



State of Wisconsin
1999 - 2000 LEGISLATURE

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1999 ASSEMBLY BILL 519

October 5, 1999 - Introduced by Representatives WALKER, F. LASEE, LADWIG, AINSWORTH, ALBERS, GOETSCH, GROTHMAN, MILLER, OWENS, PETTIS, STONE and URBAN, cosponsored by Senator DARLING. Referred to Committee on Corrections and the Courts.

1 **AN ACT to renumber** 51.37 (11), 157.02 (1) and 976.06; **to renumber and**
2 **amend** 252.14 (1) (ad), 252.15 (1) (ad) and 801.02 (7) (b); **to amend** 16.385 (7),
3 19.32 (1e), 19.35 (1) (am) 2. c., 19.35 (3) (f), 20.410 (1) (kc), 20.903 (2) (c), 29.199,
4 38.04 (12), 38.14 (3) (a), 38.24 (1m) (d), 46.011 (2), 49.32 (7) (d), 49.47 (6) (c) 3.,
5 51.20 (1) (ar) (intro.), 51.20 (7) (b), 51.20 (7) (c), 51.20 (11) (a), 51.20 (13) (a) 3.,
6 51.20 (13) (a) 4., 51.20 (13) (a) 5., 51.20 (13) (g) 2m., 51.20 (19) (b) 1., 51.30 (4)
7 (b) 10. (intro.), 51.30 (4) (b) 12., 51.35 (1) (a), 51.35 (6) (a), 51.37 (5) (a), 51.37
8 (5) (b), 51.37 (5) (b), 51.37 (8) (a), 51.37 (8) (b), 51.39, 51.42 (3) (as) 1., 51.45 (15)
9 (b), 51.61 (1) (c), 59.29 (1) (b), 77.996 (2) (f), 101.123 (4) (bm), 115.762 (4),
10 115.787 (6) (a) 1., 115.787 (6) (a) 2., 115.787 (6) (b), 165.84 (4), 165.84 (5), 227.43
11 (1) (bg), 252.02 (4), 252.02 (5), 252.06 (6) (b), 252.14 (2) (intro.), 252.14 (2) (am),
12 252.14 (2) (bm), 252.15 (1) (ab), 252.15 (2) (a) 7. a., 301.03 (12), 301.035 (2),
13 301.035 (4), 301.105 (intro.), 301.287, 301.33 (2), 301.33 (3), 301.36 (1) and (6),
14 301.372, 301.373 (9) (a), 302.01, 302.02 (5) (a), 302.02 (5) (b), 302.055, 302.07,

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1 302.09, 302.095 (2), 302.12 (1), 302.13, 302.14, 302.18 (1), 302.27, 303.063 (1),
2 303.069 (title), 304.06 (1) (b), 447.06 (2) (a) 4., 782.01 (1), 782.45 (title), 801.02
3 (7) (a) 1., 801.02 (7) (a) 3., 801.02 (7) (bm) (intro.), 806.025 (1), 807.15 (1), 813.40
4 (1) (b) 3. (intro.), 814.29 (1m) (c) 2., 814.29 (1m) (e), 893.735 (1), 898.01, 940.20
5 (1), 940.29, 941.237 (1) (b), 941.29 (6), 946.43, 946.44 (2) (c), 946.44 (2) (d),
6 946.45 (2) (c), 946.45 (2) (d), 946.47 (2) (b), 948.50 (4) (a), 968.255 (7) (a), 971.11
7 (title), 971.11 (1), 971.11 (6) and 973.15 (4) (a); **to repeal and recreate** 302.095
8 (2); and **to create** 20.410 (1) (hq), 20.410 (1) (hv), 20.903 (2) (bs), 51.37 (11) (b),
9 101.123 (1) (dq), 101.123 (1) (ds), 101.123 (2) (a) 6m., 101.123 (4) (am) 2m.,
10 157.02 (1) (b), 252.14 (1) (ad) 1. and 2., 252.14 (1) (e), 252.14 (1) (f), 252.15 (1)
11 (ad) 1. and 2., 252.15 (1) (au), 301.01 (2) (e), 301.01 (2g) and (2m), 301.03 (8m),
12 301.371, 301.372, 301.373, 301.374, 301.376, 301.378, 301.379, 302.11 (11),
13 302.386 (5) (e), 782.45 (3), 782.47, 801.02 (7) (a) 4., 801.02 (7) (a) 5., 801.02 (7)
14 (b) 2., 806.025 (3), 961.01 (12m) (g), 976.01 (4m), 976.05 (16) and 976.06 (2) of
15 the statutes; **relating to:** construction and operation of private prisons,
16 requiring the exercise of rule-making authority and making an appropriation.

Analysis by the Legislative Reference Bureau

Under current law, the department of corrections (DOC) may enter into contracts with private persons for the transfer and confinement in other states of prisoners who have been committed to DOC's custody. Current law, however, does not specifically address the authority of private persons in this state to confine individuals who have been convicted of crimes in other states. This bill establishes the conditions under which a private person may construct and operate a prison in this state for the confinement of inmates from other states.

Private prison construction

Under the bill, a private prison operator seeking to commence the construction of a prison must first obtain a private prison construction license from DOC. The issuance of the license is contingent upon the person paying application and license fees, complying with all applicable laws and complying with rules promulgated by DOC regarding the protection of prison employees and the public and the

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confinement, treatment and rehabilitation of inmates. As is the case with fees for operating licenses, DOC is to set the application and license fees for persons seeking or obtaining a private prison construction license at a level that reflects DOC's approximate costs in reviewing the applications, issuing the licenses and regulating private prisons.

Private prison operation

The bill establishes a number of requirements for a person seeking to operate a private prison. First, a private prison operator must obtain a private prison operating license, pay all application and license fees and comply with all applicable laws, DOC rules (including rules required to be issued under the bill relating to the use of force and transportation of inmates) and DOC orders. Second, the private prison operator is subject to certain financial requirements. The private prison operator must provide proof of insurance or self-insurance satisfactory to DOC and must indemnify all state and local governments and their officers and employees for costs that they incur in connection with the prison's operation. Third, the private prison operator must file plans with DOC regarding responding to emergencies, providing medical care to inmates outside of the prison and transporting inmates to and from the prison. Fourth, the bill requires the private prison operator to designate a medical director for the prison. Fifth, the bill requires certain terms in any contract providing for the confinement of prisoners by the private prison operator (*see below, Contract requirements*).

The bill also contains other restrictions relating to the operation of a private prison. Under the bill, a private prison operator may not assign a person responsibility for supervising or disciplining inmates unless the person has completed a training program approved or provided by DOC. Moreover, a private prison operator may not employ any person until the department of justice has completed a criminal history record search for the person, nor may the private prison operator employ any convicted felon. The bill also prohibits a private prison operator from confining inmates who would be classified as "maximum security" by DOC. In addition, with certain exceptions, the bill prohibits a private prison operator from allowing inmates to leave the prison grounds during the time of their confinement. Finally, the bill prohibits a private prison operator from subcontracting for the provision of goods or services on prison grounds without prior written approval from DOC.

Contract requirements

All contracts between a private prison operator and another state or a political subdivision of another state (the sending jurisdiction) for the confinement of inmates are subject to DOC approval. In addition, each such contract must be enforceable by DOC and must contain the following provisions:

1) Neither the sending jurisdiction nor the private prison operator may bring an inmate into this state without prior written notice to DOC. DOC also may direct the return of an inmate to the sending jurisdiction for any reason.

2) The courts of the sending jurisdiction shall retain concurrent jurisdiction over claims brought by inmates regarding the conditions of an inmate's confinement in the private prison.

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3) The sending jurisdiction shall impose certain sanctions on an inmate who knowingly offers false evidence or provides false information to a court of this state.

4) Any provision of the contract that is inconsistent with Wisconsin law or an order issued by or decision of either DOC or the department of administration's division of hearings and appeals (the division) is void.

Enforcement/DOC assumption of control

The bill establishes a number of mechanisms by which DOC may respond to violations of laws, rules and orders relating to the construction and operation of private prisons, to violations of the terms of a private prison construction or operating license and to material misstatements in a license application. With the agreement of the person committing the violation or making the misstatement, DOC may enter an order providing an appropriate remedy for the violation or misstatement. Alternatively, DOC may file a petition with the division seeking appropriate relief. If the division determines that a violation occurred or that a person holding a license made a material misstatement in a license application, the person shall forfeit not less than \$100 nor more than \$100,000 per violation or misstatement. If a violation or material misstatement may jeopardize public safety or the health or safety of prison staff or inmates, the division shall order the licensee to remedy the violation or misstatement or deny, limit, suspend or revoke the person's license or both. DOC, the attorney general or the district attorney of the proper county may also bring a civil action to enjoin a person from committing any violation. DOC is entitled to reimbursement of attorney fees if it is the prevailing party in any enforcement action brought under the bill.

Under the bill, if a private prison's operating license is suspended, revoked or not renewed, DOC shall assume responsibility for its operation. If DOC assumes responsibility for the operation of the prison for any reason, the private prison operator is liable to DOC for all of the costs DOC incurs in operating the prison or in hiring another person to operate it.

For further information see the **state** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 16.385 (7) of the statutes is amended to read:

2 16.385 (7) INDIVIDUALS IN STATE PRISONS. No payment under sub. (6) may be
3 made to a prisoner who is imprisoned in a state prison under s. 302.01 ~~or~~, to a person
4 placed at a secured correctional facility, as defined in s. 938.02 (15m), or a secured
5 child caring institution, as defined in s. 938.02 (15g), or to a person confined in a
6 private prison, as defined in s. 301.01 (2g).

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1 **SECTION 2.** 19.32 (1e) of the statutes is amended to read:

2 19.32 (1e) "Penal facility" means a state prison under s. 302.01, private prison,
3 as defined in s. 301.01 (2g), county jail, county house of correction or other state,
4 county or municipal correctional or detention facility.

5 **SECTION 3.** 19.35 (1) (am) 2. c. of the statutes is amended to read:

6 19.35 (1) (am) 2. c. Endanger the security of any state correctional institution,
7 as defined in s. 301.01 (4), private prison, as defined in s. 301.01 (2g), jail, as defined
8 in s. 165.85 (2) (bg), secured correctional facility, as defined in s. 938.02 (15m),
9 secured child caring institution, as defined in s. 938.02 (15g), mental health
10 institute, as defined in s. 51.01 (12), center for the developmentally disabled, as
11 defined in s. 51.01 (3), or the population or staff of any of these institutions, facilities
12 or jails.

13 **SECTION 4.** 19.35 (3) (f) of the statutes is amended to read:

14 19.35 (3) (f) An authority may require prepayment by a requester of any fee or
15 fees imposed under this subsection if the total amount exceeds \$5. If the requester
16 is a prisoner, as defined in s. 301.01 (2), or is a person confined in a federal
17 correctional institution or private prison, as defined in s. 301.01 (2g), located in this
18 state, and he or she has failed to pay any fee that was imposed by the authority for
19 a request made previously by that requester, the authority may require prepayment
20 both of the amount owed for the previous request and the amount owed for the
21 current request.

22 **SECTION 5.** 20.410 (1) (hq) of the statutes is created to read:

23 20.410 (1) (hq) *Private prison regulation.* All moneys received from private
24 prisons under s. 301.373 (9) for the costs of regulating the construction and operation
25 of private prisons.

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1 **SECTION 6.** 20.410 (1) (hv) of the statutes is created to read:

2 20.410 (1) (hv) *Training private prison employes.* All moneys received from
3 private prison employes under s. 301.373 (3) (a) for the costs of their training.

4 **SECTION 7.** 20.410 (1) (kc) of the statutes is amended to read:

5 20.410 (1) (kc) *Correctional institution enterprises; inmate activities and*
6 *employment.* All moneys received from state correctional institution enterprises
7 involving the activities of inmates, excluding moneys received from canteen
8 operations, prison industries and correctional farms, to conduct state correctional
9 institution enterprises and inmate employment projects.

10 **SECTION 8.** 20.903 (2) (bs) of the statutes is created to read:

11 20.903 (2) (bs) Notwithstanding sub. (1), liabilities may be created and moneys
12 expended from the appropriations under s. 20.410 (1) (hq) in an additional amount
13 not to exceed the amount of money anticipated to be received during the remainder
14 of the biennium.

