

CHAPTER 301

CORRECTIONS

301.001	Purposes of chapters.	301.17	Minimum security corrections institutions.
301.01	Definitions.	301.18	Correctional and other institutions; expansion and establishment of facilities.
301.02	Institutions governed.	301.19	Restriction on construction of correctional facilities.
301.025	Division of juvenile corrections.	301.20	Training school for delinquent boys.
301.027	Treatment program at one or more juvenile correctional facilities.	301.205	Reimbursement to visiting families.
301.029	Contracts requiring prisoner access to personal information.	301.21	Contracts for the transfer and confinement of Wisconsin prisoners in other states.
301.03	General corrections authority.	301.235	Structures, facilities and permanent improvements.
301.031	County youth corrections budget and contract.	301.24	Lands; condemnation, easements, leases, sales, purchases.
301.032	Juvenile delinquency–related services; supervisory functions of state department.	301.25	Sewer system at Taycheedah Correctional Institution.
301.035	Division of hearings and appeals; administrator’s general duties.	301.26	Community youth and family aids.
301.04	Legal actions.	301.263	Community intervention program.
301.045	Investigations.	301.27	Meal and other charges; vending stands; commissary; and butter and cheese.
301.046	Community residential confinement.	301.28	Training of correctional officers.
301.047	Inmate rehabilitation and aftercare.	301.285	In–service and work experience training.
301.048	Intensive sanctions program.	301.286	State identification upon release from prison.
301.049	Mother–young child care program.	301.287	Correctional officer overtime.
301.05	Gifts; trustee duty.	301.29	Bonds of employees; police powers; investigation of complaints.
301.055	Prisoner population limits.	301.295	Recruitment of department employees.
301.06	Education and prevention.	301.30	Inmate wages, allowances and release payments.
301.065	Religious organizations; contract powers.	301.31	Wages to prisoners.
301.067	Funding for certain community reintegration services.	301.315	Corrections programs report.
301.07	Cooperation and contracts with federal government.	301.32	Property of prisoners, residents and probationers.
301.075	Disbursement of funds and facsimile signatures.	301.325	Prisoner reimbursement to the state.
301.08	Purchase of care and services.	301.328	Judgment for litigation loans to prisoners.
301.085	Payment of benefits.	301.33	Freedom of worship; religious ministrations.
301.09	Grants for pilot programs or demonstration projects.	301.335	Treatment records.
301.10	Purchases, bills, audits, payments.	301.35	Law enforcement officer access to department records.
301.105	Telephone company commissions.	301.36	General supervision and inspection by department.
301.11	Reports of corrections institutions.	301.37	County buildings; establishment, approval, inspection.
301.12	Cost of care and maintenance, liability; collection and deportation counsel; collections; court actions; recovery.	301.38	Notification of victims and witnesses about prisoner escapes.
301.13	Minimum security correctional institutions.	301.45	Sex offender registration.
301.132	Honesty testing of sex offenders.	301.46	Access to information concerning sex offenders.
301.135	Electronic monitoring.	301.47	Sex offender name changes prohibited.
301.14	State–local shared correctional facilities.	301.48	Global positioning system tracking and residency requirement for certain sex offenders.
301.15	Medium security prison.		
301.16	Construction or establishment of certain institutions.		

301.001 Purposes of chapters. The purposes of this chapter and chs. 302 to 304 are to prevent delinquency and crime by an attack on their causes; to provide a just, humane and efficient program of rehabilitation of offenders; and to coordinate and integrate corrections programs with other social services. In creating the department of corrections, chs. 301 to 304, the legislature intends that the state continue to avoid sole reliance on incarceration of offenders and continue to develop, support and maintain professional community programs and placements.

History: 1989 a. 31, 107; 1995 a. 27.

The department must follow its own rules. It is not harmless error for an agency to disobey its own procedural regulations. *State ex rel. Anderson–El v. Cooke*, 2000 WI 40, 234 Wis. 2d 626, 610 N.W.2d 821, 98–0715.

301.01 Definitions. In this chapter and chs. 302 to 304:

(1) “Department” means the department of corrections.

(1m) “Juvenile correctional facility” has the meaning given in s. 938.02 (10p).

(2) “Prisoner” means any person who is either arrested, incarcerated, imprisoned, or otherwise detained in excess of 12 hours by any law enforcement agency of this state, except when detention is pursuant to s. 55.06 (11) (a), 2003 stats., or s. 51.15, 51.20, 51.45 (11) (b), or 55.135 or ch. 980. “Prisoner” does not include any of the following:

(a) Any person who is serving a sentence of detention under s. 973.03 (4) unless the person is in the county jail under s. 973.03 (4) (c).

(b) Any resident of a juvenile correctional facility or a secured residential care center for children and youth.

(c) Any child held in custody under ss. 48.19 to 48.21.

(cm) Any expectant mother held in custody under ss. 48.193 to 48.213.

(d) Any child participating in the mother–young child care program under s. 301.049.

(3) “Secretary” means the secretary of corrections.

(3k) “Secured residential care center for children and youth” has the meaning given in s. 938.02 (15g).

(4) “State correctional institution” means a state prison under s. 302.01 or a juvenile correctional facility operated by the department.

(5) “Type 1 prison” means a state prison under s. 302.01, but excludes any institution that meets the criteria under s. 302.01 solely because of its status under s. 301.048 (4) (b).

(6) “Type 2 prison” means a state prison under s. 302.01 that meets the criteria under s. 302.01 solely because of its status under s. 301.048 (4) (b).

History: 1989 a. 31, 107; 1991 a. 39; 1993 a. 479; 1995 a. 27, 77; 1997 a. 27, 292; 1999 a. 9; 2005 a. 264, 344.

301.02 Institutions governed. The department shall maintain and govern the state correctional institutions.

History: 1989 a. 31.

Cross Reference: See also ch. DOC 310, Wis. adm. code.

301.025 Division of juvenile corrections. The division of juvenile corrections shall exercise the powers and perform the duties of the department that relate to juvenile correctional services and institutions, juvenile offender review, aftercare, correc-

tive sanctions, the serious juvenile offender program under s. 938.538, and youth aids.

History: 1995 a. 27, 77; 2003 a. 33.

301.027 Treatment program at one or more juvenile correctional facilities. The department shall maintain a cottage–based intensive alcohol and other drug abuse program at one or more juvenile correctional facilities.

History: 1995 a. 27; 1999 a. 9; 2005 a. 344.

301.029 Contracts requiring prisoner access to personal information. (1) In this section, “financial transaction card” has the meaning given in s. 943.41 (1) (em).

(2) (a) The department may not enter into any contract or other agreement if, in the performance of the contract or agreement, a prisoner would perform data entry or telemarketing services and have access to an individual’s financial transaction card numbers, checking or savings account numbers or social security number.

(b) The department may not enter into any contract or other agreement if, in the performance of the contract or agreement, a prisoner would perform data entry services or telemarketing services and have access to any information that may serve to identify a minor.

History: 1999 a. 9.

301.03 General corrections authority. The department shall:

(1) Supervise, manage, preserve and care for the buildings, grounds and other property pertaining to the state correctional institutions and promote the objectives for which they are established.

(2) Supervise the custody and discipline of all prisoners and the maintenance of state correctional institutions and the prison industries under s. 303.01.

(2g) Provide alcohol or other drug abuse assessments so that a prisoner can receive such an assessment either during his or her initial assessment and evaluation period in the state prison system or at the prison where he or she is placed after the initial assessment and evaluation period.

(2m) Provide alcohol or other drug abuse treatment at each state prison except a Type 2 prison, the correctional institution authorized under s. 301.046, a minimum security correctional institution authorized under s. 301.13 or a state–local shared correctional facility established under s. 301.14.

(2r) Conduct drug testing of prospective parolees or persons to be placed on extended supervision who have undergone treatment while in state prison.

(3) Administer parole, extended supervision and probation matters, except that the decision to grant or deny parole to inmates shall be made by the parole commission and the decision to revoke probation, extended supervision or parole in cases in which there is no waiver of the right to a hearing shall be made by the division of hearings and appeals in the department of administration. The secretary may grant special action parole releases under s. 304.02. The department shall promulgate rules establishing a drug testing program for probationers, parolees and persons placed on extended supervision. The rules shall provide for assessment of fees upon probationers, parolees and persons placed on extended supervision to partially offset the costs of the program.

(3a) Subject to all of the following, design a form to provide notice under ss. 302.117, 973.09 (4m), and 973.176 (2) of ineligibility to vote under s. 6.03 (1) (b):

(a) The form shall inform the person who is ineligible to vote that he or she may not vote in any election until his or her civil rights are restored.

(b) The form shall inform the person who is ineligible to vote when his or her civil rights are expected to be restored.

(c) The form shall include a place for the person to sign indicating that he or she understands that he or she may not vote in any

election until his or her civil rights are restored. The form shall include a place also for a witness signature.

(d) The department shall retain the form, and a copy shall be given to the person.

(3b) Establish regulations for persons placed on lifetime supervision under s. 939.615, supervise and provide services to persons placed on lifetime supervision under s. 939.615 and promulgate rules for the administration of matters relating to lifetime supervision under s. 939.615.

(3c) If requested by the department of health services, contract with that department to supervise and provide services to persons who are conditionally transferred or discharged under s. 51.37 (9), conditionally released under s. 971.17 (3), or placed on supervised release under s. 980.06 (2), 1997 stats., or s. 980.08.

(3d) If requested by the department of health services, contract with that department to provide a secure mental health unit or facility under s. 980.065 (2).

(3g) Provide treatment for alcoholics and intoxicated persons on parole or extended supervision.

(3m) Monitor compliance with deferred prosecution agreements under s. 971.39.

(3r) If any restitution ordered under s. 973.20 (1r) remains unpaid at the time that a person’s probation or sentence expires, or he or she is discharged by the department, give to the person upon release, or send to the person at his or her last–known address, written notification that a civil judgment may be issued against the person for the unpaid restitution.

(4) If requested by the governor, make recommendations as to pardons or commutations of sentence.

(5) Examine all institutions authorized by law to receive and detain witnesses, prisoners or convicted persons, and inquire into all matters relating to their management, including the management of witnesses, prisoners or convicted persons, and the condition of buildings and grounds and other property connected with the institutions.

(6) Direct the correctional psychiatric service in all state correctional institutions.

(6m) On or before January 30 of each year, after consultation with the department of health services, report to the joint committee on finance and to the chief clerk of each house of the legislature, for distribution to the appropriate standing committees under s. 13.172 (3), on all of the following:

(a) The number of prisoners transferred to a mental health institute under s. 51.20 (13) (a) 4. and their average length of stay and the number of prisoners transferred to a mental health institute on a voluntary basis and their average length of stay.

(b) The number of prisoners being treated with psychotropic drugs on both a voluntary and involuntary basis and the types of drugs being used.

(c) A description of the mental health services available to prisoners on both a voluntary and involuntary basis.

(6r) By January 30 of each year, submit a report to the joint committee on finance and to the chief clerk of each house of the legislature, for distribution to the appropriate standing committees under s. 13.172 (3), on the number of prisoners that the department considers to be violent and the total number of prisoners.

(6t) On or before January 1 of each odd–numbered year, submit a report to the joint committee on finance and to the chief clerk of each house of the legislature on the use of overtime in the state correctional institutions, identifying the state correctional institution, the amount and costs of overtime at each correctional institution, and the reason for the overtime at each correctional institution.

(7) Direct the educational programs, including an adult basic education program, in all state correctional institutions. The department shall test the reading ability of each prisoner.

(7m) Supervise criminal defendants accepted into the custody of the department under s. 969.02 (3) (a) or 969.03 (1) (a). The

department shall charge the county that is prosecuting the defendant a fee for providing this supervision. The department shall set the fee by rule.

(9) Supervise all persons placed under s. 48.366 (8) or 938.183 in a state prison.

(9r) Supervise all persons placed in the serious juvenile offender program under s. 938.538.

(10) (a) Execute the laws relating to the detention, reformation and correction of delinquents.

(b) Direct the aftercare of and supervise all delinquents under its jurisdiction and exercise such functions as it deems appropriate for the prevention of delinquency.

(c) Promote the enforcement of laws for the protection of delinquent children. To this end, the department shall cooperate with courts assigned to exercise jurisdiction under chs. 48 and 938, county departments under ss. 46.215, 46.22 and 46.23 and licensed child welfare agencies and institutions in providing community-based programming, including in-home programming and intensive supervision, for delinquent children. The department shall also establish and enforce standards for the development and delivery of services provided by the department under ch. 938 in regard to juveniles who have been adjudicated delinquent.

(d) Administer the office of juvenile offender review in the division of juvenile corrections in the department. The office shall be responsible for decisions regarding case planning and the release of juvenile offenders from juvenile correctional facilities or secured residential care centers for children and youth to after-care placements.

(e) Provide educational programs in all juvenile correctional facilities operated by the department.

(f) Provide health services and psychiatric services for residents of all juvenile correctional facilities operated by the department.

(g) Keep statistics, by race, age and gender, of the number of juveniles over whom the court assigned to exercise jurisdiction under chs. 48 and 938 waives its jurisdiction under s. 938.18 as well as the nature of the waiver that was ordered and annually report those statistics to the governor, and to the appropriate standing committees under s. 13.172 (3).

(11) By February 1, 2002, submit a report to the legislature under s. 13.172 (2) concerning the extent to which the department has required pharmacological treatment using an antiandrogen or the chemical equivalent of an antiandrogen as a condition of probation or parole and the effectiveness of the treatment in the cases in which its use has been required.

(12) Cooperate and coordinate its activities with other state and local agencies to provide educational, social, health and other services to offenders, except as provided in s. 302.386 (5).

(13) Annually notify each person who has been discharged from probation, extended supervision or parole and who owed any supervision fees at the time of discharge of any supervision fees owed by the person to the department.

(14) Upon request of the department of revenue, disclose information to the department of revenue concerning a prisoner, probationer or parolee or a person registered under s. 301.45 for the purposes of locating persons, or the assets of persons, who have failed to file tax returns, who have underreported their taxable income or who are delinquent taxpayers, identifying fraudulent tax returns or providing information for tax-related prosecutions.

(15) On or before August 1 of each even-numbered year, provide to the department of health services an estimate of the total proposed budget that the department of corrections will submit in its biennial budget request under s. 16.42.

(18) (a) Except as provided in s. 301.12 (14) (b) and (c), establish a uniform system of fees for juvenile delinquency-related ser-

vices provided or purchased by the department or a county department under s. 46.215, 46.22 or 46.23, except for services provided to courts; outreach, information and referral services; or when, as determined by the department, a fee is administratively unfeasible or would significantly prevent accomplishing the purpose of the service. A county department under s. 46.215, 46.22 or 46.23 shall apply the fees that it collects under this program to cover the cost of those services.

(am) Paragraph (a) does not prevent a county department under s. 46.215, 46.22, or 46.23 from charging and collecting the cost of an examination ordered under s. 938.295 (2) (a) as authorized under s. 938.295 (2) (c).

(b) Except as provided in s. 301.12 (14) (b) and (c), hold liable for the services provided or purchased under par. (a) in the amount of the fee established under par. (a) any person receiving those services or the spouse of the person and, in the case of a minor, the parents of the person, and, in the case of a foreign child described in s. 48.839 (1) who became dependent on public funds for his or her primary support before an order granting his or her adoption, the resident of this state appointed guardian of the child by a foreign court who brought the child into this state for the purpose of adoption.

(c) Make collections from the person who in the opinion of the department is best able to pay, giving due regard to the present needs of the person or of his or her lawful dependents. The department may bring action in the name of the department to enforce the liability established under par. (b). This paragraph does not apply to the recovery of fees for the care and services specified under s. 301.12.

(d) Compromise or waive all or part of the liability for services received as the department considers necessary to efficiently administer this subsection, subject to such conditions as the department considers appropriate. The sworn statement of the collection and deportation counsel appointed under s. 301.12 (7) or the secretary, shall be evidence of the services provided and the fees charged for those services.

(e) Delegate to county departments under s. 46.215, 46.22 or 46.23 and other providers of care and services the powers and duties vested in the department by pars. (c) and (d) as the department considers necessary to efficiently administer this subsection, subject to such conditions as the department considers appropriate.

(g) Return to county departments under s. 46.215, 46.22 or 46.23 50% of collections made by the department for delinquent accounts previously delegated under par. (e) and then referred back to the department for collections.

(19) Subject to sub. (20), work to minimize, to the greatest extent possible, the residential population density of sex offenders, as defined in s. 302.116 (1) (b), who are on probation, parole, or extended supervision or placed on supervised release under s. 980.06 (2) (c), 1997 stats., s. 980.08 (5), 2003 stats., or s. 980.08 (4) (g).

(20) (a) Except as provided in s. 304.06 (2m) (b), place, in one of the following locations, each person who has been convicted of a sex offense, as defined in s. 301.45 (1d) (b), upon his or her release to parole or extended supervision:

1. The county in which the person resided on the date of the sex offense.
2. The county in which the person was convicted of the sex offense.
3. A sex offender treatment facility.

(b) Paragraph (a) does not preclude the department from authorizing a person to reside in a location other than one listed in par. (a) 1. to 3. if the department initially placed the person in one of those listed locations.

(20m) Transmit to the government accountability board, on a continuous basis, a list containing the name of each living person who has been convicted of a felony under the laws of this state and

whose civil rights have not been restored, together with his or her residential address and the date on which the department expects his or her civil rights to be restored.

History: 1989 a. 31, 107, 121, 188, 336; 1991 a. 39; 1993 a. 16, 377, 479; 1995 a. 27 ss. 6355, 6356m, 6356p, 9126 (19); 1995 a. 77, 141; 1997 a. 27, 35, 237, 275, 283, 284; 1999 a. 9, 32; 2001 a. 16, 109; 2003 a. 321; 2005 a. 344, 431, 434, 451; 2007 a. 1; 2007 a. 20 ss. 3100g, 9121 (6) (a); 2007 a. 96, 97.

Cross Reference: See also DOC, Wis. adm. code.

Sections 46.03 (18) and 46.10 do not constitute an unlawful delegation of legislative power. In *Matter of Guardianship of Klisurich*, 98 Wis. 2d 274, 296 N.W.2d 742 (1980).

Section 46.10 (18) and s. 46.10 (3) permit the department to promulgate rules that consider non–liable family members' incomes in determining a liable family member's ability to pay. In *Interest of A.L.W.* 153 Wis. 2d 412, 451 N.W.2d 416 (1990).

Section 46.01 (18) (b) imposes liability upon minors and parents for the costs of services, but does not give counties an automatic right of recovery. Section 46.10 governs enforcement procedure and allows courts to exercise discretion. In *Matter of S.E. Trust*, 159 Wis. 2d 709, 465 N.W.2d 231 (Ct. App. 1990).

The uniform fee system under s. 46.01 (18) and s. 46.10 allows imputing income and, consequently, looking beyond tax returns to determine ability to pay. *Interest of Kevin C.* 181 Wis. 2d 146, 510 N.W.2d 746 (Ct. App. 1993).

NOTE: The above–cited cases relate to uniform fee schedules for services provided by predecessor agencies to the department of corrections under s. 46.03 (18).

301.031 County youth corrections budget and contract. (1) BUDGET. (a) Each county department under s. 46.215, 46.22 or 46.23 shall submit to the department by December 31 annually its final budget for services directly provided or purchased.

(b) The department shall submit a model of the contract under sub. (2g) (a) to each county department under ss. 46.215, 46.22 and 46.23 by May 1 annually.

(2) ASSESSMENT OF NEEDS. Before developing and submitting a proposed budget to the county executive or county administrator or the county board, the county departments listed in sub. (1) shall assess needs and inventory resources and services, using an open public participation process.

(2g) CONTRACT. (a) The department shall annually submit to the county board of supervisors in a county with a single–county department or the county boards of supervisors in counties with a multicounty department a proposed written contract containing the allocation of funds and such administrative requirements as necessary. The contract as approved may contain conditions of participation consistent with federal and state law. The contract may also include provisions necessary to ensure uniform cost accounting of services. Any changes to the proposed contract shall be mutually agreed upon. The county board of supervisors in a county with a single–county department or the county boards of supervisors in counties with a multicounty department shall approve the contract before January 1 of the year in which it takes effect unless the department grants an extension. The county board of supervisors in a county with a single–county department or the county boards of supervisors in counties with a multicounty department may designate an agent to approve addenda to any contract after the contract has been approved.

(b) The department may not approve contracts for amounts in excess of available revenues. The county board of supervisors in a county with a single–county department or the county boards of supervisors in counties with a multicounty department may appropriate funds for juvenile delinquency–related services. Actual expenditure of county funds shall be reported in compliance with procedures developed by the department, and shall comply with standards guaranteeing quality of care comparable to similar facilities.

(c) The joint committee on finance may require the department to submit contracts between county departments under ss. 46.215, 46.22 and 46.23 and providers of service to the committee for review and approval.

(2r) WITHHOLDING FUNDS. (a) The department, after reasonable notice, may withhold a portion of the appropriation allocated to a county department under s. 46.215, 46.22 or 46.23 if the department determines that that portion of the allocated appropriation:

1. Is for services which duplicate or are inconsistent with services being provided or purchased by the department or other county departments receiving grants–in–aid or reimbursement from the department.

2. Is inconsistent with state or federal statutes, rules or regulations, in which case the department may also arrange for provision of services by an alternate agency. The department may not arrange for provision of services by an alternate agency unless the joint committee on finance or a review body designated by the committee reviews and approves the department's determination.

3. Is for the treatment of alcoholics in treatment facilities which have not been approved by the department of health services in accordance with s. 51.45 (8).

4. Is for inpatient treatment in excess of an average of 21 days, as provided in s. 51.423 (12), excluding care for patients at the centers for the developmentally disabled.

5. Is inconsistent with the provisions of the county department's contract under sub. (2g).

(b) If the department withholds a portion of the allocable appropriation under par. (a), the county department affected by the action of the department may submit to the county board of supervisors in a county with a single–county department or to its designated agent or the county boards of supervisors in counties with a multicounty department or their designated agents a plan to rectify the deficiency found by the department. The county board of supervisors or its designated agent in a county with a single–county department or the county boards of supervisors in counties with a multicounty department or their designated agents may approve or amend the plan and may submit for departmental approval the plan as adopted. If a multicounty department is administering a program, the plan may not be submitted unless each county board of supervisors which participated in the establishment of the multicounty department, or its designated agent, adopts it.

(3) OPEN PUBLIC PARTICIPATION PROCESS. (a) *Citizen advisory committee.* 1. Except as provided in par. (b), the county board of supervisors of each county or the county boards of supervisors of 2 or more counties jointly shall establish, in accordance with subd. 2. or 3., a citizen advisory committee to the county departments under ss. 46.215, 46.22 and 46.23. The citizen advisory committee shall advise in the formulation of the budget under sub. (1).

2. The citizen advisory committee established under s. 46.031 (3) (a) may also serve as the citizen advisory committee under subd. 1.

3. If the citizen advisory committee established under s. 46.031 (3) (a) does not also serve as the citizen advisory committee under subd. 1., membership on the committee under subd. 1. shall be determined by the county board of supervisors in a county with a single–county committee or by the county boards of supervisors in counties with a multicounty committee and shall include representatives of those persons receiving services, providers of service and citizens. A majority of the members of the committee shall be citizen and service consumers. The committee's membership may not consist of more than 25% county supervisors, nor of more than 20% service providers. The chairperson of the committee shall be appointed by the county board of supervisors establishing it. In the case of a multicounty committee, the chairperson shall be nominated by the committee and approved by the county boards of supervisors establishing it. The county board of supervisors in a county with a single–county committee or the county boards of supervisors in counties with a multicounty committee may designate an agent to determine the membership of the committee and to appoint the committee chairperson or approve the nominee.

(b) *Alternate process.* The county board of supervisors or the boards of 2 or more counties acting jointly may submit a report to the department on the open public participation process used under sub. (2). The county board of supervisors may designate an agent, or the boards of 2 or more counties acting jointly may design-

nate an agent, to submit the report. If the department approves the report, establishment of a citizen advisory committee under par. (a) is not required.

(c) *Yearly report.* The county board of supervisors or its designated agent, or the boards of 2 or more counties acting jointly or their designated agent, shall submit to the department a list of members of the citizen advisory committee under par. (a) or a report on the open public participation process under par. (b) on or before July 1 of each year.

History: 1995 a. 27 ss. 6356r, 9126 (19); 1995 a. 77, 225; 1997 a. 35; 2007 a. 20 s. 9121 (6) (a).

301.032 Juvenile delinquency–related services; supervisory functions of state department. (1) (a) The department shall supervise the administration of juvenile delinquency–related services. The department shall submit to the federal authorities state plans for the administration of juvenile delinquency–related services in such form and containing such information as the federal authorities require, and shall comply with all requirements prescribed to ensure their correctness.

(b) All records of the department and all county records relating to juvenile delinquency–related services shall be open to inspection at all reasonable hours by authorized representatives of the federal government. Notwithstanding ss. 48.396 (2) and 938.396 (2), all county records relating to the administration of those services shall be open to inspection at all reasonable hours by authorized representatives of the department.

(c) The department may at any time audit all county records relating to the administration of juvenile delinquency–related services and may at any time conduct administrative reviews of county departments under ss. 46.215, 46.22 and 46.23. If the department conducts such audit or administrative review in a county, the department shall furnish a copy of the audit or administrative review report to the chairperson of the county board of supervisors and the county clerk in a county with a single–county department or to the county boards of supervisors and the county clerks in counties with a multicounty department, and to the director of the county department under s. 46.21, 46.22 or 46.23.

