CHAPTER 302

PRISONS; STATE, COUNTY AND MUNICIPAL

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Cross−reference: See definitions in s. 301.01.

302.01 State prisons defined and named. (1) All of the following are state prisons:

(a) The institutions named in this section.

(b) The medium security correctional institutions at Redgranite and New Lisbon.

(c) The correctional institutions authorized under s. 301.16 (1n) and (1v).

(d) The correctional institution at Prairie du Chien authorized under s. 301.16 (1u).

(e) The correctional institution authorized under s. 301.046 (1).

(f) The correctional institution authorized under s. 301.048 (4) (b).

(g) The correctional institution at Stanley authorized under 2001 Wisconsin Act 16, section 9107 (1) (b).

(h) The minimum security correctional institutions authorized under s. 301.13.

(i) The probation and parole holding facilities authorized under s. 301.16 (1q).

(j) The state−local shared correctional facilities when established under s. 301.14.

(2) The penitentiary at Waupun is named "Waupun Correctional Institution."

(3) The correctional treatment center at Waupun is named "Dodge Correctional Institution."

(4) The penitentiary at Green Bay is named "Green Bay Correctional Institution."

(5) The medium/maximum penitentiary at Portage is named "Columbia Correctional Institution."

(6) The medium security institution at Oshkosh is named "Oshkosh Correctional Institution."

(7) The medium security penitentiary near Fox Lake is named "Fox Lake Correctional Institution."

(8) The penitentiary at Taycheedah is named "Taycheedah Correctional Institution."

(9) The medium security penitentiary at Plymouth is named "Kettle Moraine Correctional Institution."

(10) The penitentiary at the village of Sturtevant in Racine County is named "Racine Correctional Institution."

(10m) The medium security correctional institution near Black River Falls is named "Jackson Correctional Institution."

(11) The medium security penitentiary at Racine is named "Racine Youthful Offender Correctional Facility."

(12) The resource facility at Oshkosh is named "Wisconsin Resource Center."

History: 1973 c. 90; 1975 c. 39; 1975 c. 189 s. 99 (1); 1975 c. 224, 422; 1977 c. 29; 1977 c. 418 ss. 369, 924 (18) (d); 1979 c. 221; 1981 c. 20; 1983 a. 192, 332, 538; 1985 a. 29; 1987 a. 5; 1989 a. 31 ss. 1617m, 1617n; Stats. 1989 s. 302.01; 1989 a. 359; 1991 a. 39; 1995 a. 27; 1997 a. 4, 27; 1999 a. 9; 2001 a. 16, 103; 2003 a. 33, 321.

302.02 Jurisdiction and extent of state correctional institutions. (1m) INSTITUTIONS LOCATED WITHIN THE STATE. Every activity conducted under the jurisdiction of and by any institution or facility listed under this section, wherever located, is a precinct of the prison, and each precinct is part of the institution. For all purposes of discipline and judicial proceedings all of the following apply:

(a) *Waupun Correctional Institution.* The Waupun Correctional Institution and its precincts are considered to be in Dodge County, and the Dodge County circuit court has jurisdiction of all crimes committed within the county.

(b) *Green Bay Correctional Institution.* The Green Bay Correctional Institution and its precincts are considered to be in Brown County, and the Brown County circuit court has jurisdiction of all crimes committed within the county.

(c) *Taycheedah Correctional Institution.* The Taycheedah Correctional Institution and its precincts are considered to be in Fond du Lac County, and the Fond du Lac County circuit court has jurisdiction of all crimes committed within the county.

(d) *Correctional institutions under s. 301.16.* The correctional institutions authorized under s. 301.16 and their precincts are considered to be in the county in which the institution is physically located, and that county's circuit court has jurisdiction of all crimes committed within the county.

(e) *Fox Lake Correctional Institution.* The Fox Lake Correctional Institution and its precincts are considered to be in Dodge County, and the Dodge County circuit court has jurisdiction of all crimes committed within the county.

(f) *Minimum security correctional institutions.* The minimum security correctional institutions and their precincts, as to each inmate, are considered to be in the county in which the institution to which the inmate is assigned is located, and that county's circuit court has jurisdiction of all crimes committed within the county.

(g) *Kettle Moraine Correctional Institution.* The Kettle Moraine Correctional Institution and its precincts are considered to be in Sheboygan County, and the Sheboygan County circuit court has jurisdiction of all crimes committed within the county.

(h) *Dodge Correctional Institution.* The Dodge Correctional Institution and its precincts are considered to be in Dodge County, and the Dodge County circuit court has jurisdiction of all crimes committed within the county.

(i) *State−local shared correctional facilities.* The state−local shared correctional facilities and their precincts are considered, as to each inmate, to be in the county in which the facility to which the inmate is assigned is located, and that county's circuit court has jurisdiction over all crimes committed within the facility.

(j) *Correctional institution; community residential confinement.* The correctional institution under s. 301.046 (1) and its precincts are considered, as to each inmate, to be in the county in which the inmate is confined, and the courts of that county shall have jurisdiction of all crimes committed within the county.

(k) *Correctional institution; intensive sanctions program.* The correctional institution under s. 301.048 (4) (b) and its precincts are considered, as to each inmate, to be in the county in which the inmate is assigned, and that county's circuit court has jurisdiction of all crimes committed within the county.

(3t) INSTITUTIONS LOCATED IN OTHER STATES. For all purposes of discipline and for judicial proceedings, each institution that is located in another state and authorized for use under s. 301.21 and its precincts are considered to be in the county in which the institution is physically located, and the courts of that county have jurisdiction of any activity, wherever located, conducted by the institution.

History: 1973 c. 90; 1975 c. 39, 189, 224; 1977 c. 29; 1977 c. 418 ss. 370 to 372, 924 (18) (d); 1979 c. 221; 1981 c. 20; 1983 a. 27, 332; 1985 a. 29; 1989 a. 31 ss. 1618, 1618m; Stats. 1989 s. 302.02; 1991 a. 39, 316; 1995 a. 344; 1997 a. 27; 2001 a. 103; 2003 a. 321 s. 111; s. 35.17 correction in (1m) (d) (title).

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

Although review of disciplinary proceedings conducted by a private, out−of−state, contract prison may proceed in the state where the prison is located, when disciplined inmates were returned to Wisconsin and Tennessee courts refused to review the cases, because no statute allowed judicial review of prison disciplinary decisions applied to the inmates, Wisconsin courts could review the disciplinary decisions by certiorari. State ex rel. Curtis v. Litscher, 2002 WI App 172, 256 Wis. 2d 787, 650 N.W.2d 43, 01−1804.

Sub. (3t) deprives Wisconsin courts of competency to entertain certiorari actions seeking review of out−of−state prison disciplinary decisions unless a petitioner can show a denial of judicial review on jurisdictional or competency grounds in the state where the disciplinary action occurred. Allowing the courts of other states to resolve disputes over prison disciplinary actions within their borders is entirely rational and not a violation of equal protection. Myers v. Swenson, 2004 WI App 224, 277 Wis. 2d 749, 691 N.W.2d 749, 03−2406. See also Ponchik v. Bradley, 2004 WI App 226, 277 Wis. 2d 768, 690 N.W.2d 860, 03−2958.

302.025 Service of process on prison officers, employees, or inmates. (1) Service of process may be made on the warden or superintendent of any prison named in s. 302.01 as upon any other resident of this state.

(2) Except as provided in sub. (1), service of process within any prison under s. 302.01 on any officer, employee, or inmate of the prison shall be made by the warden or superintendent or some person appointed by the warden or superintendent to serve process.

History: 2001 a. 103 s. 262.

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

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

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

302.04 Duties of warden and superintendents. Except as provided in ss. 13.48 (14) (am) and 16.848 (1), the warden or the superintendent of each state prison shall have charge and custody of the prison and all lands, belongings, furniture, implements, stock and provisions and every other species of property within the same or pertaining thereto. The warden or superintendent shall enforce the rules of the department for the administration of the prison and for the government of its officers and the discipline of its inmates.

History: 1989 a. 31 s. 1620; Stats. 1989 s. 302.04; 1991 a. 316; 2005 a. 25; 2013 a. 20.

Cross−reference: See also ch. DOC 303, Wis. adm. code.

302.043 Release of inmates serving risk reduction sentences. (1) When an inmate who is serving a risk reduction sentence imposed under s. 973.031, 2009 stats., has served not less than 75 percent of the term of confinement portion of his or her sentence under s. 973.01 and the department determines that he or she has completed the programming or treatment under his or her plan and that the inmate maintained a good conduct record during his or her term of confinement, the department shall notify the sentencing court that the inmate has successfully completed the requirements of his or her risk reduction sentence.

(2) Upon receipt of notice under sub. (1), the court shall release the inmate to extended supervision.

(3) Upon receiving a court order releasing the inmate under sub. (2), the department shall release the inmate within 6 working days, as defined in s. 227.01 (14) and as computed in s. 990.001 (4).

(4) A person released under this section, his or her residence, and any property under his or her control may be searched by a law enforcement officer at any time during his or her period of supervision if the officer reasonably suspects that the person is committing, is about to commit, or has committed a crime or a violation of a condition of release to extended supervision. Any search conducted pursuant to this subsection shall be conducted in a reasonable manner and may not be arbitrary, capricious, or harassing. A law enforcement officer who conducts a search pursuant to this subsection shall, as soon as practicable after the search, notify the department.

History: 2011 a. 38; 2013 a. 79.

302.045 Challenge incarceration program. (1) PROGRAM. The department shall provide a challenge incarceration program for inmates selected to participate under sub. (2). The program shall provide participants with manual labor, personal development counseling, substance abuse treatment and education, military drill and ceremony, counseling, and strenuous phys-

ical exercise, for participants who have not attained the age of 30 as of the date on which they begin participating in the program, or age−appropriate strenuous physical exercise, for all other participants, in preparation for release on parole or extended supervision. The department shall design the program to include not fewer than 50 participants at a time and so that a participant may complete the program in not more than 180 days. The department may restrict participant privileges as necessary to maintain discipline.

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

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

(b) The inmate has not attained the age of 40 as of the date the inmate will begin participating in the program.

(c) The inmate is incarcerated regarding a violation other than a crime specified in ch. 940 or s. 948.02, 948.025, 948.03, 948.05, 948.051, 948.055, 948.06, 948.07, 948.075, 948.08, 948.085, or 948.095.

(cm) If the inmate is serving a bifurcated sentence imposed under s. 973.01, the sentencing court decided under s. 973.01 (3m) that the inmate is eligible for the challenge incarceration program.

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

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

(3) PAROLE ELIGIBILITY. Except as provided in sub. (4), if the department determines that an inmate serving a sentence other than one imposed under s. 973.01 has successfully completed the challenge incarceration program, the parole commission shall parole the inmate for that sentence under s. 304.06, regardless of the time the inmate has served. When the parole commission grants parole under this subsection, it must require the parolee to participate in an intensive supervision program for drug abusers as a condition of parole.

(3m) RELEASE TO EXTENDED SUPERVISION. (a) Except as provided in sub. (4), if the department determines that an inmate serving the term of confinement in prison portion of a bifurcated sentence imposed under s. 973.01 has successfully completed the challenge incarceration program, the department shall inform the court that sentenced the inmate.

(b) Upon being informed by the department under par. (a) that an inmate whom the court sentenced under s. 973.01 has successfully completed the challenge incarceration program, the court shall modify the inmate's bifurcated sentence as follows:

1. The court shall reduce the term of confinement in prison portion of the inmate's bifurcated sentence in a manner that provides for the release of the inmate to extended supervision within 30 days of the date on which the court receives the information from the department under par. (a).

2. The court shall lengthen the term of extended supervision imposed so that the total length of the bifurcated sentence originally imposed does not change.

(c) The court may not increase the total length of the bifurcated sentence when modifying a bifurcated sentence under par. (b).

(d) Upon receiving a court order modifying an inmate's bifurcated sentence, the department shall release the inmate within 6 working days, as defined in s. 227.01 (14) and as computed in s. 990.001 (4).

(e) A person released under this subsection, his or her residence, and any property under his or her control may be searched by a law enforcement officer at any time during his or her period of supervision if the officer reasonably suspects that the person is committing, is about to commit, or has committed a crime or a violation of a condition of release to extended supervision. Any search conducted pursuant to this paragraph shall be conducted in a reasonable manner and may not be arbitrary, capricious, or harassing. A law enforcement officer who conducts a search pursuant to this paragraph shall, as soon as practicable after the search, notify the department.

