

CHAPTER 302

PRISONS; STATE, COUNTY AND MUNICIPAL

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Cross–reference: See definitions in s. 301.01.

302.01 State prisons named and defined. The penitentiary at Waupun is named “Waupun Correctional Institution”. The correctional treatment center at Waupun is named “Dodge Correctional Institution”. The penitentiary at Green Bay is named “Green Bay Correctional Institution”. The medium/maximum penitentiary at Portage is named “Columbia Correctional Institution”. The medium security institution at Oshkosh is named “Oshkosh Correctional Institution”. The medium security penitentiary near Fox Lake is named “Fox Lake Correctional Institution”. The penitentiary at Taycheedah is named “Taycheedah Correctional Institution”. The medium security penitentiary at Plymouth is named “Kettle Moraine Correctional Institution”. The penitentiary at the village of Sturtevant in Racine county is named “Racine Correctional Institution”. The resource facility at Oshkosh is named “Wisconsin Resource Center”. The institutions named in this section, the correctional institutions authorized under s. 301.16 (1n) or (1o), correctional institution authorized under s. 301.046 (1), correctional institution authorized under s. 301.048 (4) (b), minimum security correctional institutions authorized under s. 301.13, and state–local shared correctional facilities when established under s. 301.14, are state prisons.

History: 1973 c. 90; 1975 c. 39; 1975 c. 189 s. 99 (1); 1975 c. 224, 422; 1977 c. 29; 1977 c. 418 ss. 369, 924 (18) (d); 1979 c. 221; 1981 c. 20; 1983 a. 192, 332, 538; 1985 a. 29; 1987 a. 5; 1989 a. 31 ss. 1617m, 1617n; Stats. 1989 s. 302.01; 1989 a. 359; 1991 a. 39; 1995 a. 27.

302.02 Jurisdiction and extent of state correctional institutions; service of process therein. (1) WAUPUN CORRECTIONAL INSTITUTION. For all purposes of discipline and for judicial proceedings, the Waupun correctional institution and the precincts thereof shall be deemed to be in Dodge county, and the courts of that county shall have jurisdiction of all crimes committed within the county. Every activity conducted under the jurisdiction of and by the institution, wherever located, is a precinct of the prison and each precinct is part of the institution.

(2) GREEN BAY CORRECTIONAL INSTITUTION. For all purposes of discipline and for judicial proceedings, the Green Bay correctional institution and the precincts thereof shall be deemed to be in Brown county, and the courts of that county shall have jurisdiction of all crimes committed within the county. Every activity conducted under the jurisdiction of and by the institution, wherever located, is a precinct of the institution; and each precinct is part of the institution.

(3) TAYCHEEDAH CORRECTIONAL INSTITUTION. For all purposes of discipline and for judicial proceedings, the Taycheedah correctional institution and the precincts thereof shall be deemed to be in Fond du Lac county, and the courts of that county shall have jurisdiction of all crimes committed within the same. Every activity conducted under the jurisdiction of and by such correctional institution, wherever located, is a precinct of the correctional institution; and each precinct is part of the correctional institution.

(3m) CORRECTIONAL INSTITUTION UNDER SECTION 301.16. For all purposes of discipline and for judicial proceedings, the correctional institutions authorized under s. 301.16 and the precincts thereof shall be deemed to be in a county in which the institution is physically located, and the courts of that county shall have jurisdiction of all crimes committed within the county. Every activity conducted under the jurisdiction of and by the institution, wherever located, is a precinct of the institution; and each precinct is part of the institution.

(3t) OTHER STATES' INSTITUTIONS. For all purposes of discipline and for judicial proceedings, each institution of another state or of a political subdivision of another state authorized for use under s. 301.21 and the precincts thereof shall be deemed to be in a county in which the institution is physically located, and the courts of that county shall have jurisdiction of any activity, wherever located, conducted by the institution.

(4) FOX LAKE CORRECTIONAL INSTITUTION. For all purposes of discipline and for judicial proceedings, the Fox Lake correctional institution and the precincts thereof are deemed to be in Dodge

county, and the courts of that county shall have jurisdiction of all crimes committed within the county. Every activity conducted under the jurisdiction of and by the Fox Lake correctional institution wherever located is a precinct of the institution.

(4a) MINIMUM SECURITY CORRECTIONAL INSTITUTIONS. For all purposes of discipline and judicial proceedings the minimum security correctional institutions and precincts thereof shall be deemed, as to each inmate, to be in the county in which the institution to which the inmate is assigned is located, and the courts of that county shall have jurisdiction of all crimes committed within the same. Every activity conducted under the jurisdiction of and by the minimum security correctional institutions wherever located is, as to each inmate, a precinct of the institution to which the inmate is assigned.

(4c) KETTLE MORAINE CORRECTIONAL INSTITUTION. For all purposes of discipline and for judicial proceedings, the Kettle Moraine correctional institution and the precincts thereof are deemed to be in Sheboygan county, and the courts of that county shall have jurisdiction of all crimes committed within the same. Every activity conducted under the jurisdiction of and by the Kettle Moraine correctional institution wherever located is a precinct of the institution.

(4d) DODGE CORRECTIONAL INSTITUTION. For all purposes of discipline and for judicial proceedings, the Dodge correctional institution and the precincts thereof shall be deemed to be in Dodge county, and the courts of that county shall have jurisdiction of all crimes committed within that county. Every activity conducted under the jurisdiction of and by the Dodge correctional institution, wherever located, is a precinct of the institution; and each precinct is part of the institution.

(4t) STATE-LOCAL SHARED CORRECTIONAL FACILITIES. For all purposes of discipline and judicial proceedings, the state-local shared correctional facilities and their precincts shall be deemed, as to each inmate, to be in the county in which the facility to which the inmate is assigned is located, and the courts of that county shall have jurisdiction over all crimes committed within the facility. Every activity conducted under the jurisdiction of and by the state-local shared correctional facility wherever located is, as to each inmate, a precinct of the facility to which he or she is assigned.

(4x) CORRECTIONAL INSTITUTION; COMMUNITY RESIDENTIAL CONFINEMENT. For all purposes of discipline and judicial proceedings the correctional institution under s. 301.046 (1) and precincts thereof shall be deemed, as to each inmate, to be in the county in which the inmate is confined, and the courts of that county shall have jurisdiction of all crimes committed within the same. Every activity conducted under the jurisdiction of and by the institution under s. 301.046 (1) wherever located is a precinct of the institution.

(4y) CORRECTIONAL INSTITUTION; INTENSIVE SANCTIONS PROGRAM. For all purposes of discipline and judicial proceedings the correctional institution under s. 301.048 (4) (b) and precincts thereof shall be deemed, as to each inmate, to be in the county in which the inmate is assigned, and the courts of that county shall have jurisdiction of all crimes committed within the same. Every activity conducted under the jurisdiction of and by the institution under s. 301.048 (4) (b) wherever located is a precinct of the institution.

(5) SERVICE OF PROCESS. (a) Service of process may be made on the warden or superintendent of any prison named in s. 302.01 as upon any other resident of this state.

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

History: 1973 c. 90; 1975 c. 39, 189, 224; 1977 c. 29; 1977 c. 418 ss. 370 to 372, 924 (18) (d); 1979 c. 221; 1981 c. 20; 1983 a. 27, 332; 1985 a. 29; 1989 a. 31 ss. 1618, 1618m; Stats. 1989 s. 302.02; 1991 a. 39, 316; 1995 a. 344.

Under 801.50 (3), prisoner's civil action against superintendent was properly venued in Dane county. *Irby v. Young*, 139 W (2d) 279, 407 NW (2d) 314 (Ct. App. 1987).

302.03 Oath of office; bond. (1) The wardens and the superintendents of the state prisons shall each take the official oath required by s. 19.01.

(2) They shall each execute the official bond required by s. 19.01, the amount of which shall be fixed by the department, with surety or sureties approved by the department.

History: 1989 a. 31 s. 1619; Stats. 1989 s. 302.03.

302.04 Duties of warden and superintendents. The warden or the superintendent of each state prison shall have charge and custody of the prison and all lands, belongings, furniture, implements, stock and provisions and every other species of property within the same or pertaining thereto. The warden or superintendent shall enforce the regulations of the department for the administration of the prison and for the government of its officers and the discipline of its inmates.

History: 1989 a. 31 s. 1620; Stats. 1989 s. 302.04; 1991 a. 316.

302.045 Challenge incarceration program for youthful offenders. (1) PROGRAM. The department shall provide a challenge incarceration program for inmates selected to participate under sub. (2). The program shall provide participants with strenuous physical exercise, manual labor, personal development counseling, substance abuse treatment and education, military drill and ceremony and counseling in preparation for release on parole. The department shall design the program to include not less than 50 participants at a time and so that a participant may complete the program in not more than 180 days. The department may restrict participant privileges as necessary to maintain discipline.

(2) PROGRAM ELIGIBILITY. Except as provided in sub. (4), the department may place any inmate in the challenge incarceration program if the inmate meets all of the following criteria:

(a) The inmate volunteers to participate in the program.

(b) The inmate has not attained the age of 30, as of the date the inmate will begin participating in the program.

(c) The inmate is incarcerated regarding a violation other than a crime specified in ch. 940 or s. 948.02, 948.025, 948.03, 948.05, 948.055, 948.06, 948.07, 948.08 or 948.095.

(d) The department determines, during assessment and evaluation, that the inmate has a substance abuse problem.

(e) The department determines that the inmate has no psychological, physical or medical limitations that would preclude participation in the program.

(3) PAROLE ELIGIBILITY. Except as provided in sub. (4), if the department determines that an inmate has successfully completed the challenge incarceration program, the parole commission shall parole the inmate under s. 304.06, regardless of the time the inmate has served. When the parole commission grants parole under this subsection, it must require the parolee to participate in an intensive supervision program for drug abusers as a condition of parole.

(4) INTENSIVE SANCTIONS PROGRAM PARTICIPANTS. The department may place any intensive sanctions program participant in the challenge incarceration program. The participant is not subject to subs. (2) and (3).

History: 1989 a. 122; 1991 a. 39; 1993 a. 218, 227, 491; 1995 a. 456.

302.05 Wisconsin substance abuse program. (1) The department of corrections and the department of health and family services may designate a section of a mental health institute as a correctional treatment facility for the treatment of substance abuse of inmates transferred from Wisconsin state prisons. This section shall be administered by the department of corrections and shall be known as the Wisconsin substance abuse program. The department of corrections and the department of health and family ser-

vices shall ensure that the residents at the institution and the residents in the substance abuse program:

(a) Have access to all those facilities which are available at the institution and are necessary for the treatment programs designed by the departments.

