

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

LRB-0751/P1dn  
JEO:kmg:jf

November 11, 1998

This draft does not completely eliminate the ability of sheriffs to move prisoners in an emergency, but instead provides that the prisoners can be moved only to another county jail (as opposed to any "place of safety" as under current law). Does this approach effect your intent?

I should point out that the Wisconsin supreme court has recently held that as custodian of the jail, the sheriff has a duty to safely keep and protect the prisoners in his charge and protect them from unnecessary harm. *Department of Corrections v. Kliesmet*, 211 Wis. 2d 254, 264-65 (1997). (The court's decision is based on statutory and common law; it did not decide whether the constitution imposes similar duties on the sheriff. *Kliesmet*, 211 Wis. 2d at 266 n. 10.)

Providing that jail prisoners may be moved only to another county jail in an emergency may in a particular case conflict with the sheriff's duty to prisoners if no other county jails will agree to take the prisoners or if the exigency of the situation requires the sheriff to move the prisoner before it is possible to arrange with another county jail to take them. In such a case the sheriff might be justified in temporarily housing the prisoners in some safe place other than a different county's jail. To avoid potential conflicts with the sheriff's duties you could have the draft allow for temporary confinement in a place other than another jail if, for instance, the prisoners are facing imminent harm or death.

Please let me know if you have any questions or changes.

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