

2001 DRAFTING REQUEST

Bill

Received: **09/29/2000**

Received By: **nelsorp1**

Wanted: **As time permits**

Identical to LRB:

For: **Administration-Budget 6-2213**

By/Representing: **Steinmetz**

This file may be shown to any legislator: **NO**

Drafter: **nelsorp1**

May Contact:

Alt. Drafters:

Subject: **Correctional System - prisons**

Extra Copies:

Pre Topic:

DOA:.....Steinmetz -

Topic:

Definition of "correctional institution" for prisoner litigation

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/1	nelsorp1 10/19/2000	gilfokm 10/20/2000	rschluet 10/23/2000	_____	lrb_docadmin 10/23/2000		State
/2	nelsorp1 02/08/2001	jdye 02/09/2001	martykr 02/09/2001	_____	lrb_docadmin 02/09/2001		State

FE Sent For:

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FE Sent For:

12-2/18-01 *AMG* *Kr 2/9* *Jim 2/9*

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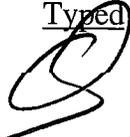
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1/1	nelsorp1	1/1-10/20 KMG	 10-20-00	 10-20-00			

FE Sent For:

<END>

STATE OF WISCONSIN
DEPARTMENT OF ADMINISTRATION
101 East Wilson Street, Madison, Wisconsin

TOMMY G. THOMPSON
GOVERNOR

GEORGE LIGHTBOURN
SECRETARY



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Date: September 26, 2000

To: Steve Miller, LRB

From: Jana D. Steinmetz, DOA
266-2213

Subject: Department of Corrections Biennial Budget Request Statutory Language Drafts

I'm forwarding a statutory language change that the Department of Corrections (DOC) included with its budget submission.

Prison Litigation Reform Act: This change will clarify that Wisconsin's Prison Litigation Reform Act affects all Wisconsin inmates, no matter where they are housed. The proposed change is attached.

cc: Jim Johnston
Justice Team Lead

Department of Corrections
2001-2003 BIENNIAL BUDGET
Statutory Language Request

Topic: Prison Litigation Reform Act (PLRA)

Current Language

Current language at §801.02 (7)(a)1 defines "correctional institution" as "any state or local facility that incarcerates or detains any adult accused of, charged with, convicted of, or sentenced for any crime. A correctional institution includes a Type 1 prison, as defined in s. 301.01 (5), a Type 2 prison, as defined in s. 301.01 (6), a county jail and a house of correction."

Proposed Change

Amend §801.02(7)(a)1, to include any facility that the Department utilizes to hold inmates.

"Correctional Institution" means any federal, state or local facility, whether publicly or privately owned and whether located within or outside this state, that incarcerates or detains any adult accused of, charged with, convicted of, or sentenced for any crime. A correctional institution includes a Type 1 prison, as defined in s. 301.01 (5), a Type 2 prison, as defined in s. 301.01 (6), a county jail and a house of correction.

Effect of the Change

This change would clarify that Wisconsin's PLRA affects all Wisconsin prisoners, no matter where they are housed.

Rationale for the Change

The United States Congress enacted the Prison Litigation Reform Act of 1995 (PLRA). This led to a shift in inmate litigation from the federal courts to the state courts. As a result, the Wisconsin Legislature enacted 1997 Wisconsin Act 133, which was effective 9/1/98. This law placed many of the federal reforms in the Wisconsin statutes. This includes exhaustion of all available administrative remedies, compliance with the 45-day statute of limitations and payment of filing fees. The goal was to decrease state litigation and not waste staff time on frivolous lawsuits.

A Wisconsin Court of Appeals decision in State of Wisconsin ex rel. William Speener v. Donald Gudmanson ruled that the definition of "correctional institution" does not include out-of-state or private facilities. By clarifying that Wisconsin's PLRA affects all Wisconsin prisoners no matter where they are housed, this should reduce the number of inmate lawsuits, which will reduce the workload relating to discovery and depositions for DOJ and DOC staff.