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

History: 1989 a. 122; 1991 a. 39; 1993 a. 218, 227, 491; 1995 a. 456; 1997 a. 283; 2001 a. 109; 2003 a. 33; 2005 a. 277; 2007 a. 116; 2009 a. 28; 2011 a. 38; 2013 a. 79.

While an offender must meet the eligibility requirements of sub. (2) to participate in the challenge incarceration program, the trial court must, pursuant to s. 973.01 (3m), also determine if the offender is eligible for the program, in the exercise of its sentencing discretion. State v. Steele, 2001 WI App 160, 246 Wis. 2d 744, 632 N.W.2d 112, 00−2864.

Once the trial court has made an eligibility determination, the final placement determination is made by the department. This section provides that if an inmate meets all of the program eligibility criteria, the department "may" place that inmate in the program. It is not the sentencing court's function to classify an inmate to a particular institution or program. State v. Schladweiler, 2009 WI App 177, 322 Wis. 2d 642, 777 N.W.2d 114, 08−3119.

302.05 Wisconsin substance abuse program. (1) (am) The department of corrections and the department of health services may designate a section of a mental health institute as a correctional treatment facility for the treatment of substance abuse of inmates transferred from Wisconsin state prisons. This section shall be administered by the department of corrections and shall be known as the Wisconsin substance abuse program. The department of corrections and the department of health services shall ensure that the residents at the institution and the residents in the substance abuse program:

1. Have access to all facilities that are available at the institution and are necessary for the treatment programs designed by the departments.

2. Are housed on separate wards.

(b) The department of corrections and the department of health services shall, at any correctional facility the departments determine is appropriate, provide a substance abuse treatment program for inmates for the purposes of the program described in sub. (3).

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

(3) (a) In this subsection, "eligible inmate" means an inmate to whom all of the following apply:

1. The inmate is incarcerated regarding a violation other than a crime specified in ch. 940 or s. 948.02, 948.025, 948.03, 948.05, 948.051, 948.055, 948.06, 948.07, 948.075, 948.08, 948.085, or 948.095.

2. If the inmate is serving a bifurcated sentence imposed under s. 973.01, the sentencing court decided under par. (e) or s. 973.01 (3g) that the inmate is eligible to participate in the earned release program described in this subsection.

(b) Except as provided in par. (d), if the department determines that an eligible inmate serving a sentence other than one imposed under s. 973.01 has successfully completed a treatment program described in sub. (1), the parole commission shall parole the inmate for that sentence under s. 304.06, regardless of the time the inmate has served. If the parole commission grants parole under this paragraph, it shall require the parolee to participate in an intensive supervision program for drug abusers as a condition of parole.

(c) 1. Except as provided in par. (d), if the department determines that an eligible inmate serving the term of confinement in prison portion of a bifurcated sentence imposed under s. 973.01 has successfully completed a treatment program described in sub. (1), the department shall inform the court that sentenced the inmate.

2. Upon being informed by the department under subd. 1. that an inmate whom the court sentenced under s. 973.01 has successfully completed a treatment program described in sub. (1), the court shall modify the inmate's bifurcated sentence as follows:

a. The court shall reduce the term of confinement in prison portion of the inmate's bifurcated sentence in a manner that provides for the release of the inmate to extended supervision within 30 days of the date on which the court receives the information from the department under subd. 1.

b. The court shall lengthen the term of extended supervision imposed so that the total length of the bifurcated sentence originally imposed does not change.

3. Upon receiving a court order modifying an inmate's bifurcated sentence, the department shall release the inmate within 6 working days, as defined in s. 227.01 (14) and as computed in s. 990.001 (4).

4. A person released under this paragraph, his or her residence, and any property under his or her control may be searched by a law enforcement officer at any time during his or her period of supervision if the officer reasonably suspects that the person is committing, is about to commit, or has committed a crime or a violation of a condition of release to extended supervision. Any search conducted pursuant to this subdivision shall be conducted in a reasonable manner and may not be arbitrary, capricious, or harassing. A law enforcement officer who conducts a search pursuant to this subdivision shall, as soon as practicable after the search, notify the department.

(d) The department may place intensive sanctions program participants in a treatment program described in sub. (1), but pars. (b) and (c) do not apply to those participants.

(e) If an inmate is serving the term of confinement portion of a bifurcated sentence imposed under s. 973.01, the sentence was imposed before July 26, 2003, and the inmate satisfies the criteria under par. (a) 1., the inmate may, with the department's approval, petition the sentencing court to determine whether he or she is eligible or ineligible to participate in the earned release program under this subsection during the term of confinement. The inmate shall serve a copy of the petition on the district attorney who prosecuted him or her, and the district attorney may file a written response. The court shall exercise its discretion in granting or denying the inmate's petition but must do so no later than 90 days after the inmate files the petition. If the court determines under this paragraph that the inmate is eligible to participate in the earned release program, the court shall inform the inmate of the provisions of par. (c).

History: 1989 a. 31; 1995 a. 27 s. 9126 (19); 2003 a. 33; 2005 a. 25, 277; 2007 a. 20 ss. 3168, 9121 (6) (a); 2007 a. 116; 2009 a. 28; 2011 a. 38; 2013 a. 79.

Excluding persons whose conduct has caused death or great bodily harm in violation of ch. 940 from the opportunity to reduce their period of confinement by participation in the earned release program is rationally related to the legitimate government purpose of punishing more serious crimes more severely. Sub. (3) (a) does not violate the right to equal protection by precluding participation in the program by violators of ch. 940. State v. Lynch, 2006 WI App 231, 297 Wis. 2d 51, 724 N.W.2d 656, 05−2128.

The department of corrections approval required by sub. (3) (e) is merely a determination that the petitioner is not statutorily excluded from eligibility for the earned release program. The exercise of discretion as to whether the inmate should be included in program eligibility is a matter for the trial court. State v. Johnson, 2007 WI App 41, 299 Wis. 2d 785, 730 N.W.2d 661, 06−0870.

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

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

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

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

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

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

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

Cross−reference: See also chs. DOC 303, 306, 308, 309, and 311, Wis. adm. code.

Because administrative segregation is the type of confinement inmates should reasonably anticipate, they have no liberty interest protected by the due process clause in not being placed in administrative segregation. The same applies to adjustment or program segregation. Kirsch v. Endicott, 201 Wis. 2d 705, 549 N.W.2d 761 (Ct. App. 1996), 94−0359.

State traffic patrol officers may act as peace officers during a prison riot or other disturbance even when this occurs during a strike of prison guards; they may not, however, perform other duties of guards. 68 Atty. Gen. 104.

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

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

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

Cross−reference: See also chs. DOC 303, 308, 309, and 311, Wis. adm. code.

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

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

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

Cross−reference: See also s. DOC 313.02, Wis. adm. code.

The department may be required to justify a refusal to allow a prisoner to write the Veterans Administration concerning the adequacy of his medical treatment. State ex rel. Thomas v. State, 55 Wis. 2d 343, 198 N.W.2d 675 (1972).

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

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

(b) A house of correction.

(c) A Huber facility under s. 303.09.

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

(2) Any officer or other person who delivers or procures to be delivered or has in his or her possession with intent to deliver to any inmate confined in a jail or state prison, or who deposits or conceals in or about a jail or prison, or the precincts of a jail or prison, or in any vehicle going into the premises belonging to a jail or prison, any article or thing whatever, with intent that any inmate confined in the jail or prison shall obtain or receive the same, or who receives from any inmate any article or thing whatever with intent to convey the same out of a jail or prison, contrary to the rules or regulations and without the knowledge or permission of the sheriff or other keeper of the jail, in the case of a jail, or of the warden or superintendent of the prison, in the case of a prison, is guilty of a Class I felony.

History: 1989 a. 31 s. 1627; Stats. 1989 s. 302.095; 1991 a. 316; 1993 a. 490; 1995 a. 437; 1997 a. 283; 2001 a. 109.

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

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

302.105 Notification prior to expiration of sentence. (1) In this section:

(a) "Member of the family" means spouse, domestic partner under ch. 770, child, sibling, parent or legal guardian.

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

(2) Before an inmate who is in a prison serving a sentence for a violation of s. 940.01, 940.03, 940.05, 940.225 (1) or (2), 948.02 (1) or (2), 948.025, 948.06, 948.07, or 948.085 is released from imprisonment because he or she has reached the expiration date of his or her sentence, 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 inmate or, if the victim died as a result of the crime, an adult member of the victim's family or, if the victim is younger than 18 years old, the victim's parent or legal guardian.

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

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

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

History: 1993 a. 479; 1997 a. 181; 2001 a. 16 s. 3385g; Stats. 2001 s. 302.105; 2005 a. 277; 2009 a. 28.

302.107 Notification upon revocation. (1) In this section:

(a) "Inmate" means the person who was convicted of an offense against the victim.

(b) "Victim" has the meaning given in s. 950.02 (4).

(2) Upon revocation of parole or extended supervision under s. 302.11 (7), 302.113 (9), 302.114 (9), or 304.06 (3) or (3g), the department shall make a reasonable effort to send a notice of the revocation to a victim of an offense committed by the inmate, if the victim can be found, in accordance with sub. (3) and after receiving a completed card under sub. (4).

(3) The department shall make a reasonable effort to send the notice, postmarked not more than 10 days after the revocation, to the last−known address of the victim.

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

History: 2015 a. 354.

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

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

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

2. Any felony under s. 940.09 (1), 1999 stats., s. 943.23 (1m), 1999 stats., s. 948.35 (1) (b) or (c), 1999 stats., or s. 948.36, 1999 stats., or s. 940.02, 940.03, 940.05, 940.09 (1c), 940.19 (5), 940.195 (5), 940.21, 940.225 (1) or (2), 940.305 (2), 940.31 (1) or (2) (b), 943.02, 943.10 (2), 943.23 (1g), 943.32 (2), 946.43 (1m), 948.02 (1) or (2), 948.025, 948.03 (2) (a) or (c) or (5) (a) 1., 2., 3., or 4., 948.05, 948.06, 948.07, 948.08, or 948.30 (2).

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

(am) The mandatory release date established in sub. (1) is a presumptive mandatory release date for an inmate who is serving a sentence for a serious felony committed on or after April 21, 1994, but before December 31, 1999.

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

1. Protection of the public.

2. Refusal by the inmate to participate in counseling or treatment that the social service and clinical staff of the institution determines is necessary for the inmate, including pharmacological treatment using an antiandrogen or the chemical equivalent of an antiandrogen if the inmate is a serious child sex offender as defined in s. 304.06 (1q) (a). The parole commission may not deny presumptive mandatory release to an inmate because of the inmate's refusal to participate in a rehabilitation program under s. 301.047.

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

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

(1i) Except as provided in sub. (1z), an inmate serving a sentence to the intensive sanctions program is entitled to mandatory release. The mandatory release date under sub. (1) is established at two−thirds of the sentence under s. 973.032 (3) (a).

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

(1p) An inmate serving a term subject to s. 961.49 (2), 1999 stats., for a crime committed before December 31, 1999, is entitled to mandatory release, except the inmate may not be released before he or she has complied with s. 961.49 (2), 1999 stats.

(1q) (a) An inmate who files an action or special proceeding, including a petition for a common law writ of certiorari, to which s. 807.15 applies shall have his or her mandatory release date extended by the number of days specified in the court order prepared under s. 807.15 (3).

(b) Upon receiving a court order issued under s. 807.15, the department shall recalculate the mandatory release date of the inmate to whom the order applies and shall inform the inmate of his or her new mandatory release date.

(1z) An inmate who is sentenced to a term of confinement in prison under s. 973.01 for a felony that is committed on or after December 31, 1999, is not entitled under this section to mandatory release on parole under that sentence.

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

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

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

(3) All consecutive sentences imposed for crimes committed before December 31, 1999, shall be computed as one continuous sentence.

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

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

(4m) An inmate paroled under this section is subject to the restriction under s. 304.06 (2m), if applicable, relating to the counties to which inmates may be paroled.

