



## MSRS Correctional Plan Eligibility Work Group: Report and Recommended Legislation (LCPR25-003)

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Attachments: [Work Group membership list](#)  
[Amendment LCPR25-003-1A](#)  
[Amendment LCPR25-003-2A](#)  
[Bill Draft LCPR25-003](#)

### Introduction

A state employee is mandatorily covered by the MSRS Correctional Employees Retirement Plan (Correctional Plan) if the state employee is employed in an employment position listed in the statute. In addition, for all but 9 employment positions, the employee must have “direct contact” with inmates or patients during at least 75% of the employee’s working time. In some form or another, since the establishment of the Correctional Plan in 1973, Minnesota Statutes, Section 352.91, has defined eligibility for the Correctional Plan by reference to employment positions. This way of determining eligibility is unique among the state’s pension plans for public employees.

This approach to determining eligibility, by reference to an employee’s employment position and amount of direct contact, is not working very well. One problem is that titles of employment positions change, and new positions are added and the statute doesn’t keep pace with these changes. Another problem is that the duties of an employment position may change and an employee’s amount of direct contact with patients or incarcerated persons may increase to the extent that the employee has the requisite 75% direct contact and should be transferred to the Correctional Plan. But the work behind the scenes at the responsible agencies is not keeping up with these changes.

A staff review of legislation since 2010 turned up 13 bills that proposed to make changes to the eligibility requirements in Section 352.91, including adding one or more employment positions to the list in the statute at the request of employee organizations, such as AFSCME or MAPE. From this, it has become apparent that procedures required by Section 352.91 for adding Correctional Plan coverage for employment positions or employees are not being consistently followed, which would have reduced the need for legislative involvement. The result is that the list of employment positions in Section 352.91 is out of date and incomplete, employees who may have the requisite 75% direct contact are not being promptly considered for Correctional Plan coverage, and the legislature is too often the only avenue available to employees and employee organizations to fix Correctional Plan coverage problems.

Recognizing this, after hearing three bills amending employment positions in Section 352.91, the Legislative Commission on Pensions and Retirement (LCPR) approved legislation that was eventually enacted in 2024 to require that a work group be convened to recommend legislation to amend and update the statute and address concerns raised by LCPR members.

## The Work Group

**Mandate in the 2024 session law establishing the Work Group.** The session law establishing the work group (Laws 2024, Ch. 102, Art. 5, Sec. 14) states that the work group must consider the following:

1. 75% direct contact requirement. The effectiveness of the current process for certifying that an employee has direct contact with inmates or patients at least 75% of the employee's working time.
2. Reliance on position descriptions and titles. Whether Correctional Plan membership should depend on position descriptions that are not updated frequently enough or titles that may change from time to time.
3. DOC and DHS procedures for adding members. Whether the procedures in Section 352.91 should be reformed to ensure they are effective in evaluating positions and employees entitled to coverage.
4. Service credit transfer. Whether the service credit transfer provisions are effective or should be revised to apply whenever an employee transfers coverage from the MSRS General Plan to the Correctional Plan.
5. Automatic membership vs. membership depending on direct contact. The philosophy behind current law that identifies certain positions as being automatically eligible for plan membership and other positions as being eligible for plan membership only if the direct contact requirement is met.
6. Reducing the need for LCPR involvement. Anything else that will reduce the frequency with which the LCPR is requested to review Correctional Plan membership issues.

**Work Group membership.** Members of the Work Group included representatives from the Minnesota State Retirement System (MSRS), the Department of Corrections (DOC) and Direct Care and Treatment (DCT; formerly Department of Human Services (DHS)), AFSCME, Minnesota Association of Professional Employees (MAPE), Minnesota Middle Management Association (MMA), and the Minnesota Nurses Association (MNA). See the attachment that provides a complete list of members and interested legislative staff.