Desired Effective Date: Upon Passage of Bill
Agency: DOC
Agency Contact: Bob Margolies
Phone: 266-2931

801.02(7)(a)

(a) (intro.) In this subsection:

801.02(7)(a)1.

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

801.02(7)(a)2.

2. (intro.) "Prisoner" means any person who is incarcerated, imprisoned or otherwise detained in a correctional institution or who is arrested or otherwise detained by a law enforcement officer. "Prisoner" does not include any of the following:

801.02(7)(a)2.a.

a. A person committed under ch. 980.

801.02(7)(a)2.b.

b. A person bringing an action seeking relief from a judgment terminating parental rights.

801.02(7)(a)2.c.

c. A person bringing an action seeking relief from a judgment of conviction or a sentence of a court, including an action for an extraordinary writ or a supervisory writ seeking relief from a judgment of conviction or a sentence of a court or an action under s. 809.30, 809.40, 973.19 or 974.06.

801.02(7)(a)2.d.

d. A person bringing an action under s. 809.50 seeking relief from an order or judgment not appealable as of right that was entered in a proceeding under ch. 980 or in a case specified under s. 809.30 or 809.40.

801.02(7)(a)2.e.

e. A person who is not serving a sentence for the conviction of a crime but who is detained, admitted or committed under ch. 51 or 55 or s. 971.14 (2) or (5).

801.02(7)(a)3.

3. "Prison or jail conditions" means any matter related to the conditions of confinement or to the effects of actions by government officers, employees or agents on the lives of prisoners.

802.05(3)(a)

(a) A court shall review the initial pleading as soon as practicable after the action or special proceeding is filed with the court if the action or special proceeding is commenced by a prisoner, as defined in s. 801.02 (7) (a) 2.

809.103(2)(b)

(b) Is used for any improper purpose, such as to harass, to cause unnecessary delay or to needlessly increase the cost of litigation.

809.103(2)(c)

(c) Seeks review of a denial of monetary damages from a defendant who is immune from such relief.

809.103(2)(d)

(d) There is no ground upon which relief may be granted.

809.103(3)

(3) A prisoner is not relieved from paying the full filing fee related to an appeal or supervisory writ proceeding if the appellate court dismisses the appeal or supervisory writ proceeding for one of the reasons listed in sub. (2).

813.02(1)(a)

(a) When it appears from a party's pleading that the party is entitled to judgment and any part thereof consists in restraining some act, the commission or continuance of which during the litigation would injure the party, or when during the litigation it shall appear that a party is doing or threatens or is about to do, or is procuring or suffering some act to be done in violation of the rights of another party and tending to render the judgment ineffectual, a temporary injunction may be granted to restrain such act.

813.02(1)(b)

(b) Prior to granting a temporary injunction or temporary restraining order, the court may attempt to contact the party sought to be restrained, or his or her counsel if known, by telephone and allow all parties to be heard on the equities between the parties, the availability of other remedies, the damages which may be sustained if the temporary injunction or restraining order is granted, and other relevant matters.

813.02(1)(c)

(c) (intro.) If the court determines that a temporary injunction may be granted under par. (a) to a prisoner, as defined in s. 801.02 (7) (a) 2., in any action or special proceeding with respect to prison or jail conditions, as defined in s. 801.02 (7) (a) 3., the following apply:

813.02(1)(c)1.

1. The court may not issue the injunction until giving notice and an opportunity to be heard on the request for a preliminary injunction to the attorney general, if the case involves a prisoner in a state correctional institution, as defined in s. 801.02 (7) (a) 1., or to the attorney representing the local correctional institution involved and to all other interested parties. Any injunction issued without giving notice and an opportunity to be heard is void.

use
4 state prison under 302.01



2001
70/19
State of Wisconsin
2001 - 2002 LEGISLATURE

LRB-0606/P1

RPN.....
kmg

DOA:.....Steinmetz - Definition of "correctional institution" for prisoner litigation

FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION

head Correctional system
sub Adult correctional system

Fix Request Sheet

DON'T GEN. CAT.
AN ACT ...; relating to: the budget.