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

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

(6m) A person released under this section, his or her residence, and any property under his or her control may be searched by a law enforcement officer at any time during his or her period of supervision if the officer reasonably suspects that the person is committing, is about to commit, or has committed a crime or a violation of a condition of parole. Any search conducted pursuant to this subsection shall be conducted in a reasonable manner and may not be arbitrary, capricious, or harassing. A law enforcement officer who conducts a search pursuant to this subsection shall, as soon as practicable after the search, notify the department.

(7) (ag) In this subsection "reviewing authority" means the division of hearings and appeals in the department of administration, upon proper notice and hearing, or the department of corrections, if the parolee waives a hearing.

(am) The reviewing authority may return a parolee released under sub. (1) or (1g) (b) or s. 304.02 or 304.06 (1) to prison for a period up to the remainder of the sentence for a violation of the conditions of parole. The remainder of the sentence is the entire sentence, less time served in custody prior to parole. The revocation order shall provide the parolee with credit in accordance with ss. 304.072 and 973.155.

(b) A parolee returned to prison for violation of the conditions of parole shall be incarcerated for the entire period of time determined by the reviewing authority unless paroled earlier under par. (c). The parolee is not subject to mandatory release under sub. (1) or presumptive mandatory release under sub. (1g). The period of time determined under par. (am) may be extended in accordance with subs. (1q) and (2).

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

(d) A parolee who is subsequently released either after service of the period of time determined by the reviewing authority or by a grant of parole under par. (c) is subject to all conditions and rules of parole until expiration of sentence or discharge by the department.

(e) A reviewing authority may consolidate proceedings before it under par. (am) with other proceedings before that reviewing authority under par. (am) or s. 302.113 (9) (am) or 302.114 (9) (am) if all of the proceedings relate to the parole or extended supervision of the same person.

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

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

History: 1977 c. 266, 353; 1979 c. 221; 1981 c. 266; 1983 a. 66, 528; 1985 a. 27; 1985 a. 332 s. 251 (1); 1987 a. 27, 412; 1989 a. 31 ss. 1629, 1630; Stats. s. 302.11; 1989 a. 107; 1991 a. 39; 1993 a. 79, 97, 194, 289, 483; 1995 a. 77, 448; 1997 a. 133, 275, 283, 284, 295, 326; 1999 a. 188; 2001 a. 16, 109; 2005 a. 344; 2009 a. 28; 2011 a. 38; 2013 a. 79, 334; 2015 a. 366.

Cross−reference: See also ss. DOC 302.21 and 302.30, Wis. adm. code.

A defendant convicted of a sex crime who was committed to the department of health and social services for a mandatory examination not to exceed 60 days to determine whether he was in need of specialized treatment was not entitled to credit therefor against a maximum sentence thereafter imposed. Mitchell v. State, 69 Wis. 2d 695, 230 N.W.2d 884 (1975).

Due process for disciplinary hearings requires a record sufficient for judicial review. A major change in conditions of confinement gives rise to minimum due process requirements under *Wolff v. McDonnell*, 418 U.S. 539. State ex rel. Irby v. Israel, 95 Wis. 2d 697, 291 N.W.2d 643 (Ct. App. 1980).

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

The calculation of mandatory release dates for pre−June 1, 1994 crimes is discussed. State ex. rel. Parker v. Sullivan, 184 Wis. 2d 668, 517 N.W.2d 449 (1994).

An inmate has a constitutionally protected liberty interest in not having a mandatory release date extended. Santiago v. Ware, 205 Wis. 2d 295, 556 N.W.2d 356 (Ct. App. 1996), 95−0079.

Time served on parole does not constitute custody for purposes of determining sentence credit under sub. (7) (a) [now sub. (7) (am)]. Section 304.072 addresses the tolling of time served between an alleged violation and revocation and s. 973.155 addresses credit for days incarcerated; neither requires sentence credit under sub. (7) (a) for probation served. State ex rel. Ludtke v. DOC, 215 Wis. 2d 1, 572 N.W.2d 864 (Ct. App. 1997), 96−1745.

Whether or not a residence has been found for an inmate, he or she must be released on his or her mandatory release date. State ex rel. Olson v. Litscher, 2000 WI App 61, 233 Wis. 2d 685, 608 N.W.2d 425, 99−1082.

The presumptive mandatory release scheme under sub. (1g) does not create a protectible liberty interest in parole. The parole commission may deny mandatory release to otherwise eligible prisoners when, in its discretion, the prisoner either poses a risk to the public or refuses to participate in necessary counseling and treatment. Because a prisoner is not entitled to release on the presumptive mandatory release date, he or she is not entitled to any due process protections. State ex rel. Gendrich v. Litscher, 2001 WI App 163, 246 Wis. 2d 814, 632 N.W.2d 878, 00−3527.

Sub. (7) (am) [formerly sub. (7) (a)] does not distinguish between the portion of an original sentence for felony offenses and the portion of an original sentence for misdemeanor offenses. Darby v. Litscher, 2002 WI App 258, 258 Wis. 2d 270, 655 N.W.2d 129, 02−1018.

Treating all sentences as one as required by ss. 302.11 (3) and 302.113 (4) simply means that a defendant must serve all of his or her initial confinement at once, and must then serve all of the extended supervision at once. State v. Polar, 2014 WI App 15, 352 Wis. 2d 452, 842 N.W.2d 531, 13−1433.

Sub. (7) (b) first states the general rule that revoked parolees are not subject to early release; the next sentence provides a specific example that revoked parolees are not subject to mandatory release. It does not address the problem caused by custody incurred before sentencing that was not granted at sentencing. State v. Obriecht, 2015 WI 66, 363 Wis. 2d 816, 867 N.W.2d 387, 13−1345.

Incarcerating a person beyond the termination of his or her sentence without penological justification violates the 8th amendment prohibition against cruel and unusual punishment when it is the product of deliberate indifference. To comply with due process, prison officials cannot ignore an inmate's request to recalculate his or her sentence and must place some procedure in place to address such requests. Russell v. Lazar, 300 F. Supp 2d 316 (2004).

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

In the absence of a showing of an abuse of discretion by the department, a prisoner released on parole is not entitled to an absolute discharge because it was granted to other prisoners. Hansen v. Schmidt, 329 F. Supp. 141 (1971).

302.113 Release to extended supervision for felony offenders not serving life sentences. (1) An inmate is subject to this section if he or she is serving a bifurcated sentence imposed under s. 973.01.

(2) Except as provided in subs. (3) and (9), an inmate subject to this section is entitled to release to extended supervision after he or she has served the term of confinement in prison portion of the sentence imposed under s. 973.01, as modified by the sentencing court under sub. (9g) or s. 302.045 (3m) (b) 1., 302.05 (3) (c) 2. a., 973.195 (1r), or 973.198, if applicable.

(3) (a) The warden or superintendent shall keep a record of the conduct of each inmate subject to this section, specifying each infraction of the rules. If an inmate subject to this section violates any regulation of the prison or refuses or neglects to perform required or assigned duties, the department may extend the term of confinement in prison portion of the inmate's bifurcated sentence as follows:

1. Ten days for the first offense.
2. Twenty days for the 2nd offense.
3. Forty days for the 3rd or each subsequent offense.

(b) In addition to the sanctions under par. (a), if an inmate subject to this section is placed in adjustment, program or controlled segregation status, the department may extend his or her term of confinement in prison portion of the bifurcated sentence by a number of days equal to 50 percent of the number of days spent in segregation status. In administering this paragraph, the department shall use the definition of adjustment, program or controlled segregation status under departmental rules in effect at the time an inmate is placed in that status.

(bm) An inmate subject to this section who files an action or special proceeding, including a petition for a common law writ of certiorari, to which s. 807.15 applies shall have his or her term of confinement extended by the number of days specified in the court order prepared under s. 807.15 (3). Upon receiving a court order issued under s. 807.15, the department shall recalculate the date on which the inmate to whom the order applies will be entitled to release to extended supervision and shall inform the inmate of that date.

(c) No extension of a term of confinement in prison under this subsection may require an inmate to serve more days in prison than the total length of the bifurcated sentence imposed under s. 973.01.

(d) If the term of confinement in prison portion of a bifurcated sentence is increased under this subsection, the term of extended supervision is reduced so that the total length of the bifurcated sentence does not change.

(4) All consecutive sentences imposed for crimes committed on or after December 31, 1999, shall be computed as one continuous sentence. The person shall serve any term of extended supervision after serving all terms of confinement in prison.

(5) An inmate may waive entitlement to release to extended supervision if the department agrees to the waiver.

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

(7) Any inmate released to extended supervision under this section is subject to all conditions and rules of extended supervision until the expiration of the term of extended supervision portion of the bifurcated sentence. The department may set conditions of extended supervision in addition to any conditions of extended supervision required under s. 302.116, if applicable, or set by the court under sub. (7m) or s. 973.01 (5) if the conditions set by the department do not conflict with the court's conditions.

(7m) (a) Except as provided in par. (e), a person subject to this section or the department may petition the sentencing court to modify any conditions of extended supervision set by the court.

(b) If the department files a petition under this subsection, it shall serve a copy of the petition on the person who is the subject of the petition and, if the person is represented by an attorney, on the person's attorney. If a person who is subject to this section or his or her attorney files a petition under this subsection, the person or his or her attorney shall serve a copy of the petition on the department. The court shall serve a copy of a petition filed under this section on the district attorney. The court may direct the clerk of the court to provide notice of the petition to a victim of a crime committed by the person who is the subject of the petition.

(c) The court may conduct a hearing to consider the petition. The court may grant the petition in full or in part if it determines that the modification would meet the needs of the department and the public and would be consistent with the objectives of the person's sentence.

(d) A person subject to this section or the department may appeal an order entered by the court under this subsection. The appellate court may reverse the order only if it determines that the sentencing court erroneously exercised its discretion in granting or denying the petition.

(e) 1. An inmate may not petition the court to modify the conditions of extended supervision earlier than one year before the date of the inmate's scheduled date of release to extended supervision or more than once before the inmate's release to extended supervision.

2. A person subject to this section may not petition the court to modify the conditions of extended supervision within one year after the inmate's release to extended supervision. If a person subject to this section files a petition authorized by this subsection after his or her release from confinement, the person may not file another petition until one year after the date of filing the former petition.

(7r) A person released under this section, his or her residence, and any property under his or her control may be searched by a law enforcement officer at any time during his or her period of supervision if the officer reasonably suspects that the person is committing, is about to commit, or has committed a crime or a violation of a condition of release to extended supervision. Any search conducted pursuant to this subsection shall be conducted in a reasonable manner and may not be arbitrary, capricious, or harassing. A law enforcement officer who conducts a search pursuant to this subsection shall, as soon as practicable after the search, notify the department.

(8) Releases to extended supervision from prison shall be on the Tuesday or Wednesday preceding the date on which he or she completes the term of imprisonment.

(8m) (a) Every person released to extended supervision under this section remains in the legal custody of the department. If the department alleges that any condition or rule of extended supervision has been violated by the person, the department may take physical custody of the person for the investigation of the alleged violation.

(b) If a person released to extended supervision under this section signs a statement admitting a violation of a condition or rule of extended supervision, the department may, as a sanction for the

violation, confine the person for up to 90 days in a regional detention facility or, with the approval of the sheriff, in a county jail. If the department confines the person in a county jail under this paragraph, the department shall reimburse the county for its actual costs in confining the person from the appropriations under s. 20.410 (1) (ab) and (b). Notwithstanding s. 302.43, the person is not eligible to earn good time credit on any period of confinement imposed under this subsection.

(9) (ag) In this subsection "reviewing authority" means the division of hearings and appeals in the department of administration, upon proper notice and hearing, or the department of corrections, if the person on extended supervision waives a hearing.

(am) If a person released to extended supervision under this section violates a condition of extended supervision, the reviewing authority may revoke the extended supervision of the person. If the extended supervision of the person is revoked, the reviewing authority shall order the person to be returned to prison for any specified period of time that does not exceed the time remaining on the bifurcated sentence. The time remaining on the bifurcated sentence is the total length of the bifurcated sentence, less time served by the person in confinement under the sentence before release to extended supervision under sub. (2) and less all time served in confinement for previous revocations of extended supervision under the sentence. The order returning a person to prison under this paragraph shall provide the person whose extended supervision was revoked with credit in accordance with ss. 304.072 and 973.155.

