

1999 DRAFTING REQUEST

Bill

Received: 11/6/98

Received By: **olsenje**

Wanted: **As time permits**

Identical to LRB:

For: **Tony Staskunas (608) 266-0620**

By/Representing: **Mike**

This file may be shown to any legislator: **NO**

Drafter: **olsenje**

May Contact:

Alt. Drafters:

Subject: **Correctional System - jails**

Extra Copies:

Pre Topic:

No specific pre topic given

Topic:

Authority of sheriff to move prisoners in emergencies

Instructions:

See Attached

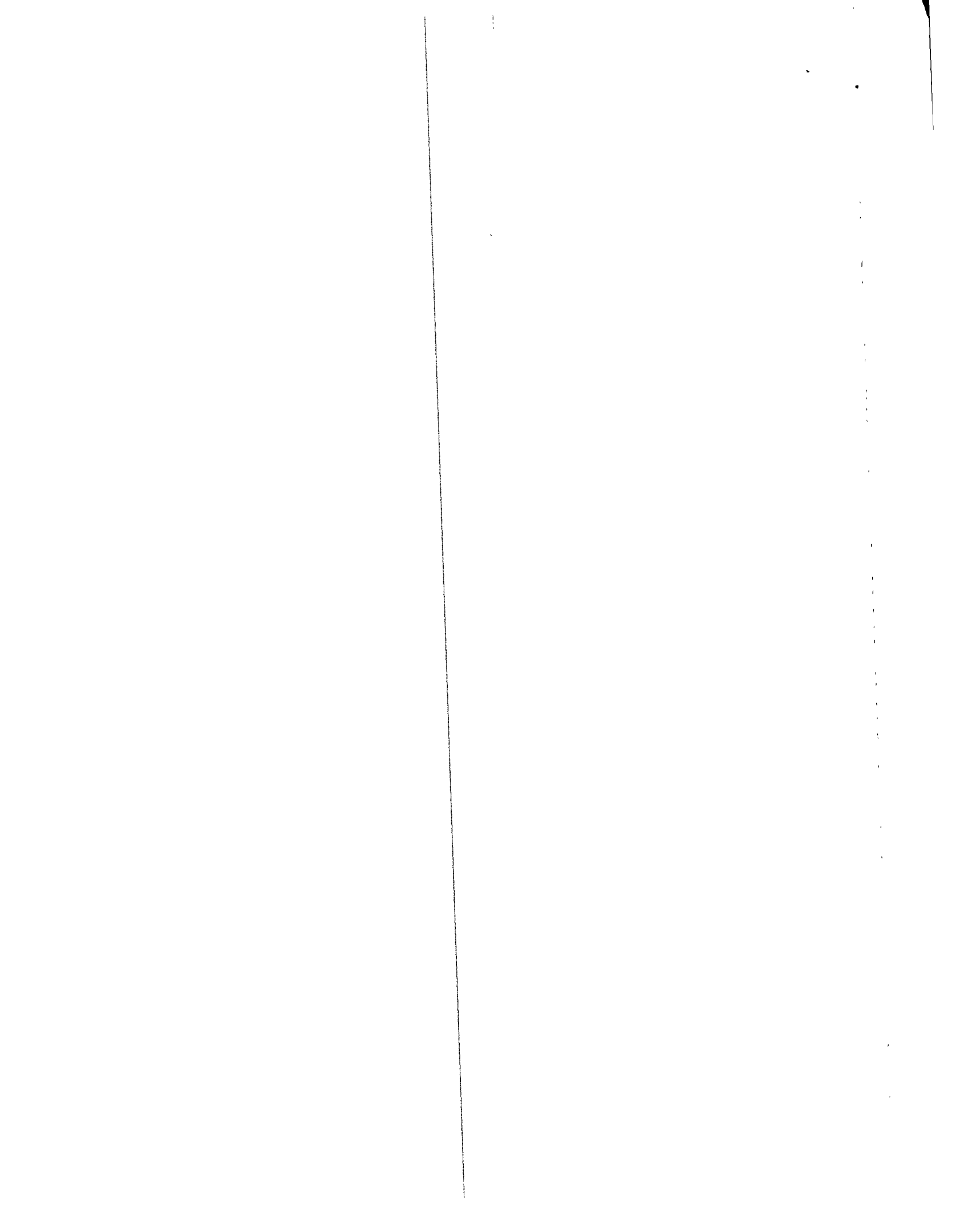
Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/P1	olsenje 11/6/98	gilfokm 11/11/98	jfrantze 11/11/98	_____	lrb_docadmin 11/11/98		Local
/1	olsenje 02/20/99	gilfokm 02/22/99	jfrantze 02/23/99	_____	lrb_docadmin 02/23/99	lrb_docadminLocal 03/2/99	