Wisconsin
and

Analysis by the Legislative Reference Bureau,

Under current law, as interpreted in *State ex rel Speener v. Gudmanson*, 234 Wis. 461⁸ (2000), the definition of "correctional institution" for purposes of the Prisoner Litigation Reform Act, 1997 Wis Act 133, does not include an out-of-state jail. As a result of that decision, the provisions of that Act that place specific duties and limits on prisoners who want to begin actions based on prison or jail conditions do not apply to persons in the custody of DOC who are placed in a jail or prison that is located outside of the state of Wisconsin. This bill overrides that decision by defining a "prisoner" for purposes of prison litigation to include any person who is incarcerated, imprisoned, or otherwise detained and who is in the custody of the department of corrections or of the sheriff or other keeper of a jail or house of corrections. All persons who are placed in a jail or prison outside the state by DOC are in the custody of DOC.

legislation
who are

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:

, superintendent,

1 SECTION 1. 801.02 (7) (a) 1. of the statutes is repealed.

2 SECTION 2. 801.02 (7) (a) 2. (intro.) of the statutes is amended to read:

3 801.02 (7) (a) 2. ^(intro.) "Prisoner" means any person who is incarcerated, imprisoned, ^{or}

4 or otherwise detained ~~in a correctional institution~~ ^{and who is in the custody of the}

5 ~~department of corrections or of the sheriff~~ ^{superintendent} or other keeper of a jail or house of

6 ~~corrections~~ ^{or any person} who is arrested or otherwise detained by a law enforcement

7 officer. "Prisoner" does not include any of the following:

8 History: Sup. Ct. Order, 67 Wis. 2d 585, 589 (1975); 1975 c. 218; 1981 c. 289, 317; 1995 a. 27; 1997 a. 133, 187.

8 SECTION 3. 813.02 (1) (c) 1. of the statutes is amended to read:

9 813.02 (1) (c) 1. The court may not issue the injunction until giving notice and

10 an opportunity to be heard on the request for a preliminary injunction to the attorney

11 general, if the case involves a prisoner in a state ~~correctional institution~~, as defined

12 ~~in s. 801.02 (7) (a) 1.~~ prison, or to the attorney representing the local correctional

13 institution involved and to all other interested parties. Any injunction issued

14 without giving notice and an opportunity to be heard is void.

15 History: Sup. Ct. Order, 67 Wis. 2d 760; Stats. 1975 s. 813.02; Sup. Ct. Order, 141 Wis. 2d xxvi; 1993 a. 112, 486; 1995 a. 400; 1997 a. 133.

(END)

Friday a.m.

DOA:.....Steinmetz – Definition of “correctional institution” for prisoner litigation

FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION

Not Forwarded

Don't GEN. CAT.

1

AN ACT ...; relating to: the budget.

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CORRECTIONAL SYSTEM

ADULT CORRECTIONAL SYSTEM

Under current law, as interpreted in *State ex rel. Speener v. Gudmanson*, 234 Wis. 461 (2000), the definition of “correctional institution” for purposes of the prisoner litigation reform legislation, 1997 Wisconsin Act 133, does not include an out-of-state jail. As a result of that decision, the provisions of that legislation that place specific duties and limits on prisoners who want to begin actions based on prison or jail conditions do not apply to persons who are in the custody of DOC and placed in a jail or prison that is located outside of this state. This bill overrides that decision by defining a “prisoner” for purposes of prison litigation to include any person who is incarcerated, imprisoned, or otherwise detained and who is in the custody of the department of corrections or of the sheriff, superintendent, or other keeper of a jail or house of corrections. All persons who are placed in a jail or prison outside this state by DOC are in the custody of DOC.

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14 institution involved and to all other interested parties. Any injunction issued
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16 (END)



State of Wisconsin
2001 - 2002 LEGISLATURE

LRB-0606/2

RPN:kmg:km

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15 parties. Any injunction issued without giving notice and an opportunity to be heard
16 is void.

17

(END)