**Topics considered.** The Work Group met five times during July through October 2024, and discussed the topics required by the 2024 session law. For consideration by the Work Group, the representatives from the DOC and DCT compiled extensive lists of employment positions at each of their facilities or programs, noting which employment positions needed to be added to or deleted from the statute or had no incumbents. When the Work Group decided that all the employment positions referred to or listed in subdivisions 2, 2a, and 3c through 3g, in Section 352.91, should be consolidated into one list in alphabetical order, this data compiled by the DOC and DCT representatives was invaluable in compiling the list of employment positions, which now appears in Section 6 of the bill.

## MSRS Correctional Plan Eligibility Work Group

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In addition to the topics required by the 2024 session law, the Work Group considered the following:

- A report from a subcommittee consisting of representatives from DOC, DCT, MMA, and MAPE that recommended combining the procedures required to be established at DOC and DCT into one set of procedures and establishing a single review committee to consider and approve changes to the list of employment positions and whether an employee satisfies the direct contact requirement;
- A report from a subcommittee consisting of representatives from DOC, DCT, and AFSCME that recommended adding new definitions for common terminology used by the agencies and revising the definition of “direct contact;”
- Whether Correctional Plan coverage should be extended to probation and parole officers (i.e., corrections agents), led by representatives from MAPE; and
- Whether Correctional Plan coverage should be extended to employees of the Anoka Metro Regional Treatment Center (AMRTC) whose employment exposes them to hazards similar to employees currently covered by the Correctional Plan.

**Concerns with current statutes.** The Work Group identified several concerns with the current statute, Section 352.91, governing eligibility:

**First**, the Work Group determined that one list of employment positions in alphabetical order would be cleaner than the current law’s allocation of employment positions among several subdivisions with different labels, such as “other correctional personnel” and “additional corrections department personnel.” These subdivision titles are not based on meaningful distinctions but are more likely a reflection of when a new list of employment positions was added. This single list would also eliminate duplication: many employment positions, such as “group supervisor,” “registered nurse,” and “clinical program therapist [2, 3, or 4]” appear in more than one subdivision. The final list in Section 6 of the bill is in alphabetical order but divided into four subdivisions to make them easier to amend in the future.

**Second**, the Work Group determined that the employment positions listed in current statute do not, in many cases, match the titles of the same employment positions currently used by human resources personnel in the DOC or DCT. In some cases, the title of an employment position in the statute is a generic title that describes a category of employment positions but not specific employment positions. For instance, subdivision 2 uses the single term “maintenance personnel.” The new list in the bill includes 9 different employment positions with the term “maintenance” in them. Subdivision 2 also uses the single phrase “members of trades.” The new list in the bill specifies these trades employees, such as “carpenter,” “electrician,” “mason,” “painter,” among other trades.

Thanks to the work of the agency representatives, the bill’s list of employment positions in Section 6 should now match the employment position of every member of the Correctional Plan. Approximately 55 employment positions that are not currently listed in Section 352.91 now appear in the list of employment positions in the bill. These positions are not new positions but have to be added because employees in these positions are currently covered by the Correctional Plan. Therefore, the bill brings the statute that governs the membership of the Correctional Plan into conformity with its actual membership.

**Note from LCPR Staff: The importance in current statute of having the titles of employment positions match the titles of employment positions actually in use cannot be overstated.** Under Section 352.91, subdivision 3h, if the title of an employee's employment position changes such that it no longer matches the title listed in Section 352.91, the employee's coverage by the Correctional Plan continues only until the July 1 next following the title change, unless the Commissioner of MMB certifies to the executive directors of MSRS and the LCPR that the duties of the employment position under the new title are substantially identical to the duties of the employment position under the prior title. Since at least 2015, the LCPR executive director has not received such a certification. This means that technically all employees covered by the Correctional Plan whose employment position title does not match the title in current statute should no longer be covered by the Plan. The fact that they are still covered means that the Plan is being administered out of compliance with—that is, in violation of—its governing document. This is a qualification defect under the federal Internal Revenue Code and, therefore, the Plan is technically no longer a qualified plan. The consequences of this are potentially severe for all members of the Plan and the State.