(b) Are housed on separate wards.

(2) Transfer to a correctional treatment facility for the treatment of substance abuse shall be considered a transfer under s. 302.18.

History: 1989 a. 31; 1995 a. 27 s. 9126 (19).

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

History: 1981 c. 20; 1989 a. 31 s. 1622; Stats. 1989 s. 302.055.

Rights and responsibilities of counties in prisoner transfers to Wisconsin resource center discussed. 71 Atty. Gen. 170.

302.06 Delivery of persons to prisons. The sheriff shall deliver to the reception center designated by the department every person convicted in the county and sentenced to the Wisconsin state prisons or to the intensive sanctions program as soon as may be after sentence, together with a copy of the judgment of conviction. The warden or superintendent shall deliver to the sheriff a receipt acknowledging receipt of the person, naming the person, which receipt the sheriff shall file in the office of the clerk who issued the copy of the judgment of conviction. When transporting or delivering the person to any of the Wisconsin state prisons the sheriff shall be accompanied by an adult of the same sex as the person. If the sheriff and the person are of the same sex, this requirement is satisfied and a 3rd person is not required.

History: 1975 c. 94; 1975 c. 189 s. 99 (1); 1975 c. 224 s. 146m; 1989 a. 31 s. 1623; Stats. 1989 s. 302.06; 1991 a. 39.

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

History: 1989 a. 31 s. 1624; Stats. 1989 s. 302.07; 1991 a. 316.

Constitutional requirements for disciplinary segregation discussed. Kirsch v. Endicott, 201 W (2d) 702, 549 NW (2d) 761 (Ct. App. 1996).

See note to 166.04, citing 68 Atty. Gen. 104.

Correctional staff have authority of peace officer in pursuing and capturing escaped inmates. 68 Atty. Gen. 352.

302.08 Humane treatment and punishment. The wardens and the superintendents and all prison officials shall uniformly treat the inmates with kindness. There shall be no corporal or other painful and unusual punishment inflicted upon inmates.

History: 1989 a. 31 s. 1625; Stats. 1989 s. 302.08.

Lawfully incarcerated persons retain only narrow range of protected liberty interests. Hewitt v. Helms, 459 US 460 (1983).

302.09 Labor and communications. Inmates shall be employed as provided in ch. 303. Communication shall not be allowed between inmates and any person outside the prison except as prescribed by the prison regulations.

History: 1989 a. 31 s. 1626; Stats. s. 302.09.

The department may be required to justify a refusal to allow a prisoner to write the Veterans Administration concerning the adequacy of his medical treatment. State ex rel. Thomas v. State, 55 W (2d) 343, 198 NW (2d) 675.

Dividing line between publications which may be denied prisoners and those which may not is a matter not of administrative grace but of constitutional right. Gaugh v. Schmidt, 369 F Supp. 877.

The state has no legitimate interest in requiring an inmate to sign an authorization form to have incoming and outgoing mail examined and no sanction of any kind may be imposed for refusal to sign it. Stone v. Schmidt, 398 F Supp. 768.

302.095 Delivering articles to inmate. (1) In this section, “jail” means any of the following:

(a) A jail, as defined in s. 302.30.

(b) A house of correction.

(c) A Huber facility under s. 303.09.

(d) A lockup facility, as defined in s. 302.30.

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

History: 1989 a. 31 s. 1627; Stats. 1989 s. 302.095; 1991 a. 316; 1993 a. 490; 1995 a. 437.

302.10 Solitary confinement. For violation of the rules of the prison an inmate may be confined to a solitary cell, under the care and advice of the physician.

History: 1989 a. 31 s. 1628; Stats. s. 302.10.

See note to Art. I, sec. 7, citing U.S. v. Gouveia, 467 US 180 (1984).

302.11 Mandatory release. (1) The warden or superintendent shall keep a record of the conduct of each inmate, specifying each infraction of the rules. Except as provided in subs. (1g), (1m), (7) and (10), each inmate is entitled to mandatory release on parole by the department. The mandatory release date is established at two-thirds of the sentence. Any calculations under this subsection or sub. (2) (b) resulting in fractions of a day shall be rounded in the inmate’s favor to a whole day.

(1g) (a) In this subsection, “serious felony” means any of the following:

1. Any felony under s. 961.41 (1), (1m) or (1x) if the felony is punishable by a maximum prison term of 30 years or more.

2. Any felony under s. 940.02, 940.03, 940.05, 940.09 (1), 940.19 (5), 940.21, 940.225 (1) or (2), 940.305 (2), 940.31 (1) or (2) (b), 943.02, 943.10 (2), 943.23 (1g) or (1m), 943.32 (2), 946.43, 948.02 (1) or (2), 948.025, 948.03 (2) (a) or (c), 948.05, 948.06, 948.07, 948.08, 948.30 (2), 948.35 (1) (b) or (c) or 948.36.

3. The solicitation, conspiracy or attempt, under s. 939.30, 939.31 or 939.32, to commit a Class A felony.

(am) The mandatory release date established in sub. (1) is a presumptive mandatory release date for an inmate who is serving a sentence for a serious felony committed on or after April 21, 1994.

(b) Before an incarcerated inmate with a presumptive mandatory release date reaches the presumptive mandatory release date specified under par. (am), the parole commission shall proceed under s. 304.06 (1) to consider whether to deny presumptive mandatory release to the inmate. If the parole commission does not deny presumptive mandatory release, the inmate shall be released on parole. The parole commission may deny presumptive mandatory release to an inmate only on one or more of the following grounds:

1. Protection of the public.

2. Refusal by the inmate to participate in counseling or treatment that the social service and clinical staff of the institution determines is necessary for the inmate.

(c) If the parole commission denies presumptive mandatory release to an inmate under par. (b), the parole commission shall schedule regular reviews of the inmate’s case to consider whether to parole the inmate under s. 304.06 (1).

(d) An inmate may seek review of a decision by the parole commission relating to the denial of presumptive mandatory release only by the common law writ of certiorari.

(1i) An inmate serving a sentence to the intensive sanctions program is entitled to mandatory release. The mandatory release date under sub. (1) is established at two-thirds of the sentence under s. 973.032 (3) (a).

(1m) An inmate serving a life term is not entitled to mandatory release. Except as provided in ss. 939.62 (2m) and 973.014, the parole commission may parole the inmate as specified in s. 304.06 (1).

(1p) An inmate serving a term subject to s. 961.49 (2) is entitled to mandatory release, except the inmate may not be released before he or she has complied with s. 961.49 (2).

(2) (a) Any inmate who violates any regulation of the prison or refuses or neglects to perform required or assigned duties is subject to extension of the mandatory release date as follows: 10 days for the first offense, 20 days for the 2nd offense and 40 days for the 3rd or each subsequent offense.

(b) In addition to the sanctions under par. (a), any inmate who is placed in adjustment, program or controlled segregation status shall have his or her mandatory release date extended by a number of days equal to 50% of the number of days spent in segregation status. In administering this paragraph, the department shall use the definition of adjustment, program or controlled segregation status under departmental rules in effect at the time an inmate is placed in that status.

(c) No extension under this section may require the inmate to serve more days in prison than provided for under the sentence.

(3) All consecutive sentences shall be computed as one continuous sentence.

(4) An inmate may waive entitlement to mandatory release if the department agrees to the waiver.

NOTE: 1985 Wis. Act 27 s. 1, which amended sub. (4), explains the effect of the amendment in sections 2 and 3 of the act.

(5) Before a person is released on parole under this section, the department shall so notify the municipal police department and the county sheriff for the area where the person will be residing. The notification requirement does not apply if a municipal department or county sheriff submits to the department a written statement waiving the right to be notified. If applicable, the department shall also comply with s. 304.063.

(6) Any inmate released on parole under sub. (1) or (1g) (b) or s. 304.02 or 304.06 (1) is subject to all conditions and rules of parole until the expiration of the sentence or until he or she is discharged by the department. Except as provided in ch. 304, releases from prison shall be on the Tuesday or Wednesday preceding the release date. The department may discharge a parolee on or after his or her mandatory release date or after 2 years of supervision. Any inmate sentenced to the intensive sanctions program who is released on parole under sub. (1) or s. 304.02 or 304.06 (1) remains in the program unless discharged by the department under s. 301.048 (6).

(7) (a) The division of hearings and appeals in the department of administration, upon proper notice and hearing, or the department of corrections, if the parolee waives a hearing, may return a parolee released under sub. (1) or (1g) (b) or s. 304.02 or 304.06 (1) to prison for a period up to the remainder of the sentence for a violation of the conditions of parole. The remainder of the sentence is the entire sentence, less time served in custody prior to parole. The revocation order shall provide the parolee with credit in accordance with ss. 304.072 and 973.155.

(b) A parolee returned to prison for violation of the conditions of parole shall be incarcerated for the entire period of time determined by the department of corrections in the case of a waiver or the division of hearings and appeals in the department of administration in the case of a hearing under par. (a), unless paroled earlier under par. (c). The parolee is not subject to mandatory release under sub. (1) or presumptive mandatory release under sub. (1g).

The period of time determined under par. (a) may be extended in accordance with sub. (2).

(c) The parole commission may subsequently parole, under s. 304.06 (1), and the department may subsequently parole, under s. 304.02, a parolee who is returned to prison for violation of a condition of parole.

(d) A parolee who is subsequently released either after service of the period of time determined by the department of corrections in the case of a waiver or the division of hearings and appeals in the department of administration in the case of a hearing under par. (a) or by a grant of parole under par. (c) is subject to all conditions and rules of parole until expiration of sentence or discharge by the department.

(8) The department may promulgate rules under ch. 227 establishing guidelines and criteria for the exercise of discretion under this section.

(9) Except as provided in sub. (1g) (am), this section applies to persons committing offenses occurring on or after June 1, 1984, or persons filing requests in accordance with 1983 Wisconsin Act 528, section 29 (2) or (3).

(10) An inmate subject to an order under s. 48.366 or 938.34 (4h) is not entitled to mandatory release and may be released or discharged only as provided under s. 48.366 or 938.538.

History: 1977 c. 266, 353; 1979 c. 221; 1981 c. 266; 1983 a. 66, 528; 1985 a. 27; 1985 a. 332 s. 251 (1); 1987 a. 27, 412; 1989 a. 31 ss. 1629, 1630; Stats. s. 302.11; 1989 a. 107; 1991 a. 39; 1993 a. 79, 97, 194, 289, 483; 1995 a. 77, 448.

