

1999 DRAFTING REQUEST

Bill

Received: **04/07/1999**

Received By: **mdsida**

Wanted: **As time permits**

Identical to LRB:

For: **Scott Walker (608) 266-9180**

By/Representing:

This file may be shown to any legislator: NO

Drafter: **mdsida**

May Contact:

Alt. Drafters: **olsenje**

Subject: **Correctional System - prisons**

Extra Copies: **DAK
RPN**

Pre Topic:

No specific pre topic given

Topic:

Regulation of private prisons

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>
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/P2	olsenje 08/02/1999	wjackson 08/02/1999	mclark 08/02/1999	_____	lrb-docadmin 08/02/1999		State
/1	mdsida 09/03/1999	wjackson 09/03/1999	kfollet 09/08/1999	_____	lrb-docadmin 09/08/1999	lrb_docadminState 09/08/1999	
/2	mdsida	wjackson	martykr	_____	lrb-docadmin	lrb_docadminState	

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Reaired</u>
	09/10/1999	09/10/1999	09/13/1999	_____	09/13/1999	09/13/1999	

FE Sent For:

10/4/99

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		12 9/10 WLJ	km 9/13	CS 9/15 km 9/15			

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for Assembly

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/P2	olsenje 08/02/1999	wj ackson 08/02/1999	mclark 08/02/1999	_____	lrb_docadmin 08/02/1999	_____	State

FE Sent For:

1 WJ 9/3
Kif 9/7
KF/Km 9/8

<END>

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Instructions:

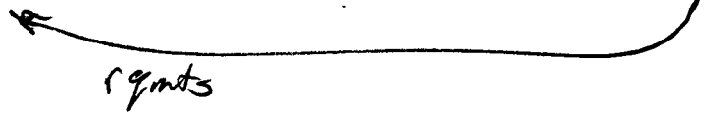
See Attached

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/P1	olsenje	/p1 7/21 WLJ	7/26	7/26			
		/p2 8/2 WLJ					
FE Sent For:			MRC 8/2	MRC/JF 8/2 <END>			

Am. Correctional Assn. - make DoC rights consistent w/

abundant
resources?
sick



rights

California - a spec. prison going up

Other states have extensive expertise w/spec.

~~Crime per~~ staff forfeitures

Separate from AB 174

Oklahoma - Ohio also
webs site



DoC to regulate
Not necessarily separated in statute

insurance -
grad training

Pre-construction approval of plans

\$ for DoC for emerg's

Immediate notification of police + DoC

DoC can charge for
licensing



sales of prison facilities / transfer of licenses

Initial + subseq.

\$ to DoC for Special operation

Declaration of emergency - make condition
of licensure

~~to~~ Remedies for violation

annual renewal? - can change the conditions of license

appeal ~~of~~ of denial of license - admin hrg

Use DoC's own classification (as opposed to sending state)

Once sanctioned at a certain level

Contract has to require sending state to take
prisoners back in of needs to be shut down

DOC must ~~have~~ review any contract

Decision?

OK.

Other.

NM

DoC as reg. entity

- No constraint on siting
- Reapproval of plans & specifications.

- bldg permit ~~is~~ essentially

- Denominate security level [?]

based on DoC

- Notice of emergency - imm'd - 301.38

- Authority of law enforcement officials to enter

DoC 301.36(c)

- DoC emergency response team [?] ability to move in & wind up biz.

- Renewal yearly

- Fees { preapproval -
operating approval -
on-going op. -

Sanctions

If approved, notice to sending state

Review of K of sending state



Scott Walker
Wauwatosa's Representative in the Wisconsin State Assembly

3-30-99

Jeffers,

Scott would like to meet with you next week about drafting legislation which would regulate prisons. The state does not contract walls.

The attached "model law for regulating privatization" may provide a platform to work from.

The press release is for your information.

- Ed

P.S. We can discuss details of drafting instructions next week if you have time.

P.O. Box 8953, State Capitol, Madison, WI 53708-8953 • (608) 266-9180
Message Hotline: 800-362-WISC (9472)
2334 N. 73rd Street, Wauwatosa, WI 53213 • (414) 258-1086

Printed on recycled paper with soy based ink

Wanted: A Model Law for Regulating Privatization

by Richard Crane*

Editor's Note: Richard Crane, a frequent contributor to these pages, probably knows more about the legal problems of contracting for correctional services than any other lawyer in the country. He has advised major private providers of correctional services, many jurisdictions contracting for correctional services, and government agencies examining the policy issues around privatization in corrections.

In this ground-breaking article, Mr. Crane offers his views on the need for statutory control over the private prison movement. While readers may take issue with some of what follows, Crane raises some very important points. CLR welcomes letters to the editor commenting on this proposal, and comments may also be sent directly to the author, whose address is given below.

This article and the model statutory provisions it proposes should become the springboard for discussion of the issues the author raises. We would like to see (and the lawyer within us would like to participate in) a very focused conference intended to examine these proposals and move them, or modifications of them, toward adoption by state legislatures. B.C.

Until recently contracting for private prisons was a relatively straightforward matter. True, there were early concerns about the **constitutionality** of delegating the authority to **incarcerate** inmates to private companies. But a comfort level was reached on that issue, often through legislation which simply authorized a corrections department to contract for services. Other issues, while tedious, were not that difficult to resolve.

However, as competition has increased and the market has grown, new issues never before considered have arisen. These include speculative construction, housing of out-of-state inmates, private company/county partnerships, use of force on out-of-state inmates, the cost of apprehending escapees, and more. While these matters are not necessarily of constitutional **magnitude**, they can be troublesome

*Richard Crane is a Nashville attorney with extensive experience in contracting and privatization in corrections. He can be reached at 2200 Hillsboro Road, Suite 310, Nashville, TN 37212; phone: (615) 298-3719.

and should be addressed legislatively.

In response to the problems I am encountering, I have attempted to develop a single piece of legislation that will address privatization of jail/prison operation from soup to nuts. In **all likelihood**, I have missed an item or two. However, if what follows provokes examination of the issues I address and suggestions for additional issues, I will have succeeded. I hope readers of this article will point out areas which need to be included. In the meantime, what follows is my proposed **statute**; each section is preceded by my summary and comments.

Authority to Contract

Section 1.1: Before any contract for correctional services can be **entered**, the basic authority to contract is needed. This section provides such authority, eliminating the **need** to argue that such contracting authority is implied. In general, **this** act deals with contracts for the full range of correctional services. However, I have tied to write it so that it is equally **appropriate** when **contracting** for discrete areas such as food service or health care.

SECTION 1. STATE AND LOCAL CORRECTIONAL FACILITIES, PRIVATE CONTRACTS

(1) The Department of Corrections and any County or other political subdivision otherwise authorized to operate a correctional facility is hereby authorized to enter into contracts with each other, a tax exempt entity, another state or **county** therein, and/or a private entity to finance, acquire, construct, lease, and/or provide full or partial **correctional services**. As used herein, the term "correctional services" shall mean those **services** necessary for the operation of a **correctional** facility, including, but not limited to the provision of food, clothing, security, and health care.

Bond Financing

Section 1.2: This section attempts to satisfy a group rarely satisfied - bond attorneys - by addressing certain **areas** of bond financing that will help the state or county get a higher bond rating.

(2) The Director of Corrections and the governing bodies of any political subdivision are hereby authorized to contract with tax-exempt entities to **provide** for the payment of the principal, premium, if any, interest, and trustees'

and paying agents' fees on bonds issued to finance the acquisition and/or construction of correctional facilities authorized under this Act, to be secured by a lien on and pledge of one **or more of the following**: (1) **all revenues** derived from payments to be made by the Department for the housing of **prisoners**; (2) all revenues derived from payments to be made by political subdivisions for the housing of prisoners; (3) any other revenues authorized by the Legislature or the governing body, respectively. It shall **not** be necessary to the perfection of the lien and pledge for such purposes that the Trustee in connection with such bond issue or me holders of me bonds take possession of me collateral security.

RFP Requirement

Section 1.3: The benefits to be had from privatization come from competition in **the marketplace, which is supposed to keep** the price of services down and their **quality** up. A growing phenomenon - companies building speculative prisons in states where they know that a need exists - **threatens** these benefits. When on-spec facilities are available, political pressure is brought to bear on the department of corrections, pushing them to contract for housing their inmates in this very nice correctional facility which just happens to be located in, for instance, the Speaker of the House's district. Competition is taken out of the process.

America traditionally has had a public monopoly in corrections. There is no sense in trading this for a private monopoly, which has little or no incentive to be any more efficient than its public predecessor. To keep competition in the process, this section requires that requests for proposals (**RFPs**) be **issued** before any **contract** is entered into with a private prison contractor. But, this alone will not solve the problem if the State does not get out in front of the curve. An RFP for 1,200 beds available next week is no better than handing the contract over to the speculative builder.

(3) No contract shall be entered into with a tax-exempt entity or private prison contractor for the provision of correctional services except through me issuance of a request for proposals.

See **PRIVATIZATION, next page**

will or part of 5054

Advance note part 2

PRIVATIZATION. *from page 83*

Likewise, no contract shall be entered into with a county that has **subcontracted** with a private prison contractor for operation of the facility except through the issuance of a request for **proposals**. Contracts entered into under this subsection shall be with the entity submitting the best overall **proposal** pursuant to the request for proposals.

Unless legislation addresses the force issue, serious questions exist as to how force (beyond the levels which any person may legally use it) may be legally used by private contractors.

Use of Public Lands

Section 1.4: This section merely provides legal authority for the use of public lands and buildings by a private contractor awarded a contract pursuant to the above section.

(4) Contracts awarded under the provisions of this Act may include the lease or use of public lands or buildings.

Contract Terms

Section 1.5: This section sets minimum and maximum terms for correctional service contracts. A three-year minimum is proposed to allow the private company ample time to "show its stuff." On the other hand, a maximum term of five years is suggested, so that the company doesn't get too comfortable or entrenched.

(5) Contracts awarded under this Act for the full or partial provision of correctional services shall be for a period of **not** less than three (3), **nor** more than five (5) year.%, subject to the requirement of annual appropriation of funds by the State or political subdivision.

Provider Qualifications

Sections 1.6 and 1.7: Section 1.6 provides qualifications where the correctional services to be ordered are either full or partial. Section 1.7 adds additional qualifications where contracts are awarded for full correctional services. In both cases, the standards are intended to be bare minimums: **far more specific** requirements would be contained in the RFPs. Some would put more specific requirements in the **legislation**, but I feel this is better handled by the executive branch.

The prohibition in 1.78 against a contractor's benefiting from inmate labor is not intended to prevent inmates from **working in traditional prison housekeeping/maintenance tasks**. The statute addresses **direct monetary benefits** to the contractor. Use of inmates to do work in the prison benefits the state by keeping the cost of the contract down. It also provides for an apples-to-apples cost comparison between the public and private sector since the **public sector uses inmates for these jobs**.

(6) No contract for full or partial correctional services may be entered into unless the entity providing the services demonstrates, at a minimum, **that** it has:

A. **Management** personnel with the qualifications and experience necessary to carry out the terms of the contract;

B. **Sufficient financial resources** to provide indemnification for liability arising from operation of the correctional facility;

C. The ability to meet applicable court orders, correctional standards, and constitutional requirements; and

D. Liability insurance adequate to protect the State, the political subdivision(s) wherein the facility is located, and their officers and employees **from** all claims and losses incurred as a result of the operation of the facility.

(7) No contracts shall be awarded for full correctional services unless the entity offering the services offers, at a minimum:

A. Adequate internal and perimeter security to protect the public, employees, and inmates;

B. Work and/or training opportunities for sentenced inmates; provided, however, that the contractor shall not benefit financially from the labor of inmates;

C. Imposition of inmate discipline only in accordance with applicable **rules** and procedures; and

D. Adequate **food**, clothing, housing, and medical care for inmates.

Use of Force

Sections 2.1 and 2.2: These sections authorize the use of force by private contractors on the **grounds** of the institution, while **transporting** inmates, and while **pursuing** escapees from the facility. Some jurisdictions may not want to allow private prison contractors to pursue escapees once they have left the grounds. In that case, this portion should be left out of the legislation. But unless legislation addresses the force issue, serious questions exist as to how force (beyond the levels which any person may legally use it) may be legally used by private contractors. This concern is particularly significant in situations where the private prison is housing inmates from other states.

SECTION 2. USE OF FORCE: PRIVATE PRISON EMPLOYEES, PERSONS FROM OUT OF STATE; POLICE POWERS

(1) Employees of a private prison contractor shall be allowed to use force and shall exercise their powers and authority only:

A. While On the grounds of an institution operated in whole or in part by their employer;

B. While transporting inmates; and

C. While pursuing escapees from such institutions.

(2) **An employee of a private prison contractor shall be allowed to carry firearms** provided the company and the employee meet all federal, state, and local requirements regarding the possession and carrying of firearms. Such employee shall be allowed to use a firearm only for the following **purposes**:

A. To prevent an inmate's escape from the facility or from custody while being transported to or **from the facility**. As used in this paragraph, "to prevent escape from the facility" shall mean to prevent an inmate **from** crossing the secure perimeter of the facility.

B. To prevent an act by an inmate which would cause death or serious bodily harm.

Section 2.3: This **section** allows employees of private contractors to use firearms if they meet all the training and licensing requirements of the state. Most states have private security **firm** acts (originally enacted for rent-a-cop companies) that have specific training and licensing requirements. Those sections of state **law** should be referenced in the legislation. More demanding requirements could obviously be adopted.

See **PRIVATIZATION**, next page

liability for violations?

I have taken the opportunity to also address the situation where law enforcement or private transportation company employees enter a state to pick up an inmate. Currently, an unwritten policy of professional courtesy permits those people to carry and use firearms. The act would make it clear that such individuals are authorized to use force while transporting or apprehending inmates under the circumstances set forth in the legislation.

(3) Provided They meet all the training and licensing requirements of the state where they are employed, duly authorized persons who enter this State for the purpose of transporting inmates of other states shall be authorized to use force while transporting or apprehending said inmates and shall be authorized to use deadly force under the circumstances as set forth in Subsection 2 of this Section.

Section 2.4: This section makes it clear that allowing individuals to carry and use firearms does not confer peace officer status on them.

(4) The provisib of this Section shall not be construed to confer peace officer status on the private prison contractor or its employees or persons from other states, or to authorize the use of firearms, except in accordance with this Section.

Handling Illegal Inmate Activity

Section 3: A major concern about the private operation of correctional facilities is the handling of illegal actions of inmates housed therein. This is of particular concern when the inmates are from another state. The problem is that the laws dealing with these crimes typically refer to crimes committed in a facility operated by state or local government. This is easily understandable; these laws were typically passed before we had private prisons. Rather than amending every state law which addresses crimes in a correctional facility (e.g., introduction of contraband, assault on correctional officers) Section 3.1 takes the easy way out by stating that any offense that is a crime if committed in a state or local correctional facility is a crime when committed in a private facility.

Frankly, I'm not particularly concerned about the application of corrections-specific criminal laws to inmates in privately operated facilities: general criminal laws usually cover the situations adequately.

For instance, say there is a special statute on assault of correctional officers. Even if it were not applicable to inmates in a private facility, the general criminal provisions on assault would apply.

More difficult is the question of escapes from privately operated facilities, so this is addressed specifically. The typical state escape statute refers to escapes from prisons or jails operated by government entities. Where does that leave on escape from a private prison, especially one housing only inmates from other states? I believe it leaves them with no way to prosecute the inmate for escape. See Crane, R., "Escape Laws Haven't Kept Up With Comctions Management Trends," VIII(5) CLR 67 (February/March 1997). I have addressed this problem by proposing an amendment to the state criminal laws on escapes that makes that law broad enough to cover an escape by any person from a place where such person is legally confined or from the lawful custody of any individual having authority to detain or transport the inmate. The reference to transport then covers the transportation situation, including circumstances where an inmate in transit may just be passing through a jurisdiction in the supervision of his public or private guard.

SECTION 3. APPLICATION OF CERTAIN CRIMINAL LAW TO CONTRACTOR-OPERATED FACILITIES

(1) Any offense which would be a crime if committed within a state or local correctional facility shall be a crime

if committed in a facility operated by a private prison contractor.

(2) Section ___ of the State Criminal Code is hereby amended to read as follows:

A. Simple Escape shall mean any of the following:

1. The intentional departure, under circumstances wherein human life is not endangered, of a person imprisoned, committed, or detained from a place where such person is legally confined or from the lawful custody of any individual having authority to detain or transpon such person.

2. The failure of any legally confined person to return from work release or furlough.

B. Aggravated Escape is the intentional departure, under circumstances wherein human life is endangered, of a person imprisoned, committed, or detained from a place where such Person is legally confined or from the lawful custody of any individual having authority to detain or transport such person.

Non-Delegable State Powers

Section 4: This section harks back to the earliest concerns about whether or not the powers and duties of the state are delegable to private contractors. This section lists those areas which may not be delegated. While there is nothing that

See PRIVATIZATION, page 90

PRIVATIZATION, from page 85

definitively holds that these are non-delegable functions, common sense dictates that those functions which relate to an inmate's release from custody ought not be given to an entity which makes money if inmates are not released.

provider is meeting the terms of the contract. Realistically, when hundreds if not thousands of miles separate the jurisdiction from its inmates, this sort of monitoring is apt to be weak.

In a bow to those who are concerned about the additional cost of this monitoring, the legislation provides that the monitoring

without going through the RFP process when an overcrowding situation exists, However, such contracts would be limited to a maximum of two years so as not to promote the speculative construction of facilities meant to subvert the bidding process.

SECTION 6. CONTRACTS WITH OTHER JURISDICTIONS

If the Director of Corrections or Sheriff, as the case may be, determines that an overcrowding situation exists which presents a danger to the operation of the facility under his/her jurisdiction and that suitable State or County correctional facilities are not available, he/she may enter into an agreement with the proper authorities of the United States, this or another state, a political subdivision of this or another state, or a private prison contractor to provide for the safe-keeping, care, subsistence, proper government, discipline, and treatment of State inmates. Such contracts may be let without formal bid or requests for proposals provided that the beds are available immediately or will be available within ninety (90) days of entering the contract and, further, that the term of the contract is for no more than one (1) year, with an option to renew for one (1) additional one-year term, and provided further, that all other requirements of this Act are met.

At a minimum, the director would review the location, design, security level, and financing of the facility and the type of inmates to be housed there.

Out-of-state inmates could not be housed in these facilities unless the state certified that it did not need them for its own inmates.

SECTION 4. POWERS AND DUTIES NOT DELEGABLE TO PRIVATE PRISON CONTRACTORS.

No contract for correctional services shall authorize, allow, or imply a delegation of authority or responsibility to any private prison contractor to perform any of the following:

- (1) Calculating inmate release and parole eligibility dates;
- (2) Granting, denying, or revoking sentence credits;
- (3) Approving inmates for furloughs, work release, or parole;
- (4) Approving the type of work inmates may perform, and the wages or sentence credits which may be given the inmates engaging in such work.

Contract Monitoring

Section 5: This section provides for the monitoring of correctional facilities. Normally, this is handled in the contract when a state or county has a private company operating a facility incarcerating its inmates. However, with the rise of facilities which exclusively house out-of-state inmates, it is necessary to provide statutorily for this authority, because it is entirely possible that neither the state nor county would have a contractual relationship allowing them to monitor the facility. Without a section like this, a jurisdiction would have no authority to monitor the operation of a private prison, other than through such things as building codes, public health ordinances, etc.

In theory, the sending jurisdiction should be monitoring how its inmates are being handled and to assure the private

agency will be reimbursed by the operating entity for the salary and expenses of the monitor. However, given the benefits to the economy of those jurisdictions with facilities housing out-of-state inmates, this may be somewhat shortsighted.

SECTION 5. MONITORING OF CONTRACTS

(1) The Director of Corrections or his/her designee shall monitor the performance of all correctional facilities incarcerating inmates under the jurisdiction of the Department of Corrections.

(2) The Sheriff or his designee shall monitor the performance of all correctional facilities incarcerating that County's inmates.

(3) All contracts for the housing of State or County inmates shall contain a provision granting the Director of Corrections, the Sheriff, or their designees unlimited access to the facility for monitoring purposes.

(4) The Director of Corrections shall have the right to appoint a monitor to inspect any in-State facility housing out-of-state inmates and the monitor shall have unlimited access to the facility. The State shall be reimbursed by the operating entity for that portion of the salary and expenses of the monitor attributable to monitoring the particular facility.

(5) In all cases, monitoring shall consist of ensuring that all State laws and contractual obligations applicable to the correctional facility are being met.

Emergency Contracting

Section 6: This would allow the director of corrections or the sheriff to enter into contracts on an emergency basis

State Review and Approval of Construction

Section 7: This section is the heart of my attempt to prevent the building of speculative facilities for the purpose of either subverting the competitive process or for the housing of out-of-state inmates. In either case, the department of corrections would have some say in the construction of such facilities.

This section provides that no correctional institution can be constructed without review and comment by the director of corrections. I have stopped short of requiring a certificate of need, as is often required in the hospital industry. But, at a minimum, the director would review the location, design, security level, and financing of the facility and the type of inmates to be housed there. Out-of-state inmates could not be housed in these facilities unless the state certified that it did not need them for its own inmates. The director of corrections would also be required to certify the custody levels of facilities housing these inmates.

See PRIVATIZATION, next page

reporting reqmts so state man

PRIVATIZATION, from page 90

SECTION 7. FACILITY CONSTRUCTION; HOUSING OF FEDERAL OR OUT-OF-STATE INMATES WITHIN THE STATE

(1) No correctional facility shall be constructed, nor shall any facility be renovated for the purpose of creating a correctional facility within the State without review and comment by the Director of Corrections. Review of requests for construction shall, at a minimum, include:

A Consideration of the location, design, security level, and financing of the Facility, and

B. The nature of the inmates to be housed in the facility.

(2) Counties and private prison contractors may incarcerate federal or out-of-state inmates in a correctional facility located within the State; provided that the Director of Corrections has certified that the State does not need some or all of the capacity of the facility for State inmates. Such certification shall be obtained bi-annually. The Director shall also certify the custody level(s) of any facility housing federal or out-of-state inmates.

Reimbursement to Law Enforcement Agencies

Section 7.3: This section provides for reimbursement by the operator of the correctional facility for expenses incurred by law enforcement agencies as a result of an escape by an out-of-state inmate. It has been suggested that the expense of prosecution and incarceration also be included. However, I believe this would be going too far. We don't charge General Motors for the prosecution and incarceration of employees it brings to our state when it opens a plant and I don't think that we ought to it for other industries.

3) The State and/or local governing body shall be reimbursed by the operator of the correctional facility for any expenses incurred, other than the expense of prosecution or incarceration, as a result of an escape by a federal or out-of-state inmate incarcerated within the State.

(4) Employees of facilities housing federal or out-of-state inmates shall meet such training requirements as are set forth by law or regulations for employees of State or County correctional facilities. Should no such requirements exist, the Director may by rule establish the training requirements for employees of these facilities.

(5) Use of force at facilities housing federal or out-of-state inmates shall be governed by the provisions of Section 2, above.

Liability Insurance

Section 7.6: Private contractors routinely carry insurance to protect themselves and the entity whose inmates they are housing. This section requires private prison contractors to add coverage to protect the state and the political subdivision where the facility is located. While the exposure to liability is small, it is a risk which would not be there, but for the privately operated facility.

(6) If operated by a private prison contractor, the contractor shall, at all times, have a policy of liability insurance adequate

requiring inmates be returned to their state of origin.

Probably of more impact is the migration of families to the area where out-of-state inmates are housed. I am beginning to see jurisdictions whose social service agencies are stretched very thin because of this additional burden. It would be hoped that the economic impact of the facility would provide sufficient additional revenues for the jurisdiction to provide these services. However, no study of this has yet been undertaken-

(8) No federal or out-of-state inmate shall be released in this State, unless the State has a detainer on the inmate or has accepted custody of the inmate pursuant to an interstate compact. In every other case, federal or out-of-state

Today, almost all contracts for out-of-state inmates provide that the inmates must be returned to the sending state before their release, but a desire to save a few bucks could change this practice in the future.

quate to protect the State, the political subdivision(s) wherein the facility is located, and their officers and employees from all claims and losses incurred as a result of the operation of the facility.

Emergency Plans

Section 7.7: This section deals with an area that is of grave concern to many. Specifically, how will the private company housing out-of-state inmates handle escapes, riots, and other emergency situations. This section requires that they have a written plan approved by the department for dealing with these situations.

(7) A facility housing federal or out-of-state inmates shall have in place a written plan approved by the Department of Corrections regarding the handling of escapes, riots, and other emergency situations.

Release of Out-of-State Inmates

Section 7.8: This section deals with another area of concern and that is the release of out-of-state inmates within the state upon completion of their sentences. Today, almost all contracts for out-of-state inmates provide that the inmates must be returned to the sending state before their release, but a desire to save a few bucks could change this practice in the future. This section prevents this from happening by

inmates shall be returned to the custody of the sending jurisdiction, or such other jurisdiction as has agreed to accept custody of the inmate, prior to the inmate's release from custody.

Section 7.9 and 7.10: These sections deal with allowing out-of-state inmates to leave the grounds of the facility temporarily. The statute makes it clear that they may not be allowed to do so, except under certain enumerated circumstances. On the other hand, the statute provides the flexibility to use out-of-state inmates on public works projects approved by the county where the facility is located. There have been situations where inmates were housed in a jurisdiction that needed their assistance in dealing with a natural disaster (e.g. flooding), but the inmates were prevented from helping, because they could not be allowed beyond the facility perimeter. This would remedy such situations.

(9) A facility housing federal or out-of-state inmates shall not allow any such inmate to leave the premises of the facility, except to comply with an order to appear in a court of competent jurisdiction, to receive medical care not available at the facility, to comply with the provisions of Section 8 of this Act, or to work as provided in Section 10 of this Act.

Handwritten note: dump over the border, prevent via vests

(10) A private prison contractor may allow federal or out-of-state inmates to work on public works projects outside the facility provided all of the following conditions are satisfied:

- A. The public works project must be in and for the county where the prison is located or in a county adjacent to the county where the prison is located, or in and for a municipality in the county where the prison is located **or** an adjacent county;
- 6. The public works project has been

authorized by the Department of Corrections and the county or **municipal** authorities where the public works **project** is located.

Exception for Federal Prisons; Interstate Transfers

Sections 7.11 and 7.12: Finally, the act provides that it is inapplicable to facilities operated within the state by the Federal Bureau of Prisons and that the act may be used as authority for the interstate transfer of inmates in lieu of the Interstate Compact on Corrections. The latter has been a prob-

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(11) **The** provisions of this Act shall not apply to facilities operated within the State by the federal Bureau of Prisons.

(12) The provisions of this Act may be used in lieu of the provisions of the Interstate Compact on **Corrections.** ■

Wanted: A Model Law for Regulating Privatization

by Richard Crane*

ch. 13
bonding

Editor's Note: Richard Crane, a frequent contributor to these pages, probably knows more about the legal problems of contracting for correctional services than any other lawyer in the country. He has advised major private providers of correctional services, many jurisdictions contracting for correctional services, and government agencies examining the policy issues around privatization in corrections.

In this ground-breaking article, Mr. Crane offers his views on the need for statutory control over the private prison movement. While readers may take issue with some of what follows, Crane raises some very important points. CLR welcomes letters to the editor commenting on this proposal, and comments may also be sent directly to the author, whose address is given below.

This article and the model statutory provisions it proposes should become the springboard for thoughtful discussion of the issues the author mires. We would like to see (and the lawyer within us would like to participate in) a very focused conference intended to examine these proposals and move them or modifications of them, toward adoption by state legislatures. B. C.

Until recently contracting for private prisons was a relatively straightforward matter. True, there were early concerns about the constitutionality of delegating the authority to incarcerate inmates to private companies. But a comfort level was reached on that issue, often through legislation which simply authorized a corrections department to contract for services. Other issues, while tedious, were not that difficult to resolve.

However, as competition has increased and the market has grown, new issues never before considered have arisen. These include speculative construction, housing of out-of-state inmates, private company/county partnerships, use of force on out-of-state inmates, the cost of apprehending escapees, and more. While these matters are not necessarily of constitutional magnitude, they can be troublesome

*Richard Crane is a Nashville attorney with extensive experience in contracting and privatization in corrections. He can be reached at 2200 Hillsboro Road, Suite 310, Nashville, TN 37212; phone: (615) 298-3719.

and should be addressed legislatively.

In response to the problems I am encountering, I have attempted to develop a single piece of legislation that will address privatization of jail/prison operation from soup to nuts. In all likelihood, I have missed an item or two. However, if what follows provokes examination of the issues I address and suggestions for additional issues, I will have succeeded. I hope readers of this article will point out areas which need to be included. In the meantime, what follows is my proposed statute; each section is preceded by my summary and comments.

Authority to contract

Section 1.1: Before any contract for correctional services can be entered, the basic authority to contract is needed. This section provides such authority, eliminating the n&d to argue that such contracting authority is implied. In general, this act deals with contracts for the full range of correctional services. However, I have tried to write it so that it is equally appropriate when contracting for discrete areas such as food service or health care.

SECTION 1. STATE AND LOCAL CORRECTIONAL FACILITIES, PRIVATE CONTRACTS

(1) The Department of Corrections and any County or other political subdivision otherwise authorized to operate a correctional facility is hereby authorized to enter into contracts with each other, a tax exempt entity, another state or county therein, and/or a private entity to finance, acquire, construct, lease, and/or provide full or partial correctional services. As used herein, the term 'correctional services' shall mean those services necessary for the operation of a correctional facility, including, but not limited to the provision of food, clothing, security, and health care.

Bond Financing

Section 1.2: This section attempts to satisfy a group rarely satisfied - bond attorneys - by addressing certain areas of bond financing that will help the state or county get a higher bond rating.

(2) The Director of Corrections and the governing bodies of any political subdivision are hereby authorized to contract with tax-exempt entities to provide for the payment of the principal, premium, if any, interest, and trustees'

and paying agents' fees on bonds issued to finance the acquisition and/or construction of correctional facilities authorized under this Act, to be secured by a non-pledge of one or more of the following: (1) all revenues derived from payments to be made by the Department for the housing of prisoners; (2) all revenues derived from payments to be made by political subdivisions for the housing of prisoners; (3) any other revenues authorized by the Legislature or the governing body, respectively. It shall not be necessary to the perfection of the lien and pledge for such purposes that the Trustee in connection with such bond issue or the holders of the bonds take possession of the collateral security.

RFP Requirement

Section 1.3: The benefits to be had from privatization come from competition in the marketplace, which is supposed to keep the price of services down and their quality up. A growing phenomenon - companies building speculative prisons in states where they know that a need exists - threatens these benefits. When on-spec facilities are available, political pressure is brought to bear on the department of corrections, pushing them to contract for housing their inmates in this very nice correctional facility which just happens to be located in, for instance, the Speaker of the House's district. Competition is taken out of the process.

America traditionally has had a public monopoly in corrections. There is no sense in trading this for a private monopoly, which has little or no incentive to be any more efficient than its public predecessor. To keep competition in the process, this section requires that requests for proposals (RFPs) be issued before any contract is entered into with a private prison contractor. But, this alone will not solve the problem if the State does not get out in front of the curve. An RFP for 1,200 beds available next week is no better than handing the contract over to the speculative builder.

(3) No contract shall be entered into with a tax-exempt entity or private prison contractor for the provision of correctional services except through the issuance of a request for proposals.

See PRIVATIZATION, next page

Likewise, no contract shall be entered into with a county that has subcontracted with a private prison contractor for operation of the facility except through the issuance of a request for proposals. Contracts entered into under this subsection shall be with the entity submitting the best overall proposal pursuant to the request for proposals.