**Third**, the Work Group determined that the requirement in Section 352.91, subdivisions 4a, 4b, and 4c, that DOC and DCT each develop their own procedures and appoint their own standing review committee for the purpose of adding or removing employment positions and adding coverage for employees who satisfy the direct contact requirement was unnecessary duplication and should be combined into a single set of procedures with one standing review committee. A subcommittee of the Work Group met and drafted a proposed generic procedure, which forms the basis for the procedures and review committee set forth in the bill.

Work Plan members also acknowledged that the procedures were not being followed anyway and that meetings of a review committee did not occur as frequently as needed. That appears to be borne out by the fact that, while the procedure in the statute requires that the DOC or DCT make a request for legislation to the LCPR executive director when a determination has been made that an employment position is to be added or removed from the statute, such a request has not been made to the LCPR executive director since at least 2015.

**Fourth**, members of the Work Group also noted that current law contains out-of-date names of facilities and programs and terminology such as “inmates” and references to DHS that needed to be replaced with references to Direct Care and Treatment (DCT), a new agency created effective July 1, 2025, when the DHS was reorganized into three agencies through legislation enacted in 2023.

**Two areas of disagreement.** Members of the Work Group did not reach consensus on two topics:

1. Whether to add the Anoka Metro Regional Treatment Center (AMRTC) as a third eligible program, thereby transferring retirement coverage for approximately 1,100 employees and as many as 50 employment positions from the MSRS General Plan to the Correctional Plan. The representatives from MAPE (and maybe other employee organizations) were proponents. The representatives from DCT objected to adding AMRTC because of the cost to the employer of having to contribute employer contributions at the Correctional Plan rate of 18.85% of salary versus MSRS General Plan's employer contribution rate of 6.25% of salary. According to the DCT representative, the DCT would also be required to provide medical insurance coverage to these

new members of the Correctional Plan from the date of retirement, which could as early as age 55 under the Correctional Plan, to age 65.

**Amendment LCPR25-003-1A** amends the bill to add AMRTC as a third “eligible program” and the position of “behavior modification assistant” to the list of employment positions in subdivision 3 of new Section 352.905.

We have asked DCT to provide a cost estimate for both the increased employer contributions and the anticipated medical insurance coverage.

2. Whether to include employment positions that no longer have incumbents in the list of employment positions. The split of opinion on this topic was between the desire to clean up the statutes and remove employment positions that are no longer in use versus the desire to retain employment positions that may one day be filled and thereby eliminate the need to go through the Correctional Plan Membership Committee for approval of a new employment classification.

**Amendment LCPR25-003-2A** removes these positions.

Two arguments may be made in favor of the -2A amendment:

First, if an employee is hired into one of these employment classifications, the employee will need to request consideration by the Correctional Plan Membership Committee anyway to determine if the employee has the requisite 75% direct contact with patients, clients, or incarcerated persons. This would be the case even if the employment position were retained in the statute. If the employee has the requisite contact, the new procedure authorizes the Committee to approve the addition of the employment position and the employee for coverage by the Correctional Plan.

Second, the new procedure for adding or removing employment positions set forth as subdivision 4 of section 352.907, in Section 7 of the bill, authorizes an employer to request that the Correctional Plan Membership Committee remove an employment position from the lists in new section 352.905 if the Committee determines that no employee in the employment classification satisfies the direct contact requirement. Since there is no employee at all in the employment classifications identified by the DOC and DCT representatives, it is not possible to assess direct contact and the Committee can approve removal of these positions.

## Section- by- Section Summary

### Sections 1 and 3: Definition of “Executive Director”

Section 1 adds a new definition for “executive director” of MSRS to the definitions section for Chapter 352, which governs the MSRS General Plan and the Correctional Plan. Section 3 makes changes to Section 352.03 to use the new defined term.