The department cannot delegate to a review board the authority to forfeit good time; it cannot affirm the decision of such a board. State ex rel. Farrell v. Schubert, 52 W (2d) 351, 190 NW (2d) 529.

Due process requirements in a disciplinary proceeding listed. Steele v. Gray, 64 W (2d) 422, 219 NW (2d) 312. Rehearing.

A defendant convicted of a sex crime and committed to the department of health and social services for a mandatory examination not to exceed 60 days to determine whether he is in need of specialized treatment is not entitled to credit therefor against a maximum sentence thereafter imposed. Mitchell v. State, 69 W (2d) 695, 230 NW (2d) 884.

Subsequent to the revocation of parole, a mandatory release parolee—or a discretionary parolee whose mandatory release has occurred during his parole—is entitled at the discretionary determination as to how much of his good time will be forfeited to at least those due process procedures presently available to a discretionary parole violator in the same situation. Putnam v. McCauley, 70 W (2d) 256, 234 NW (2d) 75.

Inmate's procedural rights in disciplinary proceeding discussed. State ex rel. Meeks v. Gagnon, 95 W (2d) 115, 289 NW (2d) 357 (Ct. App. 1980).

Due process in disciplinary hearing requires record sufficient for judicial review. Major change in condition of confinement gives rise to minimum due process requirements under Wolff v. McDonald, 418 US 539. State ex rel. Irby v. Israel, 95 W (2d) 697, 291 NW (2d) 643 (Ct. App. 1980).

A person serving consecutive sentences is subject to revocation and reincarceration for the remainder of both sentences if a parole violation is committed prior to discharge of the first sentence. Ashford v. Division of Hearings and Appeals, 177 W (2d) 34, 501 NW (2d) 824 (Ct. App. 1993).

Calculation of mandatory release dates for pre-June 1, 1994 crimes discussed. State ex rel. Parker v. Sullivan, 184 W (2d) 668, 517 NW (2d) 449 (1994).

The department is not at this time required by law to restore forfeited good time allowances or immediately to release anyone committed under the sex crimes act whose maximum term of commitment including forfeited good time has not expired. 61 Atty. Gen. 77.

Mandatory release parolee has a protectible interest, including a conditional liberty interest, in being free from involuntary use of psychotropic drugs; Wisconsin procedure imposing administration of these drugs as parole condition is unconstitutional. Felce v. Feidler, 974 F (2d) 1484 (1992).

A prisoner released on parole is not entitled to an absolute discharge because this was granted other prisoners, in the absence of a showing of an abuse of discretion by the department. Hansen v. Schmidt, 329 F Supp. 141.

A prisoner is not entitled to counsel at a hearing at which his good time is forfeited for parole violation. Sanchez v. Schmidt, 352 F Supp. 628.

See note to 973.15, citing Monsour v. Gray, 375 F Supp. 786.

Prisoner whose parole was revoked on or about May 27, 1970 was entitled to a hearing prior to revocation of his good time credits. Sillman v. Schmidt, 394 F Supp. 1370.

302.115 Notification prior to expiration of sentence.

(1) In this section:

(a) “Member of the family” means spouse, child, sibling, parent or legal guardian.

(b) “Victim” means a person against whom a crime has been committed.

(2) Before an inmate who is in a prison serving a sentence for a violation of s. 940.01, 940.03, 940.05, 940.225 (1) or (2), 948.02 (1) or (2), 948.025, 948.06 or 948.07 is released from imprison-

ment because he or she has reached the expiration date of his or her sentence, the department shall make a reasonable effort to notify all of the following persons, if they can be found, in accordance with sub. (3) and after receiving a completed card under sub. (4):

(a) The victim of the crime committed by the inmate or, if the victim died as a result of the crime, an adult member of the victim's family or, if the victim is younger than 18 years old, the victim's parent or legal guardian.

(b) Any witness who testified against the inmate in any court proceeding involving the offense.

(3) The department shall make a reasonable effort to send the notice, postmarked at least 7 days before an inmate's sentence expires and he or she is released from imprisonment, to the last-known address of the persons under sub. (2).

(4) The department shall design and prepare cards for any person specified in sub. (2) to send to the department. The cards shall have space for any such person to provide his or her name and address, the name of the applicable inmate and any other information the department determines is necessary. The department shall provide the cards, without charge, to district attorneys. District attorneys shall provide the cards, without charge, to persons specified in sub. (2). These persons may send completed cards to the department. All department records or portions of records that relate to mailing addresses of these persons are not subject to inspection or copying under s. 19.35 (1).

History: 1993 a. 479.

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

(2) Money accruing under this section remains under the control of the department, to be used for the crime victim and witness assistance surcharge under s. 973.045 (4), the deoxyribonucleic acid analysis surcharge under s. 973.046 and the benefit of the inmate or the inmate's family or dependents, under rules promulgated by the department as to time, manner and amount of disbursements.

History: 1975 c. 396; 1983 a. 27, 66, 528; 1985 a. 332 s. 251 (6); 1989 a. 31 s. 1631; Stats. 1989 s. 302.12; 1993 a. 16.

Denying industrial good time to inmates sentenced to life imprisonment does not violate equal protection clause. *Parker v. Percy*, 105 W (2d) 486, 314 NW (2d) 166 (Ct. App. 1981).

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

History: 1973 c. 90; 1983 a. 27; 1985 a. 120; 1989 a. 31 s. 1632; Stats. 1989 s. 302.13; 1993 a. 16.

302.14 Property of deceased inmates, parolees or probationers, disposition. When an inmate of a prison or a parolee of an institution or a person on probation to the department dies leaving an estate of \$150 or less in the trust of the warden, superintendent or secretary, the warden, superintendent or secretary shall try to determine whether or not the estate is to be probated. If probate proceedings are not commenced within 90 days, the warden, superintendent or secretary shall turn over the money or securities to the nearest of kin as evidenced by the records of the institution and the department.

History: 1989 a. 31 s. 1633; Stats. 1989 s. 302.14.

302.15 Activities off grounds. The wardens and superintendents of the state prisons, and all wardens and superintendents of county prisons, jails, camps and houses of correction enumer-

ated in ch. 303, may take inmates away from the institution grounds for rehabilitative and educational activities approved by the department and under such supervision as the superintendent or warden deems necessary. While away from the institution grounds an inmate is deemed to be under the care and control of the institution in which he or she is an inmate and subject to its rules and discipline.

History: 1971 c. 54; 1989 a. 31 s. 1634; Stats. 1989 s. 302.15.

302.17 Register of inmates. (1) When any inmate is received into any state penal institution the department shall register the date of admission, the name, age, nativity and nationality and such other facts as may be obtained as to parentage, education and previous history and environments of such inmate.

(2) The department shall make entries on the register to reflect the progress made by each inmate while incarcerated and the inmate's release on parole, condition at the time of parole and progress made while on parole. This subsection does not apply to inmates subject to an order under s. 48.366.

(3) If the inmate is subject to an order under s. 48.366, the department shall keep a record of the inmate's behavior for use in proceedings under s. 48.366 (5) and (6).

History: 1987 a. 27, 403; 1989 a. 31 s. 1635; Stats. 1989 s. 302.17.

302.18 Transfers of inmates. (1) Inmates of a prison may be transferred and retransferred to another prison by the department.

(1m) Inmates transferred to the Wisconsin resource center shall be afforded a transfer hearing under s. 302.055.

(2) Inmates of a county house of correction may be transferred to a state prison. If any county discontinues its house of correction, inmates at the time of the discontinuance may be transferred to the state prison or to the county jail of the county as the commitment indicates.

(3) A prisoner may request the department to transfer him or her to a prison in another state under s. 302.25.

(4) With each person transferred to a state prison from another institution, the warden or superintendent of such other institution shall transmit the original commitment and the institutional record pertaining to such person.

(5) Any person who is legally transferred by the department to a penal institution shall be subject to the same statutes, regulations and discipline as if the person had been originally sentenced to that institution, but the transfer shall not change the term of sentence.

(6) Inmates may be transferred under ss. 302.45 and 973.035.

(7) Except as provided in s. 973.013 (3m), the department shall keep all prisoners under 15 years of age in secured juvenile correctional facilities or secured child caring institutions, but the department may transfer them to adult correctional institutions after they attain 15 years of age.

History: 1981 c. 20; 1983 a. 332; 1987 a. 27; 1989 a. 31 s. 1636; Stats. 1989 s. 302.18; 1991 a. 39, 316; 1993 a. 89; 1995 a. 27, 77.

302.185 Transfer to foreign countries under treaty. If a treaty is in effect between the United States and a foreign country, allowing a convicted person who is a citizen or national of the foreign country to transfer to the foreign country, the governor may commence a transfer of the person if the person requests.

History: 1981 c. 29; 1989 a. 31 s. 1637; Stats. 1989 s. 302.185.

302.19 Temporary detention of inmates. The department may use any of its facilities for the temporary detention of persons in its custody.

History: 1989 a. 31 s. 1638; Stats. 1989 s. 302.19.

302.20 Uniforms for correctional officers. The department shall furnish and, from time to time replace, a standard uniform to be prescribed by the department including items of clothing (not including overcoats), shoulder patches, caps, lapel

insignia, and badge to each correctional officer in the department who is required to wear such standard uniform.

History: 1989 a. 31 s. 1639; Stats. 1989 s. 302.20.

302.21 Vocational education program in auto body repair at the Green Bay correctional institution. (1) The department may maintain and operate a vocational education program in auto body repair at the Green Bay correctional institution. Notwithstanding s. 303.06 (1), in connection with the vocational education program the institution may receive from licensed automobile dealers and regularly established automobile repair shops vehicles to be repaired, painted or otherwise processed by residents enrolled in the program.

(2) Prices for repairing, painting or otherwise processing vehicles in the program shall be fixed as near as possible to the market value of the labor and materials furnished. Proceeds received from the repairing, painting or other processing of vehicles shall be deposited as provided in s. 20.410 (1) (kk) and shall be available to the institution to purchase materials, supplies and equipment necessary to operate the vocational education program in auto body repair.

History: 1975 c. 224; 1977 c. 418; 1979 c. 34 s. 2102 (20) (a); 1981 c. 314 s. 146; 1989 a. 31 s. 1640; Stats. 1989 s. 302.21; 1989 a. 283.

