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ALTERNATIVES TO PRISON FOR NONVIOLENT DRUG OFFENDERS

An increase in the number of nonviolent drug related convictions has contributed to a growing prison population. Race is a crucial variable, with two out of five blacks charged with drug offenses sent to state prisons.

2003 Senate Bill 518, known as the Addicted Offenders Accountability and Public Safety Bill, proposed to make grant money available to counties to establish programs that offer substance abuse treatment to drug or alcohol-related offenders. It was passed unanimously by the senate in March, but subsequently died in the assembly. This brief discusses the causes and possible solutions to the burgeoning prison populations, Wisconsin's treatment programs, a summary of SB-518, and programs in other states.

GROWING PRISON POPULATIONS

United States and Wisconsin

According to the U.S. Department of Justice Statistics, in 2002, 22 state prison systems and the federal prison system operated at 100% or more capacity. The national prison and jail population exceeded 2 million inmates for the first time ever during the fiscal year ending June 30, 2002. Two-thirds of the inmate population were housed in state or federal prisons, the other third in local jails.

As of June 2002, there were 21,978 inmates in Wisconsin state prisons, according to the Wisconsin Office of Justice Assistance (OJA). There was an average daily

population of 13,583 inmates in county jails, with 261,684 total admissions for the year. According to the 2000 U.S. Census, blacks composed 5.7% of Wisconsin's general population, but accounted for 38.8% of the state's incarcerated population.

Race As A Factor

In seven states including Wisconsin (Connecticut, Illinois, Iowa, Minnesota, New Jersey, and Pennsylvania are the others), black males are incarcerated at more than 13 times the rate of white males for drug offenses. While drug laws differ in every state, differences in sentencing structures have increased the number of black males incarcerated for nonviolent drug offenses. At the federal level, offenders convicted of selling five grams of crack cocaine receive an automatic sentence of a minimum of five years, but an offender selling powder cocaine would have to be convicted of selling 500 grams to receive the same sentence, according to the U.S. Drug Enforcement Administration.

The Human Rights Watch (HRW), an organization that investigates human rights violations worldwide, provides in its report "Incarcerated America", that while the proportion of all drug users nationwide that are black is roughly 13-15%, blacks compose 36% of arrests for drug possession, and 63% of all drug offenders in state prisons. Nationwide, one in 20 black men over 18 are in prison. According to another HRW report, black males in Wisconsin are 53 times more likely to go to prison for a drug offense than white males – this rate being the 2nd

highest in the country. (Illinois has the highest rate, with black males 57 times more likely to go to prison for a drug offense.) Wisconsin's rate is four times the national average.

CURRENT PROGRAMS IN WISCONSIN

Treatment Alternative Program

The Department of Health and Family Services (DHFS) is responsible for promoting and helping to maintain healthy individuals and families through a variety of programs and other assistance. Section 46.65, Wisconsin Statutes, requires DHFS to fund and administer the Treatment Alternative Program, which makes grants to enable counties and tribal or nonprofit agencies to provide assessments of and treatment for alcohol and other drug abuse. The program serves as an alternative to prison for a person who is involved in the criminal justice system either as a defendant or a party to a diversion agreement; or a person who is or has previously been drug dependent. Among other requirements, DHFS must distribute funds evenly throughout the state, impose communication requirements between grantees and the criminal justice system, and collect data for program management and evaluation.

Intensive Sanctions Program

Section 301.048, Wisconsin Statutes, requires the Department of Corrections (DOC) to administer an intensive sanctions program. To be eligible, the offender must be convicted of a nonviolent felony not punishable by life imprisonment. A court must sentence the offender to the program, or the offender must complete the program as a condition of parole or extended supervision. Offenders serving a bifurcated sentence under section 973.01 are not eligible for the

program during the term of confinement in prison portion of their sentence. Participants receive one or more of the following sanctions: placement in a Type I prison or jail, county reforestation camp, residential treatment facility or community-based residential facility for no more than one year; intensive or other field supervision; electronic monitoring; community service; restitution; or participation in other programs prescribed by the DOC. This program has been in effect since August 15, 1991, however it has been used rarely since 1997.

Sturtevant Transitional Facility

In early December 2003, the Sturtevant Transitional Facility opened its doors to become Wisconsin's first residential facility dedicated to alternatives to parole or probation revocation. The facility has two parts. The Alternative to Revocation/Work Release facility is a minimum security area for up to 150 nonviolent offenders who have violated their probation or parole, providing treatment if needed and allowing them to maintain employment and remain close to their communities. The Probation and Parole Hold facility is a maximum security setting which holds up to 150 probation and parole violators awaiting possible return to prison.

