

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-0475/P1dn  
JEO & RAC:jlg:km

December 23, 1998

Mark Grapentine:

This draft allows DOC to contract with a private prison operating in this state. The draft is lengthy because of the number of references in current law to "prison", "correctional institution" and similar entities. In addition to reviewing the draft carefully yourself, you may want to have DOC review the draft to make sure that it does not effect some changes that we are unaware of and that you do not intend. When reviewing the draft, please note the following:

1. As we discussed, the draft generally treats private prisons the same way state prisons are treated under current statutes. For instance, wherever the statutes currently refer simply to "prison", that reference will include private prisons. Also, as you will see when you review it, the draft changes a number of statutes to refer to "prison" instead of "state prison", thus making the statute applicable to private prisons. Please review all of these changes carefully to make sure that you want the statute to apply to private prisons.

This approach has the virtue of dealing with several issues raised by Attorney Ann Sappenfield of Legislative Council Staff about 1997 Assembly Bill 634, which we had drafted for you last session. Specifically, on pages two and three of her December 10, 1997, memorandum to your office, she pointed out that 1997 AB-634 did not specifically address the status of private prison inmates and the powers and duties of a private prison (or the warden or keeper of a private prison) under certain statutes. The draft deals with the issues raised by Attorney Sappenfield as follows: a) it gives superintendents or wardens of private prisons some law enforcement authority (ss. 301.29 (2) and 302.07, stats.); b) it gives DOC authority to investigate private prisons (s. 301.36, stats.); c) it allows transfer and commitment of private prison inmates under ss. 51.20 and 51.37, stats.; d) it requires DOC to notify victims of an escape from a private prison (s. 301.38, stats.); e) it prohibits delivery of contraband to a private prison (s. 302.095 (2), stats.); and f) it makes it clear that private prisoners are covered under ss. 940.20 and 946.43, stats. Do all of these provisions effect your intent?

The draft does *not* address the following two statutes in Attorney Sappenfield's list. The first statute is s. 301.03 (2), stats., which does not appear to need amending because DOC is essentially supervising custody and discipline through the contract with a private prison (just as it is currently with respect to out-of-state prisoners). The second statute is s. 301.28, stats., which deals with training of state correctional

officers. As Attorney Sappenfield mentioned in her memorandum, you may want to require training for private prison guards. If so, the draft will have to be changed to do that.

2. As noted above, the draft generally treats private prisons like state prisons. At the same time, the draft provides that participants in the adult intensive sanctions program and the serious juvenile offender program may not be placed in a private prison during any correctional placement under those programs. Is that your intent?

The draft also leaves alone certain provisions of current law that it seemed logical to apply only to state prisons. In particular, the draft does not affect a number of provisions of chs. 301 to 304 that relate to state prison facilities and employes, and the draft generally does not treat private prison guards as state prison guards. However, the draft does include private prison guards in the definition of "correctional officer" under ss. 252.14 (1) (ad), 252.15 (1) (ad) and 941.237 (1) (b), stats. Is that your intent?

3. When we were searching the statutes for current statutes relating to state prisons we found a good amount of inconsistent and downright archaic terminology. To help clarify what statutes apply to private prisons we have attempted to eliminate some of the inconsistencies and archaisms. Specifically, this draft generally eliminates the use of "penal institution", "penal facility" and "penitentiary" and substitutes prison or correctional institution, depending on the context.

The draft also replaces "correctional facility" with "correctional institution" except: a) with respect to juvenile secured correctional facilities defined in s. 938.02 (15m), stats.; and b) where the context seems clearly to be referring to an institution's physical plant or bricks and mortar (e.g., ss. 20.410 (1) (gm) and (3) (e), 20.866 (2) (ux) and 301.18 (4), stats.; compare ss. 301.046 (1) and 301.048 (4) (b), stats., which distinguish between "facilities" and the "institution"). The draft does not make terminology changes in s. 302.25, stats., the interstate corrections compact, or ch. 976, which contains the uniform acts concerning criminal procedure.

Finally, the draft does not eliminate the references to "municipal prison" in ss. 250.04 (10) and 302.30, stats., because we have not yet been able to determine whether such a thing still exists. If the term is archaic and no such thing exists anymore, the references could be eliminated in the next draft.

4. For purposes of getting out a preliminary draft, this draft provides that a private prison operating in this state may house Wisconsin prisoners only. See proposed s. 302.28. If you want to allow private prisons to take prisoners from other states, then we need to discuss whether you want DOC or some other agency to have any licensing or other regulatory authority over private prisons and, if so, what that authority will be. (You could of course leave much of the regulatory detail to be established in agency rules.)

Please let us know if you have any questions or changes. If you would like to discuss in more detail the numerous current statutes dealing with prisons and how they are affected by this draft, we would be happy to set up a meeting to do so.

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