



Legislative Fiscal Bureau

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December 17, 2008

TO: Members
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Department of Administration's Office of Justice Assistance: Section 13.10 Request for the Release of Reserved Funds for an Assess, Inform and Measure Grant to Milwaukee County -- Agenda Item II

REQUEST

Under a revised request to the Joint Committee on Finance dated December 5, 2008, the Department of Administration's Office of Justice Assistance (OJA) requests the release of \$500,000 GPR in 2008-09 from the Joint Committee on Finance s. 20.865(4)(a) supplemental appropriation to OJA's s. 20.505(6)(b) alternatives to prosecution for persons who use alcohol or other drugs; presentencing assessments appropriation to provide: (a) \$313,000 GPR to Milwaukee County in calendar year 2009 for an Assess, Inform and Measure (AIM) grant; and (b) \$187,000 GPR to Milwaukee County through June 30, 2009, for its Treatment Alternatives and Diversion (TAD) program. Under the original request dated September 3, 2008, no funding for Milwaukee County's TAD program was requested.

BACKGROUND

Assess, Inform, and Measure Grant to the County with the Highest Violent Crime Rate. Under 2007 Wisconsin Act 20, the Legislature provided \$500,000 GPR in 2008-09, in the Joint Committee on Finance's GPR supplemental appropriation for possible future release to OJA to provide grant funding to the county with the highest violent crime rate, as reported by OJA, to fund the preparation of presentencing assessments of criminal offenders. Under Act 20, each presentencing assessment must include the following information: (a) the risk that the individual will commit further crimes; (b) the needs of the individual that are directly related to criminal behavior; (c) the likelihood that the individual will respond positively to community-based treatment for the assessed needs; and (d) an assessment of the availability of community-based treatment programs to serve the individual.

By December 1, 2007, the county that has the highest violent crime rate was required to submit to OJA a plan for conducting these presentencing assessments for the purpose of providing courts information for sentencing decisions. The plan was required to include the following elements: (a) identification of a target group of offenders from among persons who are convicted of a Class F, G, H, or I felony or a misdemeanor; (b) collection and dissemination of information relating to the accuracy of assessments performed, the value and usefulness of information contained in the assessment reports for purposes of making sentencing decisions, the effectiveness of community-based treatment programs in addressing the assessed needs of offenders, and the effect of the treatment programs with respect to recidivism; and (c) annual reevaluation of the plan. At least 50% of the presentencing assessments must be completed for persons subject to sentencing in connection with a felony.

The original September 3, 2008, s. 13.10 request indicated that, "Consistent with the request of the Chief Judge of the First Judicial District, based on the level of project planning required and the late date of enactment of the legislation, submission of the plan was delayed until May, [2008] for a January 1, 2009 project start date." On April 29, 2008, Milwaukee County submitted its AIM plan to OJA.

While Act 20 envisioned that the AIM grant would be utilized to conduct presentencing assessments of offenders, the AIM plan actually submitted by Milwaukee County envisions a broader project providing information at additional points in the criminal justice process. First, the plan envisions jail intake evaluators working during peak volume booking periods in the Milwaukee County Criminal Justice Facility, 6:30 am to 8:30 pm-seven days a week, to conduct evaluations on arrestees booked on non-violent felony and misdemeanor charges. Acquired information would be provided in a report to the prosecution and the defense prior to the initial charging conference, and would also be provided at the defendant's initial appearance. The report would indicate: (a) the nature of the current charges; (b) risk indicators; (c) risk score/level; (d) identified treatment or other needs; (e) arrestee demographic information; and (f) recommendations to minimize risk. Milwaukee County indicates that an important purpose of these efforts would be to identify arrestees who may be eligible for diversion or deferred prosecution programs. In calendar year 2009, Milwaukee County anticipates conducting approximately 3,500 arrestee evaluations.

Second, the plan envisions providing enhanced information in TAD diversion and deferred prosecution cases. Individuals participating in TAD would receive a risk and needs assessment, an assessment of readiness for change by alcohol abusers, and an alcohol or other drug abuse assessment. A summary of the information generated by these assessments would be provided in an AIM report at the first three-month TAD review. In calendar year 2009, Milwaukee County anticipates conducting approximately 750 TAD-related assessments.

Third, as envisioned under Act 20, the Milwaukee County AIM plan envisions providing enhanced information at sentencing. AIM reports provided at the sentencing stage would provide a risk and needs assessment, an assessment of readiness for change by alcohol abusers, and for those

individuals identified as having a substance abuse problem, an alcohol or other drug abuse assessment. In addition, the AIM report would provide information on the defendant's compliance with all court ordered conditions, such as drug testing. The sentencing AIM report would be provided at least 10 days prior to sentencing. In calendar year 2009, Milwaukee County anticipates conducting approximately 770 AIM sentencing assessments. AIM services at sentencing would be targeted to non-violent felony defendants with mental health and substance abuse issues.