The prohibition in 1.7B against a contractor's benefiting from inmate labor is not intended to prevent inmates from working in traditional prison housekeeping/maintenance tasks. The statute addresses direct monetary benefits to the contractor. Use of inmates to do work in the prison benefits the state by keeping the cost of the contract down. it also provides for an apples-to-apples cost comparison between the public and private sector since the public sector uses inmates for these jobs.

Use of Force

Sections 2.1 and 2.2: These sections authorize the use of force by private contractors on the grounds of the institution, while transporting inmates, and while pursuing escapees from the facility. Some jurisdictions may not want to allow private prison contractors to pursue escapees once they have left the grounds. In that case, this portion should be left out of the legislation. But unless legislation addresses the force issue, serious questions exist as to how force (beyond the levels which any person may legally use it) may be legally used by private contractors. This concern is particularly significant in situations where the private prison is housing inmates from other states.

SECTION 2. USE OF FORCE; PRIVATE PRISON EMPLOYEES; PERSONS FROM OUT OF STATE; POLICE POWERS

(1) Employees of a private prison contractor shall be allowed to use force and shall exercise their powers and authority only:

- A. While on the grounds of an institution operated in whole or in part by their employer;
B. While transporting inmates; and
C. While pursuing escapees from such institutions.

(2) An employee of a private prison contractor shall be allowed to carry firearms provided the company and the employee meet all federal, state, and local requirements regarding the possession and carrying of firearms. Such employee shall be allowed to use a firearm only for the following purposes:

- A. To prevent an inmate's escape from the facility or from custody while being transported to or from the facility. As used in this paragraph, 'to prevent escape from the facility' shall mean to prevent an inmate from crossing the secure perimeter of the facility.
B. To prevent an act by an inmate which would cause death or serious bodily harm.

Section 2.3: This section allows employees of private contractors to use firearms if they meet all the training and licensing requirements of the state. Most states have private security firm acts (originally enacted for rent-a-cop companies) that have specific training and licensing requirements. Those sections of state law should be referenced in the legislation. More demanding requirements could obviously be adopted.

See PRIVATIZATION, next page

Unless legislation addresses the force issue, serious questions exist as to how force (beyond the levels which any person may legally use it) may be legally used by private contractors.

Use of Public Lands

Section 1.4: This section merely provides legal authority for the use of public lands and buildings by a private contractor awarded a contract pursuant to the above section.

(4) Contracts awarded under the provisions of this Act may include the lease or use of public lands or buildings.

Contract Terms

Section 1.5: This section sets minimum and maximum terms for correctional service contracts. A three-year minimum is proposed to allow the private company ample time to "show its stuff." On the other hand, a maximum term of five years is suggested, so that the company doesn't get too comfortable or entrenched.

(5) Contracts awarded under this Act for the full or partial provision of correctional services shall be for a period of not less than three (3), nor more than five (5) years, subject to the requirement of annual appropriation of funds by the State or political subdivision.

Provider Qualifications

Sections 1.6 and 1.7: Section 1.6 provides qualifications where the correctional services to be ordered are either full or partial. Section 1.7 adds additional qualifications where contracts are awarded for full correctional services. In both cases, the standards are intended to be bare minimums: far more specific requirements would be contained in the RFPs. Some would put more specific requirements in the legislation, but I feel this is better handled by the executive branch.

(6) No contract for full or partial correctional services may be entered into unless the entity providing the services demonstrates, at a minimum, that it has:

- A. Management personnel with the qualifications and experience necessary to carry out the terms of the contract;
B. Sufficient financial resources to provide indemnification for liability arising from operation of the correctional facility;
C. The ability to meet applicable court orders, correctional standards, and constitutional requirements; and
D. Liability insurance adequate to protect the State, the political subdivision(s) wherein the facility is located, and their officers and employees from all claims and losses incurred as a result of the operation of the facility.

(7) No contracts shall be awarded for full correctional services unless the entity offering the services offers, at a minimum:

- A. Adequate internal and perimeter security to protect the public, employees, and inmates;
B. Work and/or training opportunities for sentenced inmates: provided, however, that the contractor shall not benefit financially from the labor of inmates;
C. Imposition of inmate discipline only in accordance with applicable rules and procedures; and
D. Adequate food, clothing, housing, and medical care for inmates.

cf. 302.07

Private contractor

indemnification for liability

Liability insurance adequate to protect the State, the political subdivision(s) wherein the facility is located, and their officers and employees from all claims and losses incurred as a result of the operation of the facility.

above

I have taken the opportunity to also address the situation where law enforcement or private transportation company employees enter a state to pick up an inmate. Currently, an unwritten policy of professional courtesy permits those people to carry and use firearms. The act would make it clear that such individuals are authorized to use force while transporting or apprehending inmates under the circumstances set forth in the legislation.

(3) Provided they meet all the training and licensing requirements of the state where they are employed, duly authorized persons who enter this State for the purpose of transporting inmates of other states shall be authorized to use force while transporting or apprehending said inmates and shall be authorized to use deadly force under the circumstances as set forth in Subsection 2 of this Section.

Section 2.4: This section makes it clear that allowing individuals to carry and use firearms does not confer peace officer status on them.

(4) The provision of this Section shall not be construed to confer peace officer status on the private prison contractor or its employees or persons from other states, or to authorize the use of firearms, except in accordance with this Section.

Handling Illegal Inmate Activity

Section 3: A major concern about the private operation of correctional facilities is the handling of illegal actions of inmates housed therein. This is of particular concern when the inmates are from another state. The problem is that the laws dealing with these crimes typically refer to crimes committed in a facility operated by state or local government. This is easily understandable: these laws were typically passed before we had private prisons. Rather than amending every state law which addresses crimes in a correctional facility (e.g., introduction of contraband, assault on correctional officers) Section 3.1 takes the easy way out by stating that any offense that is a crime if committed in a state or local correctional facility is a crime when committed in a private facility.

Frankly, I'm not particularly concerned about the application of corrections-specific criminal laws to inmates in privately operated facilities: general criminal laws usually cover the situations adequately.

For instance, say there is a special statute on assault of correctional officers. Even if it were not applicable to inmates in a private facility, the general criminal provisions on assault would apply.

More difficult is the question of escapes from privately operated facilities, so this is addressed specifically. The typical state escape statute refers to escapes from prisons or jails operated by government entities. Where does that leave an escape from a private prison, especially one housing only inmates from other states? I believe it leaves them with no way to prosecute the inmate for escape. See Crane, R., "Escape Laws Haven't Kept Up With Corrections Management Trends," VIII(5) CLR 67 (February/March 1997). I have addressed this problem by proposing an amendment to the state criminal laws on escapes that makes that law broad enough to cover an escape by any person from a place where such person is legally confined or from the lawful custody of any individual having authority to detain or transport the inmate. The reference to transport then covers the transportation situation, including circumstances where an inmate in transit may just be passing through a jurisdiction in the supervision of his public or private guard.

SECTION 3. APPLICATION OF CERTAIN CRIMINAL LAW TO CONTRACTOR-OPERATED FACILITIES

(1) Any offense which would be a crime if committed within a state or local correctional facility shall be a crime

if committed in a facility operated by a private prii contractor.

(2) Section ___ of the State Criminal Code is hereby amended to read as follows:

A. Simple Escape shall mean any of the following:

1. The intentional departure, under circumstances wherein human life is not endangered, of a person imprisoned, committed, or detained from a place where such person is legally confined or from the lawful custody of any individual having authority to detain or transport such person.

2. The failure of any legally confined person to return from work release or furlough.

B. Aggravated Escape is the intentional departure, under circumstances wherein human life is endangered, of a person imprisoned, committed, or detained from a place where such person is legally confined or from the lawful custody of any individual having authority to detain or transport such person.

Non-Delegable State Powers

Section 4: This section harks back to the earliest concerns about whether or not the powers and duties of the state are delegable to private contractors. This section lists those areas which may not be delegated. While there is nothing that

See PRIVATIZATION, page 90

307,235

Suppressing riots
Transporting prisoners

PRIVATIZATION, from page 85

definitively holds that these are non-delegable functions, common sense dictates that those functions which relate to an inmate's release from custody ought not be given to an entity which makes money if inmates are not released.

provider is meeting the terms of the contract. Realistically, when hundreds if not thousands of miles separate the jurisdiction from its inmates, this sort of monitoring is apt to be weak.

In a bow to those who are concerned about the additional cost of this monitoring, the legislation provides that the monitoring

without going through the RFP process when an overcrowding situation exists. However, such contracts would be limited to a maximum of two years so as not to promote the speculative construction of facilities meant to subvert the bidding process.

SECTION 6. CONTRACTS WITH OTHER JURISDICTIONS

If the Director of Corrections or Sheriff, as the case may be, determines that an overcrowding situation exists which presents a danger to the operation of the facility under his/her jurisdiction and that suitable State or County correctional facilities are not available, he/she may enter into an agreement with the proper authorities of the United States, this or another state, a political subdivision of this or another state, or a private prison contractor to provide for the safe-keeping, care, subsistence, proper government, discipline, and treatment of State inmates. Such contracts may be let without formal bid or requests for proposals provided that the beds are available immediately or will be available within ninety (90) days of entering the contract and, further, that the term of the contract is for no more than one (1) year, with an option to renew for one (1) additional one-year term. and provided further, that all other requirements of this Act are met.

State Review and Approval of Construction

Section 7: This section is the heart of my attempt to prevent the building of speculative facilities for the purpose of either subverting the competitive process or for the housing of out-of-state inmates. In either case, the department of corrections would have some say in the construction of such facilities.

This section provides that no correctional institution can be constructed without review and comment by the director of corrections. I have stopped short of requiring a certificate of need, as is often required in the hospital industry. But, at a minimum, the director would review the location, design, security level, and financing of the facility and the type of inmates to be housed there. Out-of-state inmates could not be housed in these facilities unless the state certified that it did not need them for its own inmates. The director of corrections would also be required to certify the custody levels of facilities housing these inmates.

See PRIVATIZATION, next page

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SECTION 4. POWERS AND DUTIES NOT DELEGABLE TO PRIVATE PRISON CONTRACTORS.

No contract for correctional services shall authorize, allow, or imply a delegation of authority or responsibility to any private prison contractor to perform any of the following:

- (1) Calculating inmate release and parole eligibility dates;
(2) Granting, denying, or revoking sentence credits;
(3) Approving inmates for furloughs, work release, or parole;
(4) Approving the type of work inmates may perform, and the wages or sentence credits which may be given to inmates engaging in such work.

Contract Monitoring

Section 5: This section provides for the monitoring of correctional facilities. Normally, this is handled in the contract when a state or county has a private company operating a facility incarcerating its inmates. However, with the rise of facilities which exclusively house out-of-state inmates, it is necessary to provide statutorily for this authority, because it is entirely possible that neither the state nor county would have, a contractual relationship allowing them to monitor the facility. Without a section like this, a jurisdiction would have no authority to monitor the operation of a private prison, other than through such things as building codes, public health ordinances, etc.

In theory, the sending jurisdiction should be monitoring how its inmates are being handled and to assure the private

agency will be reimbursed by the operating entity for the salary and expenses of the monitor. However, given the benefits to the economy of those jurisdictions with facilities housing out-of-state inmates, this may be somewhat shortsighted.

SECTION 5. MONITORING OF CONTRACTS

- (1) The Director of Corrections or his/her designee shall monitor the performance of all correctional facilities incarcerating inmates under the jurisdiction of the Department of Corrections.
(2) The Sheriff or his designee shall monitor the performance of all correctional facilities incarcerating that County's inmates.
(3) All contracts for the housing of State or County inmates shall contain a provision granting the Director of Corrections, the Sheriff, or their designees unlimited access to the facility for monitoring purposes.
(4) The Director of Corrections shall have the right to appoint a monitor to inspect any in-State facility housing out-of-state inmates and the monitor shall have unlimited access to the facility. The State shall be reimbursed by the operating entity for that portion of the salary and expenses of the monitor attributable to monitoring the particular facility.
(5) In all cases, monitoring shall consist of ensuring that all State laws and contractual obligations applicable to the correctional facility are being met

Emergency Contracting

Section 6: This would allow the director of corrections or the sheriff to enter into contracts on an emergency basis

TENN?
TEXAS?
OKLAHOMA?

Could be much more detailed - e.g., licensing.

PRIVATIZATION, from page 90

SECTION 7. FACILITY CONSTRUCTION; HOUSING OF FEDERAL OR OUT-OF-STATE INMATES WITHIN THE STATE

(1) No correctional facility shall be constructed, nor shall any facility be renovated for the purpose of creating a correctional facility within the State without review and comment by the Director of Corrections. Review of requests for construction shall, at a minimum, include:

A. Consideration of the location, design, security level, and financing of the facility, and

B. The nature of the inmates to be housed in the facility.

(2) Counties and private prison contractors may incarcerate federal or out-of-state inmates in a correctional facility located within the State; provided that the Director of Corrections has certified that the State does not need some or all of the capacity of the facility for State inmates. Such certification shall be obtained bi-annually. The Director shall also certify the custody level(s) of any facility housing federal or out-of-state inmates.

Reimbursement to Law Enforcement Agencies

Section 7.3: This section provides for reimbursement by the operator of the correctional facility for expenses incurred by law enforcement agencies as a result of an escape by an out-of-state inmate. It has been suggested that the expense of prosecution and incarceration also be included. However, I believe this would be going too far. We don't charge General Motors for the prosecution and incarceration of employees it brings to our state when it opens a plant and I don't think that we ought to it for other industries.

3) The State and/or local governing body shall be reimbursed by the operator of the correctional facility for any expenses incurred, other than the expense of prosecution or incarceration, as a result of an escape by a federal or out-of-state inmate incarcerated within the State.

(4) Employees of facilities housing federal or out-of-state inmates shall meet such training requirements as are set forth by law or regulations for employees of State or County correctional facilities. Should no such requirements exist, the Director may by rule establish the training requirements for employees of these facilities.

(5) Use of force at facilities housing federal or out-of-state inmates shall be governed by the provisions of Section 2. above.

Liability Insurance

Section 7.6: Private contractors routinely carry insurance to protect themselves and the entity whose inmates they are housing. This section requires private prison contractors to add coverage to protect the state and the political subdivision where the facility is located. While the exposure to liability is small, it is a risk which would not be there, but for the privately operated facility.

(6) If operated by a private prison contractor, the contractor shall at all times have a policy of liability insurance adequate to protect the State, the political subdivision(s) wherein the facility is located, and their officers and employees from all claims and losses incurred as a result of the operation of the facility.

To & y, almost all contracts for out-of-state inmates provide that the inmates must be returned to the sending state before their release, but a desire to save a few bucks could change this practice in the future.

Emergency Plans

Section 7.7: This section deals with an area that is of grave concern to many. Specifically, how will the private company housing out-of-state inmates handle escapes, riots, and other emergency situations. This section requires that they have a written plan approved by the department for dealing with these situations.

(7) A facility housing federal or out-of-state inmates shall have in place a written plan approved by the Department of Corrections regarding the handling of escapes, riots, and other emergency situations.

Release of Out-of-State Inmates

Section 7.8: This section deals with another area of concern and that is the release of out-of-state inmates within the state upon completion of their sentences. Today, almost all contracts for out-of-state inmates provide that the inmates must be returned to the sending state before their release, but a desire to save a few bucks could change this practice in the future. This section prevents this from happening by

requiring inmates be returned to their state of origin.

Probably of more impact is the migration of families to the area where out-of-state inmates are housed. I am beginning to see jurisdictions whose social service agencies are stretched very thin because of this additional burden. It would be hoped that the economic impact of the facility would provide sufficient additional revenues for the jurisdiction to provide these services. However, no study of this has yet been undertaken.

(6) No federal or out-of-state inmate shall be released in this State, unless the State has a detainer on the inmate or has accepted custody of the inmate pursuant to an interstate compact. In every other case, federal or out-of-state

inmates shall be returned to the custody of the sending jurisdiction, or such other jurisdiction as has agreed to accept custody of the inmate, prior to the inmate's release from custody.

Section 7.9 and 7.10: These sections deal with allowing out-of-state inmates to leave the grounds of the facility temporarily. The statute makes it clear that they may not be allowed to do so, except under certain enumerated circumstances. On the other hand, the statute provides the flexibility to use out-of-state inmates on public works projects approved by the county where the facility is located. There have been situations where inmates were housed in a jurisdiction that needed their assistance in dealing with a natural disaster (e.g. flooding), but the inmates were prevented from helping, because they could not be allowed beyond the facility perimeter. This would remedy such situations.

(9) A facility housing federal or out-of-state inmates shall not allow any such inmate to leave the premises of the facility, except to comply with an order to appear in a court of competent jurisdiction, to receive medical care not available at the facility, to comply with the provisions of Section 8 of this Act, or to work as provided in Section 10 of this Act.

See PRIVATIZATION, next page

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(10) A private prison contractor may allow federal or out-of-state inmates to work on public works **projects** outside the facility provided all of the following conditions are satisfied:

- A. The public works project must be in **and for the county where the prison** is located or in a county adjacent to the **county** where the prison is located, or in and for a municipality in the **county where the prison is located or** an adjacent county:
- B. The public works project has been

authorized by the **Department of Corrections and the county or municipal** authorities where the public works project is **located**.

Exception for Federal Prisons; Interstate Traders

Sections 7.11 and 7.12: Finally, the act provides that it is inapplicable to facilities operated **within the state by the Federal Bureau of Prisons and that the act may be used as authority for the interstate transfer of inmates in lieu of the Interstate Compact on Corrections. The latter has been a prob-**

lem in at least one state (Pennsylvania), which has taken the position **that inmates may only be brought in from out of state pursuant to the Compact. While I do not read the Compact as being that restrictive, this ensures that this act may be used as an alternative means of incarcerating out-of-state inmates within the state.**

(11) The provisions of this Act shall not apply to facilities operated within the State by the federal Bureau of Prisons

(12) The provisions of this Act may be used in lieu of the provisions of the Interstate Compact on Corrections. ■



Representative Scott Walker

Phone: (608) 266-9180 or (414) 258-1086 - FAX: (608) 282-3614 - E-Mail: Rep.Walker@legis.state.wi.us

FOR IMMEDIATE RELEASE - March 29, 1999

Walker Proposes Regulations for Speculative Prisons *Trip to Federal Forum in Atlanta Spurs Legislation*

(Madison) Wisconsin should learn from the experiences of other states and grant the Department of Corrections oversight of speculative private prisons, according to the Assembly's corrections chair. Citing construction of a speculative facility in Stanley, Rep. Scott Walker (R-Wauwatosa) announced today that he intends to introduce legislation specifying public safety requirements for private prisons in Wisconsin.

Walker said the idea stems from his attendance at a conference sponsored last week by the U.S. Dept. of Justice. Officials from 12 states, the District of Columbia and the Federal Bureau of Prisons gathered in Atlanta to discuss private prisons and public safety and to develop model legislation and agreements.

"Talking with many of the officials who currently have speculative prisons operating within their states reinforces my interest in legislating oversight authority for the prison in Stanley," Walker said. "Obviously inmates will be shipped here from other states even if the legislature refuses to allow the DOC to contract with the facility to hold Wisconsin prisoners."

He cited a recent incident at North Fork Correctional Facility in Sayre, OK as an example of the need for state oversight of private prisons. Several inmates and guards were injured earlier this month in a lunchtime disturbance at the prison, which houses Wisconsin inmates exclusively.

"We have the advantage of learning from the mistakes of other states," Walker said. "Proactive legislation will help avoid the problems occurring in other parts of the country."

Wisconsin law currently forbids the DOC from contracting with private facilities in-state but allows the department to send inmates to private prisons elsewhere. Accordingly, the DOC houses 2,490 inmates at private prisons in Sayre and Whiteville, Tennessee. Wisconsin's prisoner population totals 18,543, while the state's prison system has a capacity of 11,030.

Walker said his legislation will allow the DOC to inspect and regulate private prisons within the state. The measure will also address hot-button issues like liability and use of force, he added.



OSCN

Oklahoma Statutes

Cite as: 57 O.S. § 561 (OSCN 1997).

Title 57. Prisons and Reformatories

Chapter 8

Oklahoma Corrections Act of 1967

§561. Authority to Provide Incarceration, Supervision, and Residential Treatment at Facilities not Operated by Department of Corrections - Private Prison Contractors - Comprehensive File for All Private Prison Contractors.

A. The Department of Corrections is hereby authorized to provide for incarceration, supervision, and residential treatment at facilities other than those operated by the Department of Corrections. Services offered for persons under the custody or supervision of the Department are to include, but not be limited to, housing, alcoholism or drug treatment, mental health services, nursing home care, or halfway house placement. Such services must meet standards prescribed and established by the Board of Corrections for implementing such a program, including but not limited to standards concerning internal and perimeter security, discipline of inmates, educational and vocational training programs, employment of inmates, and proper food, clothing, housing, and medical care. Such services must be contracted for in accordance with Section 85.7 of Title 74 of the Oklahoma Statutes. Such services, if provided by private prison contractors, shall be contracted for as required by this section.

B. Subject to the requirements of this section and Section 78 of this act, the Department of Corrections is hereby authorized to provide for the construction or operation or both construction and operation of correctional institutions of the Department of Corrections by private prison contractors. Such operation shall meet standards prescribed by the Board of Corrections, including but not limited to, standards concerning internal and perimeter security, discipline of inmates, educational and vocational training programs, and proper food, clothing, housing, transportation and medical care. Such services shall be contracted for in accordance with the provisions of Subsection 78 of this act and the provisions of this section.

C. A comprehensive file for all private prison contractors interested in and capable of operating an institution within the Department of Corrections or providing for the housing, care, and control of inmates in a facility owned and operated by the contractor shall be maintained by the Department. These files shall include:

1. A completed application form;
2. A resume of the contractor's staff and capability;
3. A completed performance evaluation form for past projects on which the contractor has provided private prison services;
4. A list of past contracts with this state;
5. A list of contracts to provide similar services to other states or to the United States; and
6. The mailing address of each private prison contractor.

Any person or firm wishing to be a private prison contractor may request at any time to be included in the comprehensive file, and shall be provided necessary forms within twenty (20) days of the request and the Department shall add such contractor to the list within twenty (20) days of receipt of a properly completed application.

The Department may solicit evaluation of work done by private prison contractors from members of the private sector, which evaluation shall be part of the comprehensive file.

D. If the Department intends to secure the services of a private prison contractor, all persons and firms included in the file shall be notified through the mail of such intent. Such notification shall contain the following information:

1. Description and scope of the project or projects;
2. Estimated time schedule for project;
3. Last date for submitting notice of interest in performing services to Director; and
4. Other pertinent data.

Private prison contractors desiring consideration shall meet the requirements of this section and to be considered shall submit a letter expressing interest in the project to the Department within thirty (30) days of the postmark date of the letter of notification mailed by the Department. Contractors shall file an updated application form at the request of the Department.

E. The Department shall define the scope of a proposed project, determine the various project components, phases and timetables, and prepare detailed project descriptions to guide prospective contractors. Before the Department awards a contract to a private prison contractor, the plans shall be approved by the Board of Corrections.

F. The Department shall review the files of the private prison contractors desiring consideration for the project. After performing the analysis required by Section 78 of this act, the Department shall select no less than three and no more than five contractors for more detailed consideration. In the event interviews for more than one contract are being considered at the same time, the number of contractors selected for more detailed consideration should be at least twice the number of contracts contemplated. This initial screening should consider the requirements of the project, as well as the following factors to be determined from the comprehensive file, and replies to inquiries to former clients:

1. Specialized experience in the type of work contemplated;
2. Capacity of the contractor to accomplish the work in the required time; and
3. Past performance, from the performance evaluation form.

G. A full report of the evaluation procedures and recommendations of the Department shall be prepared by the Department and submitted to the Board of Corrections for the independent review of the entire process.

H. 1. The Department shall select the contractor whose qualifications and project proposal most substantially meet the criteria of the project description.

2. The Department shall execute the contract with the selected contractor, which contract shall include a fair and reasonable fee.

3. The negotiated scope and fee shall be reported to the Board for the approval of the award of the contract.

I. The Department of Central Services shall render assistance to the Department of Corrections in implementing the contracting procedures provided for in this section. The Department of Central Services may have a representative at any meeting involving negotiations of a contract between the Department and a private prison contractor. Before submission of the proposed contract to the Legislative and Executive Bond Oversight Commission, and prior to the date as of which the proposed contract is executed by the Board of Corrections, the Attorney General and the Director of the Department of Corrections, shall review the proposed final version of the contract. The Attorney General and the Director of the Department of Central Services shall have a period of fifteen (15) days from the receipt of the proposed final version of the contract to approve the contract and execute the document. If either the Attorney General or the Director of the Department of Central Services has objections to the proposed contract, the objections shall be communicated in writing to the Department of Corrections. The Department of Corrections shall take appropriate action regarding the objections and shall resubmit the proposed contract for additional review. The Attorney General and the Department of Central Services shall have an additional fifteen-day period to approve the proposed contract and to execute the document. Failure of the Attorney General or the Director of the Department of Central Services, respectively, to act within the fifteen-day period shall constitute approval of the respective official to the proposed final version of the contract. The contract shall contain a separate signature block or line for signature by the Attorney General and the Department of Central Services. The contract shall contain a statement to be executed by the Attorney General and the Director of the Department of Central Services. The contract shall contain a statement executed by the Attorney General and the Director of the Department of Central Services that each one of them, respectively, has reviewed the proposed contract for compliance with the provisions of law and that the contract conforms with those requirements. Neither the private prison contractor nor the Board of Corrections shall execute the contract until the document has been executed by the Attorney General and the Director of the Department of Central Services as required by this subsection unless the approval of the respective official has been made as a result of failure to take action within the fifteen-day period prescribed by this subsection.

J. The Director of Central Services is authorized to lease real property and improvements thereon to a private prison contractor in conjunction with a contract for private management of a state correctional institution located or to be built on the property. Said lease may be entered into for one (1) year periods, renewable at the sole option of the State of Oklahoma, but not to exceed a cumulative period of fifty (50) years.

K. Contracts awarded to private prison contractors pursuant to the provisions of this section shall be entered into for a period specified in each contract, subject to availability of funds annually appropriated by the Legislature for that purpose. No contract awarded pursuant to this section shall provide for the encumbrance of funds beyond the amount available for a fiscal year.

L. No contract authorized by the provisions of this section shall be awarded until the private prison contractor demonstrates to the satisfaction of the Board of Corrections:

1. That the contractor possesses the necessary qualifications and experience to provide the services specified in the contract;
2. That the contractor can provide the necessary qualified personnel to implement the terms of the contract;
3. That the financial condition of the contractor is such that the terms of the contract can be fulfilled;
4. That the contractor has the ability to comply with applicable court orders and corrections standards; and
5. That, in the case of a contractor who will be providing the services in a nondepartmental facility operated by said contractor, the contractor shall be able to meet accreditation standards and receive accreditation, as required by the terms of the contract pursuant to subsection R of this section.

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M. No contract authorized by the provisions of this section shall be awarded until the private prison contractor demonstrates to the satisfaction of the Board that the contractor can obtain insurance or provide self-insurance

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- 1. Indemnify the state against possible lawsuits arising from the operation of prison facilities by the contractor; and
- 2. Compensate the state for any property damage or expenses incurred due to the operation of prison facilities.

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N. A private prison contractor shall not be bound by state laws or other legislative enactments governing the appointment, qualifications, duties, salaries, or benefits of wardens, superintendents, or other correctional employees, except that any personnel authorized to carry and use firearms shall comply with the certification standards required by the provisions of Section 3311 of Title 70 of the Oklahoma Statutes and be authorized to use firearms only to prevent a felony, to prevent escape from custody, or to prevent an act which would cause death or serious bodily injury to the personnel or to another person.

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O. Any offense which would be a crime if committed within a state correctional institution also shall be a crime if committed in an institution or facility operated by a private prison contractor.

P. The Director or his designee shall monitor the performance of the contractor.

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OSCN

Oklahoma Statutes

Cite as: 57 O.S. § 561 .1 (OSCN 1997).

Title 57. Prisons and Reformatories

Chapter 8

Oklahoma Corrections Act of 1967

9561.1. Process for Requesting Proposals from Contractors - Additional Terms and Conditions,

A. Prior to entering into a contract with any private prison contractor for construction or operation, or both, of a correctional facility, the Oklahoma Department of Corrections shall establish a process for requesting proposals from such contractors. The Department of Corrections shall develop criteria for the process by which a contractor for the construction or operation, or both, of a private prison is to be awarded a contract. The criteria shall be subject to approval by the Board of Corrections. The criteria for selection of a site for a proposed facility to be constructed or operated, or both, by a private contractor shall include, but shall not be limited to, the availability of medical services, support services, transportation services and the availability of potential employees who would be qualified to perform required functions at a state correctional facility.

B. Any contract between the Department of Corrections and a private prison contractor, whereby the contractor provides for the housing, care, and control of inmates in a nondepartmental facility operated by the contractor, shall contain, in addition to other provisions, terms and conditions:

1. Requiring the contractor to provide said services in a facility which meets accreditation standards established by the American Corrections Association;
2. Requiring the contractor to receive accreditation for said facility from the American Corrections Association, within three (3) years of commencement of operations of the facility;
3. Requiring the contractor to obtain written authorization from the governing board of any municipality in which the facility is to be located, or if the facility is not to be located within a municipality, written authorization from the board of county commissioners of the county in which the facility is to be located;
4. Granting the Department the option at the beginning of each fiscal year pursuant to an agreement, to purchase any such facility, with or without inventory or other personal property, at a predetermined price' which shall be negotiated and included in a schedule or a formula to be contained in the original agreement. Such agreements relating to a correctional facility, the construction of which was financed or is to be financed by obligations issued from a local governmental entity the repayment of which is to be made in whole or in part from rentals from the State of Oklahoma or the Department of Corrections, shall be submitted to the Oklahoma Bond Oversight Commissions as provided in subsection I of this section.

C. A contractor proposing to enter a contract with the Department of Corrections for construction or operation, or both, of a correctional facility pursuant to this section must demonstrate:

1. The qualifications and the operations and management experience to carry out the terms of the contract: and

2. The ability to comply with the standards of the American Correctional Association and with specific court orders.

D. In addition to meeting the requirements specified in the requests for proposals, a proposal for the construction and operation of a correctional facility must:

1. Provide for regular, on-site monitoring by the Department of Corrections;
2. Acknowledge that payment by the state is subject to the availability of appropriations;
3. Provide for payment of a maximum amount per fiscal year;
4. Demonstrate a cost benefit to the State of Oklahoma when compared to the level and quality of programs provided by state operated facilities that have similar types of inmates at an operational cost not more than the cost of housing inmates in similar facilities and providing similar programs to those types of inmates in state-operated facilities. The Department of Corrections shall be responsible for determining the cost/benefit of the proposal;
5. Permit the state to terminate the contract for cause;
6. Contain a per them operational cost per inmate for the initial year of operations;
7. Subject to appropriations, provide that cost adjustments may be made only once each fiscal year, to take effect at the beginning of the next fiscal year using as the maximum percentage increase, if any, an increase not to exceed the previous year's Consumer Price Index for All Urban Consumers (CPI-U) as prepared by the United States Bureau of Labor Statistics;
8. Have an initial contract term of not more than one (1) year, with an option to renew for additional periods not to exceed twenty (20) years;
9. If the proposal includes construction of a facility, contain a performance bond approved by the Department that is adequate and appropriate for the proposed contract;
10. Provide for assumption of liability by the private vendor for all claims arising from the services performed under the contract by the private vendor;
11. Provide for an adequate plan of insurance for the private vendor and its officers, guards, employees, and agents against all claims, including claims based on violations of civil lights arising from the services performed under the contract by the private vendor;
12. Provide for an adequate plan of insurance to protect the state against all claims arising from the services performed under the contract by the private vendor and to protect the state from actions by a third party against the private vendor, its officer, guards, employees, and agents as a result of the contract;
13. Provide plans for the purchase and assumption of operations by the state in the event of the bankruptcy of the private vendor; and
14. Contain comprehensive standards for conditions of confinement.