302.25 Interstate corrections compact. The following compact, by and between the state of Wisconsin and any other state which has or shall hereafter ratify or legally join in the same, is ratified and approved:

INTERSTATE CORRECTIONS COMPACT

(1) **ARTICLE I – PURPOSE AND POLICY.** The party states, desiring by common action to fully utilize and improve their institutional facilities and provide adequate programs for the confinement, treatment and rehabilitation of various types of offenders, declare that it is the policy of each of the party states to provide such facilities and programs on a basis of cooperation with one another, thereby serving the best interests of such offenders and of society and effecting economies in capital expenditures and operational costs. The purpose of this compact is to provide for the mutual development and execution of such programs of cooperation for the confinement, treatment and rehabilitation of offenders with the most economical use of human and material resources.

(2) **ARTICLE II – DEFINITIONS.** As used in this compact, unless the context clearly requires otherwise:

(a) “Inmate” means a male or female offender who is committed, under sentence to or confined in a penal or correctional institution;

(b) “Institution” means any penal or correctional facility, including but not limited to a facility for the mentally ill or mentally defective, in which inmates may lawfully be confined;

(c) “Receiving state” means a state party to this compact to which an inmate is sent for confinement other than a state in which conviction or court commitment was had;

(d) “Sending state” means a state party to this compact in which conviction or court commitment was had;

(e) “State” means a state of the United States, the United States of America, a territory or possession of the United States, the District of Columbia, the commonwealth of Puerto Rico.

(3) **ARTICLE III – CONTRACTS.** (a) Each party state may make one or more contracts with any one or more of the other party states for the confinement of inmates on behalf of a sending state in institutions situated within receiving states. Any such contract shall provide for:

1. Its duration;

2. Payments to be made to the receiving state by the sending state for inmate maintenance, extraordinary medical and dental expenses, and any participation in or receipt by inmates of rehabilitative or correctional services, facilities, programs or treatment not reasonably included as part of normal maintenance;

3. Participation in programs of inmate employment, if any; the disposition or crediting of any payments received by inmates

on account thereof; and the crediting of proceeds from or disposal of any products resulting therefrom;

4. Delivery and retaking of inmates;

5. Such other matters as may be necessary and appropriate to fix the obligations, responsibilities and rights of the sending and receiving states.

(b) The terms and provisions of this compact shall be a part of any contract entered into by the authority of or pursuant thereto, and nothing in any such contract shall be inconsistent therewith.

(4) **ARTICLE IV – PROCEDURES AND RIGHTS.** (a) Whenever the duly constituted authorities in a state party to this compact, and which has entered into a contract pursuant to sub. (3), shall decide that confinement in, or transfer of an inmate to, an institution within the territory of another party state is necessary or desirable in order to provide adequate quarters and care or an appropriate program of rehabilitation or treatment, said officials may direct that the confinement be within an institution within the territory of said other party state, the receiving state to act in that regard solely as agent for the sending state.

(b) The appropriate officials of any state party to this compact shall have access, at all reasonable times, to any institution in which it has a contractual right to confine inmates for the purpose of inspecting the facilities thereof and visiting such of its inmates as may be confined in the institution.

(c) Inmates confined in an institution pursuant to the terms of this compact shall at all times be subject to the jurisdiction of the sending state and may at any time be removed therefrom for transfer to a prison or other institution within the sending state, for transfer to another institution in which the sending state may have a contractual or other right to confine inmates, for release on probation or parole, for discharge, or for any other purpose permitted by the laws of the sending state; provided, that the sending state shall continue to be obligated to such payments as may be required pursuant to the terms of any contract entered into under the terms of sub. (3).

(d) Each receiving state shall provide regular reports to each sending state on the inmates of that sending state in institutions pursuant to this compact including a conduct record of each inmate and certify said record to the official designated by the sending state, in order that each inmate may have official review of his or her record in determining and altering the disposition of said inmate in accordance with the law which may obtain in the sending state and in order that the same may be a source of information for the sending state.

(e) All inmates who may be confined in an institution pursuant to the provisions of this compact shall be treated in a reasonable and humane manner and shall be treated equally with such similar inmates of the receiving state as may be confined in the same institution. The fact of confinement in a receiving state shall not deprive any inmate so confined of any legal rights which said inmate would have had if confined in an appropriate institution of the sending state.

(f) Any hearing or hearings to which an inmate confined pursuant to this compact may be entitled by the laws of the sending state may be had before the appropriate authorities of the sending state, or of the receiving state if authorized by the sending state. The receiving state shall provide adequate facilities for such hearings as may be conducted by the appropriate officials of a sending state. In the event such hearing or hearings are had before officials of the receiving state, the governing law shall be that of the sending state and a record of the hearing or hearings as prescribed by the sending state shall be made. Said record together with any recommendations of the hearing officials shall be transmitted forthwith to the official or officials before whom the hearing would have been had if it had taken place in the sending state. In any and all proceedings had pursuant to the provisions of this subdivision, the officials of the receiving state shall act solely as agents of the sending state and no final determination shall be made in any matter except by the appropriate officials of the sending state.

(g) Any inmate confined pursuant to this compact shall be released within the territory of the sending state unless the inmate, and the sending and receiving states, shall agree upon release in some other place. The sending state shall bear the cost of such return to its territory.

(h) Any inmate confined pursuant to the terms of this compact shall have any and all rights to participate in and derive any benefits or incur or be relieved of any obligations or have such obligations modified or the inmate's status changed on account of any action or proceeding in which the inmate could have participated if confined in any appropriate institution of the sending state located within such state.

(i) The parent, guardian, trustee, or other person or persons entitled under the laws of the sending state to act for, advise, or otherwise function with respect to any inmate shall not be deprived of or restricted in the exercise of any power in respect of any inmate confined pursuant to the terms of this compact.

(5) ARTICLE V – ACTS NOT REVIEWABLE IN RECEIVING STATE; EXTRADITION. (a) Any decision of the sending state in respect of any matter over which it retains jurisdiction pursuant to this compact shall be conclusive upon and not reviewable within the receiving state, but if at the time the sending state seeks to remove an inmate from an institution in the receiving state there is pending against the inmate within such state any criminal charge or if the inmate is formally accused of having committed within such state a criminal offense, the inmate shall not be returned without the consent of the receiving state until discharged from prosecution or other form of proceeding, imprisonment or detention for such offense. The duly accredited officers of the sending state shall be permitted to transport inmates pursuant to this compact through any and all states party to this compact without interference.

(b) An inmate who escapes from an institution in which the inmate is confined pursuant to this compact shall be deemed a fugitive from the sending state and from the state in which the institution is situated. In the case of an escape to a jurisdiction other than the sending or receiving state, the responsibility for institution of extradition or rendition proceedings shall be that of the sending state, but nothing contained herein shall be construed to prevent or affect the activities of officers and agencies of any jurisdiction directed toward the apprehension and return of an escapee.

(6) ARTICLE VI – FEDERAL AID. Any state party to this compact may accept federal aid for use in connection with any institution or program, the use of which is or may be affected by this compact or any contract pursuant hereto and any inmate in a receiving state pursuant to this compact may participate in any such federally aided program or activity for which the sending and receiving state have made contractual provision; provided, that if such program or activity is not part of the customary correctional regimen the express consent of the appropriate official of the sending state shall be required therefor.

(7) ARTICLE VII – ENTRY INTO FORCE. This compact shall enter into force and become effective and binding upon the states so acting when it has been enacted into law by any 2 states. Thereafter, this compact shall enter into force and become effective and binding as to any other of said states upon similar action by such state.

(8) ARTICLE VIII – WITHDRAWAL AND TERMINATION. This compact shall continue in force and remain binding upon a party state until it shall have enacted a statute repealing the same and providing for the sending of formal written notice of withdrawal from the compact to the appropriate officials of all other party states. An actual withdrawal shall not take effect until one year after the notices provided in said statute have been sent. Such withdrawal shall not relieve the withdrawing state from its obligations assumed hereunder prior to the effective date of withdrawal. Before the effective date of withdrawal, a withdrawing state shall remove to its territory, at its own expense, such inmates as it may have confined pursuant to the provisions of this compact.

(9) ARTICLE IX – OTHER ARRANGEMENTS UNAFFECTED. Nothing contained in this compact shall be construed to abrogate or impair any agreement or other arrangement which a party state may have with a nonparty state for the confinement, rehabilitation or treatment of inmates nor to repeal any other laws of a party state authorizing the making of cooperative institutional arrangements.

(10) ARTICLE X – CONSTRUCTION AND SEVERABILITY. The provisions of this compact shall be liberally construed and shall be severable. If any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

History: 1981 c. 20, 390; 1983 a. 189, 538; 1989 a. 31 s. 1641; Stats. 1989 s. 302.25; 1991 a. 316.

302.255 Interstate corrections compact; additional applicability. “Inmate”, as defined under s. 302.25 (2) (a), includes persons subject to an order under s. 48.366 who are confined to a state prison under s. 302.01 and persons subject to an order under s. 938.34 (4h) who are 17 years of age or older.

History: 1987 a. 27; 1989 a. 31 s. 1642; Stats. 1989 s. 302.255; 1995 a. 77.

302.26 Corrections compact; contracts with other states; approval. The secretary is responsible for performing all functions necessary or incidental to carrying out the requirements of the interstate corrections compact under s. 302.25. The secretary may delegate and redelegate any of the functions as provided in s. 15.02 (4). If a contract under s. 301.21 or 302.25 involves the transfer of more than 10 prisoners in any fiscal year to any one state or to any one political subdivision of another state, the contract may be entered into only if it is approved by the legislature by law or by the joint committee on finance.

History: 1981 c. 20; 1983 a. 27; 1989 a. 31 s. 1643; Stats. 1989 s. 302.26; 1995 a. 344.

302.27 Contracts for temporary housing for or detention of prisoners. The department may contract with local governments for temporary housing or detention in county jails or county houses of correction for persons sentenced to imprisonment in state prisons or to the intensive sanctions program. The rate under any such contract may not exceed \$60 per person per day. Nothing in this section limits the authority of the department to place persons in jails under s. 301.048 (3) (a) 1.

History: 1983 a. 27; 1989 a. 31 s. 1644; Stats. 1989 s. 302.27; 1991 a. 39; 1993 a. 89, 437.

302.30 Definition of jail. In ss. 302.30 to 302.43, “jail” includes municipal prisons and rehabilitation facilities established under s. 59.53 (8) by whatever name they are known. In s. 302.37 (1) (a) and (3) (a), “jail” does not include lockup facilities. “Lockup facilities” means those facilities of a temporary place of detention at a police station which are used exclusively to hold persons under arrest until they can be brought before a court, and are not used to hold persons pending trial who have appeared in court or have been committed to imprisonment for nonpayment of fines or forfeitures. In s. 302.365, “jail” does not include rehabilitation facilities established under s. 59.53 (8).