(b) A person who is returned to prison after revocation of extended supervision shall be incarcerated for the entire period of time specified by the order under par. (am). The period of time specified under par. (am) may be extended in accordance with sub. (3). If a person is returned to prison under par. (am) for a period of time that is less than the time remaining on the bifurcated sentence, the person shall be released to extended supervision after he or she has served the period of time specified by the order under par. (am) and any periods of extension imposed in accordance with sub. (3).

(c) A person who is subsequently released to extended supervision after service of the period of time specified by the order under par. (am) is subject to all conditions and rules under sub. (7) and, if applicable, sub. (7m) until the expiration of the remaining extended supervision portion of the bifurcated sentence. The remaining extended supervision portion of the bifurcated sentence is the total length of the bifurcated sentence, less the time served by the person in confinement under the bifurcated sentence before release to extended supervision under sub. (2) and less all time served in confinement for previous revocations of extended supervision under the bifurcated sentence.

(d) For the purposes of pars. (am) and (c), the amount of time a person has served in confinement before release to extended supervision and the amount of time a person has served in confinement for a revocation of extended supervision includes any extensions imposed under sub. (3).

(e) If a hearing is to be held under par. (am) before the division of hearings and appeals in the department of administration, the hearing examiner may order that a deposition be taken by audiovisual means and allow the use of a recorded deposition under s. 967.04 (7) to (10).

(f) A reviewing authority may consolidate proceedings before it under par. (am) with other proceedings before that reviewing authority under par. (am) or s. 302.11 (7) (am) or 302.114 (9) (am) if all of the proceedings relate to the parole or extended supervision of the same person.

(g) In any case in which there is a hearing before the division of hearings and appeals in the department of administration concerning whether to revoke a person's extended supervision, the person on extended supervision may seek review of a decision to revoke extended supervision and the department of corrections may seek review of a decision to not revoke extended supervision. Review of a decision under this paragraph may be sought only by an action for certiorari.

(9g) (a) In this subsection:

1. "Extraordinary health condition" means a condition afflicting a person, such as advanced age, infirmity, or disability of the person or a need for medical treatment or services not available within a correctional institution.

2. "Program review committee" means the committee at a correctional institution that reviews the security classifications, institution assignments, and correctional programming assignments of inmates confined in the institution.

(b) An inmate who is serving a bifurcated sentence for a crime other than a Class B felony may seek modification of the bifurcated sentence in the manner specified in par. (f) if he or she meets one of the following criteria:

1. The inmate is 65 years of age or older and has served at least 5 years of the term of confinement in prison portion of the bifurcated sentence.

2. The inmate is 60 years of age or older and has served at least 10 years of the term of confinement in prison portion of the bifurcated sentence.

3. The inmate has an extraordinary health condition.

(c) An inmate who meets a criterion under par. (b) may submit a petition to the program review committee at the correctional institution in which the inmate is confined requesting a modification of the inmate's bifurcated sentence in the manner specified in par. (f). If the inmate alleges in the petition that he or she has an extraordinary health condition, the inmate shall attach to the petition affidavits from 2 physicians setting forth a diagnosis that the inmate has an extraordinary health condition.

(cm) If, after receiving the petition under par. (c), the program review committee determines that the public interest would be served by a modification of the inmate's bifurcated sentence in the manner provided under par. (f), the committee shall approve the petition for referral to the sentencing court and notify the department of its approval. The department shall then refer the inmate's petition to the sentencing court and request the court to conduct a hearing on the petition. If the program review committee determines that the public interest would not be served by a modification of the inmate's bifurcated sentence in the manner specified in par. (f), the committee shall deny the inmate's petition.

(d) When a court is notified by the department that it is referring to the court an inmate's petition for modification of the inmate's bifurcated sentence, the court shall schedule a hearing to determine whether the public interest would be served by a modification of the inmate's bifurcated sentence in the manner specified in par. (f). The inmate and the district attorney have the right to be present at the hearing, and any victim of the inmate's crime has the right to be present at the hearing and to provide a statement concerning the modification of the inmate's bifurcated sentence. The court shall order such notice of the hearing date as it considers adequate to be given to the department, the inmate, the attorney representing the inmate, if applicable, and the district attorney. Victim notification shall be provided as specified under par. (g).

(e) At a hearing scheduled under par. (d), the inmate has the burden of proving by the greater weight of the credible evidence that a modification of the bifurcated sentence in the manner specified in par. (f) would serve the public interest. If the inmate proves that a modification of the bifurcated sentence in the manner specified in par. (f) would serve the public interest, the court shall modify the inmate's bifurcated sentence in that manner. If the inmate does not prove that a modification of the bifurcated sentence in the manner specified in par. (f) would serve the public interest, the court shall deny the inmate's petition for modification of the bifurcated sentence.

(f) A court may modify an inmate's bifurcated sentence under this section only as follows:

1. The court shall reduce the term of confinement in prison portion of the inmate's bifurcated sentence in a manner that provides for the release of the inmate to extended supervision within 30 days after the date on which the court issues its order modifying the bifurcated sentence.

2. The court shall lengthen the term of extended supervision imposed so that the total length of the bifurcated sentence originally imposed does not change.

(g) 1. In this paragraph, "victim" has the meaning given in s. 950.02 (4).

2. When a court schedules a hearing under par. (d), the clerk of the circuit court shall send a notice of hearing to the victim of the crime committed by the inmate, if the victim has submitted a card under subd. 3. requesting notification. The notice shall inform the victim that he or she may appear at the hearing scheduled under par. (d) and shall inform the victim of the manner in which he or she may provide a statement concerning the modification of the inmate's bifurcated sentence in the manner provided in par. (f). The clerk of the circuit court shall make a reasonable attempt to send the notice of hearing to the last−known address of the inmate's victim, postmarked at least 10 days before the date of the hearing.

3. The director of state courts shall design and prepare cards for a victim to send to the clerk of the circuit court for the county in which the inmate was convicted and sentenced. The cards shall have space for a victim to provide his or her name and address, the name of the applicable inmate, and any other information that the director of state courts determines is necessary. The director of state courts shall provide the cards, without charge, to clerks of circuit court. Clerks of circuit court shall provide the cards, without charge, to victims. Victims may send completed cards to the clerk of the circuit court for the county in which the inmate was convicted and sentenced. All court records or portions of records that relate to mailing addresses of victims are not subject to inspection or copying under s. 19.35 (1).

(h) An inmate may appeal a court's decision to deny the inmate's petition for modification of his or her bifurcated sentence. The state may appeal a court's decision to grant an inmate's petition for a modification of the inmate's bifurcated sentence. In an appeal under this paragraph, the appellate court may reverse a decision granting or denying a petition for modification of a bifurcated sentence only if it determines that the sentencing court erroneously exercised its discretion in granting or denying the petition.

(i) If the program review committee denies an inmate's petition under par. (cm), the inmate may not file another petition within one year after the date of the program review committee's denial. If the program review committee approves an inmate's petition for referral to the sentencing court under par. (cm) but the sentencing court denies the petition, the inmate may not file another petition under par. (cm) within one year after the date of the court's decision.

(j) An inmate eligible to seek modification of his or her bifurcated sentence under this subsection has a right to be represented by counsel in proceedings under this subsection. An inmate, or the department on the inmate's behalf, may apply to the state public defender for determination of indigency and appointment of counsel under s. 977.05 (4) (jm) before or after the filing of a petition with the program review committee under par. (c). If an inmate whose petition has been referred to the court under par. (cm) is without counsel, the court shall refer the matter to the state public defender for determination of indigency and appointment of counsel under s. 977.05 (4) (jm).

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

History: 1997 a. 283; 2001 a. 16, 109; 2003 a. 33; 2005 a. 42; 2009 a. 28, 276; 2011 a. 38; 2013 a. 79.

Reconfinement under sub. (9) (am) is subject to review under s. 809.30. State v. Swiams, 2004 WI App 217, 277 Wis. 2d 400, 690 N.W.2d 452, 04−0299.

A hearing to determine the length of reconfinement under sub. (9) is akin to sentencing. Both are reviewed by appellate courts to determine whether the court erroneously exercised its discretion. State v. Brown, 2006 WI 131, 298 Wis. 2d 37, 725 N.W.2d 262, 05−0584.

While the recommendation of the department of corrections may be helpful and should be considered, the trial court owes no deference to the department's sentencing recommendation after revocation of an offender's extended supervision. The court should also consider the nature and severity of the original offense, the client's institutional conduct record, and the client's conduct and the nature of the violation of terms and conditions during extended supervision, as well as the amount of incarceration necessary to protect the public from the risk of further criminal activity. The court should impose the minimum amount of confinement consistent with the protection of the public, the gravity of the offense, and the defendant's rehabilitative needs. State v. Brown, 2006 WI 131, 298 Wis. 2d 37, 725 N.W.2d 262, 05−0584.

The department of corrections and the division of hearings and appeals had jurisdiction to revoke extended supervision for a violation of the rules of supervision when an inmate was erroneously released to supervision while serving a bifurcated sentence and the initial term of incarceration had not been completed. Rupinski v. Smith, 2007 WI App 4, 297 Wis. 2d 749, 728 N.W.2d 1, 05−1760.

Under *Brown* the defendant has a right to allocution at a reconfinement hearing before the court pronounces its decision. State v. Hines, 2007 WI App 39, 300 Wis. 2d 485, 730 N.W.2d 434, 06−0846.

When a person is serving consecutive indeterminate and determinate sentences, extended supervision and parole are to be treated as one continuous period, and both may be revoked upon violation of the conditions imposed. Thomas v. Schwarz, 2007 WI 57, 300 Wis. 2d 381, 732 N.W.2d 1, 05−1487.

Sub. (9) (am) governs reconfinement procedure and sets forth the limits of a court's exercisable discretion. It does not provide discretion for the court to consider eligibility for the challenge incarceration program or the earned release program under s. 973.01 (3g) and (3m). State v. Hall, 2007 WI App 168, 304 Wis. 2d 504, 737 N.W.2d 13, 06−1439.

The original sentencing transcript can be an important source of information in a reconfinement hearing and is generally readily available, but a circuit court is not required to read the original sentencing transcript in every case. Rather, the court should be familiar with the case and can gain the requisite familiarity in a number of ways that may differ from case to case. The court must decide which factors are relevant for consideration in any given case and use its discretion as to how it ascertains the information needed to consider the relevant factors. State v. Walker, 2008 WI 34, 308 Wis. 2d 666, 747 N.W.2d 673, 06−0562.

Sections 302.113 (4), 973.01, and 973.15 establish that consecutive periods of extended supervision are to be served consecutively, aggregated into one continuous period, so that revocation of extended supervision at any time allows revocation as to all consecutive sentences. State v. Collins, 2008 WI App 163, 314 Wis. 2d 653, 760 N.W.2d 438, 07−2580.

Sub. (9) (b) keeps intact the bifurcated−sentence scheme established by s. 973.01. It indubitably follows that the reconfinement court has the same authority to impose conditions of extended supervision that follows the period of reconfinement as an original sentencing court has to impose conditions on the extended supervision that follows the period of initial confinement. State v. Harris, 2008 WI App 189, 763 Wis. 2d 206, 763 N.W.2d 206, 08−0778.

When a person waives a revocation hearing, the department of corrections (DOC) is required by sub. (9) (at) to make a recommendation to the court concerning the period of time the person should be returned to prison. The recommendation is more appropriately analogized to a presentence investigation report (PSI) at the original sentencing than a plea agreement. The securing of a PSI is solely within the judicial function to assist the judge in selecting an appropriate sentence. The DOC does not function as an agent of either the state or the defense in fulfilling its PSI role under this section and the prosecutor is not bound by a recommendation from the DOC. State v. Washington, 2009 WI App 148, 321 Wis. 2d 508, 775 N.W.2d 535, 08−2359.

There is no indication Truth−in−Sentencing altered the substantive nature of the reconfinement decision. Rather, as before Truth−in−Sentencing, the reconfinement determination is part of the revocation process and therefore not a criminal proceeding. State v. Brimer, 2010 WI App 57, 324 Wis. 2d 408, 781 N.W.2d 726, 09−0817.

There is no authority under sub. (9) (am) or elsewhere for a defendant to use his or her revocation and resultant reconfinement hearing as a vehicle for reducing the overall sentence imposed. A challenge to a post−revocation sentence does not bring the original judgment of conviction before the court. State v. Harris, 2012 WI App 79, 343 Wis. 2d 479, 819 N.W.2d 350, 11−0983.