(2) The county administration of all laws relating to juvenile delinquency–related services shall be vested in the officers and agencies designated in the statutes.

History: 1995 a. 27, 77; 2005 a. 344.

301.035 Division of hearings and appeals; administrator’s general duties. The administrator of the division of hearings and appeals in the department of administration shall:

(1) Serve as the appointing authority of the employees of the division under s. 230.06.

(2) Assign hearing examiners from the division to preside over hearings under ss. 302.11 (7), 302.113 (9), 302.114 (9), 938.357 (5), 973.10 and 975.10 (2) and ch. 304.

(4) Supervise employees in the conduct of the activities of the division and be the administrative reviewing authority for decisions of the division under ss. 302.11 (7), 302.113 (9), 302.114 (9), 938.357 (5), 973.10, 973.155 (2) and 975.10 (2) and ch. 304.

(5) After consultation with the department of corrections, promulgate rules relating to the exercise of the administrator’s and the division’s powers and duties.

History: 1989 a. 31, 107; 1995 a. 77; 2001 a. 109.

Cross Reference: See also ch. HA 2, Wis. adm. code.

301.04 Legal actions. The department may sue and be sued.
History: 1989 a. 31.

301.045 Investigations. The secretary may inquire into any matter affecting corrections and hold hearings, subpoena witnesses and make recommendations on such matters to the appropriate public or private agencies.

History: 1989 a. 31.

Sex–offender registration as a condition of probation for bail–jumping was not authorized by s. 973.09 (1) (a). Bail jumping is not one of the offenses enumerated in the sex–offender registration statutes, ss. 301.45 or 973.048, that permit or require registration, and read–in, but dismissed, sexual assault charges do not bring a case within s. 973.048. *State v. Martel*, 2003 WI 70, 262 Wis. 2d 483, 664 N.W.2d 69, 02–1599.

301.046 Community residential confinement.

(1) **INSTITUTION STATUS.** The department shall establish and operate a community residential confinement program as a correctional institution under the charge of a superintendent. Under the program, the department shall confine prisoners in their places of residence or other places designated by the department. The secretary may allocate and reallocate existing and future facilities as part of the institution. The institution is subject to s. 301.02 and is a state prison as defined in s. 302.01. Construction or establishment of the institution shall be in compliance with all state laws except s. 32.035 and ch. 91. In addition to the exemptions under s. 13.48 (13), construction or establishment of facilities for the institution are not subject to the ordinances or regulations relating to zoning, including zoning under ch. 91, of the county and municipality in which the construction or establishment takes place and are exempt from inspections required under s. 301.36.

(2) **INMATE, OFFICER AND EMPLOYEE STATUS.** Inmates confined under sub. (1) are under the care and control of the institution, subject to its rules and discipline and subject to all laws pertaining to inmates of other correctional institutions. Courts may not directly commit persons to the institution under sub. (1). Officers and employees of the institution are subject to the same laws pertaining to other correctional institutions.

(3) **ELIGIBILITY.** The department shall determine those prisoners who are confined under sub. (1). Except as provided in subs. (3m) and (3t), a prisoner is eligible for this confinement only under all of the following conditions:

(c) The prisoner is not serving a life sentence.

(d) The prisoner is eligible for parole under s. 304.06 (1) (b) or is serving a sentence that is not longer than 3 years.

(3m) **INTENSIVE SANCTIONS PROGRAM PARTICIPANTS.** The department may confine any intensive sanctions program participant under sub. (1).

(3t) **PERSONS SERVING BIFURCATED SENTENCE; RESTRICTED ELIGIBILITY.** A prisoner serving a bifurcated sentence imposed under s. 973.01 is not eligible for confinement under sub. (1) during the term of confinement in prison portion of the bifurcated sentence.

(4) **NOTIFICATION.** (a) In this subsection:

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

2. “Victim” means a person against whom a crime has been committed.

(b) Before a prisoner is confined under sub. (1) for a violation of s. 940.03, 940.05, 940.225 (1) or (2), 948.02 (1) or (2), 948.025, 948.06, 948.07, or 948.085, the department shall make a reasonable attempt to notify all of the following persons, if they can be found, in accordance with par. (c) and after receiving a completed card under par. (d):

1. The victim of the crime committed by the prisoner 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.

2. Any witness who testified against the prisoner in any court proceeding involving the offense.

(c) The department shall make a reasonable effort to send the notice, postmarked at least 7 days before a prisoner is confined under sub. (1), to the last–known address of the persons under par. (b).

(d) The department shall design and prepare cards for any person specified in par. (b) 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 prisoner and any other infor-

mation 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 par. (b). 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).

(e) Before a prisoner is confined under sub. (1), the department shall notify the police chief of any community and the sheriff and district attorney of any county where the prisoner will be confined.

(5) ELECTRONIC SURVEILLANCE. The department shall monitor any prisoner's confinement under sub. (1) by the use of an electronic device worn continuously on the prisoner's person or by the confinement of the prisoner in supervised places designated by the department. The department may permit the prisoner to leave confinement for employment, education or other rehabilitative activities.

(5m) FEE. The prisoner shall pay any fee charged under s. 301.135 (3).

(6) ESCAPE. Any intentional failure of a prisoner to remain within the extended limits of his or her confinement or to return within the time prescribed by the superintendent is considered an escape under s. 946.42 (3) (a).

History: 1989 a. 31 ss. 961m, 961mb; Stats. 1989 s. 301.046; 1989 a. 251; 1991 a. 39; 1993 a. 97, 227, 479; 1997 a. 181, 283; 2005 a. 277.

Cross Reference: See also s. DOC 327.01, Wis. adm. code.

Read together, ss. 301.045 and 301.048 permit an escape charge when a prisoner in community residential confinement cuts off an electronic bracelet and fails to return. *State v. Holliman*, 180 Wis. 2d 348, 509 N.W.2d 73 (Ct. App. 1993).

An inmate does not have a constitutionally protected liberty interest in maintaining his status under this section. *Santiago v. Ware*, 205 Wis. 2d 295, 556 N.W.2d 356 (Ct. App. 1996), 95–2453.

Except as provided in s. 301.048 (7), counties are responsible for the provision of medical and dental services, including psychiatric and alcohol and drug abuse services, to persons in the community residential confinement program. 81 Atty. Gen. 156.

301.047 Inmate rehabilitation and aftercare. (1) PROGRAM. The department may permit one or more nonprofit community-based organizations meeting the requirements of this section to operate an inmate rehabilitation program in any department facility if the department determines that operation of that program does not constitute a threat to the security of the facility or the safety of inmates or the public and that operation of the program is in the best interest of the inmates.

(2) PROGRAM REQUIREMENTS. (a) An organization seeking to operate a rehabilitation program under sub. (1) shall submit to the department a detailed proposal for the operation of the program. The proposal shall include all of the following:

1. A description of the services to be provided, including aftercare services, and a description of the geographic area in which aftercare services will be provided.

2. A description of the activities to be undertaken and the approximate daily schedule of programming for inmates participating in the program.

3. A statement of the qualifications of the individuals providing services.

4. A statement of the organization's policies regarding eligibility of inmates to participate in the program.

5. A statement of the goals of the program.

6. A description of the methods by which the organization will evaluate the effectiveness of the program in attaining the goals under subd. 5.

7. Any other information specified by the department.

(b) An organization seeking to operate a rehabilitation program under sub. (1) shall agree in writing to all of the following:

1. The organization may not receive compensation from the department for services provided in the rehabilitation program.

2. The organization may not deny an inmate the opportunity to participate in the program for any reason related to the inmate's religious beliefs or nonbelief.

3. An inmate may stop participating in the program at any time.

4. Upon the inmate's release, the organization shall provide community-based aftercare services for each inmate who completes the program and who resides in the geographic area described in par. (a) 1.

(3) DUTIES AND AUTHORITY OF THE DEPARTMENT. (a) The department shall establish policies that provide an organization operating a rehabilitation program under sub. (1) reasonable access to inmates.

(b) The department shall designate a specific portion of the facility for operation of a rehabilitation program, if one is established, under sub. (1). To the extent possible, inmates participating in the program shall be housed in the portion of the facility in which the program is operated.

(c) The department may not require an inmate to participate in a rehabilitation program under sub. (1).

(d) The department may not base any decision regarding an inmate's conditions of confinement, including discipline, or an inmate's eligibility for release, on an inmate's decision to participate or not to participate in a rehabilitation program under sub. (1).

(e) The treatment of inmates, including the provision of housing, activities in which an inmate may participate, freedom of movement, and work assignments, shall be substantially the same for inmates who participate in a rehabilitation program under sub. (1) and inmates who do not participate in such a program.

(f) The department may restrict an inmate's participation in a rehabilitation program under sub. (1).

(g) The department may suspend or terminate operation of a rehabilitation program under sub. (1) if the organization operating the program fails to comply with any of the requirements under this section and shall suspend or terminate the operation of a program if the department determines that suspension or termination of the program is necessary for the security of the facility or the safety of the inmates or the public or is in the best interests of the inmates.

(h) 1. Except as provided in subd. 2., if an organization operating a rehabilitation program under sub. (1) promotes or informs the department that the organization intends to promote sectarian worship, instruction, or proselytization in connection with the rehabilitation program, the department shall permit all other religious organizations meeting the requirements of this section to operate an inmate rehabilitation program under sub. (1).

2. The department is not required under subd. 1. to permit a religious organization to operate an inmate rehabilitation program under sub. (1) if the department determines that the organization's operation of that program constitutes a threat to the security of the facility or the safety of the inmates or the public.

(4) EVALUATION. The department shall evaluate or contract with a public or private agency for an evaluation of the effectiveness of each rehabilitation program operated under sub. (1) in reducing recidivism and alcohol and other drug abuse among program participants. The department shall collect the data and information necessary to evaluate the program. No later than 3 years from the date on which the rehabilitation program begins operating, the department shall submit a report of the evaluation to the governor and to the appropriate standing committees of the legislature, as determined by the speaker of the assembly and the president of the senate, under s. 13.172 (3).

History: 2001 a. 16.

301.048 Intensive sanctions program. (1) PROGRAM ADMINISTRATION AND DESIGN. The department shall administer an intensive sanctions program. The department shall design the program to provide all of the following:

(a) Punishment that is less costly than ordinary imprisonment and more restrictive than ordinary probation or parole supervision or extended supervision.

(b) Component phases that are intensive and highly structured.

(c) A series of component phases for each participant that is based on public safety considerations and the participant's needs for punishment and treatment.

(2) ELIGIBILITY. (am) Except as provided in par. (bm), a person enters the intensive sanctions program only if he or she has been convicted of a felony and only under one of the following circumstances:

1. A court sentences him or her to the program under s. 973.032.

2. He or she is a prisoner serving a felony sentence not punishable by life imprisonment and the department directs him or her to participate in the program. This subdivision does not apply to a prisoner serving a bifurcated sentence imposed under s. 973.01.

3. The parole commission grants him or her parole under s. 304.06 and requires his or her participation in the program as a condition of parole under s. 304.06 (1x).

3m. A court or the department requires his or her participation in the program as a condition of extended supervision under s. 302.113 (7) or 302.114 (5) (d) or (8) or 973.01 (5).

4. The department and the person agree to his or her participation in the program as an alternative to revocation of probation, extended supervision or parole.

(bm) 1. In this paragraph, "violent offense" means:

a. A crime specified in s. 940.19 (3), 1999 stats., s. 940.195 (3), 1999 stats., s. 943.23 (1m), 1999 stats., or s. 943.23 (1r), 1999 stats., or s. 940.01, 940.02, 940.03, 940.05, 940.06, 940.08, 940.09, 940.10, 940.19 (4) or (5), 940.195 (4) or (5), 940.20, 940.201, 940.203, 940.21, 940.225 (1) to (3), 940.23, 940.285 (2) (a) 1. or 2., 940.29, 940.295 (3) (b) 1g., 1m., 1r., 2., or 3., 940.31, 940.43 (1) to (3), 940.45 (1) to (3), 941.20 (2) or (3), 941.26, 941.30, 941.327, 943.01 (2) (c), 943.011, 943.013, 943.02, 943.04, 943.06, 943.10 (2), 943.23 (1g), 943.30, 943.32, 946.43, 947.015, 948.02 (1) or (2), 948.025, 948.03, 948.04, 948.05, 948.051, 948.06, 948.07, 948.08, 948.085, or 948.30.

b. A crime under federal law, the law of any other state or, prior to October 29, 1999, the law of this state that is comparable to a crime specified in subd. 1. a.

2. A person who has at any time been convicted, adjudicated delinquent or found not guilty or not responsible by reason of insanity or mental disease, defect or illness of or for a violent offense is not eligible for the intensive sanctions program.

(2m) PERSONS SERVING BIFURCATED SENTENCE; RESTRICTED ELIGIBILITY. A prisoner serving a bifurcated sentence imposed under s. 973.01 is not eligible for the intensive sanctions program during the term of confinement in prison portion of the bifurcated sentence.

(3) COMPONENT PHASES. (a) The department shall provide each participant with one or more of the following sanctions:

1. Placement in a Type 1 prison or a jail, county reforestation camp, residential treatment facility or community-based residential facility. The department may not place a participant under this paragraph for more than one year or, if applicable, the period specified by the court under s. 973.032 (3) (b), whichever is shorter, except as provided in s. 973.032 (4).

2. Intensive or other field supervision.

3. Electronic monitoring.

4. Community service.

5. Restitution.

6. Other programs as prescribed by the department.

(b) The department may provide the sanctions under par. (a) in any order and may provide more than one sanction at a time. Subject to the cumulative time restrictions under par. (a) 1., the department may return to a sanction that was used previously for a participant. A participant is not entitled to a hearing regarding the department's exercise of authority under this subsection unless the department provides for a hearing by rule.

(c) The department may provide a participant with alcohol or other drug abuse outpatient treatment and services or mental health treatment and services.

(d) A person may seek review of a final decision of the department of corrections, or of the division of hearings and appeals in the department of administration acting under s. 304.06 (3), relating to denials of eligibility for or placement in sanctions or relating to discipline or revocation under or termination from the intensive sanctions program only by the common law writ of certiorari.

(4) STATUS. (a) A participant is in the custody and under the control of the department, subject to its rules and discipline. A participant entering the program under sub. (2) (am) 1. or 2. is a prisoner. A participant entering the program under sub. (2) (am) 3. is a prisoner, except that he or she is a parolee for purposes of revocation. A participant entering the program under sub. (2) (am) 3m. is a prisoner, except that he or she remains a person on extended supervision for purposes of revocation. A participant entering the program under sub. (2) (am) 4. is a prisoner, except that he or she remains a probationer, parolee or person on extended supervision, whichever is applicable, for purposes of revocation.

(am) A participant who is a parolee for purposes of revocation is subject to revocation for violation of any condition of parole or any rule or condition applicable because he or she is a program participant. A participant who is a person on extended supervision for purposes of revocation is subject to revocation for violation of any condition of extended supervision or any rule or condition applicable because he or she is a program participant. A participant who is a probationer for purposes of revocation is subject to revocation for violation of any condition of probation or any rule or condition applicable because he or she is a program participant.

(b) The department shall operate the program as a correctional institution. The secretary may allocate and reallocate existing and future facilities as part of the institution. The institution is subject to s. 301.02 and is a state prison as defined in s. 302.01. Construction or establishment of the institution shall be in compliance with all state laws except s. 32.035 and ch. 91. In addition to the exemptions under s. 13.48 (13), construction or establishment of facilities for the institution are not subject to the ordinances or regulations relating to zoning, including zoning under ch. 91, of the county and municipality in which the construction or establishment takes place and are exempt from inspections required under s. 301.36.

(4m) NOTIFICATION. (a) In this subsection:

1. "Member of the family" means spouse, child, sibling, parent or legal guardian.

2. "Victim" means a person against whom a crime has been committed.

(b) As soon as possible after a prisoner, probationer, parolee or person on extended supervision who has violated s. 940.03, 940.05, 940.225 (1) or (2), 948.02 (1) or (2), 948.025, 948.06, 948.07, or 948.085 enters the intensive sanctions program, the department shall make a reasonable attempt to notify all of the following persons, if they can be found, in accordance with par. (c) and after receiving a completed card under par. (d):

1. The victim of the crime committed by the prisoner, probationer, parolee or person on extended supervision 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.

2. Any witness who testified against the prisoner, probationer, parolee or person on extended supervision in any court proceeding involving the offense.

(c) The department shall make a reasonable effort to send the notice to the last-known address of the persons under par. (b).

(d) The department shall design and prepare cards for any person specified in par. (b) 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 participant 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 par. (b). 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).

(5) **ESCAPE.** Any intentional failure of a participant to remain within the extended limits of his or her placement or confinement under sub. (3) (a) or to return within the time prescribed by the administrator of the division is considered an escape under s. 946.42 (3) (a).

(6) **DISCHARGE.** (a) Except as provided in par. (b), the department may discharge a participant from participation in the program and from departmental custody and control at any time.

(b) The department may discharge a participant who is on extended supervision under s. 302.113 from participation in the program at any time, but the person remains under departmental supervision under the terms of the person's bifurcated sentence imposed under s. 973.01 until the end of that sentence.

(7) **REIMBURSEMENT.** The department shall provide reimbursement to counties and others for the actual costs incurred under sub. (3), as authorized by the department, from the appropriations under s. 20.410 (1) (ab) and (b).

(8) **EDUCATION.** The department and the director of state courts shall educate judges, district attorneys, criminal defense attorneys, county sheriffs, jail administrators and members of the public regarding the intensive sanctions program.

(10) **RULES.** The department shall promulgate rules to implement this section.

History: 1991 a. 39; 1993 a. 79, 97, 227, 437, 479; 1995 a. 27; 1997 a. 27, 133, 181, 283; 1999 a. 9; 2001 a. 109; 2005 a. 277; 2007 a. 116.

Cross Reference: See also s. DOC 333.01, Wis. adm. code.

Intensive Sanctions: A New Sentencing Option. Fiedler. Wis. Law. June 1992.

Read together, ss. 301.046 and 301.048 permit an escape charge when a prisoner in community residential confinement cuts off an electronic bracelet and fails to return. *State v. Holliman*, 180 Wis. 2d 348, 509 N.W.2d 73 (Ct. App. 1993).

The extension under s. 973.032 of an intensive sanctions program placement period must be based on public safety considerations and the participant's need for punishment and treatment. All that needs to be shown at an extension hearing is that the participant has not made sufficient progress in the program and that more time is required to meet those concerns. *State v. Turner*, 200 Wis. 2d 168, 546 N.W.2d 880 (Ct. App. 1996), 95–1295.

Custody of a person in the intensive sanctions program under s. 301.048 exists for purposes of sentence credit under s. 973.155 only if the person's sanctions program sufficiently infringes upon the person's freedom to equate with being under the state's control for a substantial time. *State v. Collett*, 207 Wis. 2d 319, 558 N.W.2d 642 (Ct. App. 1996), 96–1952.

The department of corrections is not prevented from requiring a person on mandatory release parole to wear an electronic monitoring bracelet. *State ex rel. Macemon v. Reynolds*, 208 Wis. 2d 594, 561 N.W.2d 779 (Ct. App. 1997), 96–0064.

Administrative confinement may be followed by a criminal conviction for escape if both arise from a participant's leaving the halfway house where the participant was assigned under the intensive sanctions program. *State v. Grosse*, 210 Wis. 2d 172, 565 N.W.2d 174 (Ct. App. 1997), 96–2027.

Placement under this section does not confer a liberty interest. A return to prison after revocation of status under the program is a change from a lesser to a higher form of confinement. *State ex rel. Harris v. Smith*, 220 Wis. 2d 158, 582 N.W.2d 131 (Ct. App. 1998), 97–2193.

Except as provided in s. 301.048 (7), counties are responsible for the provision of medical and dental services, including psychiatric and alcohol and drug abuse services, to persons in the intensive sanctions program. 81 Atty. Gen. 156.

301.049 Mother–young child care program. (1) **PROGRAM.** The department shall administer a mother–young child care program allowing females to retain, during participation in the program, the physical custody of their children.

(2) **ELIGIBILITY.** (a) The department shall provide the program for females who are:

1. Prisoners; or

2. On probation, extended supervision or parole and who, if approved by the department under par. (b), would participate in the program as an alternative to revocation of probation, extended supervision or parole.

(b) A female covered under par. (a) and her child may enter the program if all of the following conditions are met:

1. The female covered under par. (a) consents to participate.

2. The department approves and the female covered under par. (a) is pregnant or has a child who has not attained the age of one year.

(3) **SERVICES.** The department shall do all of the following under the program:

(a) Place program participants in the least restrictive placement consistent with community safety and correctional needs and objectives.

(b) Provide a stable, safe and stimulating environment for each child participating in the program.

(d) Provide program services with the goal of achieving a stable relationship between each mother and her child during and after participation in the program.

(e) Prepare each mother to be able to live in a safe, lawful and stable manner in the community upon parole, extended supervision or discharge.

(4) **PURCHASE OF SERVICES.** The department shall purchase the services of a private, nonprofit organization to administer the mother–young child care program.

History: 1991 a. 39, 189; 1997 a. 283.

301.05 Gifts; trustee duty. The department may:

(1) Accept gifts, grants or donations of money or property from private sources to be administered by the department for the execution of its functions. All moneys so received shall be paid into the general fund and are appropriated as provided in s. 20.410 (1) (i).

(2) Take and hold in trust all property transferred to the state to be applied to any specified purpose, use or benefit pertaining to any of the institutions under its control or the inmates thereof, and apply the same in accordance with the trust.

History: 1989 a. 31.

301.055 Prisoner population limits. The department shall promulgate rules providing limits on the number of prisoners at all state prisons, but excluding those prisoners confined in the institution authorized under s. 301.046 (1) or in a Type 2 prison. The rules shall provide systemwide limits and limits for each state prison, except the department may provide a single limit for the Wisconsin correctional center system. The rules may provide procedures allowing the department to exceed any systemwide, institution or center system limit in an emergency situation.

History: 1989 a. 31 ss. 968r, 968rc; Stats. 1989 s. 301.055; 1989 a. 107; 1991 a. 39; 1993 a. 16.

301.06 Education and prevention. The department may do all of the following:

(1) Develop and maintain education and prevention programs.

(2) Study causes and methods of prevention and treatment of juvenile delinquency and related social problems. The department may utilize all powers provided by the statutes, including the authority to accept grants of money or property from federal, state or private sources, and enlist the cooperation of other agencies and state departments.

History: 1989 a. 31, 107; 1995 a. 27.

301.065 Religious organizations; contract powers.

(1) **RELIGIOUS ORGANIZATIONS; LEGISLATIVE PURPOSE.** The purpose of this section is to allow the department to contract with, or award grants to, religious organizations, under any program administered by the department relating to the prevention of delinquency and crime or the rehabilitation of offenders, on the same basis as any other nongovernmental provider, without impairing the religious character of such organizations, and without diminishing the religious freedom of beneficiaries of assistance funded under such program.

(2) **NONDISCRIMINATION AGAINST RELIGIOUS ORGANIZATIONS.** If the department is authorized under ch. 16 to contract with a nongovernmental entity, or to award grants to a nongovernmental entity, religious organizations are eligible, on the same basis as

any other private organization, to be contractors and grantees under any program administered by the department so long as the programs are implemented consistently with the first amendment to the U.S. Constitution and [article I, section 18, of the Wisconsin Constitution](#). Except as provided in sub. (11), the department may not discriminate against an organization that is or applies to be a contractor or grantee on the basis that the organization does or does not have a religious character or because of the specific religious nature of the organization.

(3) RELIGIOUS CHARACTER AND FREEDOM. (a) The department shall allow a religious organization with which the department contracts or to which the department awards a grant to retain its independence from government, including the organization's control over the definition, development, practice, and expression of its religious beliefs.

(b) The department may not require a religious organization to alter its form of internal governance or to remove religious art, icons, scripture, or other symbols to be eligible for a contract or grant.

(4) RIGHTS OF BENEFICIARIES OF ASSISTANCE. (a) If the department contracts with or awards grants to a religious organization for the provisions of crime prevention or offender rehabilitation assistance under a program administered by the department, an individual who is eligible for this assistance shall be informed in writing that assistance of equal value and accessibility is available from a nonreligious provider upon request.

(b) The department shall provide an individual who is otherwise eligible for assistance from an organization described under par. (a) with assistance of equal value from a nonreligious provider if the individual objects to the religious character of the organization described under par. (a) and requests assistance from a nonreligious provider. The department shall provide such assistance within a reasonable period of time after the date of the objection and shall ensure that it is accessible to the individual.

(6) NONDISCRIMINATION AGAINST BENEFICIARIES. A religious organization may not discriminate against an individual in regard to rendering assistance that is funded under any program administered by the department on the basis of religion, a religious belief or nonbelief, or a refusal to actively participate in a religious practice.

(7) FISCAL ACCOUNTABILITY. (a) Except as provided in par. (b), any religious organization that contracts with, or receives a grant from, the department is subject to the same laws and rules as other contractors and grantees regarding accounting, in accord with generally accepted auditing principles, for the use of the funds provided under such programs.

(b) If the religious organization segregates funds provided under programs administered by the department into separate accounts, only the financial assistance provided with those funds shall be subject to audit.