E. As of the end of each fiscal year, the Department of Corrections shall determine the average daily cost per inmate for the operational costs at each major category of correctional facility. There shall be a separate computation of the average daily rate for maximum security, medium security, minimum security and work center facilities. The Department of Corrections shall present the daily rate computations to the Board of Corrections. The Board of Corrections, after appropriate review and analysis, shall adopt as a final action of the

Board, at its regularly scheduled meeting in the month of August, an average daily rate per inmate by facility category for the immediately preceding fiscal year.

F. If no proposals conform to the established criteria, the Department shall prepare an additional request for proposals. The Department of Corrections shall evaluate the proposals within thirty (30) days of receipt from the prospective contractor. The Department of Corrections shall specifically determine whether a proposal meets the requirements of paragraph 4 of subsection D of this section by comparing the daily rate for housing and care of inmates pursuant to any proposed contract with a private contractor to the daily rate for housing and care of inmates at the comparable type of facility operated by the Department of Corrections using the information provided pursuant to paragraph 6 of subsection D of this section. The Department shall evaluate proposals taking into account any direct or indirect costs that would continue to be paid by the Department of Corrections including, but not limited to, transportation, records management, discipline, general administration, management of inmate trust funds, and major medical coverage. Such costs shall be added to the proposed per them of the private vendor when comparing the total per diem costs of the state operating facilities.

G If the Department of Corrections proposes to enter into a contract for the construction or the operation, or both, of a private prison, the Department shall compare both the capital costs and the operating costs for the facility to the imputed capital costs and the projected operating costs of a comparable facility constructed and operated by the Department of Corrections.

H. The Department of Corrections shall deliver to the Board of Corrections the top three qualified prospective private prison contractors identified pursuant to this section and pursuant to Section 561 of Title 57 of the Oklahoma Statutes together with the information reviewed and analyzed by the Department of Corrections during analysis of the proposals as required by this section. The Board of Corrections shall evaluate the information provided and shall make a final decision selecting the contractor within fifteen (15) days of receipt of the information.

I. Any contract subject to the provisions of this section entered into by the Board of Corrections shall be subject to the approval of the Legislative and Executive Bond Oversight Commissions in the same manner as provided by law for the review of issuance of obligations by State Governmental Entities as prescribed by Section 695.8 of Title 62 of the Oklahoma Statutes.

J. Before submission of the proposed contract to the Legislative and Executive Bond Oversight Commissions, and prior to the date as of which the proposed contract is executed by the Board of Corrections, the Attorney General and the Director of the Department of Central Services shall review the proposed final version of the contract. The Attorney General and the Director of the Department of Central Services shall have a period of fifteen (15) days from receipt of the proposed final version of the contract to approve the contract and execute the document. If either the Attorney General or the Director of the Department of Central Services has objections to the proposed contract, the objections shall be communicated in writing to the Department of Corrections. The Department of Corrections shall take appropriate action regarding the objections and shall resubmit the proposed contract for additional review. The Attorney General and the Department of Central Services shall have an additional fifteen-day period to approve the proposed contract and to execute the document. Failure of the Attorney General or the Director of the Department of Central Services, respectively, to act within the fifteen-day period shall constitute approval of the respective official to the proposed final version of the contract. The contract shall contain a separate signature block or line for signature by the Attorney General and the Department of Central Services. The contract shall contain a statement to be executed by the Attorney General and the Director of the Department of Central Services that each one of them, respectively, has reviewed the proposed contract for compliance with the provisions of this section and Section 77 of this act, and all other applicable provisions of law and that the contract conforms with those requirements. Neither the private prison contractor nor the Board of Corrections shall execute the contract until the document has been executed by the Attorney General and the Director of the Department of Central Services as required by this subsection unless the approval of the respective official has been made as a result of failure to take action within the fifteen-day period prescribed by this subsection.

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OSCN

Oklahoma Statutes
Cite as: 57 O.S. § 563.1 (OSCN 1997).

Title 57. Prisons and Reformatories

Chapter 8
Oklahoma Corrections Act of 1967
5563.1. Private Prison Facilities - Location.

The location of any prison facility which is not operated by the Department of Corrections, a county, or a city shall be subject to the nondiscriminatory zoning ordinances of the town or city in which located, and the location of such facility is specifically prohibited within one (1) mile of any public or private elementary or secondary school. Provided, that if any public or private elementary or secondary school shall be established within the prohibited distance from any such facility after such facility has been in use as a prison facility, this shall not be a bar to the continued use of the facility as a prison so long as it remains in continuous use as a prison. Provided further, the provisions of this section shall not apply to any prison facility established within the prohibited distance from a private elementary or secondary school prior to May 20, 1994 or within the prohibited distance from a public elementary or secondary school prior to July 1, 1987. The distance indicated in this section shall be measured from the nearest property line of the school to the nearest property line of the prison facility. Provided, that the provisions of this subsection shall not apply to a correctional facility not operated by the Department of Corrections that is granted permission to operate within the areas restricted by this subsection by a majority vote of the following entities:

1. The district board of education of each school district with an affected school; and
2. The equivalent governing body of each affected private school.

Prior to the establishment of any prison facility which is not operated by the Department of Corrections, a private prison contractor shall obtain written authorization to establish the facility from the governing body of any municipality in which such a facility is to be located, or if the facility is not to be located within the incorporated limits of a municipality, from the board of county commissioners of the county in which the facility is to be located. Said authorization shall be submitted to the Board of Corrections before any contract between the Department of Corrections and the private prison contractor is awarded.

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Cite as: 57 O.S. § 563.2 (OSCN 1997).

Title 57. Prisons and Reformatories

Chapter 8

Oklahoma Corrections Act of 1967

3563.2. Contracting with Private Prison Contractors.

A. A private prison contractor may contract with the federal government or another state to provide for housing, care and control of minimum or medium security level inmates, as provided by subsection H of this section, who are in the custody of the United States or another state, who do not have histories of escape or riot, and who are sentenced to terms of incarceration for conviction of a felony, other than a felony that would be a capital offense if committed in this state or a sex-related offense, or who are sentenced to federal or state facilities for conviction of a misdemeanor, other than a sex-related offense, within a facility owned or operated by the private prison contractor. Provided, incarceration for misdemeanors shall be allowed only pursuant to subsection D of this section. Such private prison contractor may perform other functions related to said responsibilities.

B. Any offense which would be a crime if committed within a state correctional institution of this state shall be a crime if committed in a facility owned or operated by a private prison contractor.]

C. A private prison contractor shall not employ any personnel convicted of a felony if the person has been incarcerated in the private prison facility for which an application for employment is being considered; provided, a private prison contractor may employ personnel convicted of drug-related felonies who have been rehabilitated for programs for drug or other substance abuse rehabilitation for inmates of the facility.]

Any personnel of a facility owned or operated by a private prison contractor, except any person convicted of a felony offense, shall be authorized to carry and use firearms while in the performance of their official duties only in the manner provided in this subsection and only after completing training approved or provided by the Department of Corrections. Such personnel shall only be authorized to use firearms for the following purposes:

1. To prevent escape from the facility or from custody while being transported to or from the facility. As used in this paragraph, "to prevent escape from the facility" shall mean to prevent an incarcerated individual from crossing the secure perimeter of the facility; or
2. To prevent an act which would cause death or serious bodily injury to any person.

The Department of Corrections is authorized to provide training to personnel of the private prison contractor, pursuant to contract. The Department of Corrections shall charge a reasonable fee for the training, not to exceed the cost of such training. The provisions of this subsection shall not be construed to confer peace officer status upon any employee of the private prison contractor or to authorize the use of firearms, except as provided in this subsection. If an inmate escapes from the facility, or in the event of any riot or other serious disturbance, personnel from the facility immediately shall inform the Department of Public Safety, the county sheriff and, if the facility is located within the boundaries of a municipality, the police department of the municipality. If fifty percent (50%) or more of the population of the facility are inmates from this state, the personnel from the facility immediately shall inform the Department of Corrections if there is any riot or other serious disturbance, whether or not involving any inmates from this state, or if an inmate from this state

escapes. The Department of Corrections is directed to respond on behalf of inmates of this state. Any emergency response provided by any state or local law enforcement agency shall be at the sole expense of the private prison contractor/operator. Each responding agency shall submit a written invoice detailing costs incurred which shall be paid within thirty (30) days of receipt by the private prison contractor/operator.

D. A private prison contractor housing federal inmates or inmates of another state shall not accept:

1. Any inmate who would be incarcerated in the facility for conviction of a misdemeanor, unless such incarceration in the facility is consistent with American Correctional Association requirements relating to the incarceration of inmates convicted of more serious offenses; or
2. Any maximum security level inmate.

E. If an inmate is to be released or discharged from incarceration, is released or discharged by any court order, is to be placed on probation, is paroled, or if the federal government or sending state requests transfer or the return of the inmate, the private prison contractor immediately shall transfer or return the inmate to the sending state which has legal authority over the sentence or, in the case of federal inmates, to the closest federal prison or to the federal authority of the state in which federal custody over the inmate originated.

F. A private prison contractor housing federal inmates from jurisdictions other than Oklahoma, or inmates sentenced pursuant to the legal authority of another state, shall not allow any such inmate to leave the premises of the facility, except to comply with an order to appear in a court of competent jurisdiction, to receive medical care not available at the facility, to work as provided in subsection G of this section, or to return or be transferred to another state as provided by the provisions of subsection E of this section.

G. A private prison contractor may allow minimum security inmate labor to be used in public works projects provided all of the following conditions are satisfied:

1. The public works project must be in and for the county where the private prison is located or a county adjacent to the county where the private prison is located, or in and for a municipality in the county where the private prison is located or an adjacent county;
2. The private prison contractor has developed security procedures which will ensure the safety of the public and the Department of Corrections has approved such procedures;
3. The public works project has been authorized by Department of Corrections and the county or municipal authorities where the public works project is located;
4. The private prison contractor has procured and has in force and effect a policy of liability insurance which will provide coverage in an amount determined by the Department of Corrections for any loss resulting from the acts or omissions of inmates participating in said project or employees of the private prison contractor and for any injuries occurring to said inmates or employees; and
5. The use of federal inmates for public works projects will be in strict compliance with the provisions of Section 4002 of Title 18 of the United States Code and any other applicable provisions of federal law.

H. A private prison contractor housing federal inmates or inmates of another state shall be responsible for the reimbursement of all reasonable costs and expenses incurred by this state or a political subdivision of this state for legal actions brought in this state by or on behalf of any federal inmate or inmate of another state while incarcerated in the facility, including court costs, sheriff's mileage fees, witness fees, district attorney expenses, expenses of the office of Attorney General, indigent or public defender fees and costs, judicial expenses, court reporter expenses and any other costs, fees, or expenses associated with the proceedings or actions.

I. As used in this section, unless federal custody status is specified, security level restrictions shall refer to the security levels applicable to inmates in institutions within the Department of Corrections, as determined by

policy of the Department of Corrections, unless the Department of Corrections approves more restrictive levels of security as prescribed by the private prison contractor. Private prison contractors housing federal inmates or inmates of another state shall be bound by such security level classifications.

J. A private prison contractor shall not house inmates from this state with federal inmates or inmates from another state, unless segregated or otherwise housed in such a manner as to satisfy the Director of the Department of Corrections.

K. The State of Oklahoma shall not assume jurisdiction or custody of any federal inmate or inmate from another state housed in a facility owned or operated by a private prison contractor. Such inmates from another state shall at all times be subject to the jurisdiction of that state and federal inmates shall at all times be subject to federal jurisdiction. This state shall not be liable for loss resulting from the acts of said inmates nor shall this state be liable for any injuries to said inmates.

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Title 57. Prisons and Reformatories

Chapter 8

Oklahoma Corrections Act of 1967

§563.3. Requirements of Private Prison Contractors Housing Federal Inmates or Inmates of Another State.

A. A private prison contractor which does not have a contract with the Department of Corrections, but which houses federal inmates or inmates of another state, within two (2) months of commencing operations and thereafter as required by the Department of Corrections, shall:

1. Obtain from the Department of Corrections approval of the internal and perimeter security of the facility of the private prison contractor. Such approval shall be given only if the Director of the Department of Corrections determines that the security is adequate to protect the public;

2. Show, to the satisfaction of the Department of Corrections, that adequate food, housing and medical care shall be available for inmates, that the facility will have the necessary qualified personnel to operate the facility, that the financial condition of the private prison contractor is such that the facility can be operated adequately, and that the facility has the ability to comply with applicable court orders and American Correctional Association standards;

3. Furnish to the Department of Corrections satisfactory proof that the private prison contractor has obtained insurance or is self-insured, in such a manner and in such an amount as the Director of the Department of Corrections, after consulting with the Risk Management Administration, may deem necessary and adequate to reimburse this state or a political subdivision of this state, for expenses arising from any incident which occurs at said prison or which requires intervention by this state or a political subdivision of this state. Such insurance, in addition, shall be in an amount sufficient to indemnify this state and its officers and employees, for any liability or other loss, including property damage, judgments, costs, attorneys fees or other expenses arising from the operation of the facility, and such facility shall in any event and regardless of the amount of insurance available indemnify and hold harmless this state and its officers and employees, for any and all acts of prison inmates, and/or all officers, employees and stockholders of such private prison contractor for any liability arising out of acts of said inmates, officers, employees and stockholders of such private prison contractor in relation to the operation of the facility. The insurance required by this paragraph shall not provide coverage for more than one facility. If the private prison contractor owns or operates more than one facility, separate insurance coverage shall be obtained or provided for each facility;

4. Obtain written authorization from the governing board of any municipality in which the facility is to be located, or if the facility is not to be located within a municipality, written authorization from the board of county commissioners of the county in which the facility is to be located; and

5. A felony record search of fingerprints of the employee or prospective employee of the private prison contractor shall be required. The search shall be based on fingerprints and shall be conducted either by the Federal Bureau of Investigation or the Oklahoma State Bureau of Investigation. If the search is conducted by the Oklahoma State Bureau of Investigation, the

*See also
§561 P.4*

Bureau shall require that said person pay a search fee not to exceed Fifty Dollars (\$50.00) or the cost of the search, whichever is the lesser amount. The fees shall be deposited in the OSBI Revolving Fund. The private prison contractor is hereby authorized to reimburse employees for the cost of the search. The Oklahoma State Bureau of Investigation may contact the Federal Bureau of Investigation as regards the information requested, to obtain any felony convictions of the person involved. The record required by this paragraph shall include the name of the person, whether or not said person has been convicted of any felony offense, a list of any felony convictions, and the dates of such convictions. The search records of each employee shall be maintained by the contractor for as long as the employee works for the contractor. The records shall be subject to inspection by the Department of Corrections.

B. A private prison contractor which does not have a contract with the Department of Corrections, but which houses federal inmates or inmates of another state shall attain accreditation by the American Correctional Association within three (3) years of commencing operation of the facility and thereafter shall maintain such accreditation.

C. The Department of Corrections shall monitor the performance of the private prison contractor and the continued compliance of the private prison contractor with the provisions of subsections A and B of this section. If at any time after commencing operations, a private prison contractor, that is subject to the provisions of subsection A of this section, fails to comply with any of said provisions, the Director of the Department of Corrections may order the facility to cease operations. If a private prison contractor fails to attain or maintain the accreditation required by subsection B of this section, the Director of the Department of Corrections shall order the facility to cease operations. This order may be enforced by injunction issued by a district court of this state.

D. The Department of Corrections may charge the private prison contractor a reasonable fee for monitoring compliance with the provisions of paragraphs 1 and 2 of subsection A of this section. The fee shall not exceed the cost incurred in performing the monitoring.

E. The Department of Corrections shall promulgate and adopt rules for the implementation of this section.

F. All fees collected by the Department of Corrections pursuant to this section shall be deposited with the State Treasurer to the credit of the Department of Corrections Revolving Fund.

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Inducing, keeping, detaining or restraining a child under 18 years of age for prostitution (21 O.S. ' 1088(A), penalty contained in 21 O.S. ' 1088(B)).

Seduction under promise to marry (21 O.S. ' 1120).

Marriage after seduction, abandonment (21 O.S. ' 1122).

Lewd or indecent liberties with a child under 16 years (21 O.S. ' 1123).

Lewd or indecent proposals or acts to a child under 16 years (21 O.S. ' 1123(A)(1)-(5)).

Sexual battery (21 O.S. ' 1123(B)).

Second degree rape (21 O.S. ' 1111, penalty contained in 21 O.S. ' 1116); see also: (21 O.S. ' 1114).

Second degree rape by instrumentation, no bodily harm (21 O.S. ' 1111, penalty contained in 21 O.S. ' 1116); see also: (21 O.S. ' 1114(B)).

Compelling a woman to marry (21 O.S. ' 1117).

-Intent to compel a woman to marry (21 O.S. ' 1118).

Second degree rape committed during riot (21 O.S. ' 1312(1)).

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Indecent exposure, indecent exhibitions, obscene or indecent writings, pictures, etc. (21 O.S. ' 1021(A)).

Sexual solicitation of minors - soliciting or aiding minor to perform obscenity (21 O.S. ' 1021(B)(1)).

Inducing minor to perform obscene conduct (21 O.S. ' 1021(B)(2)).

Lewd exhibition of a child, causing minors to participate or engage in obscene or indecent writing or pictures and/or possessing or distributing such materials (21 O.S. ' 1021.2).

Guardians/parents consenting to participation of minors in obscene writings or pictures (21 O.S. ' 1021.3).

Purchase, procurement, or possession of obscene material (21 o.s. ' 1024.2).

Knowingly engaging in prostitution while HIV infected (21 O.S. ' 1031(B)).

Child prostitution (21 O.S. ' 1031(C)).

Buying, selling, or trafficking pictures, movies of sexual intercourse or unnatural copulation (21 O.S. ' 1040.51).

Pandering, procuring, persuading, encouraging, tricking etc., a female to become inmate of house of prostitution (21 O.S. ' 1081).

Restraining female in house of prostitution (21 O.S. ' 1085).

Allowing pandering on premises (21 O.S. ' 1086).

Owner, proprietor permitting procuring a child under 18 years for prostitution, lewdness, or other indecent act (21 O.S. ' 1087(B)).

Owner, proprietor permitting premises to be used to induce, keep, detain, or restrain child under 18 years for prostitution (21 O.S. ' 1088(B)(2)).

Abduction of person under 15 years for purpose of marriage or concubinage, or crime of moral turpitude (21 O.S. ' 1119).

Knowingly engaging in conduct reasonably likely to transfer HIV, exposing others to HIV (21 O.S. ' 1192.1).

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As used in this title, unless the context otherwise requires:

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- (a) "Board" means the State Board of Corrections;
- (b) "Department" means the Department of Corrections of this state;
- (c) "Institutions" means the Oklahoma State Penitentiary located at McAlester, Oklahoma; the Oklahoma State Reformatory located at Granite, Oklahoma; the Lexington Assessment and Reception Center located at Lexington, Oklahoma; the Joseph Harp Correctional Center located at Lexington, Oklahoma; the Jackie Brannon Correctional Center located at McAlester, Oklahoma; the Howard C. McLeod Correctional Center located at Farris, Oklahoma; the Mack H. Alford Correctional Center located at Stringtown, Oklahoma; the Ouachita Correctional Center located at Hodgen, Oklahoma; the Mabel Bassett Correctional Center located at Oklahoma City, Oklahoma; the R.B. "Dick" Conner Correctional Center located at Hominy, Oklahoma; the James Crabtree Correctional Center located at Helena, Oklahoma; the Jess Dunn Correctional Center located at Taft, Oklahoma; the John Lilley Correctional Center located at Boley, Oklahoma; the William S. Key Correctional Center located at Fort Supply, Oklahoma; the Dr. Eddie Walter Warrior Correctional Center located at Taft, Oklahoma; the Northeast Oklahoma Correctional Center located at Vinita, Oklahoma; the Oklahoma City, Clara Waters and Kate Barnard Community Corrections Centers located at Oklahoma City, Oklahoma; the Tulsa Community Corrections Center located at Tulsa, Oklahoma; the Community Corrections Centers located at Lawton, Enid, and Muskogee; the Charles E. "Bill" Johnson Correctional Center, located east of Alva, Oklahoma; and other facilities under the jurisdiction and control of the Department of Corrections or hereafter established by the Department of Corrections;
- (d) "Director" means the Director of the Department of Corrections;
- (e) "Halfway house" means a private facility for the placement of inmates in a community setting for the purpose of reintegrating into the community inmates who are nearing their release dates. The term shall not include private prisons.
- (f) "House arrest" means a program whereby persons committed to the Department of Corrections are authorized to be away from a correctional facility and are placed by the Department in a community for the purpose of reintegration of the person into society, pursuant to the provisions of Section 510.2 of this title; and
- (g) "Private prison contractor" means:
- (1) a nongovernmental entity or public trust which, pursuant to a contract with the Department of Corrections, operates an institution within the Department, or provides for the housing, care, and control of inmates and performs other functions related to said responsibilities within a minimum or medium security level facility not owned by the Department but operated by the contractor; or
 - (2) a nongovernmental entity or public trust which, pursuant to a contract with the United States or another state, provides for the housing, care, and control of minimum or medium security inmates in the custody of the United States or another state, and performs other functions related to said responsibilities within a facility owned or operated by the contractor.

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entered into evidence. As used in this division, "state" means only the state of Ohio and does not include any political subdivision.

History

HISTORY: 139 v S 264 (Eff 7-9-82); 140 v S 73 (Eff 3-16-84); 146 v S 293. Eff 9-26-96.

§ 9.03 Political subdivision newsletters and other means of communication.

Text of Statute

(A) As used in this section, "political subdivision" means any body corporate and politic, ~~except a municipal corporation that has adopted a charter under Section 7 of Article XVIII, Ohio Constitution, and except a county that has adopted a charter under Sections 3 and 4 of Article X, Ohio Constitution, to which both of the following apply:~~

- (1) It is responsible for governmental activities only in a geographic area smaller than the state.
- (2) It is subject to the sovereign immunity of the state.

(B) Except as otherwise provided in division (C) of this section, the governing body of a political subdivision may use public funds to publish and distribute newsletters, or to use any other means, to communicate information about the plans, policies, and operations of the political subdivision to members of the public within the political subdivision and to other persons who may be affected by the political subdivision.

(C) Except as otherwise provided in division (A)(5) of section ~~340.03~~ or division (A)(12) of section ~~340.033~~ [340.03.3] of the Revised Code, no governing body of a political subdivision shall use public funds to do any of the following:

- (1) Publish, distribute, or otherwise communicate information ~~that does any of the following:~~
 - (a) Contains defamatory, libelous, or obscene matter;
 - (b) Promotes alcoholic beverages, cigarettes or other tobacco products, or any illegal product, service, or activity;
 - (c) Promotes illegal discrimination on the basis of race, color, religion, national origin, handicap, age, or ancestry;
 - (d) Supports or opposes any labor organization or any action by, on behalf of, or against any labor organization;
 - (e) Supports or opposes the nomination or election of a candidate for public office, the investigation, prosecution, or recall of a public official, or the passage of a levy or bond issue.
- (2) Compensate any employee of the political subdivision for time spent on any activity to influence the outcome of an election for any of the purposes described in ~~division (C)(1)(e)~~ of this section. Division (C)(2) of this section does not prohibit the use of public funds to compensate an employee of a political subdivision for attending a public meeting to present information about the political subdivision's finances, activities, and governmental actions in a manner that is not designed to influence the outcome of an election or the passage of a levy or bond issue, even though the election, levy, or bond issue is discussed or debated at the meeting.

(D) Nothing in this section prohibits or restricts any political subdivision from sponsoring, participating in, or doing any of the following:

- (1) Charitable or public service advertising that is not commercial in nature;
- (2) Advertising of exhibitions, performances, programs, products, or services that are provided by employees of a political subdivision or are provided at or through premises owned or operated by a political subdivision;
- (3) Licensing an interest in a name or mark that is owned or controlled by the political subdivision.

(E) As used in this section, "cigarettes" and "tobacco product" have the same meanings as in section 5743.01 of the Revised Code.

History

HISTORY: 147 v S 201. Eff 12-21-98.

§ 9.06 Contracts for private operation and management of correctional facilities.

Text of Statute

(A)(1) The department of rehabilitation and correction shall contract for the private operation and management pursuant to this section of the initial intensive program prison established pursuant to section 5120.033 [5120.03.3] of the Revised Code and may contract for the private operation and management of any other facility under this section. Counties and municipal corporations to the extent authorized in sections 307.93, 341.35, 753.03, and 753.15 of the Revised Code, may contract for the private operation and management of a facility under this section. A contract entered into under this section shall be for an initial term of not more than two years, with an option to renew for additional periods of two years.

(2) Not later than December 31, 1998, the department of rehabilitation and correction, by rule, shall adopt minimum criteria and specifications that a person or entity, other than a person or entity that satisfies the criteria set forth in division

(A)(3)(a) of this section and subject to division (I) of this section, must satisfy in order to apply to operate and manage as a contractor pursuant to this section the initial intensive program prison established pursuant to section 5120.033 [5120.03.3] of the Revised Code.

(3) Subject to division (I) of this section, any person or entity that applies to operate and manage a facility as a contractor pursuant to this section shall satisfy one or more of the following criteria:

(a) The person or entity is accredited by the American correctional association and, at the time of the application, operates and manages one or more facilities accredited by the American correctional association.



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(b) The person or entity satisfies all of the minimum criteria and specifications adopted by the department of rehabilitation and correction pursuant to division (A)(2) of this section, provided that this alternative shall be available only in relation to the initial intensive program prison established pursuant to section 5120.033 [5120.03.3] of the Revised Code.

(4) Subject to division (I) of this section, before a public entity may enter into a contract under this section, the contractor shall convincingly demonstrate to the public entity that it can operate the facility with the inmate capacity required by the public entity and provide the services required in this section and realize at least a five per cent savings over the projected cost to the public entity of providing these same services to operate the facility that is the subject of the contract. No out-of-state prisoners may be housed in any facility that is the subject of a contract entered into under to* this section.

(B) Subject to division (I) of this section, any contract entered into under this section shall include all of the following:

(1) A requirement that the contractor retain the contractor's accreditation from the American correctional association throughout the contract term;

(2) A requirement that all of the following conditions be met:

(a) The contractor begins the process of accrediting the facility with the American correctional association no later than sixty days after the facility receives its first inmate.

(b) The contractor receives accreditation of the facility within twelve months after the date the contractor applies to the American correctional association for accreditation.

(c) Once the accreditation is received, the contractor maintains it for the duration of the contract term.

(d) If the contractor does not comply with divisions (B)(2)(a) to (c) of this section, the contractor is in violation of the contract and the public entity may revoke the contract at its discretion.

(3) A requirement that the contractor comply with all rules promulgated by the department of rehabilitation and correction that apply to the operation and management of correctional facilities, including the minimum standards for jails in Ohio and policies regarding the use of force and the use of deadly force, although the public entity may require more stringent standards, and comply with any applicable laws, rules, or regulations of the federal, state, and local governments, including, but not limited to, sanitation, food service, safety, and health regulations. The contractor shall be required to send copies of reports of inspections completed by the appropriate authorities regarding compliance with rules and regulations to the director of rehabilitation and correction or the director's designee and, if contracting with a local public entity, to the governing authority of that entity.

(4) A requirement that the contractor report for investigation all crimes in connection with the facility to the public entity, to all local law enforcement agencies having jurisdiction at the facility, and, for a crime committed at a state correctional institution, to the state highway patrol;

(5) A requirement that, if the facility is a state correctional institution, the contractor provide a written report within specified time limits to the director of rehabilitation and correction or the director's designee of all unusual incidents at the facility as defined in rules promulgated by the department of rehabilitation and correction or, if the facility is a local correctional institution, that the contractor provide a written report to the governing authority of the local public entity.

(6) A requirement that the contractor maintain proper control of inmates' personal funds pursuant to rules promulgated by the department of rehabilitation and correction, for state correctional institutions, or pursuant to the minimum standards for jails along with any additional standards established by the local public entity, for local correctional institutions, and that records pertaining to these funds be made available to representatives of the public entity for review or audit;

(7) A requirement that the contractor prepare and distribute to the director of rehabilitation and correction or, if contracting with a local public entity, to the governing authority of the local entity, annual budget income and expenditure statements and funding source financial reports;

(8) A requirement that the public entity appoint and supervise a full-time contract monitor, that the contractor provide suitable office space for the contract monitor at the facility, and that the contractor allow the contract monitor unrestricted access to all parts of the facility and all records of the facility except the contractor's financial records;

(9) A requirement that if the facility is a state correctional institution, designated department of rehabilitation and correction staff members be allowed access to the facility in accordance with rules promulgated by the department;

(10) A requirement that the contractor provide internal and perimeter security as agreed upon in the contract;

(11) If the facility is a state correctional institution, a requirement that the contractor impose discipline on inmates housed in a state correctional institution, only in accordance with rules promulgated by the department of rehabilitation and correction;

(12) A requirement that the facility be staffed at all times with a staffing pattern approved by the public entity and adequate both to ensure supervision of inmates and maintenance of security within the facility, and to provide for programs, transportation, security, and other operational needs. In determining security needs, the contractor shall be required to consider, among other things, the proximity of the facility to neighborhoods and schools.

(13) If the contract is with a local public entity a requirement that the contractor provide the following services and programs, consistent with the minimum standards for jails promulgated by the department of rehabilitation and correction

under section 5120.10 of the Revised Code;

(14) A clear statement that no immunity from liability granted to the state, and no immunity from liability granted to political subdivisions under Chapter 2744. of the Revised Code, shall extend to the contractor or any of the contractor's employees;

(15) A statement that all documents and records relevant to the facility shall be maintained in the same manner required for, and subject to the same laws, rules, and regulations as apply to, the records of the public entity;

(16) Authorization for the public entity to impose a fine on the contractor from a schedule of fines included in the contract for the contractor's failure to perform its contractual duties, or to cancel the contract, as the public entity considers appropriate. If a fine is imposed, the public entity may reduce the payment owed to the contractor pursuant to any invoice in the amount of the imposed fine.

(17) A statement that all services provided or goods produced at the facility shall be subject to the same regulations, and the same distribution limitations, as apply to goods and services produced at other correctional institutions;

(18) Authorization for the department to establish one or more prison industries at a facility operated and managed by a contractor for the department;

(19) A requirement that, if the facility is an intensive program prison established pursuant to section 5120.033 [5120.03.3] of the Revised Code, the facility shall comply with all criteria for intensive program prisons of that type that are set forth in that section.

(C) No contract entered into under this section may require, authorize, or imply a delegation of the authority or responsibility of the public entity to a contractor for any of the following:

(1) Developing or implementing procedures for calculating inmate release and parole eligibility dates and recommending the granting or denying of parole, although the contractor may submit written reports that have been prepared in the ordinary course of business;

(2) Developing or implementing procedures for calculating and awarding earned credits, approving the type of work inmates may perform and the wage or earned credits, if any, that may be awarded to inmates engaging in such work, and granting, denying, or revoking earned credits;

(3) For inmates serving a term imposed for a felony offense committed prior to July 1, 1996, or for a misdemeanor offense, developing or implementing procedures for calculating and awarding good time, approving the good time, if any, that may be awarded to inmates engaging in work, and granting, denying, or revoking good time;

(4) For inmates serving a term imposed for a felony offense committed on or after July 1, 1996, extending an inmate's term pursuant to the provisions of law governing bad time;

(5) Classifying an inmate or placing an inmate in a more or a less restrictive custody than the custody ordered by the public entity;-

(6) Approving inmates for work release;

(7) Contracting for local or long distance telephone services for inmates or receiving commissions from such services at a facility that is owned by or operated under a contract with the department.