15 **SECTION 9.** 20.903 (2) (c) of the statutes is amended to read:

16 20.903 (2) (c) All expenditures authorized by this subsection are subject to the
17 estimate approval procedure provided in s. 16.50 (2). Notwithstanding pars. (a), (b)
18 and, (bn) and (bs), the maximum amounts that may be expended from a program
19 revenue or program revenue–service appropriation which is limited to the amounts
20 in the schedule are the amounts in the schedule, except as authorized by the
21 department of administration under s. 16.515 or the joint committee on finance
22 under s. 13.101.

23 **SECTION 10.** 29.199 of the statutes is amended to read:

24 **29.199 Authorizations for certain patients and institutionalized**
25 **persons to fish.** The department shall issue an authorization without charge to a

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1 county hospital, state or federal mental hospital, state correctional institution or
2 nonprofit institution located in this state for rehabilitation purposes upon request
3 of the superintendent of the institution. The authorization permits a resident of the
4 hospital or institution who is supervised by an employe of the hospital or institution
5 to fish for fish subject to all other provisions of law.

6 **SECTION 11.** 38.04 (12) of the statutes is amended to read:

7 38.04 (12) PRISON INMATE EDUCATIONAL PROGRAM. The board may establish
8 vocational educational programs for inmates ~~within the state correctional system of~~
9 correctional facilities and contract with the departments of corrections and health
10 and family services and private prisons, as defined in s. 301.01 (2g), for
11 reimbursement of that portion of the district program costs which exceeds amounts
12 received as state and federal aid.

13 **SECTION 12.** 38.14 (3) (a) of the statutes is amended to read:

14 38.14 (3) (a) The district board may enter into contracts to provide educational
15 services to public and private educational institutions, federal and state agencies,
16 local governmental bodies, private prisons, as defined in s. 301.01 (2g), industries
17 and businesses.

18 **SECTION 13.** 38.24 (1m) (d) of the statutes is amended to read:

19 38.24 (1m) (d) *Programs for inmates.* Uniform fees, for vocational programs
20 or courses offered ~~at a district facility to state prison inmates at a district facility~~ by
21 the department of corrections or the department of health and family services in
22 cooperation with a district board or to inmates of a private prison, as defined in s.
23 301.01 (2g), under ss. 38.04 (12) and 38.14 (3) (a), equal to the fees established under
24 par. (b).

25 **SECTION 14.** 46.011 (2) of the statutes is amended to read:

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1 46.011 (2) “Prisoner” means any person who is either arrested, incarcerated,
2 imprisoned or otherwise detained in excess of 12 hours by any law enforcement
3 agency of this state, except when detention is pursuant to s. 51.15, 51.20, 51.45 (11)
4 (b) or 55.06 (11) (a) or ch. 980. “Prisoner” does not include any person who is serving
5 a sentence of detention under s. 973.03 (4) unless the person is in the county jail
6 under s. 973.03 (4) (c) and does not include an inmate of a private prison, as defined
7 in s. 301.01 (2g).

8 **SECTION 15.** 49.32 (7) (d) of the statutes is amended to read:

9 49.32 (7) (d) The department, with assistance from the department of
10 corrections, shall conduct a program to periodically match the records of persons
11 confined in state correctional facilities with the records of recipients of medical
12 assistance under s. 49.46, 49.468 or 49.47, aid to families with dependent children
13 under s. 49.19 and the food stamp program under 7 USC 2011 to 2029 to identify
14 recipients who may be ineligible for benefits.

15 **SECTION 16.** 49.47 (6) (c) 3. of the statutes is amended to read:

16 49.47 (6) (c) 3. Care or services for an individual who is an inmate of a private
17 prison, as defined in s. 301.01 (2g), or a public institution, except as a patient in a
18 medical institution or a resident in an intermediate care facility.

19 **SECTION 17.** 51.20 (1) (ar) (intro.) of the statutes is amended to read:

20 51.20 (1) (ar) If the individual is an inmate of a state prison, the petition may
21 allege that the inmate is mentally ill, is a proper subject for treatment and is in need
22 of treatment. The petition shall allege that appropriate less restrictive forms of
23 treatment have been attempted with the individual and have been unsuccessful and
24 it shall include a description of the less restrictive forms of treatment that were
25 attempted. The petition shall also allege that the individual has been fully informed

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1 about his or her treatment needs, the mental health services available to him or her
2 and his or her rights under this chapter and that the individual has had an
3 opportunity to discuss his or her needs, the services available to him or her and his
4 or her rights with a licensed physician or a licensed psychologist. The petition shall
5 include the inmate's sentence and his or her expected date of release ~~as determined~~
6 ~~under s. 302.11 or 302.113, whichever is applicable.~~ The petition shall have attached
7 to it a signed statement by a licensed physician or a licensed psychologist of a state
8 prison or, if the individual is a private prison inmate, by any licensed psychologist
9 or the prison's medical director, and a signed statement by a licensed physician or a
10 licensed psychologist of a state treatment facility attesting either of the following:

11 **SECTION 18.** 51.20 (7) (b) of the statutes is amended to read:

12 51.20 (7) (b) If the subject individual is not detained or is an inmate of a state
13 prison, county jail or house of correction, the court shall hold a hearing within a
14 reasonable time of the filing of the petition, to determine whether there is probable
15 cause to believe the allegations made under sub. (1).

16 **SECTION 19.** 51.20 (7) (c) of the statutes is amended to read:

17 51.20 (7) (c) If the court determines that there is probable cause to believe the
18 allegations made under sub. (1), it shall schedule the matter for a hearing within 14
19 days from the time of detention of the subject individual, except as provided in sub.
20 (8) (bg) or (bm) or (11) (a). If a postponement has been granted under par. (a), the
21 matter shall be scheduled for hearing within 21 days from the time of detention of
22 the subject individual. If the subject individual is not detained under s. 51.15 or this
23 section or is an inmate of a state prison, county jail or house of correction, the hearing
24 shall be scheduled within 30 days of the hearing to determine probable cause for
25 commitment. In the event that the subject individual fails to appear for the hearing

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1 to determine probable cause for commitment, the court may issue an order for the
2 subject individual's detention and shall hold the hearing to determine probable cause
3 for commitment within 48 hours, exclusive of Saturdays, Sundays and legal
4 holidays, from the time that the individual is detained.

5 **SECTION 20.** 51.20 (11) (a) of the statutes is amended to read:

6 51.20 (11) (a) If before involuntary commitment a jury is demanded by the
7 individual against whom a petition has been filed under sub. (1) or by the individual's
8 counsel if the individual does not object, the court shall direct that a jury of 6 people
9 be selected to determine if the allegations specified in sub. (1) (a), (ar) or (av) are true.
10 A jury trial is deemed waived unless demanded at least 48 hours in advance of the
11 time set for final hearing, if notice of that time has been previously provided to the
12 subject individual or his or her counsel. If a jury trial demand is filed within 5 days
13 of detention, the final hearing shall be held within 14 days of detention. If a jury trial
14 demand is filed later than 5 days after detention, the final hearing shall be held
15 within 14 days of the date of demand. If an inmate of a state prison, county jail or
16 house of correction demands a jury trial within 5 days after the probable cause
17 hearing, the final hearing shall be held within 28 days of the probable cause hearing.
18 If an inmate of a state prison, county jail or house of correction demands a jury trial
19 later than 5 days after the probable cause hearing, the final hearing shall be held
20 within 28 days of the date of demand.

21 **SECTION 21.** 51.20 (13) (a) 3. of the statutes is amended to read:

22 51.20 (13) (a) 3. If the individual is not an inmate of a state prison, county jail
23 or house of correction and the allegations specified in sub. (1) (a) are proven, order
24 commitment to the care and custody of the appropriate county department under s.

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1 51.42 or 51.437, or if inpatient care is not required order commitment to outpatient
2 treatment under care of such county department; or

3 **SECTION 22.** 51.20 (13) (a) 4. of the statutes is amended to read:

4 51.20 (13) (a) 4. If the individual is an inmate of a state prison and the
5 allegations under sub. (1) (a) or (ar) are proven, order commitment to the department
6 and either authorize the transfer of the inmate to a state treatment facility or if
7 inpatient care is not needed authorize treatment on an outpatient basis in the prison;
8 or

9 **SECTION 23.** 51.20 (13) (a) 5. of the statutes is amended to read:

10 51.20 (13) (a) 5. If the allegations specified in sub. (1) (a) are proven and the
11 subject individual is a nonresident who is not an inmate of a prison, order
12 commitment to the department.

13 **SECTION 24.** 51.20 (13) (g) 2m. of the statutes is amended to read:

14 51.20 (13) (g) 2m. In addition to the provisions under subs. 1., 2. and 2g., no
15 commitment ordered under par. (a) 4. or 4m. may continue beyond the inmate's date
16 of release ~~on parole or extended supervision, as determined under s. 302.11 or~~
17 ~~302.113, whichever is applicable.~~

18 **SECTION 25.** 51.20 (19) (b) 1. of the statutes is amended to read:

19 51.20 (19) (b) 1. Establishing standards for the use of psychotropic drugs on
20 ~~prisoners in a state~~ inmates of a prison and inmates committed under sub. (1) (ar).

21 **SECTION 26.** 51.30 (4) (b) 10. (intro.) of the statutes is amended to read:

22 51.30 (4) (b) 10. (intro.) To a correctional facility or to a probation, extended
23 supervision and parole agent who is responsible for the supervision of an individual
24 who is receiving inpatient or outpatient evaluation or treatment under this chapter
25 in a program that is operated by, or is under contract with, the department or a

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1 county department under s. 51.42 or 51.437, or in a treatment facility, as a condition
2 of the probation, extended supervision and parole supervision plan, or whenever
3 such an individual is transferred from a state or local correctional facility or a private
4 prison to such a treatment program and is then transferred back to the correctional
5 facility. Every probationer, parolee or person on extended supervision who receives
6 evaluation or treatment under this chapter shall be notified of the provisions of this
7 subdivision by the individual's probation, extended supervision and parole agent.
8 Release of records under this subdivision is limited to:

9 **SECTION 27.** 51.30 (4) (b) 12. of the statutes is amended to read:

10 51.30 (4) (b) 12. To a correctional officer of the department of corrections or an
11 employee of a private prison who has custody of or is responsible for the supervision
12 of an individual who is transferred or discharged from a treatment facility. Records
13 released under this subdivision are limited to notice of the subject individual's
14 change in status.

15 **SECTION 28.** 51.35 (1) (a) of the statutes is amended to read:

16 51.35 (1) (a) The department or the county department under s. 51.42 or 51.437
17 may transfer any patient or resident who is committed to it, or who is admitted to
18 a facility under its supervision or operating under an agreement with it, between
19 treatment facilities or, with the exception of a person committed under s. 51.20 (13)
20 (a) 4. or 4m., from a facility into the community if such transfer is consistent with
21 reasonable medical and clinical judgment and consistent with s. 51.22 (5). The
22 transfer shall be made in accordance with par. (e). Terms and conditions which will
23 benefit the patient or resident may be imposed as part of a transfer to a less
24 restrictive treatment alternative. A patient or resident who is committed to the
25 department or a county department under s. 51.42 or 51.437 may be required to take

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1 medications and receive treatment, subject to the right of the patient or resident to
2 refuse medication and treatment under s. 51.61 (1) (g) and (h), through a community
3 support program as a term or condition of a transfer. The patient or resident shall
4 be informed at the time of transfer of the consequences of violating such terms and
5 conditions, including possible transfer back to a facility which imposes a greater
6 restriction on personal freedom of the patient or resident.

7 **SECTION 29.** 51.35 (6) (a) of the statutes is amended to read:

8 51.35 (6) (a) When the department has notice that any person other than a
9 prisoner or a private prison inmate is entitled to receive care and treatment in a U.S.
10 department of veterans affairs facility, the person may petition the department of
11 health and family services for a transfer to such facility, and that department may
12 procure admission to such facility in accordance with s. 45.30.