(8) COMPLIANCE. Any party that seeks to enforce its rights under this section may bring a civil action for injunctive relief against the entity that allegedly commits the violation.

(9) LIMITATIONS ON USE OF FUNDS FOR CERTAIN PURPOSES. No funds provided directly to religious organizations by the department may be expended for sectarian worship, instruction, or proselytization.

(10) CERTIFICATION OF COMPLIANCE. Every religious organization that contracts with, or receives a grant from, the department to provide delinquency and crime prevention or offender rehabilitation services to eligible recipients shall certify in writing that it has complied with the requirements of subs. (6) and (9) and submit to the department a copy of this certification and a written description of the policies the organization has adopted to ensure that it has complied with the requirements under subs. (6) and (9).

(11) PREEMPTION. Nothing in this section may be construed to preempt any other statute that prohibits or restricts the expenditure

of federal or state funds by or the granting of federal or state funds to religious organizations.

History: 2001 a. 16.

301.067 Funding for certain community reintegration services. From the appropriation under s. 20.410 (1) (d), the department shall provide \$50,000 each fiscal year to Madison-area Urban Ministry, Inc., and \$50,000 each fiscal year to Project Return for community reintegration services.

History: 2005 a. 25.

301.07 Cooperation and contracts with federal government. The department may cooperate with the federal government in carrying out federal acts concerning adult corrections and youth corrections and may enter into contracts with the federal government under [18 USC 5003](#).

History: 1989 a. 31, 107; 1995 a. 27; 1997 a. 27.

301.075 Disbursement of funds and facsimile signatures. Withdrawal or disbursement of moneys deposited in a public depository, as defined in s. 34.01 (5), to the credit of the department or any of its divisions or agencies shall be by check, share draft or other draft signed by the secretary or by one or more persons in the department designated by written authorization of the secretary. The checks, share drafts and other drafts shall be signed personally or by use of a mechanical device adopted by the secretary or the secretary's designees for affixing a facsimile signature. Any public depository shall be fully warranted and protected in making payment on any check, share draft or other draft bearing the facsimile signature notwithstanding that the facsimile signature may have been placed on the check, share draft or other draft without the authority of the secretary or the designees.

History: 1989 a. 31.

301.08 Purchase of care and services. (1) AUTHORIZATION. (a) The department may contract with public or voluntary agencies or others to:

1. Purchase in full or in part care and services which it is authorized by any statute to provide as an alternative to providing such care and services itself.

2. Purchase or provide in full or in part the care and services which county agencies may provide or purchase under any statute and to sell to county agencies such portions thereof as the county agency may desire to purchase.

3. Sell services, under contract, which the department is authorized to provide by statute, to any federally recognized tribal governing body.

(b) The department may:

1. Contract with public, private or voluntary agencies for the purchase of goods, care and services for persons committed or sentenced to a state correctional or penal institution, placed on probation or lifetime supervision to the department by a court of record, or released from a state correctional or penal institution. Services shall include, but are not limited to, diagnostic services, evaluation, treatment, counseling, referral and information, day care, inpatient hospitalization, transportation, recreation, special education, vocational training, work adjustment, sheltered employment, special living arrangements and legal and protective services.

2. Contract with one public, private or voluntary agency for the supervision, maintenance and operation of one minimum security correctional institution in a county having a population of 500,000 or more. To be eligible, an agency must have prior relevant experience.

3. Contract with public, private, or voluntary agencies for the supervision, maintenance, and operation of juvenile correctional facilities, residential care centers for children and youth, as defined in s. 938.02 (15d), and secured residential care centers for children and youth for the placement of juveniles who have been

convicted under s. 938.183 or adjudicated delinquent under s. 938.183 or 938.34 (4d), (4h), or (4m). The department may designate juvenile correctional facility, residential care center for children and youth, or a secured residential care center for children and youth contracted for under this subdivision as a Type 2 juvenile correctional facility, as defined in s. 938.02 (20), and may designate a residential care center for children and youth or secured residential care center for children and youth contracted for under this subdivision as a Type 2 residential care center for children and youth, as defined in s. 938.02 (19r).

(c) 2. Beginning on January 1, 1996, the department may contract with public, private or voluntary vendors for the supervision or for any component of the supervision of probationers, parolees and persons on extended supervision who are under minimum supervision or administrative supervision.

3. Except as provided in subd. 3m., a contract under subd. 2. shall authorize a vendor to charge a fee to probationers, parolees and persons on extended supervision sufficient to cover the cost of supervision and administration of the contract.

3m. A contract under subd. 2. shall permit the department to prohibit a vendor from charging a fee to a probationer, parolee or person on extended supervision who is supervised under the contract if the probationer, parolee or person on extended supervision demonstrates that he or she is unable to pay the fee because of any of the following:

a. The probationer, parolee or person on extended supervision is undergoing treatment approved by the department and is unable to work.

b. The probationer, parolee or person on extended supervision has a statement from a physician certifying to the department that the probationer, parolee or person on extended supervision should be excused from working for medical reasons.

4. If the department collects any moneys from a vendor under a contract under subd. 2., the department shall credit those moneys to the appropriation account under s. 20.410 (1) (ge).

5. The department shall promulgate rules for fees, collections, reporting and verification regarding probationers, parolees and persons on extended supervision supervised by a vendor who contracts with the department under subd. 2. and shall promulgate rules defining “administrative supervision” and “minimum supervision”.

(2) RESTRICTIONS. (a) All care and services purchased by the department and all care and services relating to juvenile delinquency purchased by a county department under s. 46.215, 46.22 or 46.23 shall be authorized and contracted for under the standards established under this subsection. For purchases of \$10,000 or less the requirement for a written contract may be waived by the department. No contract is required for care provided by foster homes required to be licensed under s. 48.62. If the department directly contracts for services, it shall follow the procedures in this subsection in addition to meeting purchasing requirements established in s. 16.75.

(b) All care and services purchased shall meet standards established by the department and other requirements specified by purchaser in the contract. Based on these standards the department shall establish standards for cost accounting and management information systems that shall monitor the utilization of those services, and document the specific services in meeting the service plan for the client and the objective of the service.

(c) 1. Purchase of service contracts shall be written in accordance with rules and procedures established by the department. Contracts for client services shall show the total dollar amount to be purchased and for each service the number of clients to be served, number of client service units, the unit rate per client service and the total dollar amount for each service.

2. Payments under a contract may be made on the basis of actual allowable costs or on the basis of a unit rate per client service multiplied by the actual client units furnished each month. The contract may be renegotiated when units vary from the con-

tracted number. The purchaser shall determine actual marginal costs for each service unit less than or in addition to the contracted number.

3. For proprietary agencies, contracts may include a percentage add-on for profit according to rules promulgated by the department.

4. Reimbursement to an agency may be based on total costs agreed to by the parties regardless of the actual number of service units to be furnished, when the agency is entering into a contract for a new or expanded service that the purchaser recognizes will require a start-up period not to exceed 180 days. The reimbursement applies only if identified client needs necessitate the establishment of a new service or expansion of an existing service.

5. If the purchaser finds it necessary to terminate a contract prior to the contract expiration date for reasons other than nonperformance by the provider, actual cost incurred by the provider may be reimbursed for an amount determined by mutual agreement of the parties.

6. Advance payments of up to one-twelfth of an annual contract may be allowed under the contract. If the advance payment exceeds \$10,000, the provider shall supply a surety bond for an amount equal to the amount of the advance payment applied for. No surety bond is required if the provider is a state agency. The cost of the surety bond shall be allowable as an expense.

(d) For purposes of this subsection and as a condition of reimbursement, each provider under contract shall:

1. Except as provided in s. 46.036 (4) (a), maintain a uniform double entry accounting system and a management information system which are compatible with cost accounting and control systems prescribed by the department.

2. Cooperate with the department and purchaser in establishing costs for reimbursement purposes.

3. Unless waived by the department, biennially, or annually if required under federal law, provide the purchaser with a certified financial and compliance audit report. The audit shall follow standards that the department prescribes. A purchaser may waive the requirements of this subdivision as provided in s. 46.036 (4) (c).

4. Transfer a client from one category of care or service to another only with the approval of the purchaser.

5. Charge a uniform schedule of fees established under s. 301.03 (18) unless waived by the purchaser with approval of the department. Whenever providers recover funds attributed to the client, the funds shall offset the amount paid under the contract.

(e) The purchaser shall recover from provider agencies money paid in excess of the conditions of the contract from subsequent payments made to the provider.

(f) Contracts may be renegotiated by the purchaser under conditions specified in the contract.

(g) The service provider under this section may appeal decisions of the purchaser in accordance with terms and conditions of the contract and ch. 68 or 227.

(3) NOTIFICATION CONCERNING PLANS FOR TRANSITIONAL HOUSING. (a) In this subsection, “political subdivision” means a city, village, town or county.

(b) Before contracting under this section for transitional housing for the temporary placement of persons on parole, extended supervision or probation, the department shall notify all of the following of the proposed contract:

1. The police department of the political subdivision in which the transitional housing will be located.

2. The sheriff for the county in which the transitional housing will be located.

3. The chief elected official of the political subdivision in which the transitional housing will be located.

4. The newspaper designated as the official newspaper of the political subdivision in which the transitional housing will be located, or, if there is no designated official newspaper, a newspa-

per published or having general circulation in the political subdivision and eligible under s. 985.03 as an official newspaper.

(c) A person notified under par. (b) of a proposed contract for transitional housing shall notify the general public of the proposed contract in a manner and to the extent that the person determines is appropriate.

History: 1989 a. 31, 107; 1995 a. 27, 352; 1997 a. 27, 205, 237, 275, 283; 1999 a. 9, 185; 2001 a. 59; 2005 a. 344.

301.085 Payment of benefits. (1) The department may make payments of benefits directly to persons who are authorized to receive those payments in accordance with law and rules of the department on behalf of the counties. The department may charge the counties for the cost of making those payments.

(2) The department may make juvenile delinquency–related payments directly to recipients, vendors or providers in accordance with law and rules of the department on behalf of the counties which have contracts to have such payments made on their behalf.

(3) The county department under s. 46.215, 46.22 or 46.23 shall provide the department with information which the department shall use to determine each person's eligibility and amount of payment. The county department under s. 46.215, 46.22 or 46.23 shall provide the department all necessary information in the manner prescribed by the department.

(4) The department shall disburse from state or federal funds or both the entire amount and charge the county for its share under s. 301.26.

History: 1995 a. 27.

301.09 Grants for pilot programs or demonstration projects. Whenever the department provides a grant after August 15, 1991, for a pilot program or demonstration project, the department shall do all of the following:

(1) State on the grant application that the funding for the program or project will be provided by the department once or for a limited period of time, whichever is applicable.

(2) Require the applicant to provide, as part of the grant application, a plan that describes:

(a) How activities funded by the grant will be phased out or how the program or project will be eliminated; or

(b) What other funding sources will be available to support the program or project when state funding is eliminated.

History: 1991 a. 39.

301.10 Purchases, bills, audits, payments.

(2) CORRECTIONS INSTITUTIONS PREAUDIT; PAYMENTS. Unless otherwise provided by law, no bills may be incurred in the management of the institutions nor be paid until they have been audited by the department of corrections under the supervision of the department of administration. All payments shall be made on the warrant of the department of administration drawn in accordance with the certificate of the proper designated officer of the department of corrections. All claims and accounts, before being certified to the department of administration by the department of corrections, shall be verified and approved as provided in s. 16.53.

History: 1989 a. 31; 1997 a. 289.

301.105 Telephone company commissions. The department shall collect moneys for commissions from telephone companies for contracts to provide telephone services to inmates. The department shall transmit those moneys to the secretary of administration. The secretary of administration shall do all of the following:

(1) Deposit two–thirds of all moneys collected under this section in the general fund as general purpose revenue–earned.

(2) Credit one–third of all moneys collected under this section to the appropriation account under s. 20.410 (1) (gt).

History: 1993 a. 16; 2003 a. 33.

301.11 Reports of corrections institutions.

(1) MONTHLY REPORT. The officer in charge of each state institu-

tion under the control of the department shall report monthly to the department an itemized statement of all receipts and disbursements and of the daily number of inmates, officers, teachers and employees, and of the wages paid to each.

(2) BIENNIAL REPORT. On July 1 in each even–numbered year, the officer in charge of each state institution under the control of the department shall submit a report to the department, covering the preceding biennial fiscal term, which includes a summarized statement of the management of every department of the institution and of all receipts and disbursements, and any other information the department requires.

History: 1989 a. 31.

301.12 Cost of care and maintenance, liability; collection and deportation counsel; collections; court actions; recovery. (1) Liability and the collection and enforcement of such liability for the care, maintenance, services and supplies specified in this section is governed exclusively by this section, except in cases of child support ordered by a court under s. 938.183 (4), 938.355 (2) (b) 4., 938.357 (5m) (a) or 938.363 (2) or ch. 767.

(2) Except as provided in subs. (2m) and (14) (b) and (c), any person, including but not limited to a person placed under s. 48.366, 938.183, 938.34 (4h) or (4m) or 938.357 (4) or (5) (e), receiving care, maintenance, services and supplies provided by any institution in this state operated or contracted for by the department, in which the state is chargeable with all or part of the person's care, maintenance, services and supplies, and the person's property and estate, including the homestead, and the spouse of the person, and the spouse's property and estate, including the homestead, and, in the case of a minor child, the parents of the person, and their property and estates, including their homestead, and, in the case of a foreign child described in s. 48.839 (1) who became dependent on public funds for his or her primary support before an order granting his or her adoption, the resident of this state appointed guardian of the child by a foreign court who brought the child into this state for the purpose of adoption, and his or her property and estate, including his or her homestead, shall be liable for the cost of the care, maintenance, services and supplies in accordance with the fee schedule established by the department under s. 301.03 (18). If a spouse, widow or minor, or an incapacitated person may be lawfully dependent upon the property for their support, the court shall release all or such part of the property and estate from the charges that may be necessary to provide for those persons. The department shall make every reasonable effort to notify the liable persons as soon as possible after the beginning of the maintenance, but the notice or the receipt of the notice is not a condition of liability.

(2m) The liability specified in sub. (2) shall not apply to persons 17 and older receiving care, maintenance, services and supplies provided by prisons named in s. 302.01.

(3) After investigation of the liable persons' ability to pay, the department shall make collection from the person who in the opinion of the department under all of the circumstances is best able to pay, giving due regard to relationship and the present needs of the person or of the lawful dependents. However, the liability of relatives for maintenance shall be in the following order: first, the spouse of the resident; then, in the case of a minor, the parent or parents.

(4) (a) If a person liable under sub. (2) fails to make payment or enter into or comply with an agreement for payment, the department may bring an action to enforce the liability or may issue an order to compel payment of the liability. Any person aggrieved by an order issued by the department under this paragraph may appeal the order as a contested case under ch. 227 by filing with the department a request for a hearing within 30 days after the date of the order.

(b) If judgment is rendered in an action brought under par. (a) for any balance that is 90 or more days past due, interest at the rate of 12% per year shall be computed by the clerk and added to the

liable person's costs. That interest shall begin on the date on which payment was due and shall end on the day before the date of any interest that is computed under s. 814.04 (4).

(c) If the department issues an order to compel payment under par. (a), interest at the rate of 12% per year shall be computed by the department and added at the time of payment to the person's liability. That interest shall begin on the date on which payment was due and shall end on the day before the date of final payment.

(5) If any person named in an order to compel payment issued under sub. (4) (a) fails to pay the department any amount due under the terms of the order and no contested case to review the order is pending and the time for filing for a contested case review has expired, the department may present a certified copy of the order to the circuit court for any county. The circuit court shall, without notice, render judgment in accordance with the order. A judgment rendered under this subsection shall have the same effect and shall be entered in the judgment and lien docket and may be enforced in the same manner as if the judgment had been rendered in an action tried and determined by the circuit court.

(6) The sworn statement of the collection and deportation counsel, or of the secretary, shall be evidence of the fee and of the care and services received by the resident.

(7) The department shall administer and enforce this section. The department shall appoint an attorney to be designated "collection and deportation counsel" and other necessary assistants. The department may delegate to the collection and deportation counsel such other powers and duties as the department considers advisable. The collection and deportation counsel or any of the assistants may administer oaths, take affidavits and testimony, examine public records, subpoena witnesses and the production of books, papers, records, and documents material to any matter of proceeding relating to payments for the cost of maintenance. The department shall encourage agreements or settlements with the liable person, having due regard to ability to pay and the present needs of lawful dependents.

(8) The department may do any of the following:

(a) Appear for the state in any collection and deportation matter arising in the several courts, and may commence suit in the name of the department to recover the cost of maintenance against the person liable for that cost.

(b) Determine whether any residents are subject to deportation; and on behalf of this state enter into reciprocal agreements with other states for deportation and importation of persons who are public charges, upon such terms as will protect the state's interests and promote mutually amicable relations with other states.

(c) From time to time investigate the financial condition and needs of persons liable under sub. (2), their ability to presently maintain themselves, the persons legally dependent upon them for support, the protection of the property and investments from which they derive their living and their care and protection, for the purpose of ascertaining the person's ability to make payment in whole or in part.

(d) After due regard to the case and to a spouse and minor children who are lawfully dependent on the property for support, compromise or waive any portion of any claim of the state or county for which a person specified under sub. (2) is liable, but not any claim payable by an insurer under s. 632.89 (2) or (2m) or by any other 3rd party.

(e) Make an agreement with a person who is liable under sub. (2), or who may be willing to assume the cost of maintenance of any resident, providing for the payment of such costs at a specified rate or amount.

(f) Make adjustment and settlement with the several counties for their proper share of all moneys collected.

(i) Pay quarterly from the appropriation account under s. 20.410 (3) (gg) the collection moneys due county departments under ss. 46.215, 46.22 and 46.23. Payments shall be made as soon after the close of each quarter as is practicable.

(9) Any person who willfully testifies falsely as to any material matter in an investigation or proceeding under this section shall be guilty of perjury. Banks, employers, insurers, savings banks, savings and loan associations, brokers and fiduciaries, upon request of the department, shall furnish in writing and duly certified, full information regarding the property, earnings or income or any funds deposited to the credit of or owing to any person liable under sub. (2). Such a certified statement shall be admissible in evidence in any action or proceeding to compel payment under this section, and shall be evidence of the facts stated in the certified statement, if a copy of the certified statement is served upon the party sought to be charged not less than 3 days before the hearing.

(10) The department shall make all reasonable and proper efforts to collect all claims for maintenance, to keep payments current, and to periodically review all unpaid claims.

(11) (a) Except as provided in par. (b), in any action to recover from a person liable under this section, the statute of limitations may be pleaded in defense.

(b) If a person who is liable under this section is deceased, a claim may be filed against the decedent's estate and the statute of limitations specified in s. 859.02 shall be exclusively applicable.

(14) (a) Except as provided in pars. (b) and (c), liability of a person specified in sub. (2) or s. 301.03 (18) for care and maintenance of persons under 17 years of age in residential, nonmedical facilities such as group homes, foster homes, treatment foster homes, residential care centers for children and youth and juvenile correctional institutions is determined in accordance with the cost-based fee established under s. 301.03 (18). The department shall bill the liable person up to any amount of liability not paid by an insurer under s. 632.89 (2) or (2m) or by other 3rd-party benefits, subject to rules which include formulas governing ability to pay promulgated by the department under s. 301.03 (18). Any liability of the resident not payable by any other person terminates when the resident reaches age 17, unless the liable person has prevented payment by any act or omission.

(b) Except as provided in par. (c) and subject to par. (cm), liability of a parent specified in sub. (2) or s. 301.03 (18) for the care and maintenance of the parent's minor child who has been placed by a court order under s. 938.183, 938.355, or 938.357 in a residential, nonmedical facility such as a group home, foster home, treatment foster home, residential care center for children and youth, or juvenile correctional institution shall be determined by the court by using the percentage standard established by the department of children and families under s. 49.22 (9) and by applying the percentage standard in the manner established by the department under par. (g).

(c) Upon request by a parent, the court may modify the amount of child support payments determined under par. (b), subject to par. (cm), if, after considering the following factors, the court finds by the greater weight of the credible evidence that the use of the percentage standard is unfair to the child or to either of the parents:

1. The needs of the child.
2. The physical, mental and emotional health needs of the child, including any costs for the child's health insurance provided by a parent.
3. The standard of living and circumstances of the parents, including the needs of each parent to support himself or herself at a level equal to or greater than that established under 42 USC 9902 (2).
4. The financial resources of the parents.
5. The earning capacity of each parent, based on each parent's education, training and work experience and based on the availability of work in or near the parent's community.
6. The need and capacity of the child for education, including higher education.
7. The age of the child.

8. The financial resources and the earning ability of the child.
9. The needs of any person, including dependent children other than the child, whom either parent is legally obligated to support.
10. The best interests of the child, including, but not limited to, the importance of a placement that will promote the objectives specified in s. 938.01.
11. Any other factors that the court in each case determines are relevant.

(cm) 1. Except as provided in subd. 2., if a parent who is required to pay child support under par. (b) or (c) is receiving adoption assistance under s. 48.975 for the child for whom support is ordered, the amount of the child support payments determined under par. (b) or (c) may not exceed the amount of the adoption assistance payments.

2. Subdivision 1. does not apply if, after considering the factors under par. (c) 1. to 11., the court finds by the greater weight of the credible evidence that limiting the amount of the child support payments to the amount of the adoption assistance payments is unfair to the child or to either of the parents.

(d) If the court finds under par. (c) that use of the percentage standard is unfair to the minor child or either of the parents, the court shall state in writing or on the record the amount of support that would be required by using the percentage standard, the amount by which the court's order deviates from that amount, the court's reasons for finding that use of the percentage standard is unfair to the child or the parent, the court's reasons for the amount of the modification and the basis for the modification.

(e) 1. An order issued under s. 938.183 (4), 938.355 (2) (b) 4., 938.357 (5m) (a) or 938.363 (2) for support determined under this subsection constitutes an assignment of all commissions, earnings, salaries, wages, pension benefits, benefits under ch. 102 or 108 and other money due or to be due in the future to the county department under s. 46.215, 46.22 or 46.23 in the county where the order was entered or to the department, depending upon the placement of the child as specified by rules promulgated under subd. 5. The assignment shall be for an amount sufficient to ensure payment under the order.

2. Except as provided in subd. 3., for each payment made under the assignment, the person from whom the payer under the order receives money shall receive an amount equal to the person's necessary disbursements, not to exceed \$3, which shall be deducted from the money to be paid to the payer.

3. Benefits under ch. 108 may be assigned and withheld only in the manner provided in s. 108.13 (4). Any order to withhold benefits under ch. 108 shall be for an amount certain. When money is to be withheld from these benefits, no fee may be deducted from the amount withheld and no fine may be levied for failure to withhold the money.

4. No employer may use an assignment under this paragraph as a basis for the denial of employment to a person, the discharge of an employee or any disciplinary action against an employee. An employer who denies employment or discharges or disciplines an employee in violation of this subdivision may be fined not more than \$500 and may be required to make full restitution to the aggrieved person, including reinstatement and back pay. Except as provided in this subdivision, restitution shall be in accordance with s. 973.20. An aggrieved person may apply to the district attorney or to the department of workforce development for enforcement of this subdivision.

5. The department shall promulgate rules for the operation and implementation of assignments under this paragraph.

(f) If the amount of the child support determined under this subsection is greater than the cost for the care and maintenance of the minor child in the residential, nonmedical facility, the assignee under par. (e) 1. shall expend or otherwise dispose of any funds that are collected in excess of the cost of such care and maintenance

in a manner that the assignee determines will serve the best interests of the minor child.

(g) For purposes of determining child support under par. (b), the department shall promulgate rules related to the application of the standard established by the department of children and families under s. 49.22 (9) to a child support obligation for the care and maintenance of a child who is placed by a court order under s. 938.183, 938.355 or 938.357 in a residential, nonmedical facility. The rules shall take into account the needs of any person, including dependent children other than the child, whom either parent is legally obligated to support.

(16) The department shall delegate to county departments under ss. 46.215, 46.22 and 46.23 or the local providers of care and services meeting the standards established by the department under s. 301.08, the responsibilities vested in the department under this section for collection of fees for services other than those provided at state facilities if those county departments or providers meet the conditions considered appropriate by the department. The department may delegate to county departments under ss. 46.215, 46.22 and 46.23 the responsibilities vested in the department under this section for collection of fees for services provided at the state facilities if the necessary conditions are met.

History: 1995 a. 27 ss. 6361, 9126 (19); 1995 a. 77; 1997 a. 237; 1999 a. 103; 2001 a. 59; 2007 a. 20, 97.

Sections 46.03 (18) and 46.10 do not constitute an unlawful delegation of legislative power. In *Matter of Guardianship of Klisurich*, 98 Wis. 2d 274, 296 N.W.2d 742 (1980).

Sub. (3) and s. 46.03 (18) permit the department to promulgate rules that consider non-labile family members' incomes in determining a liable family member's ability to pay. In *Interest of A.L.W.* 153 Wis. 2d 412, 451 N.W.2d 416 (1990).

Section 46.03 (18) (b) imposes liability upon minors and parents for the costs of services, but does not give counties an automatic right of recovery; Section 46.10 governs enforcement procedure and allows courts to exercise discretion. In *Matter of S.E. Trust*, 159 Wis. 2d 709, 465 N.W.2d 231 (Ct. App. 1990).