(D) A contractor that has been approved to operate a facility under this section, and a person or entity that enters into a contract for specialized services, as described in division (I) of this section, relative to an intensive program prison established pursuant to section 5120.033 [5120.03.3] of the Revised Code to be operated by a contractor that has been approved to operate the prison under this section, shall provide an adequate policy of insurance specifically including, but not limited to, insurance for civil rights claims as determined by a risk management or actuarial firm with demonstrated experience in public liability for state governments. The insurance policy shall provide that the state, including all state agencies, and all political subdivisions of the state with jurisdiction over the facility or in which a facility is located are named as insured, and that the state and its political subdivisions shall be sent any notice of cancellation. The contractor may not self-insure.

A contractor that has been approved to operate a facility under this section, and a person or entity that enters into a contract for specialized services, as described in division (I) of this section, relative to an intensive program prison established pursuant to section 5120.033 [5120.03.3] of the Revised Code to be operated by a contractor that has been approved to operate the prison under this section, shall indemnify and hold harmless the state, its officers, agents, and employees, and any local government entity in the state having jurisdiction over the facility or ownership of the facility, shall reimburse the state for its costs in defending the state or any of its officers, agents, or employees, and shall reimburse any local government entity of that nature for its costs in defending the local government entity, from all of the following:

(1) Any claims or losses for services rendered by the contractor, person, or entity performing or supplying services in connection with the performance of the contract;

(2) Any failure of the contractor, person, or entity or its officers or employees to adhere to the laws, rules, regulations, or terms agreed to in the contract;

(3) Any constitutional, federal, state, or civil rights claim brought against the state related to the facility operated and managed by the contractor;

(4) Any claims, losses, demands, or causes of action arising out of the contractor's, person's or entity's activities in this state;

(5) Any attorney's fees or court costs arising from any habeas corpus actions or other inmate suits that may arise from any

event that occurred at the facility or was a result of such an event, or arise over the conditions, management, or operation of the facility, which fees and costs shall include, but not be limited to, attorney's fees for the state's representation and for any court-appointed representation of any inmate, and the costs of any special judge who may be appointed to hear such actions.

(E) Private correctional officers of a contractor operating and managing a facility pursuant to a contract entered into under this section may carry and use firearms in the course of their employment only after being certified as satisfactorily completing an approved training program as described in division (A) of section 109.78 of the Revised Code.

(F) Upon notification by the contractor of an escape from, or of a disturbance at, the facility that is the subject of a contract entered into under this section, the department of rehabilitation and correction and state and local law enforcement agencies shall use all reasonable means to recapture escapees or quell any disturbance. Any cost incurred by the state or its political subdivisions relating to the apprehension of an escapee or the quelling of a disturbance at the facility shall be chargeable to and borne by the contractor. The contractor shall also reimburse the state or its political subdivisions for all reasonable costs incurred relating to the temporary detention of the escapee following recapture.

(G) Any offense that would be a crime if committed at a state correctional institution or jail, workhouse, prison, or other correctional facility shall be a crime if committed by or with regard to inmates at facilities operated pursuant to a contract entered into under this section.

(H) A contractor operating and managing a facility pursuant to a contract entered into under this section shall pay any inmate workers at the facility at the rate approved by the public entity. Inmates working at the facility shall not be considered employees of the contractor.

(I) In contracting for the private operation and management pursuant to division (A) of this section of the initial intensive program prison established pursuant to section 5120.033 [5120.03.3] of the Revised Code or of any other intensive program prison established pursuant to that section, the department of rehabilitation and correction may enter into a contract with a contractor for the general operation and management of the prison and may enter into one or more separate contracts with other persons or entities for the provision of specialized services for persons confined in the prison, including, but not limited to, security or training services or medical, counseling, educational, or similar treatment programs. If, pursuant to this division, the department enters into a contract with a contractor for the general operation and management of the prison and also enters into one or more specialized service contracts with other persons or entities, all of the following apply:

(1) The contract for the general operation and management shall comply with all requirements and criteria set forth in this section, and all provisions of this section apply in relation to the prison operated and managed pursuant to the contract.

(2) Divisions (A)(2), (B), and (C) of this section do not apply in relation to any specialized services contract, except to the extent that the provisions of those divisions clearly are relevant to the specialized services to be provided under the specialized services contract. Division (D) of this section applies in relation to each specialized services contract.

(J) As used in this section:

(1) "Public entity" means the department of rehabilitation and correction, or a county or municipal corporation or a combination of counties and municipal corporations, that has jurisdiction over a facility that is the subject of a contract entered into under this section.

(2) "Local public entity" means a county or municipal corporation, or a combination of counties and municipal corporations, that has jurisdiction over a jail, workhouse, or other correctional facility used only for misdemeanants that is the subject of a contract entered into under this section.

(3) "Governing authority of a local public entity" means, for a county, the board of county commissioners; for a municipal corporation, the legislative authority; for a combination of counties and municipal corporation, all the boards of county commissioners and municipal legislative authorities that joined to create the facility.

(4) "Contractor" means a person who enters into a contract under this section to operate and manage a jail, workhouse, or other correctional facility.

(5) "Facility" means the specific county, multicounty, municipal, municipal-county, or multicounty-municipal jail, workhouse, prison, or other type of correctional institution or facility used only for misdemeanants, or a state correctional institution, that is the subject of a contract entered into under this section.

History

HISTORY: 146 v H 117 (Eff 9-29-95); 147 v H 215 (Eff 9-29-97); 147 v H 293. Eff 3-17-98.

* So in enrolled bill, division (A)(4).



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§ 9.07 Entities authorized to operate correctional facility housing out-of-state prisoners: requirements for operation.

Text of Statute

(A) As used in this section:

- (1) "Deadly weapon" has the same meaning as in section **2923.11** of the Revised Code.
- (2) "Governing authority of a local public entity" means whichever of the following is applicable:
 - (a) For a county, the board of county commissioners of the county;
 - (b) For a municipal corporation, the legislative authority of the municipal corporation;
 - (c) For a combination of counties, a combination of municipal corporations, or a combination of one or more counties and one or more municipal corporations, all boards of county commissioners and legislative authorities of all of the counties and municipal corporations that combined to form a local public entity for purposes of this section.
- (3) "Local public entity" means a county, a municipal corporation, a combination of counties, a combination of municipal corporations, or a combination of one or more counties and one or more municipal corporations.
- (4) "Non-contracting political subdivision" means any political subdivision to which all of the following apply:
 - (a) A correctional facility for the housing of out-of-state prisoners in this state is or will be located in the political subdivision.
 - (b) The correctional facility described in division (A)(4)(a) of this section is being operated and managed, or will be operated and managed, by a local public entity or a private contractor pursuant to a contract entered into prior to the effective date of this section or a contract entered into on or after the effective date of this section under this section.
 - (c) The political subdivision is not a party to the contract described in division (A)(4)(b) of this section for the management and operation of the correctional facility.
- (5) "Out-of-state jurisdiction" means the United States, any state other than this state, and any political subdivision or other jurisdiction located in a state other than this state.
- (6) "Out-of-state prisoner" means a person who is convicted of a crime in another state or under the laws of the United States or who is found under the laws of another state or of the United States to be a delinquent child or the substantially equivalent designation.
- (7) "Private contractor" means either of the following:
 - (a) A person who, on or after the effective date of this section, enters into a contract under this section with a local public entity to operate and manage a correctional facility in this state for out-of-state prisoners.
 - (b) A person who, pursuant to a contract with a local public entity entered into prior to the effective date of this section, operates and manages on the effective date of this section a correctional facility in this state for housing out-of-state prisoners.

(B) Subject to division (I) of this section, the only entities other than this state that are authorized to operate a correctional facility to house out-of-state prisoners in this state are a local public entity that operates a correctional facility pursuant to this section or a private contractor that operates a correctional facility pursuant to this section under a contract with a local public entity.

Subject to division (I) of this section, a private entity may operate a correctional facility in this state for the housing of out-of-state prisoners only if the private entity is a private contractor that enters into a contract that comports with division (D) of this section with a local public entity for the management and operation of the correctional facility.

(C)(1) Except as provided in this division, on and after the effective date of this section, a local public entity shall not enter into a contract with an out-of-state jurisdiction to house out-of-state prisoners in a correctional facility in this state. On and after the effective date of this section, a local public entity may enter into a contract with an out-of-state jurisdiction to house out-of-state prisoners in a correctional facility in this state only if the local public entity and the out-of-state jurisdiction with which the local public entity intends to contract jointly submit to the department of rehabilitation and correction a statement that certifies the correctional facility's intended use, intended prisoner population, and custody level, and the department reviews and comments upon the plans for the design or renovation of the correctional facility regarding their suitability for the intended prisoner population specified in the submitted statement.

(2) If a local public entity and an out-of-state jurisdiction enter into a contract to house out-of-state prisoners in a correctional facility in this state as authorized under division (C)(1) of this section, in addition to any other provisions it contains, the contract shall include whichever of the following provisions is applicable:

- (a) If a private contractor will operate the facility in question pursuant to a contract entered into in accordance with

division (D) of this section, a requirement that, if the facility is closed or ceases to operate for any reason and if the conversion plan described in division (D)(16) of this section is not complied with, the out-of-state jurisdiction will be responsible for housing and transporting the prisoners who are in the facility at the time it is closed or ceases to operate and for the cost of so housing and transporting those prisoners;

(b) If a private contractor will not operate the facility in question pursuant to a contract entered into in accordance with division (D) of this section, a conversion plan that will be followed if, for any reason, the facility is closed or ceases to operate. The conversion plan shall include, but is not limited to, provisions that specify whether the local public entity or the out-of-state jurisdiction will be responsible for housing and transporting the prisoners who are in the facility at the time it is closed or ceases to operate and for the cost of so housing and transporting those prisoners.

(3) If a local public entity and an out-of-state jurisdiction intend to enter into a contract to house out-of-state prisoners in a correctional facility in this state as authorized under division (C)(1) of this section, or if a local public entity and a private contractor intend to enter into a contract pursuant to division (D) of this section for the private contractor's management and operation of a correctional facility in this state to house out-of-state prisoners, prior to entering into the contract the local public entity and the out-of-state jurisdiction, or the local public entity and the private contractor, whichever is applicable, shall conduct a public hearing in accordance with this division, and, prior to entering into the contract, the governing authority of the local public entity in which the facility is or will be located shall authorize the location and operation of the facility. The hearing shall be conducted at a location within the municipal corporation or township in which the facility is or will be located. At least one week prior to conducting the hearing, the local public entity and the out-of-state jurisdiction or private contractor with the duty to conduct the hearing shall cause notice of the date, time, and place of the hearing to be made by publication in the newspaper with the largest general circulation in the county in which the municipal corporation or township is located. The notice shall be of a sufficient size that it covers at least one-quarter of a page of the newspaper in which it is published. This division applies to a private contractor that, pursuant to the requirement set forth in division (I) of this section, is required to enter into a contract under division (D) of this section.

(D) Subject to division (I) of this section, on and after the effective date of this section, if a local public entity enters into a contract with a private contractor for the management and operation of a correctional facility in this state to house out-of-state prisoners, the contract, at a minimum, shall include all of the following provisions:

(1) A requirement that the private contractor seek and obtain accreditation from the American correctional association for the correctional facility within two years after accepting the first out-of-state prisoner at the correctional facility under the contract and that it maintain that accreditation for the term of the contract;

(2) A requirement that the private contractor comply with all applicable laws, rules, or regulations of the government of this state, political subdivisions of this state, and the United States, including, but not limited to, all sanitation, food service, safety, and health regulations;

(3) A requirement that the private contractor send copies of reports of inspections completed by appropriate authorities regarding compliance with laws, rules, and regulations of the type described in division (D)(2) of this section to the director of rehabilitation and correction or the director's designee and to the governing authority of the local public entity in which the correctional facility is located;

(4) A requirement that the private contractor report to the local law enforcement agencies with jurisdiction over the place at which the correctional facility is located, for investigation, all criminal offenses or delinquent acts that are committed in or on the grounds of, or otherwise in connection with, the correctional facility and report to the department of rehabilitation and correction all escapes from or disturbances at the facility;

(5) A requirement that the private contractor provide a written report to the director of rehabilitation and correction or the director's designee and to the governing authority of the local public entity in which the correctional facility is located of all unusual incidents occurring at the correctional facility. The private contractor shall report the incidents in accordance with the incident reporting rules that, at the time of the incident, are applicable to state correctional facilities for similar incidents occurring at state correctional facilities.

(6) A requirement that the private contractor provide internal and perimeter security to protect the public, staff members of the correctional facility, and prisoners in the correctional facility;

(7) A requirement that the correctional facility be staffed at all times with a staffing pattern that is adequate to ensure supervision of inmates and maintenance of security within the correctional facility and to provide for appropriate programs, transportation, security, and other operational needs. In determining security needs for the correctional facility, the private contractor and the contract requirements shall fully take into account all relevant factors, including, but not limited to, the proximity of the facility to neighborhoods and schools.

(8) A requirement that the private contractor provide an adequate policy of insurance that satisfies the requirements set forth in division (D) of section **9.06** of the Revised Code regarding contractors who operate and manage a facility under that section, and that the private contractor indemnify and hold harmless the state, its officers, agents, and employees, and any local public entity in the state with jurisdiction over the place at which the correctional facility is located or that owns the correctional facility, reimburse the state for its costs in defending the state or any of its officers, agents, or employees, and reimburse any local government entity of that nature for its costs in defending the local government entity, in the manner described in division (D) of that section regarding contractors who operate and manage a facility under that section;

- (9) A requirement that the private contractor develop a security classification schedule for prisoners housed in the correctional facility, classify in accordance with the schedule each prisoner housed in the facility, and house all prisoners in the facility in accordance with their classification under this division;
- (10) A requirement that the private contractor will not accept for housing, and will not house, in the correctional facility any out-of-state prisoner in relation to whom either of the following applies:
- (a) The private entity has not obtained from the out-of-state jurisdiction that imposed the sentence or sanction under which the prisoner will be confined in this state a copy of the institutional record of the prisoner while previously confined in that out-of-state jurisdiction or a statement that the prisoner previously has not been confined in that out-of-state jurisdiction and a copy of all medical records pertaining to that prisoner that are in the possession of the out-of-state jurisdiction.
- (b) The prisoner, while confined in any out-of-state jurisdiction, has a record of institutional violence involving the use of a deadly weapon and a pattern of committing acts of an assaultive nature against employees of, or visitors to, the place of confinement or has a record of escape or attempted escape from secure custody.
- (11) A requirement that the private contractor, prior to housing any out-of-state prisoner in the correctional facility under the contract, enter into a written agreement with the department of rehabilitation and correction that sets forth a plan and procedure that will be used to coordinate law enforcement activities of state law enforcement agencies and of local law enforcement agencies with jurisdiction over the place at which the facility is located in response to any riot, rebellion, escape, insurrection, or other emergency occurring inside or outside the facility;
- (12) A requirement that the private contractor cooperate with the correctional institution inspection committee in the committee's performance of its duties under section 103.73 of the Revised Code and provide the committee, its subcommittees, and its staff members, in performing those duties, with access to the correctional facility as described in that section;
- (13) A requirement that the private contractor permit any peace officer who serves a law enforcement agency with jurisdiction over the place at which the correctional facility is located to enter into the facility to investigate any criminal offense or delinquent act that allegedly has been committed in or on the grounds of, or otherwise in connection with, the facility;
- (14) A requirement that the private contractor will not employ any person at the correctional facility until after the private contractor has submitted to the bureau of criminal identification and investigation, on a form prescribed by the superintendent of the bureau, a request that the bureau conduct a criminal records check of the person and a requirement that the private contractor will not employ any person at the facility if the records check or other information possessed by the contractor indicates that the person previously has engaged in malfeasance;
- (15) A requirement that the private contractor will not accept for housing, and will not house, in the correctional facility any out-of-state prisoner unless the private contractor and the out-of-state jurisdiction that imposed the sentence for which the prisoner is to be confined agree that, if the out-of-state prisoner is confined in the facility in this state, commits a criminal offense while confined in the facility, is convicted of or pleads guilty to that offense, and is sentenced to a term of confinement for that offense but is not sentenced to death for that offense, the private contractor and the out-of-state jurisdiction will do all of the following:
- (a) Unless section 5120.50 of the Revised Code does not apply in relation to the offense the prisoner committed while confined in this state and the term of confinement imposed for that offense, the out-of-state jurisdiction will accept the prisoner pursuant to that section for service of that term of confinement and for any period of time remaining under the sentence for which the prisoner was confined in the facility in this state, the out-of-state jurisdiction will confine the prisoner pursuant to that section for that term and that remaining period of time, and the private contractor will transport the prisoner to the out-of-state jurisdiction for service of that term and that remaining period of time.
- (b) If section 5120.50 of the Revised Code does not apply in relation to the offense the prisoner committed while confined in this state and the term of confinement imposed for that offense, the prisoner shall be returned to the out-of-state jurisdiction or its private contractor for completion of the period of time remaining under the out-of-state sentence for which the prisoner was confined in the facility in this state before starting service of the term of confinement imposed for the offense committed while confined in this state, the out-of-state jurisdiction or its private contractor will confine the prisoner for that remaining period of time and will transport the prisoner outside of this state for service of that remaining period of time, and, if the prisoner is confined in this state in a facility operated by the department of rehabilitation and correction, the private contractor will be financially responsible for reimbursing the department at the per diem cost of confinement for the duration of that incarceration, with the amount of the reimbursement so paid to be deposited in the department's prisoner programs fund.
- (16) A requirement that the private contractor, prior to housing any out-of-state prisoner in the correctional facility under the contract, enter into an agreement with the local public entity that sets forth a conversion plan that will be followed if, for any reason, the facility is closed or ceases to operate. The conversion plan shall include, but is not limited to, provisions that specify whether the private contractor, the local public entity, or the out-of-state jurisdictions that imposed the sentences for which the out-of-state prisoners are confined in the facility will be responsible for housing and transporting the prisoners who are in the facility at the time it is closed or ceases to operate and for the cost of so housing and transporting those prisoners.

(17) A schedule of fines that the local public entity shall impose upon the private contractor if the private contractor fails to perform its contractual duties, and a requirement that, if the private contractor fails to perform its contractual duties, the local public entity shall impose a fine on the private contractor from the schedule of fines and, in addition to the fine, may exercise any other rights it has under the contract. Division (F)(2) of this section applies regarding a fine described in this division.

(18) A requirement that the private contractor adopt and use in the correctional facility the drug testing and treatment program that the department of rehabilitation and correction uses for inmates in state correctional institutions.

(E) A private correctional officer or other designated employee of a private contractor that operates a correctional facility that houses out-of-state prisoners in this state under a contract entered into prior to, on, or after the effective date of this section may carry and use firearms in the course of the officer's or employee's employment only if the officer or employee is certified as having satisfactorily completed an approved training program designed to qualify persons for positions as special police officers, security guards, or persons otherwise privately employed in a police capacity, as described in division (A) of section 109.78 of the Revised Code.

(F)(1) Upon notification by the private contractor of an escape from, or of a disturbance at, a correctional facility that is operated by a private contractor under a contract entered into prior to, on, or after the effective date of this section and that houses out-of-state prisoners in this state, the department of rehabilitation and correction and state and local law enforcement agencies shall use all reasonable means to recapture persons who escaped from the facility or quell any disturbance at the facility, in accordance with the plan and procedure included in the written agreement entered into under division (D)(11) of this section in relation to contracts entered into on or after the effective date of this section, and in accordance with their normal procedures in relation to contracts entered into prior to the effective date of this section. Any cost incurred by this state or a political subdivision of this state relating to the apprehension of a person who escaped from the facility, to the quelling of a disturbance at the facility, or to the investigation or prosecution as described in division (G)(2) of this section of any offense relating to the escape or disturbance shall be chargeable to and borne by the private contractor. The contractor also shall reimburse the state or its political subdivisions for all reasonable costs incurred relating to the temporary detention of a person who escaped from the facility, following the person's recapture.

(2) If a private contractor that, on or after the effective date of this section, enters into a contract under this section with a local public entity for the operation of a correctional facility that houses out-of-state prisoners fails to perform its contractual duties, the local public entity shall impose upon the private contractor a fine from the schedule of fines included in the contract and may exercise any other rights it has under the contract. A fine imposed under this division shall be paid to the local public entity that enters into the contract, and the local public entity shall deposit the money so paid into its treasury to the credit of the fund used to pay for community policing. If a fine is imposed under this division, the local public entity may reduce the payment owed to the private contractor pursuant to any invoice in the amount of the fine.



Sendig jurisdiction

*reimbursement
transport costs*

 **Anderson's Ohio Revised Code**

(3) If a private contractor, on or after the effective date of this section, enters into a contract under this section with a local public entity for the operation of a correctional facility that houses out-of-state prisoners in this state, the private contractor shall comply with the insurance, indemnification, hold harmless, and cost reimbursement provisions described in division (D)(8) of this section.

(G)(1) Any act or omission that would be a criminal offense or a delinquent act if committed at a state correctional institution or at a jail, workhouse, prison, or other correctional facility operated by this state or by any political subdivision or group of political subdivisions of this state shall be a criminal offense or delinquent act if committed by or with regard to any out-of-state prisoner who is housed at any correctional facility operated by a private contractor in this state pursuant to a contract entered into prior to, on, or after the effective date of this section.

(2) If any political subdivision of this state experiences any cost in the investigation or prosecution of an offense committed by an out-of-state prisoner housed in a correctional facility operated by a private contractor in this state pursuant to a contract entered into prior to, on, or after the effective date of this section, the private contractor shall reimburse the political subdivision for the costs so experienced.

(3)(a) Except as otherwise provided in this division, the state, and any officer or employee, as defined in section 109.36 of the Revised Code, of the state is not liable in damages in a civil action for any injury, death, or loss to person or property that allegedly arises from, or is related to, the establishment, management, or operation of a correctional facility to house out-of-state prisoners in this state pursuant to a contract between a local public entity and an out-of-state jurisdiction, a local public entity and a private contractor, or a private contractor and an out-of-state jurisdiction that was entered into prior to the effective date of this section or that is entered into on or after the effective date of this section in accordance with its provisions. The immunity provided in this division does not apply regarding an act or omission of an officer or employee, as defined in section 109.36 of the Revised Code, of the state that is manifestly outside the scope of the officer's or employee's official responsibilities or regarding an act or omission of the state, or of an officer or employee, as so defined, of the state that is undertaken with malicious purpose, in bad faith, or in a wanton or reckless manner.

(b) Except as otherwise provided in this division, a non-contracting political subdivision, and any employee, as defined in section 2744.01 of the Revised Code, of a non-contracting political subdivision is not liable in damages in a civil action for any injury, death, or loss to person or property that allegedly arises from, or is related to, the establishment, management, or operation of a correctional facility to house out-of-state prisoners in this state pursuant to a contract between a local public entity other than the non-contracting political subdivision and an out-of-state jurisdiction, a local public entity other than the non-contracting political subdivision and a private contractor, or a private contractor and an out-of-state jurisdiction that was entered into prior to the effective date of this section or that is entered into on or after the effective date of this section in accordance with its provisions. The immunity provided in this division does not apply regarding an act or omission of an employee, as defined in section 2744.01 of the Revised Code, of a non-contracting political subdivision that is manifestly outside the scope of the employee's employment or official responsibilities or regarding an act or omission of a non-contracting political subdivision or an employee, as so defined, of a non-contracting political subdivision that is undertaken with malicious purpose, in bad faith, or in a wanton or reckless manner.

(c) Divisions (G)(3)(a) and (b) of this section do not affect any immunity or defense that the state and its officers and employees or a non-contracting political subdivision and its employees may be entitled to under another section of the Revised Code or the common law of this state, including, but not limited to, section 9.86 or Chapter 2744. of the Revised Code.

(H)(1) Upon the completion of an out-of-state prisoner's term of detention at a correctional facility operated by a private contractor in this state pursuant to a contract entered into prior to, on, or after the effective date of this section, the operator of the correctional facility shall transport the prisoner to the out-of-state jurisdiction that imposed the sentence for which the prisoner was confined before it releases the prisoner from its custody.

(2) No private contractor that operates and manages a correctional facility housing out-of-state prisoners in this state pursuant to a contract entered into prior to, on, or after the effective date of this section shall fail to comply with division (H)(1) of this section.

(3) Whoever violates division (H)(2) of this section is guilty of a misdemeanor of the first degree.

(I) Except as otherwise provided in this division, the provisions of divisions (A) to (H) of this section apply in relation to any correctional facility operated by a private contractor in this state to house out-of-state prisoners, regardless of whether the facility is operated pursuant to a contract entered into prior to, on, or after the effective date of this section. Division (C)(1) of this section shall not apply in relation to any correctional facility for housing out-of-state prisoners in this state that is operated by a private contractor under a contract entered into with a local public entity prior to the effective date of this section. If a private contractor operates a correctional facility in this state for the housing of out-of-state prisoners under a contract entered into with a local public entity prior to the effective date of this section, no later than one hundred eighty days after the effective date of this section, the private contractor shall enter into a contract with the local public entity that comports to the requirements and criteria of division (D) of this section.

History

HISTORY: 147 v H 293. Eff 3-17-98.

§ 9.10 Definition of facsimile signature.

Text of Statute

As used in sections **9.10** to 9.14, inclusive, of the Revised Code, “facsimile signature” includes, but is not limited to, the reproduction of any authorized signature by a copper plate or by a photographic, photostatic, or mechanical device, but does not authorize the use of a rubber stamp signature by the official or authorized employee referred to in section **9.11** of the Revised Code on the face of any instrument mentioned in such section.

History

HISTORY: GC § 32-2; 122 v 83; Bureau of Code Revision. Eff 10-1-53.

§ 9.11 Use of facsimile signature by public officials.

Text of Statute

Any elected or appointed public official of this state or of any political subdivision or instrumentality thereof, or any member, agent, or employee of any board, commission, bureau, or other public body established by law, who is permitted or required in the performance of his duties to affix his signature on any check, draft, warrant, voucher, or other instrument for the payment of money, may adopt a facsimile thereof, in lieu of such manual signature, and affix such facsimile to any such instrument. Notice of the adoption of any such facsimile shall be given in writing to the depository from which funds are to be withdrawn, which notice shall include a description of the device to be used and a specimen of such facsimile signature. Prior to use of such facsimile, the written approval of such depository must be obtained.

History

HISTORY: GC § 32-2; 122 v 83; Bureau of Code Revision. Eff 10-1-53.

§ 9.12 Instrument with facsimile signature valid.

Text of Statute

Any check, draft, warrant, voucher, or other instrument for the payment of money bearing a duly adopted facsimile signature as authorized by section **9.11** of the Revised Code, even though such facsimile signature was affixed without the authority or knowledge of the person whose signature it purports to be, is as valid as if the genuine manual signature of such person were affixed thereto as to any depository, bank, or other person which gave value for such instrument in good faith.

History



STATE OF WISCONSIN
DEPARTMENT **OF** JUSTICE

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May 28, 1999

The Honorable Chuck Chvala
Chairman
Senate Committee on Organization
119 Martin Luther King Jr. Blvd., Room 101
Madison, WI 53702

Dear **Senator Chvala**:

You have asked a series of questions regarding the construction and operation of private incarceration facilities in Wisconsin. For ease of analysis, I have organized your inquiry into four areas:

- (1) Can a private company build **an** incarceration facility in Wisconsin?
- (2) Can a privately built incarceration facility be sold **or** leased to the state?
- (3) Can **out-of-state** prisoners be housed in Wisconsin?
- (4) Can an **incarceration** facility in Wisconsin be operated by a private company?

As a starting point, the management of incarceration **facilities** is a core state function. Torcasio v. Murray, 57 **F.3d** 1340 (4th Cir. 1995). The U.S. Supreme Court has **stated**: "It is **difficult** to imagine **an** activity in which a **State** has a stronger interest, or one **that is more intricately** bound up with state laws, regulations, and procedures, than the administration of its prisons." Preiser v. Rodriguez, 411 **U.S.** 475, 491-92 (1973). Other cases have noted that the **maintenance** of penal institutions is **an** "essential part" of one of government's "primary functions," which is the preservation **of societal** order through enforcement of criminal law. Procunier v. Martinez, 426 U.S. 396,412 (1974).

In a 1988 opinion regarding privatization of the jailer function by a county, **Attorney General Hanaway** articulated the underlying framework of the sovereign power of the state as follows:

As explained in State ex rel. Hammermill Paper Co. v. La Plante, 58 Wis. 2d 32, 80, 205 **N.W.2d** 784 (1973), a governmental subdivision "may, by **contract**, curtail its right to exercise functions of a business or proprietary **nature**, but, in the absence of express legislative authority, it cannot surrender or contract **away** its governmental functions and powers," not *even* partially. See also

Wausau It. Venture v. Redevelopment Authority, 118 Wis. 2d 50, 59, 347 N.W.2d 604 (Ct. App. 1984). Consistent with this basic proposition, it is said that such an entity may not contract for the **performance** of public duties which the law requires **its** public officers or **employees** to perform, . . . ,

. . . .

. . . **The maintenance** of law and order encompassed in the jailer function involves just such an exercise of the sovereign power of the state.

77 Op. Att’y Gen. **94, 95-96 (1988)**.

In 1996, in answer to a related question, I adopted this rationale:

This reasoning is applicable to all forms of incarceration for commitment **of a crime** In my opinion, with respect to matters exclusively or primarily of statewide concern, “if the legislature did not specifically confer a power, it is evidence of legislative intent not to permit the **exercise** of the power.” See State ex rel. Harris v. Larson, 64 Wis. 2d 521, 527, 219 N.W.2d 335 (1974).

OAG 1-96 at 7.

With these basic principles in mind, your questions are specifically addressed:

1. Can a private company build an incarceration facility?

In OAG 1-96, I **concluded** that a **private** company could construct a facility which **conceivably** could be used **as a** county house of corrections. The same would be possible for any **incarceration** facility. The building would have **to** be constructed **in** compliance **with** all applicable state laws, rules, codes and regulations, and would be subject to the ordinances or regulations of the municipality in which construction takes place, the same as any building,

This answer is limited only to the bricks or **mortar**. The building’s use as **an** incarceration facility, its purchase or lease by the state, whether it could be run by a private company or whether out-of-state prisoners could be housed there, are entirely **separate** questions. Merely constructing a building and calling it an **incarceration** facility does not in any way mean it can be operated **as** such.

2. **Can a privately built incarceration facility be sold or leased to the state?**

The acquisition of a privately built incarceration facility by the state would have to be within the state's long-range public building program as expressed in Wis. Stat. § 13.48,' and have the **additional approval** of the Joint Committee on Finance. which is required by Wis. Stat. § 301.18(4).

Wisconsin Stat. § 13.48(27) specifically **allows** the building commission to lease a correctional facility as part of the **authorized state** building program, **with an option** to purchase the facility by the state. **Any lease must provide that the facility is in accordance with requirements and specifications approved by the Department of Administration. Id.** Such a facility could also be purchased **outright** in lieu of state construction **as long as the project were enumerated** in the authorized **state** building program. Wis. Stat. § 13.48(19). Wisconsin Stat. § 301.18(4) **additionally** requires **the** approval of **the** Joint Committee on Finance for "[a]ny purchase, lease or construction of additional correctional facilities . . ."