Earned Release Program

The 2003-04 biennial budget (2003 Wisconsin Act 33) created the Earned Release Program for eligible inmates, which requires the successful completion of an alcohol and drug abuse treatment program. Those who complete the program may be released into extended supervision. The program is open to males and females, and is operated at the Drug Abuse Correctional Center, which is located at Winnebago Mental Health Institute. Among other requirements, inmates must demonstrate good behavior while in prison and must have served 25% or six

months of their sentence, whichever is greater. The program began in March 2004.

Chippewa Valley Correctional Treatment Facility

Formerly known as the Highview Correctional Institution, the Chippewa Valley Correctional Treatment Facility was designated as an alcohol and drug abuse treatment facility by the 2003-04 biennial budget. The facility provides inpatient treatment for minimum security offenders for one to five months. Offenders began occupying the facility in April 2004.

2003 SENATE BILL 518

Overview

Senate Bill 518, sponsored by Senator Roessler and five other senators and cosponsored by 10 representatives, proposed a new program to be administered by the Office of Justice Assistance in collaboration with the Department of Health and Family Services and the Department of Corrections to provide grants to county departments that currently provide substance abuse treatment services. SB-518 was introduced on March 2, 2004. It was passed by the senate as amended and received by the assembly on March 11, 2004. On March 31, 2004, the bill failed to pass the assembly pursuant to Senate Joint Resolution 1, which ended the legislative floorperiod.

The grants would have enabled county departments that provide substance abuse services to establish programs that make available alternatives to prosecution and imprisonment for criminal offenders who abuse alcohol or other drugs. To be eligible, a county department or group of county departments applying jointly must design a program to do the following:

- meet the needs of people who abuse alcohol or other drugs and who may be

or have been charged with or have been convicted of a crime related to their substance abuse;

- promote public safety, reduce prison and jail populations, reduce prosecution and incarceration costs, reduce recidivism and improve the welfare of participants' families by meeting the comprehensive needs of participants, including employment, housing, needs relating to mental health, and family reunification;
- establish eligibility requirements for participants, which must include excluding those charged with or convicted of violent offenses;
- be consistent with the best practices in substance abuse and mental health treatment, and provide intensive case management through DHFS certified providers;
- use graduated sanctions and incentives to promote successful treatment;
- provide holistic treatment to its participants and provide services that may be needed as determined under the program to eliminate or reduce the use of alcohol or other drugs; improve mental health; facilitate employment, education or training; assist with housing and family reunification; and ensure payment of child support;
- integrate all mental health services provided to participants by state and local government agencies and other organizations and require regular communication between participants' substance abuse treatment providers and any probation, extended supervision, or parole agent assigned to the participant;
- provide substance abuse and mental health treatment services through providers that are certified by DHFS;

- require participants to pay a reasonable amount for their treatment, based on their income and available assets; and
- be developed with input from a variety of specified individuals and agencies, including: one or more circuit court judge, the district attorney, the state public defender, local law enforcement officials, the county department responsible for the program, other agencies responsible for providing social services (including those relating to child welfare, mental health and the Wisconsin Works program), DOC, DHFS, private social services agencies, and substance abuse treatment providers.

SB-518 also specified that any program that meets all eligibility criteria, regardless of whether or not it received a grant, could require participants to submit to electronic monitoring or participation in a day reporting program as a condition of participation.

A county department that received a grant would be required to create an oversight committee to advise it in the administration of the program and provide an evaluation. The bill obligated each county department receiving a grant to comply with state audits and submit an annual report to OJA regarding the program's impact on jail and prison populations. Members of the oversight committee must include a circuit court judge, the district attorney, and the state public defender or a designee of each; a local law enforcement official; representatives of the county department; each other county agency responsible for providing social services including those relating to child welfare, mental health, and the Wisconsin Works program; representatives from DOC and DHFS, private social services agencies, and substance abuse treatment

providers; and other members to be determined by the county department.

Under the substance abuse program proposed by SB-518, a convicted offender would receive credit toward the service of his or her sentence for all days spent in custody as part of that program. SB-518 also created Section 20.505 (6)(kv), "Grants for substance abuse treatment programs for criminal offenders", which permits DOC and DHFS to transfer money to OJA, enabling the agency to make grants to county departments under the bill.

PRISON ALTERNATIVES: COMMUNITY CORRECTIONS PROGRAMS

There are two types of community corrections programs for nonviolent offenders: residential programs and nonresidential programs. Both categories include programs designed to provide some level of structure, guidance, and discipline, while providing drug treatment and other assistance.

Residential Programs

Residential programs require the offender to reside at or remain in a specified facility for a certain period of time. Programs included in this category are halfway house programs and community-based correctional facilities.

- Halfway house programs consist of offenders residing in a common residence with the freedom to attend work, school, and treatment. Supervision and treatment services are provided for offenders released from state prison, and in some cases, offenders are sentenced to the halfway house directly instead of a prison. Halfway houses are used as a transition for offenders leaving prison and reentering their communities. Felons who violate their probation can also be sentenced to a halfway house.