FE Sent For:

04-08-99

<END>



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FE Sent For: *12-2-99 kmg* *Jb 2/23* *Jb/lp 2/23*
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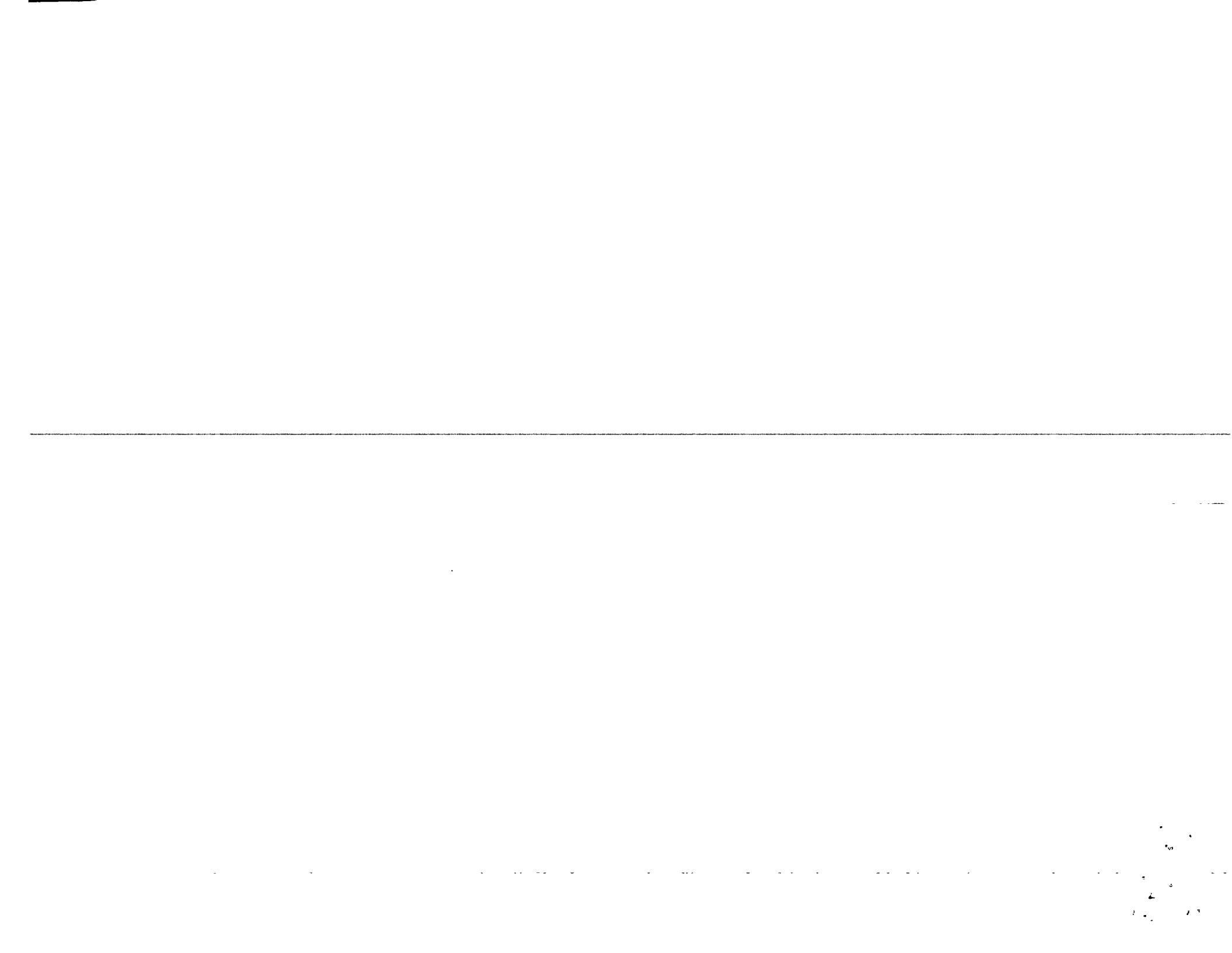
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1?	olsenje		11/11	11/11			