## **Sections 2, 9, 10, 11: Replacing references to repealed Section 352.91**

Section 11 repeals Section 352.91. Sections 2, 9, and 10 replace references to repealed Section 352.91 with references to new statutes, Section 352.905 and 352.907, added by the bill.

## **Section 4: Policy statement**

Section 4 revises Section 352.90, which states the policy reason for establishing the Correctional Plan. The changes update language.

## **Section 5: New definitions section for Correctional Plan**

Section 5 adds new Section 352.901, titled “Definitions applicable to the correctional plan,” a new definitions section for terms used in the statutes governing the Correctional Plan. The new section consists of 15 subdivisions. Notable new terms include:

“Direct contact” and “Direct contact requirement”  
“Custody,” “Rehabilitation,” “Supervision,” and “Treatment”  
“Eligible facility” and “Eligible program”

## **Section 6: Covered correctional service**

Section 6 adds new Section 352.905, titled “Covered correctional service,” which replaces subdivisions 1, 2, 3c through 3g, and consists of 7 subdivisions, as follows:

Subdivision 1 (“Direct contact not required”): This is the same list as is currently in Section 352.91, subdivision 1, except that “a corrections officer supervisor” is deleted. According to the DOC representatives, the employment position of “Corrections Officer Supervisor” was abolished on June 30, 1997. An employee in one of the 8 remaining positions is covered by the Correctional Plan and does not also have to demonstrate compliance with the requirement that the employee spend at least 75% of the employee’s working time in direct contact with patients, clients, or incarcerated persons.

Subdivision 2 (“Direct contact required”): Subdivision 2 states that an employee is a member of the Correctional Plan for all service in “covered correctional service” but only if the employee satisfies the direct contact requirement. “Covered correctional service” is defined in paragraph (b) as service performed in an eligible facility or in an eligible program in one of the employment positions listed in subdivisions 3 to 6. This means that an employee of DOC or DCT has retirement coverage by the Correctional Plan if (1) the employee is employed in one of the employment positions listed in subdivisions 3 to 6 and (2) spends at least 75% of the employee’s working time in direct contact with patients, clients, or incarcerated persons (the “direct contact requirement”).

Subdivisions 3 to 6: This is a consolidation of all the employment positions listed in subdivisions 2 and 3c through 3g, organized alphabetically and then divided into 4 subdivisions. This will allow an amendment to part of the list, without having to include the entire list in future legislation whenever it is amended.

The list is divided as follows:

Subdivision 3: Employment positions that start with A to C

Subdivision 4: Employment positions that start with D to M

Subdivision 5: Employment positions that start with O to R

Subdivision 6: Employment positions that start with S to W

Subdivision 7 is retained from current law Section 352.91, subdivision 3e, paragraph (c). Retaining this statute is necessary to ensure that employees who were employed by the Minnesota Specialty Health System-Cambridge in 2014 when it was converted to community-based homes will continue to be covered by the Correctional Plan while employed by DHS or DCT in the direct care and treatment of patients.

### **Section 7: Changes to employment positions and employees in covered correctional service**

Section 7 adds new section 352.907, which consists of 6 subdivisions. This new section reorganizes and consolidates subdivisions 3h, 3i, and 4a through 4c, so that there is one committee that will decide whether to add new employment positions to the lists in Section 352.905 and whether an employee satisfies the direct contact requirement. This section also addresses changes in the title of an employment position and transfers to new eligible facilities or eligible programs.

Subdivision 1 (“Correctional plan membership committee”) establishes a new “Correctional Plan Membership Committee” (Committee). The Committee will consist of

- the commissioner of the DOC or the commissioner’s designee;
- the chief executive officer of DCT or the officer’s designee;
- the executive director of MSRS or the director’s designee;
- a representative from each employee organization that represents employees of the DOC or DCT who are covered by the Correctional Plan;
- the human resources director or the director’s designee from the DOC; and
- the human resources director of the director’s designee from the DCT.

The MSRS executive director is required to convene the Committee at least once every calendar quarter to consider requests for changes to the employment positions or adding or ceasing Correctional Plan coverage of an employee. No meeting is required if there have been no requests for changes.