- Community-based correctional facilities (CBCF) are usually joint ventures between the state and local government, and offenders are typically felony probation offenders or low-level felony offenders otherwise headed to prison. These facilities are similar to the traditional prison setting because offenders remain locked in the facility. However, the CBCF only has between 50 and 200 offenders at a time, and they are confined for about 120 days, on average. Offenders receive education and employment assistance, and those who need it receive substance abuse treatment. Upon completion of their confinement, they are provided with follow-up services including transitional counseling.

Nonresidential Programs

Nonresidential programs provide offenders with more freedom. They are not confined in a facility and live at their own private residence. Programs in this category are intensive supervision probation programs, day reporting centers, electronic monitoring/home incarceration, and drug courts.

- Intensive Supervision Probation Programs (ISP) are nonresidential programs that involve probation officers with specialized training and small caseloads, allowing for increased supervision of offenders. According to the U.S. Department of Justice, 103,618 offenders participated in this program in 1998, with 23,530 being from the Midwest. The program lasts from 9 to 12 months.
- Day reporting centers, in general, require participants to report to the center and develop a daily itinerary outlining all destinations for that day, providing locations and other contact information that must receive

approval. Participants are also required to report to work daily, or actively seek employment and keep a record of their job search. Offenders must attend any required educational and/or vocational classes, and must take part in other support services and any substance or alcohol abuse treatment sessions as directed. Participants also have to meet regularly with probation officers and counselors, and must adhere to any required curfews.

- Electronic monitoring provides constant observation of the offenders' whereabouts, usually through the use of a device. Home incarceration programs confine offenders to their residence. They are permitted to leave their homes for work, school, and treatment only.
- Drug courts have three categories: family, adult, and juvenile. The program tests participants for drug use on a regular basis and offenders are required to appear before a judge every week where their treatment is assessed. Failure to maintain sobriety results in increased substance abuse testing, increased court appearances, and can result in a 3-day stay in jail. Offenders may have their charges dismissed after successful completion of their treatment program under judicial supervision. Since the beginning of this program in 1989, communities have formed 600 drug courts in the United States, including Dane County in Wisconsin.

While statistics vary from state to state, residential and nonresidential prison alternative programs seem to cost less to operate, compared to funding a traditional prison setting. In Ohio, for example, the cost of incarcerating an inmate serving a 7-month prison sentence is \$11,000, compared to \$900 for an inmate sentenced to day reporting for

45 days. An 84-day stay in a halfway house costs around \$4,500. According to fiscal estimates from the Wisconsin Departments of Administration, Health and Family Services, and Corrections, it is not possible to estimate the cost savings of SB-518, due to factors such as the number of counties applying for grants, the amounts of each grant, and additional costs.

APPROACHES IN OTHER STATES

Several other states have passed legislation and created residential and nonresidential programs designed as alternatives to prison for nonviolent drug offenders. The focus has largely been on providing treatment, employment assistance, and housing to help offenders become functioning members of society. Additionally, some states have passed legislation to change their drug laws as a means of reducing the prison population.

Treatment Programs

California, which has the highest recidivism rate in the country (55% of their 114,136 parolees return to prison within two years), has created a new program this year called the Halfway Back program. It is designed to divert nonthreatening offenders from prison. Halfway Back is a residential program, which will house up to 700 parole and probation violators in a classroom setting. Residents will stay in the program 30 to 90 days, and will be provided with job counseling and substance abuse treatment.

Texas passed legislation in June 2003, that requires treatment for offenders in possession of a gram or less of an illegal sub-

stance, instead of incarceration. This change is estimated to save the state \$115 million over five years.

Kansas also passed legislation effective November 2003, requiring 18 months of community based treatment instead of prison for first time drug offenders. The state is saving \$21,000 a year for each offender not sent to prison.

Changes in Sentencing Structures

Hawaii passed legislation in 2002 relating to sentencing for drug offenses. Act 161 requires first-time nonviolent drug offenders involved in possession or use to be sentenced to probation with treatment.

Michigan uses an indeterminate sentencing structure, which means that a judge sets the minimum and maximum terms to be served by the offender. However, in 2002, Michigan eliminated mandatory minimum sentences for violations involving cocaine and other drugs. In addition, 2002 Act 670 provides early parole for offenders already sentenced under the mandatory minimum prison terms. Offenders convicted of manufacturing, delivering, and/or possessing 225 to 649 grams of cocaine or other narcotics prior to March 1, 2003, are eligible for parole after serving the minimum of their sentence, or 10 years of their sentence, whichever is less.

Utah introduced legislation in 2003 that would require a drug abuse assessment and screening prior to sentencing for those convicted of or pleading guilty to a drug felony. If passed, the legislation would take effect July 1, 2004, and expand to include all convicted felons on July 1, 2005.