In its budget submitted with the September 3rd request, Milwaukee County identified utilizing the requested \$500,000 as follows: (a) \$350,000 to retain an outside vendor to conduct the AIM screenings and assessments as envisioned above employing five staff positions and one supervisor; (b) \$92,000 for a Milwaukee County AIM Coordinator; (c) \$28,000 for grant administration costs; (d) \$15,000 to contract with an outside evaluator to develop evaluation criteria for the program, identify required data elements, and begin design of a "feedback loop" to provide data about the effectiveness of the information provided to the criminal justice system under AIM; (e) \$10,000 for computer programming costs to link three databases that would be utilized as a part of AIM; (f) \$3,000 for equipment and furniture; and (g) \$2,000 for travel and conference expenses.

Under the revised request to the Committee submitted on December 5th, Milwaukee County is now requesting \$313,000 GPR for its proposed AIM program in calendar year 2009, and that \$187,000 GPR be granted to extend funding for the TAD program through June 30, 2009. Under 2007 Act 20, the Milwaukee County TAD program was provided \$375,000 GPR in 2007-08 for its expenses in calendar year 2008. The requested \$187,000 GPR would continue state funding for the first six months of 2009.

As of this writing, Milwaukee County does not have a specific plan as to how it would operate the AIM program in calendar year 2009 with \$313,000 in funding. Milwaukee County court officials, however, indicate that the scope and administration of the AIM program would not change from the plan submitted to OJA on April 29, 2008. Among the cost saving measures being considered are delayed implementation and initially creating the AIM Coordinator as a half-time position.

Milwaukee County court officials indicate that they will be seeking ongoing state funding for the AIM program in the 2009-11 state biennial budget. These officials indicate that, "the impact of the provision of enhanced information on sentencing decisions, efficacy of community-based treatment programs in addressing offender needs, and the effect of programming on offender recidivism can only be evaluated after sufficient time (1-3 years) has passed after sentencing."

Milwaukee County's Treatment Alternatives and Diversion Program. Provisions of 2005 Wisconsin Act 25 created the TAD grant program under OJA. The program is intended to provide grants to counties to establish and operate programs, including suspended and deferred prosecution programs and programs based on principles of restorative justice, which provide alternatives to prosecution and incarceration for criminal offenders who abuse alcohol or other drugs.

Act 25 created an annual GPR appropriation under OJA for making grants and evaluating the TAD program, but provided no funding. Act 25 also created a continuing PR appropriation under OJA for grant funding and program evaluation and estimated that \$755,000 PR would be available for these purposes in 2006-07. Program revenue for this latter appropriation is provided from: (a) the drug abuse program improvement surcharge; and (b) a \$10 drug offender diversion surcharge assessed for property crime convictions under Chapter 943 of the statutes created by Act 25.

Although OJA made grants totaling \$747,450 PR in 2006-07 for the TAD program, sufficient revenues to support the grants were not realized. The Office indicates that the grants were made to the following counties: (a) \$163,725 to Dane County; (b) \$156,814 to Rock County; (c) \$148,936 to Burnett and Washburn Counties; (d) \$147,025 to Wood County; and (e) \$130,950 to Washington County. Further, OJA made commitments to these counties to continue funding for these programs through the 2007-09 biennium, and estimated an ongoing need of \$755,000 PR annually to honor these commitments.

However, program revenues have not kept pace with expenditures leading this program to operate in deficit. In 2006-07, the program received \$14,600 in program revenues, while in 2007-08, the program received \$25,700 in program revenues. The Office of Justice Assistance estimates revenues of \$45,300 for the program in 2008-09, and further estimates that the program will conclude the 2007-09 biennium with a deficit of \$2,116,000.

Under state law, program revenue appropriations may not operate in deficit. Under s. 16.40(7) of the statutes, DOA is required to collect from any available source and correlate information concerning any and all anticipated state revenues, including program revenues. Under s. 16.513 of the statutes, if DOA projects that there are insufficient moneys, assets, or accounts receivable to cover expenditures under a program revenue appropriation, the affected agency must propose and submit to DOA a plan to assure that there are sufficient moneys, assets, or accounts receivable to meet projected expenditures under the appropriation. Any such plan approved by DOA must be forwarded to the Joint Committee on Finance for its approval under 14-day passive review. To date, such a plan has not been submitted to the Committee for OJA's TAD program.

In 2006-07, OJA provided a grant of \$275,400 FED in federal Byrne Justice Assistance Grant funding directly to Milwaukee County for its TAD program. Under the 2007-09 biennial budget bill, as introduced, Milwaukee County would have been provided \$250,000 GPR in 2007-08, and \$500,000 GPR in 2008-09, to continue its TAD program. Under 2007 Wisconsin Act 20, however, the Legislature opted to limit funding for Milwaukee County's TAD program to \$375,000 GPR in 2007-08 only.