Treating all sentences as one as required by ss. 302.11 (3) and 302.113 (4) simply means that a defendant must serve all of his or her initial confinement at once, and must then serve all of the extended supervision at once. State v. Polar, 2014 WI App 15, 352 Wis. 2d 452, 842 N.W.2d 531, 13−1433.

2011 Wis. Act 38 repealed or modified ss. 302.113 (2) (b) and 304.06 (1) (bg) 1., 2009 stats., which afforded certain prisoners convicted of Class F to Class I felonies an opportunity to earn early release from confinement, resulting in the petitioner being required to serve the full term of the initial confinement portion of his sentence. Because the law in effect when he was convicted afforded him the opportunity to be released earlier and the 2011 Act 38 modifications resulted in a significant risk of prolonging the defendant's incarceration, the portions of Act 38 that eliminated the defendant's eligibility for early release under the 2009 law violated the ex post facto clauses when applied to the defendant's offenses. Singh v. Kemper, 2014 WI App 43, 353 Wis. 2d 520, 846 N.W.2d 820, 13−1724.

Singh v. Kemper, 2014 WI App 43 affirmed in part, reversed in part by Singh v. Kemper, 2016 WI 67, ___ Wis. 2d ___, 883 N.W.2d 86, 13−1724.

Taking Reconfinement Hearings Seriously. Bizzaro. Wis. Law. Apr. 2007.

302.114 Petition for release and release to extended supervision for felony offenders serving life sentences.

(1) An inmate is subject to this section if he or she is serving a life sentence imposed under s. 973.014 (1g) (a) 1. or 2. An inmate serving a life sentence under s. 939.62 (2m) or 973.014 (1g) (a) 3. is not eligible for release to extended supervision under this section.

(2) Except as provided in subs. (3) and (9), an inmate subject to this section may petition the sentencing court for release to extended supervision after he or she has served 20 years, if the inmate was sentenced under s. 973.014 (1g) (a) 1., or after he or she has reached the extended supervision eligibility date set by the court, if the inmate was sentenced under s. 973.014 (1g) (a) 2.

(3) (a) The warden or superintendent shall keep a record of the conduct of each inmate subject to this section, specifying each infraction of the rules. If any inmate subject to this section violates any regulation of the prison or refuses or neglects to perform required or assigned duties, the department may extend the extended supervision eligibility date set under s. 973.014 (1g) (a) 1. or 2., whichever is applicable, as follows:

1. Ten days for the first offense.
2. Twenty days for the 2nd offense.
3. Forty days for the 3rd or each subsequent offense.

(b) In addition to the sanctions under par. (a), if an inmate subject to this section is placed in adjustment, program or controlled segregation status, the department may extend the extended supervision eligibility date set under s. 973.014 (1g) (a) 1. or 2., whichever is applicable, by a number of days equal to 50 percent of the number of days spent in segregation status. In administering this paragraph, the department shall use the definition of adjustment, program or controlled segregation status under departmental rules in effect at the time an inmate is placed in that status.

(c) An inmate subject to this section who files an action or special proceeding, including a petition for a common law writ of certiorari, to which s. 807.15 applies shall have his or her extended supervision eligibility date set under s. 973.014 (1g) (a) 1. or 2., whichever is applicable, extended by the number of days specified in the court order prepared under s. 807.15 (3). Upon receiving a court order issued under s. 807.15, the department shall recalculate the date on which the inmate to whom the order applies will be entitled to petition for release to extended supervision and shall inform the inmate of that date.

(4) All consecutive sentences imposed for crimes committed on or after December 31, 1999, shall be computed as one continuous sentence. An inmate subject to this section shall serve any term of extended supervision after serving all terms of confinement in prison.

(5) (a) An inmate subject to this section who is seeking release to extended supervision shall file a petition for release to extended supervision with the court that sentenced him or her. An inmate may not file an initial petition under this paragraph earlier than 90 days before his or her extended supervision eligibility date. If an inmate files an initial petition for release to extended supervision at any time earlier than 90 days before his or her extended supervision eligibility date, the court shall deny the petition without a hearing.

(am) The inmate shall serve a copy of a petition for release to extended supervision on the district attorney's office that prosecuted him or her, and the district attorney shall file a written response to the petition within 45 days after the date he or she receives the petition.

(b) After reviewing a petition for release to extended supervision and the district attorney's response to the petition, the court shall decide whether to hold a hearing on the petition or, if it does not hold a hearing, whether to grant or deny the petition without a hearing. If the court decides to hold a hearing under this paragraph, the hearing shall be before the court without a jury. The office of the district attorney that prosecuted the inmate shall represent the state at the hearing.

(c) Before deciding whether to grant or deny the inmate's petition, the court shall allow a victim, as defined in s. 950.02 (4), to make a statement or submit a statement concerning the release of the inmate to extended supervision. The court may allow any other person to make or submit a statement under this paragraph. Any statement under this paragraph must be relevant to the release of the inmate to extended supervision.

(cm) A court may not grant an inmate's petition for release to extended supervision unless the inmate proves, by clear and convincing evidence, that he or she is not a danger to the public.

(d) If the court grants the inmate's petition for release to extended supervision, the court may impose conditions on the term of extended supervision.

(e) If the court denies the inmate's petition for release to extended supervision, the court shall specify the date on which the inmate may file a subsequent petition under this section. An inmate may file a subsequent petition at any time on or after the date specified by the court, but if the inmate files a subsequent petition for release to extended supervision before the date specified by the court, the court may deny the petition without a hearing.

(f) An inmate may appeal an order denying his or her petition for release to extended supervision. In an appeal under this paragraph, the appellate court may reverse an order denying a petition for release to extended supervision only if it determines that the sentencing court erroneously exercised its discretion in denying the petition for release to extended supervision.

(6) (a) In this subsection, "victim" has the meaning given in s. 950.02 (4).

(b) If an inmate petitions a court under sub. (5) or (9) (bm) for release to extended supervision under this section, the clerk of the circuit court in which the petition is filed shall send a copy of the petition and, if a hearing is scheduled, a notice of hearing to the victim of the crime committed by the inmate, if the victim has submitted a card under par. (e) requesting notification.

(c) The notice under par. (b) shall inform the victim that he or she may appear at the hearing under sub. (5) or (9) (bm), if a hearing is scheduled, and shall inform the victim of the manner in which he or she may provide written statements concerning the inmate's petition for release to extended supervision.

(d) The clerk of the circuit court shall make a reasonable attempt to send a copy of the inmate's petition to the last−known address of the victim within 7 days of the date on which the petition is filed and shall make a reasonable attempt to send the notice of hearing, if a hearing is scheduled, to the last−known address of the persons victim, postmarked at least 10 days before the date of the hearing.

(e) The director of state courts shall design and prepare cards for a victim to send to the clerk of the circuit court in which the inmate is convicted and sentenced. The cards shall have space for a victim to provide his or her name and address, the name of the applicable inmate and any other information the director of state courts determines is necessary. The director of state courts shall provide the cards, without charge, to clerks of circuit court. Clerks of circuit court shall provide the cards, without charge, to victims. Victims may send completed cards to the clerk of the circuit court in which the inmate was convicted and sentenced. All court records or portions of records that relate to mailing addresses of victims are not subject to inspection or copying under s. 19.35 (1).

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

(8) Any inmate released to extended supervision under this section is subject to all conditions and rules of extended supervision. The department may set conditions of extended supervision in addition to any conditions of extended supervision required under s. 302.116, if applicable, or set by the court under sub. (5) (d) if the conditions set by the department do not conflict with the court's conditions.

(8g) A person released under this section, his or her residence, and any property under his or her control may be searched by a law enforcement officer at any time during his or her period of supervision if the officer reasonably suspects that the person is committing, is about to commit, or has committed a crime or a violation of a condition of release to extended supervision. Any search conducted pursuant to this subsection shall be conducted in a reasonable manner and may not be arbitrary, capricious, or harassing. A law enforcement officer who conducts a search pursuant to this subsection shall, as soon as practicable after the search, notify the department.

(8m) (a) Every person released to extended supervision under this section remains in the legal custody of the department. If the department alleges that any condition or rule of extended supervision has been violated by the person, the department may take physical custody of the person for the investigation of the alleged violation.

(b) If a person released to extended supervision under this section signs a statement admitting a violation of a condition or rule of extended supervision, the department may, as a sanction for the violation, confine the person for up to 90 days in a regional detention facility or, with the approval of the sheriff, in a county jail. If the department confines the person in a county jail under this paragraph, the department shall reimburse the county for its actual costs in confining the person from the appropriations under s. 20.410 (1) (ab) and (b). Notwithstanding s. 302.43, the person is not eligible to earn good time credit on any period of confinement imposed under this subsection.

(9) (ag) In this subsection "reviewing authority" has the meaning given in s. 302.113 (9) (ag).

(am) If a person released to extended supervision under this section violates a condition of extended supervision, the reviewing authority may revoke the extended supervision of the person. If the extended supervision of the person is revoked, the person shall be returned to the circuit court for the county in which the person was convicted of the offense for which he or she was on extended supervision, and the court shall order the person to be returned to prison for a specified period of time before he or she is eligible for being released again to extended supervision. The period of time specified under this paragraph may not be less than 5 years and may be extended in accordance with sub. (3).

(b) When a person is returned to court under par. (am) after revocation of extended supervision, the reviewing authority shall make a recommendation to the court concerning the period of time for which the person should be returned to prison before being eligible for release to extended supervision. The period of time recommended under this paragraph may not be less than 5 years.

(bm) A person who is returned to prison under par. (am) after revocation of extended supervision may, upon petition to the sentencing court, be released to extended supervision after he or she has served the entire period of time specified by the court under par. (am), including any periods of extension imposed under sub. (3). A person may not file a petition under this paragraph earlier than 90 days before the date on which he or she is eligible to be released to extended supervision. If a person files a petition for release to extended supervision under this paragraph at any time earlier than 90 days before the date on which he or she is eligible to be released to extended supervision, the court shall deny the petition without a hearing. The procedures specified in sub. (5) (am) to (f) apply to a petition filed under this paragraph.

(c) A person who is subsequently released to extended supervision under par. (bm) is subject to all conditions and rules under sub. (8) until the expiration of the sentence.

(d) If a hearing is to be held under par. (am) before the division of hearings and appeals in the department of administration, the hearing examiner may order that a deposition be taken by audiovisual means and allow the use of a recorded deposition under s. 967.04 (7) to (10).

(e) A reviewing authority may consolidate proceedings before it under par. (am) with other proceedings before that reviewing authority under par. (am) or s. 302.11 (7) (am) or 302.113 (9) (am) if all of the proceedings relate to the parole or extended supervision of the same person.

(f) In any case in which there is a hearing before the division of hearings and appeals in the department of administration concerning whether to revoke a person's extended supervision, the person on extended supervision may seek review of a decision to revoke extended supervision and the department of corrections may seek review of a decision to not revoke extended supervision. Review of a decision under this paragraph may be sought only by an action for certiorari.

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

History: 1997 a. 283; 2001 a. 16, 109; 2005 a. 42; 2009 a. 28; 2011 a. 38; 2013 a. 79.

302.116 Extended supervision conditions for sex offenders. (1) In this section:

(a) "Serious sex offense" means a violation of s. 940.225 (1) or (2), 948.02 (1) or (2), 948.025, 948.06, or 948.07 or a solicitation, conspiracy, or attempt to commit a violation of s. 940.225 (1) or (2), 948.02 (1) or (2), 948.025, 948.06, 948.07, or 948.085.

(b) "Sex offender" means a person serving a sentence for a serious sex offense.

(2) As a condition of extended supervision, a sex offender shall live in a residence that the department has approved.

History: 2001 a. 16; 2005 a. 277.

302.117 Notice regarding ineligibility to vote. When an inmate who is disqualified from voting under s. 6.03 (1) (b) is released to parole or extended supervision, the department shall inform the person in writing that he or she may not vote in any election until his or her civil rights are restored. The department shall use the form designed under s. 301.03 (3a) to inform the person, and the person and a witness shall sign the form.

History: 2003 a. 121; 2005 a. 451.