13 **SECTION 30.** 51.37 (5) (a) of the statutes is amended to read:

14 51.37 (5) (a) ~~When a~~ A licensed physician or licensed psychologist of a state
15 prison, of a county jail or of the department of corrections ~~reports in writing~~ may
16 submit written reports regarding prisoners, and the prison's medical director or any
17 licensed psychologist may submit written reports regarding private prison inmates
18 to the officer in charge of a jail or institution. If the report states that any prisoner
19 or any private prison inmate is, in ~~his or her~~ the opinion of the medical director or
20 psychologist, mentally ill, drug dependent, or developmentally disabled and is
21 appropriate for treatment as described in s. 51.20 (1), or is an alcoholic and is
22 dangerous as described in s. 51.45 (13) (a) 1. and 2.; or that the prisoner or inmate
23 is mentally ill, drug dependent, developmentally disabled or is an alcoholic and is in
24 need of psychiatric or psychological treatment, and that the prisoner or inmate
25 voluntarily consents to a transfer for treatment, the officer shall make a written

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1 report to the department of corrections which may transfer the prisoner or authorize
2 the transfer of the private prison inmate if a voluntary application is made and the
3 department of health and family services consents. ~~If voluntary application is not~~
4 ~~made~~ the prisoner does not voluntarily consent to a transfer for treatment, the
5 department of corrections may file a petition for involuntary commitment under s.
6 51.20 (1) or 51.45 (13). If the private prison inmate does not voluntarily consent to
7 a transfer for treatment, the prison's medical director shall file a petition for
8 involuntary commitment under s. 51.20 (1) or 51.45 (13). Any time spent by a
9 prisoner in an institution designated under sub. (3) or s. 51.37 (2), 1983 stats., shall
10 be included as part of the individual's sentence.

11 **SECTION 31.** 51.37 (5) (b) of the statutes is amended to read:

12 51.37 (5) (b) The department of corrections or, if the individual is a private
13 prison inmate, the prison's medical director may authorize an emergency transfer of
14 an individual from a prison, jail or other criminal detention facility to a state
15 treatment facility if there is cause to believe that the individual is mentally ill, drug
16 dependent or developmentally disabled and exhibits conduct which constitutes a
17 danger as described in s. 51.20 (1) (a) 2. a., b., c. or d. of physical harm to himself or
18 herself or to others, or is mentally ill and satisfies the standard under s. 51.20 (1) (a)
19 2. e. or is an alcoholic and is dangerous as provided in s. 51.45 (13) (a) 1. and 2. The
20 correctional custodian of the sending institution shall execute a statement of
21 emergency detention or petition for emergency commitment for the individual and
22 deliver it to the receiving state treatment facility. The department of health and
23 family services shall file the statement or petition with the court within 24 hours
24 after receiving the subject individual for detention. The statement or petition shall
25 conform to s. 51.15 (4) or (5) or 51.45 (12) (b). After an emergency transfer is made,

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1 the director of the receiving facility may file a petition for continued commitment
2 under s. 51.20 (1) or 51.45 (13) or may return the individual to the institution from
3 which the transfer was made. As an alternative to this procedure, the emergency
4 detention procedure in s. 51.15 or 51.45 (12) may be used, except that no prisoner or
5 inmate may be released without the approval of the court which directed
6 confinement in the institution.

7 **SECTION 32.** 51.37 (5) (b) of the statutes, as affected by 1995 Wisconsin Act 292
8 and 1999 Wisconsin Act (this act), is amended to read:

9 51.37 (5) (b) The department of corrections or, if the individual is a private
10 prison inmate, the prison's medical director may authorize an emergency transfer of
11 an individual from a prison, jail or other criminal detention facility to a state
12 treatment facility if there is cause to believe that the individual is mentally ill, drug
13 dependent or developmentally disabled and exhibits conduct which constitutes a
14 danger as described in s. 51.20 (1) (a) 2. of physical harm to himself or herself or to
15 others, or is an alcoholic and is dangerous as provided in s. 51.45 (13) (a) 1. and 2.
16 The correctional custodian of the sending institution shall execute a statement of
17 emergency detention or petition for emergency commitment for the individual and
18 deliver it to the receiving state treatment facility. The department of health and
19 family services shall file the statement or petition with the court within 24 hours
20 after receiving the subject individual for detention. The statement or petition shall
21 conform to s. 51.15 (4) or (5) or 51.45 (12) (b). After an emergency transfer is made,
22 the director of the receiving facility may file a petition for continued commitment
23 under s. 51.20 (1) or 51.45 (13) or may return the individual to the institution from
24 which the transfer was made. As an alternative to this procedure, the emergency
25 detention procedure in s. 51.15 or 51.45 (12) may be used, except that no prisoner or

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1 inmate may be released without the approval of the court which directed
2 confinement in the institution.

3 **SECTION 33.** 51.37 (8) (a) of the statutes is amended to read:

4 51.37 (8) (a) Rights to reexamination under s. 51.20 (16) apply to a prisoner or
5 inmate who is found to be mentally ill or drug dependent except that the petition
6 shall be made to the court that made the finding or, if the prisoner or inmate is
7 detained by transfer, to the circuit court of the county in which he or she is detained.
8 If upon rehearing it is found that the standards for recommitment under s. 51.20 (13)
9 (g) no longer apply to the prisoner or inmate or that he or she is not in need of
10 psychiatric or psychological treatment, the prisoner or inmate shall be returned to
11 the prison or county jail or house of correction unless it one of the following applies:

12 1. In the case of a prisoner, it is past his or her release date as determined under
13 s. 302.11 or 302.113, whichever is applicable, in which case he or she shall be
14 discharged.

15 2. In the case of a private prison inmate, it is past his or her release date or the
16 sending jurisdiction, as defined in s. 301.371 (4), is to transfer the inmate to another
17 facility, in which case the person will be returned to the sending jurisdiction.

18 **SECTION 34.** 51.37 (8) (b) of the statutes is amended to read:

19 51.37 (8) (b) If the condition of any prisoner ~~or inmate~~ committed or transferred
20 under this section requires psychiatric or psychological treatment after his or her
21 date of release as determined under s. 302.11 or 302.113, whichever is applicable, the
22 director of the state treatment facility shall, within a reasonable time before the
23 release date of the prisoner ~~or inmate~~, make a written application to the court which
24 committed the prisoner or inmate under sub. (5) (a). Thereupon, the proceeding shall
25 be upon application made under s. 51.20, but no physician or psychologist who is

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1 connected with a state prison, Winnebago or Mendota mental health institute or any
2 county jail or house of correction may be appointed as an examiner. If the court does
3 not commit the prisoner ~~or inmate~~, it may dismiss the application and order the
4 prisoner ~~or inmate~~ returned to the institution from which he or she was transferred
5 until the release date of the prisoner ~~or inmate~~. If the court commits the prisoner ~~or~~
6 ~~inmate~~ for the period commencing upon his or her release date, the commitment
7 shall be to the care and custody of the county department under s. 51.42 or 51.437.

8 **SECTION 35.** 51.37 (11) of the statutes is renumbered 51.37 (11) (a).

9 **SECTION 36.** 51.37 (11) (b) of the statutes is created to read:

10 51.37 (11) (b) When an individual who is in the custody of a private prison is
11 transferred or discharged from a treatment facility, the treatment facility shall notify
12 the private prison and the department of corrections as soon as possible. When an
13 individual who is in the custody of a private prison is on unauthorized absence from
14 a treatment facility, the treatment facility shall notify the private prison, the
15 department of corrections, the sheriff of the county in which the treatment facility
16 is located and the local law enforcement agency for the city, village or town in which
17 the treatment facility is located as soon as it learns that the individual is on
18 unauthorized absence.

19 **SECTION 37.** 51.39 of the statutes is amended to read:

20 **51.39 Resident patients on unauthorized absence.** If any patient who is
21 admitted under s. 51.13, 51.15, 51.20, 51.45 (11) (b), (12) or (13) or 55.06 or ch. 971,
22 975 or 980 or transferred under s. 51.35 (3) or 51.37 is on unauthorized absence from
23 a treatment facility, the sheriff or any other law enforcement agency in the county
24 in which the patient is found or in which it is believed the patient may be present,
25 upon the request of the director, shall take charge of and return the patient to the

ASSEMBLY BILL 519**SECTION 37**

1 facility. The costs incident to the return of a person other than a private prison
2 inmate shall be paid out of the facility's operating funds and be charged back to the
3 patient's county of residence. The costs incident to the return of an inmate of a
4 private prison shall be paid by the private prison.

5 **SECTION 38.** 51.42 (3) (as) 1. of the statutes is amended to read:

6 51.42 (3) (as) 1. A county department of community programs shall authorize
7 all care of any patient in a state, local or private facility under a contractual
8 agreement between the county department of community programs and the facility,
9 unless the county department of community programs governs the facility. The need
10 for inpatient care shall be determined by the program director or designee in
11 consultation with and upon the recommendation of a licensed physician trained in
12 psychiatry and employed by the county department of community programs or its
13 contract agency. In cases of emergency, a facility under contract with any county
14 department of community programs shall charge the county department of
15 community programs having jurisdiction in the county where the patient is found.
16 The county department of community programs shall reimburse the facility for the
17 actual cost of all authorized care and services less applicable collections under s.
18 46.036, unless the department of health and family services determines that a
19 charge is administratively infeasible, or unless the department of health and family
20 services, after individual review, determines that the charge is not attributable to the
21 cost of basic care and services. A county department of community programs may
22 not reimburse any state institution or receive credit for collections for care received
23 therein by nonresidents of this state, interstate compact clients, transfers under s.
24 51.35 (3), and transfers from ~~Wisconsin~~ state prisons under s. 51.37 (5) (a),
25 commitments under s. 975.01, 1977 stats., or s. 975.02, 1977 stats., or s. 971.14,

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1 971.17 or 975.06 or admissions under s. 975.17, 1977 stats., or children placed in the
2 guardianship of the department of health and family services under s. 48.427 or
3 48.43 or under the supervision of the department of corrections under s. 938.183 or
4 938.355. The exclusionary provisions of s. 46.03 (18) do not apply to direct and
5 indirect costs which are attributable to care and treatment of the client.

6 **SECTION 39.** 51.45 (15) (b) of the statutes is amended to read:

7 51.45 (15) (b) No provisions of this section may be deemed to contradict any
8 rules or regulations governing the conduct of any inmate of a ~~state or county~~
9 correctional institution who is being treated in an alcoholic treatment program
10 within the institution.

11 **SECTION 40.** 51.61 (1) (c) of the statutes is amended to read:

12 51.61 (1) (c) Have an unrestricted right to send sealed mail and receive sealed
13 mail to or from legal counsel, the courts, governmental officials, private physicians
14 and licensed psychologists, and have reasonable access to letter writing materials
15 including postage stamps. A patient shall also have a right to send sealed mail and
16 receive sealed mail to or from other persons, subject to physical examination in the
17 patient's presence if there is reason to believe that such communication contains
18 contraband materials or objects which threaten the security of patients, prisoners,
19 inmates of a private prison or staff. Such reasons shall be written in the individual's
20 treatment record. The officers and staff of a facility may not read any mail covered
21 by this paragraph.

22 **SECTION 41.** 59.29 (1) (b) of the statutes is amended to read:

23 59.29 (1) (b) Whenever a person convicted of, or charged with, any felony, the
24 punishment for which is not less than 5 years' imprisonment, ~~shall escape, or~~
25 escapes, whenever any such felony ~~shall be~~ is committed by any unknown person or

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1 persons or whenever a private prison inmate escapes, the sheriff of the county from
2 which such escape was made or in which such felony was committed may, with the
3 consent of the chairperson of the board of such county when such board is not in
4 session, and with the consent of the board when it is in session, offer such reward for
5 the apprehension and delivery of such escaped person, or the apprehension or
6 conviction of the perpetrator of such felony as the sheriff considers necessary, not
7 exceeding \$1,000 in any one case; but no such reward or any part thereof shall be paid
8 to any such sheriff, undersheriff or any deputy. The right to any such reward shall
9 be determined finally by such sheriff; and if more than one person claims the reward
10 the sheriff shall determine what portion, if any, the claimants are entitled to, and
11 shall certify the determination to the treasurer, and such certificate shall be the
12 treasurer's authority for paying the sum so certified.

13 **SECTION 42.** 77.996 (2) (f) of the statutes is amended to read:

14 77.996 (2) (f) Facilities that are located at a state prison or other state or county
15 penal institution.