History: 1979 c. 34; 1987 a. 394; 1989 a. 31 s. 1645; Stats. 1989 s. 302.30; 1995 a. 201.

302.31 Use of jails. The county jail may be used for the detention of persons charged with crime and committed for trial; for the detention of persons committed to secure their attendance as witnesses; to imprison persons committed pursuant to a sentence or held in custody by the sheriff for any cause authorized by law; for the detention of persons sentenced to imprisonment in state penal

institutions or a county house of correction, until they are removed to those institutions; for the detention of persons participating in the intensive sanctions program; for the temporary detention of persons in the custody of the department; and for other detentions authorized by law. The county jail may be used for the temporary placement of persons in the custody of the department, other than persons under 17 years of age, and persons who have attained the age of 17 years but have not attained the age of 25 years who are under the supervision of the department under s. 48.366 or 938.355 (4) and who have been taken into custody pending revocation of aftercare supervision under s. 48.366 (5) or 938.357 (5) (e).

History: 1981 c. 20; 1989 a. 31 s. 1646; Stats. 1989 s. 302.31; 1989 a. 336; 1991 a. 39; 1993 a. 16, 89, 385, 490; 1995 a. 27, 77.

302.315 Use of county house of correction. A county house of correction may be used for the detention of any person detained in the county jail but the person shall be separated, if feasible, from the inmates of the house of correction in a manner determined by the department.

History: 1977 c. 126; 1989 a. 31 s. 1647; Stats. 1989 s. 302.315.

302.33 Maintenance of prisoners in county jail; state payments to counties and tribal governing bodies.

(1) The maintenance of persons who have been sentenced to the state penal institutions; persons in the custody of the department, except as provided in sub. (2) and s. 301.048 (7); persons accused of crime and committed for trial; persons committed for the non-payment of fines and expenses; and persons sentenced to imprisonment therein, while in the county jail, shall be paid out of the county treasury. No claim may be allowed to any sheriff for keeping or boarding any person in the county jail unless the person was lawfully detained therein.

(2) (a) The department shall pay for the maintenance of persons in its custody who are placed in the county jail or other county facility, or in a tribal jail under s. 302.445, pending disposition of parole or probation revocation proceedings subject to the following conditions:

1. The department shall make payments under this paragraph beginning when an offender is detained in a county jail or other county facility, or in a tribal jail under s. 302.445, pursuant only to a departmental hold and ending when the revocation process is completed and a final order of the department of corrections or the division of hearings and appeals in the department of administration has been entered.

2. The department shall not pay for persons who have pending criminal charges whether or not a departmental hold has been placed on the person. Payment for maintenance by the department is limited to confinements where an offender is held solely because of conduct which violates the offender's supervision and which would not otherwise constitute a criminal offense.

3. After verification by the department, it shall reimburse the county or tribal governing body at a rate of \$36 per person per day prior to January 1, 1993, and \$40 per person per day thereafter, subject to the conditions in subs. 1. and 2. If the amount provided under s. 20.410 (1) (bn) for any fiscal year is insufficient to provide complete reimbursement at that rate, the department shall prorate the payments under this subdivision to counties or tribal governing bodies for that fiscal year. The department shall not reimburse a county or tribal governing body unless that county or tribal governing body informs the department of the amount of reimbursement to which it is entitled under this subsection no later than September 1 of the fiscal year following the fiscal year for which reimbursement is requested.

(b) This subsection applies only to probationers or parolees who were placed on that status in connection with a conviction for a felony. This subsection applies only to confinements initiated after July 2, 1983.

(c) The department shall make payments under this subsection to the applicable county or tribal governing body on the basis of where the person is actually confined.

History: 1983 a. 27; 1985 a. 29; 1987 a. 27; 1989 a. 31 s. 1648; Stats. 1989 s. 302.33; 1989 a. 107, 122; 1991 a. 39, 269; 1993 a. 16, 48, 490; 1995 a. 27.

302.335 Restrictions on detaining probationers and parolees in county or tribal jail. (1) In this section, "division" means the division of hearings and appeals in the department of administration.

(2) If a probationer or parolee is detained in a county jail or other county facility, or in a tribal jail under s. 302.445, pending disposition of probation or parole revocation proceedings, the following conditions apply:

(a) The department shall begin a preliminary revocation hearing within 15 working days after the probationer or parolee is detained in the county jail, other county facility or the tribal jail. The department may extend, for cause, this deadline by not more than 5 additional working days upon written notice to the probationer or parolee and the sheriff, the tribal chief of police or other person in charge of the county facility. This paragraph does not apply under any of the following circumstances:

1. The probationer or parolee has waived, in writing, the right to a preliminary hearing.

2. The probationer or parolee has given and signed a written statement that admits the violation.

3. There has been a finding of probable cause in a felony criminal action and the probationer or parolee is bound over for trial for the same or similar conduct that is alleged to be a violation of supervision.

4. There has been an adjudication of guilt by a court for the same conduct that is alleged to be a violation of supervision.

(b) The division shall begin a final revocation hearing within 50 calendar days after the person is detained in the county jail, other county facility or the tribal jail. The department may request the division to extend this deadline by not more than 10 additional calendar days, upon notice to the probationer or parolee, the sheriff, the tribal chief of police or other person in charge of the facility, and the division. The division may grant the request. This paragraph does not apply if the probationer or parolee has waived the right to a final revocation hearing.

(3) If there is a failure to begin a hearing within the time requirements under sub. (2), the sheriff, the tribal chief of police or other person in charge of a county facility shall notify the department at least 24 hours before releasing a probationer or parolee under this subsection.

(4) This section applies to probationers or parolees who begin detainment in a county jail, other county facility or a tribal jail on or after July 1, 1990, except that this section does not apply to any probationer or parolee who is in the county jail, other facility or the tribal jail and serving a sentence.

History: 1989 a. 121; 1991 a. 39; 1993 a. 48.

The sub. (2) (b) requirement that a hearing be held within 50 days of detention is directory, not mandatory. State ex rel. Jones v. Division of Hearings and Appeals, 195 W (2d) 669, 536 NW (2d) 213 (Ct. App. 1995).

302.336 County jail in populous counties. (1) A county having a population of 500,000 or more shall provide, as part of its county jail, for the confinement of all persons arrested for violation of state laws or municipal ordinances or otherwise detained by police officers of a 1st class city located within the county. A contribution toward the construction and equipment of the county jail from a 1st class city accepted by a county having a population of 500,000 or more under an intergovernmental cooperation agreement under s. 66.30 is made for a municipal purpose, and a 1st class city may borrow money under ch. 67, appropriate funds and levy taxes for that purpose.

(2) Prisoners confined in the county jail under sub. (1) are in the legal custody of the county sheriff or other keeper of the jail. The sheriff or other keeper is legally responsible for any such prisoner's confinement; maintenance; care, including medical and hospital care; release prior to an initial appearance in court; and the initial appearance before the circuit court or the initial appearance before a municipal court at a location within the county jail.

(3) Except as provided in sub. (4) and ss. 302.33 (2) and 302.38, a county under sub. (1) is solely responsible for:

(a) The costs of operating and maintaining the county jail and maintaining the prisoners in the county jail.

(b) The costs of carrying out its legal responsibilities under sub. (2).

(4) An intergovernmental cooperation agreement under s. 66.30 between a city and a county under sub. (1) may provide for the city to reimburse the county for its cost of custody at the initial appearance before a municipal court located within the county jail for prisoners who are in custody exclusively for violation of a municipal ordinance.

History: 1989 a. 261; 1989 a. 359 s. 200; Stats. 1989 s. 302.336; 1995 a. 43.

302.34 Use of jail of another county. Courts, judges and officers of any county having no jail and no cooperative agreement under s. 302.44 may sentence, commit or deliver any person to the jail of any other county as if that jail existed in their own county. The sheriff of the other county shall receive and keep the prisoner in all respects as if committed from his or her county. The cost of the keep shall be paid by the county from which the prisoner was sentenced, committed or delivered.

History: 1983 a. 110; 1989 a. 31 s. 1649; Stats. 1989 s. 302.34.

Cross-reference: See s. 973.03 (1) for similar provision.

302.35 Removal of prisoners in emergency. In an emergency and for the safety of prisoners in any jail, the sheriff or other keeper may remove them to a place of safety and there confine them so long as necessary. If any county jail is destroyed or is insecure for keeping prisoners, the sheriff may remove them to some other county jail, where they shall be received and kept as if committed thereto, but at the expense of the county from which they were removed. An indorsement on the commitment of a prisoner, made by the sheriff in charge of such prisoner, directed to the sheriff of another county, shall be authority for the latter to hold the prisoner.

History: 1989 a. 31 s. 1650; Stats. 1989 s. 302.35.

302.36 Segregation of prisoners. (1) All jails shall be provided with suitable wards or buildings or cells in the case of jail extensions under s. 59.54 (14) (g) for the separation of criminals from noncriminals; persons of different sexes; and persons alleged to be mentally ill. All prisoners shall be kept segregated accordingly.

(2) Notwithstanding sub. (1), the sheriff, jailer or keeper may permit prisoners of different sexes to participate together in treatment or in educational, vocational, religious or athletic activities or to eat together, under such supervision as the sheriff, jailer or keeper deems necessary.

History: 1977 c. 7; 1983 a. 185; 1989 a. 31 s. 1651; Stats. 1989 s. 302.36; 1995 a. 201.

302.365 Jail and house of correction program standards. (1) **STANDARDS.** The department shall establish, by rule, program standards for jails and houses of correction. The standards shall require all of the following:

(a) *Policy and procedure manual.* That the sheriff or other keeper of a jail or house of correction develop a written policy and procedure manual for the operation of the jail or house of correction which reflects the jail's or house of correction's physical characteristics, the number and types of prisoners in the jail or house of correction and the availability of outside resources to the jail or house of correction. The manual shall include all of the following:

1. Policies and procedures for screening prisoners for medical illnesses or disabilities, mental illnesses, developmental disabilities and alcohol or other drug abuse problems. The rules shall establish functional objectives for screening but may not require jails or houses of correction to use only one particular method to meet the objectives. The policies and procedures shall include the use of outside resources, such as county mental health staff or hospital resources, and shall include agreements with these resources, as appropriate, to ensure adequate services to prisoners identified as needing services.