FE Sent For:

<END>

Submit "P"
drafts
JED



0757

Memorandum

To: Mike
From: Tony
Date: 10/19/98
Re: Legislation

You probably recall last year when Milwaukee County Sheriff Lev Baldwin was threatening that he would take over the State Fair Park Youth Center Dorm to house Milwaukee County Jail prisoners unless the State of Wisconsin removed State probation and parole prisoners from the County Jail. Sheriff Baldwin cited a State Statute allowing Sheriffs to commandeer other public buildings to house prisoners as his authority to make this move.

As you know, several meetings were held, public officials raised a stink and the State and Sheriff Baldwin eventually came to an agreement.

However, I would like to investigate removing the authority of the Sheriff to make such moves as this. While this controversy was averted, this may come up again, either in Milwaukee County or another county. You probably do have in our files somewhere information on this particular situation, including the statutory citation for this. I would like to have a bill drafted which simply removes this authority from any County Sheriff.

302-35

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Wisconsin Legislature

Contact Rep. Scott Walker: (608) 266-9180 -- Contact Sen. Peggy Rosenzweig: (608) 266-2512
Contact Rep. Staskunas: (608) 266-0620

Save
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44.2
MEDIA

FOR IMMEDIATE RELEASE – MARCH 4, 1998

JOINT FINANCE SET TO RULE ON OUT-OF-STATE PRISON DEAL *Contract Should Help Overcrowding Problem in Milwaukee County Jail*

Milwaukee-area legislators are calling on the legislature's Joint Finance Committee to approve a contract that allows the Department of Corrections to send 1,200 prison inmates to a private Tennessee prison by the end of the summer. The contract, legislators say, would help alleviate the severe overcrowding situation in the Milwaukee County Jail.