16 **SECTION 43.** 101.123 (1) (dq) of the statutes is created to read:

17 101.123 (1) (dq) "Private prison" has the meaning given in s. 301.01 (2g).

18 **SECTION 44.** 101.123 (1) (ds) of the statutes is created to read:

19 101.123 (1) (ds) "Private prison operator" has the meaning given in s. 301.01
20 (2m).

21 **SECTION 45.** 101.123 (2) (a) 6m. of the statutes is created to read:

22 101.123 (2) (a) 6m. Private prisons.

23 **SECTION 46.** 101.123 (4) (am) 2m. of the statutes is created to read:

24 101.123 (4) (am) 2m. A private prison operator may designate areas where
25 smoking is permitted in a private prison, unless a fire marshal, law or resolution

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1 prohibits smoking in the area. A private prison operator may designate an entire
2 room as a smoking area in a private prison.

3 **SECTION 47.** 101.123 (4) (bm) of the statutes is amended to read:

4 101.123 (4) (bm) The person in charge of a state institution, jail or lockup
5 facility, or his or her agent, or a private prison operator, in the case of a private prison,
6 shall post notice of the designation of a smoking area under par. (am) in or near the
7 area designated. If an entire room is designated a smoking area, the person in charge
8 or his or her agent or the private prison operator shall post notice of the designation
9 conspicuously on or near all normally used entrances to the room. If an entire
10 building in a prison, secured correctional facility, jail or lockup facility is designated
11 a smoking area, the person in charge, or his or her agent, or the private prison
12 operator shall post notice of the designation on or near all normally used entrances
13 to the building, but need not post notice of the designation on or near entrances to
14 rooms within the building.

15 **SECTION 48.** 115.762 (4) of the statutes is amended to read:

16 115.762 (4) LIMITATION. Nothing in this subchapter requires that special
17 education and related services be provided to a child with a disability who is at least
18 18 years old but not yet 22 years old and who, in the child's educational placement
19 before his or her incarceration in a state prison, was not identified as a child with a
20 disability or for whom an individualized education program was not developed.

21 **SECTION 49.** 115.787 (6) (a) 1. of the statutes is amended to read:

22 115.787 (6) (a) 1. The requirements relating to participation of children with
23 disabilities in general assessments under sub. (2) (e) do not apply to a child with a
24 disability who is convicted of a crime under state law and incarcerated in a state
25 prison or who is incarcerated in a private prison.

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1 **SECTION 50.** 115.787 (6) (a) 2. of the statutes is amended to read:

2 115.787 **(6)** (a) 2. The requirements relating to transition planning and
3 transition services under sub. (2) (g) 1. and 2. do not apply with respect to a child with
4 a disability who is convicted of a crime under state law and incarcerated in a state
5 prison or who is incarcerated in a private prison and whose eligibility under this
6 subchapter will end, because of his or her age, before he or she will be released from
7 prison.

8 **SECTION 51.** 115.787 (6) (b) of the statutes is amended to read:

9 115.787 **(6)** (b) If a child with a disability is convicted of a crime and
10 incarcerated in a state prison or is incarcerated in a private prison, the child's
11 individualized education program team may modify the child's individualized
12 education program or placement notwithstanding the requirements of sub. (1) and
13 s. 115.79 (1) if the department of corrections or the private prison operator, as defined
14 in s. 301.01 (2m), has demonstrated a bona fide security or compelling penological
15 interest that cannot otherwise be accommodated.

16 **SECTION 52.** 157.02 (1) of the statutes is renumbered 157.02 (1) (a).

17 **SECTION 53.** 157.02 (1) (b) of the statutes is created to read:

18 157.02 **(1)** (b) When an inmate of a private prison, as defined in s. 301.01 (2g),
19 dies, the the private prison operator, as defined in s. 301.01 (2m), shall immediately
20 notify a relative of the decedent and the sending jurisdiction, as defined in s. 301.371
21 (4). A public officer having the possession or the disposition of a corpse shall
22 immediately notify a relative of the decedent and the sending jurisdiction. If no
23 relative is known, or discoverable by use of ordinary diligence, notice to a relative
24 may be dispensed with.

25 **SECTION 54.** 165.84 (4) of the statutes is amended to read:

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1 165.84 (4) All persons in charge of state penal and correctional institutions
2 shall obtain fingerprints, according to the fingerprint system of identification
3 established by the director of the F.B.I., and full face and profile photographs of all
4 persons received on commitment to these institutions. The prints and photographs
5 so taken shall be forwarded to the department, together with any other identifying
6 data requested, within 10 days after the arrival at the institution of the person
7 committed. Full length photographs in release dress shall be taken immediately
8 prior to the release of these persons from these state penal and correctional
9 institutions. Immediately after release, these photographs shall be forwarded to the
10 department.

11 **SECTION 55.** 165.84 (5) of the statutes is amended to read:

12 165.84 (5) All persons in charge of law enforcement and tribal law enforcement
13 agencies, all clerks of court, all municipal judges where they have no clerks, all
14 persons in charge of ~~state and county~~ penal and correctional institutions, and all
15 persons in charge of state and county probation, extended supervision and parole
16 offices, shall supply the department with the information described in s. 165.83 (2)
17 (f) on the basis of the forms and instructions to be supplied by the department under
18 s. 165.83 (2) (g).

19 **SECTION 56.** 227.43 (1) (bg) of the statutes is amended to read:

20 227.43 (1) (bg) Assign a hearing examiner to preside over any hearing or review
21 under ss. 84.30 (18), 84.31 (6) (a), 85.013 (1), 86.073 (3), 86.16 (5), 86.195 (9) (b), 86.32
22 (1), 114.134 (4) (b), 114.135 (9), 114.20 (19), 175.05 (4) (b), 194.145 (1), 194.46, 218.01
23 (2) (bd) 2. and (c) 2., (3) (b), (c), (f) 1., (fm) 1. and (h) and (3c) (d), 218.11 (7) (a) and
24 (b), 218.22 (4) (a) and (b), 218.32 (4) (a) and (b), 218.41 (4), 218.51 (5) (a) and (b),
25 301.373 (10) (a), 301.378 (7), 341.09 (2m) (d), 342.26, 343.69 and 348.25 (9).

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1 **SECTION 57.** 252.02 (4) of the statutes is amended to read:

2 252.02 (4) The department may promulgate and enforce rules or issue orders
3 for guarding against the introduction of any communicable disease into the state, for
4 the control and suppression of communicable diseases, for the quarantine and
5 disinfection of persons, localities and things infected or suspected of being infected
6 by a communicable disease and for the sanitary care of jails, state prisons, mental
7 health institutions, schools, hotels and public buildings and connected premises.
8 Any rule or order may be made applicable to the whole or any specified part of the
9 state, or to any vessel or other conveyance. The department may issue orders for any
10 city, village or county by service upon the local health officer. Rules that are
11 promulgated and orders that are issued under this subsection supersede conflicting
12 or less stringent local regulations, orders or ordinances.

13 **SECTION 58.** 252.02 (5) of the statutes is amended to read:

14 252.02 (5) If any public officer or employe or any person in charge of any
15 building, vessel, conveyance, jail, state prison, mental health institution or school
16 fails to comply with a rule promulgated or order issued under sub. (4), the
17 department may appoint an agent to execute its rules or orders. Expenses that an
18 agent incurs shall be paid by the unit of government that employs the person or of
19 which the public officer is a member. If the building, vessel, conveyance, mental
20 health institution or school is privately owned the state shall pay the expenses that
21 the agent incurs.

22 **SECTION 59.** 252.06 (6) (b) of the statutes is amended to read:

23 252.06 (6) (b) When a person confined in a jail, state prison, mental health
24 institute or other public place of detention has a disease which the local health officer
25 or the director of health at the institution deems dangerous to the health of other

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1 residents or the neighborhood, the local health officer or the director of health at the
2 institution shall order in writing the removal of the person to a hospital or other place
3 of safety, there to be provided for and securely kept. Upon recovery the person shall
4 be returned; and if the person was committed by a court or under process the removal
5 order or a copy shall be returned by the local health officer to the committing court
6 officer.

7 **SECTION 60.** 252.14 (1) (ad) of the statutes is renumbered 252.14 (1) (ad) (intro.)
8 and amended to read:

9 252.14 (1) (ad) (intro.) “Correctional officer” ~~has the meaning given in s. 301.28~~
10 ~~(1)~~ means any of the following:

11 **SECTION 61.** 252.14 (1) (ad) 1. and 2. of the statutes are created to read:

12 252.14 (1) (ad) 1. A correctional officer, as defined in s. 301.28 (1).

13 2. An out-of-state correctional officer.

14 **SECTION 62.** 252.14 (1) (e) of the statutes is created to read:

15 252.14 (1) (e) “Out-of-state correctional officer” means a person employed by
16 the United States or one of its political subdivisions or a federally recognized
17 American Indian tribe or band, other than a person employed by this state or a
18 political subdivision of this state, as a guard or officer whose principal duties are
19 supervision and discipline of persons in custody for the commission or alleged
20 commission of a crime.

21 **SECTION 63.** 252.14 (1) (f) of the statutes is created to read:

22 252.14 (1) (f) “Private prison” has the meaning given in s. 301.01 (2g).

23 **SECTION 64.** 252.14 (2) (intro.) of the statutes is amended to read:

24 252.14 (2) (intro.) No health care provider, peace officer, fire fighter,
25 correctional officer, private prison employe, state patrol officer, jailer or keeper of a

ASSEMBLY BILL 519**SECTION 64**

1 jail or person designated with custodial authority by the jailer or keeper, home health
2 agency, inpatient health care facility or person who has access to a validated test
3 result may do any of the following with respect to an individual who has acquired
4 immunodeficiency syndrome or has a positive test for the presence of HIV, antigen
5 or nonantigenic products of HIV or an antibody to HIV, solely because the individual
6 has HIV infection or an illness or medical condition that is caused by, arises from or
7 is related to HIV infection:

8 **SECTION 65.** 252.14 (2) (am) of the statutes is amended to read:

9 252.14 (2) (am) If a peace officer, fire fighter, correctional officer, private prison
10 employe, state patrol officer, jailer or keeper of a jail or person designated with
11 custodial authority by the jailer or keeper, refuse to provide services to the
12 individual.

13 **SECTION 66.** 252.14 (2) (bm) of the statutes is amended to read:

14 252.14 (2) (bm) If a peace officer, fire fighter, correctional officer, private prison
15 employe, state patrol officer, jailer or keeper of a jail or person designated with
16 custodial authority by the jailer or keeper, provide services to the individual at a
17 standard that is lower than that provided other individuals with like service needs.

18 **SECTION 67.** 252.15 (1) (ab) of the statutes is amended to read:

19 252.15 (1) (ab) “Affected person” means an emergency medical technician, first
20 responder, fire fighter, peace officer, correctional officer, person who is employed at
21 a secured correctional facility, as defined in s. 938.02 (15m), or at a secured child
22 caring institution, as defined in s. 938.02 (15g), private prison employe, state patrol
23 officer, jailer or keeper of a jail or person designated with custodial authority by the
24 jailer or keeper, health care provider, employe of a health care provider or staff
25 member of a state crime laboratory.

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1 **SECTION 68.** 252.15 (1) (ad) of the statutes is renumbered 252.15 (1) (ad) (intro.)
2 and amended to read:

3 252.15 (1) (ad) (intro.) “Correctional officer” ~~has the meaning given in s. 301.28~~
4 ~~(1)~~ means any of the following:

5 **SECTION 69.** 252.15 (1) (ad) 1. and 2. of the statutes are created to read:

6 252.15 (1) (ad) 1. A correctional officer, as defined in s. 301.28 (1).

7 2. An out-of-state correctional officer, as defined in s. 252.14 (1) (e).

8 **SECTION 70.** 252.15 (1) (au) of the statutes is created to read:

9 252.15 (1) (au) “Private prison” has the meaning given in s. 301.01 (2g).