2. Identification of the facilities and programs, including outside facilities and programs, that will be provided for long-term prisoners, including prisoners who are charged with a crime and detained prior to trial and prisoners who are sentenced to jail or a house of correction. The rules shall establish functional objectives for programs for these prisoners but may not require counties to use only one particular method of providing programs for these prisoners.

3. Policies and procedures for providing educational programming for prisoners under 18 years of age. The rules shall establish functional objectives for educational programming for those prisoners, but may not require jails or houses of correction to use only one particular method to meet the objectives.

(b) *Crisis intervention services.* That the sheriff or other keeper of the jail or house of correction ensure that the jail or house of correction has available emergency services for crisis intervention for prisoners with medical illnesses or disabilities, mental illnesses, developmental disabilities or alcohol or other drug abuse problems.

(2) **APPROVAL OF POLICY AND PROCEDURE MANUAL.** The sheriff or other keeper of a jail or house of correction shall submit, no later than December 31, 1990, a policy and procedure manual developed under sub. (1) (a) to the department for approval, as provided by the department by rule. Thereafter, the sheriff or other keeper of a jail or house of correction shall submit any substantive changes to the manual to the department for approval, as provided by the department by rule. The department shall approve or disapprove the manual or any changes made in the manual, in writing, within 90 days after submission of the manual. If the department disapproves the manual or any changes to a manual, it shall include in the written disapproval a statement of the reasons for the disapproval. Within 60 days after disapproval, the sheriff or other keeper of the jail or house of correction shall modify the manual and resubmit it to the department for approval.

(3) **CONSULTATION IN RULE DEVELOPMENT.** In developing rules under this section, the department shall consult with the department of justice.

History: 1987 a. 394; 1989 a. 31 s. 1652; Stats. 1989 s. 302.365; 1989 a. 92; 1995 a. 352.

NOTE: 1987 Wis. Act 394 s. 15, which created this section contains explanatory notes.

302.37 Maintenance of jail and care of prisoners. (1)

(a) The sheriff or other keeper of a jail shall constantly keep it clean and in a healthful condition and pay strict attention to the personal cleanliness of the prisoners and shall cause the clothing of each prisoner to be properly laundered. The sheriff or keeper shall furnish each prisoner with clean water, towels and bedding. The sheriff or keeper shall serve each prisoner 3 times daily with enough well-cooked, wholesome food. The county board shall prescribe an adequate diet for the prisoners in the county jail.

(b) The keeper of a lockup facility shall constantly keep it clean and in a healthful condition and pay strict attention to the personal cleanliness of the prisoners. The keeper shall serve each prisoner with clean water, towels and food.

(2) Neither the sheriff or other keeper of any jail nor any other person shall give, sell or deliver to any prisoner for any cause whatever any alcohol beverages unless a physician certifies in

writing that the health of the prisoner requires it, in which case the prisoner may be allowed the quantity prescribed.

(3) (a) The county or municipality shall furnish its jail with necessary bedding, clothing, toilet facilities, light and heat for prisoners.

(b) The owner of a lockup facility shall furnish toilet facilities, light and heat for prisoners.

(4) The sheriff or other keeper of a jail may use without compensation the labor of any prisoner sentenced to actual confinement in the county jail or, with the prisoner's consent, any other prisoner in the maintaining of and the housekeeping of the jail, including the property on which it stands. Any prisoner who escapes while working on the grounds outside the jail enclosure shall be punished as provided in s. 946.42.

History: 1979 c. 34; 1981 c. 79 s. 17; 1985 a. 167; 1989 a. 31 s. 1653; Stats. 1989 s. 302.37; 1991 a. 316; 1993 a. 213.

302.372 Prisoner reimbursement to a county. (1) DEFINITIONS. In this section:

(a) "Jail" includes a house of correction, Huber facility under s. 303.09 or a work camp under s. 303.10.

(b) "Jailer" includes a sheriff, superintendent or other keeper of a jail.

(2) REIMBURSEMENT OF EXPENSES; COUNTY OPTION. (a) Except as provided in pars. (c) and (d), a county may seek reimbursement for any expenses incurred by the county in relation to the crime for which a person was sentenced to a county jail, or for which the person was placed on probation and confined in jail, as follows:

1. From each person who is or was a prisoner, not more than the actual per-day cost of maintaining that prisoner, as set by the county board by ordinance, for the entire period of time that the person is or was confined in the jail, including any period of pre-trial detention.

2. To investigate the financial status of the person.

3. Any other expenses incurred by the county in order to collect payments under this section.

(b) Before seeking any reimbursement under this section, the county shall provide a form to be used for determining the financial status of prisoners. The form shall provide for obtaining the social security number of the prisoner, the age and marital status of a prisoner, the number and ages of children of a prisoner, the number and ages of other dependents of a prisoner, the income of a prisoner, type and value of real estate owned by a prisoner, type and value of personal property owned by a prisoner, the prisoner's cash and financial institution accounts, type and value of the prisoner's investments, pensions and annuities and any other personality of significant cash value owned by a prisoner. The county shall use the form whenever investigating the financial status of prisoners. The information on a completed form is confidential and not open to public inspection or copying under s. 19.35 (1).

(c) This section applies to expenses incurred on or after May 9, 1996.

(d) The jailer shall choose, for each prisoner, whether to seek reimbursement under this section or as otherwise provided in chs. 301 to 303, but may not collect for the same expenses twice. The jailer may choose to seek reimbursement for the expenses under sub. (2) (a) using the method under sub. (5), the method under sub. (6) or a combination of both methods, but may not seek reimbursement for the same expenses twice.

(3) LIST OF PRISONERS; INFORMATION; REPORTS. Upon request of the district attorney or the corporation counsel for the county, the jailer shall provide the district attorney or corporation counsel with a list containing the name of each sentenced prisoner or prisoner confined as a condition of probation, the term of sentence or confinement, and the date of admission, together with information regarding the financial status of each prisoner to enable the county to obtain reimbursement under this section.

(4) PRISONER COOPERATION. A prisoner in a jail shall cooperate with the county in seeking reimbursement under this section for expenses incurred by the county for that prisoner. A prisoner who intentionally refuses to cooperate under this subsection may not earn good time credit under s. 302.43 or diminution of sentence under s. 303.19 (3). If the prisoner is confined as a condition of probation, refusal to cooperate is a ground for revocation of probation.

(5) CHARGE TO OBTAIN REIMBURSEMENT. The jailer may charge a prisoner for the expenses under sub. (2) (a) while he or she is a prisoner. If the jailer maintains an institutional account for a prisoner's use for payment for items from canteen, vending or similar services, the jailer may make deductions from the account to pay for the expenses under sub. (2) (a). Any money collected under this subsection shall be deposited in the county treasury.

(6) ACTION TO OBTAIN REIMBURSEMENT. (a) Within 12 months after the release of a prisoner from jail, the county where the jail is located shall commence a civil action in circuit court to obtain a judgment for the expenses under sub. (2) (a) or be barred. The jailer shall provide any assistance that the county requests related to an action under this subsection.

(b) An action commenced under this subsection shall be commenced in the county where the jail is located or in the county where the defendant resides.

(c) The complaint in an action commenced under this subsection shall include the date and place of the sentence, the length of time of the sentence, the length of time actually served in the jail and the amount of expenses incurred by the county under sub. (2) (a).

(d) Before entering a judgment for the county, the court shall consider any legal obligations of the defendant for support or maintenance under ch. 767 and any moral obligation of the defendant to support dependants and may reduce the amount of the judgment entered for the county based on those obligations.

(e) Any money obtained as the result of an action commenced under this subsection shall be deposited in the county treasury.

History: 1995 a. 281.

302.375 Restrictions on liquor and dangerous drugs; placement of prisoners. (1) Any sheriff, jailer or keeper of any prison, jail or house of correction or any other person who does any of the following with respect to a prisoner within the precincts of any prison, jail or house of correction shall be fined not more than \$10,000 or imprisoned not more than 9 months or both:

(a) Sells, gives or delivers any intoxicating liquor to the prisoner.

(b) Wilfully permits a prisoner to have any controlled substance, controlled substance analog or intoxicating liquor.

(c) Has within his or her possession in the prison, jail or house of correction any intoxicating liquor, with intent to sell, give or deliver the liquor to the prisoner.

(2) Any prisoner who uses intoxicating liquor in violation of s. 302.37 (2) shall be fined not more than \$10,000 or imprisoned for not more than 9 months or both.

(3) (a) Any sheriff, jailer or keeper of any prison, jail or house of correction or any other person who places, keeps together or knowingly permits to be kept together prisoners of different sexes within the precincts of any prison, jail or house of correction shall be fined not more than \$500 or imprisoned not more than 6 months or both.

(b) Notwithstanding par. (a), the sheriff, jailer or keeper may permit prisoners of different sexes to participate together in treatment or in educational, vocational, religious or athletic activities or to eat together, under such supervision as the sheriff, jailer or keeper deems necessary.

(4) In this section:

(a) “Controlled substance” has the meaning given in s. 961.01 (4).

(am) “Controlled substance analog” has the meaning given in s. 961.01 (4m).

(b) “Precinct” means a place where any activity is conducted by the prison, jail or house of correction.

History: 1977 c. 337; 1979 c. 116; 1983 a. 185; 1989 a. 31 s. 1654; Stats. 1989 s. 302.375; 1995 a. 448.

302.38 Medical care of prisoners. (1) If a prisoner needs medical or hospital care or is intoxicated or incapacitated by alcohol the sheriff, superintendent or other keeper of the jail or house of correction shall provide appropriate care or treatment and may transfer the prisoner to a hospital or to an approved treatment facility under s. 51.45 (2) (b) and (c), making provision for the security of the prisoner. The sheriff, superintendent or other keeper may provide appropriate care or treatment under this subsection for a prisoner under 18 years of age and may transfer a prisoner under 18 years of age under this subsection without obtaining the consent of the prisoner’s parent, guardian or legal custodian. The sheriff, superintendent or other keeper may charge a prisoner for the costs of providing medical care to the prisoner while he or she is in the jail or house of correction. If the sheriff or other keeper maintains a personal money account for an inmate’s use for payment for items from canteen, vending or similar services, the sheriff or other keeper may make deductions from the account to pay for the charges under this subsection.

(2) The prisoner is liable for the costs of medical and hospital care outside of the jail or house of correction. If the prisoner is unable to pay the costs, the county shall pay the costs in the case of persons held under the state criminal laws or for contempt of court and, except as provided in s. 302.336 (2) and (3) (b), a municipality shall pay the costs in the case of persons held under municipal ordinance by the municipality.