3. **Can Out of State prisoners be housed in Wisconsin?**

The brief **answer** is that out of **state** prisoners, like any **other** prisoner, may be housed in Wisconsin only as expressly authorized by **the** state. Incarceration is one of the state's sovereign powers. See 60 Am. Jur. 2d Penal and Correctional Institutions § 8 (1987). **o w e r s** belong exclusively to the state, and may be delegated only by express **state** action. See 81A C.J.S. States § 16 (1977) ("[T]he [sovereign] power of a state may be abridged only by its own **action**, which must be sanctioned by its statutes.") The State of Wisconsin has only authorized the **incarceration** of out of state prisoners **as** set forth in **the** Interstate Corrections Compact. See Wis. Stat. § 302.25. It follows that no other entity may house 'out of state prisoners in Wisconsin, be it local units of government, sister **states** or private organizations, absent express legislative authorization.²

Municipalities

Municipalities may not **incarcerate** out of state prisoners. Municipalities do not possess inherent sovereign powers, See Van Gilder v. Madison, 222 Wis, 58, 72-73, 267 N.W. 25 (1936). Municipalities **are** created **by** the state, and hold **all** powers **and** privileges subject to the state's sovereign will. See id. (citing City of Trenton v. State of New Jersey, 262 U.S. 182 (1923)). The **state** may grant **powers** to municipalities **either** through its **state** constitution or by **legislation**. See id. **Limited only** by the state constitution, the **state** may revoke or modify these

¹Unless otherwise noted, all statutory references are to the 1997-98 volume of the Wisconsin Statutes.

²The federal government, by virtue of the supremacy clause, is sovereign over Wisconsin, See U.S. Const. art. VI. Therefore, the federal government may house federal prisoners in Wisconsin, subject to federal law. See 18 U.S.C. §§ 4001, 4002, 4003, 4013(a)(3) and 4013(b)(2).

powers at its pleasure. See id. (“In the absence of state constitutional provisions safeguarding it to them, municipalities have no inherent right of self-government which is beyond the legislative control of the state.”)

The Wisconsin Constitution grants municipalities broad power over local affairs. See Wis. Const. art. XI, § 3. This “home rule” provision of the constitution reads:

(1) Cities and villages **organized** pursuant to state law may determine **their** local affairs and government, **subject** only to this constitution and to such enactments of the legislature of statewide concern as with uniformity shall affect every city or **every** village. The method of such determination shall be prescribed by the legislature.

Id.

The Wisconsin Legislature has similarly made a statutory grant of power to municipalities. See Wis. Stat. § 62.11(5); but see Wis. Stat. § 62.03(1) (Wis. Stat. § 62.11(5) “does not apply to 1st class cities under special charter”). The power granted under the “home rule” statute is broader than the power granted under the constitution, by allowing a municipality to enact ordinances on matters of statewide concern. See Wis. Environmental Decade, Inc. v. DNR, 85 Wis. 2d 518, 533, 271 N.W.2d 69 (1978); see also Anchor Savings & Loan Ass’n v. Madison EOC, 120 Wis. 2d 391, 395, 355 N.W.2d 234 (1984) (“A city ordinance may be authorized by sec. 62.11(5), Stats., notwithstanding statewide concern in the matter it regulates.”) However, municipalities’ ability to regulate statewide matters is not unlimited. See DeRosso Landfill Co. v. City of Oak Creek, 200 Wis. 2d 642, 651, 547 N.W.2d 770 (1996). Wisconsin courts have long held that “municipalities may enact ordinances in the same field and on the same subject covered by state legislation where such ordinances do not conflict with . . . the state legislation.” Id. (citing Fox v. Racine, 225 Wis. 542, 546, 275 N.W. 513 (1937)). As a result, municipalities may not make regulations that are inconsistent with those of the state, See DeRosso, 200 Wis. 2d at 651; see also Gloudeman v. City of St. Francis, 143 Wis. 2d 780, 789, 422 N.W.2d 864 (Ct. App. 1988) (when provisions of a statute are primarily of statewide concern, municipality may not under Wis. Stat. § 66.01(4) elect not to be bound by such statute).

Municipalities are pre-empted from regulating matters of statewide concern if any one of the four conditions set out by the Wisconsin Supreme Court in Anchor is met. See Anchor, 120 Wis. 2d at 397. The Anchor test is used whether the ordinance was enacted based on the home rule statute, see Local Union No. 487 v. Eau Claire, 147 Wis. 2d 519, 525, 433 N.W.2d 578 (1989), or based on the home rule amendment, see DeRosso, 200 Wis. 2d at 656–57. The Anchor test provides that the state has pre-empted municipal regulation if: (1) the state has expressly withdrawn the power of municipalities to act; (2) the local regulation logically conflicts with state legislation; (3) the local regulation defeats the purpose of state legislation; or (4) the local regulation violates the spirit of state legislation.” Id. at 657 (citing Anchor, 120

Wis. 2d at 397). It cannot be disputed that **one** area of **statewide** concern is the preservation of order. See Van Gilder, 222 Wis. at 76. Included in this is the power to incarcerate, See 60 Am. Jur. 2d Penal and Correctional Institutions § 8 (1987) (“[Penal] institutions are a public necessity and part of the police system for the preservation of order and **the** security of society. They are established by the state **in the** exercise of its sovereign powers.”). Therefore, a municipality may only regulate in the field of **incarceration** if **state** legislation has not pre-empted such regulation. Applying **the Anchor** test to the ability of municipalities to incarcerate out of state prisoners, it is **apparent that state legislation pre-empts** such a possibility, Not just one, but all **four** of the conditions would be **met**, precluding municipal **regulation** in **this** area.

Addressing the **first test**, the Legislature **has** expressly withdrawn the power of municipalities **to act** in the area of **incarcerating** out of state prisoners, The state has specifically defined “jail” to include “municipal prisons . . . by whatever name they are known.” Wis. Stat. § 302.30. The state has enumerated specific uses for which such facilities may be employed, which do not include the incarceration of out of state felons. See Wis. Stat. § 302.31. The state has therefore **expressly** limited the power of municipalities to **use their** prisons to incarcerate out of **state** prisoners.

Turning to the second test, local ordinances **authorizing** the incarceration of out of state felons would logically conflict with state legislation. Wisconsin has enacted, the ‘Interstate Corrections Compact, which **gives a detailed** description of how the state intends to treat incarceration of prisoners from **other** states. See Wis. Stat. § 302.25. Municipalities could not logically incarcerate out of **state** prisoners outside this statutory scheme. **As to the third and fourth test’s**, **the** state legislature **has** enacted a comprehensive system of laws to regulate incarceration within the state. See Wis. Stat. chs. 301 and 302. Municipal ordinances regarding **the** statewide concern of incarceration of out of state felons would “**defeat[] the purpose of state legislation and violate[] the spirit of the legislature’s ‘complex and comprehensive statutory structure.’**” DeRosso, 200 Wis. 2d at 662 (citing Anchor, 120 Wis. 2d at 397).

Because municipal incarceration of out of state **felons** would logically conflict **with** and “**violate[] the express letter, the purpose and the spirit of statutes addressing a matter of statewide concern,**” **state legislation** has pre-empted municipalities from regulating in this area. DeRosso, 200 Wis. 2d at 664.

Counties

Counties may not incarcerate out of state prisoners. Counties are also creations of the state, with **limited** powers. In the 1988 opinion, Attorney General Hanaway stated: “It has been repeatedly held in Wisconsin that ‘**a county board has only such powers as are expressly conferred upon it [by the legislature] or necessarily implied from the powers expressly given or from the nature of the grant of power.**’” 77 Op. Att’y Gen. at 96 (citing State ex rel. Teunan v. Kenosha County, 142 Wis. 2d 498, 504, 418 N.W.2d 833 (1988)).

County powers conferred by the Legislature are addressed in the county “home rule” and “board powers” statutes. See Wis. Stat. §§ 59.03, 59.04 and 59.51. These powers are less expansive than the powers granted to municipalities. As I explained in the 1996 opinion, addressing the privatization of a county house of correction:

[T]he statutory language defining the substantive nature of the power granted [to counties] is modelled [sic] primarily upon language contained in article XI, section 3 of the Wisconsin Constitution rather than upon language contained in section 62.11(5)

. . . .

Unlike section 62.11(5), which contains a grant of substantive power for municipalities to act even in connection with matters primarily of statewide concern, county municipal home rule statutes “expand upon and ‘fill the gaps’ in the organizational and administrative structure which is already in place.”

OAG 1-96 at 4-5 (citations omitted). Because “the grant to counties is so limited, “if the legislature did not specifically confer a power, it is evidence of legislative intent not to permit the exercise of the power.” Id. at 7 (citing State ex rel. Harris v. Larson, 64 Wis. 2d 521, 527; 219 N.W.2d 335 (1974)). The Legislature has made no express grant of power to counties to house out of state prisoners; therefore counties have no power to do so.

Sister States

Another state cannot lease or buy a correctional facility in Wisconsin and operate it according to its laws. Although states are sovereign within their territory, sovereignty ends at the border. See K-S Pharmacies v. American Home Products, 962 F.2d 728 (7th Cir. 1992) (states lack power to reach outside their borders, giving rise to strong presumption of exclusive domestic application of state statutes); see also World-Wide Volkswagen Corp v. Woodson, 444 U.S. 286, 294 (1980) (sovereignty of each state implies limitation on sovereignty of all its sister states). Even were one state to acquire property in another, it is “elementary law that . . . [the acquiring state] does not thereby project its sovereignty into the state where the property is situated.” State v. City of Hudson, 231 Minn. 127, 42 N.W.2d 546, 548 (1950). It is clear that state sovereignty does not permit one state to house prisoners in another state without that state’s express consent.

Because states have long recognized that they may house their prisoners in another state only by consent of that state, they have devised a contractual method to arrange such housing. The Interstate Corrections Compact is the means by which Wisconsin and other subscribers address the housing of out of state prisoners. See Wis. Stat. § 302.25. The compact is a detailed cooperative agreement whereby participating states may contractually provide for the confinement of prisoners of other states. See id. Providing housing for out of state prisoners is

voluntary, and occurs **only** after **entering** into a contract. See Wis. Stat. § 302.25(3)(a) (“Each party state **may** make one or more **contracts** . . . [with other party states].”). This is the only manner in which Wisconsin expressly provides for **the** housing of out of state prisoners,

Private Organization

Because the power to incarcerate belongs exclusively to the state, incarceration may be performed only by those whom the state expressly authorizes. See 81A C.J.S. States § 16 (1977). Consequently, private organizations may not incarcerate any **prisoners** including out of state prisoners, as **the** state has made no provision, statutory or constitutional, for such incarceration. Indeed, **the** state has made no provisions for a private organization to operate an **incarceration** facility **at all**, which leads to your fourth question.

4. Can a Private company operate an incarceration facility in Wisconsin?

Private companies may not **operate** an incarceration facility of any sort. As discussed above, incarceration is a sovereign power of the state. See 60 Am. Jur. 2d Penal and Correctional Institutions § 8 (1987). From this **it follows that** “detention is a power reserved to the government, and is an exclusive **prerogative of the state.**” Medina v. O’Neill, 589 F. Supp. 1028, 1038 (S.D. Tex. 1984), modified on other grounds, 838 F.2d 800 (5th Cir. 1988). **Thus**, incarceration of prisoners may only be performed by the **state** or under its express authority. Because Wisconsin has made no express authorization, private companies may not operate an incarceration facility of any sort.

Previous opinions **of** the Attorney **General**, concluding that county **incarceration** functions may not be performed **by** private companies, form **the** foundation for the conclusion. **In 1988**, Attorney General **Hanaway** addressed the **narrower** issue of **whether** the jailer function **of a** sheriff’s **duties** under Wis. Stat. § 59.23(1) could legally be “**privatized**” by contract with a private firm; he concluded that it could not. See 77 Op. Att’y Gen. 94 (1988). In a later opinion, **1** **concluded** that **neither** could a private firm **operate a** county house of correction. See OAG 1-96. One factor leading to the result in both of these **situations** is that “the privatization of law and **order functions** relating to **the incarceration** of prisoners involves a matter exclusively or primarily of **statewide concern.**” Id. at 6. As I explained:

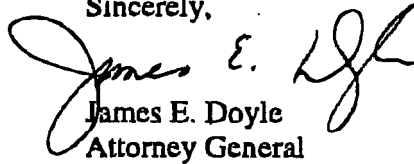
This reasoning is applicable to all forms of incarceration for **commitment** of a crime and is not limited to functions performed under the auspices of the sheriff as a constitutional officer. In my opinion, with **respect to matters** exclusively or primarily of statewide **concern**, “if the legislature did **not**

specifically confer a power, it is evidence of legislative intent not to permit the **exercise** of the power.”

Id. at 7 (citation omitted). While this opinion was limited to the **privatization** of county incarceration functions, the reasoning **is** applicable to all forms of incarceration, whether at statewide or local levels. Because incarceration is a sovereign power **and** incarceration functions involve matters of statewide concern, specific **legislation** would be needed in order to **permit** private companies to perform such functions.

I, therefore, conclude that under existing **statutes**, while a private company could conceivably build an incarceration facility, and sell or lease it to the state, private companies may not operate incarceration facilities in Wisconsin, nor may out of **state** prisoners be housed within Wisconsin except as provided in the Interstate Corrections Compact.

Sincerely,



James E. Doyle
Attorney General

JED:SJN:jlw

CAPTION:

While a private company may conceivably build **an** incarceration **facility** in Wisconsin, without enabling legislation it cannot be operated by a private company. The purchase or lease of a privately built incarceration facility by the state must be within the state’s long range building program **as** expressed in Wis. **Stat. §** 13.48. A purchase must also be approved by **the** Joint Finance Committee. Out of state prisoners may be housed in Wisconsin by **the** state, a **county** or a municipality, only as expressly authorized by state statute. **Currently** that **authorization** is **limited** to the Interstate Corrections Compact (Wis. Stat. § 302.25).

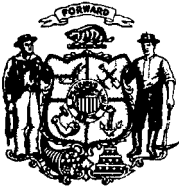
NB: For P2

or / / , add

material that was

in INS 6-22

to P1.



State of Wisconsin
1999 - 2000 LEGISLATURE

3/7/20

LRB-2853/P1
MGD&JEO:l...
Wlj

D-Note

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

WFO: Please check auto refs. Thanks!

WFO: Inserts are out of order

RPN
DAK



WFO's -
~~scribble~~ Please do a global search + replace -
Replace "XX" with "301.01 (2g)"
Thanks.

regen cat

1 **AN ACT** to renumber 51.37 (11) and 157.02 (1); to renumber and amend 801.02
2 (7) (b) ;to amend 6.385 (7), 19.32 (1e), 19.35(1) (am) 2. c., 19.35 (3) (f), 20.410
3 (1) (kc), 20.410 (1) (kk), 20.903 (2) (c), 29.199, 38.04 (12), 38.14 (3) (a), 38.24 (1m)
4 (d), 46.011(2), 49.32 (7)(d), 49.47 (6) (c) 3., 51.20 (1)(ar) (intro.), 51.20 (7) (b) ,
5 51.20 (7) (c), 51.20 (11) (a) , 51.20 (13) (a) 3., 51.20 (13) (a) 4., 51.20 (13) (a) 5.,
6 51.20 (13) (g) 2m., 51.20 (19) (b) 1., 51.30 (4) (b) 10. (intro.), 51.30 (4) (b) 12.,
7 51.37 (5) (a), 51.37 (5) (b), 51.37 (5) (b), 51.37 (8) (a), 51.37 (8) (b), 51.42 (3) (as)
8 1., 51.45 (15) (b), 59.29 (1) (b), 77.996 (2) (f), 101.123 (4) (bm), 115.762 (4),
9 115.787 (6) (a) 1., 115.787 (6) (a) 2., 115.787 (6) (b), 165.84 (4), 165.84 (5), 227.43
10 (1) (bg), 252.02 (4), 252.02 (5), 252.06 (6) (b), 252.14 (2) (intro.), 252.14 (2) (am),
11 252.14(2)(bm), 252.15 (1) (ab), 252.15 (2) (a) 7. a., 301.03(12), 301.035 (2),
12 301.035(4), 301.105(intro.), 301.287, 301.33(2), 301.33 (3), 301.36 (1) and (6),
13 302.01, 302.02 (5) (a), 302.02 (5) (b), 302.055, 302.07, 302.09, 302.095 (2),
14 302.095 (2), 302.12 (1), 302.13, 302.14, 302.18 (1), 303.063 (1), 303.069, 304.06
15 (1) (b), 447.06 (2) (a) 4., 782.01 (1), 782.45 (title), 782.47, 801.02 (7) (a) 1., 801.02

1 (7) (a) 3., 801.02 (7) (bm) (intro.), 806.025 (l), 807.15 (1), 813.02 (1) (c) l., 813.40
 2 (1) (b) 3. (intro.), 814.29 (lm) (c) 2., 814.29 (1m) (e), 893.735 (2), 898.01, 940.20
 3 (1), 940.29, 941.237 (1) (b), 941.29 (6), 946.43, 946.44 (2) (c), 946.44 (2) (d),
 4 946.45 (2) (c), 946.45 (2) (d), 946.47 (2) (b), 946.73, 946.73, 948.50 (4) (a), 943.50
 5 (4)(a), 968.255 (7)(a), 971.11 (1), 971.11 (6), 973.15 (4)(a), 973.15 (6) and 976.06;
 6 and **to create** 20.410 (1) (hq), 20.410 (1) (hv), 20.904 (2) (bs), 51.37 (11) (b),
 7 101.123 (1) (dq), 101.123 (1) (ds), 101.123 (2) (a) 6m, 101.123 (2) (a) 6m., 101.123
 8 (4) (am) 2m., 157.02 (1) (b), 252.14 (1) (e), 252.15 (1) (au), 301.01 (2) (e), 301.01
 9 (2g) and (2m), 301.03 (8), 301.371, 301.372, 301.373, 301.374, 302.11 (ll),
 10 302.386 (5) (e), 782.45 (3), 801.02 (7) (a) 4., 801.02 (7) (a) 5., 801.02 (7) (b) 2.,
 11 806.025 (3), 961.01 (12m) (f), 976.01 (4m), 976.05 (16) and 976.06 (2) of the
 12 statutes; **relating to:** construction and operation of private prisons, requiring
 13 the exercise of rule-making authority[✓] and making an appropriation.✓/

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.

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

14 **SECTION 1.** 16.385 (7)[✓] of the statutes is amended to read:

15 16.385 (7) **INDIVIDUALS IN STATE PRISONS.** No payment under sub. (6) may be
 16 made to a prisoner who is imprisoned in a state prison under s. 302.01 ~~or~~ ^{scored commo- (not struck)} to a person
 17 placed at a secured correctional facility, as defined in s. 938.02 (15m), or a secured
 18 child caring institution, as defined in s. 938.02 (15g), or to a person confined in a
 19 private nrison. as defined in s. XX.

History: 1985 a 29 ss. 1055g, 2488h to 2488n; 1985 a. 176.332; 1987 a. 27; 1989 a. 31,359; 1991 a. 39; 1993 a. 16, 1995 a. 27 ss. 2336.3182 to 3207; Stats. 1995 s. 16.385; 1995 a. 77,417.

20 **SECTION 2.** 19.32 (1e)[✓] of the statutes is amended to read:

1 19.32 (le) "Penal facility" means a state prison under s. 302.01, private prison,
2 as defined in s. ~~XX~~, county jail, county house of correction or other state, county or
3 municipal correctional or detention facility.

History: 1981 c. 335; 1985 a 26, 29, 332; 1987 a 305; 1991 a. 39, 1991 a 2 6 ss.26pd, 33b; 1993 a. 215263,491; 1995 a. 158; 1997 a 79, 94.

4 SECTION 3. 19.35 (1) (am) 2. c. 3 of the statutes amended to read:

5 19.35 (1) (am) 2. c. Endanger the security of any state correctional institution,
6 as defined in s. 301.01 (4), private nrison. as defined in s. ~~XX~~ jail, as defined in s. 165.85
7 (2) (bg), secured correctional facility, as defined in s. 938.02 (15m), secured child
8 caring institution, as defined in s. 938.02 (15g), mental health institute, as defined
9 in s. 51.01 (12), center for the developmentally disabled, as defined in s. 51.01 (3), or
10 the population or staff of any of these institutions, facilities or jails.

History: 1981 c. 335,391; 1991 a. 39, 1991 a. 269 ss. 34am, 40am; 1993 a 93; 1995 a. 77, 158; 1997 a. 94, 133.

11 SECTION 4. 19.35 (3) (f) of the statutes is amended to read:

12 19.35 (3) (f) An authority may require prepayment by a requester of any fee or
13 fees imposed under this subsection if the total amount exceeds \$5. If the requester
14 is a prisoner, as defined in s. 301.01 (2), or is a person confined in a federal
15 correctional institution or nprivate nrison. as defined in s. ~~XX~~, located in this state, and
16 he or she has failed to pay any fee that was imposed by the authority for a request
17 made previously by that requester, the authority may require prepayment both of the
18 amount owed for the previous request and the amount owed for the current request.

History: 1981 c. 335,391; 1991 a. 39, 1991 a. 269 ss. 34am, 40am; 1993 a 93; 1995 a. 77, 158; 1997 a. 94, 133.

19 SECTION 5. 20.410 (1) (hq) of the statutes is created to read:

20 20.410 (1) (hq) **Private prison regulation.** All moneys received from private
21 prisons under ~~ss.~~ for the costs of regulating the construction and operation of private
22 prisons. ~~301.373 (9)~~

23 SECTION 6. 20.410 (1) (hv) of the statutes is created to read:

301.373(3)(a)✓

1 20.410 (1) (hv) *Training private prison employees*. All moneys received from
2 private prison employees under s. 4 for the costs of their training.

3 **SECTION 7.** 20.410 (1) (kc)✓ of the statutes is amended to read:

4 20.410 (1) (kc) *Correctional institution enterprises; inmate activities and*
5 *employment*. All moneys received from state correctional institution enterprises
6 involving the activities of inmates, excluding moneys received from canteen
7 operations, prison industries and correctional farms, to conduct state correctional
8 institution enterprises and inmate employment projects.

History: 1989 a. 31 ss. 340,361 to 380,382 to 392; 1989 a. 107, 122,359; 1991 a. 39; 1993 a. 16, 98, 377, 437, 490; 1995 a. 27, 77, 416, 440; 1997 a. 4, 27, 35, 237, 252, 275, 283, 284.

9 **SECTION 8.** 20.903 (2) (bs)✓ of the statutes is created to read:

10 20.903 (2) (bs) Notwithstanding sub. (1),✓ liabilities may be created and moneys
11 expended from the appropriations under s. 20.410 (1) (hq)✓ in an additional amount
12 not to exceed the amount of money anticipated to be received during the remainder
13 of the biennium.

14 **SECTION 9.** 20.903 (2) (c)✓ of the statutes is amended to read:

15 20.903 (2) (c) All expenditures authorized by this subsection are subject to the
16 estimate approval procedure provided in s. 16.50 (2). Notwithstanding pars. (a), (b)
17 ~~and~~, (bn) and (bs), the maximum amounts that may be expended from a program
18 revenue or program revenue-service appropriation which is limited to the amounts
19 in the schedule are the amounts in the schedule, except as authorized by the
20 department of administration under s. 16.515 or the joint committee on finance
21 under s. 13.101.

History: 1971 c. 40 s. 93; 1971 c. 125; 1973 c. 90 1975 c. 224; 1977 c. 29,418; 1979 c. 34,221; 1981 c. 20,317; 1983 a. 27; 1985 a. 29; 1987 a. 27,399; 1989 a. 31,125, 359; 1991 a. 39; 1993 a. 16, 1995 a. 27; 1997 c. 27.

22 **SECTION 10.** 29.199✓ of the statutes is amended to read:

1 **29.199 Authorizations for certain patients and institutionalized**

2 **persons to fish.** The department shall issue an authorization without charge to a

3 county hospital, state or federal mental hospital, ~~state~~ correctional institution or

4 ~~private prison, as defined in 1999~~ nonprofit institution located in this state for

5 rehabilitation purposes upon request of the superintendent of the institution. The

6 authorization permits a resident of the hospital or institution who is supervised by

7 an employe of the hospital or institution to fish for fish subject to all other provisions

8 of law.

9 History: 1993 a 16; 1997 a. 248 s. 375; Stats. 1997 s. 29.199. ✓

SECTION 11. 38.04 (12) of the statutes is amended to read:

10 38.04 (12) PRISON INMATE EDUCATIONAL PROGRAM. The board may establish

11 vocational educational programs for inmates ~~within the state correctional system of~~

12 correctional facilities and contract with the departments of corrections and health

13 and family services and private prisons, as defined in ~~s. XX~~, for reimbursement of that

14 portion of the district program costs which exceeds amounts received as state and

15 federal aid.

History: 1971 c. 154,211; 1973 c. 90,333; 1975 c. 39; 1977 c. 29; 1979 c. 221; 1981 c. 20; 1981 c 93 ss.19m,30m, 300; 1981 c. 269,314; 1983 a. 27,379; 1985 a. 12, 29; 1985 a. 332 s. 251 (1); 1987 a. 27; 1989 a. 31, 107, 125, 169, 299, 3 5,336; 1991 a. 39, 227, 250; 1993 a. 16, 223, 377, 399, 455, 491; 1995 a. 27 ss.1800n to 1803.9126 (19) and 9145 (1); 1995 a. 342; 1997 a. 27.

16 **SECTION 12.** 38.14 (3) (a) of the statutes is amended to read:

17 38.14 (3) (a) The district board may enter into contracts to provide educational

18 services to public and private educational institutions, federal and state agencies,

19 local governmental bodies, private prisons, as defined in ~~s. XX~~, industries and

20 businesses.

History: 1971 c. 154, 215; 1977 c. 29; 1979 c. 221; 1981 c. 20, 93, 269; 1985 a. 29; 1987 a. 27,403; 1989 a. 31; 1991 a. 39, 67, 1995 a. 201; 1997 a. 27, 85, 128.

21 **SECTION 13.** 38.24 (1m) (d) of the statutes is amended to read:

22 38.24 (1m) (d) **Programs for inmates.** Uniform fees, for vocational programs

23 or courses offered at a district facility to state prison inmates ~~at a district facility~~ by

don't
strike
(plain)

Strike

private prison, as defined in 1999

s. XX

s. XX

1 the department of corrections or the department of health and family services in
2 cooperation with a district board or to inmates of a private prison, as defined in s.
3 ~~XX~~ under ss. 38.04 (12) and 38.14 (3) (a), equal to the fees established under par. (b).

History: 1971 c. 154, 211, 228; 1975 c. 39, 224, 1977 c. 29, 418; 1981 c. 20; 1983 a. 27; 1985 a. 29; 1987 a. 27; 1989 a. 31, 107,336; 1991 a. 39 ss. 1103 to 1108m, 1117; 1993 a. 16, 223, 491, 1995 a. 27 s. 9126 (19); 1995 a. 77, 228; 1997 a. 27, 163,292. s. 13.93 (1) (b).

4 SECTION 14. 46.011 (2) of the statutes is amended to read:

5 46.011 (2) "Prisoner" means any person who is either arrested, incarcerated,
6 imprisoned or otherwise detained in excess of 12 hours by any law enforcement
7 agency of this state, except when detention is pursuant to s. 51.15, 51.20, 51.45 (11)
8 (b) or 55.06 (11) (a) or ch. 980. "Prisoner" does not include any person who is serving
9 a sentence of detention under s. 973.03 (4) unless the person is in the county jail
10 under s. 973.03 (4) (c) and does not include an inmate of a private prison, as defined
11 in s. .

History: 1975 c. 39,430; 1977 c. 29; 1979 c. 221; 1985 a. 29 s. 3202 (23); 1987 a. 27; 1989 a. 31; 1993 a. 16, 27, 479; 1995 a. 27 ss. 2022,9126 (19).

12 SECTION 15. 49.32 (7) (d) of the statutes is amended to read:

13 49.32 (7) (d) The department, with assistance from the department of
14 corrections, shall conduct a program to periodically match the records of persons
15 confined in ~~state~~ correctional facilities with the records of recipients of medical
16 assistance under s. 49.46, 49.468 or 49.47, aid to families with dependent children
17 under s. 49.19 and the food stamp program under 7 USC 2011 to 2029 to identify
18 recipients who may be ineligible for benefits.

History: 1995 a. 27 ss. 2035 to 2037, 2276d, 2805 to 2809, 2927 to 2930, 3146 to 3149; 1995 a. 289, 361, 370, 404; 1997 a. 27, 35, 237, 252, 283.

19 SECTION 16. 49.47 (6) (c) 3. of the statutes is amended to read:

20 49.47 (6) (c) 3. Care or services for an individual who is an inmate of a private
21 prison, as defined in institution, except as a patient in a medical
22 institution or a resident in an intermediate care facility.

History: 1971 c. 125, 1971 c. 213 s. 5; 1971 c. 215, 1973 c. 90, 147, 333, 1977 c. 29 ss. 593,1656 (18); 1977 c. 105 s. 59; 1977 c. 273,418; 1979 c. 34; 1981 c. 20, 93; 1981 c. 314s. 144; 1983 a. 27, 245; 1985 a. 29; 1987a. 27, 307, 399, 413; 1989 a. 9; 1989a. 31 ss. 1462kto 1466d, 2909c to 2909i; 1989 a. 173, 336, 351; 1991 a. 39, 178, 269, 316; 1993 a. 16, 269, 277, 437; 1995 a. 27 ss. 3026 to 3028, 9126 (19); 1995 a. 225, 289, 295; 1997 a. 27.

23 SECTION 17. 51.20 (1) (ar) (intro.) of the statutes is amended to read:

1 51.20 (1) (ar) If the individual is an inmate of a ~~state~~ prison, the petition may
 2 allege that the inmate is mentally ill, is a proper subject for treatment and is in need
 3 of treatment. The petition shall allege that appropriate less restrictive forms of
 4 treatment have been attempted with the individual and have been unsuccessful and
 5 it shall include a description of the less restrictive forms of treatment that were
 6 attempted. The petition shall also allege that the individual has been fully informed
 7 about his or her treatment needs, the mental health services available to him or her
 8 and his or her rights under this chapter and that the individual has had an
 9 opportunity to discuss his or her needs, the services available to him or her and his
 10 or her rights with a licensed physician or a licensed psychologist. The petition shall
 11 include the inmate's sentence and his or her expected date of release ~~as determined~~
 12 ~~under 302.11 or 302.119, whichever is applicable.~~ The petition shall have attached
 13 to it a signed statement by a licensed physician or a licensed psychologist of a state
 14 prison or, if the individual is an inmate of a private prison, ~~as determined by any~~
 15 ~~licensed physician or~~ licensed psychologist, and a signed statement by a licensed
 16 physician or a licensed psychologist of a state treatment facility attesting either of
 17 the following: or the prison's medical director

History: 1975 c. 430; 1977 c. 26, 29; 1977 c. 187 ss. 42, 43, 134, 135; 1977 c. 428 ss 29 to 65, 115; 1977 c. 447, 449; Sup. Ct. Order, 83 W (2d) xiii; 1979 c. 32, 89, Sup. Ct. Order, eff. 1-1-80; 1979 c. 110 s. 60 (1); 1979 c. 175 s. 53; 1979 c. 300, 336, 356; 1981 c. 20, 367; 1981 c. 390 s. 252; 1983 a. 27, 219; 1983 a. 474 ss. 2 to 9m, 14; 1985 8.29 ss. 1067 to 1071, 3200 (56), 3202 (56); 1985 a. 139, 176, 321, 332; 1987 a. 27; Sup. Ct. Order, 141 W (2d) xiii (1987); 1987 a. 366, 394, 403; 1989 a. 31, 334; 1593 a. 98, 196, 227, 316, 451, 474; 1995 a. 77, 201, 268, 292, 440; Sup. Ct. Order No. 9648, 207 W (2d) xv (1997); 1997 a. 35, 130, 237, 283

18 **SECTION 18.** 51.20 (7) (b) of the statutes is amended to read:

19 51.20 (7) (b) If the subject individual is not detained or is an inmate of a ~~state~~
 20 prison, county jail or house of correction, the court shall hold a hearing within a
 21 reasonable time of the filing of the petition, to determine whether there is probable
 22 cause to believe the allegations made under sub. (1).