10 **SECTION 71.** 252.15 (2) (a) 7. a. of the statutes is amended to read:

11 252.15 (2) (a) 7. a. If all of the conditions under subd. 7. ai. to c. are met, an
12 emergency medical technician, first responder, fire fighter, peace officer, correctional
13 officer, person who is employed at a secured correctional facility, as defined in s.
14 938.02 (15m), or at a secured child caring institution, as defined in s. 938.02 (15g),
15 private prison employe, state patrol officer, jailer or keeper of a jail or person
16 designated with custodial authority by the jailer or keeper who, during the course
17 of providing care or services to an individual; or a peace officer, correctional officer,
18 private prison employe, state patrol officer, jailer or keeper of a jail or person
19 designated with custodial authority by the jailer or keeper who, while searching or
20 arresting an individual or while controlling or transferring an individual in custody;
21 or a health care provider or an employe of a health care provider who, during the
22 course of providing care or treatment to an individual or handling or processing
23 specimens of body fluids or tissues of an individual; or a staff member of a state crime
24 laboratory who, during the course of handling or processing specimens of body fluids
25 or tissues of an individual; is significantly exposed to the individual may subject the

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1 individual's blood to a test or a series of tests for the presence of HIV, antigen or
2 nonantigenic products of HIV or an antibody to HIV and may receive disclosure of
3 the results.

4 **SECTION 72.** 301.01 (2) (e) of the statutes is created to read:

5 301.01 (2) (e) An inmate of a private prison.

6 **SECTION 73.** 301.01 (2g) and (2m) of the statutes are created to read:

7 301.01 (2g) "Private prison" means a building, structure or facility that is used
8 or is to be used for the confinement of one or more individuals who have been
9 sentenced to a term of imprisonment for the commission of a crime and that is or will
10 be operated in this state by a person other than the department, a law enforcement
11 agency, as defined in s. 165.83 (1) (b), a county, a group of counties acting under s.
12 302.44, this state and a county or group of counties acting under s. 302.45, the United
13 States or a federally recognized American Indian tribe or band in this state. "Private
14 prison" does not include a building, structure or facility used or to be used solely to
15 confine juveniles alleged or found to be delinquent or a building, structure or facility
16 supervised, maintained and operated by a public, private or voluntary agency under
17 contract with the department under s. 301.08 (1) (b) 2.

18 (2m) "Private prison operator" means a person licensed to operate a private
19 prison under s. 301.378.

20 **SECTION 74.** 301.03 (8m) of the statutes is created to read:

21 301.03 (8m) Supervise the design, construction and operation of private
22 prisons under ss. 301.372 to 301.379. The department shall promulgate rules
23 regarding the design, construction and operation of private prisons to ensure the
24 protection of private prison employees and the public and to help facilitate the
25 confinement, treatment and rehabilitation of inmates.

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1 **SECTION 75.** 301.03 (12) of the statutes is amended to read:

2 301.03 (12) Cooperate and coordinate its activities with other state and local
3 agencies to provide educational, social, health and other services to offenders, other
4 than inmates of a private prison, and except as provided in s. 302.386 (5).

5 **SECTION 76.** 301.035 (2) of the statutes is amended to read:

6 301.035 (2) Assign hearing examiners from the division to preside over
7 hearings under ss. 301.373 (10) (a), 301.378 (7), 302.11 (7), 938.357 (5), 973.10 and
8 975.10 (2) and ch. 304.

9 **SECTION 77.** 301.035 (4) of the statutes is amended to read:

10 301.035 (4) Supervise employes in the conduct of the activities of the division
11 and be the administrative reviewing authority for decisions of the division under ss.
12 301.373 (10) (a), 301.378 (7), 302.11 (7), 938.357 (5), 973.10, 973.155 (2) and 975.10
13 (2) and ch. 304.

14 **SECTION 78.** 301.105 (intro.) of the statutes is amended to read:

15 **301.105 Telephone company commissions.** (intro.) The department shall
16 collect moneys for commissions from telephone companies for contracts to provide
17 telephone services to ~~inmates~~ prisoners. The department shall transmit those
18 moneys to the state treasurer. The state treasurer shall do all of the following:

19 **SECTION 79.** 301.287 of the statutes is amended to read:

20 **301.287 Correctional officer overtime.** The department shall maintain a
21 central monitoring system to record the amount of overtime worked by correctional
22 officers employed by the state.

23 **SECTION 80.** 301.33 (2) of the statutes is amended to read:

24 301.33 (2) Every inmate prisoner shall receive, upon request, religious
25 ministrations and sacraments according to the inmate's prisoner's faith.

ASSEMBLY BILL 519**SECTION 81**

1 **SECTION 81.** 301.33 (3) of the statutes is amended to read:

2 301.33 (3) Every inmate prisoner who requests it shall have the use of the
3 Bible.

4 **SECTION 82.** 301.36 (1) and (6) of the statutes are amended to read:

5 **301.36 General supervision and inspection by department. (1) GENERAL**
6 **AUTHORITY.** The department shall investigate and supervise all of the state
7 correctional institutions, ~~and all secure detention facilities~~ and all private prisons
8 and familiarize itself with all of the circumstances affecting their management and
9 usefulness.

10 **(6) OPPORTUNITY TO INSPECT.** All trustees, managers, directors, superintendents
11 and other officers or employes of the institutions shall at all times afford to every
12 member of the department and its agents, unrestrained facility for inspection of and
13 free access to all parts of the buildings and grounds and to all books and papers of
14 the institutions; and, in the case of private prisons, the books and papers of the
15 private prison operator and shall give, either verbally or in writing, such information
16 as the department requires. Any person who violates this subsection shall forfeit not
17 less than \$10 nor more than \$100. A private prison operator may also be subject to
18 enforcement proceedings and sanctions under s. 301.373 (10) for violations of this
19 subsection.

20 **SECTION 83.** 301.371 of the statutes is created to read:

21 **301.371 Definitions.** In this section and ss. 301.372 to 301.378:

22 **(1)** "Division" means the division of hearings and appeals in the department
23 of administration.

24 **(2)** "Political subdivision of this state" means a city, village, town or county.

25 **(3)** "Security breach" means one of the following:

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1 (a) A violation of s. 946.42 (3) by a person committed to a private prison by a
2 sending jurisdiction.

3 (b) A disturbance at a private prison that places any person at imminent risk
4 of great bodily harm, as defined in s. 939.22 (14).

5 (4) "Sending jurisdiction" means the United States or one of its political
6 subdivisions or a federally recognized American Indian tribe or band that contracts
7 with a private prison operator to confine persons in a private prison for the
8 commission of a crime.

9 **SECTION 84.** 301.372 of the statutes is created to read:

10 **301.372 Private prison construction.** No person may commence the
11 construction of a private prison or the conversion of an existing building into a
12 private prison without paying the license fee and any application fee set under 1999
13 Wisconsin Act (this act), section 151 (3), and obtaining a private prison
14 construction license under s. 301.378.

15 **SECTION 85.** 301.372 of the statutes, as created by 1999 Wisconsin Act (this
16 act), is amended to read:

17 **301.372 Private prison construction.** No person may commence the
18 construction of a private prison or the conversion of an existing building into a
19 private prison without paying the license fee and any application fee set under ~~1999~~
20 ~~Wisconsin Act (this act), section 151 (3),~~ s. 301.379 and obtaining a private prison
21 construction license under s. 301.378.

22 **SECTION 86.** 301.373 of the statutes is created to read:

23 **301.373 Private prison operation.** No person may operate a private prison
24 unless the person complies with all of the following requirements:

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1 **(1) COMPLIANCE WITH LICENSE AND APPLICABLE LAWS.** A private prison operator
2 shall maintain a private prison operating license and operate and maintain the
3 private prison in a manner consistent with the operating license. A private prison
4 operator shall comply with all laws relating to the design, construction and operation
5 of the private prison, all rules promulgated by the department, all orders issued by
6 the department under sub. (10) (a) 1. a. and all orders issued by the division.

7 **(2) INSURANCE, INDEMNIFICATION AND FINANCIAL STATUS REPORTS.** (a) A private
8 prison operator shall periodically provide the department satisfactory proof of
9 insurance or self-insurance in the form, manner and frequency required by the
10 department. The insurance shall be in an amount sufficient, as determined by the
11 department, to indemnify this state and its officers and employees and political
12 subdivisions of this state and their officers and employees for any expenses, property
13 damage, losses, liability, costs or attorney fees arising from acts or omissions of the
14 private prison operator, prison employees or inmates in relation to the operation of the
15 private prison.

16 (b) A private prison operator shall indemnify and hold harmless this state and
17 its officers and employees and political subdivisions of this state and their officers and
18 employees for any expenses, property damage, losses, liability, costs or attorney fees
19 arising from acts or omissions of the private prison operator, prison employees or
20 inmates in relation to the operation of the private prison.

21 (c) A private prison operator shall submit to the department financial status
22 reports in the form and manner required by the department.

23 **(3) PRIVATE PRISON EMPLOYEES.** (a) A private prison operator may not assign a
24 person responsibility for supervising or disciplining inmates until the person has
25 completed a training program approved or provided by the department. If the

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1 department provides the training, the private prison operator shall pay a reasonable
2 fee, which the department shall set by rule.

3 (b) A private prison operator may not employ a person at a private prison until
4 the department of justice has completed a criminal history record search for the
5 person.

6 (c) Notwithstanding s. 111.322, a private prison operator may not employ a
7 person who has been convicted of a felony in this state or a violation of the law of
8 another jurisdiction which, if committed in this state, would have been a felony.

9 **(4) SECURITY CLASSIFICATION AT PRIVATE PRISONS.** A private prison operator may
10 not confine an inmate who would have a maximum security classification under the
11 department's security classification system.

12 **(5) LIMITS ON SUBCONTRACTING.** A private prison operator may not subcontract
13 with a person for the provision of goods or services on prison grounds without the
14 prior written approval of the department. As a condition of its approval, the
15 department may subject the subcontractor to any requirement of this section and s.
16 301.376 or to any department rule.

17 **(6) INMATE LEAVE.** A private prison operator may not permit an inmate to leave
18 the prison grounds during the time of the inmate's commitment to the private prison
19 unless otherwise ordered by a court, unless approved in writing by the department
20 or unless the inmate requires medical care unavailable within the private prison.
21 The department shall promulgate rules regarding security for inmates permitted to
22 leave the prison grounds under this subsection.

23 **(7) REQUIRED PLANS; NOTICE.** A private prison operator shall have written plans,
24 subject to department approval, regarding responding to security breaches,
25 providing medical care to inmates outside of the private prison and transporting

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1 inmates to and from the private prison. A private prison operator shall provide
2 written notice to the department if a private prison inmate is returned to the sending
3 jurisdiction, is admitted to a state treatment facility, as defined in s. 51.01 (15), or
4 dies.

5 (8) DESIGNATION OF MEDICAL DIRECTOR. A private prison operator shall designate
6 a licensed physician to act as the prison's medical director.

7 (9) PAYMENTS BY PRIVATE PRISON OPERATOR. (a) A private prison operator shall
8 pay the fee for its private prison operating license and any application fee set under
9 1999 Wisconsin Act (this act), section 151 (3), all forfeitures, attorney fees, costs
10 and other sanctions imposed under sub. (10), and all charges for which
11 reimbursement or indemnification is required under this paragraph or par. (b) or
12 sub. (2) (b). The private prison operator shall reimburse this state, the political
13 subdivisions of this state and any local educational agency, as defined in s. 115.76
14 (10), for expenses they incur in connection with providing health, mental health or
15 educational services to inmates of private prisons.

16 (b) A private prison operator shall reimburse the state and the political
17 subdivisions of this state for all court costs incurred in connection with any judicial
18 or administrative proceeding involving the care and treatment of inmates of private
19 prisons if the state or the political subdivision is not a party to the proceeding or is
20 a prevailing party in the proceeding and the costs are not reimbursed by one of the
21 parties to the proceeding. If the state, a political subdivision of this state, or a local
22 educational agency, as defined in s. 115.76 (10), is a prevailing party in such a
23 proceeding, the private prison shall also reimburse the state, the political
24 subdivision of this state or the local educational agency for attorney fees and all other

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1 expenses incurred in connection with such a proceeding, if the attorney fees and
2 other expenses are not reimbursed by any other party to the proceeding.