The uniform fee system under ss. 46.03 (18) and 46.10 allows imputing income and, consequently, looking beyond tax returns to determine ability to pay. In *Interest of Kevin C.* 181 Wis. 2d 146, 510 N.W.2d 746 (Ct. App. 1993).

A circuit court may order parents to pay toward a child's support when a CHIPS child is placed in residential treatment, but the court may not assess any of the facility's education-related costs against the parents. *Calumet County Department of Human Services v. Randall H.* 2002 WI 126, 257 Wis. 2d 57, 653 N.W.2d 503, 01-1272.

NOTE: The above-cited cases relate to cost of care and maintenance for a person receiving services provided by predecessor agencies to the department of corrections under s. 46.10.

301.13 Minimum security correctional institutions.

The department may establish and operate minimum security correctional institutions. The secretary may allocate and reallocate existing and future facilities as part of these institutions. The institutions are subject to s. 301.02 and are state prisons as defined in s. 302.01. Inmates from Wisconsin state prisons may be transferred to these institutions and they shall be subject to all laws pertaining to inmates of other penal institutions of the state. Officers and employees of the institutions shall be subject to the same laws as pertain to other penal institutions. Inmates shall not be received on direct commitment from the courts. In addition to the exemptions under s. 13.48 (13), construction or establishment of facilities at institutions which are community correctional residential centers initially established prior to July 2, 1983, shall not be subject to the ordinances or regulations relating to zoning, including zoning under ch. 91, of the county and municipality in which the construction or establishment takes place. The department shall establish a procedure for soliciting responses from interested communities and persons regarding potential sites for the institutions under this section, except the procedure does not apply to the 125-bed community correctional center in the city of Waupun. The department shall consider locations proposed under this procedure and may consider any other locations on its own initiative. The department need not promulgate rules regarding the site consideration procedures under this section.

History: 1977 c. 418; 1983 a. 27; 1985 a. 29; 1987 a. 5; 1989 a. 31 s. 961; Stats. 1989 s. 301.13.

301.132 Honesty testing of sex offenders. (1) In this section:

- (a) “Lie detector” has the meaning given in s. 111.37 (1) (b).
- (b) “Polygraph” has the meaning given in s. 111.37 (1) (c).
- (c) “Sex offender” means a person in the custody of the department who meets any of the criteria specified in s. 301.45 (1g).

(2) The department may require a sex offender to submit to a lie detector test when directed to do so by the department. The department may require submission to a lie detector test under this subsection as part of a sex offender’s correctional programming or care and treatment, as a condition of a sex offender’s probation, parole or extended supervision, or both as part of a sex offender’s correctional programming or care and treatment and as a condition of the sex offender’s probation, parole or extended supervision.

(3) The department shall promulgate rules establishing a lie detector test program for sex offenders. The rules shall provide for assessment of fees upon sex offenders to partially offset the costs of the program.

History: 1995 a. 440; 1997 a. 283; 1999 a. 89.

Cross Reference: See also ss. DOC 332.015, 332.15, 332.16, 332.17, and 332.18, Wis. adm. code.

301.135 Electronic monitoring. (1) The department may contract with counties to provide electronic monitoring services relating to criminal offenders. The department shall charge a fee to counties for providing these services.

(2) The department may charge a fee to offenders under its supervision to cover the costs associated with electronic monitoring. The department may charge a fee under this subsection or the department or the attorney general may collect under s. 301.325, but the state may not collect for the same expenses twice.

(3) The department may charge a fee to offenders who are confined under s. 301.046 or who are in the intensive sanctions program under s. 301.048.

(4) The department shall set the fees charged to offenders under subs. (2) and (3) by rule.

History: 1989 a. 31 ss. 958, 959; Stats. 1989 s. 301.135; 1991 a. 39; 1993 a. 98; 1995 a. 27.

301.14 State–local shared correctional facilities. In cooperation with any county or group of counties, the department may contract for the establishment and operation of state–local shared correctional facilities under s. 302.45. Except as provided in s. 302.45 (4), the secretary may allocate and reallocate existing and future facilities as state–local shared correctional facilities. The shared facilities shall be institutions under s. 301.02 and shall be prisons under s. 302.01. Inmates from Wisconsin state prisons may be transferred to these facilities and, except as to any separate rules established in the contract governing a shared facility, shall be subject to all laws pertaining to inmates of other penal institutions of this state. Officers and employees of the facilities shall be subject to the same laws as pertain to other penal institutions. Inmates may not be received on direct commitment from the courts.

History: 1983 a. 332; 1989 a. 31 s. 967; Stats. 1989 s. 301.14.

NOTE: 1983 Wisconsin Act 332 s. 1, which created this section, contains a long prefatory note explaining the bill. See 1983 Session Laws.

301.15 Medium security prison. The department may construct a medium security prison to be known as the Fox Lake Correctional Institution on state–owned land known as prison farm 10 in Dodge County. Inmates from the Wisconsin state prisons may be transferred to this institution, and they shall be subject to all laws pertaining to inmates of other penal institutions of this state. Officers and employees of the institutions shall be subject to the same laws as pertain to other penal institutions. Inmates shall not be received on direct commitment from the courts.

History: 1977 c. 418 s. 924 (18) (b); 1989 a. 31 s. 962; Stats. 1989 s. 301.15; 2001 a. 103.

301.16 Construction or establishment of certain institutions. (1) The department shall construct or establish an adult medium/maximum security institution or an adult medium security institution or both.

(1m) The medium security institution under sub. (1) shall be the Oshkosh Correctional Institution and shall be located north of Oshkosh, north of Snell Road and south of Sunnyview Road at the site that, on July 31, 1981, was the site of the Winnebago Correctional Farm.

(1n) In addition to the institutions under sub. (1), the department shall establish a maximum security correctional institution that constitutes the prison expansion project enumerated in 1995 Wisconsin Act 27, section 9108 (1) (b), and that is located at a site selected by the building commission.

(1o) (a) In addition to the institutions under sub. (1), the department shall establish a correctional institution located at the St. Bonaventure site which is located between CTH “H” on the west and 90th Street on the east in the village of Sturtevant in Racine County.

(b) In the selection of classified service employees of the institution specified in par. (a), the appointing authority shall, whenever possible, use the expanded certification program under rules of the administrator of the division of merit recruitment and selection in the office of state employment relations to ensure that employees of the institution reflect the general population of either the county in which the institution is located or the most populous county contiguous to the county in which the institution is located, whichever population is greater. The administrator of the division of merit recruitment and selection in the department of administration shall provide guidelines for the administration of this selection procedure.

(1q) The department shall establish probation and parole holding facilities, one of which shall be the probation and parole holding and alcohol and other drug abuse treatment facility in the city of Milwaukee, as enumerated in 1997 Wisconsin Act 27, section 9107 (1) (b) 1.

(1r) In addition to the institutions under sub. (1), the department shall establish a medium security correctional institution for persons 15 years of age or over, but not more than 24 years of age, who have been placed in a state prison under s. 302.01. The medium security correctional institution under this subsection shall be known as the Racine Youthful Offender Correctional Facility and shall be located at the intersection of Albert Street and North Memorial Drive in the city of Racine. The department shall limit the number of prisoners who may be placed at the Racine Youthful Offender Correctional Facility to no more than 450 at any one time.

(1s) In addition to the institutions under sub. (1), the department shall establish a medium security correctional institution that is a part of the correctional facilities enumerated in 1997 Wisconsin Act 27, section 9107 (1) (b), and that is located in Redgranite.

(1t) In addition to the institutions under sub. (1), the department shall establish a medium security correctional institution that is a part of the correctional facilities enumerated in 1997 Wisconsin Act 27, section 9107 (1) (b), and that is located in New Lisbon.

(1u) Notwithstanding 1995 Wisconsin Act 27, section 9126 (23) and (26v), the department shall operate the facility authorized under 1995 Wisconsin Act 27, section 9126 (26v), as a state prison.

(1v) In addition to the institutions under sub. (1), the department shall establish a minimum security correctional institution in Chippewa Falls.

(1x) Inmates from the Wisconsin state prisons may be transferred to the institutions under this section and they shall be subject to all laws pertaining to inmates of other penal institutions of this state. Officers and employees of the institutions shall be sub-

ject to the same laws as pertain to other penal institutions. Inmates shall not be received on direct commitment from the courts.

(2) Construction or establishment of the institutions shall be in compliance with all state laws except s. 32.035 and ch. 91.

(3) In addition to the exemptions under s. 13.48 (13), construction or establishment of the institutions shall not be subject to the ordinances or regulations relating to zoning, including zoning under ch. 91, of the county and municipality in which the construction or establishment takes place.

History: 1979 c. 221; 1981 c. 20, 317, 387; 1983 a. 16; 1983 a. 27 ss. 953p, 953r, 2200 (15); 1985 a. 29; 1987 a. 5; 1989 a. 31 ss. 964, 964m; Stats. 1989 s. 301.16; 1991 a. 39; 1995 a. 27; 1997 a. 27; 1999 a. 9; 2001 a. 16, 103; 2003 a. 33 ss. 2489 to 2490d, 2807, 9160.

301.17 Minimum security corrections institutions. The department may, with the approval of the joint committee on finance, increase staffing levels at minimum security institutions sufficiently to allow temporary placement of medium security inmates at existing minimum security institutions as may be necessary to relieve medium security overcrowding. The temporary placement under this section may constitute a partial use of the institution.

History: 1981 c. 20; 1989 a. 31 s. 973; Stats. 1989 s. 301.17.

301.18 Correctional and other institutions; expansion and establishment of facilities. (1) The department of corrections shall:

(a) Provide the facilities necessary for at least 25 additional beds at Camp Flambeau.

(b) Provide the facilities necessary for at least 45 additional beds for a corrections drug abuse treatment program on the grounds of the Winnebago Mental Health Institute.

(bp) Provide the facilities necessary for not more than 400 beds at the correctional institution under s. 301.16 (1m).

(bw) Provide the facilities necessary for the correctional institution under s. 301.16 (1n).

(bx) Provide the facilities necessary for the Racine Correctional Institution.

(by) Provide the facilities necessary for the Racine Youthful Offender Correctional Facility under s. 301.16 (1r).

(bz) Provide the facilities necessary for not more than 170 additional beds at the Kettle Moraine Correctional Institution for use associated with alcohol and other drug abuse treatment.

(c) Provide the facilities necessary for the correctional institution under s. 301.16 (1v) using the Highview building located at the Northern Wisconsin Center for the Developmentally Disabled and converted to a correctional facility under 1999 Wisconsin Act 9, section 9107 (1) (b) 1.

(d) Provide the facilities necessary for at least 40 additional beds at the Green Bay work release center.

(e) Provide the facilities necessary for at least 20 additional beds at Black River camp.

(f) Provide the facilities necessary for at least 20 additional beds at the Oregon camp.

(g) Provide the facilities necessary for housing to alleviate overcrowding.

(1m) The department of health services shall provide the facilities necessary to operate the Wisconsin resource center with 460 beds. The facilities may be used for persons transferred under ch. 302.

(2) In addition to the exemptions under s. 13.48 (13), construction or establishment of facilities necessary to comply with sub. (1) or (1m) shall not be subject to the ordinances or regulations relating to zoning, including zoning under ch. 91, of the county and municipality in which the construction or establishment takes place.

(3) For compliance with this section, the department of corrections may expend moneys authorized under chapter 29, laws of 1977, section 1606c (1) (b) relating to the correctional system which have not been expended or encumbered or moneys

available under residual existing general fund supported borrowing, not to exceed \$1,500,000.

(4) Any purchase, lease or construction of additional correctional facilities is subject to prior approval by the building commission and the joint committee on finance.

(5) This section constitutes enumeration in the authorized state building program for purposes of s. 20.924.

(6) The building commission is encouraged and authorized to utilize the most economical and expeditious construction alternatives available to effectuate completion of the construction projects.

History: 1989 a. 31, 122; 1991 a. 39; 1995 a. 27 ss. 6363h, 9126 (19); 1995 a. 416; 1997 a. 27; 1999 a. 9; 2001 a. 103; 2007 a. 20 s. 9121 (6) (a).

A private company may build a private incarceration facility without enabling legislation, but it cannot be operated by a private company. A state purchase or lease must be within the state's long range building program and approved by the joint finance committee. Out-of-state prisoners may be housed by the state, a county, or a municipality only as authorized per statute, which is currently limited to the Interstate Corrections Compact, s. 302.25. OAG 2–99.

301.19 Restriction on construction of correctional facilities. (1) In this section:

(a) "Authorized jurisdiction" means a county, 2 counties acting jointly under s. 302.44, the United States, or a federally recognized American Indian tribe or band in this state.

(b) "Correctional facility" means an institution or facility, or a portion of an institution or facility, that is used to confine juveniles alleged or found to be delinquent or a prison, jail, house of correction, or lockup facility.

(2) No person may commence construction of a correctional facility or commence conversion of an existing building, structure, or facility into a correctional facility unless the building, structure, or facility is enumerated in the authorized state building program.

(3) Subsection (2) does not apply to any of the following:

(a) A building, structure, or facility that is constructed or converted under a contract with and for use by an authorized jurisdiction.

(b) A building, structure, or facility the construction of which was completed before January 1, 2001, if the building, structure, or facility was designed to confine persons convicted of a criminal offense.

History: 2001 a. 16; 2005 a. 344.

301.20 Training school for delinquent boys. The department, with the approval of the governor, may purchase or accept a gift of land for a suitable site for an additional training school for delinquent boys and erect and equip such buildings as it considers necessary at such time as funds may be allocated for that purpose by the building commission. The training school or other additional facilities for delinquent boys financed by the authorized 1965–67 building program shall be located north of a line between La Crosse and Manitowoc. The department shall operate and maintain the institution for the treatment of delinquent boys who are placed under the supervision of the department under s. 938.34 (4h) or (4m). All laws pertaining to the care of juveniles received under s. 938.34 shall apply. Officers and employees of the institution are subject to the same laws as apply to other facilities described in s. 938.52.

History: 1995 a. 27, 77; 1997 a. 35.

301.205 Reimbursement to visiting families. The department may reimburse families visiting girls at a juvenile correctional facility. If the department decides to provide the reimbursement, the department shall establish criteria for the level of reimbursement, which shall include family income and size and other relevant factors.

History: 1995 a. 27, 77; 1999 a. 9; 2005 a. 344.

301.21 Contracts for the transfer and confinement of Wisconsin prisoners in other states. (1m) (a) The department may enter into one or more contracts with another state or a political subdivision of another state for the transfer and confine-

ment in that state of prisoners who have been committed to the custody of the department. Any such contract shall provide for all of the following:

1. A termination date.
2. Provisions concerning the costs of prisoner maintenance, extraordinary medical and dental expenses and any participation in or receipt by inmates of rehabilitative or correctional services, facilities, programs or treatment, including those costs not reasonably included as part of normal maintenance.
3. Provisions concerning any participation in programs of inmate employment if any, the disposition or crediting of any payments received by inmates on account of employment, and the crediting of proceeds from or disposal of any products resulting from employment.
4. Delivery and retaking of inmates.
5. Waiver of extradition by Wisconsin and the state to which the prisoners are transferred.
6. Retention of jurisdiction of the prisoners transferred by Wisconsin.
7. Regular reporting procedures concerning Wisconsin prisoners by officials of the state or political subdivision with which the department is contracting.
8. Provisions concerning procedures for probation, parole, extended supervision and discharge.
9. The same standards of reasonable and humane care as the prisoners would receive in an appropriate Wisconsin institution.
10. Any other matters as are necessary and appropriate to fix the obligations, responsibilities and rights of Wisconsin and the state or political subdivision with which the department is contracting.

(b) Inmates from Wisconsin state prisons while in an institution in another state are subject to all provisions of law and regulation concerning the confinement of persons committed for violations of the laws of that state, except as otherwise provided for by any contract entered into under this subsection.

(c) Any hearing to consider parole to which an inmate confined under this contract may be entitled by the laws of Wisconsin will be conducted by the Wisconsin parole commission under rules of the department.

(d) Sections 16.75 and 301.08 (2) do not apply to contracts entered into under this subsection.

(e) The provisions of this subsection are severable, as provided in s. 990.001 (11). The provisions of any contract entered into under this subsection are severable. If any provision of such a contract is invalid, or if the application of a provision of the contract to any person or circumstance is invalid, the invalidity does not affect other provisions or applications which can be given effect without the invalid provision or application.

(2m) (a) The department may enter into one or more contracts with a private person for the transfer and confinement in another state of prisoners who have been committed to the custody of the department. Any such contract shall provide for all of the following:

1. A termination date.
2. Provisions concerning the costs of prisoner maintenance, extraordinary medical and dental expenses and any participation in or receipt by prisoners of rehabilitative or correctional services, facilities, programs or treatment, including those costs not reasonably included as part of normal maintenance.
3. Provisions concerning any participation in programs of prisoner employment if any, the disposition or crediting of any payments received by prisoners on account of employment, and the crediting of proceeds from or disposal of any products resulting from employment.
4. Delivery and retaking of prisoners.

5. Regular reporting procedures concerning Wisconsin prisoners by the private person with which the department is contracting.

6. Provisions concerning procedures for probation, parole, extended supervision and discharge.

7. The same standards of reasonable and humane care as the prisoners would receive in an appropriate Wisconsin institution.

8. Any other matters as are necessary and appropriate to fix the obligations, responsibilities and rights of Wisconsin and the private person with which the department is contracting.

(b) While in an institution in another state covered by a contract under this subsection, Wisconsin prisoners are subject to all provisions of law and regulation concerning the confinement of persons in that institution under the laws of that state.

(c) Any hearing to consider parole to which a prisoner confined under a contract under this subsection may be entitled by the laws of Wisconsin shall be conducted by the Wisconsin parole commission under rules of the department.

(e) The provisions of any contract entered into under this subsection are severable. If any provision of such a contract is invalid, or if the application of a provision of the contract to any person or circumstance is invalid, the invalidity does not affect other provisions or applications which can be given effect without the invalid provision or application.

(6) Contracts under this section are subject to approval under s. 302.26, except that for purposes of s. 302.26 this section constitutes legislative approval of contracts between the department and the state of Minnesota.

History: 1981 c. 20; 1983 a. 27; 1989 a. 31 s. 965; Stats. 1989 s. 301.21; 1995 a. 344; 1997 a. 27, 283.

That this section does not, apart from the authority to contract for out-of-state placements, grant specific authority to transfer prisoners to out-of-state prisons does not mean that the department of corrections is without authority to so transfer prisoners without their consent. Prisoners do not have a constitutionally protected liberty interest in not being transferred from one prison to another. *Evers v. Sullivan*, 2000 WI App 144, 237 Wis. 2d 759, 615 N.W.2d 680, 00–0127.

DOC has the authority under sub. (2m) to delegate to employees at a private correctional facility in another state the responsibility for conducting reviews and making recommendations on the security classifications and program assignments of Wisconsin prisoners incarcerated in that facility. State ex rel. Treat v. Puckett, 2002 WI App 58, 252 Wis. 2d 404, 643 N.W.2d 515, 00–2712.

The state is not required to use the extradition process whenever and wherever prisoners are transported through noncontracting states on their way to incarceration in a contracting state. State ex rel. Jones v. Smith, 2002 WI App 94, 253 Wis. 2d 712, 643 N.W.2d 548, 01–1673.

The reference to “provisions of law and regulation concerning the confinement of persons” in sub. (2m) (b) means the conditions of confinement and procedures used in the out-of-state institution. Sentence credit under the law of the state where the prison is located are not laws concerning confinement but are an element of that state’s sentencing system and do not apply to a prisoner serving a Wisconsin sentence. State ex rel. Griffin v. Litscher, 2003 WI App 60, 261 Wis. 2d 694, 659 N.W.2d 455, 02–1704.

Transferring inmates from Wisconsin prisons to out-of-state facilities does not violate state law. *Lambert v. Sullivan*, 35 F. Supp. 2d 1131 (1999).

A prisoner has no liberty interest in avoiding transfer to any prison, whether within or without the state. *Berdine v. Sullivan*, 161 F. Supp. 2d 972 (2001).

A Wisconsin prisoner’s income while imprisoned in an out-of-state institution is not subject to department of corrections rules, but instead is subject to the rules of the host state. *Doty v. Doyle*, 182 F. Supp. 2d 750 (2002).

301.235 Structures, facilities and permanent improvements. (1) In this section unless the context requires otherwise:

(a) “Existing building”, in relation to any conveyance, lease or sublease made under sub. (2) (a) 1., 2. and 3., means all detention, treatment, administrative, recreational, infirmary, hospital, vocational and academic buildings; all dormitories and cottages; all storage facilities, heating plants, sewage disposal plants, and such other buildings, structures, facilities and permanent improvements as in the judgment of the secretary are needed or useful for the purposes of the department, and all equipment therefor and all improvements and additions thereto which were erected, constructed or installed prior to making the conveyance, lease or sublease.

(b) “New building”, in relation to any conveyance, lease or sublease made under sub. (2) (a) 1., 2. and 3., means all detention,

treatment, administrative, recreational, infirmary, hospital, vocational and academic buildings; all dormitories and cottages; all storage facilities, heating plants, sewage disposal plants, and such other buildings, structures, facilities and permanent improvements as in the judgment of the secretary are needed or useful for the purposes of the department, and all equipment therefor and all improvements and additions thereto which are erected, constructed or installed after making the conveyance, lease or sublease.

(c) “Nonprofit corporation” means a nonstock corporation organized under ch. 181 that is a nonprofit corporation, as defined in s. 181.0103 (17).

(2) The department shall have and may exercise the following powers and duties:

(a) In order to provide new buildings and to enable the construction and financing thereof, to refinance indebtedness created by a nonprofit corporation for the purpose of providing a new building or buildings or additions or improvements thereto which are located on land owned by, or owned by the state and held for, the department or on lands of the institutions under the jurisdiction of the department or owned by the nonprofit corporation, or for any one or more of those purposes, but for no other purpose unless authorized by law, the department, subject to s. 16.848, has the following powers and duties:

1. Without limitation by reason of any other statute except s. 16.848, the power to sell and to convey title in fee simple to a nonprofit corporation any land and any existing buildings thereon owned by, or owned by the state and held for, the department or any of the institutions under the jurisdiction of the department for such consideration and upon such terms and conditions as in the judgment of the secretary are in the public interest.

2. The power to lease to a nonprofit corporation for a term or terms not exceeding 50 years each any land and any existing buildings thereon owned by, or owned by the state and held for, the department or any of the institutions under the jurisdiction of the department upon such terms and conditions as in the judgment of the secretary are in the public interest.

3. The power to lease or sublease from the nonprofit corporation, and to make available for public use, any such land and existing buildings conveyed or leased to the nonprofit corporation under subds. 1. and 2., and any new buildings erected upon the land or upon any other land owned by such nonprofit corporation, upon such terms, conditions and rentals, subject to available appropriations, as the secretary determines are in the public interest. With respect to any property conveyed to the nonprofit corporation under subd. 1., the lease from the nonprofit corporation may be subject or subordinated to one or more mortgages of the property granted by the nonprofit corporation.

4. The duty to submit the plans and specifications for all such new buildings and all conveyances, leases and subleases made under this section to the department of administration and the governor for written approval before they are finally adopted, executed and delivered.

5. The power to pledge and assign all or any part of the revenues derived from the operation of the new buildings as security for the payment of rentals due and to become due under any lease or sublease of the new buildings under subd. 3.

6. The power to covenant and agree in any lease or sublease of the new buildings made under subd. 3. to impose fees, rentals or other charges for the use and occupancy or other operation of the new buildings in an amount calculated to produce net revenues sufficient to pay the rentals due and to become due under the lease or sublease.

7. The power to apply all or any part of the revenues derived from the operation of existing buildings to the payment of rentals due and to become due under any lease or sublease made under subd. 3.

8. The power to pledge and assign all or any part of the revenues derived from the operation of existing buildings to the pay-

ment of rentals due and to become due under any lease or sublease made under subd. 3.

9. The power to covenant and agree in any lease or sublease made under subd. 3. to impose fees, rentals or other charges for the use and occupancy or other operation of existing buildings in an amount calculated to produce net revenues sufficient to pay the rentals due and to become due under the lease or sublease.

10. The power and duty, upon receipt of notice of any assignment by any such nonprofit corporation of any lease or sublease made under subd. 3., or of any of its rights under any such sublease, to recognize and give effect to the assignment, and to pay to the assignee thereof rentals or other payments then due or which may become due under any such lease or sublease which has been so assigned by the nonprofit corporation.

(b) The state is liable for accrued rentals and for any other default under any lease or sublease made under par. (a) 3., and may be sued therefor on contract as in other contract actions under ch. 775, except that it is not necessary for the lessor under any such lease or sublease or any assignee of the lessor or any person or other legal entity proceeding on behalf of the lessor to file any claim with the legislature prior to the commencement of any such action.

(c) Nothing in this section empowers the secretary or the department to incur any state debt.

(d) All conveyances, leases and subleases made under this section shall be made, executed and delivered in the name of the department and shall be signed by the secretary and sealed with the seal of the department.

(e) All laws, except ch. 150, conflicting with this section are, insofar as they conflict with this section and no further, superseded by this section.

History: 1989 a. 31; 1997 a. 79; 2005 a. 25.

301.24 Lands; condemnation, easements, leases, sales, purchases. (1) CONDEMNATION. When the department is authorized and desires to acquire land and is unable to agree with the owner upon the terms of purchase, or when agreement cannot be had without unreasonable delay, the department may condemn the land in the manner prescribed in ch. 32.