Under the revised request submitted by OJA on December 5th, Milwaukee County seeks \$187,000 to extend funding for its TAD program through June 30, 2009. This request would maintain the funding level for Milwaukee's TAD program that it received from the state in 2007-08 for calendar year 2008. Milwaukee County court officials indicate that they will be seeking

ongoing state funding for the Milwaukee County TAD program in the 2009-11 state biennial budget.

ANALYSIS

Milwaukee County's TAD Program. On October 31, 2008, Jeffrey Kremers, Chief Judge of the First Judicial District (Milwaukee County), wrote a letter to David Steingraber, Executive Director of OJA, attaching a resolution adopted by the Milwaukee County Justice Council's Executive Committee. In the resolution, the Council stated that:

"Since the inception of Milwaukee County's TAD program in March, 2007:

1) TAD screening operations cover 14 hours per day, 365 days per year. Over 4,600 arrestees have received complete TAD evaluations;

2) Over 750 people have received a diversion/deferred prosecution agreement and have been admitted to the TAD Supervision Program;

3) Over 700 TAD participants have been admitted to AODA services;

4) 56% of TAD participants successfully complete the program with an average length of stay in the program of 161 days;

5) Over 21,000 jail/prison days have been save[d];

6) There are currently 265 persons receiving services and being supervised in the community by the TAD Supervision Program.

Discontinuation of State funding for 2009 will result in complete elimination of Milwaukee County's Treatment Alternatives and Diversion Program. The Milwaukee County Community Justice Council strongly urges the State to swiftly and fully restore funding for this program."

In the revised request to the Committee, a savings estimate was included as to the possible savings associated with 21,000 jail and prison bed days being saved (estimated savings to the state of over \$800,000 if only half of the bed days reflected individuals who would have been sentenced to state corrections). From March 1, 2007, through October 15, 2008, 266 individuals successfully completed Milwaukee's TAD program. For 166 of these individuals, the Milwaukee County District Attorney's Office provided a sentencing recommendation should the individual fail the TAD program. Any sentence recommendation of one year or more was identified as prison bed savings, while any sentence recommendation of less than one year was identified as county jail bed savings. Utilizing this methodology, for the 166 individuals who successfully completed the TAD program for whom a sentencing recommendation had been provided, an estimated 5,650 prison bed

days were saved and an additional 16,095 jail bed days were saved. (It should be noted that this estimate did not include an estimate of prison bed or jail bed savings for 100 successful participants of the TAD program for whom the DA office did not provide a sentencing recommendation.)

In reviewing the savings estimate, however, it is unknown how many of these TAD participants: (a) would have pled guilty or been convicted of the charges made against them; (b) would have pled guilty to lesser charges to resolve the case with the state; and (c) if convicted, what the terms of the sentence would have actually been. As a result, the cumulative effect on prison and jail populations and their respective variable and fixed costs is also unknown.

However, one may conclude that a successful TAD program could generate savings for the: (a) courts (which are funded by both the state and the county); (b) district attorney offices (which are funded by both the state and the county); (c) the Office of the State Public Defender (which is state funded); (d) counties by reducing indigent counsel appointments for defendants who constitutionally qualify for legal counsel but are ineligible for state public defender representation; (e) county jails; and (f) state prison system. As a result, given the potential savings as well as the possible impact of the program on those participating in the program as well as the larger community, the Committee could conclude that it is important to continue Milwaukee's TAD program and provide the requested \$187,000 in funding to continue the program through June 30, 2009.

Milwaukee County court officials indicate that Milwaukee County has budgeted no funding to support its TAD program for 2009, and, as a result, if state funding for the program is not provided, the program will end. Given that a TAD program provides benefits to both state and county governments, the Committee could consider providing half of the requested funding for Milwaukee's TAD program (\$93,500), and direct OJA to only release this funding if Milwaukee County provides an equal match of \$93,500 to operate the program through June 30, 2009.

On the other hand, the Committee could also consider denying the request. When the Legislature denied second year GPR funding for the Milwaukee County TAD program under Act 20, the Legislature arguably indicated its intent to OJA and Milwaukee County that future funding for the program would have to come from some combination of federal, state program revenue and/or county funding. (The Office of Justice Assistance indicates that there are no federal funds that are currently available that could be utilized to support the Milwaukee County TAD program, and the PR-funded portion of OJA's TAD program is currently operating in deficit.) Alternatively, it could also be argued that the Legislature indicated an intent or willingness to support the program with GPR under Act 20, and the Committee could consider providing additional GPR funding to the program to continue it through June 30, 2009.