3 (10) ENFORCEMENT. (a) 1. The department may investigate violations of the
4 terms of a private prison construction license or a private prison operating license,
5 this section, s. 301.374 or 301.376, a department rule or an order issued by the
6 department under this subd. 1. b. and statements made in an application for a
7 private prison construction or operating license or for removal of a license. If the
8 department determines that a violation has occurred or that a person issued a
9 private prison construction or operating license made a material misstatement in an
10 application for a license or for renewal of a license, it may do one of the following:

11 a. File a petition with the division seeking appropriate relief.

12 b. With the agreement of the person who committed the violation or who made
13 the misstatement, enter an order providing an appropriate remedy for the violation
14 or the misstatement.

15 2. If the division determines that a person has violated the terms of a private
16 prison construction license or a private prison operating license, this section, s.
17 301.374 or 301.376, a department rule or an order issued by the department under
18 subd. 1. b. or the continued licensing of a person who made a material misstatement
19 in an application for a license or for renewal of a license or that a person issued a
20 private prison construction or operating license made a material misstatement in an
21 application for a license or for renewal of a license, the person shall forfeit not less
22 than \$100 nor more than \$100,000 per violation or misstatement. Each day of
23 continued violation constitutes a separate offense.

24 3. If the division determines that a violation of the terms of a private prison
25 construction license or a private prison operating license, this section, s. 301.374 or

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1 301.376, a department rule or an order issued by the department under subd. 1. b.
2 or the continued licensing of a person who made a material misstatement in an
3 application for a license or for renewal of a license may jeopardize public safety or
4 the health or safety of prison staff or inmates, the division shall order the person to
5 remedy the violation or the misstatement by a specific date or deny, limit, suspend
6 or revoke the prison's operating license or both.

7 (b) If the department has reason to believe that any person is violating the
8 terms of a private prison construction license or a private prison operating license,
9 this section, s. 301.374 or 301.376, a department or an order issued by the
10 department under par. (a) 1. b. rule, the department, the attorney general or the
11 district attorney of the proper county may, in addition to any other remedies, bring
12 an action in the name and on behalf of this state to enjoin the person from committing
13 the violation.

14 (c) If the department is the prevailing party in any proceeding under this
15 subsection, the person against whom the proceeding was brought shall pay all costs
16 incurred and all attorneys' fees expended by the department in connection with its
17 investigation and the proceedings.

18 **SECTION 87.** 301.373 (9) (a) of the statutes, as created by 1999 Wisconsin Act
19 (this act), is amended to read:

20 301.373 (9) PAYMENTS BY PRIVATE PRISON OPERATOR. (a) A private prison operator
21 shall pay the fee for its private prison operating license and any application fee set
22 under ~~1999 Wisconsin Act (this act), section 151 (3) s. 301.379,~~ all forfeitures,
23 attorney fees, costs and other sanctions imposed under sub. (10), and all charges for
24 which reimbursement or indemnification is required under this paragraph or par. (b)
25 or sub. (2) (b). The private prison operator shall reimburse this state, the political

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1 subdivisions of this state and any local educational agency, as defined in s. 115.76
2 (10), for expenses they incur in connection with providing health, mental health or
3 educational services to inmates of private prisons.

4 **SECTION 88.** 301.374 of the statutes is created to read:

5 **301.374 Private prison contracts.** No private prison may accept an inmate
6 except pursuant to a written contract meeting the requirements of this section. The
7 contract shall contain provisions regarding delivery and retaking of inmates and any
8 other matters necessary and appropriate to fix the obligations, responsibilities and
9 rights of the sending jurisdiction and the private prison operator. The contract shall
10 be subject to final approval by the department and shall contain substantially the
11 following provisions:

12 (1) The department shall be a third party beneficiary under the contract. If the
13 department assumes responsibility for the operation of the private prison under s.
14 301.378 (8), the department will assume the rights of the private prison operator
15 under the contract, but no provisions of the contract, other than the obligation to
16 provide care and treatment to inmates, shall be enforceable against the department.
17 The department may assign its rights under the contract to any other person.

18 (2) Neither the sending jurisdiction nor the private prison operator may bring
19 an inmate into this state without prior written notice to the department. The
20 sending jurisdiction and the private prison operator shall provide the department of
21 justice and the department of corrections all information requested regarding
22 inmates confined or to be confined in a private prison. The department may direct
23 the return of any inmate to the sending jurisdiction for any reason. The sending
24 jurisdiction shall also resume physical custody of an inmate if the private prison
25 operator returns the inmate to the sending jurisdiction because of a change in its

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1 licensed capacity under s. 301.378 (6) or upon the termination of the contract
2 applicable to the inmate.

3 (4) The courts of the sending jurisdiction shall exercise concurrent jurisdiction
4 over claims brought by inmates of private prisons regarding the conditions of
5 confinement or under the laws or regulations of the sending jurisdiction. The
6 sending jurisdiction shall provide a venue for such claims.

7 (5) If an inmate of a private prison files an action or special proceeding in this
8 state which, if filed by a prisoner, as defined in s. 806.025 (1), who committed an
9 offense after September 1, 1998, would subject the prisoner to sanctions under s.
10 807.15, or if an inmate of a private prison testifies falsely or otherwise knowingly
11 offers false evidence or provides false information to a court of this state, the sending
12 jurisdiction shall impose sanctions on the inmate of a private prison substantially
13 similar to the sanctions to which the prisoner would be subject under s. 807.15.

14 (6) Any provision of the contract that is in conflict with or inconsistent with
15 Wisconsin law or any order issued by or decision of either the department or the
16 division shall be void.

17 **SECTION 89.** 301.376 of the statutes is created to read:

18 **301.376 Security and emergencies.** (1) USE OF FIREARMS AND FORCE AT
19 PRIVATE PRISONS. (a) The department shall promulgate rules regarding the
20 possession of firearms and the use of force by private prison employees. No person
21 may carry a firearm or use force at a private prison except in accordance with
22 department rules.

23 (b) If a security breach occurs or if a prison employe discharges a firearm, the
24 private prison operator shall immediately notify the department, the sheriff of the
25 county in which the security breach or discharge has occurred and the local law

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1 enforcement agency for the city, village or town in which the security breach or
2 discharge has occurred.

3 (2) TRANSPORTING INMATES. The department shall promulgate rules regarding
4 the transportation of inmates to and from private prisons. No person may transport
5 an inmate to or from a private prison except in accordance with department rules.
6 If a person transporting an inmate between a sending jurisdiction and a private
7 prison discharges a firearm or if a person he or she is transporting escapes or causes
8 death or serious bodily harm, he or she shall immediately notify the department, the
9 sheriff of the county in which the incident occurs and the local law enforcement
10 agency for the city, village or town in which the incident occurs.

11 **SECTION 90.** 301.378 of the statutes is created to read:

12 **301.378 Private prison licensing. (1) APPLICATION PROCEDURES.** A person
13 seeking a private prison construction license or a private prison operating license
14 shall apply in the manner prescribed by the department. After applying for a license,
15 the person shall cooperate fully with all reasonable requests of the department. The
16 department may hold public hearings as part of its review of an application. The
17 department may not issue a license unless the applicant complies with all applicable
18 laws and department rules and pays the license fee and any application fee as set by
19 the department.

20 (2) INSPECTION OF PRIVATE PRISON. As part of its review of an application for a
21 private prison operating license, the department shall inspect the private prison
22 with respect to public, inmate and prison staff safety, sanitation, adequacy and
23 fitness for use as a prison and report any deficiency found to the applicant. The
24 department may condition the issuance of a license on the applicant remedying the
25 deficiency.

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1 **(3) SECURITY LEVEL AND CAPACITY.** Each operating license shall set the security
2 levels at which the private prison may operate and the maximum number of inmates
3 to be confined there. The department’s determinations regarding security level and
4 capacity shall be based on its review and investigation of the application for an
5 operating license.

6 **(4) NONTRANSFERABILITY.** Licenses issued by the department under this section
7 are not transferable.

8 **(5) RENEWAL OF PRIVATE PRISON OPERATING LICENSES.** A private prison operating
9 license shall be valid for one year, unless the department establishes a shorter term.
10 The renewal of a private prison operating license is subject to the same requirements
11 as those applicable to the initial issuance of such a license.

12 **(6) CHANGES IN LICENSED CAPACITY.** If the department reduces the number of
13 inmates that a private prison may hold under its operating license, the private prison
14 operator shall return inmates in excess of that number to the relevant sending
15 jurisdictions within the time set by the department.

16 **(7) APPEALS.** Any person aggrieved by a decision by the department under this
17 section may appeal the order as a contested case under ch. 227 by filing with the
18 division a request for a hearing within 30 days after the date of the department’s
19 written decision.

20 **(8) DEPARTMENT TAKEOVER OF PRIVATE PRISON.** If the division suspends or revokes
21 a private prison operating license or if the private prison operating license is not
22 renewed, the department shall assume responsibility for the operation of the prison.
23 If the department assumes responsibility for the operation of the prison for any
24 reason, the private prison operator shall be liable to the department for all costs
25 incurred by the department in managing or hiring another person to manage the

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1 private prison, in addition to forfeitures, attorney fees, costs and other sanctions
2 imposed under s. 301.373 (10) and any charges for which reimbursement is required
3 under s. 301.373 (2) (b) or (9) (a) or (b).

4 **SECTION 91.** 301.379 of the statutes is created to read:

5 **301.379 License fee determination.** The department shall include all of the
6 following with each biennial budget request that it makes under s. 16.42:

7 (1) A recalculation of all costs the department includes in the budget request
8 that are attributable to the review of applications for and issuance of private prison
9 construction licenses, the review of applications for and issuance and renewals of
10 private prison operating licenses and the supervision of private prisons.

11 (2) The fees to be charged for private prison construction licenses and private
12 prison operating licenses, which shall reflect the approximate costs of the
13 department that are attributable to its review of applications, its issuance of licenses
14 and its regulation of private prisons. The department may recommend separate fees
15 for an initial private prison operating license and for the renewal of a private prison
16 operating license. The department may recommend variable fees for operating
17 licenses based on the size of the prison and the costs that the department has
18 incurred or anticipates it will incur in licensing or supervising individual licensees.
19 The department may recommend a separate application fee to be paid upon the
20 application for a private prison construction license or a private prison operating
21 license or both, to cover its approximate costs of reviewing such applications. If the
22 department imposes a separate application fee for either type of license, the
23 department shall not consider the costs of reviewing applications in determining the
24 relevant license fee.

25 **SECTION 92.** 302.01 of the statutes is amended to read:

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1 **302.01 State prisons named and defined listed.** The penitentiary
2 institution at Waupun is named “Waupun Correctional Institution”. The
3 correctional treatment center at Waupun is named “Dodge Correctional Institution”.
4 The penitentiary institution at Green Bay is named “Green Bay Correctional
5 Institution”. The medium/maximum penitentiary institution at Portage is named
6 “Columbia Correctional Institution”. The medium security institution at Oshkosh
7 is named “Oshkosh Correctional Institution”. The medium security penitentiary
8 institution near Fox Lake is named “Fox Lake Correctional Institution”. The
9 penitentiary institution at Taycheedah is named “Taycheedah Correctional
10 Institution”. The medium security penitentiary institution at Plymouth is named
11 “Kettle Moraine Correctional Institution”. The penitentiary institution at the
12 village of Sturtevant in Racine county is named “Racine Correctional Institution”.
13 The medium security penitentiary institution at Racine is named “Racine Youthful
14 Offender Correctional Facility”. The resource facility at Oshkosh is named
15 “Wisconsin Resource Center”. The institutions named in this section, the
16 correctional institution authorized under s. 301.16 (1n), correctional institution
17 authorized under 1997 Wisconsin Act 4, section 4 (1) (a), correctional institution
18 authorized under s. 301.046 (1), correctional institution authorized under s. 301.048
19 (4) (b), minimum security correctional institutions authorized under s. 301.13, and
20 state-local shared correctional facilities when established under s. 301.14, and any
21 correctional institution that the department operates under s. 301.378 (8) are state
22 prisons.

23 **SECTION 93.** 302.02 (5) (a) of the statutes is amended to read:

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1 302.02 (5) (a) Service of process may be made on the warden or superintendent
2 of any prison named in s. 302.01 or a private prison as upon any other resident of this
3 state.

