

MEMORANDUM

TO: Wisconsin Assembly Speaker Robin Vos

FROM: Marc Pelka, Deputy Director of State Initiatives, CSG Justice Center
Ed Weckerly, Research Manager, CSG Justice Center

CC: Marshall Clement, Director, Council of State Governments Justice Center

DATE: January 12, 2018

RE: Independent Review of Impact Estimates for Legislation (SB54 and AB94)

This memo responds to a request for an independent review of the impact estimate the Wisconsin Department of Corrections carried out for legislation (SB54 and AB94) pending in the legislature.

I. Introduction

The impact estimate that the Wisconsin Department of Corrections (WI DOC) generated for legislation (SB54 and AB94) is consistent with the methodology that other states' corrections departments with research capacity typically generate.

After receiving supporting information for the impact estimate from WI DOC, Council of State Governments Justice Center (CSG Justice Center) staff replicated it using techniques that they have used in in other states, and generated essentially similar results.

Because WI DOC's methodology is sound, CSG Justice Center staff focused on two elements: assumptions and prison population and cost impact estimates.

II. Assumptions

Impact estimates inevitably include assumptions as they predict and model how a policy will perform during implementation. Below are two key assumptions, both of which are conservatively drawn by WI DOC, that could lead to substantially different outcomes based on how the policy is implemented.

First, an estimation of the percent of supervision cases that would be revoked by the Division of Hearings and Appeals (DHA) following a positive recommendation from WI DOC, which would be mandatory under the legislation. WI DOC looked at a range, from 32 to 92 percent of cases being revoked, and the final estimate selected 52 percent. Under current practice, in CY2016 DHA revoked a substantially higher proportion of cases (92 percent) recommended for revocation by WI DOC.

During implementation, if the percentage of cases revoked tilts lower or higher, impacts will be substantially different than what is stated in the impact estimate.

Second, the DOC impact estimate uses a length of stay in prison following a revocation (19 months) that is roughly half the current length of stay in prison (39 months) for a person on supervision who receives a new conviction. The impact estimate's rationale for the shorter length of stay is that the policy

expands the universe of supervision violators who would be recommended for revocation, thus exposing a wider range of violators, including those who currently are not being revoked, to revocation.

Again, during implementation, if the length of stay tilts lower or higher, impacts will be substantially different. An alternative to selecting percentages for both these assumptions is to provide a range of prison population and cost impacts depending on how the policy is implemented.

III. Prison population and cost impact estimates

WI DOC, like many states, forecasts changes in its prison population. Between 2017 and 2022, the prison population is projected to grow 3 percent, from 23,140 to 23,897 people. This projected population increase is not reflected in the impact estimate of the legislation, which estimates an increase of 1,758 people. Combining the current forecast and the policy impact results in a roughly 11-percent increase, of 2,515 people, by the end of FY2022.

According to WI DOC, the prison system currently is at 141% of capacity. The combined impact of the policy and prison population forecast is estimated to push the prison system to a 156% of capacity, all things equal.

The methodology used to calculate the cost estimates utilizes an operating cost per day. It doesn't reflect the cost of constructing new prisons. If Wisconsin built new facilities to accommodate the projected impact by FY2022, the new construction and operating costs would be substantially higher than the cost figure used in the impact estimate.

IV. Additional analysis

State policymakers' concerns about increases in crime are legitimate and deserving of a coordinated state plan that supports local law enforcement efforts to cut crime, and strengthens probation and extended supervision to lower recidivism. There are additional key questions that should be explored to identify strategies to address the public safety concerns prompting this legislation.

A. Support local law enforcement efforts to cut crime

First, analysis of criminal history data would help answer key questions about the increase in reported crime and arrests: who was arrested, where they were arrested, were they were on supervision at the time, how many prior arrests do they have, and have they received an assessment indicating a need for behavioral health treatment? Answers to these questions would identify opportunities to help law enforcement, supervision, and other systems to respond more effectively.

B. Strengthen probation and extended supervision

State policymakers' concerns reflect a desire to strengthen supervision and provide responses that are delivered with swiftness, certainty, and cost-effectiveness. Effective supervision involves empowering officers to apply a range of incentives and sanctions tailored to the unique risks and needs of the person on supervision as well as the severity of the violation committed. Analyzing probation and extended supervision revocations would identify which were the result of a new criminal charges or violations of their conditions of supervision. Moreover, analyzing prior administrative responses, length of time on

supervision prior to the revocation, and whether there was an assessed behavioral health need all could help inform opportunities to strengthen supervision.

C. Additional impacts

WI DOC's impact estimate rightly considers impacts on the prison population. County jail data would also help estimate the impact on local systems.

V. Assistance available at no cost to Wisconsin state leaders

There are three additional forms of assistance, in varying levels of intensity, available at no cost to Wisconsin state policymakers.

A. Further discussion and introductions to other state officials

CSG Justice Center staff can assist Wisconsin state policymakers, officials, and staff with additional questions concerning its review of the impact estimate and the additional analyses that should be explored. Moreover, staff would be happy to facilitate introductions to peers in other states — such as Arkansas, which enacted similar policies to what Wisconsin is considering — that responded to similar challenges.

B. State Forum on Public Safety

On-site assistance is available, with CSG Justice Center staff helping facilitate a data-rich public safety discussion involving a broad cross-section of policymakers, criminal justice professionals, behavioral health practitioners, and advocates. These forums help policymakers understand their state's challenges within national and regional contexts and provide case studies of strategies and policies that state and local governments across the country have implemented to address similar issues.

Called a State Forum on Public Safety, this assistance is available to all states following November's 50-State Summit on Public Safety, which was held in Washington, DC. A delegation of four Wisconsin officials — representing corrections, the legislature, behavioral health, and law enforcement — attended the Summit and already have applied for hosting such a forum.

CSG Justice Center staff can help plan Wisconsin's state forum, which likely could be held between January and March.

C. Justice Reinvestment Initiative (JRI)

Through a private-public partnership at The U.S. Department of Justice's Bureau of Justice Assistance and The Pew Charitable Trusts, states are eligible for intensive, multi-year, onsite assistance available under the Justice Reinvestment Initiative (JRI). If Wisconsin state leaders requested JRI assistance, CSG Justice Center staff and experts would help leaders develop a coordinated data-driven strategy with heavy participation from stakeholders to develop policy options that increase public safety and curb growth in corrections spending.