(3) The maximum amount that a governmental unit may pay for the costs of medical or hospital care under this section is limited for that care to the amount payable by medical assistance under subch. IV of ch. 49, except s. 49.468, for care for which a medical assistance rate exists. No provider of medical or hospital care may bill a prisoner under sub. (1) for the cost of care exceeding the amount paid under this subsection by the governmental unit. If no medical assistance rate exists for the care provided, there is no limitation under this subsection.

(4) The governmental unit paying the costs of medical or hospital care under this section, regardless of whether the care is provided in or out of the jail or house of correction, may collect the value of the same from the prisoner or the prisoner’s estate [as provided for in s. 49.08]. If applicable, the governmental unit may proceed to collect under this section or may seek reimbursement under s. 302.372, but may not collect for the same expenses twice.

NOTE: The bracketed language was deleted by 1995 Wis. Act 43, but was reinserted by 1995 Wis. Act 281 without being underscored. The change was not intended. Corrective legislation is pending.

(5) This section does not require the sheriff, superintendent or keeper of the jail or house of correction to provide or arrange for the provision of appropriate care or treatment if the prisoner refuses appropriate care or treatment.

History: 1973 c. 198; 1987 a. 27, 269; 1989 a. 31 s. 1655c, 1656d; Stats. 1989 s. 302.38; 1989 a. 261, 359; 1995 a. 27, 43, 281, 352.

Appropriate medical care for prisoners is mandatory under this section, but sheriffs have the discretion as to how to provide that care. *Swatek v. Dane County*, 192 W (2d) 47, 531 NW (2d) 45 (1995).

See note to 49.02, citing 67 Atty. Gen. 245.

See note to 49.02, citing 69 Atty. Gen. 230.

302.381 Emergency services for crisis intervention for prisoners. The costs of providing emergency services for crisis intervention for prisoners of a jail or house of correction with medical illnesses or disabilities, mental illnesses, developmental disabilities or alcohol or other drug abuse problems are payable according to the criteria under s. 302.38 (2). If applicable, a county may seek payment under this section or seek reimburse-

ment under s. 302.372, but may not collect for the same expenses twice.

History: 1987 a. 394; 1989 a. 31 s. 1657; Stats. 1989 s. 302.381; 1995 a. 281.

302.383 Mental health treatment of prisoners. (1) Prior to filing a petition for commitment of a prisoner under s. 51.20 (1) (av), the sheriff or other keeper of a jail or house of correction shall do all of the following:

(a) Attempt to use less restrictive forms of treatment with the prisoner. Less restrictive forms of treatment shall include, but are not limited to, voluntary treatment within the county jail or house of correction or voluntary transfer to a state or county treatment facility.

(b) Ensure that the prisoner has been fully informed about his or her treatment needs, the mental health services available to him or her and his or her rights under ch. 51, and ensure that the prisoner has had an opportunity to discuss his or her needs, the services available to him or her and his or her rights with a licensed physician, licensed psychologist or other mental health professional.

(2) On or before January 30 annually, the sheriff or other keeper of a jail or house of correction shall report to the department on all of the following for the previous calendar year:

(a) The number of prisoners from the jail or house of correction who were transferred to a state treatment facility and the number who were transferred to a county treatment facility under each of the following:

1. A commitment under s. 51.20 (1) (a).
2. A commitment under s. 51.20 (1) (av).
3. A voluntary transfer under s. 51.37 (5).
4. An emergency transfer under s. 51.37 (5).

(b) The length of stay in the treatment facility of each prisoner reported under par. (a).

(c) The number of prisoners committed to treatment on an outpatient basis in the jail or house of correction under s. 51.20 (1) (av) who were treated in the jail or house of correction with psychotropic drugs during the year and, for each such prisoner, the prisoner’s diagnosis and the types of drugs used.

(3) The report under sub. (2) shall include a description of the mental health services that are available to prisoners on either a voluntary or involuntary basis.

History: 1987 a. 394; 1989 a. 31 s. 1658; Stats. 1989 s. 302.383.

NOTE: 1987 Wis. Act 394, which created this section contains explanatory notes.

302.384 Procedure if a prisoner refuses appropriate care or treatment. A sheriff, jailer, keeper of any prison, jail or house of correction and the arresting officer are immune from civil liability for any acts or omissions that occur as the result of a good faith effort to allow a prisoner to refuse appropriate care or treatment if all of the following occur:

(1) A sheriff, jailer, keeper or officer arranges for a health care professional, as defined in s. 154.01 (3), to observe the prisoner.

(2) The health care professional informs the prisoner of the availability of appropriate care or treatment.

(3) The health care professional indicates on records kept by a sheriff, jailer, keeper or officer that appropriate care or treatment was offered and that the prisoner refused that care or treatment.

History: 1987 a. 269, 403; 1989 a. 31 s. 1659; Stats. 1989 s. 302.384.

302.385 Correctional institution health care. The standards for delivery of health services in state correctional institutions governed under s. 301.02 shall be based on the essential standards of the American medical association standards for health services in prisons, published in July 1979 and standards for health services in juvenile correctional facilities, published in August 1979.

History: 1979 c. 221; 1983 a. 27; 1989 a. 31 s. 1660; Stats. 1989 s. 302.385.

302.386 Medical and dental services for prisoners and forensic patients. (1) Except as provided in sub. (5), liability

for medical and dental services furnished to residents housed in prisons identified in s. 302.01 or in a secured correctional facility as defined in s. 938.02 (15m), or in a secured child caring institution, as defined in s. 938.02 (15g), or to forensic patients in state institutions for those services which are not provided by employees of the department shall be limited to the amounts payable under ss. 49.43 to 49.47, except s. 49.468, for similar services. The department may waive any such limit if it determines that needed services cannot be obtained for the applicable amount. No provider of services may bill the resident or patient for the cost of services exceeding the amount of the liability under this subsection.

(2) The liability of the state for medical and dental services under sub. (1) does not extend to that part of the medical or dental services of a resident housed in a prison identified in s. 302.01, a secured correctional facility as defined in s. 938.02 (15m), or a secured child caring institution, as defined in s. 938.02 (15g), for which any of the following applies:

- (a) The resident has the financial ability to pay.
- (b) The service is payable under any of the following:
 1. A disability insurance policy under subch. VI of ch. 632.
 2. Worker's compensation under ch. 102.
 3. Benefits from the state department of veterans affairs or the federal department of veterans affairs.
 4. Hill–Burton benefits under 42 USC 291c (e).
 5. Medicare benefits under 42 USC 1395 to 1395ccc, as limited by 42 USC 402 (x).
 6. Third-party liability other than that in subs. 1. to 5.

(2m) The department shall collect moneys under sub. (2) for medical and dental services furnished to residents under sub. (1) and credit those moneys to the appropriation account under s. 20.410 (1) (gi).

(3) (a) Except as provided in par. (b), the department may require a resident housed in a prison identified in s. 302.01 or in a secured correctional facility as defined in s. 938.02 (15m) who earns wages during residency and who receives medical or dental services to pay a deductible, coinsurance, copayment or similar charge upon the medical or dental service that he or she receives. The department shall collect the allowable deductible, coinsurance, copayment or similar charge.

(b) If the resident under par. (a) requests the medical services or dental services, the department shall require the resident to pay the deductible, coinsurance, copayment or similar charge. The department may not charge the person less than \$2.50 for each request. The requirements under this paragraph are subject to the exception and waiver provisions under par. (c).

(c) No provider of services may deny care or services because the resident is unable to pay the applicable deductible, coinsurance, copayment or similar charge, but an inability to pay these charges does not relieve the resident of liability for the charges unless the department excepts or waives the liability under criteria that the department shall establish by rule.

(d) The department shall credit all moneys that it collects under this subsection to the appropriation account under s. 20.410 (1) (gi).

(4) The department shall promulgate rules to establish all of the following:

(a) The specific medical or dental services on which a deductible, coinsurance, copayment or similar charge may be imposed under sub. (3) (a) or must be imposed under sub. (3) (b).

(b) The amounts of deductibles, coinsurances, copayments or similar charges for the medical or dental services under par. (a).

(5) The state is not required to provide medical or dental services to any of the following:

(a) Any prisoner who is confined in the institution authorized in s. 301.046 (1).

(b) Any participant in the intensive sanctions program under s. 301.048 unless he or she is imprisoned in a Type 1 prison other than the institution authorized in s. 301.046 (1).

(c) Any participant in the corrective sanctions program under s. 938.533 unless he or she is placed in a Type 1 secured correctional facility, as defined in s. 938.02 (19).

(d) Any participant in the serious juvenile offender program under s. 938.538 unless he or she is placed in a Type 1 secured correctional facility, as defined in s. 938.02 (19), or in a Type 1 prison other than the institution authorized under s. 301.046 (1).

(6) The department may collect a deductible, coinsurance, copayment or similar charge under this section or the department or the attorney general may collect under s. 301.325, but the state may not collect for the same expense twice.

History: 1985 a. 29; 1989 a. 31 ss. 1661, 1662; Stats. 1989 s. 302.386; 1991 a. 39; 1995 a. 27, 77.

302.39 Freedom of worship; religious ministrations. Insofar as practicable, s. 301.33 shall apply to county jails.

History: 1989 a. 31 s. 1663; Stats. 1989 s. 302.39.

302.40 Discipline; solitary confinement. For violating the rules of the jail, an inmate may be kept in solitary confinement, under the care and advice of a physician, but not over 10 days.

History: 1989 a. 31 s. 1664; Stats. 1989 s. 302.40.

Pretrial detainees in jail are entitled to a due process hearing prior to more than slight deprivation of privileges, including loss of any privilege for more than one day. Representation by counsel is not essential. *Inmates of Milwaukee Co. Jail v. Petersen*, 353 F Supp. 1157.

302.41 Care of prisoners. Whenever there is a prisoner in any jail there shall be at least one person of the same sex on duty who is wholly responsible to the sheriff or keeper for the custody, cleanliness, food and care of such prisoner.

History: 1975 c. 94; 1989 a. 31 s. 1665; Stats. 1989 s. 302.41.

This section does not conflict with Wisconsin fair employment act. Concept of "bona fide occupational qualification" under Title VII of the 1964 Civil Rights Act discussed. Counties must comply with this section when they can do so without conflict with Title VII. 70 Atty. Gen. 202.

302.42 Jailer constantly at jail. There shall be a keeper or custodian or attendant present at every jail while there is a prisoner therein.

History: 1989 a. 31 s. 1666; Stats. 1989 s. 302.42.