Subdivision 2 (“Change in the title of an employment position”) applies to changes made by the DOC or DCT in the title of an employment position. When this happens, the following procedure applies:

- (1) The DOC or DCT, as applicable, must submit the title change to Minnesota Management and Budget (MMB).
- (2) MMB must review and determine whether the responsibilities of the employment position have changed.

- (3) If MMB determines that the responsibilities have not changed or not enough to pull them from the list of covered employment positions, the DOC or DCT must:
  - (a) submit the title change to the LCPR executive director and request legislation to change the title; and
  - (b) notify each employee in the employment position within 30 days after the effective date of the title change that the title change will not affect coverage by the Correctional Plan.
- (4) If MMB determines that the responsibilities have changed and the change results in a loss of coverage, the DOC or DCT must submit a request for confirmation to the Committee and notify each employee in the employment position within 30 days after the effective date that coverage will cease, subject to confirmation by the Committee.

Subdivision 3 (“Transfers to new eligible facility or eligible program”) applies to the transfer of an employee to a new facility or program that has been added to the list of eligible facilities or eligible programs. If the new employee’s employment position is the same at the new facility or program, the employee must continue to be covered by the Correctional Plan.

Subdivision 4 (“Procedures for making employment position changes”) provides the procedure for adding or removing employment positions from the lists in section 352.905 or confirming a change in responsibilities has resulted in loss of coverage under subdivision 2. The procedure is as follows:

- (1) An employee, employee organization, or employer may submit a request to the Committee to add an employment position. The position must be added if the Committee determines that at least one employee in the position satisfies the direct contact requirement.
- (2) An employer may submit a request to the Committee to have an employment position removed from the list or request confirmation of a determination by MMB that a position be removed because no employee in the employment classification satisfies the direct contact requirement.
- (3) The Committee must determine an effective date for either addition or removal of an employment position.
- (4) If the Committee determines that an employment position must be added or removed, the DOC or DCT must:
  - (a) submit the title change to the LCPR executive director and request legislation to change the title; and
  - (b) notify all affected employees of the Committee’s determination within 10 days after the meeting of the Committee at which the determination was made.

Subdivision 5 (“Procedures for adding or ceasing coverage for employees”) provides the procedure for making requests to provide coverage to an employee or cease coverage of an employee. The procedure is as follows:

- (1) An employee, employee organization, or manager may submit a request to the Committee to provide coverage to an employee. The request must include the position description, a statement that the employee satisfies the direct contact requirement, and any additional information regarding the hazards of the position.



- (2) An employer may request to have coverage of an employee cease. The request must include a position description and a statement that the employee no longer satisfies the direct contact requirement.
- (3) The Committee must determine an effective date for either the addition or cessation of coverage.
- (4) The committee must notify the affected employee within 10 days after the meeting of the Committee at which the determination was made.

Subdivision 6 (“Right to appeal”) provides the affected employee the right to appeal a determination of the Committee by filing the appeal with the employee’s human resources manager. The appeal must be decided by the commissioner of the DOC or the chief executive officer of the DCT.

### **Section 8: Correction of plan coverage errors**

Section 8 adds new section 352.908 which is subdivision 6 of section 352.91 in current law. With the repeal of section 352.91, this subdivision is being moved to its own new section. This section states that section 356.637 applies if an employee is erroneously covered by the Correctional Plan when the employee should have been covered by another plan or by another plan when the employee should have been covered by the Correctional Plan. Section 356.637 provides procedures for the transfer of past service credit and related contributions.

### **Sections 9 and 10**

Sections 9 and 10 are explained in Section 2, above. The changes replace the repealed section number with the corresponding new sections.

### **Section 11: Repeal of Section 352.91**

Section 352.91 has been entirely replaced by new Section 352.901, 352.905, 352.907, and 352.908.

### **Effective date:**

The effective date of the bill is January 1, 2026.