alternative, Corrections would be able to decide from those facilities where a program would be operated.

17. If the earned release provision is removed from the bill, funding would decrease by \$779,700 GPR in 2005-06 and increase by \$821,000 GPR in 2006-07 (an overall increase of \$41,300 GPR). Deleting the provision removes contract bed savings, resulting in an increase to the bill. Also, removing the provision would decrease GPR positions by 22.50 annually.

ALTERNATIVES

A. Earned Release Funding

1. Approve the Governor's recommendation that Corrections may designate all or any part of any prison as a correctional treatment facility to provide alcohol and other drug abuse (AODA) programs. Provide \$779,700 GPR in 2005-06 and \$1,272,500 GPR in 2006-07 and 22.5 GPR positions annually to expand the use of the earned release program by 200 new beds. Reduce contract bed funding by \$2,093,500 GPR in 2006-07 associated with the expanded program.

2. Modify funding and staffing by any of the following:

a. *Expand Earned Release Program by 160 New Beds.* Provide \$623,600 GPR in 2005-06 and \$1,018,000 GPR in 2006-07 and 18.0 GPR positions annually to expand the use of the earned release program by 160 new beds. Reduce contract bed funding by \$1,507,100 GPR in 2006-07 associated with the expanded program.

<u>Alternative A2a</u>	<u>GPR</u>
2005-07 FUNDING (Change to Bill)	\$175,800
2006-07 POSITIONS (Change to Bill)	- 4.50

b. *Expand Earned Release Program by 120 New Beds.* Provide \$467,700 GPR in 2005-06 and \$763,500 GPR in 2006-07 and 13.5 GPR positions annually to expand the use of the earned release program by 120 new beds. Reduce contract bed funding by \$1,131,400 GPR in 2006-07 associated with the expanded program.

<u>Alternative A2b</u>	<u>GPR</u>
2005-07 FUNDING (Change to Bill)	\$141,100
2006-07 POSITIONS (Change to Bill)	- 9.00

c. *Expand Earned Release Program by 80 New Beds.* Provide \$311,800 GPR in 2005-06 and \$509,000 GPR in 2006-07 and 9.0 GPR positions annually to expand the use of the earned release program by 80 new beds. Reduce contract bed funding by \$755,800 GPR in 2006-07 associated with the expanded program.

<u>Alternative A2c</u>	<u>GPR</u>
2005-07 FUNDING (Change to Bill)	\$106,300
2006-07 POSITIONS (Change to Bill)	- 13.50

d. *Expand Earned Release Program by 40 New Beds.* Provide \$155,900 GPR in 2005-06 and \$254,500 GPR in 2006-07 and 4.5 GPR positions annually to expand the use of the earned release program by 40 new beds. Reduce contract bed funding by \$380,100 GPR in 2006-07 associated with the expanded program.

<u>Alternative A2d</u>	<u>GPR</u>
2005-07 FUNDING (Change to Bill)	\$71,600
2006-07 POSITIONS (Change to Bill)	- 18.00

B. Earned Release Facilities

1. Delete the Governor's recommendation that Corrections may designate all or any part of any prison as a correctional treatment facility. Instead, specifically designate the following correctional centers as facilities at which the earned release program could be housed: (a) Thompson; (b) Oregon; (c) Ellsworth; (d) Kenosha; and (e) Marshall E. Sherrer.

2. Delete the Governor's recommendation that Corrections may designate all or any part of any prison as a correctional treatment facility. Instead, specifically designate any of the following correctional centers as facilities at which the earned release program could be housed:

- a. Thompson Correctional Center
- b. Oregon Correctional Center
- c. Ellsworth Correctional Center
- d. Kenosha Correctional Center
- e. Marshall E. Sherrer Correctional Center

C. Delete Earned Release Expansion

1. Delete provision, but specifically designate the Ellsworth Correctional Center as a facility for the earned release program.

<u>Alternative C1</u>	<u>GPR</u>
2005-07 FUNDING (Change to Bill)	\$41,300
2006-07 POSITIONS (Change to Bill)	- 22.50

2. Delete the provision.

<u>Alternative C2</u>	<u>GPR</u>
2005-07 FUNDING (Change to Bill)	\$41,300
2006-07 POSITIONS (Change to Bill)	- 22.50

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