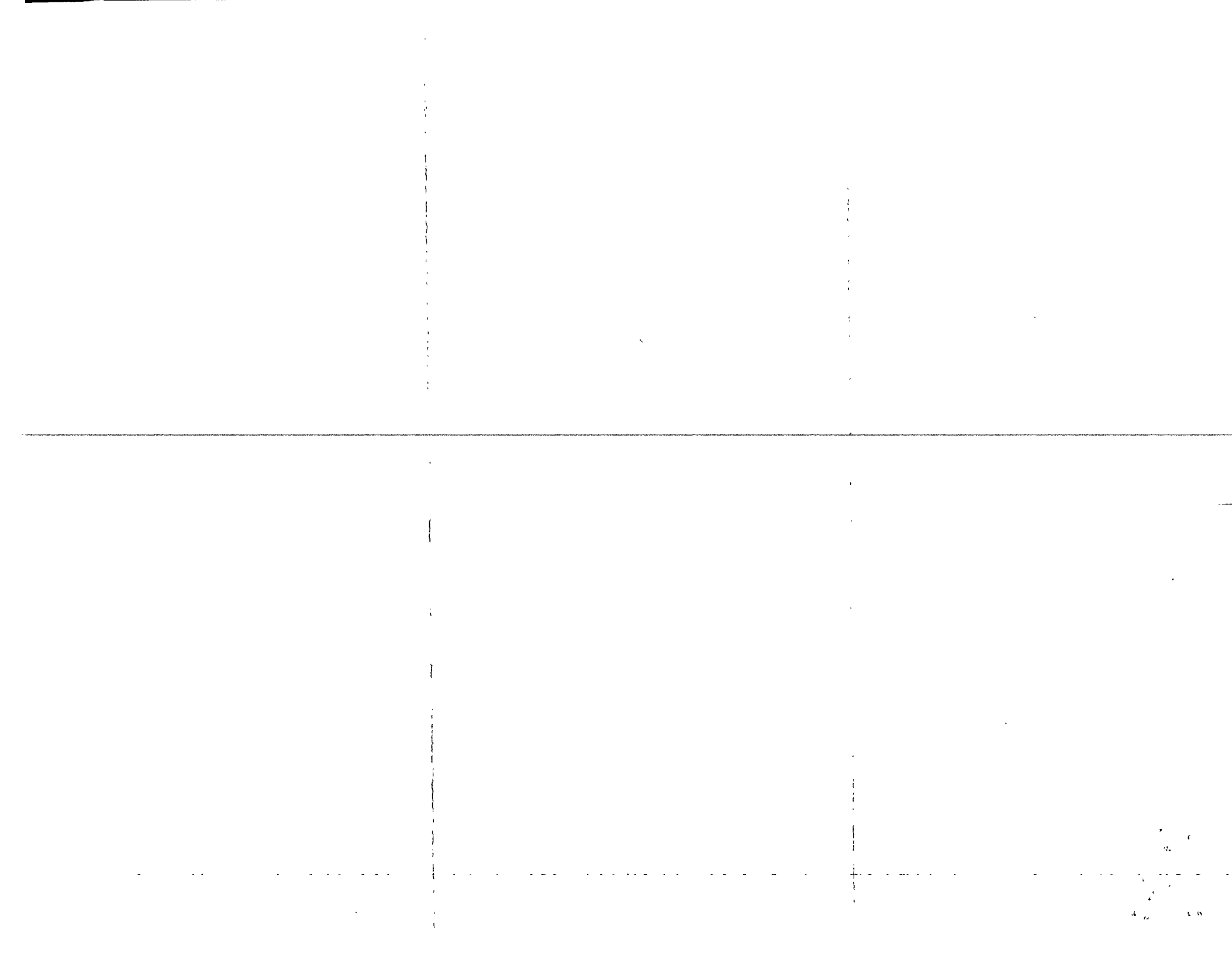
"The chronic overcrowding of the state's prison system has trickled down to the local level," says Rep. Scott Walker (R-Wauwatosa), chair of the Assembly Corrections Facilities committee. "This contract is doubly good: not only does it free up space in the state prisons, but that space can be used to help out the counties that have no more room for anyone else."

At the end of February, the state held 15,122 prisoners in a system designed for 11,313. The county jail's numbers are so bad – where 1,630 prisoners are in a facility designed to hold 798 – that county officials have started to house prisoners in the Safety Building's gymnasium, and floated the idea of placing excess prisoners in a State Fair Park youth dormitory.

That idea rankles Sen. Peggy Rosenzweig (R-Wauwatosa), whose district includes the Fairgrounds. "The proposal to house prisoners in the State Fair youth dorm is an indication of how desperately we need prison space," says Rosenzweig, who is also a member of Joint Finance. "I wish we could house all our prisoners in our own state. But a safe place in Tennessee is better than an unsafe place in Wisconsin."

The dormitory plan has a local Democrat upset as well. "The state must work with the county to develop more realistic alternatives," says Rep. Tony Staskunas (D-West Allis). "This contract is a good starting point toward ultimately finding a workable solution to jail overcrowding in Wisconsin."

The contract between the Department of Corrections and the Corrections Corporation of America can't go forward until Joint Finance gives its approval. Under terms of the contract, the Department would have sent 200 inmates to Tennessee in February, another 200 in this month, then 400 in both July and August.