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

(2) Money accruing under this section remains under the control of the department, to be used for the crime victim and witness assistance surcharge under s. 973.045 (4), the deoxyribonucleic acid analysis surcharge under s. 973.046 (1r), the drug offender diversion surcharge under s. 973.043, and the benefit of the inmate or the inmate's family or dependents, under rules promulgated by the department as to time, manner and amount of disbursements. The rules shall provide that the money be used for the reasonable support of the inmate's family or dependents before it is allocated for the drug offender diversion surcharge.

History: 1975 c. 396; 1983 a. 27, 66, 528; 1985 a. 332 s. 251 (6); 1989 a. 31 s. 1631; Stats. 1989 s. 302.12; 1993 a. 16; 2005 a. 25; 2013 a. 20.

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

302.13 Preservation of property an inmate brings to prison. The department shall preserve money and effects, except clothes, in the possession of an inmate when admitted to the prison and, subject to the crime victim and witness assistance surcharge under s. 973.045 (4), the deoxyribonucleic acid analysis surcharge under s. 973.046 (1r), the child pornography surcharge under s. 973.042, the drug offender diversion surcharge under s. 973.043, and victim restitution under s. 973.20 (11) (c) shall restore the money and effects to the inmate when discharged.

History: 1973 c. 90; 1983 a. 27; 1985 a. 120; 1989 a. 31 s. 1632; Stats. 1989 s. 302.13; 1993 a. 16; 2005 a. 25, 433; 2013 a. 20; 2015 a. 355.

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

History: 1989 a. 31 s. 1633; Stats. 1989 s. 302.14; 1997 a. 283.

302.15 Activities off grounds. The wardens and superintendents of the state prisons, and all wardens and superintendents of county prisons, jails, camps and houses of correction enumerated in ch. 303, may take inmates away from the institution grounds for rehabilitative and educational activities approved by the department and under such supervision as the superintendent or warden deems necessary. While away from the institution grounds an inmate is deemed to be under the care and control of the institution in which he or she is an inmate and subject to its rules and discipline.

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

Cross−reference: See also s. DOC 325.02, Wis. adm. code.

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

(2) The department shall make entries on the register to reflect the progress made by each inmate while incarcerated and the inmate's release on parole or extended supervision, condition at the time of release on parole or extended supervision and progress made while on parole or extended supervision.

History: 1987 a. 27, 403; 1989 a. 31 s. 1635; Stats. 1989 s. 302.17; 1997 a. 283; 2013 a. 334.

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

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

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

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

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

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

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

(7) Except as provided in s. 973.013 (3m), the department shall keep a person under 15 years of age who has been sentenced to the Wisconsin state prisons in a juvenile correctional facility or a secured residential care center for children and youth, but the department may transfer that person to an adult correctional institution after the person attains 15 years of age. The department may not transfer any person under 18 years of age to the correctional institution authorized in s. 301.16 (1n).

History: 1981 c. 20; 1983 a. 332; 1987 a. 27; 1989 a. 31 s. 1636; Stats. 1989 s. 302.18; 1991 a. 39, 316; 1993 a. 89; 1995 a. 27, 77; 2001 a. 16; 2005 a. 344.

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

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

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

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

302.20 Uniforms for correctional officers. The department shall furnish and, from time to time replace, a standard uniform to be prescribed by the department including items of clothing (not including overcoats), shoulder patches, caps, lapel insignia, and badge to each correctional officer in the department who is required to wear such standard uniform.

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

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

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

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

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

INTERSTATE CORRECTIONS COMPACT

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

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

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

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

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

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

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

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

1. Its duration;

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

3. Participation in programs of inmate employment, if any; the disposition or crediting of any payments received by inmates on account thereof; and the crediting of proceeds from or disposal of any products resulting therefrom;

4. Delivery and retaking of inmates;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

History: 1981 c. 20, 390; 1983 a. 189, 538; 1989 a. 31 s. 1641; Stats. 1989 s. 302.25; 1991 a. 316; 1997 a. 283.

Out−of−state prisoners may be housed by the state, a county, or a municipality only as authorized by statute, which is currently limited to this section. OAG 2−99.

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

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

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

History: 1983 a. 27; 1989 a. 31 s. 1644; Stats. 1989 s. 302.27; 1991 a. 39; 1993 a. 89, 437; 2013 a. 196.

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

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

302.31 Use of jails. The county jail may be used for any of the following purposes:

(1) The detention of persons charged with crime and committed for trial.

(1m) The detention of persons subject to confinement under s. 322.011.

(2) The detention of persons committed to secure their attendance as witnesses.

(3) To imprison persons committed pursuant to a sentence or held in custody by the sheriff for any cause authorized by law.

(4) The detention of persons sentenced to imprisonment in state penal institutions or a county house of correction, until they are removed to those institutions.

(5) The detention of persons participating in the intensive sanctions program.

(6) The temporary detention of persons in the custody of the department.

(7) The temporary placement of persons in the custody of the department, other than persons under 17 years of age, and persons who have attained the age of 17 years but have not attained the age of 25 years who are under the supervision of the department under s. 938.355 (4) and who have been taken into custody pending revocation of community supervision or aftercare supervision under s. 938.357 (5) (e).

NOTE: Sub. (7) is shown as amended eff. 7−1−17, or on the 2nd day after publication of the 2017−19 biennial budget act, whichever is later, by 2015 Wis. Act 55. Prior to that date it reads:

(7) The temporary placement of persons in the custody of the department, other than persons under 17 years of age, and persons who have attained the age of 17 years but have not attained the age of 25 years who are under the supervision of the department under s. 938.355 (4) and who have been taken into custody pending revocation of aftercare supervision under s. 938.357 (5) (e).

(8) Under an agreement under s. 66.0303, the detention of persons detained or imprisoned before, during, or after trial by a county that borders on this state and is located in the state of Michigan. The agreement under s. 66.0303 for the detention of persons from another state shall take into account the provisions of this chapter regarding the detention of persons in county jails.

(8m) Under an agreement under s. 66.0303, the detention of persons detained or imprisoned before, during, or after trial by a county that borders on this state. An agreement under this subsection may not provide for the detention of a person detained or imprisoned in a county jail by a county that borders on this state who has been sentenced to imprisonment in a state prison in that state. The agreement under s. 66.0303 for the detention of persons from another state shall take into account the provisions of this chapter regarding the detention of persons in county jails.

(9) Other detentions authorized by law.

History: 1981 c. 20; 1989 a. 31 s. 1646; Stats. 1989 s. 302.31; 1989 a. 336; 1991 a. 39; 1993 a. 16, 89, 385, 490; 1995 a. 27, 77; 2003 a. 81, 226, 326; 2007 a. 200; 2013 a. 334; 2015 a. 55.

DOC has discretion to keep its detainees in a county jail, but sheriffs in their capacity as custodians of the jails have authority to refuse to keep DOC detainees if doing so will endanger jail safety. DOC v. Kliesmet, 211 Wis. 2d 254, 564 N.W.2d 742 (1997), 96−2292.

Out−of−state prisoners may be housed by the state, a county, or a municipality only as authorized by statute, which is currently limited to the Interstate Corrections Compact, s. 302.25. OAG 2−99.

302.315 Use of county house of correction. A county house of correction may be used for the detention of any person detained in the county jail but the person shall be separated, if fea-

sible, from the inmates of the house of correction in a manner determined by the department.

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

302.33 Maintenance of prisoners in county jail; state payments to counties and tribal governing bodies. (1) The maintenance of persons who have been sentenced to the state penal institutions; persons in the custody of the department, except as provided in sub. (2) and ss. 301.048 (7), 302.113 (8m), and 302.114 (8m); persons accused of crime and committed for trial; persons committed for the nonpayment of fines and expenses; and persons sentenced to imprisonment therein, while in the county jail, shall be paid out of the county treasury. No claim may be allowed to any sheriff for keeping or boarding any person in the county jail unless the person was lawfully detained therein.

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

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

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

3. After verification by the department, it shall reimburse the county or tribal governing body at a rate of $40 per person per day, subject to the conditions in subds. 1. and 2. Any amount not paid under s. 20.410 (1) (bn) shall be paid under s. 20.410 (1) (gf) using any amount remaining in that appropriation account after the department pays all costs incurred for probation, parole, and extended supervision. If the amounts provided under s. 20.410 (1) (bn) and (gf) for any fiscal year are insufficient to provide complete reimbursement at that rate, the department shall prorate the payments under this subdivision to counties or tribal governing bodies for that fiscal year. The department shall not reimburse a county or tribal governing body unless that county or tribal governing body informs the department of the amount of reimbursement to which it is entitled under this subsection no later than September 1 of the fiscal year following the fiscal year for which reimbursement is requested.

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

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

History: 1983 a. 27; 1985 a. 29; 1987 a. 27; 1989 a. 31 s. 1648; Stats. 1989 s. 302.33; 1989 a. 107, 122; 1991 a. 39, 269; 1993 a. 16, 48, 490; 1995 a. 27; 1997 a. 283; 2001 a. 109; 2015 a. 164.

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

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

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

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

2. The probationer, parolee or person on extended supervision has given and signed a written statement that admits the violation.

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

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

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

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

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

History: 1989 a. 121; 1991 a. 39; 1993 a. 48; 1997 a. 283.

The sub. (2) (b) requirement that a hearing be held within 50 days of detention is directory, not mandatory. State ex rel. Jones v. Division of Hearings and Appeals, 195 Wis. 2d 669, 536 N.W.2d 213 (Ct. App. 1995), 94−3378.

302.336 County jail in populous counties. (1) A county having a population of 500,000 or more shall provide, as part of its county jail, for the confinement of all persons arrested for violation of state laws or municipal ordinances or otherwise detained by police officers of a 1st class city located within the county. A contribution toward the construction and equipment of the county jail from a 1st class city accepted by a county having a population of 500,000 or more under an intergovernmental cooperation agreement under s. 66.0301 is made for a municipal purpose, and a 1st class city may borrow money under ch. 67, appropriate funds and levy taxes for that purpose.

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

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

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

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

(4) An intergovernmental cooperation agreement under s. 66.0301 between a city and a county under sub. (1) may provide for the city to reimburse the county for its cost of custody at the initial appearance before a municipal court located within the county jail for prisoners who are in custody exclusively for violation of a municipal ordinance.

History: 1989 a. 261; 1989 a. 359 s. 200; Stats. 1989 s. 302.336; 1995 a. 43; 1999 a. 150 s. 672.

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

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

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

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

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

302.36 Classification of prisoners. The sheriff, jailer, or keeper of a jail shall establish a prisoner classification system to determine prisoner housing assignments, how to supervise and provide services and programs to a prisoner, and what services and programs to provide a prisoner. The prisoner classification system shall be based on objective criteria, including a prisoner's criminal offense record and gender, information relating to the current offense for which the prisoner is in jail, the prisoner's history of behavior in jail, the prisoner's medical and mental health condition, and any other factor the sheriff, jailer, or keeper of a jail considers necessary to provide for the protection of prisoners, staff, and the general public.

History: 1977 c. 7; 1983 a. 185; 1989 a. 31 s. 1651; Stats. 1989 s. 302.36; 1995 a. 201; 2005 a. 295.

Cross−reference: See also ch. DOC 311, Wis. adm. code.

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

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

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

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

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

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

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

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

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

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

302.37 Maintenance of jail and care of prisoners. (1) (a) The sheriff or other keeper of a jail shall constantly keep it clean and in a healthful condition and pay strict attention to the personal cleanliness of the prisoners and shall cause the clothing of each prisoner to be properly laundered. The sheriff or keeper shall furnish each prisoner with clean water, towels and bedding. The sheriff or keeper shall serve each prisoner 3 times daily with enough well−cooked, wholesome food. The county board shall prescribe an adequate diet for the prisoners in the county jail.

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

(2) Except as provided in s. 302.375 (2m), neither the sheriff or other keeper of any jail nor any other person shall give, sell or deliver to any prisoner for any cause whatever any alcohol beverages unless a physician certifies in writing that the health of the prisoner requires it, in which case the prisoner may be allowed the quantity prescribed.

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

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

(4) The sheriff or other keeper of a jail may use without compensation the labor of any prisoner sentenced to actual confinement in the county jail or, with the prisoner's consent, any other prisoner in the maintaining of and the housekeeping of the jail, including the property on which it stands. Any prisoner who

escapes while working on the grounds outside the jail enclosure shall be punished as provided in s. 946.42.