302.425 Home detention programs. (1) DEFINITION. In this section:

(a) "County department" has the meaning given in s. 48.02 (2g).

(b) "Jail" includes a house of correction, a work camp under s. 303.10 and a Huber facility under s. 303.09.

(2) SHERIFF'S OR SUPERINTENDENT'S GENERAL AUTHORITY. Subject to the limitations under sub. (3), a county sheriff or a superintendent of a house of correction may place in the home detention program any person confined in jail who has been arrested for, charged with, convicted of or sentenced for a crime. The sheriff or superintendent may transfer any prisoner in the home detention program to the jail.

(2g) COUNTY DEPARTMENTS AND DEPARTMENT; GENERAL AUTHORITY. Subject to the limitations under sub. (3m), a county department or the department may place in the home detention program any child who is in its custody or under its supervision.

(2m) INTENSIVE SANCTIONS PROGRAM PARTICIPANTS. Notwithstanding the agreement requirements under sub. (3), the department may place any intensive sanctions program participant in a home detention program.

(3) PLACEMENT OF A PRISONER IN THE PROGRAM. If a prisoner described under sub. (2) and the department agree, the sheriff or superintendent may place the prisoner in the home detention program and provide that the prisoner be detained at the prisoner's place of residence or other place designated by the sheriff or

superintendent and be monitored by an active electronic monitoring system. The sheriff or superintendent shall establish reasonable terms of detention and ensure that the prisoner is provided a written statement of those terms, including a description of the detention monitoring procedures and requirements and of any applicable liability issues. The terms may include a requirement that the prisoner pay the county a daily fee to cover the county costs associated with monitoring him or her. The county may obtain payment under this subsection or s. 302.372, but may not collect for the same expenses twice.

NOTE: Sub. (3) is shown as affected by two acts of the 1995 legislature and as merged by the revisor under s. 13.93 (2) (c).

(3m) PLACEMENT OF A CHILD IN THE PROGRAM. The department or, upon the agreement of the department, the county department may place the child in the home detention program and provide that the child be detained at the child's place of residence or other place designated by the department or the county department and be monitored by an active electronic monitoring system. The department or the county department shall provide reasonable terms of detention and ensure that the child receives a written statement of those terms, including a description of the detention monitoring procedures and requirements and of any applicable liability issues. The terms may include a requirement that the child or his or her parent or guardian pay the county or state a daily fee to cover the costs associated with monitoring him or her.

(4) DEPARTMENTAL DUTIES. The department shall ensure that electronic monitoring equipment units are available, pursuant to contractual agreements with county sheriffs and county departments, throughout the state on an equitable basis. If a prisoner is chosen under sub. (3) or a child is chosen under sub. (3m) to participate in the home detention program, the department shall install and monitor electronic monitoring equipment. The department shall charge the county a daily per prisoner fee or per child fee, whichever is applicable, to cover the department's costs for these services.

(5) STATUS. (a) Except as provided in par. (b), a prisoner in the home detention program is considered to be a jail prisoner but the place of detention is not subject to requirements for jails under this chapter.

(b) Sections 302.36, 302.37 and 302.375 do not apply to prisoners in the home detention program.

(6) ESCAPE. Any intentional failure of a prisoner to remain within the limits of his or her detention or to return to his or her place of detention, as specified in the terms of detention under sub. (3), is considered an escape under s. 946.42 (3) (a).

(7) COURT-ORDERED DETENTION. This section does not apply to persons sentenced under s. 973.04.

History: 1989 a. 122; 1991 a. 39; 1995 a. 26; 1995 a. 27 ss. 6374 to 6381, 9126 (19); 1995 a. 77, 225, 281; s. 13.93 (2) (c).

A person subject to home detention under s. 302.425 is not "in custody" and therefore is not entitled to sentence credit for time served under s. 973.155. State v. Swadlow, 190 W (2d) 139, 526NW (2d) 778 (Ct. App. 1994).

302.43 Good time. Every inmate of a county jail is eligible to earn good time in the amount of one-fourth of his or her term for good behavior if sentenced to at least 4 days, but fractions of a day shall be ignored. An inmate shall be given credit for time served prior to sentencing under s. 973.155, including good time under s. 973.155 (4). An inmate who violates any law or any regulation of the jail, or neglects or refuses to perform any duty lawfully required of him or her, may be deprived by the sheriff of good time under this section, except that the sheriff shall not deprive the inmate of more than 2 days good time for any one offense without the approval of the court.

History: 1977 c. 353; 1989 a. 31 s. 1667; Stats. 1989 s. 302.43.

One confined for civil (remedial) contempt is not eligible to earn good time, but one confined for criminal (punitive) contempt is eligible. 74 Atty. Gen. 96.

302.44 Cooperation between counties regarding prisoners. Two or more counties may agree under s. 66.30 for the cooperative establishment and use of the jails and rehabilitation facilities of any of them for the detention or imprisonment of pris-

oners before, during and after trial and for sharing the expense without reference to s. 302.34. The sheriffs of the counties shall lodge prisoners in any jail or rehabilitation facility authorized by the agreement and shall endorse the commitment, if any, under s. 302.35 in case detention or imprisonment is in the jail or rehabilitation facility of another county. Only jails and rehabilitation facilities approved by the department for the detention of prisoners may be used under the agreement. The sheriff of the county of arrest shall transport the prisoner to and from court and to any other institution whenever necessary.

History: 1975 c. 94; 1983 a. 110; 1989 a. 31 s. 1668; Stats. 1989 s. 302.44.

302.445 Confinement of county jail prisoners in tribal jails. The county board and the sheriff of any county may enter into an agreement with the elected governing body of a federally recognized American Indian tribe or band in this state for the confinement in a tribal jail of county jail prisoners. The sheriff retains responsibility for the prisoners for providing custody, care, treatment, services, leave privileges and food and determining good time as if they remained county jail prisoners, except that the sheriff may delegate, under the agreement, any of the responsibility to the tribal chief of police. The tribal jail is subject to s. 301.37 (4) but is not subject to the requirements for county jails unless otherwise provided under the agreement.

History: 1993 a. 48.

302.446 Confinement of tribal prisoners in county jails. (1) The county board and the sheriff of any county may enter into an agreement with the elected governing body of a federally recognized American Indian tribe or band in this state for the confinement in the county jail of a person who is being confined for any of the following reasons:

(a) The person has been arrested by a tribal law enforcement officer for violating a tribal statute or ordinance.

(b) The person has been ordered incarcerated by a tribal court.

(c) The person is being held in custody for any cause authorized by tribal law.

(2) Notwithstanding ss. 302.33 (1), 302.37, 302.38, 302.381, 302.383, 302.41, 302.43 and 303.08, the tribe or tribal official designated by the tribe retains responsibility for the prisoners for providing custody, care, treatment, services, leave privileges and food and for determining good time as if they remained tribal prisoners, except that the tribe or tribal official designated by the tribe may delegate, under the agreement, any of the responsibility to the sheriff. The county jail is not subject to any of the requirements for tribal jails unless otherwise provided under the agreement.

History: 1995 a. 379.

302.45 State-local shared correctional facilities.

(1) The department and any county or group of counties may contract for the cooperative establishment and use of state-local shared correctional facilities. Inmates sentenced to the Wisconsin state prisons, a county jail, a county reforestation camp or a county house of correction may be transferred to a shared facility by the department, sheriff or superintendent, respectively, under the agreement covering use of the facility. Any inmate confined in a state-local shared correctional facility shall be deemed to be serving time in the penal institution to which he or she was sentenced and shall be eligible to earn good time credit against his or her sentence as provided under ss. 302.11, 302.12; 302.43; 303.07 and 303.19 for that institution.

(2) Costs of establishment and use of state-local shared correctional facilities shall be borne in accordance with the contract between the department and the cooperating county or counties. The contract shall provide for administration of the facility, establish criteria and a procedure for transfer of inmates to and from the facility and allow for dissolution of the agreement. The contract may exempt inmates at the shared facility from rules governing inmates at other prisons and county correctional facilities and, within statutory authority, establish separate rules for the facility.

(3) Any county jail, reforestation camp established under s. 303.07, county house of correction or rehabilitation facility established under s. 59.53 (8), whether operated by one county or more than one county, may be a state–local shared correctional facility.

(4) The Taycheedah correctional institution may not be used as a state–local shared correctional facility.

History: 1983 a. 332; 1989 a. 31 s. 1669; Stats. 1989 s. 302.45; 1995 a. 201.

NOTE: 1983 Wisconsin Act 332, which created this section, contains a long prefatory note explaining the bill. See 1983 Session Laws.

302.46 Jail assessment. (1) (a) On or after October 1, 1987, if a court imposes a fine or forfeiture for a violation of state law or for a violation of a municipal or county ordinance except for a violation of s. 101.123 (2) (a), (am) 1. or (bm) or (5) or state laws or municipal or county ordinances involving nonmoving traffic violations or safety belt use violations under s. 347.48 (2m), the court, in addition, shall impose a jail assessment in an amount of 1% of the fine or forfeiture imposed or \$10, whichever is greater. If multiple offenses are involved, the court shall determine the jail assessment on the basis of each fine or forfeiture. If a fine or forfeiture is suspended in whole or in part, the court shall reduce the jail assessment in proportion to the suspension.

(b) If a fine or forfeiture is imposed by a court of record, after a determination by the court of the amount due for the jail assess-

ment, the clerk of the court shall collect and transmit the jail assessment to the county treasurer as provided in s. 59.40 (2) (n). The county treasurer shall place the amount in the county jail fund as provided in s. 59.25 (3) (g).

(c) If a fine or forfeiture is imposed by a municipal court, after a determination by the court of the amount due for the jail assessment, the court shall collect and transmit the jail assessment to the county treasurer under s. 800.10 (2). The county treasurer shall place the amount in the county jail fund as provided in s. 59.25 (3) (g).

(d) If any deposit of bail is made for a noncriminal offense to which this section applies, the person making the deposit shall also deposit a sufficient amount to include the jail assessment prescribed in this section for forfeited bail. If bail is forfeited, the amount of the jail assessment shall be transmitted to the county treasurer under this section. If bail is returned, the jail assessment shall also be returned.

(2) Counties may make payments for construction, remodeling, repair or improvement of county jails from county jail funds.

(3) This section applies only to violations occurring on or after October 1, 1987.

History: 1987 a. 27; 1989 a. 22; 1989 a. 31 s. 1670c, 1670g; Stats. 1989 s. 302.46; 1989 a. 97, 359; 1991 a. 26, 32, 130, 189; 1993 a. 313; 1995 a. 201.