D-Note

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 AN ACT ^{Jan 1st} relating to: moving county jail prisoners under certain
2 circumstances.

Analysis by the Legislative Reference Bureau

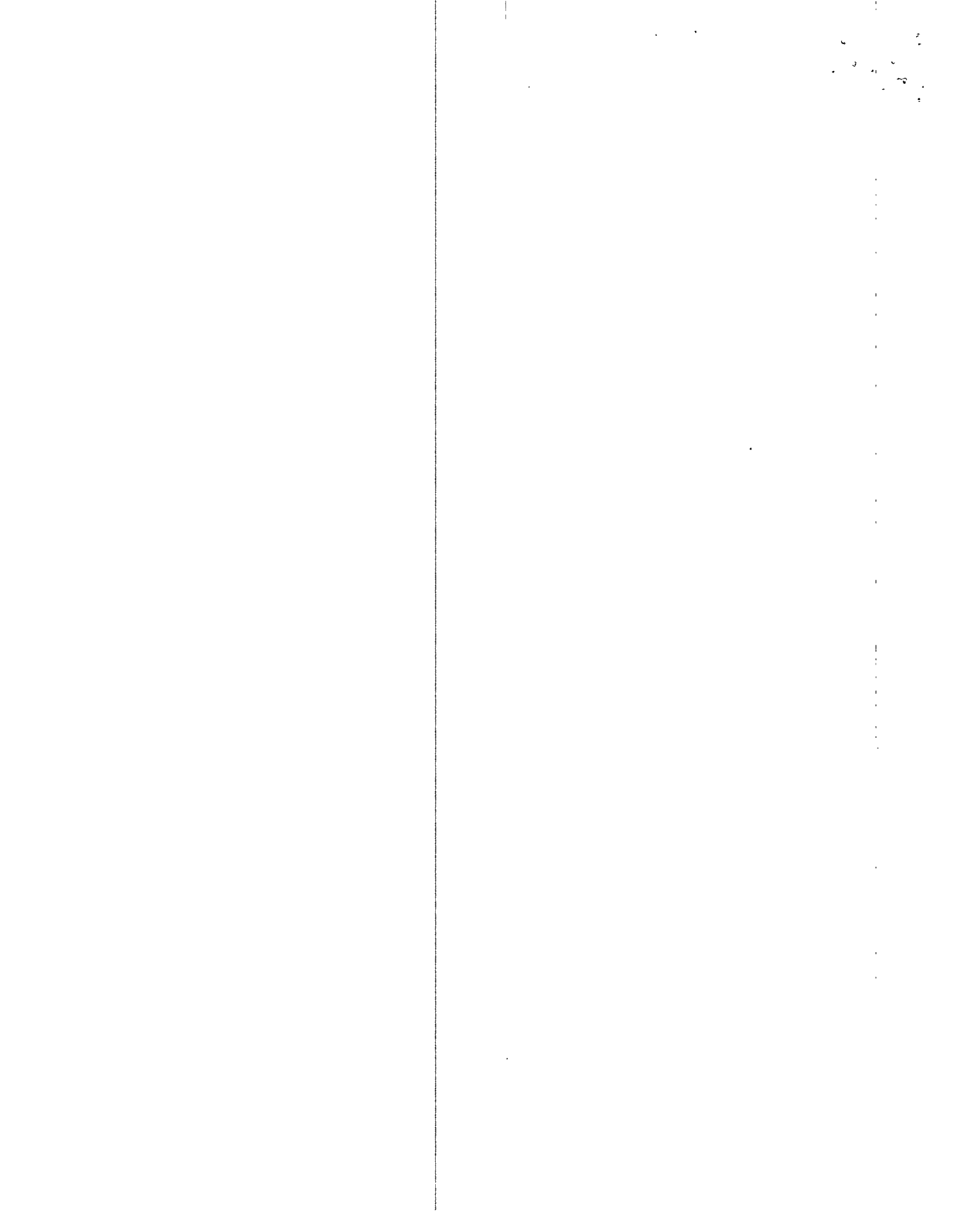
Under current law, a sheriff or other keeper of a county jail may move jail prisoners to any place of safety if there is an emergency and the safety of the prisoners requires that they be moved. In addition, if a county jail is destroyed or is insecure for keeping prisoners, the sheriff may move the prisoners to the jail of another county, where they are to be kept at the expense of the county from which they were moved.