(2) **EASEMENTS.** The department may grant easements for the extension of municipal and public utilities onto the lands of the institutions under its jurisdiction, for the purpose of connecting railroads, roads, water systems, sewers, electric lines and similar facilities, to serve the institutions.

(3) **LEASES.** The department may lease additional lands for the operation of the institutions under its jurisdiction.

(4) **SALES.** Except where a sale occurs under s. 16.848, the department, with the approval of the building commission, may sell and convey such lands under the jurisdiction of the department as the secretary deems to be in excess of the present or future requirements of the department for either the operation of its facilities or programs, for the maintenance of buffer zones adjacent to its facilities or for other public purposes. The proceeds of the sales shall be credited to the state building trust fund.

(4m) **CORRECTIONAL INSTITUTION PROPERTY DISPOSITION.** In addition to any other requirements under this section, except where a sale occurs under s. 16.848, the department may sell or otherwise transfer or dispose of the property acquired for the correctional institution under s. 46.05 (1o), 1985 stats., only if the sale, transfer or disposition is approved by the joint committee on finance. The department shall submit a plan for any such proposed sale, transfer or disposition to the committee.

(5) **PURCHASES.** The department, with the approval of and release of state building trust funds by the building commission, may acquire by purchase such lands, together with such improvements as are situated thereon, as the secretary deems necessary for the department’s farm programs, or for the purpose of providing adequate buffer zones to its existing facilities, or for the purpose

of eliminating flexuous boundaries in cooperation with owners of lands adjoining lands under the department's jurisdiction.

(6) LEASE OF LANDS FOR RADIO RANGE STATION. The department may lease state owned lands under its control situated in section 16, township 24 north, range 18 east, town of Seymour, Outagamie County, not exceeding 2 acres in extent, to the United States of America, to be used by the civil aeronautics administration for a radio range station. The terms of the lease shall be determined by the department and may grant to the lessee authority to erect navigational aids and other structures on such lands. Such lease shall not be effective unless approved by the governor in writing.

History: 1989 a. 31 ss. 974, 975, 2569; 1989 a. 56 s. 84; 1995 a. 378; 2005 a. 25.

301.25 Sewer system at Taycheedah Correctional Institution. The department, with the approval of the governor, may enter into an agreement containing terms, conditions and covenants approved by the building commission, to participate in the construction of a sanitary sewer system in the area adjacent to the Taycheedah Correctional Institution in the town of Taycheedah, Fond du Lac County; to connect the sewer system of the Taycheedah Correctional Institution thereto; to pay sewage disposal charges; and to grant easements or convey land to meet construction requirements.

History: 1975 c. 189 s. 99 (1); 1975 c. 224 s. 146m; 1989 a. 31 s. 1069; Stats. 1989 s. 301.25; 2005 a. 25; 2007 a. 20.

301.26 Community youth and family aids. (1) PROCEDURES. The department shall develop procedures for the implementation of this section and standards for the development and delivery of juvenile delinquency-related services under ch. 938, and shall provide consultation and technical assistance to aid counties in implementation and service delivery. The department shall establish information systems, monitoring and evaluation procedures to report periodically to the governor and legislature on the state impact of this section.

(2) RECEIPT OF FUNDS. (a) All funds to counties under this section shall be allocated to county departments under ss. 46.21, 46.22 and 46.23 subject to ss. 46.495 (2) and 301.031, except that monthly advance payments to the counties may be less than one-twelfth of the contracted amounts. No reimbursement may be made to any multicounty department until the counties which established the department have drawn up a detailed contractual agreement, approved by the secretary, setting forth the plans for joint sponsorship.

(b) Uniform fees collected or received by counties under s. 301.03 (18) for services provided under this section shall be applied to cover the cost of the services.

(c) All funds to counties under this section shall be used to purchase or provide juvenile delinquency-related services under ch. 938, except that no funds to counties under this section may be used for purposes of land purchase, building construction, or maintenance of buildings under s. 46.17, 46.175, or 301.37, for reimbursement of costs under s. 938.209, for city lockups, or for reimbursement of care costs in temporary shelter care under s. 938.22. Funds to counties under this section may be used for reimbursement of costs of program services, other than basic care and supervision costs, in juvenile detention facilities.

(2m) PUBLIC PARTICIPATION PROCESS. In determining the use of funds under this section, county departments under ss. 46.21, 46.22 and 46.23 shall assess needs using an open public participation process which involves representatives of those receiving services.

(3) GRANTS-IN-AID. (a) Receipt of funds under this subsection is contingent upon use of a public participation process required under sub. (2m).

(c) Within the limits of the appropriations under s. 20.410 (3) (cd) and (ko), the department shall allocate funds to each county for services under this section.

(dm) The department may carry forward for a county from one calendar year to another funds allocated under this subsection that

are not spent or encumbered. The amount that the department may carry forward for a county under this paragraph may not exceed 5% of the amount allocated to the county for the 12-month period ending December 31. The funds carried forward under this paragraph do not affect a county's base allocation.

(e) The department may carry forward \$500,000 or 10% of its funds allocated under this subsection and not encumbered or carried forward under par. (dm) by counties by December 31, whichever is greater, to the next 2 calendar years. The department may transfer moneys from or within s. 20.410 (3) (cd) to accomplish this purpose. The department may allocate these transferred moneys to counties with persistently high rates of juvenile arrests for serious offenses during the next 2 calendar years to improve community-based juvenile delinquency-related services. The allocation does not affect a county's base allocation.

(em) The department may carry forward any emergency funds allocated under sub. (7) (e) and not encumbered or carried forward under par. (dm) by December 31 to the next 2 calendar years. The department may transfer moneys from or within s. 20.410 (3) (cd) to accomplish this purpose. The department may allocate these transferred moneys to counties that are eligible for emergency payments under sub. (7) (e). The allocation does not affect a county's base allocation.

(4) STATE SERVICES. (a) Except as provided in pars. (c) and (cm), the department of corrections shall bill counties or deduct from the allocations under s. 20.410 (3) (cd) for the costs of care, services and supplies purchased or provided by the department of corrections for each person receiving services under s. 48.366, 938.183 or 938.34 or the department of health services for each person receiving services under s. 46.057 or 51.35 (3). The department of corrections may not bill a county for or deduct from a county's allocation the cost of care, services and supplies provided to a person subject to an order under s. 48.366 or 938.183 after the person reaches 18 years of age. Payment shall be due within 60 days after the billing date. If any payment has not been received within 60 days, the department of corrections may withhold aid payments in the amount due from the appropriation under s. 20.410 (3) (cd).

(b) Assessment of costs under par. (a) shall be made periodically on the basis of the per person per day cost estimate specified in par. (d) 2. and 3. Except as provided in pars. (bm), (c), and (cm), liability shall apply to county departments under s. 46.21, 46.22, or 46.23 in the county of the court exercising jurisdiction under chs. 48 and 938 for each person receiving services from the department of corrections under s. 48.366, 938.183, or 938.34 or the department of health services under s. 46.057 or 51.35 (3). Except as provided in pars. (bm), (c), and (cm), in multicounty court jurisdictions, the county of residency within the jurisdiction shall be liable for costs under this subsection. Assessment of costs under par. (a) shall also be made according to the general placement type or level of care provided, as defined by the department, and prorated according to the ratio of the amount designated under sub. (3) (c) to the total applicable estimated costs of care, services, and supplies provided by the department of corrections under ss. 48.366, 938.183, and 938.34 and the department of health services under s. 46.057 or 51.35 (3).

(bm) Notwithstanding par. (b), the county department under s. 46.21, 46.22 or 46.23 of the county of residency of a juvenile who has been adjudicated delinquent by a court of another county or by a court of another multicounty jurisdiction may voluntarily assume liability for the costs payable under par. (a). A county department may assume liability under this paragraph by a written agreement signed by the director of the county department that assumes liability under this paragraph and the director of the county department that is otherwise liable under par. (b).

(c) Notwithstanding pars. (a), (b), and (bm), the department of corrections shall pay, from the appropriation under s. 20.410 (3) (hm), (ho), or (hr), the costs of care, services, and supplies provided for each person receiving services under s. 46.057, 48.366, 51.35 (3), 938.183, or 938.34 who was under the guardianship of

the department of children and families pursuant to an order under ch. 48 at the time that the person was adjudicated delinquent.

(cm) 1. Notwithstanding pars. (a), (b), and (bm), the department shall transfer funds from the appropriation under s. 20.410 (3) (cg) to the appropriations under s. 20.410 (3) (hm), (ho), and (hr) for the purpose of reimbursing juvenile correctional facilities, secured residential care centers for children and youth, alternate care providers, aftercare supervision providers, and corrective sanctions supervision providers for costs incurred beginning on July 1, 1996, for the care of any juvenile 14 years of age or over who has been placed in a juvenile correctional facility based on a delinquent act that is a violation of s. 943.23 (1m) or (1r), 1999 stats., s. 948.35, 1999 stats., or s. 948.36, 1999 stats., or s. 939.32 (1) (a), 940.03, 940.06, 940.21, 940.225 (1), 940.305, 940.31, 941.327 (2) (b) 4., 943.02, 943.10 (2), 943.23 (1g), 943.32 (2), 948.02 (1), 948.025 (1), or 948.30 (2), that is a conspiracy to commit any of those violations, or that is an attempted violation of s. 943.32 (2) and for the care of any juvenile 10 years of age or over who has been placed in a juvenile correctional facility or secured residential care center for children and youth for attempting or committing a violation of s. 940.01 or for committing a violation of s. 940.02 or 940.05.

2. Notwithstanding pars. (a), (b), and (bm), the department shall transfer funds from the appropriation under s. 20.410 (3) (cg) to the appropriations under s. 20.410 (3) (hm), (ho), and (hr) for the purpose of reimbursing juvenile correctional facilities, secured residential care centers for children and youth, alternate care providers, aftercare supervision providers, and corrective sanctions supervision providers for costs incurred beginning on July 1, 1996, for the care of any juvenile 14 years of age or over and under 18 years of age who has been placed in a juvenile correctional facility under s. 48.366 based on a delinquent act that is a violation of s. 940.01, 940.02, 940.05, or 940.225 (1).

3. The per person daily reimbursement rate for juvenile correctional services under this paragraph shall be equal to the per person daily cost assessment to counties under par. (d) 2. and 3. for juvenile correctional services.

(d) 1. Except as provided in pars. (e) to (g), for services under s. 938.34, all payments and deductions made under this subsection and uniform fee collections made under s. 301.03 (18) shall be credited to the appropriation account under s. 20.410 (3) (hm).

1m. Except as provided in pars. (e) to (g), for services under ss. 48.366 and 938.183, all payments and deductions made under this subsection and uniform fee collections made under s. 301.03 (18) shall be credited to the appropriation account under s. 20.410 (3) (hm).

2. Beginning on July 1, 2007, and ending on June 30, 2008, the per person daily cost assessment to counties shall be \$259 for care in a Type 1 juvenile correctional facility, as defined in s. 938.02 (19), \$259 for care for juveniles transferred from a juvenile correctional institution under s. 51.35 (3), \$277 for care in a residential care center for children and youth, \$165 for care in a group home for children, \$67 for care in a foster home, \$132 for care in a treatment foster home, \$99 for departmental corrective sanctions services, and \$35 for departmental aftercare services.

3. Beginning on July 1, 2008, and ending on June 30, 2009, the per person daily cost assessment to counties shall be \$268 for care in a Type 1 juvenile correctional facility, as defined in s. 938.02 (19), \$268 for care for juveniles transferred from a juvenile correctional institution under s. 51.35 (3), \$296 for care in a residential care center for children and youth, \$172 for care in a group home for children, \$74 for care in a foster home, \$145 for care in a treatment foster home, \$101 for departmental corrective sanctions services, and \$37 for departmental aftercare services.

(dt) Except as provided in pars. (e) to (g), for serious juvenile offender services, all uniform fee collections under s. 301.03 (18) shall be credited to the appropriation account under s. 20.410 (3) (hm).

(e) For foster care, treatment foster care, group home care and institutional child care to delinquent juveniles under ss. 49.19 (10) (d), 938.48 (4) and (14) and 938.52 all payments and deductions made under this subsection and uniform fee collections under s. 301.03 (18) shall be credited to the appropriation account under s. 20.410 (3) (ho).

(ed) For foster care, treatment foster care, group home care and institutional child care to serious juvenile offenders under ss. 49.19 (10) (d), 938.48 (4) and (14) and 938.52 all uniform fee collections under s. 301.03 (18) shall be credited to the appropriation account under s. 20.410 (3) (ho).

(eg) For corrective sanctions services under s. 938.533 (2), all payments and deductions made under this subsection and uniform fee collections under s. 301.03 (18) shall be credited to the appropriation account under s. 20.410 (3) (hr).

(f) For services under s. 51.35 (3), payments made under par. (d) for services to juveniles who are ineligible for medical assistance under subch. IV of ch. 49 and uniform fee collections under s. 46.03 (18) shall be deposited in the appropriation under s. 20.435 (2) (gk) and all other payments made under this subsection shall be deposited in the general fund and treated as a nonappropriated receipt.

(g) For juvenile field and institutional aftercare services under ch. 938 and for the office of juvenile offender review, all payments and deductions made under this subsection and uniform fee collections under s. 301.03 (18) shall be credited to the appropriation account under s. 20.410 (3) (hm).

(6) PERFORMANCE STANDARDS. (a) The intent of this subsection is to develop criteria to assist the legislature in allocating funding, excluding funding for base allocations, from the appropriations under s. 20.410 (3) (cd) and (ko) for purposes described in this section.

(b) The department shall submit recommendations to the joint committee on finance regarding performance standards criteria to be used to determine whether counties are successfully diverting juveniles from juvenile correctional institutions and into less restrictive community programs and are successfully rehabilitating children adjudged delinquent on or before December 31, 1987. Beginning on January 1, 1988, counties shall provide information requested by the department in order to apply the criteria and assess performances.

(7) ALLOCATIONS OF FUNDS. Within the limits of the availability of federal funds and of the appropriations under s. 20.410 (3) (cd) and (ko), the department shall allocate funds for community youth and family aids for the period beginning on July 1, 2007, and ending on June 30, 2009, as provided in this subsection to county departments under ss. 46.215, 46.22, and 46.23 as follows:

(a) For community youth and family aids under this section, amounts not to exceed \$49,395,100 for the last 6 months of 2007, \$99,790,200 for 2008, and \$50,395,100 for the first 6 months of 2009.

(b) Of the amounts specified in par. (a), the department shall allocate \$2,000,000 for the last 6 months of 2007, \$4,000,000 for 2008, and \$2,000,000 for the first 6 months of 2009 to counties based on each of the following factors weighted equally:

1. Each county's proportion of the total statewide juvenile population for the most recent year for which that information is available.

2. Each county's proportion of the total Part I juvenile arrests reported statewide under the uniform crime reporting system of the office of justice assistance during the most recent 3-year period for which that information is available.

3. Each county's proportion of the number of juveniles statewide who are placed in a juvenile correctional facility or a secured residential care center for children and youth during the most recent 3-year period for which that information is available.

(bm) Of the amounts specified in par. (a), the department shall allocate \$5,250,000 for the last 6 months of 2007, \$11,500,000 for 2008, and \$6,250,000 for the first 6 months of 2009 to counties based on each county's proportion of the number of juveniles statewide who are placed in a juvenile correctional facility during the most recent 3-year period for which that information is available.

(c) Of the amounts specified in par. (a), the department shall allocate \$1,053,200 for the last 6 months of 2007, \$2,106,500 for 2008, and \$1,053,300 for the first 6 months of 2009 to counties based on each of the factors specified in par. (b) 1. to 3. weighted equally, except that no county may receive an allocation under this paragraph that is less than 93% nor more than 115% of the amount that the county would have received under this paragraph if the allocation had been distributed only on the basis of the factor specified in par. (b) 3.

(e) For emergencies related to community youth and family aids under this section, amounts not to exceed \$125,000 for the last 6 months of 2007, \$250,000 for 2008, and \$125,000 for the first 6 months of 2009. A county is eligible for payments under this paragraph only if it has a population of not more than 45,000.

(h) For counties that are participating in the corrective sanctions program under s. 938.533 (2), \$1,062,400 in the last 6 months of 2007, \$2,124,800 in 2008, and \$1,062,400 in the first 6 months of 2009 for the provision of corrective sanctions services for juveniles from that county. In distributing funds to counties under this paragraph, the department shall determine a county's distribution by dividing the amount allocated under this paragraph by the number of slots authorized for the program under s. 938.533 (2) and multiplying the quotient by the number of slots allocated to that county by agreement between the department and the county. The department may transfer funds among counties as necessary to distribute funds based on the number of slots allocated to each county.

(8) ALCOHOL AND OTHER DRUG ABUSE TREATMENT. From the amount of the allocations specified in sub. (7) (a), the department shall allocate \$666,700 in the last 6 months of 2007, \$1,333,400 in 2008, and \$666,700 in the first 6 months of 2009 for alcohol and other drug abuse treatment programs.

History: 1995 a. 27 ss. 6363p, 9126 (19); 1995 a. 77, 352, 416, 417; 1997 a. 27, 35, 237, 252; 1999 a. 9, 32; 2001 a. 16, 59, 109; 2003 a. 33; 2005 a. 25, 344; 2007 a. 20 ss. 3112 to 3124; 9121 (6) (a); 2007 a. 97.

301.263 Community intervention program. (1) From the appropriation under s. 20.410 (3) (f), the department shall distribute \$3,750,000 in each year to counties for early intervention services for first offenders and for intensive community-based intervention services for seriously chronic offenders.

(2) To determine eligibility for a payment under sub. (1), the department shall require a county to submit a plan for the expenditure of that payment that ensures that the county targets the programs to be funded under that payment appropriately.

(3) The department shall distribute 33% of the amounts distributed under sub. (1) based on each county's proportion of the violent Part I juvenile arrests reported statewide under the uniform crime reporting system of the office of justice assistance in the department of administration, during the most recent 2-year period for which that information is available. The department shall distribute 33% of the amounts distributed under sub. (1) based on each county's proportion of the number of juveniles statewide who are placed in a juvenile correctional facility or a secured residential care center for children and youth during the most recent 2-year period for which that information is available. The department shall distribute 34% of the amounts distributed under sub. (1) based on each county's proportion of the total Part I juvenile arrests reported statewide under the uniform crime reporting system of the office of justice assistance, during the most recent 2-year period for which that information is available.

History: 1995 a. 27, 77; 1997 a. 35; 1999 a. 9; 2005 a. 344.

301.27 Meal and other charges; vending stands; commissary; and butter and cheese. (1) **CHARGES.** In compliance with the compensation plan established under s. 230.12 (3), the department may make and determine charges for meals, living quarters, laundry and other services furnished to employees of the state correctional institutions and members of the employee's family maintained as such. All moneys received from each person on account of these services shall be used for operation of the institutions under s. 20.410 (1) (a) and (3) (a), (hm) and (j). If a chaplain employed in any institution administered by the department is not furnished a residence by the state, \$1,800 or 20% of the chaplain's salary, whichever is greater, is designated as his or her housing allowance.

(2) **VENDING STANDS.** The department shall establish and maintain a revolving fund not exceeding \$100,000 in any of the state institutions administered by the department, for the education, recreation and convenience of the patients, inmates and employees, to be used for the operation of vending stands, canteen operations, reading clubs, musical organizations, religious programs, athletics and similar projects. The funds are exempt from s. 20.906, but are subject to audit by the department and the legislative audit bureau in its discretion.

(3) **COMMISSARY.** With the approval of the governor and the director of personnel, the department, by rule, may provide employees in its institutions with laundry, food, housing and necessary furnishings.

(4) **BUTTER AND CHEESE.** No butter or cheese not made wholly and directly from pure milk or cream, salt and harmless coloring matter may be used in any of the institutions of the department, except for the institution authorized under s. 301.046 (1) or a Type 2 prison.

History: 1989 a. 31; 1991 a. 39; 1995 a. 27; 1999 a. 9.

301.28 Training of correctional officers. (1) In this section, "correctional officer" means any person classified as a correctional officer employed by the state whose principal duty is the supervision of inmates at a prison, as defined in s. 302.01.

(2) (a) Correctional officers serving under permanent appointment prior to July 31, 1981 are not required to meet any requirement under par. (b) as a condition of continued employment. Failure of any such correctional officer to fulfill those requirements does not make that person ineligible for any promotional examination for which he or she is otherwise eligible. Those correctional officers may voluntarily participate in this program.

(b) No person may be permanently appointed as a correctional officer unless the person has satisfactorily completed a preservice training program approved by the department.

History: 1981 c. 20; 1989 a. 31 s. 970; Stats. 1989 s. 301.28; 1993 a. 377; 1995 a. 27.

301.285 In-service and work experience training. The department may conduct a program of in-service training and staff development and, in cooperation with educational institutions, provide facilities for work experience for students, including subsistence.

History: 1989 a. 31.

301.286 State identification upon release from prison. Before an individual is released from prison upon completion of his or her sentence or to parole or extended supervision, the department shall determine if the individual has an operator's license or a state identification card under ch. 343. If the individual has neither, the department shall assist the individual in applying for a state identification card under s. 343.50. The department shall determine if the individual is able to pay all or a portion of the fee under s. 343.50 (5) from the individual's general fund account. The department shall pay any portion of the fee the individual is unable to pay from the individual's general fund account.

History: 2007 a. 20.

301.287 Correctional officer overtime. The department shall maintain a central monitoring system to record the amount of overtime worked by correctional officers.

History: 1991 a. 39.

301.29 Bonds of employees; police powers; investigation of complaints. (2) The superintendents of all the state correctional institutions, and the employees under them to whom they delegate police power, may arrest any person within or upon the grounds of the institutions whom they have reason to believe guilty of any offense against the laws or regulations governing the institutions; and for that purpose they shall possess the powers of constables.

(3) The department shall investigate complaints against any institution under its jurisdiction or against the officers or employees of the institutions. For that purpose, the secretary and such officers and employees as the secretary authorizes may summon and swear witnesses, take testimony and compel the production of books and papers. On its own initiative, the department may investigate the affairs of any institution. Any written communication or complaint addressed to the secretary by any inmate, employee or subordinate of an institution shall be immediately forwarded unopened to the addressee.

History: 1989 a. 31; 1997 a. 289.

301.295 Recruitment of department employees. The department may not use billboards or similar structures to recruit its employees.

History: 2001 a. 16.

301.30 Inmate wages, allowances and release payments. The department may pay a wage or an allowance and a release payment to inmates at its institutions. The department shall prescribe the amounts of pay and such hours, health and other conditions in connection with employment as are reasonable.

History: 1989 a. 31.

301.31 Wages to prisoners. The department may provide for assistance of prisoners on their discharge; for the support of their families while the prisoners are in confinement; or for the payment, either in full or ratably, of their obligations acknowledged by them in writing or which have been reduced to judgment by the allowance of moderate wages, to be paid from the operation, maintenance, farm and construction appropriations of the institution in which they are confined. Until the prisoner's final discharge, the funds arising from the wages shall be under the control of the officer in charge of the institution and shall be used for the benefit of the prisoner, the prisoner's family and other obligations specified in this section. Earnings by inmates working in the prison industries and the retention and distribution thereof shall be governed by ss. 303.01 (4) and (8) and 303.06 (2).

History: 1989 a. 31; 1991 a. 269.

301.315 Corrections programs report. The department shall report to the joint committee on finance with a proposal to address negative cash balances associated with closed industries or other corrections programs through the use of moneys appropriated under s. 20.410 as of the date of the proposal.

History: 1989 a. 31.

301.32 Property of prisoners, residents and probationers. (1) PROPERTY DELIVERED TO WARDEN OR SUPERINTENDENT; CREDIT AND DEBIT. All money and other property delivered to an employee of any state correctional institution for the benefit of a prisoner or resident shall be delivered to the warden or superintendent, who shall enter the property upon his or her accounts to the credit of the prisoner or resident. The property may be used only under the direction and with the approval of the superintendent or warden and for the crime victim and witness assistance surcharge under s. 973.045 (4), the delinquency victim and witness assistance surcharge under s. 938.34 (8d) (c), the deoxyribo-

nucleic acid analysis surcharge under s. 973.046, the child pornography surcharge under s. 973.042, the drug offender diversion surcharge under s. 973.043, or the benefit of the prisoner or resident. If the money remains uncalled for for one year after the prisoner's or resident's death or departure from the state correctional institution, the superintendent shall deposit it in the general fund. If any prisoner or resident leaves property, other than money, uncalled for at a state correctional institution for one year, the superintendent shall sell the property and deposit the proceeds in the general fund, donate the property to a public agency or private, nonprofit organization or destroy the property. If any person satisfies the department, within 5 years after the deposit, of his or her right to the deposit, the department shall direct the department of administration to draw its warrant in favor of the claimant and it shall charge the same to the appropriation made by s. 20.913 (3) (bm).

(2) CENTRAL RECEPTION UNIT; EXCEPTION. Notwithstanding sub. (1) and s. 302.13, an inmate account need not be opened or maintained for an inmate placed at the central reception unit at the Dodge Correctional Institution.

(3) PROPERTY DELIVERED TO EMPLOYEE. (a) All money or other property paid or delivered to a probation, extended supervision and parole agent or other employee of the department by or for the benefit of any person on probation, extended supervision or parole shall be immediately transmitted to the department and it shall enter the same upon its books to his or her credit. The property shall be used only under the direction of the department.