History: 1975 c. 430; 1977 c. 26, 29; 1977 c. 187 ss. 42, 43, 134, 135; 1977 c. 428 ss. 29 to 65, 115; 1977 c. 447, 449; Sup. Ct. Order, 83 W (2d) xiii; 1979 c. 32, 89; Sup. Ct. Order, eff. 1-1-80; 1979 c. 110 s. 60 (1); 1979 c. 175 s. 53; 1979 c. 300, 336, 356; 1981 c. 20, 367; 1981 c. 390 s. 252; 1983 a. 27, 219; 1983 a. 474 ss. 2 to 9m, 14; 1985 a. 29 ss. 1067 to 1071, 3200 (56), 3202 (56); 1985 a. 139, 176, 321, 332; 1987 a. 27; Sup. Ct. Order, 141 W (2d) xiii (1987); 1987 a. 366, 394, 403; 1989 a. 31, 334; 1993 a. 98, 196, 227, 316, 451, 474; 1995 a. 77, 201, 268, 292, 440; Sup. Ct. Order No. 9648, 207 W (2d) xv (1997); 1997 a. 35, 130, 237, 283.

1 **SECTION 19.** 51.20 (7) (c) [↓] of the statutes is amended to read:

2 51.20 (7) (c) If the court determines that there is probable cause to believe the
3 allegations made under sub. (l), it shall schedule the matter for a hearing within 14
4 days from the time of detention of the subject individual, except as provided in sub.
5 (8) (bg) or (bm) or (11) (a). If a postponement has been granted under par. (a), the
6 matter shall be scheduled for hearing within 21 days from the time of detention of
7 the subject individual. If the subject individual is not detained under s. 51.15 or this
8 section or is an inmate of a state prison, county jail or house of correction, the hearing
9 shall be scheduled within 30 days of the hearing to determine probable cause for
10 commitment. In the event that the subject individual fails to appear for the hearing
11 to determine probable cause for commitment, the court may issue an order for the
12 subject individual's detention and shall hold the hearing to determine probable cause
13 for commitment within 48 hours, exclusive of Saturdays, Sundays and legal
14 holidays, from the time that the individual is detained.

History: 1975 c. 430; 1977 c. 26.29; 1977 c. 187 ss. 42, 43, 134, 135; 1977 c. 428 ss. 29 to 65,115; 1977 c. 447,449; Sup. Ct. Order, 83 W (2d) xiii; 1979 c. 32.89; Sup. Ct. Order, eff. 1-1-80; 1979 c. 110 s. 60 (1); 1979 c. 175 S. 53; 1979 c. 300, 336.356; 1981 c. 20,367; 1981 C. 390 S. 252; 1983 a. 27,219; 1983 a. 474 ss. 2 to 9m, 14; 1985 a. 29 ss. 1067 to 1071, 3200 (56), 3202 (56); 1985 a. 139, 176, 321, 332; 1987 a. 27; Sup. Ct. Order, 141 W (2d) xiii (1987); 1987 a. 366, 394, 403; 1989 a. 31,334; 1993 a. 98, 196, 227, 316, 451, 474; 1995 a. 77, 201, 268, 292, 440; Sup. Ct. Order N_A 96-08, 207 W (2d) xv (1997); 1997 a. 35, 130, 237, 283.

15 **SECTION 20.** 51.20 (11) (a) of the statutes is amended to read:

16 **51.20 (11) (a)** If before involuntary commitment a jury is demanded by the
17 individual against whom a petition has been filed under sub. (1) or by the individual's
18 counsel if the individual does not object, the court shall direct that a jury of 6 people
19 be selected to determine if the allegations specified in sub. (1) (a), (ar) or (av) are true.
20 A jury trial is deemed waived unless demanded at least 48 hours in advance of the
21 time set for final hearing, if notice of that time has been previously provided to the
22 subject individual or his or her counsel. If a jury trial demand is filed within 5 days
23 of detention, the final hearing shall be held within 14 days of detention. If a jury trial

1 demand is filed later than 5 days after detention, the final hearing shall be held
 2 within 14 days of the date of demand. If an inmate of a ~~state~~ prison, county jail or
 3 house of correction demands a jury trial within 5 days after the probable cause
 4 hearing, the final hearing shall be held within 28 days of the probable cause hearing.
 5 If an inmate of a ~~state~~ prison, county jail or house of correction demands a jury trial
 6 later than 5 days after the probable cause hearing, the final hearing shall be held
 7 within 28 days of the date of demand.

History: 1975 c. 430; 1977 c. 26, 29; 1977 c. 187 ss. 42, 43, 134, 135; 1977 c. 428 ss. 29 to 65,115; 1977 c. 447,449; Sup. Ct. Order, 83 W (2d) xiii; 1979 c. 32, 89; Sup. Ct. Order, eff. 1-1-80; 1979 c. 110 s. 60 (1); 1979 c. 175 s. 53; 1979 c. 300, 336, 356; 1981 c. 20,367; 1981 c. 390 s. 252; 1983 a. 27,219; 1983 a. 474 s. 2 to 9m, 14; 1985 a. 29 ss. 1067 to 1071, 3200 (56), 3202 (56); 1985 a. 139, 176, 321, 332; 1987 a. 27; Sup. Ct. Order, 141 W (2d) xiii (1987); 1987 a. 366, 394, 403; 1989 a. 31, 334; 1993 a. 98, 196, 227, 316, 451, 474; 1995 a. 77, 201, 268, 292, 440; Sup. Ct. Order No. 96/08, 207 W (2d) xv (1997); 1997 a. 35, 130, 237, 283.

8 SECTION 21. 51.20 (13) (a) 3. of the statutes is amended to read:

9 51.20 (13) (a) 3. If the individual is not an inmate of a ~~state~~ prison, county jail
 10 or house of correction and the allegations specified in sub. (1) (a) are proven, order
 11 commitment to the care and custody of the appropriate county department under s.
 12 51.42 or 51.437, or if inpatient care is not required order commitment to outpatient
 13 treatment under care of such county department; or

History: 1975 c. 430; 1977 c. 26, 29; 1977 c. 187 ss. 42, 43, 134, 135; 1977 c. 428 ss. 29 to 65, 115; 1977 c. 447,449; Sup. Ct. Order, 83 W (2d) xiii; 1979 c. 32, 89; Sup. Ct. Order, eff. 1-1-80; 1979 c. 110 s. 60 (1); 1979 c. 175 s. 53; 1979 c. 300, 336, 356; 1981 c. 20,367; 1981 c. 390 s. 252; 1983 a. 27,219; 1983 a. 474 ss. 2 to 9m, 14; 1985 a. 29 ss. 1067 to 1071, 3200 (56), 3202 (56); 1985 a. 139,176,321,332; 1987 a. 27; Sup. Ct. Order, 141 W (2d) xiii (1987); 1987 a. 366, 394, 403; 1989 a. 31,334; 1993 a. 98, 196, 227, 316, 451, 474; 1995 a. 77, 201, 268, 292, 440; Sup. Ct. Order No. 96/08, 207 W (2d) xv (1997); 1997a.35,130,237,283.

14 SECTION 22. 51.20 (13) (a) 4. of the statutes is amended to read:

15 51.20 (13) (a) 4. If the individual is an inmate of a ~~state~~ prison and the
 16 allegations under sub. (1) (a) or (ar) are proven, order commitment to the department
 17 and either authorize the transfer of the inmate to a state treatment facility or if
 18 inpatient care is not needed authorize treatment on an outpatient basis in the prison;
 19 or

History: 1975 c. 430; 1977 c. 26, 29; 1977 c. 187 ss. 42, 43, 134, 135; 1977 c. 428 ss. 29 to 65,115; 1977 c. 447, 449; Sup. Ct. Order, 83 W (2d) xiii; 1979 c. 32, 89; Sup. Ct. Order, eff. 1-1-80; 1979 c. 110 s. 60 (1); 1979 c. 175 s. 53; 1979 c. 300, 336, 356; 1981 c. 20,367; 1981 c. 390 s. 252; 1983 a. 27,219; 1983 a. 474 ss. 2 to 9m, 14; 1985 a. 29 ss. 1067 to 1071, 3200 (56), 3202 (56); 1985 a. 139, 176, 321, 332; 1987 a. 27; Sup. Ct. Order, 141 W (2d) xiii (1987); 1987 a. 366, 394, 403; 1989 a. 31,334; 1993 a. 98, 196, 227, 316, 451, 474; 1995 a. 77, 201, 268, 292, 440; Sup. Ct. Order No. 96/08, 207 W (2d) xv (1997); 1997 a. 35, 130, 237, 283

20 SECTION 23. 51.20 (13) (a) 5. of the statutes is amended to read:

1 51.20 (13) (a) 5. If the allegations specified in sub. (1) (a) are proven and the
2 subject individual is a nonresident who is not an inmate of a prison, order
3 commitment to the department.

History: 1975 c. 430; 1977 c. 26, 29; 1977 c. 187 ss. 42, 43, 134, 135; 1977 c. 428 ss. 29 to 65, 115; 1977 c. 447, 449; Sup. Ct. Order, 83 W (2d) xiii; 1979 c. 32, 89; Sup. Ct. Order, eff. 1-1-80, 1979 c. 110 s. 60 (1); 1979 c. 175 s. 53; 1979 c. 300, 336, 356; 1981 c. 20, 367; 1981 c. 390 s. 252; 1983 a. 27, 219; 1983 a. 474 ss. 2 to 9m, 14; 1985 a. 29 ss. 1067 to 1071, 3200 (56), 3202 (56); 1985 a. 139, 176, 321, 332; 1987 a. 27; Sup. Ct. Order, 141 W (2d) xiii (1987); 1987 a. 366, 394, 403; 1989 a. 31, 334; 1993 a. 98, 196, 227, 316, 451, 474; 1995 a. 77, 201, 268, 292, 440; Sup. Ct. Order No. 96-03, 207 W (2d) xv (1997); 1997 a. 35, 130, 237, 283.

4 SECTION 24. 51.20 (13) (g) 2m. of the statutes is amended to read:

5 51.20 (13) (g) 2m. In addition to the provisions under subds. 1., 2. and 2g., no
6 commitment ordered under par. (a) 4. or 4m. may continue beyond the inmate's date
7 of release ~~on parole or extended supervision, as determined under s. 302.11 or~~
8 ~~302.113, whichever is applicable.~~

History: 1975 c. 430; 1977 c. 26, 29; 1977 c. 187 ss. 42, 43, 134, 135; 1977 c. 428 ss. 29 to 65, 115; 1977 c. 447, 449; Sup. Ct. Order, 83 W (2d) xiii; 1979 c. 32, 89; Sup. Ct. Order, eff. 1-1-80, 1979 c. 110 s. 60 (1); 1979 c. 175 s. 53; 1979 c. 300, 336, 356; 1981 c. 20, 367; 1981 c. 390 s. 252; 1983 a. 27, 219; 1983 a. 474 ss. 2 to 9m, 14; 1985 a. 29 ss. 1067 to 1071, 3200 (56), 3202 (56); 1985 a. 139, 176, 321, 332; 1987 a. 27; Sup. Ct. Order, 141 W (2d) xiii (1987); 1987 a. 366, 394, 403; 1989 a. 31, 334; 1993 a. 98, 196, 227, 316, 451, 474; 1995 a. 77, 201, 268, 292, 440; Sup. Ct. Order No. 96-08, 207 W (2d) xv (1997); 1997 a. 35, 130, 237, 283.

9 SECTION 25. 51.20 (19) (b) 1. of the statutes is amended to read:

10 ~~Strike~~ 51.20 (19) (b) 1. Establishing standards for the use of psychotropic drugs on
11 ~~prisoners in a state~~ inmates of a prison and inmates committed under sub. (1) (ar).

History: 1975 c. 430; 1977 c. 26, 29; 1977 c. 187 ss. 42, 43, 134, 135; 1977 c. 428 ss. 29 to 65, 115; 1977 c. 447, 449; Sup. Ct. Order, 83 W (2d) xiii; 1979 c. 32, 89; Sup. Ct. Order, eff. 1-1-80, 1979 c. 110 s. 60 (1); 1979 c. 175 s. 53; 1979 c. 300, 336, 356; 1981 c. 20, 367; 1981 c. 390 s. 252; 1983 a. 27, 219; 1983 a. 474 ss. 2 to 9m, 14; 1985 a. 29 ss. 1067 to 1071, 3200 (56), 3202 (56); 1985 a. 139, 176, 321, 332; 1987 a. 27; Sup. Ct. Order, 141 W (2d) xiii (1987); 1987 a. 366, 394, 403; 1989 a. 31, 334; 1993 a. 98, 196, 227, 316, 451, 474; 1995 a. 77, 201, 268, 292, 440; Sup. Ct. Order No. 96-08, 207 W (2d) xv (1997); 1997 a. 35, 130, 237, 283.

12 SECTION 26. 51.30 (4.) (b) 10. (intro.) of the statutes is amended to read:

13 51.30 (4) (b) 10. (intro.) To a correctional facility or to a probation, extended
14 supervision and parole agent who is responsible for the supervision of an individual
15 who is receiving inpatient or outpatient evaluation or treatment under this chapter
16 in a program that is operated by, or is under contract with, the department or a
17 county department under s. 51.42 or 51.437, or in a treatment facility, as a condition
18 of the probation, extended supervision and parole supervision plan, or whenever
19 such an individual is transferred from a state or local correctional facility or a private
20 prison as defined in s. 111.01 to such a treatment program and is then transferred back
21 to the correctional facility. Every probationer, parolee or person on extended

1 supervision who receives evaluation or treatment under this chapter shall be
2 notified of the provisions of this subdivision by the individual's probation, extended
3 supervision and parole agent. Release of records under this subdivision is limited
4 to:

History: 1975 c. 430; 1977 c. 26 s. 75; 1977 c. 61, 428; 1979 c. 110 s. 60 (1); 1983 a. 27, 292, 398, 538; 1985 a. 29, 176; 1985 a. 292 s. 3; 1985 a. 332 ss. 97, 98, 251 (1); 1987 a. 352, 355, 362, 367, 399, 403; 1989 a. 31, 334, 336; 1991 a. 39, 189; 1993 a. 196, 445, 479; 1995 a. 169, 440; 1997 a. 35, 231, 237, 283, 292; s. 13.93 (2) (c).

5 **SECTION 27. 51.30 (4) (b) 12.** of the statutes is amended to read:

6 51.30 (4) (b) 12. To a correctional officer of the department of corrections or an
7 employee of a private prison, as defined in ~~§ 13.93 (2) (c)~~, who has custody of or is responsible
8 for the supervision of an individual who is transferred or discharged from a
9 treatment facility. Records released under this subdivision are limited to notice of
10 the subject individual's change in status,

History: 1975 c. 430; 1977 c. 26 s. 75; 1977 c. 61, 428; 1979 c. 110 s. 60 (1); 1983 a. 27, 292, 398, 538; 1985 a. 29, 176; 1985 a. 292 s. 3; 1985 a. 332 ss. 97, 98, 251 (1); 1987 a. 352, 355, 362, 367, 399, 403; 1989 a. 31, 334, 336; 1991 a. 39, 189; 1993 a. 196, 445, 479; 1995 a. 169, 440; 1997 a. 35, 231, 237, 283, 292; s. 13.93 (2) (c).

11 **SECTION 28. 51.35 (1) (a)** of the statutes is amended to read:

12 51.35 (1) (a) The department or the county department under s. 51.42 or 51.437
13 may transfer any patient or resident who is committed to it, or who is admitted to
14 a facility under its supervision or operating under an agreement with it, between
15 treatment facilities or, with the exception of a person committed under s. 51.20 (13)
16 (a) 4. ^{or 4m. ↓} firm facility into the community if such transfer is consistent with
17 reasonable medical and clinical judgment and consistent with s. 51.22 (5). The
18 transfer shall be made in accordance with par. (e). Terms and conditions which will
19 benefit the patient or resident may be imposed as part of a transfer to a less
20 restrictive treatment alternative. A patient or resident who is committed to the
21 department or a county department under s. 51.42 or 51.437 may be required to take
22 medications and receive treatment, subject to the right of the patient or resident to
23 refuse medication and treatment under s. 51.61 (1) (g) and (h), through a community

1 support program as a term or condition of a transfer. The patient or resident shall
2 be informed at the time of transfer of the consequences of violating such terms and
3 conditions, including possible transfer back to a facility which imposes a greater
4 restriction on personal freedom of the patient or resident.

History: 1975 c. 430 ss.18, 81; 1977 c. 26, 29, 428; 1979 c. 110 s. 60 (1); 1981 c. 74 s. 2; 1981 c. 314 s.144; 1983 a. 27, 441, 474; 1985 a. 29, 176, 332; 1987a. 366,403; 1989 a. 31, 56, 107; 1991 a. 39; 1993 a. 451; 1995 a. 27 ss. 3258m, 3259m, 9126 (19); 1995 a. 77,292; 1997 a. 35.

5 **SECTION 29. 51.35 (6) (a)** of the statutes is amended to read:

6 51.35 (6) (a) When the department has notice that any person other than a
7 prisoner or ~~an~~ inmate ~~of~~ a private prison, ~~as defined in s. 45.30,~~ is entitled to receive care
8 and treatment in a U.S. department of veterans affairs facility, the person may
9 petition the department of health and family services for a transfer to such facility,
10 and that department may procure admission to such facility in accordance with s.
11 45.30.

History: 1975 c. 430 ss.18, 81; 1977 c.26, 29, 428; 1979 c. 110 s. 60 (1); 1981 c. 74 s. 2; 1981 c. 314 s.144; 1983 a.27, 441, 474; 1985 a.29, 176, 332; 1987a.366.403; 1989 a.31, 56, 107; 1991 a. 39; 1993 a.451.1995 a. 27 ss. 3258m, 3259m, 9126 (19); 1995 a. 77,292, 1997 a. 35.

12 **SECTION 30. 51.37 (5) (a)** of the statutes is amended to read:

13 51.37 (5) (a) ~~When a~~ A licensed physician or licensed psychologist of a state
14 prison, of a county jail or of the department of corrections ~~reports in writing may~~
15 submit written reports regarding prisoners, and ^{prison's} the medical director or any licensed
16 psychologist may submit written reports regarding inmates ^{of a} private prison ~~as~~
17 defined in s. 45.30 to the officer in charge of a jail or institution. If the report states that
18 any prisoner or any private prison inmate is, in his or her the opinion of the medical
19 director or psychologist, mentally ill, drug dependent, or developmentally disabled
20 and is appropriate for treatment as described in s. 51.20 (1), or is an alcoholic and
21 is dangerous as described in s. 51.45 (13) (a) 1. and 2.; or that the prisoner or inmate
22 is mentally ill, drug dependent, developmentally disabled or is an alcoholic and is in
23 need of psychiatric or psychological treatment, and that the prisoner or inmate

1 voluntarily consents to a transfer for treatment, the officer shall make a written
 2 report to the department of corrections which may transfer the prisoner or authorize
 3 the transfer of the private prison inmate if a voluntary application is made and the
 4 department of health and family services consents. If ~~voluntary application is not~~
 5 ~~made~~ the prisoner does not voluntarily consent to a transfer for treatment, the
 6 department of corrections may file a petition for involuntary commitment under s.
 7 51.20 (1) or 51.45 (13). If the private prison inmate ~~of~~ ^{prison's} does not voluntarily consent
 8 to a transfer for treatment, the medical director of the private prison shall file a
 9 petition for involuntary commitment under s. 51.20 (1) or 51.45 (13). Any time spent
 10 by a prisoner in an institution designated under sub. (3) or s. 51.37 (2), 1983 stats.,
 11 shall be included as part of the individual's sentence.

History: 1975 c. 430; 1977 c. 418 ss. 360 to 362, 929 (55); 1977 c. 428 ss. 80, 81, 115; 1977 c. 447; 1977 c. 449 s. 497; 1979 c. 32, 117, 175, 221; 1983 a. 27, 359, 474; 1985 a. 29 ss. 1075 to 1077, 3200 (56), 3202 (23); 1985 a. 176; 1987 a. 307, 394; 1989 a. 31, 359; 1991 a. 39, 269; 1995 a. 27 s. 9126 (19); 1995 a. 292; 1997 a. 181, 283.

SECTION 31. 51.37 (5) (b) of the statutes is amended to read:

13 51.37 (5) (b) The department of corrections ^{prison's} ~~or the medical director of the private~~
 14 ~~prison~~ ~~defined in~~ if the individual is an inmate of the private prison, may
 15 authorize an emergency transfer of an individual from a prison, jail or other criminal
 16 detention facility to a state treatment facility if there is cause to believe that the
 17 individual is mentally ill, drug dependent or developmentally disabled and exhibits
 18 conduct which constitutes a danger as described in s. 51.20 (1) (a) 2. a., b., c. or d. of
 19 physical harm to himself or herself or to others, or is mentally ill and satisfies the
 20 standard under s. 51.20 (1) (a) 2. e. or is an alcoholic and is dangerous as provided
 21 in s. 51.45 (13) (a) 1. and 2. The correctional custodian of the sending institution shall
 22 execute a statement of emergency detention or petition for emergency commitment
 23 for the individual and deliver it to the receiving state treatment facility. The
 24 department of health and family services shall file the statement or petition with the

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SECTION 31

1 court within 24 hours after receiving the subject individual for detention. The
2 statement or petition shall conform to s. 51.15 (4) or (5) or 51.45 (12) (b). After an
3 emergency transfer is made, the director of the receiving facility may file a petition
4 for continued commitment under s. 51.20 (1) or 51.45 (13) or may return the
5 individual to the institution from which the transfer was made. As an alternative
6 to this procedure, the emergency detention procedure in s. 51.15 or 51.45 (12) may
7 be used, except that no prisoner or inmate may be released without the approval of
8 the court which directed confinement in the institution.

9 ^{MA.R. (C)} SECTION 32. 51.37 (5) (b) of the statutes, as ^{affected} amended by 1995 Wis. Act 292 and

10 1999 Wis. Act (this act), is amended to read: Wisconsin

11 51.37 (5)(b) The department of corrections ^{prison's} or the medical director of ~~a private prison~~

12 as defined in if the individual is an inmate ~~of the~~ private prison, may authorize
13 an emergency transfer of an individual from a prison, jail or other criminal detention
14 facility to a state treatment facility if there is cause to believe that the individual is
15 mentally ill, drug dependent or developmentally disabled and exhibits conduct
16 which constitutes a danger as described in s. 51.20 (1) (a) 2. of physical harm to
17 himself or herself or to others, or is an alcoholic and is dangerous as provided in s.
18 51.45 (13) (a) 1. and 2. The correctional custodian of the sending institution shall
19 execute a statement of emergency detention or petition for emergency commitment
20 for the individual and deliver it to the receiving state treatment facility. The
21 department of health and family services shall file the statement or petition with the
22 court within 24 hours after receiving the subject individual for detention. The
23 statement or petition shall conform to s. 51.15 (4) or (5) or 51.45 (12) (b). After an
24 emergency transfer is made, the director of the receiving facility may file a petition
25 for continued commitment under s. 51.20 (1) or 51.45 (13) or may return the

1 individual to the institution from which the transfer was made. As an alternative
2 to this procedure, the emergency detention procedure in s. 51.15 or 51.45 (12) may
3 be used, except that no prisoner or inmate may be released without the approval of
4 the court which directed confinement in the institution,

History: 1975 c. 430; 1977 c. 418 ss. 360 to 362,929 (55); 1977 c. 428 ss. 80, 81, 115; 1977 c. 447; 1977 c. 449 s. 497; 1979 c. 32, 117, 175, 221; 1983 a. 27, 359, 474; 1985 a. 29 ss. 1075 to 1077, 3200 (56), 3202 (23); 1985 a. 176; 1987 a. 307, 394; 1989 a. 31,359; 1991 a. 39,269; 1995 a. 27 s. 9126 (19); 1995 a. 292; 1997 a. 181,283.

5 **SECTION 33. 51.37 (8) (a)** of the statutes is amended to read:

6 51.37 (8) (a) Rights to reexamination under s. 51.20 (16) apply to a prisoner or
7 inmate who is found to be mentally ill or drug dependent except that the petition
8 shall be made to the court that made the finding or, if the prisoner or inmate is
9 detained by transfer, to the circuit court of the county in which he or she is detained.

10 If upon rehearing it is found that the standards for recommitment under s. 51.20 (13)
11 (g) no longer apply to the prisoner or inmate or that he or she is not in need of
12 psychiatric or psychological treatment, the prisoner or inmate shall be returned to
13 the prison or county jail or house of correction unless ^{plain space} ~~it~~ one of the following applies:

14 1. In the case of a prisoner, it is past his or her release date as determined under
15 s. 302.11 or 302.113, whichever is applicable, in which case he or she shall be
16 discharged.

301.371(4)

17 2. In the case of ~~an~~ inmate ~~at~~ a private prison, ~~as defined in s. 301.371(4),~~ it is past his
18 or her release date or the sending jurisdiction, as defined in s. 301.371(4), is to transfer the
19 inmate to another facility, in which case the person will be returned to the sending
20 jurisdiction.

History: 1975 c. 430; 1977 c. 418 ss. 360 to 362,929 (55); 1977 c. 428 ss. 80, 81, 115; 1977 c. 447; 1977 c. 449 s. 497; 1979 c. 32, 117, 175, 221; 1983 a. 27, 359, 474; 1985 a. 29 ss. 1075 to 1077, 3200 (56), 3202 (23); 1985 a. 176; 1987 a. 307, 394; 1989 a. 31,359; 1991 a. 39, 269; 1995 a. 27 s. 9126 (19); 1995 a. 292; 1997 a. 181,283.

21 **SECTION 34. 51.37 (8) (b)** of the statutes is amended to read:

22 51.37 (8) (b) If the condition of any prisoner ~~or inmate~~ committed or transferred
23 under this section requires psychiatric or psychological treatment after his or her

1 date of release as determined under s. 302.11 or 302.113, whichever is applicable, the
 2 director of the state treatment facility shall, within a reasonable time before the
 3 release date of the prisoner ~~or inmate~~, make a written application to the court which
 4 committed the prisoner or inmate under sub. (5) (a). Thereupon, the proceeding shall
 5 be upon application made under s. 51.20, but no physician or psychologist who is
 6 connected with a state prison, Winnebago or Mendota ~~ment health ins. state~~ ^{STET} or any
 7 county jail or house of correction may be appointed as an examiner. If the court does
 8 not commit the prisoner ~~or inmate~~, it may dismiss the application and order the
 9 prisoner ~~or inmate~~ returned to the institution from which he or she was transferred
 10 until the release date of the prisoner ~~or inmate~~. If the court commits the prisoner ~~or~~
 11 ~~inmate~~ for the period commencing upon his or her release date, the commitment
 12 shall be to the care and custody of the county department under s. 51.42 or 51.437.

13 ~~here~~

14 a. History: 1975 c. 430; 1977 c. 418 ss. 360 to 362, 929 (55); 1977 c. 428 ss. 80, 81, 115; 1977 c. 447; 1977 c. 449 s. 497; 1979 c. 32, 117, 175, 221; 1983 a. 27, 359, 474; 1985 a. 29 ss. 1075 to 1077, 3200 (56), 3202 (23); 1985 a. 176; 1987 a. 307, 394; 1989 a. 31, 359; 1991 a. 39, 269; 1995 a. 27 s. 9126 (19); 1995 a. 292; 1997 a. 181, 283.

SECTION 35. 51.37 (11) of the statutes is renumbered 51.37 (11) (a).

15 a. History: 1975 c. 430; 1977 c. 418 ss. 360 to 362, 929 (55); 1977 c. 428 s. 80, 81, 115; 1977 c. 447; 1977 c. 449 s. 497; 1979 c. 32, 117, 175, 221; 1983 a. 27, 359, 474; 1985 a. 29 ss. 1075 to 1077, 3200 (56), 3202 (23); 1985 a. 176; 1987 a. 307, 394; 1989 a. 31, 359; 1991 a. 39, 269; 1995 a. 27 s. 9126 (19); 1995 a. 292; 1997 a. 181, 283.

SECTION 36. 51.37 (11) (b) of the statutes is created to read:

16 51.37 (11) (b) When an individual who is in the custody of a private prison is
 17 transferred & discharged from a treatment facility, the treatment facility shall notify
 18 the private prison and the department of corrections as soon as possible. When an
 19 individual who is in the custody of a private prison is on unauthorized absence from
 20 a treatment facility, the treatment facility shall notify the private prison, the
 21 department of corrections, the sheriff of the county in which the treatment facility
 22 is located and the local law enforcement agency for the city, village or town in which

1 the treatment facility is located as soon as it learns that the individual is on
2 unauthorized absence.

3 SECTION 37. 51.39^I of the statutes is amended to read:

4 **51.39 Resident patients on unauthorized absence.** If any patient who is
5 admitted under s. 51.13, 51.15, 51.20, 51.45 (11) (b), (12) or (13) or 55.06 or ch. 971,
6 975 or 980 or transferred under s. 51.35 (3) or 51.37 is on unauthorized absence from
7 a treatment facility, the sheriff or any other law enforcement agency in the county
8 in which the patient is found or in which it is believed the patient may be present,
9 upon the request of the director, shall take charge of and return the patient to the
10 facility. The costs incident to the return of a person other than ~~an~~ inmate of a private
11 prison ~~as defined in s. 40.01~~ shall be paid out of the facility's operating funds and be
12 charged back to the patient's county of residence. The costs incident to the return
13 of an inmate of a private prison shall be paid by the private prison.

History: 1975 c. 430; 1977 c. 428; 1979 c. 336; 1993 a 479.

14 SECTION 38. 51.42 (3) (as) 1. of the statutes is amended to read:

15 51.42 (3) (as) 1. A county department of community programs shall authorize
16 all care of any patient in a state, local or private facility under a contractual
17 agreement between the county department of community programs and the facility,
18 unless the county department of community programs governs the facility. The need
19 for inpatient care shall be determined by the program director or designee in
20 consultation with and upon the recommendation of a licensed physician trained in
21 psychiatry and employed by the county department of community programs or its
22 contract agency. In cases of emergency, a facility under contract with any county
23 department of community programs shall charge the county department of
24 community programs having jurisdiction in the county where the patient is found.

1 The county department of community programs shall reimburse the facility for the
 2 actual cost of all authorized care and services less applicable collections under s.
 3 46.036, unless the department of health and family services determines that a
 4 charge is administratively infeasible, or unless the department of health and family
 5 services, after individual review, determines that the charge is not attributable to the
 6 cost of basic care and services. A county department of community programs may
 7 not reimburse any state institution or receive credit for collections for care received
 8 therein by nonresidents of this state, interstate compact clients, transfers under s.
 9 51.35 (3), and transfers from Wisconsin state prisons under s. 51.37 (5) (a),
 10 commitments under s. 975.01, 1977 stats., or s. 975.02, 1977 stats., or s. 971.14,
 11 971.17 or 975.06 or admissions under s. 975.17, 1977 stats., or children placed in the
 12 guardianship of the department of health and family services under s. 48.427 or
 13 48.43 or under the supervision of the department of corrections under s. 938.183 or
 14 938.355. The exclusionary provisions of s. 46.03 (18) do not apply to direct and
 15 indirect costs which are attributable to care and treatment of the client.