History: 1979 c. 34; 1981 c. 79 s. 17; 1985 a. 167; 1989 a. 31 s. 1653; Stats. 1989 s. 302.37; 1991 a. 316; 1993 a. 213; 2005 a. 67.

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

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

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

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

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

2. To investigate the financial status of the person.

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

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

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

(d) The jailer or the county shall choose, for each prisoner, whether to seek reimbursement under this section or as otherwise provided in chs. 301 to 303, but may not collect for the same expenses twice. The jailer or the county may choose to seek reimbursement for the expenses under sub. (2) (a) using the method under sub. (5), using the method under sub. (6), or certifying the expenses as a debt pursuant to s. 71.935 (2) under sub. (7), or a combination of methods, but may not seek reimbursement for the same expenses twice.

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

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

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

(6) ACTION TO OBTAIN REIMBURSEMENT. (a) Except as provided in par. (am) or sub. (7), within 12 months after the release of a prisoner from jail, the county where the jail is located shall commence a civil action in circuit court to obtain a judgment for the expenses under sub. (2) (a) or be barred. The jailer shall provide any assistance that the county requests related to an action under this subsection.

(am) Except as provided in sub. (7), within 24 months after the release of a prisoner from jail, the county where the jail is located shall commence a civil action in circuit court to obtain a judgment for the medical expenses associated with the prisoner under sub. (2) (a) or be barred. The jailer shall provide any assistance that the county requests related to an action under this subsection.

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

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

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

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

(7) DEBT CERTIFICATION TO OBTAIN REIMBURSEMENT. (a) Except as provided in par. (b), the county where the jail is located may obtain reimbursement by proceeding under s. 71.935 and certifying as a debt pursuant to s. 71.935 (2), within 12 months after the release of a prisoner from jail, the amount of expenses incurred by the county under sub. (2) (a). Any money obtained as the result of an action commenced under this subsection shall be deposited in the county treasury.

(b) The county where the jail is located may obtain reimbursement by proceeding under s. 71.935 and certifying as a debt pursuant to s. 71.935 (2), within 24 months after the release of a prisoner from jail, the amount of medical expenses associated with the prisoner and incurred by the county under sub. (2) (a). Any money obtained as the result of an action commenced under this subsection shall be deposited in the county treasury.

History: 1995 a. 281; 1997 a. 191; 1999 a. 32; 2007 a. 20; 2013 a. 315.

302.373 Prisoner reimbursement to municipality. (1) In this section:

(a) "Jail" means a county jail, a rehabilitation facility established by s. 59.53 (8), or a county house of correction under s. 303.16.

(b) "Prisoner" means a person who is incarcerated in a jail by court order under s. 800.095 (1) (b).

(2) (a) Except as provided in par. (b), a city, village, or town may seek reimbursement from the prisoner for the amount paid to a county under s. 800.095 (1) (d) for the expenses incurred by the county to incarcerate the prisoner.

(b) This section applies to expenses incurred after June 3, 2003.

(3) Within 12 months after the release of a prisoner from jail, the city, village, or town shall commence a civil action in circuit

court to obtain a judgment for the amount paid to the county under sub. (2) or be barred.

(4) Before entering a judgment in an action under sub. (3) for a city, village, or town, the court shall consider any legal obligations of the defendant for support or maintenance under ch. 767 and any moral obligation of the defendant to support dependents and may reduce the amount of the judgment entered for the city, village, or town based on those obligations.

History: 2003 a. 28; 2009 a. 402.

302.375 Restrictions on liquor and dangerous drugs; placement of prisoners. (1g) In this section:

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

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

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

(1m) Except as provided in s. 302.375 (2m), any sheriff, jailer or keeper of any prison, jail or house of correction or any other person who does any of the following with respect to a prisoner within the precincts of any prison, jail or house of correction shall be fined not more than $10,000 or imprisoned not more than 9 months or both:

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

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

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

(2) Except as provided in s. 302.375 (2m), any prisoner who uses intoxicating liquor in violation of s. 302.37 (2) shall be fined not more than $10,000 or imprisoned for not more than 9 months or both.

(2m) A member of the clergy may possess no more than 2 ounces of wine in a prison, jail, or house of correction if he or she intends to use it in a religious service. A member of the clergy may give or deliver a reasonable amount of wine to an inmate and an inmate may consume that wine as part of a religious service. The department is not required to purchase or store wine for an inmate, a chaplain, or any other member of the clergy who is acting under this subsection.

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

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

History: 1977 c. 337; 1979 c. 116; 1983 a. 185; 1989 a. 31 s. 1654; Stats. 1989 s. 302.375; 1995 a. 448; 2001 a. 103; 2005 a. 67.

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

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

(3) The maximum amount that a governmental unit may pay for the costs of medical or hospital care under this section is limited for that care to the amount payable by medical assistance under subch. IV of ch. 49, excluding ss. 49.468 and 49.471 (11), for care for which a medical assistance rate exists. No provider of medical or hospital care may bill a prisoner under sub. (1) for the cost of care exceeding the amount paid under this subsection by the governmental unit. If no medical assistance rate exists for the care provided, there is no limitation under this subsection.

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

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

History: 1973 c. 198; 1987 a. 27, 269; 1989 a. 31 s. 1655c, 1656d; Stats. 1989 s. 302.38; 1989 a. 261, 359; 1995 a. 27, 43, 281, 352; 1997 a. 35; 2007 a. 20.

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

When charges against a prisoner were dismissed after the prisoner was admitted to a hospital for medical care, the prisoner lost his status as "a person held under the state criminal laws" under sub. (2). The county was no longer liable for medical costs incurred after the charges were dismissed. The prisoner's status did not change when the department of corrections issued an apprehension request for him. Meriter Hospital, Inc. v. Dane County, 2004 WI 145, 277 Wis. 2d 1, 689 N.W.2d 627, 02−2837.

Sub. (1) does not confer a constitutionally protected substantive property right in an inmate's prescription medication. An inmate denied medication need not have been afforded procedural due process either before or after the deprivation. Ledford v. Sullivan, 105 F.3d 354 (1997).

302.381 Emergency services for crisis intervention for prisoners. The costs of providing emergency services for crisis intervention for prisoners of a jail or house of correction with medical illnesses or disabilities, mental illnesses, developmental disabilities or alcohol or other drug abuse problems are payable according to the criteria under s. 302.38 (2). If applicable, a county may seek payment under this section or seek reimbursement under s. 302.372, but may not collect for the same expenses twice.

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

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

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

1. A commitment under s. 51.20 (1) (a).

3. A voluntary transfer under s. 51.37 (5).

4. An emergency transfer under s. 51.37 (5).

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

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

History: 1987 a. 394; 1989 a. 31 s. 1658; Stats. 1989 s. 302.383; 2009 a. 260.

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

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

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

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

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

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

302.385 Correctional institution health care. The standards for delivery of health services in state correctional institutions governed under s. 301.02 shall be based on the standards of any professional organization that establishes standards for health services in prisons and that is recognized by the department.

History: 1979 c. 221; 1983 a. 27; 1989 a. 31 s. 1660; Stats. 1989 s. 302.385; 1997 a. 289.

This section does not confer a constitutionally protected substantive property right in an inmate's prescription medication. An inmate denied medication need not have been afforded procedural due process either before or after the deprivation. Ledford v. Sullivan, 105 F.3d 354 (1997).

302.386 Medical and dental services for prisoners and forensic patients. (1) Except as provided in sub. (5), liability for medical and dental services furnished to residents housed in prisons identified in s. 302.01, in a juvenile correctional facility, or in a secured residential care center for children and youth, or to forensic patients in state institutions for those services that are not provided by employees of the department shall be limited to the amounts payable under ss. 49.43 to 49.471, excluding ss. 49.468 and 49.471 (11), for similar services. The department may waive any such limit if it determines that needed services cannot be obtained for the applicable amount. No provider of services may bill the resident or patient for the cost of services exceeding the amount of the liability under this subsection.

(2) The liability of the state for medical and dental services under sub. (1) does not extend to that part of the medical or dental services of a resident housed in a prison identified in s. 302.01, a juvenile correctional facility, or a secured residential care center for children and youth, for which any of the following applies:

(a) The resident has the financial ability to pay.

(b) The service is payable under any of the following:

1. A disability insurance policy under subch. VI of ch. 632.

2. Worker's compensation under ch. 102.

3. Benefits from the state department of veterans affairs or the federal department of veterans affairs.

4. Hill−Burton benefits under 42 USC 291c (e).

5. Medicare benefits under 42 USC 1395 to 1395ccc, as limited by 42 USC 402 (x).

6. Third−party liability other than that in subds. 1. to 5.

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

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

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

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

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

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

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

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

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

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

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

(c) Any person who is subject to community supervision under s. 938.533 unless the person is placed in a Type 1 juvenile correctional facility, as defined in s. 938.02 (19).

NOTE: Par. (c) is shown as amended eff. 7−1−17, or on the 2nd day after publication of the 2017−19 biennial budget act, whichever is later, by 2015 Wis. Act 55. Prior to that date it reads:

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

(d) Any participant in the serious juvenile offender program under s. 938.538 unless the participant is placed in a Type 1 juvenile correctional facility, as defined in s. 938.02 (19).

(5m) (a) In this subsection:

1. "Hormonal therapy" means the use of hormones to stimulate the development or alteration of a person's sexual characteristics in order to alter the person's physical appearance so that the person appears more like the opposite gender.

2. "Sexual reassignment surgery" means surgical procedures to alter a person's physical appearance so that the person appears more like the opposite gender.

(b) The department may not authorize the payment of any funds or the use of any resources of this state or the payment of any federal funds passing through the state treasury to provide or to facilitate the provision of hormonal therapy or sexual reassignment surgery for a resident or patient specified in sub. (1).

NOTE: In *Fields v. Smith*, 712 F. Supp. 2d 830 (2010) the U.S. District Court for the Eastern District of Wisconsin granted a permanent injunction restraining the enforcement or attempted enforcement of sub. (5m) because any application of the statute would violate the 8th Amendment and Equal Protection clause of the U.S. Constitution. The U.S. Seventh Circuit Court of Appeals affirmed the district court at 653 F.3d 550 (2012).

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

History: 1985 a. 29; 1989 a. 31 ss. 1661, 1662; Stats. 1989 s. 302.386; 1991 a. 39; 1995 a. 27, 77; 2001 a. 16; 2005 a. 105, 344; 2007 a. 20; 2015 a. 55.

Cross−reference: See also s. DOC 316.01, Wis. adm. code.

302.388 Prisoner medical records. (1) DEFINITIONS. In this section:

(a) "Health care provider" has the meaning given in s. 146.81 (1) (a) to (p).

(b) "Jail" means a jail or house of correction.

(c) "Jailer" means the sheriff, superintendent or other keeper of a jail.

(d) "Medical staff" means health care providers employed by the department or a jail.

(e) "Patient health care records" has the meaning given in s. 146.81 (4).

(f) "Prisoner" means any person who is either arrested, incarcerated, imprisoned or otherwise detained in a jail or prison but does not include any of the following:

1. 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).

2. Any child held in custody under ss. 48.19 to 48.21.

3. Any child participating in the mother−young child care program under s. 301.049.

4. A juvenile held in a jail under s. 938.209.

(g) "Receiving institution intake staff" means the warden or superintendent or his or her designee, if a prisoner is transferred to a prison, or the jailer or his or her designee, if a prisoner is transferred to a jail.

(2) HEALTH SUMMARY FORM. (a) The department shall provide each jailer a standardized form for recording the medical conditions and history of prisoners being transferred to the department or another county's jail. Except as provided in pars. (b) and (bm), jail medical staff shall complete the form and provide it to the receiving institution intake staff at the time of each such transfer.

(b) If the jail does not have medical staff on duty at the time of a transfer, the jailer or his or her designee shall complete as much of the form as possible and provide it to the receiving institution intake staff at the time of the transfer. The jailer shall ensure that all of the following occur within 24 hours after the transfer:

1. The jail medical staff, the prisoner's health care provider or, if the prisoner does not have a health care provider, a health care provider under contract with the jail reviews the form provided to the receiving institution at the time of the transfer.

2. The medical staff or health care provider reviewing the form corrects any errors in the form and includes in it any additional available information.