(b) If the person on probation, extended supervision or parole absconds, the money shall be credited to the revolving fund created by s. 304.075; and other property if not called for within one year shall be sold by the department and the proceeds shall be credited to the fund.

(c) If any person, within 5 years after such crediting of funds, satisfies the department that he or she is entitled thereto, the department shall certify the amount thereof to the department of administration for payment to the claimant from the appropriation made by s. 20.410 (1) (g).

History: 1989 a. 31 ss. 980, 981, 2569; 1991 a. 189, 315; 1993 a. 16; 1995 a. 27, 417; 1997 a. 27, 283, 289; 2001 a. 103; 2005 a. 25, 433.

Cross Reference: See also ch. DOC 309, Wis. adm. code.

This section does not create a property interest in items prohibited by administrative rule because these items have not been delivered to prison employees for the benefit of inmates. Prohibited items are contraband subject to seizure. Escobar v. Landwehr, 837 F. Supp. 284 (1993).

301.325 Prisoner reimbursement to the state. The department may charge a prisoner for some or all of the costs to the department of the prisoner's incarceration. The department may collect from the inmate during his or her incarceration or after his or her release or both. Upon the request of the department, the attorney general may bring a civil action to recover costs under this section that the department has been unable to collect. The department may not recover under this section for any costs already recovered as otherwise provided in chs. 301 to 303. The department shall promulgate rules providing a method of charging under this section that is based on a prisoner's ability to pay and providing procedures for collection of the costs.

History: 1995 a. 27.

301.328 Judgment for litigation loans to prisoners. (1) In this section, "litigation loan" means a loan made to a prisoner by the department to pay for paper, photocopying, postage or other expenses associated with litigation commenced by the prisoner.

(2) If a prisoner fails to repay a litigation loan to the department, the warden of the institution where the prisoner is incarcerated, imprisoned, confined or detained may submit a certification under oath to the clerk of circuit court in the county where the institution is located. The certification shall state the amount of litigation loans unpaid, the name and location of the prisoner and such other information as the court considers necessary. The court shall order that the amount certified by the warden be a judgment

on behalf of the state and against the prisoner if the prisoner fails to submit a written objection to the court within 20 days after the court receives the certification from the warden. If the prisoner timely submits a written objection to the certification, the court shall consider the objection to be a complaint in a civil action and proceed under the rules of procedure under ch. 799, without requiring the service of a summons or the payment of filing fees.

(3) At the same time that the warden submits the certification to the court, the warden shall provide the prisoner with a copy of the certification. The warden shall attach to the certification provided to the prisoner a notice informing the prisoner of all of the following:

(a) That if the prisoner fails to submit a written objection to the court within 20 days after the court receives the certification from the warden, the court shall order that the amount certified by the warden be a judgment on behalf of the state and against the prisoner.

(b) The name and address of the circuit court where the certification was submitted.

(c) That if the prisoner timely objects to the certification, the objection will be considered a complaint for purposes of the commencement of a civil suit under ch. 799.

(d) That the prisoner is required to submit a copy of the objection to the warden at the time he or she submits the objection to the clerk of circuit court.

History: 1997 a. 133.

301.33 Freedom of worship; religious ministrations.

(1) Subject to reasonable exercise of the privilege, members of the clergy of all religious faiths shall have an opportunity, at least once each week, to conduct religious services within the state correctional institutions. Attendance at the services is voluntary.

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

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

History: 1989 a. 31.

The state must make copies of the Quran available to prisoners to the same extent that Bibles are made available. *Pitts v. Knowles*, 339 F. Supp. 1183 (1972).

301.335 Treatment records. Section 51.30 applies to treatment records, as defined in s. 51.30 (1) (b), maintained by the department of corrections in regard to children adjudged delinquent. The department has the same authority, including rule-making authority, with regard to treatment records maintained by the department that is granted to the department of health services under s. 51.30.

History: 1989 a. 31; 1995 a. 27 s. 9126 (19); 2007 a. 20 s. 9121 (6) (a).

301.35 Law enforcement officer access to department records. (1) In this section:

(a) "Law enforcement officer" has the meaning given in s. 165.85 (2) (c).

(b) "Record" has the meaning given in s. 19.32 (2).

(2) The department shall allow a law enforcement officer access to a departmental record if the record pertains to any of the following persons who resides or is planning to reside in the officer's territorial jurisdiction:

(a) A probationer.

(b) A parolee.

(bm) A person on extended supervision.

(c) A prisoner confined under s. 301.046.

(d) A participant in the intensive sanctions program under s. 301.048.

(e) A participant in the serious juvenile offender program under s. 938.538.

History: 1993 a. 98; 1995 a. 77; 1997 a. 283.

301.36 General supervision and inspection by department. (1) GENERAL AUTHORITY. The department shall investi-

gate and supervise all of the state prisons under s. 302.01, all juvenile correctional facilities, all secured residential care centers for children and youth, and all juvenile detention facilities and familiarize itself with all of the circumstances affecting their management and usefulness.

(2) PRISONS. The department shall visit all places in which persons convicted or suspected of crime are confined, and ascertain their arrangement for the separation of the hardened criminals from juvenile offenders and persons suspected of crime or detained as witnesses; collect statistics concerning the inmates, their treatment, employment and reformation; and collect information of other facts and considerations affecting the increase or decrease of crime.

(3) INSPECTIONS. The department shall inquire into the methods of treatment, instruction, government and management of inmates of the institutions mentioned in this section; the conduct of their trustees, managers, directors, superintendents and other officers and employees; the condition of the buildings, grounds and all other property pertaining to the institutions, and all other matters pertaining to their usefulness and management; and recommend to the officers in charge such changes and additional provisions as it deems proper.

(4) FREQUENCY OF INSPECTIONS. The department shall inspect and investigate each institution at least annually and, when directed by the governor, it shall conduct a special investigation into an institution's management, or anything connected with its management, and report to the governor the testimony taken, the facts found and conclusions drawn.

(5) ENFORCEMENT BY ATTORNEY GENERAL AND DISTRICT ATTORNEYS. Upon request of the department, the attorney general or the district attorney serving the proper county shall aid in any investigation, inspection, hearing or trial had under this chapter or those sections of ch. 938 relating to powers of the department, and shall institute and prosecute all necessary actions or proceedings for the enforcement of those provisions and for the punishment of violations of those provisions. The attorney general or district attorney so requested shall report or confer with the department regarding the request, within 30 days after receipt of the request.

(6) OPPORTUNITY TO INSPECT. All trustees, managers, directors, superintendents and other officers or employees of the institutions shall at all times afford to every member of the department and its agents, unrestrained facility for inspection of and free access to all parts of the buildings and grounds and to all books and papers of the institutions; and shall give, either verbally or in writing, such information as the department requires. Any person who violates this subsection shall forfeit not less than \$10 nor more than \$100.

(7) TESTIMONIAL POWER; EXPENSES. The director or any person delegated by the director may administer oaths, take testimony and cause depositions to be taken. All expenses of the investigations, including fees of officers and witnesses, shall be charged to the appropriation for the department.

(8) STATISTICS TO BE FURNISHED. Wherever the department is required to collect statistics, the person or agency shall furnish the required statistics on request.

History: 1989 a. 31, 107; 1995 a. 27, 77; 1999 a. 9; 2005 a. 344.

Cross Reference: See also ss. DOC 346.01, 348.01, 349.01, and 350.01, Wis. adm. code.

301.37 County buildings; establishment, approval, inspection. (1) The department shall fix reasonable standards and regulations for the design, construction, repair, and maintenance of all houses of correction, reforestation camps maintained

under s. 303.07, jails, as defined in s. 302.30, extensions of jails under s. 59.54 (14) (g), rehabilitation facilities under s. 59.53 (8), lockup facilities, as defined in s. 302.30, work camps under s. 303.10, Huber facilities under s. 303.09, and, after consulting with the department of children and families, all juvenile detention facilities, with respect to their adequacy and fitness for the needs which they are to serve.

(2) The selection and purchase of the site, and the plans, specifications and erection of buildings, for the institutions is subject to the review and approval of the department. Department review shall include review of the proposed program to be carried out by the institution.

(3) Before any such building is occupied, and at least annually thereafter, the department shall inspect each institution with respect to safety, sanitation, adequacy and fitness, report to the authorities conducting the institution any deficiency found and order the necessary work to correct it or a new building. If within 6 months thereafter the work is not commenced, or not completed within a reasonable period thereafter, to the satisfaction of the department, the department shall suspend the allowance of state aid for, and prohibit the use of, the building until the order is complied with.

(4) The department's standards and regulations under sub. (1) for county jails apply to tribal jails used under s. 302.445. At least annually, the department shall inspect each such tribal jail with respect to safety, sanitation, adequacy and fitness, report to the sheriff and the tribal jail authorities regarding any deficiency found and order the necessary work to correct it. If within 6 months thereafter the work is not commenced, or not completed within a reasonable period thereafter to the satisfaction of the department, the department shall prohibit the use of the tribal jail for purposes of s. 302.445 until the order is complied with.

(5) The department's standards and regulations under sub. (1) for juvenile detention facilities apply to private juvenile detention facilities used under s. 938.222. At least annually, the department shall inspect each such private juvenile detention facility with respect to safety, sanitation, adequacy, and fitness, report to the county board and the private entity operating the private juvenile detention facility regarding any deficiency found and order the necessary work to correct it. If within 6 months thereafter the work is not commenced, or not completed within a reasonable period thereafter to the satisfaction of the department, the department shall prohibit the use of the private juvenile detention facility for purposes of s. 938.222 until the order is complied with.

History: 1989 a. 31, 107; 1993 a. 48; 1995 a. 27 s. 9126 (19); 1995 a. 201, 281; 1997 a. 27, 35; 1999 a. 9; 2005 a. 344; 2007 a. 20.

Cross Reference: See also ss. DOC 346.01, 349.01, and 350.01, Wis. adm. code.

301.38 Notification of victims and witnesses about prisoner escapes. (1) In this section:

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

(am) "Prisoner" has the meaning given in s. 301.01 (2), but does not include any person in the intensive sanctions program under s. 301.048 or any person who is imprisoned as an alternative to the revocation of probation, extended supervision or parole.

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

(2) If a prisoner escapes from a Type 1 prison, the department shall make a reasonable attempt 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 prisoner 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 prisoner in any court proceeding involving the offense.

(3) The department shall make a reasonable effort to notify the person by telephone as soon as possible after the escape and after any subsequent apprehension of the prisoner.

(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, telephone number and mailing address, the name of the applicable prisoner and any other information that the department determines is necessary. The department shall provide the cards, with-

out 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 telephone numbers and mailing addresses of these persons are not subject to inspection or copying under s. 19.35 (1).

History: 1995 a. 74; 1997 a. 181, 283.

301.45 Sex offender registration. (1d) DEFINITIONS. In this section:

(a) "Employed or carrying on a vocation" means employment or vocational activity that is full-time or part-time for a continuous period of time exceeding 14 days or for an aggregate period of time exceeding 30 days during any calendar year, whether financially compensated, volunteered or for the purpose of government or educational benefit.

(am) "Found to have committed a sex offense by another jurisdiction" means any of the following:

1. Convicted or found not guilty or not responsible by reason of mental disease or defect for a violation of a law of another state that is comparable to a sex offense.

2. Convicted or found not guilty by reason of mental disease or defect for a violation of a federal law that is comparable to a sex offense.

3. Convicted or found not guilty or not responsible by reason of mental disease or defect in the tribal court of a federally recognized American Indian tribe or band for a violation that is comparable to a sex offense.

4. Sentenced or found not guilty by reason of mental disease or defect by a court martial for a violation that is comparable to a sex offense.

(b) "Sex offense" means a violation, or the solicitation, conspiracy, or attempt to commit a violation, of s. 940.22 (2), 940.225 (1), (2) or (3), 944.06, 948.02 (1) or (2), 948.025, 948.05, 948.051, 948.055, 948.06, 948.07 (1) to (4), 948.075, 948.08, 948.085, 948.095, 948.11 (2) (a) or (am), 948.12, 948.13, or 948.30, of s. 940.302 (2) if s. 940.302 (2) (a) 1. b. applies, or of s. 940.30 or 940.31 if the victim was a minor and the person who committed the violation was not the victim's parent.

NOTE: Par. (b) is shown as affected by 2 acts of the 2007 Wisconsin legislature and as merged by the legislative reference bureau under s. 13.92 (2) (i).

(c) "Student" means a person who is enrolled on a full-time or part-time basis in any public or private educational institution, including a secondary school, a business, trade, technical or vocational school or an institution of higher education.

(1g) WHO IS COVERED. Except as provided in subs. (1m) and (1p), a person shall comply with the reporting requirements under this section if he or she meets one or more of the following criteria:

(a) Is convicted or adjudicated delinquent on or after December 25, 1993, for a sex offense.

(b) Is in prison, a juvenile correctional facility, or a secured residential care center for children and youth or is on probation, extended supervision, parole, supervision, or aftercare supervision on or after December 25, 1993, for a sex offense.

(bm) Is in prison, a juvenile correctional facility, or a secured residential care center for children and youth or is on probation, extended supervision, parole, supervision, or aftercare supervision on or after December 25, 1993, for a violation, or for the solicitation, conspiracy, or attempt to commit a violation, of a law of this state that is comparable to a sex offense.

(c) Is found not guilty or not responsible by reason of mental disease or defect on or after December 25, 1993, and committed under s. 51.20 or 971.17 for a sex offense.

(d) Is in institutional care or on conditional transfer under s. 51.35 (1) or conditional release under s. 971.17 on or after December 25, 1993, for a sex offense.

(dd) Is in institutional care or on conditional transfer under s. 51.35 (1) or conditional release under s. 971.17 on or after December 25, 1993, for a violation, or for the solicitation, conspiracy or

attempt to commit a violation, of a law of this state that is comparable to a sex offense.

(dh) Is on parole, extended supervision, or probation in this state from another state under s. 304.13 (1m), 304.135, or 304.16 on or after December 25, 1993, for a violation, or for the solicitation, conspiracy, or attempt to commit a violation, of the law of another state that is comparable to a sex offense.

(dj) Is a juvenile in this state on or after May 9, 2000, and is on supervision in this state from another state pursuant to the interstate compact on the placement of juveniles under s. 938.988 for a violation of a law of another state that is comparable to a sex offense.

(dL) Is placed on lifetime supervision under s. 939.615 on or after June 26, 1998.

(dp) Is in institutional care under, or on parole from, a commitment for specialized treatment under ch. 975 on or after December 25, 1993.

(dt) Is in institutional care or on supervised release under ch. 980 on or after June 2, 1994.

(e) Is ordered by a court under s. 51.20 (13) (ct) 1m., 938.34 (15m) (am), 938.345 (3), 971.17 (1m) (b) 1m. or 973.048 (1m) to comply with the reporting requirements under this section.

(em) Was required to register under s. 301.45 (1) (a), 1997 stats., based on a finding that he or she was in need of protection or services and is ordered to continue complying with the requirements of this section by a court acting under 1999 Wisconsin Act 89, section 107 (1) (e).

(f) On or after December 1, 2000, is registered as a sex offender in another state or is registered as a sex offender with the federal bureau of investigation under 42 USC 14072 and is a resident of this state, a student in this state or employed or carrying on a vocation in this state.

(g) Has been found to have committed a sex offense by another jurisdiction and, on or after December 1, 2000, is a resident of this state, a student in this state or employed or carrying on a vocation in this state. This paragraph does not apply if 10 years have passed since the date on which the person was released from prison or placed on parole, probation, extended supervision or other supervised release for the sex offense.

(1m) EXCEPTION TO REGISTRATION REQUIREMENT; UNDERAGE SEXUAL ACTIVITY. (a) A person is not required to comply with the reporting requirements under this section if all of the following apply:

1. The person meets the criteria under sub. (1g) (a) to (dd) based on any violation, or on the solicitation, conspiracy or attempt to commit any violation, of s. 948.02 (1) or (2), 948.025, or 948.085 (2).

1g. The violation, or the solicitation, conspiracy or attempt to commit the violation, of s. 948.02 (1) or (2), 948.025, or 948.085 (2) did not involve sexual intercourse, as defined in s. 948.01 (6), either by the use or threat of force or violence or with a victim under the age of 12 years.

2. At the time of the violation, or of the solicitation, conspiracy or attempt to commit the violation, of s. 948.02 (1) or (2), 948.025, or 948.085 (2), the person had not attained the age of 19 years and was not more than 4 years older or not more than 4 years younger than the child.

3. It is not necessary, in the interest of public protection, to require the person to comply with the reporting requirements under this section.

(b) If a person believes that he or she is not required under par. (a) to comply with the reporting requirements under this section and the person is not before the court under s. 51.20 (13) (ct), 938.34 (15m), 971.17 (1m) (b) or 973.048, the person may move a court to make a determination of whether the person satisfies the criteria specified in par. (a). A motion made under this paragraph shall be filed with the circuit court for the county in which the per-

son was convicted, adjudicated delinquent or found not guilty or not responsible by reason of mental disease or defect.

(be) A person who files a motion under par. (b) or s. 51.20 (13) (ct) 2m., 938.34 (15m) (bm), 971.17 (1m) (b) 2m. or 973.048 (2m) requesting a determination of whether the person is required to comply with the reporting requirements under this section shall send a copy of the motion to the district attorney for the county in which the motion is filed. The district attorney shall make a reasonable attempt to contact the victim of the crime that is the subject of the person's motion to inform the victim of his or her right to make or provide a statement under par. (bv).

(bm) A court shall hold a hearing on a motion made by a person under par. (b) or s. 51.20 (13) (ct) 2m., 938.34 (15m) (bm), 971.17 (1m) (b) 2m. or 973.048 (2m) requesting a determination of whether the person is required to comply with the reporting requirements under this section. The district attorney who receives a copy of a motion under par. (be) may appear at the hearing.

(bv) Before deciding a motion filed under par. (b) or s. 51.20 (13) (ct) 2m., 938.34 (15m) (bm), 971.17 (1m) (b) 2m. or 973.048 (2m) requesting a determination of whether the person is required to comply with the reporting requirements under this section, the court shall allow the victim of the crime that is the subject of the motion to make a statement in court at the hearing under par. (bm) or to submit a written statement to the court. A statement under this paragraph must be relevant to whether the person satisfies the criteria specified in par. (a).

(d) 1. Before deciding a motion filed by a person under par. (b) or s. 51.20 (13) (ct) 2m., 938.34 (15m) (bm), 971.17 (1m) (b) 2m. or 973.048 (2m) requesting a determination of whether the person is required to comply with the reporting requirements under this section, a court may request the person to be examined by a physician, psychologist or other expert approved by the court. If the person refuses to undergo an examination requested by the court under this subdivision, the court shall deny the person's motion without prejudice.

2. If a person is examined by a physician, psychologist or other expert under subd. 1., the physician, psychologist or other expert shall file a report of his or her examination with the court, and the court shall provide copies of the report to the person and, if he or she requests a copy, to the district attorney. The contents of the report shall be confidential until the physician, psychologist or other expert has testified at the hearing held under par. (bm). The report shall contain an opinion regarding whether it would be in the interest of public protection to have the person register under this section and the basis for that opinion.

3. A person who is examined by a physician, psychologist or other expert under subd. 1. is responsible for paying the cost of the services provided by the physician, psychologist or other expert, except that if the person is indigent the cost of the services provided by the physician, psychologist or other expert shall be paid by the county. If the person claims or appears to be indigent, the court shall refer the person to the authority for indigency determinations under s. 977.07 (1), except that the person shall be considered indigent without another determination under s. 977.07 (1) if the person is represented by the state public defender or by a private attorney appointed under s. 977.08.

(e) At the hearing held under par. (bm), the person who filed the motion under par. (b) or s. 51.20 (13) (ct) 2m., 938.34 (15m) (bm), 971.17 (1m) (b) 2m. or 973.048 (2m) has the burden of proving by clear and convincing evidence that he or she satisfies the criteria specified in par. (a). In deciding whether the person has satisfied the criterion specified in par. (a) 3., the court may consider any of the following:

1. The ages, at the time of the violation, of the person and of the child with whom the person had sexual contact or sexual intercourse.

2. The relationship between the person and the child with whom the person had sexual contact or sexual intercourse.
3. Whether the violation resulted in bodily harm, as defined in s. 939.22 (4), to the child with whom the person had sexual contact or sexual intercourse.
4. Whether the child with whom the person had sexual contact or sexual intercourse suffered from a mental illness or mental deficiency that rendered the child temporarily or permanently incapable of understanding or evaluating the consequences of his or her actions.
5. The probability that the person will commit other violations in the future.
6. The report of the examination conducted under par. (d).
7. Any other factor that the court determines may be relevant to the particular case.

(1p) EXCEPTION TO REGISTRATION REQUIREMENT; EXPUNGEMENT OF INVASION OF PRIVACY ADJUDICATION OR CONVICTION. If a person is covered under sub. (1g) based solely on an order that was entered under s. 938.34 (15m) (am) or 973.048 (1m) in connection with a delinquency adjudication or a conviction for a violation of s. 942.08 (2) (b), (c), or (d), the person is not required to comply with the reporting requirements under this section if the delinquency adjudication is expunged under s. 938.355 (4m) (b) or if the conviction is expunged under s. 973.015 (2).

(2) WHAT INFORMATION MUST BE PROVIDED, BY WHOM AND WHEN. (a) The department shall maintain a registry of all persons subject to sub. (1g). The registry shall contain all of the following with respect to each person:

1. The person's name, including any aliases used by the person.
2. Information sufficient to identify the person, including date of birth, gender, race, height, weight and hair and eye color.
3. The statute the person violated that subjects the person to the requirements of this section, the date of conviction, adjudication or commitment, and the county or, if the state is not this state, the state in which the person was convicted, adjudicated or committed.
4. Whichever of the following is applicable:
 - a. The date the person was placed on probation, supervision, conditional release, conditional transfer or supervised release.
 - b. The date the person was or is to be released from confinement, whether on parole, extended supervision or otherwise, or discharged or terminated from a sentence or commitment.
 - c. The date the person entered the state.
 - d. The date the person was ordered to comply with this section.
5. The address at which the person is or will be residing.
6. The name of the agency supervising the person, if applicable, and the office or unit and telephone number of the office or unit that is responsible for the supervision of the person.
8. The name and address of the place at which the person is or will be employed.
9. The name and location of any school in which the person is or will be enrolled.
- 9m. For a person covered under sub. (1g) (dt), a notation concerning the treatment that the person has received for his or her mental disorder, as defined in s. 980.01 (2).
10. The most recent date on which the information in the registry was updated.

(b) If the department has supervision over a person subject to sub. (1g), the department shall enter into the registry under this section the information specified in par. (a) concerning the person.

(c) If the department of health services has supervision over a person subject to sub. (1g), that department, with the assistance of the person, shall provide the information specified in par. (a) to the department of corrections in accordance with the rules under sub. (8).

(d) A person subject to sub. (1g) who is not under the supervision of the department of corrections or the department of health services shall provide the information specified in par. (a) to the department of corrections in accordance with the rules under sub. (8). If the person is unable to provide an item of information specified in par. (a), the department of corrections may request assistance from a circuit court or the department of health services in obtaining that item of information. A circuit court and the department of health services shall assist the department of corrections when requested to do so under this paragraph.

(e) The department of health services shall provide the information required under par. (c) or the person subject to sub. (1g) shall provide the information required under par. (d) in accordance with whichever of the following is applicable:

1. Within 10 days after the person is placed on probation, supervision, aftercare supervision, conditional release or supervised release.

1m. If the person is being released from a prison sentence and placed on parole or extended supervision, before he or she is released.

2. If the person is on parole, extended supervision, probation, or other supervision from another state under s. 304.13 (1m), 304.135, 304.16, or 938.988, before the person enters this state.

2m. If the person is registered as a sex offender in another state or is registered as a sex offender with the federal bureau of investigation under 42 USC 14072, within 10 days after the person enters this state to take up residence or begin school, employment or his or her vocation.

2t. If the person has been found to have committed a sex offense by another jurisdiction and subd. 2m. does not apply, within 10 days after the person enters this state to take up residence or begin school, employment or his or her vocation.

3. No later than 10 days before the person is terminated or discharged from a commitment.

4. If the person is being released from prison because he or she has reached the expiration date of his or her sentence, no later than 10 days before being released from prison.

5. If subd. 1., 1m., 2., 2m., 2t., 3. or 4. does not apply, within 10 days after the person is sentenced or receives a disposition.

(f) The department may require a person covered under sub. (1g) to provide the department with his or her fingerprints, a recent photograph of the person and any other information required under par. (a) that the person has not previously provided. The department may require the person to report to a place designated by the department, including an office or station of a law enforcement agency, for the purpose of obtaining the person's fingerprints, the photograph or other information.

(g) The department may send a person subject to sub. (1g) a notice or other communication requesting the person to verify the accuracy of any information contained in the registry. A person subject to sub. (1g) who receives a notice or communication sent by the department under this paragraph shall, no later than 10 days after receiving the notice or other communication, provide verification of the accuracy of the information to the department in the form and manner specified by the department.

(h) The department shall notify any person who is subject to sub. (1g) of the prohibition under s. 948.14.

(3) ANNUAL REGISTRATION REQUIREMENTS. (a) A person covered under sub. (1g) is subject to the annual registration requirements under par. (b) as follows:

1. If the person has been placed on probation or supervision, he or she is subject to this subsection upon being placed on probation or supervision.