AIM Grant to Milwaukee County. If the Committee approves of the AIM plan submitted by Milwaukee County, the Committee could consider providing funding for the Milwaukee County AIM program for calendar year 2009. The Committee could consider providing: (a) \$500,000 to fully fund the original AIM plan if the Committee does not approve additional funding for

Milwaukee County's TAD program; (b) \$406,500 to the AIM program if it sets aside \$93,500 for the Milwaukee County TAD program, but wishes to utilize the remaining balance of funds for the AIM program; or (c) \$313,000 to the AIM program based either on a: (1) separate decision to provide \$187,000 to the TAD program through June 30, 2009; or (2) recognition that Milwaukee County has identified that the AIM program could successfully operate in calendar year 2009 on \$313,000 in funding. It should be noted, however, that Milwaukee County court officials indicate that if less than \$500,000 in funding is provided for the AIM program that adjustments will have to be made to the AIM program to permit it to operate under the lesser funding including delaying implementation of the program or initially creating the AIM Coordinator as a half-time position.

While Act 20 envisioned that the AIM program would focus on providing additional information at the sentencing stage, Milwaukee County's AIM plan envisions providing information throughout the criminal justice process including the following stages: (a) pre-charging; (b) charging; (c) initial appearance; (d) TAD review hearings; and (e) sentencing. In addition to any of the above funding alternatives, therefore, the Committee could consider directing OJA to not release AIM program funds to Milwaukee County until the AIM plan is re-worked to provide AIM services at the sentencing stage only. Arguably more comprehensive services and analysis could be provided at the sentencing stage of the criminal justice process if Milwaukee County focused solely on that stage. In addition, it could be argued that this change would amend the program to better reflect legislative intent under Act 20.

Milwaukee County court officials indicate, however, that the earlier they are allowed to intervene in the criminal justice process, the better the resulting outcomes. They indicate that research has shown that defendants who are retained in custody prior to trial tend to more frequently plead guilty, are more likely to be convicted, are more likely to be sentenced to terms of incarceration, and more likely to receive longer prison terms than are defendants who are released prior to trial. Part of the purpose of Milwaukee County's expanded AIM plan is to identify defendants who may qualify for participation in TAD. The Milwaukee County Justice Council's Executive Committee has indicated that one of the purposes of the TAD program is to "help protect the citizens of our community by placing the majority of limited resources into prosecuting violent criminal offenses."

ALTERNATIVES

A. Milwaukee County's Treatment Alternatives and Diversion Program

1. Approve the Department of Administration's Office of Justice Assistance (OJA) request to release \$187,000 GPR in 2008-09 from the Joint Committee on Finance s. 20.865(4)(a) supplemental appropriation to OJA's s. 20.505(6)(b) alternatives to prosecution for persons who use alcohol or other drugs; presentencing assessments appropriation to provide funding to Milwaukee County through June 30, 2009, for its Treatment Alternatives and Diversion (TAD) program.

2. Release \$93,500 GPR in 2008-09 from the Joint Committee on Finance's GPR supplemental appropriation [s. 20.865(4)(a)] to OJA's alternatives to prosecution appropriation [s. 20.505(6)(b)] to provide one-half of the identified funding needed to operate Milwaukee County's TAD program through June 30, 2009. Direct OJA to only release this funding if Milwaukee County provides an equal match of \$93,500 to operate the program through June 30, 2009.

3. Deny the request to provide additional GPR funding to Milwaukee County's TAD program.

B. Assess, Inform, and Measure Grant to Milwaukee County

1. Approve the OJA request to release \$313,000 GPR in 2008-09 from the Joint Committee on Finance s. 20.865(4)(a) supplemental appropriation to OJA's s. 20.505(6)(b) alternatives to prosecution appropriation to provide calendar year 2009 funding to Milwaukee County for its Assess, Inform, and Measure (AIM) program. [*This alternative may be selected in addition to A1, A2, or A3.*]

2. Release \$406,500 GPR in 2008-09 from the Joint Committee on Finance's GPR supplemental appropriation [s. 20.865(4)(a)] to OJA's alternatives to prosecution appropriation [s. 20.505(6)(b)] to provide calendar year 2009 funding to Milwaukee County for its AIM program. [*This alternative may be selected in addition to A2 or A3.*]

3. Release \$500,000 GPR in 2008-09 from the Joint Committee on Finance's GPR supplemental appropriation [s. 20.865(4)(a)] to OJA's alternatives to prosecution appropriation [s. 20.505(6)(b)] to provide calendar year 2009 funding to fully fund Milwaukee County's AIM program as originally developed. [*This alternative may be selected in addition to A3.*]

4. Direct OJA to not release AIM program funds to Milwaukee County until the AIM plan is re-worked to provide AIM services at the sentencing stage only. [*This alternative may be selected in addition to any of the alternatives releasing funding for a Milwaukee County AIM program.*]

5. Deny the request to release funds for a Milwaukee County AIM program for calendar year 2009.

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