3. The medical staff or health care provider reviewing the form transmits the updated form or the information included on the form by the quickest available means to the receiving institution intake staff.

(bm) Jail medical staff need not complete the form if the jailer or his or her designee provides a copy of the prisoner's complete medical file to the receiving institution intake staff at the time of the transfer.

(c) Except as provided in pars. (d) and (e), the department shall complete the form described in par. (a) for each prisoner whom the department transfers to a jail and shall provide it to the receiving institution intake staff at the time of the transfer.

(d) If the prison does not have medical staff on duty at the time of a transfer, the warden or superintendent or his or her designee shall complete as much of the form as possible and provide it to the receiving institution intake staff at the time of the transfer. The department shall ensure that all of the following occur within 24 hours after the transfer, unless the prisoner returns to the prison within that time:

1. The prison medical staff, the prisoner's health care provider or, if the prisoner does not have a health care provider, a health care provider under contract with the department reviews the form provided to the receiving institution at the time of the transfer.

2. The medical staff or health care provider reviewing the form corrects any errors in the form and includes in it any additional available information.

3. The medical staff or health care provider reviewing the form transmits the updated form or the information included on the form by the quickest available means to the receiving institution intake staff.

(e) Paragraph (c) does not apply if the department provides a copy of the prisoner's complete medical file to the receiving institution intake staff at the time of the transfer.

(f) Receiving institution intake staff may make a health summary form available to any of the following:

1. The prison's or jail's medical staff.

2. A prisoner's health care provider.

3. In the case of a prison or jail that does not have medical staff on duty at the time of the transfer, a health care provider designated by the department or the jailer to review health summary forms.

4. In the case of a jail that does not have medical staff, a person designated by the jailer to maintain prisoner medical records.

(g) If a prisoner's health summary form or complete medical file indicates that the prisoner has a communicable disease and if disclosure of that information is necessary for the health and safety of the prisoner or of other prisoners, of a correctional officer who has custody of or is responsible for the supervision of the prisoner, of a person designated by a jailer to have custodial authority over the prisoner, of any other employee of the prison or jail, or of a law enforcement officer or other person who is responsible for transferring the prisoner to or from a prison or jail, receiving institution intake staff shall disclose that information to the persons specified in par. (f) 1. to 4. and to that correctional officer, person with custodial authority, law enforcement officer, or other person.

(3) TREATMENT SUMMARIES. (a) Each health care provider, other than medical staff, who provides health care services to a prisoner shall provide the department or the jail in which the prisoner is confined a written summary of the services provided and a description of follow−up care and treatment that the prisoner requires. The treatment summary may be made available to medical staff at the prison or jail at which the prisoner is confined or the prisoner's health care provider or, in the case of a jail that does not have medical staff, to a person designated by the jailer to maintain prisoner medical records.

(b) If a prisoner's treatment summary indicates that the prisoner has a communicable disease and if disclosure of that information is necessary for the health and safety of the prisoner or of other prisoners, of a correctional officer who has custody of or is responsible for the supervision of the prisoner, of a person designated by a jailer to have custodial authority over the prisoner, of any employee of the prison or jail, or of a law enforcement officer or other person who is responsible for transferring the prisoner to or from a prison or jail, the department or jailer shall disclose that information to the persons to whom a treatment summary may be made available under par. (a) and to that correctional officer, person with custodial authority, law enforcement officer, or other person.

(4) REQUESTS FOR PRISONER MEDICAL RECORDS. Health care providers providing health care services to a prisoner or medical staff at the prison or jail in which a prisoner is confined may obtain patient health care records for the prisoner from other health care providers who have provided health care services to the prisoner while he or she has been confined in a prison or jail and from other prisons or jails in which the prisoner has been confined.

History: 1999 a. 151; 2009 a. 28; 2011 a. 32.

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

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

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

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

Pretrial detainees in jail are entitled to a due process hearing prior to more than a slight deprivation of privileges, including a loss of any privilege for more than one day. Representation by counsel is not essential. Inmates of Milwaukee County Jail v. Petersen, 353 F. Supp. 1157 (1973).

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

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

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

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

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

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

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

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

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

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

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

(3) PLACEMENT OF A PRISONER IN THE PROGRAM. The sheriff or superintendent may, if he or she determines that the home detention program is appropriate for a prisoner, place the prisoner in the home detention program and provide that the prisoner be detained at the prisoner's place of residence or other place designated by the sheriff or superintendent and be monitored by an active electronic monitoring system. The sheriff or superintendent shall establish reasonable terms of detention and ensure that the prisoner is provided a written statement of those terms, including a description of the detention monitoring procedures and requirements and of any applicable liability issues. The terms may include a requirement that the prisoner pay the county a daily fee to cover the county costs associated with monitoring him or her. The county may obtain payment under this subsection or s. 302.372, but may not collect for the same expenses twice.

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

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

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

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

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

(7) EXCEPTIONS. This section does not apply to:

(a) A person sentenced under s. 973.04.

(b) A person in jail pending the disposition of his or her parole, extended supervision, or probation revocation proceedings.

History: 1989 a. 122; 1991 a. 39; 1995 a. 26; 1995 a. 27 ss. 6374 to 6381, 9126 (19); 1995 a. 77, 225, 281; 1997 a. 35; 1999 a. 32; 2009 a. 28.

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

This section allows the sheriff to place persons on home monitoring when they are given jail time as a probation condition. A circuit court has no power to prohibit the sheriff from ordering home monitoring for a probationer ordered to serve jail time as a probation condition. By precluding the sheriff from releasing the probationer on home monitoring, the trial court substantially interfered with the sheriff's power in violation of the separation of powers doctrine. State v. Schell, 2003 WI App 78, 261 Wis. 2d 841, 661 N.W.2d 503, 02−1394.

A court cannot avoid the holding in *Schell* by modifying the conditions of probation to order the probationer to refuse home monitoring. State v. Galecke, 2005 WI App 172, 285 Wis. 2d 691, 702 N.W.2d 392, 04−0779.

This section provides no authority for issuing orders to county sheriffs to transfer prisoners from one county jail to another. State v. Galecke, 2005 WI App 172, 285 Wis. 2d 691, 702 N.W.2d 392, 04−0779.

302.43 Good time. Every inmate of a county jail is eligible to earn good time in the amount of one−fourth of his or her term for good behavior if sentenced to at least 4 days, but fractions of a day shall be ignored. An inmate shall be given credit for time served prior to sentencing under s. 973.155, including good time under s. 973.155 (4). An inmate who violates any law or any regulation of the jail, or neglects or refuses to perform any duty lawfully required of him or her, may be deprived by the sheriff of good time under this section, except that the sheriff shall not deprive the inmate of more than 2 days good time for any one offense without the approval of the court. An inmate who files an action or special proceeding, including a petition for a common law writ of certiorari, to which s. 807.15 applies shall be deprived of the number of days of good time specified in the court order prepared under s. 807.15 (3). This section does not apply to a person who is confined in the county jail in connection with his or her participation in a substance abuse treatment program that meets the requirements of s. 165.95 (3), as determined by the department of justice under s. 165.95 (9) and (10).

History: 1977 c. 353; 1989 a. 31 s. 1667; Stats. 1989 s. 302.43; 1997 a. 133; 2005 a. 25; 2013 a. 20.

Cross−reference: See also ss. DOC 302.30, 302.31, 326.10, and 331.13, Wis. adm. code.

A person confined in jail as a condition of probation is not entitled to earn good time. State v. Fearing, 2000 WI App 229, 239 Wis. 2d 105, 619 N.W.2d 115, 99−2849.

When the defendant was sentenced to 10 months in the house of correction for battery and 7 years in state prison for intimidation, he was not entitled to "good time" credit for his house of correction sentence, which should be applied to his prison sentence. The trial court was required to construe the defendant's sentences as a single sentence, which put the sentences under the purview of s. 973.01. Because the defendant was, under the terms of the statutes, an inmate of the prison system rather than the county jail, this section, the county jail "good time" statute, does not apply

to his sentence. State v. Harris, 2011 WI App 130, 337 Wis. 2d 222, 805 N.W.2d 386, 10−1955.

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

302.44 Cooperation between counties regarding prisoners. (1) Two or more counties within the state may agree under s. 66.0301 for the cooperative establishment and use of the jails and rehabilitation facilities of any of them for the detention or imprisonment of prisoners before, during and after trial and for sharing the expense without reference to s. 302.34. The sheriffs of the counties shall lodge prisoners in any jail or rehabilitation facility authorized by the agreement and shall endorse the commitment, if any, under s. 302.35 in case detention or imprisonment is in the jail or rehabilitation facility of another county. Only jails and rehabilitation facilities approved by the department for the detention of prisoners may be used under the agreement. The sheriff of the county of arrest shall transport the prisoner to and from court and to any other institution whenever necessary.

(2) A county in this state may enter into a contract with a receiving county outside of the state to pay the receiving county to detain or imprison prisoners who are not in the custody of the department before, during, and after trial if the receiving county borders the county in which the prisoner would otherwise be detained or imprisoned, and the monthly expenses charged to the county in this state by the receiving county to detain or imprison the prisoner are at least 25 percent less than the monthly expenses charged by the county in this state. Any such contract shall provide for all of the following:

(a) A termination date.

(b) A requirement that an equivalent agency or department to the department of corrections in the receiving state approve the jail or facility in the receiving county to receive prisoners from the county in this state.

(c) 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.

(d) 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.

(e) Delivery and retaking of prisoners.

(f) Waiver of extradition by Wisconsin and the state to which the prisoners are transferred.

(g) Retention of jurisdiction of the prisoners transferred by Wisconsin.

(h) Regular reporting procedures concerning Wisconsin prisoners by officials of the receiving county.

(i) Provisions concerning procedures for probation, parole, extended supervision, and discharge.

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

(k) Any other matters as are necessary and appropriate to fix the obligations, responsibilities and rights of the state of Wisconsin, the county within the state, and the receiving state and county.

History: 1975 c. 94; 1983 a. 110; 1989 a. 31 s. 1668; Stats. 1989 s. 302.44; 1999 a. 150 s. 672; 2013 a. 376.

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

History: 1993 a. 48.

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

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

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

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

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

History: 1995 a. 379.

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

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

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

(4) The Taycheedah Correctional Institution may not be used as a state−local shared correctional facility.

History: 1983 a. 332; 1989 a. 31 s. 1669; Stats. 1989 s. 302.45; 1995 a. 201; 2013 a. 165 s. 115.

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

302.46 Jail surcharge. (1) (a) If a court imposes a fine or forfeiture for a violation of state law or for a violation of a municipal or county ordinance except for a violation of s. 101.123 (2) or (2m), for a financial responsibility violation under s. 344.62 (2), or for a violation of state laws or municipal or county ordinances involving nonmoving traffic violations, violations under s. 343.51 (1m) (b), or safety belt use violations under s. 347.48 (2m), the court, in addition, shall impose a jail surcharge under ch. 814 in an amount of 1 percent of the fine or forfeiture imposed or $10, whichever is greater. If multiple offenses are involved, the court shall determine the jail surcharge on the basis of each fine or for-

feiture. If a fine or forfeiture is suspended in whole or in part, the court shall reduce the jail surcharge in proportion to the suspension.

(b) If a fine or forfeiture is imposed by a court of record, after a determination by the court of the amount due for the jail surcharge, the clerk of the court shall collect and transmit the jail surcharge to the county treasurer as provided in s. 59.40 (2) (n). The county treasurer shall place the amount in the county jail fund as provided in s. 59.25 (3) (g).

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

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

(2) Counties may make payments for construction, remodeling, repair or improvement of county jails and for costs related to providing educational and medical services to inmates from county jail funds.

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

History: 1987 a. 27; 1989 a. 22; 1989 a. 31 s. 1670c, 1670g; Stats. 1989 s. 302.46; 1989 a. 97, 359; 1991 a. 26, 32, 130, 189; 1993 a. 313; 1995 a. 201; 1999 a. 72; 2001 a. 16; 2003 a. 30, 139, 268, 326, 327; 2005 a. 455; 2009 a. 12, 28, 100, 256; 2011 a. 260.

The imposition of a fine or forfeiture is a prerequisite to the imposition of a jail assessment under sub. (1). State v. Carter, 229 Wis. 2d 200, 598 N.W.2d 619 (Ct. App. 1999), 98−1688.