1m. If the person is on parole, extended supervision, probation, or other supervision from another state under s. 304.13 (1m), 304.135, 304.16, or 938.988, he or she is subject to this subsection upon entering this state.

1r. If the person is registered as a sex offender in another state or is registered as a sex offender with the federal bureau of investigation under 42 USC 14072, within 10 days after the person enters this state to take up residence or begin school, employment or his or her vocation.

1t. If the person has been found to have committed a sex offense by another jurisdiction and subd. 1r. does not apply, within 10 days after the person enters this state to take up residence or begin school, employment or his or her vocation.

2. If the person has been sentenced to prison or placed in a juvenile correctional facility or a secured residential care center for children and youth, he or she is subject to this subsection upon being released on parole, extended supervision, or aftercare supervision.

2m. If the person has been sentenced to prison and is being released from prison because he or she has reached the expiration date of his or her sentence, before being released from prison.

3. If the person has been committed under s. 51.20 or 971.17, he or she is subject to this subsection upon being placed on conditional release under s. 971.17 or on a conditional transfer under s. 51.35 (1) or, if he or she was not placed on conditional release or on a conditional transfer, before he or she is terminated under s. 971.17 (5) or discharged under s. 51.35 (4) or 971.17 (6).

3g. If the person has been committed for specialized treatment under ch. 975, he or she is subject to this subsection upon being released on parole under s. 975.10 or, if he or she was not released on parole, before being discharged from the commitment under s. 975.09 or 975.12.

3r. If the person has been committed under ch. 980, he or she is subject to this subsection upon being placed on supervised release under s. 980.06 (2), 1997 stats., or s. 980.08 or, if he or she was not placed on supervised release, before being discharged under s. 980.10, 2003 stats., or s. 980.09 (4).

4. If subd. 1., 1m., 1r., 1t., 2., 2m., 3., 3g. or 3r. does not apply, the person is subject to this subsection after he or she is sentenced or receives a disposition.

(b) 1. Except as provided in subd. 1m., a person who is subject to par. (a) shall notify the department once each calendar year, as directed by the department, of his or her current information specified in sub. (2) (a). The department shall annually notify registrants of their need to comply with this requirement. If the registrant is a person under the age of 18, the department may also annually notify the registrant's parent, guardian or legal custodian of the registrant's need to comply with this requirement.

1m. A person who is subject to lifetime registration under sub. (5) (b) 2. or (5m) (b) 4. shall notify the department once each 90 days, as directed by the department, of his or her current information specified in sub. (2) (a). Every 90 days, the department shall notify registrants subject to this subdivision of their need to comply with this requirement. If the registrant subject to this subdivision is a person under the age of 18, the department may also notify the registrant's parent, guardian or legal custodian every 90 days of the registrant's need to comply with this requirement.

2. The department shall notify a person who is being released from prison in this state because he or she has reached the expiration date of his or her sentence and who is covered under sub. (1g) of the need to comply with the requirements of this section. Also, probation, extended supervision, and parole agents, aftercare agents, and agencies providing supervision shall notify any client who is covered under sub. (1g) of the need to comply with the requirements of this section at the time that the client is placed on probation, extended supervision, parole, supervision, or aftercare supervision or, if the client is on probation, extended supervision, parole, or other supervision from another state under s. 304.13 (1m), 304.135, 304.16, or 938.988, when the client enters this state.

3. The department of health services shall notify a person who is being placed on conditional release, supervised release, conditional transfer or parole, or is being terminated or discharged from

a commitment, under s. 51.20, 51.35 or 971.17 or ch. 975 or 980 and who is covered under sub. (1g) of the need to comply with the requirements of this section.

3m. After notifying a person under subd. 2. or 3. of the need to comply with this section, the person who is providing the notification shall require the person who is covered under sub. (1g) to read and sign a form stating that he or she has been informed of the requirements of this section.

4. It is not a defense to liability under sub. (6) (a) or (ag) that the person subject to sub. (1g) was not required to read and sign a form under subd. 3m., was not provided with a form to read and sign under subd. 3m. or failed or refused to read or sign a form under subd. 3m. It is not a defense to liability under sub. (6) (a) or (ag) that the person subject to sub. (1g) did not receive notice under this paragraph from the department of health services, the department of corrections, a probation, extended supervision and parole agent, an aftercare agent or an agency providing supervision.

(4) UPDATED INFORMATION. In addition to the requirements under sub. (3), a person who is covered under sub. (1g) shall update information under sub. (2) (a) as follows:

(a) Except as provided in par. (b), whenever any of the information under sub. (2) (a) changes, the person shall provide the department with the updated information within 10 days after the change occurs.

(b) If the person is on parole or extended supervision and the person knows that any of the information under sub. (2) (a) 5. will be changing, the person shall provide the department with the updated information before the change in his or her address occurs. If the person is on parole or extended supervision and any of the information under sub. (2) (a) 5. changes but the person did not know before the change occurred that his or her address would be changing, the person shall provide the department with the updated information within 24 hours after the change in his or her address occurs.

(4m) INFORMATION CONCERNING A MOVE TO OR SCHOOLING OR EMPLOYMENT IN ANOTHER STATE. In addition to the requirements under subs. (3) and (4), a person who is covered under sub. (1g) and who is changing his or her residence from this state to another state, is becoming a student in another state or is to be employed or carrying on a vocation in another state shall, no later than 10 days before he or she moves out of this state, begins school or begins employment or his or her vocation, notify the department that he or she is changing his or her residence from this state, is beginning school in another state or is beginning employment or the carrying on of a vocation in another state. The person shall also inform the department of the state to which he or she is moving his or her residence, the state in which he or she will be in school or the state in which he or she will be employed or carrying on a vocation. Upon receiving notification from a person under this subsection, the department shall do all of the following:

(a) Inform the person whether the state to which the person is moving, the state in which the person will be in school or the state in which the person will be employed or carrying on a vocation has sex offender registration requirements to which the person may be subject and, if so, the name of the agency to contact in that state for information concerning those requirements.

(b) Inform the agency responsible for sex offender registration in the state to which the person is moving, in which the person will be in school or in which the person will be employed or carrying on a vocation that the person is moving to the state, beginning school in the state or beginning employment or carrying on a vocation in the state, and provide the agency of the other state with all of the information specified in sub. (2) (a).

(4r) RESTRICTION ON CERTAIN REGISTRANTS ESTABLISHING OR CHANGING RESIDENCE. No person covered under sub. (1g) who is on parole or extended supervision may establish a residence or change his or her residence unless he or she has complied with all of the applicable requirements of subs. (2) (e), (3) (b) and (4) (b).

(5) RELEASE FROM REQUIREMENTS FOR PERSONS WHO COMMITTED A SEX OFFENSE IN THIS STATE. (a) Except as provided in pars. (am) and (b), a person who is covered under sub. (1g) (a), (b), (bm), (c), (d), (dd), (dp), (e) or (em) no longer has to comply with this section when the following applicable criterion is met:

1. If the person has been placed on probation or supervision for a sex offense, 15 years after discharge from the probation or supervision imposed for the sex offense.

2. If the person has been sentenced to prison for a sex offense or placed in a juvenile correctional facility or a secured residential care center for children and youth for a sex offense, 15 years after discharge from parole, extended supervision, or aftercare supervision for the sex offense.

2m. If the person has been sentenced to prison for a sex offense and is being released from prison because he or she has reached the expiration date of the sentence for the sex offense, 15 years after being released from prison.

3. If the person has been committed to the department of health services under s. 51.20 or 971.17 and is in institutional care or on conditional transfer under s. 51.35 (1) or conditional release under s. 971.17 for a sex offense, 15 years after termination of the commitment for the sex offense under s. 971.17 (5) or discharge from the commitment for the sex offense under s. 51.35 (4) or 971.17 (6).

3m. If the person has been committed for specialized treatment under ch. 975, 15 years after discharge from the commitment under s. 975.09 or 975.12.

4. If subd. 1., 2., 2m., 3. or 3m. does not apply, 15 years after the date of conviction for the sex offense or 15 years after the date of disposition of the sex offense, whichever is later.

(am) 1. Except as provided in subd. 2., a person who is covered under sub. (1g) (dL) shall continue to comply with the requirements of this section until his or her death.

2. A person who is covered under sub. (1g) (dL) is not required to comply with the requirements of this section if a court orders that the person is no longer required to comply under s. 939.615 (6) (i).

(b) A person who is covered under sub. (1g) (a), (b), (bm), (c), (d), (dd), (dp) or (e) shall continue to comply with the requirements of this section until his or her death if any of the following applies:

1. The person has, on 2 or more separate occasions, been convicted or found not guilty or not responsible by reason of mental disease or defect for a sex offense, or for a violation, or the solicitation, conspiracy or attempt to commit a violation, of a federal law, a military law, a tribal law or a law of any state that is comparable to a sex offense. A conviction or finding of not guilty or not responsible by reason of mental disease or defect that has been reversed, set aside or vacated is not a conviction or finding for purposes of determining under this subdivision whether a person has been convicted on 2 or more separate occasions.

1m. The person has been convicted or found not guilty or not responsible by reason of mental disease or defect for a violation, or for the solicitation, conspiracy or attempt to commit a violation, of s. 940.225 (1) or (2), 948.02 (1) or (2), 948.025, or 948.085 (2). A conviction or finding of not guilty or not responsible by reason of mental disease or defect that has been reversed, set aside or vacated is not a conviction or finding for purposes of this subdivision.

2. The person has been found to be a sexually violent person under ch. 980, regardless of whether the person has been discharged under s. 980.10, 2003 stats., or s. 980.09 (4) from the sexually violent person commitment, except that the person no longer has to comply with this section if the finding that the person is a sexually violent person has been reversed, set aside or vacated.

3. The court that ordered the person to comply with the reporting requirements of this section under s. 51.20 (13) (ct), 938.34

(15m), 938.345 (3), 971.17 (1m) (b) or 973.048 also ordered the person to comply with the requirements until his or her death.

(5m) RELEASE FROM REQUIREMENTS FOR PERSONS WHO COMMITTED A SEX OFFENSE IN ANOTHER JURISDICTION. (a) Except as provided in pars. (b) and (c), a person who is covered under sub. (1g) (dh), (dj), (f) or (g) no longer has to comply with this section when the following applicable criterion is met:

1. If the person is on parole, extended supervision, probation, or other supervision from another state under s. 304.13 (1m), 304.135, 304.16, or 938.988, 15 years after discharge from that parole, extended supervision, probation, or other supervision or the period of time that the person is in this state, whichever is less.

2. If the person is registered as a sex offender in another state or is registered as a sex offender with the federal bureau of investigation under 42 USC 14072, whichever of the following is less:

a. The period of time that the person is a resident of this state, a student in this state or employed or carrying on a vocation in this state.

b. The period of time that the person is registered as a sex offender in another state or with the federal bureau of investigation, or 10 years from the date on which the person was released from prison or placed on parole, probation, extended supervision or other supervised release for the sex offense which subjects the person to the requirements of this section, whichever is greater.

3. If the person has been found to have committed a sex offense by another jurisdiction and subd. 2. does not apply, whichever of the following is less:

a. The period of time that the person is a resident of this state, a student in this state or employed or carrying on a vocation in this state.

b. Ten years from the date on which the person was released from prison or placed on parole, probation, extended supervision or other supervised release for the sex offense that subjects the person to the requirements of this section.

(b) A person who is covered under sub. (1g) (dh), (dj), (f) or (g) shall continue to comply with the requirements of this section for as long as the person is a resident of this state, a student in this state or employed or carrying on a vocation in this state if one or more of the following apply:

1. The person is registered as a sex offender in another state or is registered as a sex offender with the federal bureau of investigation under 42 USC 14072 and the person is required to register with that other state or with the federal bureau of investigation until his or her death.

2. The person has been convicted or found not guilty or not responsible by reason of mental disease or defect for a violation of s. 940.225 (1) or (2), 948.02 (1) or (2), 948.025, or 948.085, or for the solicitation, conspiracy or attempt to commit a violation, of a federal law, a military law, a tribal law or a law of any state that is comparable to a violation of s. 940.225 (1) or (2), 948.02 (1) or (2), 948.025, or 948.085. A conviction or finding of not guilty or not responsible by reason of mental disease or defect that has been reversed, set aside or vacated is not a conviction or finding for purposes of this subdivision.

3. The person has, on 2 or more separate occasions, been convicted or found not guilty or not responsible by reason of mental disease or defect for a sex offense or for a violation, or the solicitation, conspiracy or attempt to commit a violation, of a federal law, military law, tribal law or law of any state that is comparable to a sex offense. A conviction or finding of not guilty or not responsible by reason of mental disease or defect that has been reversed, set aside or vacated is not a conviction or finding for purposes of determining under this subdivision whether a person has been convicted on 2 or more separate occasions.

4. A determination has been made as provided under 42 USC 14071 (a) (2) (A) or (B) that the person is a sexually violent predator, or lifetime registration by the person is required under mea-

asures approved by the attorney general of the United States under [42 USC 14071](#) (a) (2) (C).

(c) This subsection does not apply to a person who is required to register as a sex offender under one or more of the criteria specified in sub. (1g) (a), (b), (bm), (c), (d), (dd), (dp), (e) or (em).

(6) PENALTY. (a) Whoever knowingly fails to comply with any requirement to provide information under subs. (2) to (4) is subject to the following penalties:

1. Except as provided in subd. 2., the person is guilty of a Class H felony.

2. The person may be fined not more than \$10,000 or imprisoned for not more than 9 months or both if all of the following apply:

a. The person was ordered under s. [51.20 \(13\) \(ct\) 1m.](#), [938.34 \(15m\) \(am\)](#), [938.345 \(3\)](#), [971.17 \(1m\) \(b\) 1m.](#), or [973.048 \(1m\)](#) to comply with the reporting requirements under this section based on a finding that he or she committed or solicited, conspired, or attempted to commit a misdemeanor.

b. The person was not convicted of knowingly failing to comply with any requirement to provide information under subs. (2) to (4) before committing the present violation.

(ag) Whoever intentionally violates sub. (4r) is subject to the following penalties:

1. Except as provided in subd. 2., the person is guilty of a Class H felony.

2. The person may be fined not more than \$10,000 or imprisoned for not more than 9 months or both if all of the following apply:

a. The person was ordered under s. [51.20 \(13\) \(ct\) 1m.](#), [938.34 \(15m\) \(am\)](#), [938.345 \(3\)](#), [971.17 \(1m\) \(b\) 1m.](#), or [973.048 \(1m\)](#) to comply with the reporting requirements under this section based on a finding that he or she committed or solicited, conspired, or attempted to commit a misdemeanor.

b. The person was not convicted of another offense under sub. (4r) before committing the present violation.

(am) Whoever knowingly fails to keep information confidential as required under sub. (7) may be fined not more than \$500 or imprisoned for not more than 30 days or both.

(bm) Subject to s. [971.19 \(9\)](#), a district attorney or, upon the request of a district attorney, the department of justice may prosecute a knowing failure to comply with any requirement to provide information under subs. (2) to (4). If the department of corrections determines that there is probable cause to believe that a person has knowingly failed to comply with any requirement to provide information under subs. (2) to (4) or has intentionally violated sub. (4r), the department shall forward a certified copy of all pertinent departmental information to the applicable district attorney. The department shall certify the copy in accordance with s. [889.08](#).

(c) Notwithstanding par. (a), a person who first became subject to subs. (2) to (4) under [1995 Wisconsin Act 440](#) and who was in prison or a secured correctional facility or a secured child caring institution, in institutional care, or on probation, parole, supervision, aftercare supervision, corrective sanctions supervision, conditional transfer or conditional release during the period beginning on December 25, 1993, and ending on May 31, 1997, shall be allowed until January 1, 1998, to comply with the requirements under subs. (2) to (4).

(d) Notwithstanding par. (a), a person who first became subject to subs. (2) to (4) under [1999 Wisconsin Act 89](#) and who was in prison or a secured correctional facility or a secured child caring institution, in institutional care, or on probation, parole, supervision, aftercare supervision, corrective sanctions supervision, conditional transfer or conditional release during the period beginning on December 25, 1993, and ending on May 31, 2000, shall be allowed until January 1, 2001, to comply with the requirements under subs. (2) to (4).

(6m) NOTICE TO OTHER JURISDICTIONS CONCERNING NONCOMPLIANCE. If the department has reasonable grounds to believe that a person who is covered under sub. (1g) (f) or (g) is residing in this state, is a student in this state or is employed or carrying on a vocation in this state and that the person is not complying with the requirements of this section, the department shall notify the state agency responsible for the registration of sex offenders in any state in which the person is registered that it believes the person is not complying with the requirements of this section. If the person is registered with the federal bureau of investigation under [42 USC 14072](#), the department shall notify the federal bureau of investigation that it believes the person is not complying with the requirements of this section.

(7) INFORMATION MAINTENANCE AND EXPUNGEMENT. (a) The department shall maintain information provided under sub. (2). The department shall keep the information confidential except as provided in ss. [301.03 \(14\)](#) and [301.46](#), except as needed for law enforcement purposes and except to provide, in response to a request for information under s. [49.22 \(2m\)](#) made by the department of children and families or a county child support agency under s. [59.53 \(5\)](#), the name and address of an individual registered under this section, the name and address of the individual's employer and financial information related to the individual.

(b) The department shall not charge a fee for providing information under this subsection.

(c) A person about whom information is maintained in the registry under sub. (2) may request expungement of all pertinent information in the registry if any of the following applies:

1m. The person's conviction, delinquency adjudication, finding of need of protection or services or commitment has been reversed, set aside or vacated.

2m. A court has determined under sub. (1m) (b) that the person is not required to comply with the reporting requirements under this section.

(d) The department shall purge all of the information maintained in the registry under sub. (2) concerning a person to whom par. (c) applies if the department receives all of the following:

1. The person's written request for expungement.

2. A certified copy of the court order reversing, setting aside or vacating the conviction, delinquency adjudication, finding of need of protection or services or commitment or a certified copy of the court's determination under sub. (1m) (b).

(e) The department shall purge all of the information maintained in the registry under sub. (2) concerning a person to whom sub. (1p) applies if any of the following occurs:

1. The department receives notice under s. [938.355 \(4m\) \(b\)](#) that a court has expunged the record of the person's delinquency adjudication for the violation described in sub. (1p).

2. The department issues a certificate of discharge under s. [973.015 \(2\)](#).

3. The department receives a certificate of discharge issued under s. [973.015 \(2\)](#) by the detaining authority.

(8) RULES. The department shall promulgate rules necessary to carry out its duties under this section.

(9) COOPERATION. The department of health services, the department of children and families, the department of transportation and all circuit courts shall cooperate with the department of corrections in obtaining information under this section.

(10) ANNUAL FEE. The department may require a person who must register as a sex offender to pay an annual fee to partially offset its costs in monitoring persons who must register as sex offenders. The department shall establish any such fee by rule, but the fee may not exceed \$100.

History: 1995 a. 440 ss. 26 to 49, 53 to 74; Stats. 1995 s. 301.45; 1997 a. 3, 35, 130, 191, 237, 283; 1999 a. 9, 89, 156, 186; 2001 a. 38, 96, 109; 2003 a. 50, 53; 2005 a. 25, 253, 277, 344, 432, 434; 2007 a. 20 ss. 3130 to 3132, 9121 (6) (a); 2007 a. 80, 96, 116; s. 13.92 (2) (i).

Cross Reference: See also chs. [DOC 332](#) and [Jus 8](#), Wis. adm. code.

That sub. (1m) allows minors found delinquent because of sexual contact to be excused from sex offender registration, but not juveniles convicted of false imprisonment, does not render it unconstitutional. Sub. (1m) creates a narrow exception for sex offenders in cases of factually consensual sexual contact between 2 minors. In contrast, false imprisonment is never consensual and never a crime solely because of age. *State v. Joseph E.G.* 2001 WI App 29, 240 Wis. 2d 481, 623 N.W.2d 137, 99–3248.

Sections 301.45 and 301.46 do not occupy the field in regulating the dissemination of sex offender registration information and do not prohibit a probation agent from requiring a probationer to inform the probationer's immediate neighbors of his or her status as a convicted sex offender, which was not unreasonable. *State ex rel. Kaminski v. Schwarz*, 2001 WI 94, 245 Wis. 2d 310, 630 N.W.2d 164, 99–3040.

Mandatory sex offender registration for juveniles under sub. (1m) is not criminal punishment. If a provision is not criminal punishment, there is no constitutional right to a jury trial. Sub. (1m) does not violate the guarantees of substantive due process or equal protection. *State v. Jeremy P.* 2005 WI App 13, 278 Wis. 2d 366, 692 N.W.2d 311, 04–0360.

Wisconsin's Sex Offender Registration and Notification Laws: Has the Wisconsin Legislature Left the Criminals & Constitution Behind? Blair. 87 MLR 939 (2004).

301.46 Access to information concerning sex offenders. (1) DEFINITIONS. In this section:

(a) "Agency with jurisdiction" means the state agency with the authority or duty to confine or supervise a person or release or discharge a person from confinement.

(b) "Sex offense" has the meaning given in s. 301.45 (1d) (b).

(2) ACCESS FOR LAW ENFORCEMENT AGENCIES. (a) When a person is registered with the department under s. 301.45 (2), the department shall immediately make the information specified in par. (b) available to the police chief of any community and the sheriff of any county in which the person is residing, is employed or is attending school. The department shall make information available under this paragraph through a direct electronic data transfer system.

(b) The department shall make all of the following information available under par. (a):

1. The person's name, including any aliases used by the person.

2. Information sufficient to identify the person, including date of birth, gender, race, height, weight and hair and eye color.

3. The statute the person violated, the date of conviction, adjudication or commitment, and the county or, if the state is not this state, the state in which the person was convicted, adjudicated or committed.

4. Whichever of the following is applicable:

a. The date the person was placed on probation, supervision, conditional release, conditional transfer or supervised release.

b. The date the person was released from confinement, whether on parole, extended supervision or otherwise, or discharged or terminated from a sentence or commitment.

c. The date the person entered the state.

d. The date the person was ordered to comply with s. 301.45.

5. The address at which the person is residing.

6. The name of the agency supervising the person, if applicable, and the office or unit and telephone number of the office or unit that is responsible for the supervision of the person.

8. The name and address of the place at which the person is employed.

9. The name and location of any school in which the person is enrolled.

10. The most recent date on which the information under s. 301.45 was updated.

(c) When a person who is registered under s. 301.45 (2) updates information under s. 301.45 (4), the department shall immediately make the updated information available to the police chief of any community and the sheriff of any county in which the person is residing, is employed or is attending school. The department shall make the updated information available under this paragraph through a direct electronic data transfer system.

(d) In addition to having access to information under pars. (a) and (c), a police chief or sheriff may request that the department provide the police chief or sheriff with information concerning any person registered under s. 301.45.

(e) A police chief or sheriff may provide any of the information to which he or she has access under this subsection to an entity in the police chief's community or the sheriff's county that is entitled to request information under sub. (4), to any person requesting information under sub. (5) or to members of the general public if, in the opinion of the police chief or sheriff, providing that information is necessary to protect the public.

(2m) BULLETINS TO LAW ENFORCEMENT AGENCIES. (a) If an agency with jurisdiction confines a person under s. 301.046, provides a person entering the intensive sanctions program under s. 301.048 with a sanction other than a placement in a Type 1 prison or a jail, or releases a person from confinement in a state correctional institution or institutional care, and the person has, on one occasion only, been convicted or found not guilty or not responsible by reason of mental disease or defect for a sex offense or for a violation of a law of this state that is comparable to a sex offense, the agency with jurisdiction may notify the police chief of any community and the sheriff of any county in which the person will be residing, employed or attending school if the agency with jurisdiction determines that such notification is necessary to protect the public. Notification under this paragraph may be in addition to providing access to information under sub. (2) or to any other notification that an agency with jurisdiction is authorized to provide.

(am) If an agency with jurisdiction confines a person under s. 301.046, provides a person entering the intensive sanctions program under s. 301.048 with a sanction other than a placement in a Type 1 prison or a jail, or releases a person from confinement in a state correctional institution or institutional care, and the person has been found to be a sexually violent person under ch. 980 or has, on 2 or more separate occasions, been convicted or found not guilty or not responsible by reason of mental disease or defect for a sex offense or for a violation of a law of this state that is comparable to a sex offense, the agency with jurisdiction shall notify the police chief of any community and the sheriff of any county in which the person will be residing, employed or attending school and through or to which the person will be regularly traveling. Notification under this paragraph shall be in addition to providing access to information under sub. (2) and to any other notification that an agency with jurisdiction is authorized to provide.

(at) Paragraphs (a) and (am) do not apply to a person if a court has determined under s. 301.45 (1m) that the person is not required to comply with the reporting requirements under s. 301.45.

(b) The notification under par. (a) or (am) shall be in the form of a written bulletin to the police chief or sheriff that contains all of the following:

1. The information specified in sub. (2) (b).

1m. Notice that, beginning on June 1, 2001, information concerning persons registered under s. 301.45 will be available on the Internet site established by the department under sub. (5n).

2. Any other information that the agency with jurisdiction determines is necessary to assist law enforcement officers or to protect the public. Information under this subdivision may include a photograph of the person, other identifying information and a description of the person's patterns of violation.

(c) A police chief or sheriff who receives a bulletin under this subsection may provide any of the information in the bulletin to an entity in the police chief's community or the sheriff's county that is entitled to request information under sub. (4), to any person requesting information under sub. (5) or to members of the general public if, in the opinion of the police chief or sheriff, providing that information is necessary to protect the public.