This bill provides that if there is an emergency and the safety of the jail prisoners requires that they be moved, the sheriff or other keeper of the jail may move the prisoners only to another county jail instead of to any place of safety. The county from which the jail prisoners are moved must pay the expenses of keeping the prisoners at the county jail to which they are moved.

For further information see the *local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

3 SECTION 1. 302.35 of the statutes is amended to read:



1 **302.35 Removal of prisoners in emergency.** In an emergency and for the
2 safety of prisoners in any jail, ~~the sheriff or other keeper may remove them to a place~~
3 ~~of safety and there confine them so long as necessary.~~ If or if any county jail is
4 destroyed or is insecure for keeping prisoners, the sheriff or other keeper may remove
5 ~~them~~ the prisoners to some other county jail, where they shall be received and kept
6 as if committed thereto, but at the expense of the county from which they were
7 removed. An ~~indorsement~~ endorsement on the commitment of a prisoner, made by
8 the sheriff in charge of such prisoner, directed to the sheriff of another county, shall
9 be authority for the latter to hold the prisoner.

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


10 **SECTION 2. Initial applicability.**

11 (1) This act first applies to a removal of prisoners that occurs on the effective
12 date of this subsection.

13 (END)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0751/P1dn

JEO: 

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 sheriffs' 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.

Jefren E. Olsen
Legislative Attorney
266-8906

Handwritten marks and symbols in the top right corner, including a small diagram or signature.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0751/P1dn
JEO:kmg:jf

November 11, 1998

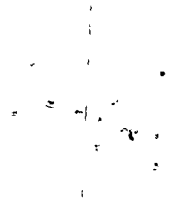
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Providing that jail prisoners may be moved only to another county jail in an emergency may in a particular case conflict with the sheriff's duty to prisoners if no other county jails will agree to take the prisoners or if the exigency of the situation 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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Legislative Attorney
266-8906



Only to public bldgs (publicly owned)

Only w/ permission of agency etc.
controlling the building



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-0751/P1
JEO:kmg:jf

Soon

redraft
maker
run

~~PRELIMINARY DRAFT NOT READY FOR INTRODUCTION~~

1 AN ACT to amend 302.35 of the statutes; relating to: moving county jail
2 prisoners under certain circumstances.

Analysis by the Legislative Reference Bureau

Under current law, a sheriff or other keeper of a county jail may move jail prisoners to any place of safety if there is an emergency and the safety of the prisoners requires that they be moved. In addition, if a county jail is destroyed or is insecure for keeping prisoners, the sheriff may move the prisoners to the jail of another county, where they are to be kept at the expense of the county from which they were moved.

This bill provides that, if there is an emergency and the safety of the jail prisoners requires that they be moved, the sheriff or other keeper of the jail may move the prisoners only to another county jail instead of to any place of safety. The county from which the jail prisoners are moved must pay the expenses of keeping the prisoners at the county jail to which they are moved.

For further information see the *local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 302.35 of the statutes is amended to read:

ANALYSIS
INSERT

INS
1-3

3

1 **302.35 Removal of prisoners in emergency.** In an emergency and for the
 2 safety of prisoners in any jail, the sheriff or other keeper may remove them to a place
 3 of safety and there confine them so long as necessary. If or if any county jail is
 4 destroyed or is insecure for keeping prisoners, the sheriff or other keeper may remove
 5 them the prisoners to some other county jail, where they shall be received and kept
 6 as if committed thereto, but at the expense of the county from which they were
 7 removed. An indorsement endorsement on the commitment of a prisoner, made by
 8 the sheriff in charge of such prisoner, directed to the sheriff of another county, shall
 9 be authority for the latter to hold the prisoner.