History: 1971 c. 125; 1973 c. 90, 198, 333, 336; 1975 c. 39, 198, 199, 224, 422; 1975 c. 428 s. 16; 1975 c. 430 ss. 24 to 31, 80; 1977 c. 26 ss. 37, 38, 75, 1977 c. 29 ss. 612 to 623p.1656 (18); 1977 c. 193; 1977 c. 203 s. 106; 1977c.272; 1977 c. 354s. 101; 1977 c. 418, 428, 447; 1979 c. 34, 117, 177, 221, 330, 355; 1981 c. 20 ss. 923 to 942, 2202 (20) (d), (n), (q); 1981 c. 93 ss. 105 to 122.186; 1981 c. 329; 1983 a. 27 ss. 1106 to 1112, 2202 (20); 1983 a. 189 ss. 44.329 (5); 1983 a. 192, 239, 365, 375, 524; 1985 a. 29, 120, 176; 1987 a. 3, 27, 199, 339, 366; 1989 a. 31, 122; 1991 a. 39, 274, 315; 1993 a. 16, 437, 445; 1995 a. 27 ss. 3260 to 3262.9126 (19), 9145 (1); 1995 a. 64, 77, 92, 201, 224, 276, 352, 417; 1997 a. 27, 164, 237, 268.

16 **SECTION 39. 51.45 (15) (b)** of the statutes is amended to read:

17 51.45 (15) (b) No provisions of this section may be deemed to contradict any
 18 rules or regulations governing the conduct of any inmate of a ~~state or county~~
 19 correctional institution who is being treated in an alcoholic treatment program
 20 within the institution.

History: 1973 c. 198; 1975 c. 200, 428; 1975 c. 430 s. 80; 1977 c. 29; 1977 c. 187 ss 44, 134, 135; 1977 c. 203 s. 106, 1977 c. 428; 1977 c. 449 s. 497; Sup. Ct. Order, 83 W (2d) xiii (1987); 1979 c. 32 s. 92 (11); Sup. Ct. Order, eff. 1-1-80; 1979c. 221 ss 417.2200 (20); 1979 c. 300, 331, 356; 1981 c. 20; 1981 c. 79 s. 17; 1981 c. 289, 314; 1983 a. 27 Ss. 1116 to 1121.2202 (20); 1985 a. 29 s. 3202 (56); 1985 a. 139; 1985 a. 176 ss. 533 to 556.615; 1985 a. 265; 1985 a. 332 s. 251 (1); 1987 a. 339, 366, 1989 a. 31, 336, 359; 1991 a. 39; 1993 a. 16, 27, 213, 451, 490; 1993a.3268.9126 (1); 1995 a. 77, 225; 1997 a. 27, 35, 237.

21 **SECTION 40. 51.61 (1) (c)** of the statutes is amended to read:

1 51.61 (1) (c) Have an unrestricted right to send sealed mail and receive sealed
 2 mail to or from legal counsel, the courts, governmental officials, private physicians
 3 and licensed psychologists, and have reasonable access to letter writing materials
 4 including postage stamps. A patient shall also have a right to send sealed mail and
 5 receive sealed mail to or from other persons, subject to physical examination in the
 6 patient's presence if there is reason to believe that such communication contains
 7 contraband materials or objects which threaten the security of patients, prisoners,
 8 ~~inmates of a private prison~~ ^{inmates of a private prison} or staff. Such reasons shall be written in the individual's
 9 treatment record. The officers and staff of a facility may not read any mail covered
 10 by this paragraph.'

History: 1975 c. 430; 1977 c. 428 ss. 96 to 109, 115; 1981 c. 20; 1981 c. 314 s. 144; 1983 a. 189 s. 329 (5); 1983 a. 293, 357, 538; 1985 a. 176; 1987 a. 366, 367, 403; 1989 a. 31; 1993 a. 184, 445, 479; 1995 a. 27 s. 9126 (19); 1995 a. 92, 268, 292; 1997a.292.

11 SECTION 41. 59.29 (1) (b) of the statutes is amended to read:

12 59.29 (1) (b) Whenever a person convicted of, or charged with, any felony, the
 13 punishment for which is not less than 5 years' imprisonment, ~~shall escape, or~~
 14 ~~escapes,~~ whenever any such felony ~~shall be~~ is committed by any unknown person or
 15 persons ~~or whenever an inmate of a private prison, as defined in s. 59.29, escapes,~~ the
 16 sheriff of the county from which such escape was made or in which such felony was
 17 committed may, with the consent of the chairperson of the board of such county when
 18 such board is not in session, and with the consent of the board when it is in session,
 19 offer such reward for the apprehension and delivery of such escaped person, or the
 20 apprehension or conviction of the perpetrator of such felony as the sheriff considers
 21 necessary, not exceeding \$1,000 in any one case; but no such reward or any part
 22 thereof shall be paid to any such sheriff, undersheriff or any deputy. The right to any
 23 such reward shall be determined finally by such sheriff; and if more than one person
 24 claims the reward the sheriff shall determine what portion, if any, the claimants are

1 entitled to, and shall certify the determination to the treasurer, and such certificate
2 shall be the treasurer's authority for paying the sum so certified.

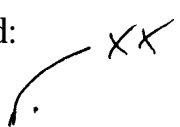
3 History: 1977 C. 449; 1991 a. 316; 1995 a. 201 ss. 285, 289, 290; 1999 a. 225; 1997 a 35.

SECTION 42. 77.996 (2) (f) of the statutes is amended to read:

4 77.996 (2) (f) Facilities that are located at a state prison or other state or county
5 penal institution.

6 History: 1997 a 27.

SECTION 43. 101.123 (1) (dq) of the statutes is created to read:

7 101.123 (1) (dq) "Private prison" has the meaning given in s. 

8 SECTION 44. 101.123 (1) (ds) of the statutes is created to read:

9 101.123 (1) (ds) "Private prison operator" has the meaning given in s. 

10 SECTION 45. 101.123 (2) (a) 6m. of the statutes is created to read:

11 101.123 (2) (a) 6m. Private prisons.

12 SECTION 46. 101.123 (4) (am) 2m. of the statutes is created to read:

13 101.123 (4) (am) 2m. A private prison operator may designate areas where
14 smoking is permitted in a private prison, unless a fire marshal, law or resolution
15 prohibits smoking in the area. A private prison operator may designate an entire
16 room as a smoking area in a private prison.

17 SECTION 47. 101.123 (4) (bm) of the statutes is amended to read:

18 101.123 (4) (bm) The person in charge of a state institution, jail or lockup
19 facility, or his or her agent, or a private prison operator in the case of a private prison,
20 shall post notice of the designation of a smoking area under par. (am) in or near the
21 area designated. If an entire room is designated a smoking area, the person in charge
22 or his or her agent or the private prison operator shall post notice of the designation
23 conspicuously on or near all normally used entrances to the room. If an entire
24 building in a prison, secured correctional facility, jail or lockup facility is designated

1 a smoking area, the person in charge, or his or her agent, or the nprivate prison
2 operator shall post notice of the designation on or near all normally used entrances
3 to the building, but need not post notice of the designation on or near entrances to
4 rooms within the building.

History: 1983 a. 211; 1985 a. 332 s. 253; 1987 a. 161 s. 13m; 1987 a. 403 s. 256; 1989 a. 97, 107, 251, 336; 1991 a. 28, 39, 130; 1993 a. 27, 313; 1995 a. 27 ss. 3661, 9126 (19); 1995 a. 77, 201, 404.

5 **SECTION 48.** 115.762 (4) of the statutes is amended to read:

6 **115.762 (4) LIMITATION.** Nothing in this subchapter requires that special
7 education and related services be provided to a child with a disability who is at least
8 18 years old but not yet 22 years old and who, in the child's educational placement
9 before his or her incarceration in a ~~state~~ prison, was not identified as a child with a
10 disability or for whom an individualized education program was not developed.

History: 1997 a. 164.

11 **SECTION 49.** 115.787 (6) (a) 1. of the statutes is amended to read:

12 115.787 (6) (a) 1. The requirements relating to participation of children with
13 disabilities in general assessments under sub. (2) (e) do not apply to a child with a
14 disability who is convicted of a crime under state law and incarcerated in a state
15 prison or who is incarcerated in a nprivate prison.

History: 1997 a. 164.

16 **SECTION 50.** 115.787 (6) (a) 2. of the statutes is amended to read:

17 **115.787 (6) (a) 2.** The requirements relating to transition planning and
18 transition services under sub. (2) (g) 1. and 2. do not apply with respect to a child with
19 a disability who is convicted of a crime under state law and incarcerated in a state
20 prison or who is incarcerated in a private prison and whose eligibility under this
21 subchapter will end, because of his or her age, before he or she will be released from
22 prison.

History: 1997 a. 164.

23 **SECTION 51.** 115.787 (6) (b) of the statutes is amended to read:

1 115.787 (6) (b) If a child with a disability is convicted of a crime and
 2 incarcerated in a state prison or is incarcerated in a private prison, the child's
 3 individualized education program team may modify the child's individualized
 4 education program or placement notwithstanding the requirements of sub. (1) and
 5 s. 115.79 (1) if the department of corrections or the private prison operator, as defined
 6 in s. ^{301.01(2m)✓}, has demonstrated a bona fide security or compelling penological interest that
 7 cannot otherwise be accommodated.

8 **History:** 1997 a. 164.

8 **SECTION 52.** 157.02 (1) [✓] of the statutes is renumbered 157.02 (1) (a). [✓]

9 **SECTION 53.** 157.02 (1) (b) [✓] of the statutes is created to read:

10 157.02 (1) (b) When an inmate of a private prison, as defined in s. ^{301.01(2g)✓}, dies, the
 11 the private prison operator, as defined in s. ^{301.01(2m)✓}, shall immediately notify a relative of
 12 the decedent and the sending jurisdiction, as defined in s. ^{301.371(4)✓}. A public officer having
 13 the possession or the disposition of a corpse shall immediately notify a relative of the
 14 decedent and the sending jurisdiction. If no relative is known, or discoverable by use
 15 of ordinary diligence, notice to a relative may be dispensed with.

16 **SECTION 54.** 165.84 (4) [↓] of the statutes is amended to read:

17 165.84 (4) All persons in charge of ~~state~~ penal and correctional institutions
 18 shall obtain fingerprints, according to the fingerprint system of identification
 19 established by the director of the F.B.I., and full face and profile photographs of all
 20 persons received on commitment to these institutions. The prints and photographs
 21 so taken shall be forwarded to the department, together with any other identifying
 22 data requested, within 10 days after the arrival at the institution of the person
 23 committed. Full length photographs in release dress shall be taken immediately
 24 prior to the release of these persons from these state penal and correctional

1 institutions. Immediately after release, these photographs shall be forwarded to the
2 department.

History: 1977 c. 305 s. 64; 1985 a. 29; 1993 a. 407; 1997 a. 283;

3 **SECTION 55. 165.84 (5)** of the statutes is amended to read:

4 165.84 (5) All persons in charge of law enforcement and tribal law enforcement
5 agencies, all clerks of court, all municipal judges where they have no clerks, all
6 persons in charge of ~~state and county~~ penal and correctional institutions, and all
7 persons in charge of state and county probation, extended supervision and parole
8 offices, shall supply the department with the information described in s. 165.83 (2)
9 (f) on the basis of the forms and instructions to be supplied by the department under
10 s. 165.83 (2) (g).

History: 1977 c. 305 s. 64; 1985 a. 29; 1993 a. 407; 1997 a. 283.

11 **SECTION 56. 227.43 (1) (bg)** of the statutes is amended to read:

12 227.43 (1) (bg) Assign a hearing examiner to preside over any hearing or review
13 under ss. 84.30 (18), 84.31 (6) (a), 85.013 (1), 86.073 (3), 86.16 (5), 86.195 (9) (b), 86.32
14 (1) , 114.134 (4) (b) 114.135 (9), 114.20 (19), 175.05 ((b), 194.145 (1), 194.46, 218.01
15 (2) (bd) 2. and (c) 2., (3) (b), (c), (f) l., (fm) 1. and (h) and (3c) (d), 218.11 (7) (a) and
17 (b), 218.22 (4) (a) and (b), 218.32 (4) (a) and (b), 218.41 (4), 218.51 (5) (a) and (b),
17 301.373(10)(a), 301.378(7), 309 (2m) (d), 342.26, 343.69 and 348.25 (9).

History: 1977 c. 418; 1981 c. 20 s. 2202 (1) (b); 1983 a. 27; 1984 a. 182 ss. 16 to 18, 29, 31; Stats. 1985 s. 227.43; 1993 a. 16; 1995 a. 370; 1997 a. 3.27.

18 **SECTION 57. 252.02 (4)** of the statutes is amended to read:

19 252.02 (4) The department may promulgate and enforce rules or issue orders
20 for guarding against the introduction of any communicable disease into the state, for
21 the control and suppression of communicable diseases, for the quarantine and
22 disinfection of persons, localities and things infected or suspected of being infected
23 by a communicable disease and for the sanitary care of jails, ~~state~~ prisons, mental
24 health institutions, schools, hotels and public buildings and connected premises.

1 Any rule or order may be made applicable to the whole or any specified part of the
2 state, or to any vessel or other conveyance. The department may issue orders for any
3 city, village or county by service upon the local health officer. Rules that are
4 promulgated and orders that are issued under this subsection supersede conflicting
5 or less stringent local regulations, orders or ordinances.

6 **History:** 1981 c. 291; 1993 a. 27 s. 284; Stats. 1993 s. 252.02. ↓
SECTION 58. 252.02 (5) of the statutes is amended to read:

7 252.02 (5) If any public officer or employe or any person in charge of any
8 building, vessel, conveyance, jail, ~~state~~ prison, mental health institution or school
9 fails to comply with a rule promulgated or order issued under sub. (4), the
10 department may appoint an agent to execute its rules or orders. Expenses that an
11 agent incurs shall be paid by the unit of government that employs the person or of
12 which the public officer is a member. If the building, vessel, conveyance, mental
13 health institution or school is privately owned the state shall pay the expenses that
14 the agent incurs.

15 **History:** 1981 c. 291; 1993 a. 27 s. 284; Stats. 1993 s. 252.02. ↓
SECTION 59. 252.06 (6) (b) of the statutes is amended to read:

16 252.06 (6) (b) When a person confined in a jail, ~~state~~ prison, mental health
17 institute or other public place of detention has a disease which the local health officer
18 or the director of health at the institution deems dangerous to the health of other
19 residents or the neighborhood, the local health officer or the director of health at the
20 institution shall order in writing the removal of the person to a hospital or other place
21 of safety, there to be provided for and securely kept. Upon recovery the person shall
22 be returned; and if the person was committed by a court or under process the removal

1 order or a copy shall be returned by the local health officer to the committing court
2 officer.

renumbered 252.14 (1) (ad) (intro.) and

History: 1981 c. 7.91; 1983 a. 189 s 329 (19); 1993 a 27 s. 295; Stats. 1993 s. 252.06

3 SECTION 60. 252.14 (1) (ad) of the statutes is amended to read:

(intro.)

4 252.14 (1) (ad), "Correctional officer" ~~has the meaning given in s. 301.28 (1).~~

5 means any of the following:

6 1. A correctional officer, as defined in s. 301.28 (1)

7 2. An out-of-state correctional officer.

CS (B) Section # 252.14(1)(ad) 1. and 2. are created to read: of the statutes

*plain -
7. Nov 9*

History: 1989 a. 201; 1591 a. 32, 39, 160, 189, 269, 315; 1993 a. 27 ss. 326 to 331; Stats. 1993 s. 252.14; 1993 a. 105, 190, 252, 443; 1993 a. 490 s. 143; 1993 a 491, 495; 1995 a. 27 ss. 6322.9145 (1); 1997 a. 27, 35, 67, 75, 175; s. 13.93 (2) (c)

8 SECTION 61. 252.14 (1) (e) of the statutes is created to read:

9 252.14 (1) (e) "Out-of-state correctional officer" means a person employed by
10 the United States or one of its political subdivisions or a federally recognized
11 American Indian tribe or band, other than a person employed by this state or a
12 political subdivision of this state, as a guard or officer whose principal duties are
13 supervision and discipline of persons in custody for the commission or alleged
14 commission of a crime.

15 SECTION 62. 252.14 (1) (f) of the statutes is created to read:

16 252.14 (1) (f) "Private prison" has the meaning given in s. *✓*

17 SECTION 63. 252.14 (2) (intro.) of the statutes is amended to read:

18 252.14 (2) (intro.) No health care provider, peace officer, fire fighter,
19 correctional officer, private orison employe, state patrol officer, jailer or keeper of a
20 jail or person designated with custodial authority by thejailer or keeper, home health
21 agency, inpatient health care facility or person who has access to a validated test
22 result may do any of the following with respect to an individual who has acquired
23 immunodeficiency syndrome or has a positive test for the presence of HIV, antigen
24 or nonantigenic products of HIV or an antibody to HIV, solely because the individual

XX ✓

1 has HIV infection or an illness or medical condition that is caused by, arises from or
2 is related to HIV infection:

History: 1989 a. 201; 1991 a. 32, 39, 160, 189, 269, 315; 1993 a. 27 ss. 326 to 331; Stats. 1993 s. 252.14; 1993 a. 105, 190, 252, 443; 1993 a. 490 s. 143; 1993 a. 491, 495; 1995 a. 27 ss. 6322.9145 (1); 1997 a. 27, 35, 67, 75, 175; s. 13.93 (2) (c).

3 SECTION 64. 252.14 (2) (am) of the statutes is amended to read:

4 252.14 (2) (am) If a peace officer, fire fighter, correctional officer, private prison
5 employee, state patrol officer, jailer or keeper of a jail or person designated with
6 custodial authority by the jailer or keeper, refuse to provide services to the
7 individual.

History: 1989 a. 201; 1991 a. 32, 39, 160, 189, 269, 315; 1993 a. 27 ss. 326 to 331; Stats. 1993 s. 252.14; 1993 a. 105, 190, 252, 443; 1993 a. 490 s. 143; 1993 a. 491, 495; 1995 a. 27 ss. 6322.9145 (1); 1997 a. 27, 35, 67, 75, 175; s. 13.93 (2) (c).

8 SECTION 65. 252.14 (2) (bm) of the statutes is amended to read:

9 252.14 (2) (bm) If a peace officer, fire fighter, correctional officer, private prison
10 employee, state patrol officer, jailer or keeper of a jail or person designated with
11 custodial authority by the jailer or keeper, provide services to the individual at a
12 standard that is lower than that provided other individuals with like service needs.

History: 1989 a. 201; 1991 a. 32, 39, 160, 189, 269, 315; 1993 a. 27 ss. 326 to 331; Stats. 1993 s. 252.14; 1993 a. 105, 190, 252, 443; 1993 a. 490 s. 143; 1993 a. 491, 495; 1995 a. 27 ss. 6322, 9145 (1); 1997 a. 27, 35, 67, 75, 175; s. 13.93 (2) (c).

13 SECTION 66. 252.15 (1) (ab) of the statutes is amended to read:

14 252.15 (1) (ab) "Affected person" means an emergency medical technician, first
15 responder, fire fighter, peace officer, correctional officer, person who is employed at
16 a secured correctional facility, as defined in s. 938.02 (15m), or at a secured child
17 **caring institution, as defined** in s. 938.02 (15g), private prison employee, state patrol
18 officer, jailer or keeper of a jail or person designated with custodial authority by the
19 jailer or keeper, health care provider, employe of a health care provider or staff
20 member of a state crime laboratory.

History: 1985 a. 29, 73, 120; 1987 a. 70 ss. 13 to 27, 36, 1987 a. 403 ss. 136, 256; 1989 a. 200; 1989 a. 201 ss. 11 to 25.36; 1989 a. 298, 359; 1991 a. 269; 1993 a. 16 s. 2567; 1993 a. 27 ss. 332, 334, 337, 340, 342; Stats. 1993 s. 252.15; 1993 a. 32, 183, 190, 252, 395, 491; 1995 a. 27 ss. 6323.9116 (5), 9126 (19); 1995 a. 77, 275; 1997 a. 54, 80, 156, 188.

21 SECTION 67. 252.15 (1) (ad) of the statutes is, amended to read:

renumbered 252.15 (1) (ad) (intro.) and

(S)B Section # 252.15(1)(ad) 1. and 2. of the statutes are created to read:

(intro.)

1

252.15 (1) (ad) "Correctional officer" has the meaning given in s. 301.28(1)

means any of the following:

3

1. A correctional officer, as defined in s. 301.28(1)

4

2. An out-of-state correctional officer,

as defined in s. 252.14(1)(e)

plain No scoring

History: 1985 a. 29, 73, 120; 1987 a. 70 ss. 13 to 27, 36; 1987 a. 403 ss. 136, 256; 1989 a. 200; 1989 a. 201 ss. 11 to 25, 36; 1989 a. 298, 359; 1991 a. 269; 1993 a. 16 s. 2567; 1993 a. 27 ss. 332, 334, 337, 340, 342; Stats. 1993 s. 252.15; 1993 a. 32, 183, 190, 252, 395, 491, 1995a. 27 ss. 6323, 9116 (5), 9126 (19); 1995 a. 77, 275; 1997 a. 54, 80, 156, 188.

5

SECTION 68. 252.15 (1) (au) of the statutes is created to read:

6

252.15 (1) (au) "Private prison" has the meaning given in s.

7

SECTION 69. 252.15 (2) (a) 7. a. of the statutes is amended to read:

8

252.15 (2) (a) 7. a. If all of the conditions under subd. 7. ai. to c. are met, an

9

emergency medical technician, first responder, fire fighter, peace officer, correctional

10

officer, person who is employed at a secured correctional facility, as defined in s.

11

938.02 (15m), or at a secured child caring institution, as defined in s. 938.02 (15g),

12

private prison employe, state patrol officer, jailer or keeper of a jail or person

13

designated with custodial authority by the jailer or keeper who, during the course

14

of providing care or services to an individual; or a peace officer, correctional officer,

15

private prison employe, state patrol officer, jailer or keeper of a jail or person

16

designated with custodial authority by the jailer or keeper who, while searching or

17

arresting an individual or while controlling or transferring an individual in custody;

18

or a health care provider or an employe of a health care provider who, during the

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course of providing care or treatment to an individual or handling or processing

20

specimens of body fluids or tissues of an individual; or a staff member of a state crime

21

laboratory who, during the course of handling or processing specimens of body fluids

22

or tissues of an individual; is significantly exposed to the individual may subject the

23

individual's blood to a test or a series of tests for the presence of HIV, antigen or

1 nonantigenic products of HIV or an antibody to HIV and may receive disclosure of
2 the results.

History: 1985 a. 29, 73, 120; 1987 a. 70 ss. 13 to 27, 36; 1987 a. 403 ss. 136,256; 1989 a. 200; 1989 a. 201 ss. 11 to 25, 36, 1989 a. 298,359; 1991 a. 269; 1993 a. 16 s. 2567; 1993 a. 27 ss. 332, 334, 337, 340, 342; Stats. 1993 s. 252.15; 1993 a. 32, 183, 190, 252, 395, 491; 1995 a. 27 ss. 6323, 9116 (5), 9126 (19); 1995 a. 77,275; 1997 a. 54, 80, 156, 188.

3 SECTION 70. 301.01 (2) (e) of the statutes is created to read:

4 301.01 (2) (e) An inmate of a private prison ~~in this state~~ *as defined in*

5 SECTION 71. 301.01 (2g) and (2m) of the statutes are created to read:

6 (2g) "Private prison" means a building, structure or facility that is used or is
7 to be used for the confinement of one or more individuals who have been sentenced
8 to a term of imprisonment for the commission of a crime and that is or will be operated *in this state*
9 by a person other than the department, a law enforcement agency, as defined in s.
10 165.83 (1) (b), a county, a group of counties acting under s. 302.44, this state and a
11 county or group of counties acting under s. 302.45, the United States or a federally
12 recognized American Indian tribe or band in this state. "Private prison" does not
13 include a building, structure or facility used or to be used solely to confine juveniles
14 alleged or found to be delinquent or a building, structure or facility supervised,
15 maintained and operated by a public, private or voluntary agency under contract
16 with the department under s. 301.08 (1) (b) 2.

17 (2m) "Private prison operator" means a person licensed *or applying for a*
18 ~~license~~ to operate a private prison under s. *301.378*

19 SECTION 72. 301.03 (8m) of the statutes is created to read:

20 301.03 (8m) Supervise the ^{design,} construction and operation of private prisons under
21 *301.372 to 301.379* ss. . The department shall promulgate rules regarding the design, construction and
22 operation of private prisons to ensure the protection of private prison employees,
23 inmates and the public and to help facilitate the confinement, treatment and
24 rehabilitation of inmates. ~~Rules promulgated by the department regarding~~

301.373 (a), 301.378 (7)

1 prisoners confined in Wisconsin state prisons shall not be applicable to inmates
2 confined in private prisons.

3 SECTION 73. 301.03 (12)¹ of the statutes is amended to read:

4 301.03 (12) Cooperate and coordinate its activities with other state and local
5 agencies to provide educational, social, health and other services to offenders, other
6 than inmates of a private prison. and except as provided in s. 302.386 (5).

7 History: 1989 a. 31, 107, 121, 188, 336; 1991 a. 39; 1993 a. 16, 377, 479; 1995 a. 27 ss. 6355, 6356m, 6356p, 9126 (19); 1995 a. 77, 141; 1997 a. 27, 35, 237, 275, 283, 284; s. 13.93 (1) (b).

8 SECTION 74. 301.035 (2)⁴ of the statutes is amended to read:

9 301.035 (2) Assign hearing examiners from the division to preside over
10 ~~hearings under ss. 302.11 (7), 938.357 (5), 973.10 and 975.10 (2) and ch. 304.~~
11 hearings under ss. 302.11 (7), 938.357 (5), 973.10 and 975.10 (2) and ch. 304.

12 History: 1989 a. 31, 107; 1995 a. 77.
13 SECTION 75. 301.035 (4)¹ of the statutes is amended to read:

14 301.035 (4) Supervise employes in the conduct of the activities of the division
15 and be the administrative reviewing authority for decisions of the division under ss.
16 302.11 (7), 938.357 (5), 973.10, 973.155 (2) and 975.10 (2) and ch. 304.

17 History: 1989 a. 31, 107; 1995 a. 77.
18 SECTION 76. 301.105 (intro.)¹ of the statutes is amended to read:

19 **301.105 Telephone company commissions.** (intro.) The department shall
20 collect moneys for commissions from telephone companies for contracts to provide
21 telephone services to ~~inmates~~ prisoners. The department shall transmit those
22 moneys to the state treasurer. The state treasurer shall do all of the following:

23 History: 1993 a. 16.
SECTION 77. 301.287¹ of the statutes is amended to read:

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

SECTION 78. 301.33 (2)¹ of the statutes is amended to read:

1 301.33 (2) Every ~~inmate~~ prisoner shall receive, upon request, religious
2 ministration and sacraments according to the ~~inmate's~~ prisoner's faith.

3 ^{History: 1989 a 31} SECTION 79. 301.33 (3) of the statutes is amended to read:

4 301.33 (3) Every ~~inmate~~ prisoner who requests it shall have the use of the
5 Bible.

6 ^{History: 1989 a 31.} SECTION 80. 301.36 (1) and (6) of the statutes are amended to read:

7 **301.36 General supervision and inspection by department. (1) GENERAL**
8 **AUTHORITY.** The department shall investigate and supervise all of the state
9 correctional institutions, ~~and~~ all secure detention facilities and all private prisons
10 and familiarize itself with all of the circumstances affecting their management and
11 usefulness.

12 (6) **OPPORTUNITY TO INSPECT.** All trustees, managers, directors, superintendents
13 and other officers or employes of the institutions shall at all times afford to every
14 member of the department and its agents, unrestrained facility for inspection of and
15 free access to all parts of the buildings and grounds and to all books and papers of
16 the institutions+ and, in the case of private prisons, the books and papers of the
17 private prison operator and shall give, either verbally or in writing, such information
18 as the department requires. Any person who violates this subsection shall forfeit not
19 less than \$10 nor more than \$100. ~~The department may impose other sanctions~~

20 ~~authorized under s. 301.378 ??? on a private prison operator~~

21 SECTION 81. 301.371 of the statutes is created to read:

22 **301.371 Definitions.** In this section and ss. 301.... :

301.372 + ✓
301.378 ✓

23 (1) "Division" means the division of hearings and appeals in the department of
24 administration.

1 (2) "Political subdivision of this state" means a city, village, town or county.

2 (B) 3 (4) "Security breach" means one of the following:

3 (a) A violation of s. 946.42 (3) by a person whom a sending jurisdiction has
4 committed to a private prison. ^{by a sending jurisdiction}

5 (b) A disturbance at a private prison which ^{that} places any person at imminent risk
6 of great bodily harm, as defined in s. 939.22 (14). ✓

7 (B) 4 (5) "Sending jurisdiction" means the United States or one of its political

8 subdivisions or a federally recognized American Indian tribe or band that contracts

9 with a private prison operator ~~under~~ ^{in a private prison} to confine persons for the commission of a
10 crime.

11 SECTION 82. 301.372 of the statutes is created to read:

12 **301.372 Private prison construction.** No person may commence the

13 construction of a private prison ^{and any application fee} or the conversion of an existing building into a
14 private prison without ^{paying the license fee set under 1999 Wisconsin Act... (this act), section A, and} obtaining a license under s. ~~Nothing in this chapter~~

15 ~~prohibits a political subdivision of this state from enacting or enforcing an ordinance,~~
16 ~~regulation, resolution or other restriction regarding the design, location and manner~~
17 ~~of construction of a private prison.~~ (Check with Marc re preemption — do I need

18 ~~this?~~ ← (H)

19 SECTION 83: 301.373 of the statutes is created to read:

20 **301.373 Private prison operation.** No person may operate a private prison

21 unless the person complies with all of the following requirements:

22 (B) (1) ^{(15) Compliance with license and applicable laws} a private prison
23 (1) A private prison operator shall maintain an operating license and operate and

24 maintain the private prison in a manner consistent with the operating license. A
25 private prison operator shall comply with all laws relating to the construction and ^{designs}

operation of the private prison ~~and~~ ^{with} all rules promulgated by the department

P. 56
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(N sect
31-18

, all orders ~~iss~~ issued
by ~~the~~ the department under
sub. (10)(a) l. a. ✓ ~~301.373~~ sub. (10)(a) max

and all orders
issued by the division M

in the form, manner and frequency required by the department

*reference to Set 165.82
form, manner & frequency*

1 (2) INSURANCE, INDEMNIFICATION AND FINANCIAL STATUS REPORTS. (a) A private
2 prison operator shall periodically provide the department satisfactory proof of
3 insurance or self-insurance. The insurance shall be in an amount sufficient, as
4 determined by the department, to indemnify this state and its officers and employes
5 and political subdivisions of this state and their officers and employes for any
6 expenses, property damage, losses, liability, costs or attorneys fees arising from acts
7 or omissions of the private prison operator, prison employes or inmates in relation
8 to the operation of the private prison.

9 (b) A private prison operator shall indemnify and hold harmless this state and
10 its officers and employes and political subdivisions of this state and their officers and
11 employes for any expenses, property damage, losses, liability, costs or attorneys fees
12 arising from acts or omissions of the private prison operator, prison employes or
13 inmates in relation to the operation of the private prison.

14 (c) A private prison operator shall submit to the department financial status
15 reports in the form and manner required by the department.

16 (3) PRIVATE PRISON EMPLOYES. (a) A private prison operator may not assign an
17 employe responsibility of supervising or disciplining inmates until the employe has
18 completed a training program ^{or as provided} approved by the department. If the department
19 provides the training, the private prison operator shall pay a reasonable fee.