(3) NOTIFICATION OF VICTIMS. (a) In this subsection:

1. "Member of the family" means spouse, child, parent, sibling or legal guardian.

2. "Victim" means a person against whom a crime has been committed.

(b) When a person is registered under s. 301.45 (2) or when the person informs the department of a change in information under

s. 301.45 (4), the department shall make a reasonable attempt to notify the victim or a member of the victim's family who has, according to the records of the department or the information provided under par. (d), requested to be notified about a person required to register under s. 301.45.

(c) The notice under par. (b) shall be a written notice to the victim or member of the victim's family that the person required to register under s. 301.45 and specified in the information provided under par. (d) has been registered or, if applicable, has provided the department with updated information under s. 301.45 (4). The notice shall contain the information specified in sub. (2) (b) 1., 5., 6. and 10. or, if applicable, the updated information.

(d) The department of health services shall provide the department with access to the names of victims or the family members of victims who have completed cards requesting notification under s. 971.17 (6m) or 980.11.

(e) In addition to receiving the notice provided under par. (c), a person who receives notice under par. (b) may request that the department provide him or her with any of the information specified in sub. (2) (b) concerning the person required to register under s. 301.45.

(4) ACCESS TO INFORMATION FOR AGENCIES AND ORGANIZATIONS OTHER THAN LAW ENFORCEMENT AGENCIES. (a) Any of the following entities may request, in a form and manner specified by the department, information from the department concerning persons registered under s. 301.45:

1. A public or private elementary or secondary school.
2. A day care provider that holds a license under s. 48.65, that is certified under s. 48.651, that holds a probationary license under s. 48.69 or that is established or contracted for under s. 120.13 (14).
3. A child welfare agency licensed under s. 48.60.
4. A group home licensed under s. 48.625.
5. A shelter care facility licensed under s. 938.22.
6. A foster home or treatment foster home licensed under s. 48.62.
7. A county department under s. 46.21, 46.215, 46.22, 46.23, 51.42 or 51.437.
8. An agency providing child welfare services under s. 48.48 (17) (b) or 48.57 (2).
- 8m. The department of justice.
9. The department of public instruction.
10. The department of health services.
- 10m. The department [of] children and families.

NOTE: A missing word is shown in brackets. Corrective legislation is pending.

11. A neighborhood watch program authorized under s. 60.23 (17m) or by the law enforcement agency of a city or village.
12. An organized unit of the Boy Scouts of America, the Boys' Clubs of America, the Girl Scouts of America or Camp Fire Girls.
13. The personnel office of a sheltered workshop, as defined in s. 104.01 (6).
14. Any other community-based public or private, nonprofit organization that the department determines should have access to information under this subsection in the interest of protecting the public.

(ag) The department may not provide any of the following in response to a request under par. (a):

1. Any information concerning a child who is required to register under s. 301.45.
2. If the person required to register under s. 301.45 is an adult, any information concerning a juvenile proceeding in which the person was involved.

(am) Subject to par. (ag), an entity may make a request under par. (a) for information concerning a specific person registered under s. 301.45.

(ar) Subject to par. (ag), an entity specified in par. (a) 11. may request the names of and information concerning all persons registered under s. 301.45 who reside, are employed or attend school in the entity's community, district, jurisdiction or other applicable geographical area of activity.

(b) In response to a request under par. (a), the department shall, subject to par. (ag), provide all of the following information:

1. The name of the person who has registered under s. 301.45, including any aliases the person has used.
2. The date of the person's conviction or commitment, and the county or, if the state is not this state, the state in which the person was convicted or committed.
4. The most recent date on which the information under s. 301.45 was updated.

(c) On the request of a police chief or a sheriff, the department shall provide the police chief or sheriff with a list of entities in the police chief's community or the sheriff's county that have requested information under par. (a) for use by the police chief or sheriff under sub. (2) (e) or (2m) (c).

(d) The department shall coordinate with the department of health services the sharing of address information of persons regarding whom notification bulletins are issued under sub. (2m) (a) or (am).

(5) ACCESS TO INFORMATION FOR GENERAL PUBLIC. (a) The department or a police chief or sheriff may provide the information specified in par. (b) concerning a specific person required to register under s. 301.45 to a person who is not provided notice or access under subs. (2) to (4) if, in the opinion of the department or the police chief or sheriff, providing the information is necessary to protect the public and if the person requesting the information does all of the following:

1. Submits a request for information in a form and manner prescribed by the department or the police chief or sheriff. The department or a police chief or sheriff may require that a person state, in his or her request under this subdivision, his or her purpose for requesting the information.
2. Specifies by name the person about whom he or she is requesting the information.
4. Provides any other information the police chief or sheriff considers necessary to determine accurately whether the person specified in subd. 2. is registered under s. 301.45.

(b) If the department or a police chief or sheriff provides information under par. (a), the department, subject to par. (c), or the police chief or sheriff shall provide all of the following concerning the person specified in the request under par. (a) 2.:

1. The date of the person's conviction or commitment, and the county or, if the state is not this state, the state in which the person was convicted or committed.
3. The most recent date on which the information under s. 301.45 was updated.
4. Any other information concerning the person that the department or the police chief or sheriff determines is appropriate.

(bm) The department shall provide on the Internet site required under sub. (5n) the following information concerning persons registered under s. 301.45:

1. If the person is a sexually violent person, as defined in s. 980.01 (7), a notice, written in red letters, of that status.
2. A current color photograph of the person, if available, and a physical description including sex, race, height, weight, eye color, and hair color.
3. The person's name and home address.
4. Whether the person has responded to the last contact letter from the department.
5. The crime committed for which the person must register.
6. Any conditions of the person's supervised release, except for any condition that may reveal the identity of the victim of the crime that the person committed for which he or she must register.

7. The date, time, and place of any scheduled hearings for supervised release or discharge under ch. 980.

8. The name and court of the judge who authorized supervised release or discharge for the person.

9. The most recent date on which the information was updated.

(c) The department may not provide any of the following under par. (a) or (bm):

1. Any information concerning a child who is required to register under s. 301.45.

2. If the person required to register under s. 301.45 is an adult, any information concerning a juvenile proceeding in which the person was involved.

(5n) INTERNET ACCESS. (a) No later than June 1, 2001, the department shall provide access to information concerning persons registered under s. 301.45 by creating and maintaining an Internet site and by any other means that the department determines is appropriate. The information provided through the Internet site shall be organized in a manner that allows a person using the Internet site to obtain the information that the department is required to provide the person under sub. (2), (2m), (3), (4) or (5) and other information that the department determines is necessary to protect the public. The department shall keep the information provided on the Internet site and in other means used to allow access to the information secure against unauthorized alteration.

(b) For Internet access provided to law enforcement agencies under this subsection, the department shall provide the means for a law enforcement agency to easily identify changes that have occurred in the residence, employment, or place of school attendance of a person registered under s. 301.45.

(6) PERIOD OF NOTIFICATION OF AND ACCESS TO INFORMATION. (a) Except as provided in par. (b), the department or an agency with jurisdiction may provide notice of or access to information under subs. (2) to (5) concerning a person registered under s. 301.45 only during the period under s. 301.45 (5) or (5m) for which the person is required to comply with s. 301.45.

(b) The department or an agency with jurisdiction may provide access to any information collected under s. 301.45, regardless of whether the person is still required to be registered, to a law enforcement agency for law enforcement purposes.

(7) IMMUNITY. A person acting under this section is immune from civil liability for any good faith act or omission regarding the release of information authorized under this section. The immunity under this subsection does not extend to a person whose act or omission constitutes gross negligence or involves reckless, wanton or intentional misconduct.

(8) RULES. The department shall promulgate rules necessary to carry out its duties under this section.

(9) EFFECT ON OPEN RECORDS REQUESTS. This section does not prohibit the department from providing to a person, in response to that person's request under s. 19.35 to inspect or copy records of the department, information that is contained in the sex offender registry under s. 301.45 concerning a person who is in the custody or under the supervision of the department if that information is also contained in records of the department, other than the sex offender registry, that are subject to inspection or copying under s. 19.35.

History: 1995 a. 440; 1997 a. 6, 27, 130, 181, 237, 283; 1999 a. 89; 2001 a. 16; 2003 a. 188; 2005 a. 5, 431; 2007 a. 20 ss. 3132r, 3133, 9121 (6) (a).

Cross Reference: See also s. DOC 332.01, Wis. adm. code.

Sections 301.45 and 301.46 do not occupy the field in regulating the dissemination of sex offender registration information and do not prohibit a probation agent from requiring a probationer to inform the probationer's immediate neighbors of his or her status as a convicted sex offender, which was not unreasonable. *State ex rel. Kaminski v. Schwarz*, 2001 WI 94, 245 Wis. 2d 310, 630 N.W.2d 164, 99–3040.

301.47 Sex offender name changes prohibited. (1) In this section, “sex offender” means a person who is subject to s. 301.45 (1g) but does not include a person who, as a result of a proceeding under s. 301.45 (1m), is not required to comply with the reporting requirements of s. 301.45.

(2) A sex offender may not do any of the following before he or she is released, under s. 301.45 (5) or (5m), from the reporting requirements of s. 301.45:

(a) Change his or her name.

(b) Identify himself or herself by a name unless the name is one by which the person is identified with the department.

(3) Whoever intentionally violates sub. (2) is subject to the following penalties:

(a) Except as provided in par. (b), the person is guilty of a Class H felony.

(b) The person may be fined not more than \$10,000 or imprisoned for not more than 9 months or both if all of the following apply:

1. The person was ordered under s. 51.20 (13) (ct) 1m., 938.34 (15m) (am), 938.345 (3), 971.17 (1m) (b) 1m., or 973.048 (1m) to comply with the reporting requirements under s. 301.45 based on a finding that he or she committed or solicited, conspired, or attempted to commit a misdemeanor.

2. The person was not convicted of another offense under this section before committing the present violation.

(4) The department shall make a reasonable attempt to notify each person required to comply with the reporting requirements under s. 301.45 of the prohibition in sub. (2), but neither the department's failure to make such an attempt nor the department's failure to notify a person of that prohibition is a defense to a prosecution under this section.

History: 2003 a. 52, 320.

301.48 Global positioning system tracking and residency requirement for certain sex offenders. (1) DEFINITIONS. In this section:

(a) “Exclusion zone” means a zone in which a person who is tracked using a global positioning system tracking device is prohibited from entering except for purposes of traveling through it to get to another destination.

(b) “Global positioning system tracking” means tracking using a system that actively monitors and identifies a person's location and timely reports or records the person's presence near or at a crime scene or in an exclusion zone or the person's departure from an inclusion zone. “Global positioning system tracking” includes comparable technology.

(c) “Inclusion zone” means a zone in which a person who is tracked using a global positioning system tracking device is prohibited from leaving.

(cm) “Level 1 child sex offense” means a violation of s. 948.02 or 948.025 in which any of the following occurs:

1. The actor has sexual contact or sexual intercourse with an individual who is not a relative of the actor and who has not attained the age of 13 years and causes great bodily harm, as defined in s. 939.22 (14), to the individual.

2. The actor has sexual intercourse with an individual who is not a relative of the actor and who has not attained the age of 12 years.

(cn) “Level 2 child sex offense” means a violation of s. 948.02 or 948.025 in which any of the following occurs:

1. The actor has sexual intercourse, by use or threat of force or violence, with an individual who is not a relative of the actor and who has not attained the age of 16 years.

2. The actor has sexual contact, by use or threat of force or violence, with an individual who has not attained the age of 16 years and who is not a relative of the actor, and the actor is at least 18 years of age when the sexual contact occurs.

(d) “Lifetime tracking” means global positioning system tracking that is required for a person for the remainder of the person's life or until terminated under sub. (2m), sub. (6), if applicable, or sub. (7) or (7m). “Lifetime tracking” does not include global positioning system tracking under sub. (2) (d), regardless of how long it is required.

(dm) “Passive positioning system tracking” means tracking using a system that monitors, identifies, and records a person’s location.

(dr) “Relative” means a son, daughter, brother, sister, first cousin, 2nd cousin, nephew, niece, grandchild, or great grandchild, or any other person related by blood, marriage, or adoption.

(e) “Serious child sex offense” means a level 1 child sex offense or a level 2 child sex offense.

(f) “Sex offense” means any of the following:

1. A sex offense, as defined in s. 301.45 (1d) (b).
2. A crime under federal law or the law of any state that is comparable to a crime described in subd. 1.

(fm) “Sexual contact” has the meaning given in s. 948.01 (5).

(g) “Sexual intercourse” means vulvar penetration as well as cunnilingus, fellatio, or anal intercourse between persons or any intrusion of any inanimate object into the genital or anal opening either by the defendant or upon the defendant’s instruction. The emission of semen is not required.

(2) WHO IS COVERED. (a) Except as provided in sub. (2m), the department shall maintain lifetime tracking of a person if any of the following occurs with respect to the person on or after January 1, 2008:

1. A court places the person on probation for committing a level 1 child sex offense.

- 1m. The person is convicted for committing a level 2 child sex offense and the court places the person on probation for committing the level 2 child sex offense.

2. The department releases the person to extended supervision or parole while the person is serving a sentence for committing a level 1 child sex offense.

- 2m. The person is convicted for committing a level 2 child sex offense and the department releases the person to extended supervision or parole while the person is serving the sentence for committing the level 2 child sex offense.

3. The department releases the person from prison upon the completion of a sentence imposed for a level 1 child sex offense.

- 3m. The person is convicted for committing a level 2 child sex offense and the department releases the person from prison upon the completion of the sentence imposed for the level 2 child sex offense.

4. A court that found the person not guilty of a serious child sex offense by reason of mental disease or mental defect places the person on conditional release.

5. A court that found the person not guilty of a serious child sex offense by reason of mental disease or mental defect discharges the person under s. 971.17 (6). This subdivision does not apply if the person was on conditional release immediately before being discharged.

6. The court places a person on lifetime supervision under s. 939.615 for committing a serious child sex offense and the person is released from prison.

7. A police chief or a sheriff receives a notification under s. 301.46 (2m) (am) regarding the person.

8. The department makes a determination under sub. (2g) that global positioning system tracking is appropriate for the person.

(b) The department shall maintain lifetime tracking of a person if any of the following occurs with respect to the person on or after January 1, 2008:

1. A court places the person on supervised release under s. 980.08 (6m).

2. A court discharges the person under [s. 980.10, 2003 stats. or] s. 980.09 (4). This subdivision does not apply if the person was on supervised release immediately before being discharged.

NOTE: Subd. 2. is shown as affected by 2 acts of the 2007 Wisconsin legislature and as merged by the legislative reference bureau under s. 13.92 (2) (i). The bracketed cross-reference was deleted by 2007 Wis. Act 20, but reinserted by 2007 Wis. Act 96 without taking the treatment by Act 20 into account and only

for the purpose of placing the citation in proper sequential order and not to restore the cross-reference. Corrective legislation is pending.

3. The department of health services places the person on parole or discharges the person under ch. 975. This subdivision does not apply unless the person’s commitment was based on his or her commission of a serious child sex offense.

(d) If, on or after January 1, 2008, a person is being placed on probation, extended supervision, parole, or lifetime supervision for committing a sex offense and par. (a) or (b) does not apply, the department may have the person tracked using a global positioning system tracking device as a condition of the person’s probation, extended supervision, parole, or lifetime supervision.

(2g) DEPARTMENT DETERMINATION. If a person who committed a serious child sex offense, or a person under supervision under the interstate corrections compact for a serious child sex offense, is not subject to lifetime tracking under sub. (2), the department shall assess the person’s risk using a standard risk assessment instrument to determine if global positioning system tracking is appropriate for the person.

(2m) PASSIVE POSITIONING SYSTEM TRACKING. If a person who is subject to lifetime tracking under sub. (2) (a) 1., 1m., 2., 2m., 3., or 3m. completes his or her sentence, including any probation, parole, or extended supervision, the department may use passive positioning system tracking instead of maintaining lifetime tracking.

(3) FUNCTIONS AND OPERATION OF TRACKING PROGRAM. (a) Except as provided in sub. (2m), the department shall implement a continuous global positioning tracking system to electronically monitor the whereabouts of persons who are subject to this section. The system shall do all of the following:

1. Use field monitoring equipment that supports cellular communications with as large a coverage area as possible and shall automatically provide instantaneous information regarding the whereabouts of a person who is being monitored, including information regarding the person’s presence in an exclusion zone established under par. (c) or absence from an inclusion zone established under par. (c).

2. Use land line communications equipment to transmit information regarding the location of persons who are subject to this section when they are in areas in which no commercial cellular service is available.

3. Immediately alert the department and the local law enforcement agency having jurisdiction over the exclusion or inclusion zone if the person stays in any exclusion zone for any longer period than the time needed to travel through the zone to get to another destination or if the person leaves any inclusion zone.

(b) The department shall contract with a vendor using a competitive process under s. 16.75 to provide staff in this state to install, remove, and maintain equipment related to global positioning system tracking and passive positioning system tracking for purposes of this section. The term of the contract may not exceed 3 years.

(c) For each person who is subject to global positioning system tracking under this section, the department shall create individualized exclusion and inclusion zones for the person, if necessary to protect public safety. In creating exclusion zones, the department shall focus on areas where children congregate, with perimeters of 100 to 250 feet, and on areas where the person has been prohibited from going as a condition of probation, extended supervision, parole, conditional release, supervised release, or lifetime supervision. In creating inclusion zones for a person on supervised release, the department shall consider s. 980.08 (9).

NOTE: Par. (c) is shown as affected by 2 acts of the 2007 Wisconsin legislature and as merged by the legislative reference bureau under s. 13.92 (2) (i).

(d) If a person who is on supervised release or conditional release is being tracked, the department shall notify the department of health services, upon request, of any tracking information for the person under any of the following circumstances:

1. The department of corrections has been alerted under par. (a) 3. that the person being tracked has improperly stayed in an exclusion zone or improperly left an inclusion zone.

2. The person being tracked fails to make a payment to the department under sub. (4) (b).

(4) COSTS. (a) The department shall determine all of the following for each person tracked:

1. The cost of global positioning system tracking or passive positioning system tracking for the person.

2. How much of the cost under subd. 1. the person is able to pay based on the factors listed in par. (d).

(b) If required by the department, a person who is subject to global positioning system tracking or passive positioning system tracking shall pay for the cost of tracking up to the amount calculated for the person under par. (a) 2. The department shall collect moneys paid by the person under this paragraph and credit those moneys to the appropriation under s. 20.410 (1) (gk).

(c) The department of health services shall pay for the cost of tracking a person to whom sub. (2) (a) 4. or 5. or (b) applies while the person is on conditional release or supervised release to the extent that the cost is not covered by payments made by the person under par. (b).

(d) In determining how much of the costs the person is able to pay, the department may consider the following:

1. The person's financial resources.
2. The present and future earning ability of the person.
3. The needs and earning ability of the person's dependents.
4. Any other costs that the person is required to pay in conjunction with his or her supervision by the department or the department of health services.
5. Any other factors that the department considers appropriate.

(6) OFFENDER'S PETITION TO TERMINATE LIFETIME TRACKING. (a) Subject to par. (b), a person who is subject to lifetime tracking may file a petition requesting that lifetime tracking be terminated. A person shall file a petition requesting termination of lifetime tracking with the circuit court for the county in which the person was convicted or found not guilty or not responsible by reason of mental disease or defect.

(b) 1. A person may not file a petition requesting termination of lifetime tracking if he or she has been convicted of a crime that was committed during the period of lifetime tracking.

2. A person may not file a petition requesting termination of lifetime tracking earlier than 20 years after the date on which the period of lifetime tracking began. If a person files a petition requesting termination of lifetime tracking at any time earlier than 20 years after the date on which the period of lifetime tracking began, the court shall deny the petition without a hearing.

3. A person described in sub. (2) (b) may not file a petition requesting termination of lifetime tracking.

(c) Upon receiving a petition requesting termination of lifetime tracking, the court shall send a copy of the petition to the district attorney responsible for prosecuting the serious sex offense that was the basis for the order of lifetime tracking. Upon receiving the copy of the petition, the district attorney shall conduct a criminal history record search to determine whether the person has been convicted of a criminal offense that was committed during the period of lifetime tracking. No later than 30 days after the date on which he or she receives the copy of the petition, the district attorney shall report the results of the criminal history record search to the court and may provide a written response to the petition.

(d) After reviewing a report submitted under par. (c) concerning the results of a criminal history record search, the court shall do whichever of the following is applicable:

1. If the report indicates that the person filing the petition has been convicted of a criminal offense that was committed during

the period of lifetime tracking, the court shall deny the person's petition without a hearing.

2. If the report indicates that the person filing the petition has not been convicted of a criminal offense that was committed during the period of lifetime tracking, the court shall order the person to be examined under par. (e), shall notify the department that it may submit a report under par. (f) and shall schedule a hearing on the petition to be conducted as provided under par. (g).

(e) A person filing a petition requesting termination of lifetime tracking who is entitled to a hearing under par. (d) 2. shall be examined by a person who is either a physician or a psychologist licensed under ch. 455 and who is approved by the court. The physician or psychologist who conducts an examination under this paragraph shall prepare a report of his or her examination that includes his or her opinion of whether the person petitioning for termination of lifetime tracking is a danger to the public. The physician or psychologist shall file the report of his or her examination with the court within 60 days after completing the examination, and the court shall provide copies of the report to the person filing the petition and the district attorney. The contents of the report shall be confidential until the physician or psychologist testifies at a hearing under par. (g). The person petitioning for termination of lifetime tracking shall pay the cost of an examination required under this paragraph.

(f) After it receives notification from the court under par. (d) 2., the department may prepare and submit to the court a report concerning a person who has filed a petition requesting termination of lifetime tracking. If the department prepares and submits a report under this paragraph, the report shall include information concerning the person's conduct while on lifetime tracking and an opinion as to whether lifetime tracking of the person is still necessary to protect the public. When a report prepared under this paragraph has been received by the court, the court shall, before the hearing under par. (g), disclose the contents of the report to the attorney for the person who filed the petition and to the district attorney. When the person who filed the petition is not represented by an attorney, the contents shall be disclosed to the person.

(g) A hearing on a petition requesting termination of lifetime tracking may not be conducted until the person filing the petition has been examined and a report of the examination has been filed as provided under par. (e). At the hearing, the court shall take evidence it considers relevant to determining whether lifetime tracking should be continued because the person who filed the petition is a danger to the public. The person who filed the petition and the district attorney may offer evidence relevant to the issue of the person's dangerousness and the continued need for lifetime tracking.

(h) The court may grant a petition requesting termination of lifetime tracking if it determines after a hearing under par. (g) that lifetime tracking is no longer necessary to protect the public.

(i) If a petition requesting termination of lifetime tracking is denied after a hearing under par. (g), the person may not file a subsequent petition requesting termination of lifetime tracking until at least 5 years have elapsed since the most recent petition was denied.

(7) DEPARTMENT'S PETITION TO TERMINATE LIFETIME TRACKING. (a) The department may file a petition requesting that a person's lifetime tracking be terminated if the person is permanently physically incapacitated. The petition shall include affidavits from 2 physicians that explain the nature of the person's permanent physical incapacitation.

(b) 1. The department shall file a petition under par. (a) with the circuit court for the county in which the person was convicted or found not guilty or not responsible by reason of mental disease or defect or, in the case of a person described in sub. (2) (b), the circuit court for the county in which the person was found to be a sexually violent person.

2. The department shall send a copy of a petition filed under subd. 1. to the district attorney responsible for prosecuting the

serious sex offense that was the basis for the order of lifetime tracking or, in the case of a person described in sub. (2) (b), the agency that filed the petition under s. 980.02.

(c) Upon its own motion or upon the motion of the party to whom the petition was sent under par. (b) 2., the court may order that the person to whom the petition relates be examined by a physician who is approved by the court. The physician who conducts an examination under this paragraph shall prepare a report of his or her examination that includes his or her opinion of whether the person is permanently physically incapacitated. The physician shall file the report of his or her examination with the court within 60 days after completing the examination, and the court shall provide copies of the report to the department and the party to whom the petition was sent under par. (b) 2. The contents of the report shall be confidential until the physician testifies at a hearing under par. (d). The department shall pay the cost of an examination required under this paragraph.

(d) The court shall conduct a hearing on a petition filed under par. (b) 1., but if the court has ordered a physical examination

under par. (c), the hearing may not occur until after the examination is complete and a report of the examination has been filed as provided under par. (c). At the hearing, the court shall take evidence it considers relevant to determining whether the person to whom the petition relates is permanently physically incapacitated so that he or she is not a danger to the public. The department and the party to whom the petition was sent under par. (b) 2. may offer relevant evidence regarding that issue.

(e) The court may grant a petition filed under par. (b) 1. if it determines after a hearing under par. (d) that the person to whom the petition relates is permanently physically incapacitated so that he or she is not a danger to the public.

(7m) TERMINATION IF PERSON MOVES OUT OF STATE. Notwithstanding sub. (2), if a person who is subject to being tracked under this section moves out of state, the department shall terminate the person's tracking. If the person returns to the state, the department shall reinstate the person's tracking except as provided under sub. (6) or (7).

History: 2005 a. 431; 2007 a. 20 ss. 3134m to 3165m, 9121 (6) (a); 2007 a. 96; s. 13.92 (2) (i).