4 **SECTION 94.** 302.02 (5) (b) of the statutes is amended to read:

5 302.02 (5) (b) Except as provided in par. (a), service of process within any ~~such~~
6 state or private prison on any officer or employe or inmate thereof shall be made by
7 the warden or superintendent or some person appointed by the warden or
8 superintendent to serve process.

9 **SECTION 95.** 302.055 of the statutes is amended to read:

10 **302.055 Transfer of inmates to resource center.** The department may
11 transfer an inmate from a prison, jail or other criminal detention facility, other than
12 a private prison, to the Wisconsin resource center if there is reason to believe that
13 the inmate is in need of individualized care. The inmate is entitled to a transfer
14 hearing by the department on the transfer to the Wisconsin resource center.

15 **SECTION 96.** 302.07 of the statutes is amended to read:

16 **302.07 Maintenance of order.** The warden or superintendent shall maintain
17 order, enforce obedience, suppress riots and prevent escapes. For such purposes the
18 warden or superintendent of a state prison may command the aid of the officers of
19 the institution and of persons outside of the prison; and any person who fails to obey
20 such command shall be punished by imprisonment in the county jail not more than
21 one year or by a fine not exceeding \$500. The warden or superintendent of a state
22 prison may adopt proper means to capture escaped inmates.

23 **SECTION 97.** 302.09 of the statutes is amended to read:

24 **302.09 Labor and communications.** Inmates of a state prison shall be
25 employed as provided in ch. 303. Communication shall not be allowed between

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1 inmates and any person outside the prison except as prescribed by the prison
2 regulations.

3 **SECTION 98.** 302.095 (2) of the statutes is amended to read:

4 302.095 (2) Any officer or other person who delivers or procures to be delivered
5 or has in his or her possession with intent to deliver to any inmate confined in a jail
6 or state prison, or who deposits or conceals in or about a jail or prison, or the precincts
7 of a jail or prison, or in any vehicle going into the premises belonging to a jail or
8 prison, any article or thing whatever, with intent that any inmate confined in the jail
9 or prison shall obtain or receive the same, or who receives from any inmate any
10 article or thing whatever with intent to convey the same out of a jail or prison,
11 contrary to the rules or regulations and without the knowledge or permission of the
12 sheriff or other keeper of the jail, in the case of a jail, or of the warden or
13 superintendent of the prison, in the case of a prison, shall be imprisoned for not more
14 than 2 years or fined not more than \$500.

15 **SECTION 99.** 302.095 (2) of the statutes, as affected by 1997 Wisconsin Act 283
16 and 1999 Wisconsin Act (this act), is repealed and recreated to read:

17 302.095 (2) Any officer or other person who delivers or procures to be delivered
18 or has in his or her possession with intent to deliver to any inmate confined in a jail
19 or prison, or who deposits or conceals in or about a jail or prison, or the precincts of
20 a jail or prison, or in any vehicle going into the premises belonging to a jail or prison,
21 any article or thing whatever, with intent that any inmate confined in the jail or
22 prison shall obtain or receive the same, or who receives from any inmate any article
23 or thing whatever with intent to convey the same out of a jail or prison, contrary to
24 the rules or regulations and without the knowledge or permission of the sheriff or
25 other keeper of the jail, in the case of a jail, or of the warden or superintendent of the

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1 prison, in the case of a prison, shall be imprisoned for not more than 3 years or fined
2 not more than \$500.

3 **SECTION 100.** 302.11 (11) of the statutes is created to read:

4 302.11 (11) This section does not apply to an inmate of a private prison.

5 **SECTION 101.** 302.12 (1) of the statutes is amended to read:

6 302.12 (1) The department may provide by rule for the payment of money to
7 inmates of a state prison. The rate may vary for different prisoners in accordance
8 with the pecuniary value of the work performed, willingness, and good behavior. The
9 payment of money to inmates working in the prison industries shall be governed by
10 s. 303.01 (4).

11 **SECTION 102.** 302.13 of the statutes is amended to read:

12 **302.13 Preservation of property an inmate brings to prison.** The
13 department shall preserve money and effects, except clothes, in the possession of an
14 inmate when admitted to ~~the~~ a state prison and, subject to the crime victim and
15 witness assistance surcharge under s. 973.045 (4) and the deoxyribonucleic acid
16 analysis surcharge under s. 973.046, shall restore the money and effects to the
17 inmate when discharged.

18 **SECTION 103.** 302.14 of the statutes is amended to read:

19 **302.14 Property of deceased inmates, parolees, probationers or**
20 **persons on extended supervision, disposition.** When an inmate of a state
21 prison, a parolee of ~~an institution~~ a state prison, a person on extended supervision
22 or a person on probation to the department dies leaving an estate of \$150 or less in
23 the trust of the warden, superintendent or secretary, the warden, superintendent or
24 secretary shall try to determine whether or not the estate is to be probated. If probate
25 proceedings are not commenced within 90 days, the warden, superintendent or

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1 secretary shall turn over the money or securities to the nearest of kin as evidenced
2 by the records of the institution and the department.

3 **SECTION 104.** 302.18 (1) of the statutes is amended to read:

4 302.18 (1) Inmates of a state prison may be transferred and retransferred to
5 another prison by the department.

6 **SECTION 105.** 302.27 of the statutes is amended to read:

7 **302.27 Contracts for temporary housing for or detention of prisoners.**

8 The department may contract with local governments for temporary housing or
9 detention in county jails or county houses of correction for persons sentenced to
10 imprisonment in state prisons or to the intensive sanctions program. The
11 department may contract with local governments for temporary housing or
12 detention in county jails or county houses of correction for persons confined in a
13 private prison, if the department assumes responsibility for the operation of the
14 private prison under s. 301.378 (8). The rate under any such contract may not exceed
15 \$60 per person per day. Nothing in this section limits the authority of the department
16 to place persons in jails under s. 301.048 (3) (a) 1.

17 **SECTION 106.** 302.386 (5) (e) of the statutes is created to read:

18 302.386 (5) (e) An inmate of a private prison.

19 **SECTION 107.** 303.063 (1) of the statutes is amended to read:

20 303.063 (1) The department may establish a secure work program for inmates
21 of state prisons in which the inmates are assigned to work away from the grounds
22 of the institution while appropriately restrained for security purposes.

23 **SECTION 108.** 303.069 (title) of the statutes is amended to read:

24 **303.069 (title) Correctional State correctional institution enterprises;**
25 **activities of inmates.**

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1 **SECTION 109.** 304.06 (1) (b) of the statutes is amended to read:

2 304.06 (1) (b) Except as provided in sub. (1m) or s. 302.045 (3), 961.49 (2),
3 973.01 (6) or 973.0135, the parole commission may parole an inmate of the Wisconsin
4 state prisons or any felon or any person serving at least one year or more in a county
5 house of correction or a county reforestation camp organized under s. 303.07, when
6 he or she has served 25% of the sentence imposed for the offense, or 6 months,
7 whichever is greater. Except as provided in s. 939.62 (2m) (c) or 973.014 (1) (b) or (c),
8 (1g) or (2), the parole commission may parole an inmate of a state prison serving a
9 life term when he or she has served 20 years, as modified by the formula under s.
10 302.11 (1) and subject to extension under s. 302.11 (1q) and (2), if applicable. The
11 person serving the life term shall be given credit for time served prior to sentencing
12 under s. 973.155, including good time under s. 973.155 (4). The secretary may grant
13 special action parole releases under s. 304.02. The department or the parole
14 commission shall not provide any convicted offender or other person sentenced to the
15 department's custody any parole eligibility or evaluation until the person has been
16 confined at least 60 days following sentencing.

17 **SECTION 110.** 447.06 (2) (a) 4. of the statutes is amended to read:

18 447.06 (2) (a) 4. For a facility, as defined in s. 50.01 (1m), a hospital, as defined
19 in s. 50.33 (2), a ~~state or federal~~ prison, ~~county jail or other federal, state, county or~~
20 ~~municipal~~ correctional or detention facility, or a facility established to provide care
21 for terminally ill patients.

22 **SECTION 111.** 782.01 (1) of the statutes is amended to read:

23 782.01 (1) Every person restrained of personal liberty may prosecute a writ of
24 habeas corpus to obtain relief from such restraint subject to ss. 782.02, 782.46, 782.47
25 and 974.06.

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1 **SECTION 112.** 782.45 (title) of the statutes is amended to read:

2 **782.45 (title) Witness fees, inmates of state institutions and private**
3 **prisons.**

4 **SECTION 113.** 782.45 (3) of the statutes is created to read:

5 782.45 (3) If an inmate of a private prison, as defined in s. 301.01 (2g), is
6 brought into court in response to a writ of habeas corpus or subpoena in a civil action,
7 the party requesting the presence of the inmate shall reimburse the private prison
8 for the time of any private prison employe conducting the inmate and the actual and
9 necessary traveling expenses incurred in taking the inmate into court on the process
10 and returning the inmate to the institution.

11 **SECTION 114.** 782.47 of the statutes is created to read:

12 **782.47 Inapplicability to inmates of private prisons.** An inmate of a
13 private prison, as defined in s. 301.01 (2g), may not apply for or obtain relief from his
14 or her confinement in the private prison under this chapter.

15 **SECTION 115.** 801.02 (7) (a) 1. of the statutes is amended to read:

16 801.02 (7) (a) 1. “Correctional institution” means any state or local facility that
17 incarcerates or detains any adult accused of, charged with, convicted of, or sentenced
18 for any crime, or any private prison. A correctional institution includes a Type 1
19 prison, as defined in s. 301.01 (5), a Type 2 prison, as defined in s. 301.01 (6), a county
20 jail and a house of correction.

21 **SECTION 116.** 801.02 (7) (a) 3. of the statutes is amended to read:

22 801.02 (7) (a) 3. “Prison or jail conditions” means any matter related to the
23 conditions of confinement or to the effects of actions by government officers,
24 employes or agents, or in the case of private prisons, employes or agents of the private
25 prison, on the lives of prisoners.

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1 **SECTION 117.** 801.02 (7) (a) 4. of the statutes is created to read:

2 801.02 (7) (a) 4. “Private prison” has the meaning given in s. 301.01 (2g).

3 **SECTION 118.** 801.02 (7) (a) 5. of the statutes is created to read:

4 801.02 (7) (a) 5. “Sending jurisdiction” has the meaning given in s. 301.371 (4).

5 **SECTION 119.** 801.02 (7) (b) of the statutes is renumbered 801.02 (7) (b) 1. and
6 amended to read:

7 801.02 (7) (b) 1. No prisoner who is an inmate of a state or local correctional
8 institution may commence a civil action or special proceeding, including a petition
9 for a common law writ of certiorari, with respect to the prison or jail conditions in the
10 facility in which he or she is or has been incarcerated, imprisoned or detained until
11 the person has exhausted all available administrative remedies that the department
12 of corrections has promulgated by rule or, in the case of prisoners not in the custody
13 of the department of corrections or a private prison, that the sheriff, superintendent
14 or other keeper of a jail or house of correction has reduced to writing and provided
15 reasonable notice of to the prisoners.

16 **SECTION 120.** 801.02 (7) (b) 2. of the statutes is created to read:

17 801.02 (7) (b) 2. No prisoner who is an inmate of a private prison may commence
18 a civil action or special proceeding, including a petition for a common law writ of
19 certiorari, with respect to the prison or jail conditions in the facility in which he or
20 she is or has been incarcerated, imprisoned or detained until the person has
21 exhausted all administrative remedies available under the law of the sending
22 jurisdiction.

23 **SECTION 121.** 801.02 (7) (bm) (intro.) of the statutes is amended to read:

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1 801.02 (7) (bm) (intro.) A prisoner who is an inmate of a state or local
2 correctional institution commencing an action or special proceeding shall first
3 comply with the provisions of s. 893.80 or 893.82 unless one of the following applies:

4 **SECTION 122.** 806.025 (1) of the statutes is amended to read:

5 806.025 (1) In this section, “prisoner” has the meaning given in s. 801.02 (7)
6 (a) 2. but does not include an inmate of a private prison, as defined in s. 301.01 (2g).

7 **SECTION 123.** 806.025 (3) of the statutes is created to read:

8 806.025 (3) If a court enters a judgment for a monetary award on behalf of an
9 inmate of a private prison, as defined in s. 301.01 (2g), the court shall inform the
10 sending jurisdiction, as defined in s. 301.371 (4), of the judgment prior to any
11 payments being made to the inmate.