10 **SECTION 2. Initial applicability.**

11 (1) This act first applies to a removal of prisoners that occurs on the effective
 12 date of this subsection.

13 (END)

1 **ANALYSIS INSERT:**

one of the following places: 1) another county jail; or 2) a building other than a county jail that is owned or leased by the state or a political subdivision of the state, if the department, agency, officer or agent of the state or political subdivision that is in charge or control of the building consents to the removal of the prisoners to the building. As under current law, if prisoners are removed to the jail of another county, the

2 **INSERT 1-3:** ✓

3 **SECTION 1.** 302.35 of the statutes is renumbered 302.35 (intro.) and amended
4 to read:

5 **302.35 Removal of prisoners in emergency.** (intro.) In an emergency and
6 for the safety of prisoners in any jail, ~~the sheriff or other keeper may remove them~~
7 ~~to a place of safety and there confine them so long as necessary. If or if~~ any county
8 jail is destroyed or is insecure for keeping prisoners, the sheriff or other keeper may
9 remove ~~them~~ the prisoners to ~~some other~~ any of the following:

10 (1) Another county jail, where they. Prisoners removed to another county jail
11 shall be received and kept as if committed thereto, but at the expense of the county
12 from which they were removed. An ~~indorsement~~ endorsement on the commitment
13 of a prisoner, made by the sheriff in charge of such prisoner, directed to the sheriff
14 of another county, shall be authority for the latter to hold the prisoner.

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

15 **SECTION 2.** 302.35 (2) of the statutes is created to read:

16 **302.35 (2)** A building other than a county jail that is owned or leased by the
17 state or any political subdivision of the state, if the department, agency, officer or
18 agent of the state or political subdivision that is in charge or control of the building
19 consents to the removal of the prisoners to the building.

**SUBMITTAL
FORM**

**LEGISLATIVE REFERENCE BUREAU
Legal Section Telephone: 266-3561
5th Floor, 100 N. Hamilton Street**

The attached draft is submitted for your inspection. Please check each part carefully, proofread each word, and sign on the appropriate line(s) below.

Date: 2/23/99

To: Representative Staskunas

Relating to LRB drafting number: LRB-0751

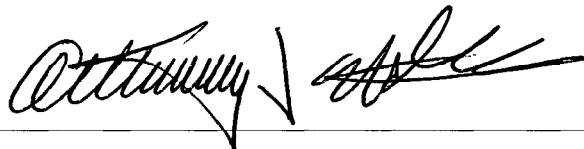
Topic

Authority of sheriff to move prisoners in emergencies

Subject(s)

Correctional System - jails

1. **JACKET** the draft for introduction _____



in the **Senate** ____ or the **Assembly** (check only one). Only the requester under whose name the drafting request is entered in the LRB's drafting records may authorize the draft to be submitted. Please allow one day for the preparation of the required copies.

2. **REDRAFT**. See the changes indicated or attached _____.

A revised draft will be submitted for your approval with changes incorporated.

3. Obtain **FISCAL ESTIMATE NOW**, prior to introduction _____.

If the analysis indicates that a fiscal estimate is required because the proposal makes an appropriation or increases or decreases existing appropriations or state or general local government fiscal liability or revenues, you have the option to request the fiscal estimate prior to introduction. If you choose to introduce the proposal without the fiscal estimate, the fiscal estimate will be requested automatically upon introduction. It takes about 10 days to obtain a fiscal estimate. Requesting the fiscal estimate prior to introduction retains your flexibility for possible redrafting of the proposal.

If you have any questions regarding the above procedures, please call 266-3561. If you have any questions relating to the attached draft, please feel free to call me.

Jefren E. Olsen, Legislative Attorney
Telephone: (608) 266-8906