12 **SECTION 124.** 807.15 (1) of the statutes is amended to read:

13 807.15 (1) In this section, “prisoner” has the meaning given in s. ~~801.02 (7) (a)~~
14 ~~2. 806.025 (1).~~

15 **SECTION 125.** 813.40 (1) (b) 3. (intro.) of the statutes is amended to read:

16 813.40 (1) (b) 3. (intro.) Does not require or permit a government official,
17 employe or agent to exceed his or her authority or to violate a state law or local
18 ordinance and does not require or permit a government official, employe or agent of
19 the sending jurisdiction, as defined in s. 301.371 (4), or a private prison, as defined
20 in s. 301.01 (2g), or any of its employes to violate a state law or local ordinance or to
21 violate any provision contained in a contract between the sending jurisdiction and
22 the private prison that is required to be included in the contract under s. 301.374,
23 unless all of the following apply:

24 **SECTION 126.** 814.29 (1m) (c) 2. of the statutes is amended to read:

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1 814.29 **(1m)** (c) 2. The prisoner authorizes in writing the agency or person
2 having custody of the prisoner's prison trust fund or other such account to forward
3 payments from the prisoner's account to the clerk of court each time the amount in
4 the account exceeds \$10 until the fees or costs are paid in full.

5 **SECTION 127.** 814.29 (1m) (e) of the statutes is amended to read:

6 814.29 **(1m)** (e) The agency or person having custody of the prisoner shall
7 freeze the prisoner's trust fund or other such account until the deposits in that
8 account are sufficient to pay the balance owed for the costs and fees. When the
9 deposits in that account are sufficient to pay the balance owed for the court costs and
10 fees, the agency shall forward that amount to the court. This paragraph does not
11 prohibit the payment from the prisoner's trust fund account of court-ordered
12 payments for child or family support, restitution or federal court fees or for the
13 payments of debts owed to the department of corrections.

14 **SECTION 128.** 893.735 (1) of the statutes is amended to read:

15 893.735 **(1)** In this section, "prisoner" has the meaning given in s. 801.02 ~~(7)~~
16 ~~(a) 2.~~ 806.025 (1).

17 **SECTION 129.** 898.01 of the statutes is amended to read:

18 **898.01 Discharge of persons confined for tort.** Every person confined in
19 jail on an execution issued on a judgment recovered in an action founded on a tort
20 shall be discharged therefrom upon the conditions hereinafter specified. This
21 chapter does not apply to persons confined in a private prison, as defined in s. 301.01
22 (2g).

23 **SECTION 130.** 940.20 (1) of the statutes is amended to read:

24 940.20 **(1)** BATTERY BY PRISONERS. Any prisoner confined to a state prison ~~or~~
25 ~~other,~~ a state, county or municipal detention facility or a private prison, as defined

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1 in s. 301.01 (2g), who intentionally causes bodily harm to an officer, employe, visitor
2 or another inmate of such prison, facility or institution, without his or her the consent
3 of the person injured, is guilty of a Class D felony.

4 **SECTION 131.** 940.29 of the statutes is amended to read:

5 **940.29 Abuse of residents of penal facilities correctional institutions.**

6 Any person in charge of or employed in a ~~penal or~~ correctional institution or other
7 place of confinement who abuses, neglects or ill-treats any person confined in or a
8 resident of any such institution or place or who knowingly permits another person
9 to do so is guilty of a Class E felony.

10 **SECTION 132.** 941.237 (1) (b) of the statutes is amended to read:

11 941.237 (1) (b) “Correctional officer” means any person employed by the state
12 or any political subdivision as a guard or officer whose principal duties are the
13 supervision and discipline of inmates. “Correctional officer” includes an
14 out-of-state correctional officer, as defined in s. 252.14 (1) (e).

15 **SECTION 133.** 941.29 (6) of the statutes is amended to read:

16 941.29 (6) The prohibition against firearm possession under this section does
17 not apply to any correctional officer employed by the state or by a county, city, town
18 or village of this state before May 1, 1982, who is required to possess a firearm as a
19 condition of employment. This exemption applies if the officer is eligible to possess
20 a firearm under any federal law and applies while the officer is acting in an official
21 capacity.

22 **SECTION 134.** 946.43 of the statutes is amended to read:

23 **946.43 Assaults by prisoners.** Any prisoner confined to a state prison or
24 other, a state, county or municipal detention facility or a private prison, as defined

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1 in s. 301.01 (2g), who intentionally does any of the following is guilty of a Class C
2 felony:

3 (1) Places an officer, employe, visitor or another inmate of such prison, facility
4 or institution in apprehension of an immediate battery likely to cause death or great
5 bodily harm; or

6 (2) Confines or restrains an officer, employe, visitor or another inmate of such
7 prison, facility or institution without the person's consent.

8 **SECTION 135.** 946.44 (2) (c) of the statutes is amended to read:

9 946.44 (2) (c) "Institution" includes a private prison, as defined in s. 301.01 (2g),
10 a secured correctional facility, as defined in s. 938.02 (15m), a secured child caring
11 institution, as defined in s. 938.02 (15g), and a Type 2 child caring institution, as
12 defined in s. 938.02 (19r).

13 **SECTION 136.** 946.44 (2) (d) of the statutes is amended to read:

14 946.44 (2) (d) "Prisoner" includes a person who is under the supervision of the
15 department of corrections under s. 938.34 (4h) or placed in a secured correctional
16 facility or secured child caring institution under s. 938.34 (4m) or 938.357 (4) or (5)
17 (e) or placed in a Type 2 child caring institution under s. 938.34 (4d) ~~or~~, who is subject
18 to an order under s. 48.366 or who is an inmate of a private prison, as defined in s.
19 301.01 (2g).

20 **SECTION 137.** 946.45 (2) (c) of the statutes is amended to read:

21 946.45 (2) (c) "Institution" includes a private prison, as defined in s. 301.01 (2g),
22 a secured correctional facility, as defined in s. 938.02 (15m), a secured child caring
23 institution, as defined in s. 938.02 (15g), and a Type 2 child caring institution, as
24 defined in s. 938.02 (19r).

25 **SECTION 138.** 946.45 (2) (d) of the statutes is amended to read:

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1 946.45 (2) (d) “Prisoner” includes a person who is under the supervision of the
2 department of corrections under s. 938.34 (4h) or placed in a secured correctional
3 facility or secured child caring institution under s. 938.34 (4m) or 938.357 (4) or (5)
4 (e) or placed in a Type 2 child caring institution under s. 938.34 (4d) ~~or~~, who is subject
5 to an order under s. 48.366 or who is an inmate of a private prison, as defined in s.
6 301.01 (2g).

7 **SECTION 139.** 946.47 (2) (b) of the statutes is amended to read:

8 946.47 (2) (b) A person who commits an act within the jurisdiction of another
9 state which is punishable by imprisonment for one year or more in a state prison ~~or~~
10 ~~penitentiary~~ under the law of that state and would, if committed in this state,
11 constitute a felony under the law of this state.

12 **SECTION 140.** 948.50 (4) (a) of the statutes is amended to read:

13 948.50 (4) (a) Is serving a sentence, pursuant to a conviction, in a jail, state
14 prison or house of correction.

15 **SECTION 141.** 961.01 (12m) (g) of the statutes is created to read:

16 961.01 (12m) (g) A private prison, as defined in s. 301.01 (2g).

17 **SECTION 142.** 968.255 (7) (a) of the statutes is amended to read:

18 968.255 (7) (a) Is serving a sentence, pursuant to a conviction, in a jail, state
19 prison or house of correction.

20 **SECTION 143.** 971.11 (title) of the statutes is amended to read:

21 **971.11 (title) Prompt disposition of intrastate detainees.**

22 **SECTION 144.** 971.11 (1) of the statutes is amended to read:

23 971.11 (1) Whenever the warden or superintendent receives notice of an
24 untried criminal case pending in this state against an inmate of a state prison, the
25 warden or superintendent shall, at the request of the inmate, send by certified mail

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1 a written request to the district attorney for prompt disposition of the case. The
2 request shall state the sentence then being served, the date of parole eligibility, if
3 applicable, or the date of release to extended supervision, the approximate discharge
4 or conditional release date, and prior decision relating to parole. If there has been
5 no preliminary examination on the pending case, the request shall state whether the
6 inmate waives such examination, and, if so, shall be accompanied by a written
7 waiver signed by the inmate.

8 **SECTION 145.** 971.11 (6) of the statutes is amended to read:

9 971.11 (6) The prisoner shall be delivered into the custody of the sheriff of the
10 county in which the charge is pending for transportation to the court, and the
11 prisoner shall be retained in that custody during all proceedings under this section.
12 The sheriff shall return the prisoner to the prison upon the completion of the
13 proceedings and during any adjournments or continuances and between the
14 preliminary examination and the trial, except that if the department certifies a jail
15 as being suitable to detain the prisoner, he or she may be detained there until the
16 court disposes of the case. ~~The~~ Unless the prisoner is an inmate of a private prison,
17 as defined in s. 301.01 (2g), the prisoner's existing sentence continues to run and he
18 or she receives time credit under s. 302.11 while in custody.

19 **SECTION 146.** 973.15 (4) (a) of the statutes is amended to read:

20 973.15 (4) (a) The court shall order the department to immediately inform the
21 appropriate authorities in the jurisdiction ~~where~~ that imposed the prior sentence is
22 ~~to be served~~ that the convicted offender is presently available to commence or resume
23 serving that sentence; and

24 **SECTION 147.** 976.01 (4m) of the statutes is created to read:

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1 976.01 (**4m**) JURISDICTION OVER PRIVATE PRISONERS. For the purposes of this
2 section, the circuit court of the county in which a private prison, as defined in s.
3 301.01 (2g), is located has jurisdiction over an inmate confined there.

4 **SECTION 148.** 976.05 (16) of the statutes is created to read:

5 976.05 (**16**) For the purposes of this section, an inmate of a private prison, as
6 defined in s. 301.01 (2g), is incarcerated in and by the sending jurisdiction, as defined
7 by s. 301.371 (4).

8 **SECTION 149.** 976.06 of the statutes is renumbered 976.06 (1).

9 **SECTION 150.** 976.06 (2) of the statutes is created to read:

10 976.06 (**2**) This section does not apply to inmates of a private prison, as defined
11 in s. 301.01 (2g).

12 **SECTION 151. Nonstatutory provisions.**

13 (1) In this section, “department” means the department of corrections.

14 (2) The department shall submit in proposed form the rules required under
15 section 301.03 (8m) of the statutes, as created by this act, to the legislative council
16 staff under section 227.15 (1) of the statutes no later than the first day of the 6th
17 month beginning after the effective date of this subsection.

18 (3) No later than the first day of the 6th month beginning after the effective date
19 of this subsection, the department shall establish fees for private prison construction
20 licenses and private prison operating licenses for the fiscal biennium during which
21 this act takes effect. The department shall base the fee for a private prison
22 construction license on its estimate of the direct and indirect costs it will incur in
23 reviewing the application for and issuing such a license. The department shall base
24 the fee for a private prison operating license on its estimate of the direct and indirect
25 costs it will incur in reviewing the application for and issuing such a license and its

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1 supervision of the private prison. The department may set separate fees for an initial
2 private prison operating license and for the renewal of a private prison operating
3 license. The department may set variable fees for operating licenses based on the
4 size of the prison and the costs that the department has incurred in licensing or
5 supervising individual licensees. The department may set a separate application fee
6 to be paid upon the application for a private prison construction license or a private
7 prison operating license or both, to cover its anticipated costs of reviewing such
8 applications. If the department imposes a separate application fee for either type of
9 license, the department shall not consider the costs of reviewing applications in
10 determining the relevant license fee.

11 **SECTION 152. Effective dates.** This act takes effect on the day after
12 publication, except as follows:

13 (1) The amendment of sections 51.37 (5) (b) (by SECTION 32), 301.372 and
14 301.373 (9) (a) of the statutes takes effect on July 1, 2001.

15 (2) The repeal and recreation of section 302.095 (2) of the statutes takes effect
16 on December 31, 1999, or the day after publication, whichever is later.

17 (END)