20 (a) A private prison operator may not employ a person at a private prison until
21 the department of justice has completed a criminal history record search. ^{for the person} The
22 department shall require the prospective employe or the private prison operator to
23 pay the cost of the search.

in which the department shall set by rule.

Which and they can pay. set by rule. 165.82

NO
The department shall promulgate rules regarding security for inmates permitted to leave the prison grounds under this subsection.

1 (a) Notwithstanding s. 111.322, a private prison operator may not employ a
2 person who has been convicted of a felony in this state or a violation of the law of
3 another jurisdiction which, if committed in this state, would have been a felony.

4 (4) SECURITY CLASSIFICATION AT PRIVATE PRISONS. A private prison operator may
5 not confine an inmate who would have a maximum security classification under the
6 department's security classification system.

7 (5) LIMITS ON SUBCONTRACTING. A private prison operator may not subcontract
8 with a person for the provision of goods or services on prison grounds without the
9 prior written approval of the department. As a condition of its approval, the
10 department may subject the subcontractor to any requirement of this section or to
11 any department rule. *and s. 301.376*

12 (6) INMATE LEAVE. A private prison operator may not permit an inmate to leave
13 the prison grounds during the time of the inmate's commitment to the private prison
14 unless otherwise ordered by a court, unless approved in writing by the department
15 or unless the inmate requires medical care unavailable within the private prison.

16 (7) A private prison operator shall ^{have} ~~develop~~ written plans, subject to department
17 approval, regarding responding to security breaches, providing medical care to
18 inmates outside of the private prison and transporting inmates to and from the
19 private prison. A private prison operator shall provide written notice to the
20 department if a private prison inmate is returned to the sending jurisdiction, is
21 admitted to a state treatment facility, as defined in s. ^{51.01(15)} ~~51.01~~, or dies.

22 (8) A private prison operator shall designate a licensed physician to act as the
23 prison's medical director.

24 ~~A private prison operator shall pay all license fees, all forfeitures imposed~~
25 under ~~it~~, and all charges assessed under s. ~~301.376~~ (2). The private prison shall
sub (10) *operator* *for which indemnification is required* *par. (a) or (b) or*

(CS)
Required plans; notice

(CS)
Designation of medical director

Insert 33-23

No 4

Attorney's fees and costs

1 reimburse this state, the political subdivisions of this state and any local educational
2 agency, as defined in s. 115.76 (10)¹, for expenses they incur in connection with ~~any~~
3 of the following ~~providing~~ ← No ~~ff~~

4 ~~providing~~ health, mental health or educational services to inmates of private
5 prisons.

6 (4) Any judicial or administrative proceeding involving the care and treatment of
7 inmates of private prisons.

8 (9) ENFORCEMENT. (a) The department may investigate violations of this

9 section, (ss.) or a department rule. If the department determines that a violation has
10 occurred, it may ~~file~~ a petition with the division seeking appropriate relief.

11 2. If the division determines that a person issued a private prison construction or
12 operating license made a material misstatement in an application for a license or fo r
13 renewal of a license or that a person has failed to comply with ~~provisions of~~ this
14 section, (ss.) or a department rule, the person shall forfeit not less than \$100 nor more
15 than \$100,000 per violation. Each day of continued violation constitutes a separate
16 offense.

17 3. If the division determines that a violation of ~~provisions of~~ this section, (ss.) or
18 a department rule may jeopardize public safety or the health or safety of prison staff
19 or inmates, the division shall order the person to remedy the violation by a specific
20 date or deny, limit, suspend or revoke the prison's operating license. or both

21 (b) If the department has reason to believe that any person is violating this section,
22 (ss.) or any rule promulgated by the department, the department, the attorney
23 general or the district attorney of the proper county may, in addition to any other
24 remedies, bring an action in the name and on behalf of this state to ~~enjoin the person~~
25 ~~from~~ committing the violation.

INSECT
34-5

301.374 or 301.376

the terms of a private prison
construction license or a private
prison operating
license,

1.

do one of the following:

At a File

INSECT 34-10

stat

committing

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1 (c) If the department is the prevailing party in any proceeding under this
2 subsection, the person against whom the proceeding was brought shall pay all costs
3 incurred and all attorneys' fees expended by the department in connection with its
4 investigation and the proceedings.

5 SECTION 84. 301.374 of the statutes is created to read:

6 **301.374 Private prison contracts.** No private prison may accept an inmate
7 except pursuant to a written contract meeting the requirements of this section. The
8 contract shall contain provisions regarding delivery and retaking of inmates and any
9 other matters necessary and appropriate to fix the obligations, responsibilities and
10 rights of the sending jurisdiction and the private prison operator. The contract shall
11 be subject to final approval by the department and shall contain substantially the
12 following provisions:

13 (1) The department shall be a third party beneficiary under the contract. If the
14 department assumes responsibility for the operation of the private prison under s.
15 (c), the department will assume the rights of the private prison operator under the
16 contract, but no provisions of the contract, other than the obligation to provide care
17 and treatment to inmates, shall be enforceable against the department. The
18 department may assign its rights under the contract to any other person.

301.374(3)
^

19 (2) Neither the sending jurisdiction nor the private prison may bring an inmate
20 into this state without prior written notice to the department. The sending
21 jurisdiction and the private prison operator shall provide the department of justice
22 and the department of corrections all information requested regarding inmates
23 confined or to be confined in a private prison. The department may direct the return
24 of any inmate to the sending jurisdiction for any reason. The sending jurisdiction
25 shall also resume physical custody of an inmate if the private prison operator returns

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1 the inmate to the sending jurisdiction because of a change in its licensed capacity
2 ^{301.378(6)1} under s. ~~301.378(8)~~ or upon the termination of the contract applicable to the inmate.

3 (c) Except as provided in pars. (g), upon the completion of an inmate's term of
4 imprisonment in the private prison or in a Wisconsin state prison or a county jail in
5 this state under par. (c), the private prison operator shall transport the inmate to the
6 municipality where the inmate was committed by a court to the custody of the
7 sending jurisdiction or to another place agreed upon by the inmate, the department
8 and the sending jurisdiction.

9 (g) If an inmate has a charge pending in this state at the time the inmate is to
10 be released, the inmate shall not be returned to or removed by the sending
11 jurisdiction unless permitted to be returned or removed by the court in which the
12 charge is pending or until the inmate is discharged from prosecution for the offense.

13 (h) If the inmate has been sentenced to a term of imprisonment by a court of this
14 state which has not been completed before the completion of the sending
15 jurisdiction's term of imprisonment or before being released by a court under par. (g),
16 the inmate shall be committed to the Wisconsin state prisons or to a county jail in this
17 state.

concurrent

18 (4) The courts of the sending jurisdiction shall exercise jurisdiction over claims
19 brought by inmates of private prisons regarding the conditions of confinement or
20 under the laws or regulations of the sending jurisdiction. The sending jurisdiction
21 shall provide a venue for such claims.

22 (5) If an inmate of a private prison files an action or special proceeding in this state
23 which, if filed by a prisoner, as defined in s. 806.025 (l), who committed an offense
24 ~~after~~ after September 1, 1998, would subject the prisoner to sanctions under s. 807.15,
25 or if an inmate of a private prison testifies falsely or otherwise knowingly offers false

1 evidence or provides false information to a court of this state, the sending jurisdiction
2 shall impose sanctions on the inmate of a private prison substantially similar to the
3 sanctions to which the prisoner would be subject under s. 807.15. ✓

4 (4) (c) Any provision of the contract that is in conflict with or inconsistent with
5 Wisconsin law or any order issued by or decision of the department or the division
6 shall be void.

7 CS + B # SECTION #. 301.376 of the statutes is created to read:
301.376 Security and emergencies.

8 (1) USE OF FIREARMS AND FORCE AT PRIVATE PRISONS. (a) The department shall
9 promulgate rules regarding the possession of firearms and the use of force by private
10 prison employees. No person may carry a firearm or use force at a private prison
11 except in accordance with department rules.

12 If a security breach occurs or if a prison employe discharges a firearm, the
13 private prison operator shall immediately notify the department, the sheriff of the
14 county in which the security breach or discharge has occurred and the local law
15 enforcement agency for the city, village or town in which the security breach or
16 discharge has occurred.

17 (1) TRANSPORTING INMATES. The department shall promulgate rules regarding
18 the transportation of inmates to and from private prisons. No person may transport
19 an inmate to or from a private prison except in accordance with department rules.
20 If a person transporting an inmate between a sending jurisdiction and a private
21 prison discharges a firearm or if a person he or she is transporting escapes or causes
22 death or serious bodily harm, he or she shall immediately notify the department, the
23 sheriff of the county in which the incident occurs and the local law enforcement
24 agency for the city, village or town in which the incident occurs.

SECTION 84

CS + B

SECTION #. 301.378 of the statutes is created to read: ^{1 (B)} ^{CS} Application procedures

301.378 Private prison licensing. (a) A person seeking a private prison

construction license or a private prison operating license shall apply in the manner

prescribed by the department. After applying for a license, the person shall shall

cooperate fully with all reasonable requests of the department. The department may

hold public hearings as part of its review of an application. The department may not

issue a license unless the applicant complies with all applicable laws and department

rules and pays the license fee and any application fee and set by the department.

^{2 (B)} (1) **INSPECTION OF PRIVATE PRISON.** As part of its review of an application for a

private prison operating license, the department shall inspect the private prison

with respect to public, inmate and prison staff safety, sanitation, adequacy and

fitness ^{for use as a prison} and report any deficiency found to the applicant. The department may

condition the issuance of a license ^{on the applicant} remedying the deficiency.

^{3 (B)} (1) **SECURITY LEVEL** ^{and capacity} - Each operating license shall set the security levels at

which the private prison ^A may operate and the maximum number of inmates to be

confined there. The department's determinations regarding security level and

capacity shall be based on its review and investigation of the application for an

operating license. No statement made by the department regarding security level ^{needed?}

or capacity in connection with an application for or the issuance of a construction

license shall bind the department in its consideration of these issues in connection

with its issuance of an operating license.

^{4 (B)} (3) **NON-TRANSFERABILITY.** Licenses issued by the department under this section

are not transferable.

^{5 (B)} (1) **RENEWAL OF PRIVATE PRISON OPERATING LICENSES.** A private prison operating

license shall be valid for one year, unless the department establishes a shorter term.

1 The renewal of a private prison operating license is subject to the same requirements
2 as those applicable to the initial issuance of such a license.

3 ^(b) (8) CHANGES IN LICENSED CAPACITY. If the department reduces the number of
4 inmates that a private prison may hold under its operating license, the private prison
5 operator shall return inmates in excess of that number to the relevant sending
6 jurisdictions within the time set by the department.

7 ^(b) (4) APPEALS. Any person aggrieved by a decision by the department under this ^{section}
8 ~~chapter and s. 301.373(10)~~ may appeal the order as a contested case under ch. 227 ^{department's}
9 by filing with the division a request for a hearing within 30 days after the date of the
10 written decision.

11 ^(b) (8) ^{Department's takeover of private prison} (CS) If the division suspends or revokes a private prison operating license or if the
12 private prison operating license is not renewed, the department shall assume
13 responsibility for the operation of the prison. If the department assumes
14 responsibility for the operation of the prison for any reason, the private prison
15 operator shall be liable to the department for all costs ^{incurred by the department} in managing or hiring
16 another person to manage the private prison, in addition to ^{forfeitures, attorney fees, costs and other sanctions} any sanction imposed
17 under s. ^{301.373(10)} and any ^{charges for which reimbursement is required} assessed under s. ^{301.373(2)(b) or (9)(a) or (b)} 301.373(2)(b) or (9)(a) or (b).

INSERT
FROM
P. 40-41

18 SECTION 85. 302.01¹ of the statutes is amended to read:

19 302.01 **State prisons named and defined listed.** The ~~penitentiary~~
20 institution at Waupun is named "Waupun Correctional Institution". The
21 correctional treatment center at Waupun is named "Dodge Correctional Institution".
22 The ~~penitentiary~~ institution at Green Bay is named "Green Bay Correctional
23 Institution". The medium/maximum ~~penitentiary~~ institution at Portage is named
24 "Columbia Correctional Institution". The medium security institution at Oshkosh
25 is named "Oshkosh Correctional Institution". The medium security ~~penitentiary~~

1 institution near Fox Lake is named "Fox Lake Correctional Institution". The
 2 penitentiary institution at Taycheedah is named "Taycheedah Correctional
 3 Institution". The medium security penitentiary institution at Plymouth is named
 4 "Kettle Moraine Correctional Institution". The penitentiary institution at the
 5 village of Sturtevant in Racine county is named "Racine Correctional Institution".
 6 The medium security penitentiary institution at Racine is named "Racine Youthful
 7 Offender Correctional Facility". The resource facility at Oshkosh is named
 8 "Wisconsin Resource Center". The institutions named in this section, the
 9 correctional institution authorized under s. 301.16 (In), correctional institution
 10 authorized under 1997 Wisconsin Act 4, section 4 (1)(a), correctional institution
 11 authorized under s. 301.046 (l), correctional institution authorized under s. 301.048
 12 (4) (b), minimum security correctional institutions authorized under s. 301.13, and
 13 state-local shared correctional facilities when established under s. 301.14, and any
 14 correctional institution which ^{that} the department ^{301.378 (2) ✓} operates under s.) are state prisons.

move
to p. 39

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.

SECTION 86. 301.379 of the statutes is created to read:

301.379 License fee determination. The department shall include all of the following with each biennial budget request that it makes under s. 16.42:

(1) A recalculation of all costs the department includes in the budget request that are attributable to the review of applications for and issuance of private prison construction licenses, the review of applications for and issuance and renewals of private prison operating licenses and the supervision of private prisons.

(2) ~~A recalculation~~ ^{The} change ^{to be charged} to the fees for private prison construction licenses, which shall and private prison operating licenses ~~if the change is necessary to~~ reflect the approximate costs of the department that are attributable to its review of

(B) (1)

(B) (2)

to p-39
↑

1 applications, its issuance of licenses^g and its regulation of private prisons. The
 2 department may recommend separate fees for an initial private prison operating
 3 license and for the renewal of a private prison operating license. The department
 4 may recommend variable fees for operating licenses based on the size of the prison
 5 and the costs ~~which~~^{that} the department has incurred or anticipates it will incur in
 6 licensing or supervising individual licensees. The department may recommend a
 7 separate application fee to be paid upon the application for a private prison
 8 construction license or a private prison operating license or both, to cover its
 9 approximate costs of reviewing such applications. If the department imposes a
 10 separate application fee for either type of license, the department shall not consider
 11 the costs of reviewing applications in determining the relevant license fee.

12 **SECTION 87. 302.02 (5) (a)** of the statutes is amended to read:
 13 302.02 (5) (a) Service of process may be made on the warden or superintendent
 14 of any prison named in s. 302.01 or a private prison as upon any other resident of this
 15 state.

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 c. 27.

16 **SECTION 88. 302.02 (5) (b)** of the statutes is amended to read:
 17 **302.02 (5) (b)** Except as provided in par. (a), service of process within any ~~such~~
 18 state or private prison on any officer or employe or inmate thereof shall be made by
 19 the warden or superintendent or some person appointed by the warden or
 20 superintendent to serve process.

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.a. 27.

21 **SECTION 89. 302.055** of the statutes is amended to read:
 22 **302.055 Transfer of inmates to resource center.** The department may
 23 transfer an inmate from a prison, jail or other criminal detention facility & other than

1 a private prison, to the Wisconsin resource center if there is reason to believe that
2 the inmate is in need of individualized care. The inmate is entitled to a transfer
3 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.

4 **SECTION 90. 302.07** of the statutes is amended to read:

5 **302.07 Maintenance of order.** The warden or superintendent shall maintain
6 order, enforce obedience, suppress riots and prevent escapes. For such purposes the
7 warden or superintendent of a state prison may command the aid of the officers of
8 the institution and of persons outside of the prison; and any person who fails to obey
9 such command shall be punished by imprisonment in the county jail not more than
10 one year or by a fine not exceeding \$500. The warden or superintendent of a state
11 prison may adopt proper means to capture escaped inmates.

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

12 **SECTION 91. 302.09** of the statutes is amended to read:

13 **302.09 Labor and communications.** Inmates of a state prison shall be
14 employed as provided in ch. 303. Communication shall not be allowed between
15 inmates and any person outside. the prison except as prescribed by the prison
16 regulations.

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

17 **SECTION 92. 302.095 (2)** of the statutes is amended to read:

18 302.095 (2) Any officer or other person who delivers or procures to be delivered
19 or has in his or her possession with intent to deliver to any inmate confined in a jail
20 or ~~state~~ prison, or who deposits or conceals in or about a jail or prison, or the precincts
21 of a jail or prison, or in any vehicle going into the premises belonging to a jail or
22 prison, any article or thing whatever, with intent that any inmate confined in the jail
23 or prison shall obtain or receive the same, or who receives from any inmate any
24 article or thing whatever with intent to convey the same out of a jail or prison,

1 contrary to the rules or regulations and without the knowledge or permission of the
 2 sheriff or other keeper of the jail, in the case of a jail, or of the warden or
 3 superintendent of the prison, in the case of a prison, shall be imprisoned for not more
 4 than 2 years or fined not more than \$500.

NOTE: NOTE: Sub. (2) is amended eff. 12-31-99 by 1997 Wis. Act 283 to read:NOTE:

1997 Wis. ^{consin} Act 283 and

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SECTION 93. 302.095 (2) of the statutes, as affected by 1999 Wisconsin Act . . .
 (this act), is ~~amended~~ ^{repealed and recreated to read} to read:

302.095 (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, shall be imprisoned for not more than 3 years or fined
 not more than \$500.

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

18 **SECTION 94.** 302.11 (11) of the statutes is created to read:

19 302.11 (11) This section does not apply to an inmate of a private prison.

20 **SECTION 95.** 302.12 (1) of the statutes is amended to read:

21 302.12 (1) The department may provide by rule for the payment of money to
 22 inmates of a state nrison. The rate may vary for different prisoners in accordance
 23 with the pecuniary value of the work performed, willingness, and good behavior. The

1 payment of money to inmates working in the prison industries shall be governed by
2 s. 303.01 (4).

3 History: 1975 c. 396; 1983 a. 27, 66, 528; 1985 a. 332 s. ~~1~~ (6); 1989 a. 31 s. 1631; Stats. 1989 s. 302.12; 1993 a. 16.

3 **SECTION 96.** 302.13 of the statutes is amended to read:

4 **302.13 Preservation of property an inmate brings to prison.** The
5 department shall preserve money and effects, except clothes, in the possession of an
6 inmate when admitted to ~~the~~ a state prison and, subject to the crime victim and
7 witness assistance surcharge under s. 973.045 (4) and the deoxyribonucleic acid
8 analysis surcharge under s. 973.046, shall restore the money and effects to the
9 inmate when discharged.

10 History: 1973 c. 90; 1983 a. 27; 1985 a. 120; 1989 a. 31 s. ~~1~~ 1632; Stats. 1989 s. 302.13; 1993 a. 16.

10 **SECTION 97.** 302.14 of the statutes is amended to read:

11 **302.14 Property of deceased inmates, parolees, probationers or**
12 **persons on extended supervision, disposition.** When an inmate of a state
13 prison, a parolee of ~~an institution~~ a state prison, a person on extended supervision
14 or a person on probation to the department dies leaving an estate of \$150 or less in
15 the trust of the warden, superintendent or secretary, the warden, superintendent or
16 secretary shall try to determine whether or not the estate is to be probated. If probate
17 proceedings are not commenced within 90 days, the warden, superintendent or
18 secretary shall turn over the money or securities to the nearest of kin as evidenced
19 by the records of the institution and the department.

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

20 **SECTION 98.** 302.18 (1) of the statutes is amended to read:

21 302.18 (1) Inmates of a state prison may be transferred and retransferred to
22 another prison by the department.

23 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.

23 **SECTION 99.** 302.27 of the statutes is amended to read:

302.27 Contracts for temporary housing for or detention of prisoners.

The department may contract with local governments for temporary housing or detention in county jails or county houses of correction for persons sentenced to imprisonment in state prisons or to the intensive sanctions program. The department may contract with local governments for temporary housing or detention in county jails or county houses of correction for persons confined in a private prison ~~if the department assumes responsibility for the operation of the private prison.~~ ^{under s. 301.378(8)} if the department assumes responsibility for the operation of the private prison. 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.

SECTION 100. 302.386 (5) (e) of the statutes is created to read:

302.386 (5) (e) An inmate of a private prison.

SECTION 101. 303.063 (1) of the statutes is amended to read:

303.063 (1) The department may establish a secure work program for inmates of state prisons in which the inmates are assigned to work away from the grounds of the institution while appropriately restrained for security purposes.

History: 1995 s. 416.

SECTION 102. 303.069 (title) of the statutes is amended to read:

303.069 ~~Correctional~~ ^(title) **State correctional institution enterprises; activities of inmates.**

History: 1991 a. 39; 1993 a. 437.

SECTION 103. 304.06 (1) (b) of the statutes is amended to read:

304.06 (1) (b) Except as provided in sub. (1m) or s. 302.045 (3), 961.49 (2), 973.01 (6) or 973.0135, the parole commission may parole an inmate of the Wisconsin state prisons or any felon or any person serving at least one year or more in a county house of correction or a county reforestation camp organized under s. 303.07, when

1 he or she has served 25% of the sentence imposed for the offense, or 6 months,
 2 whichever is greater. Except as provided in s. 939.62 (2m) (c) or 973.014 (1) (b) or (c),
 3 (1g) or (2), the parole commission may parole an inmate of a state prison serving a
 4 life term when he or she has served 20 years, as modified by the formula under s.
 5 302.11 (1) and subject to extension under s. 302.11 (1q) and (2), if applicable. The
 6 person serving the life term shall be given credit for time served prior to sentencing
 7 under s. 973.155, including good time under s. 973.155 (4). The secretary may grant
 8 special action parole releases under s. 304.02. The department or the parole
 9 commission shall not provide any convicted offender or other person sentenced to the
 10 department's custody any parole eligibility or evaluation until the person has been
 11 confined at least 60 days following sentencing.

~~NOTE: NOTE: Par. (b) is shown as affected by two acts of the 1997 legislature and as merged by the revisor under s. 13.93 (2) (c). NOTE:~~

History: 1971 c. 125, 219; 1973 c. 90, 198, 333; 1975 c. 156, 199; 1977 c. 29, 353, 418, 449; 1979 c. 356; 1981 c. 266; 1983 a. 27, 64, 197, 528, 538; 1985 a. 262 s. 8; 1987 a. 244 ss. 1 to 3, 7; 1987 a. 412; 1989 a. 31 ss. 1699 to 1700p; Stats. 1989 s. 304.06; 1989 a. 107, 122; 1991 a. 39; 1993 a. 79, 89, 97, 178, 194, 227, 289, 377, 479, 491; 1995 a. 27, 77, 352, 387, 444, 448; 1997 a. 133, 181, 237, 275, 283, 284, 326; s. 13.93(2) (c).

12 **SECTION 104. 447.06 (2) (a) 4. of the statutes is amended to read:**

13 447.06 (2) (a) 4. For a facility, as defined in s. 50.01 (lm), a hospital, as defined
 14 in s. 50.33 (2), a ~~state or federal~~ prison, ~~county jail~~ or other ~~federal, state, county or~~
 15 ~~municipal~~ correctional or detention facility, or a facility established to provide care
 16 for terminally ill patients.

17 History: 1989 a. 349 ss. 13, 16 to 19; 1993 a. 27; 1997 a. 96. **SECTION 105. 782.01 (1) of the statutes is amended to read:**

18 **782.01 (1)** Every person restrained of personal liberty may prosecute a writ of
 19 habeas corpus to obtain relief from such restraint subject to ss. ~~782.02, 782.46, 782.47~~
 20 and 974.06.

21 History: 1971 c. 57; 1973 c. 198; 1977 c. 187, 449; 1979 c. 32 ss. 59, 92(11); 1979 c. 176; Stats. 1979 s. 782.01. **SECTION 106. 782.45 (title) of the statutes is amended to read:**

22 782.45 ^{No (b)} ~~(title)~~ **Witness fees, inmates of state institutions and private**
 23 **prisons.**

1 **SECTION 107.** 782.45 (3) of the statutes is created to read:

2 782.45 (3) If an inmate of a private prison, as defined in s. ^{XX}, is brought into court
3 in response to a writ of habeas corpus or subpoena in a civil action, the party
4 requesting the presence of the inmate shall reimburse the private prison for the time
5 of any private prison employe conducting the inmate and the actual and necessary
6 traveling expenses incurred in taking the inmate into court on the process and
7 returning the inmate to the institution.

8 **SECTION 108.** 782.47 of the statutes is created to read:

9 **782.47 Inapplicability to inmates of private prisons.** An inmate of a
10 private prison, as defined in s. ^{XX}, may not apply for or obtain relief from his or her
11 confinement in the private prison under this chapter.

12 **SECTION 109.** 801.02 (7) (a) 1. of the statutes is amended to read:

13 801.02 (7) (a) 1. "Correctional institution" means any state or local facility that
14 incarcerates or detains any adult accused of, charged with, convicted of, or sentenced
15 for any crime ² ~~or a private prison~~ ^{any}. A correctional institution includes a Type 1 prison,
16 as defined in s. 301.01 (5), a Type 2 prison, as defined in s. 301.01 (6), a county jail
17 and a house of correction.

18 History: Sup. Ct. Order, 67 W (2d) 585,589 (1975); 1975 c. 218; 1981 c. 289, 317; 1995 a. 27; 1997 a. 133,187.

19 **SECTION 110.** 801.02 (7) (a) 3. of the statutes is amended to read:

20 801.02 (7) (a) 3. "Prison or jail conditions" means any matter related to the
21 conditions of confinement or to the effects of actions by government officers,
22 employes or agents, or in the case of nprivate nrisons. emnloves or agents of the nprivate
prison. on the lives of prisoners.

23 History: Sup. Ct. Order, 67 W (2d) 585,589 (1975); 1975 c. 218; 1981 c. 317; 1995 a. 27; 1997 a. 133,187.

24 **SECTION 111.** 801.02 (7) (a) 4. of the statutes is created to read:

24 801.02 (7) (a) 4. "Private prison" has the meaning given in s. ^{XX}.

1 SECTION 112. 801.02 (7) (a) 5. of the statutes is created to read: 301.371(4)

2 801.02 (7) (a) 5. "Sending jurisdiction" has the meaning given in s. f

3 SECTION 113. 801.02 (7) (b) of the statutes is renumbered 801.02 (7) (b) 1. and
4 amended to read:

5 801.02 (7) (b) 1. No prisoner who is an inmate of a state or local correctional
6 institution may commence a civil action or special proceeding, including a petition
7 for a common law writ of certiorari, with respect to the prison or jail conditions in the
8 facility in which he or she is or has been incarcerated, imprisoned or detained until
9 the person has exhausted all available administrative remedies that the department
10 of corrections has promulgated by rule or, in the case of prisoners not in the custody
11 of the department of corrections or a private prison, that the sheriff, superintendent
12 or other keeper of a jail or house of correction has reduced to writing and provided
13 reasonable notice of to the prisoners.

History: Sup. Ct. Order, 67 W (2d) 585,589 (1975); 1975 c. 218; 1981 c. 288, 317; 1995 a. 27; 1997 a. 133, 187.

14 SECTION 114. 801.02 (7) (b) 2. of the statutes is created to read:

15 801.02 (7) (b) 2. No prisoner who is an inmate of a private prison may commence
16 a civil action or special proceeding, including a petition for a common law writ of
17 certiorari, with respect to the prison or jail conditions in the facility in which he or
18 she is or has been incarcerated, imprisoned or detained until the person has
19 exhausted all administrative remedies available under the law of the sending
20 jurisdiction.

21 SECTION 115. 801.02 (7) (bm) (intro.) of the statutes is amended to read:

1 801.02 (7) (bm) (intro.) A prisoner who is an inmate of a state or local
2 correctional institution commencing an action or special proceeding shall first
3 comply with the provisions of s. 893.80 or 893.82 unless one of the following applies:

4 History: Sup. Ct. Order, 67 W (2d) 585,589 (1975); 1975 c. 218; 1981 c. 289,317; 1995 a. 27; 1997 a. 133, 187.

4 **SECTION 116.** 806.025 (1) of the statutes is amended to read:

5 806.025 (1) In this section, "prisoner" has the meaning given in s. 801.02 (7)

6 (a) ²but does not include an inmate of a private prison, as defined in s. ~~801.02 (7)(a)~~.

7 History: 1997 a. 133.

7 **SECTION 117.** 806.025 (3) of the statutes is created to read:

8 806.025 (3) If a court enters a judgment for a monetary award on behalf of an

9 inmate of a private prison, as defined in s. ^{301.371(4)} ~~801.02 (7)(a)~~, the court shall inform the sending
10 jurisdiction, as defined in s. ^{301.371(4)} ~~801.02 (7)(a)~~, of the judgment prior to any payments being made to
11 the inmate.

12 **SECTION 118.** 807.15 (1) of the statutes is amended to read:

13 807.15 (1) In this section, "prisoner" has the meaning given in s. ~~801.02 (7)(a)~~

14 ~~806.025 (1).~~

15 History: 1997 a. 133,283.

15 **SECTION 119.** 813.40 (1) (b) 3. (intro.) of the statutes is amended to read:

16 813.40 (1) (b) 3. (intro.) Does not require or permit a government official,
17 employe or agent to exceed his or her authority or to violate a state law or local
18 ordinance and does not require or permit a government official, employe or agent of
19 the sending jurisdiction, as defined in s. ^{301.371(4)} ~~801.02 (7)(a)~~, or a private prison, as defined in s. ^{301.371(4)} ~~801.02 (7)(a)~~, or any
20 of its emnloves to violate a state law or local ordinance or to violate any nrovision
21 contained in a contract between the sending jurisdiction and the private prison that
22 is reauired to be included in the contract under s. ^{301.374} ~~801.02 (7)(a)~~, unless all of the following apply:

23 History: 1997 a. 133.

23 **SECTION 120.** 814.29 (lm) (c) 2. of the statutes is amended to read:

1 814.29 **(lm)** (c) 2. The prisoner authorizes in writing the agency or person ✓
2 having custody of the prisoner’s prison trust fund or other such account to forward
3 payments from the prisoner’s account to the clerk of court each time the amount in
4 the account exceeds \$10 until the fees or costs are paid in full.

History: Sup. Ct. Order, 67 W (2d) 585,761 (1975); Stats. 1975 s. 814.29; 1981 c. 317; 1983 a 538; 1989 a. 31; Sup. Ct. Order No 93-15, 179 W (2d) xxxi; 1993 a. 490; 1995 a. 27,201; 1997 a. 133.

5 **SECTION 121.** 814.29 (lm) (e) ✓ of the statutes is amended to read:

6 814.29 **(lm)** (e) The agency or person having custody of the prisoner shall
7 freeze the prisoner’s trust fund or other such account until the deposits in that
8 account are sufficient to pay the balance owed for the costs and fees. When the
9 deposits in that account are sufficient to pay the balance owed for the court costs and
10 fees, the agency shall forward that amount to the court. This paragraph does not
11 prohibit the payment from the prisoner’s trust fund account of court-ordered
12 payments for child or family support, restitution or federal court fees or for the
13 payments of debts owed to the department of corrections.

History: Sup. Ct. Order, 67 W (2d) 585, 761 (1975); Stats. 1975 s. 814.29; 1981 c. 317; 1983 a 538; 1989 a. 31; Sup. Ct. Order No. 93-15,179 W (2d) xxxi; 1993 a. 490; 1995 a. 27,201; 1997 a. 133.

14 **SECTION 122.** 893.735 (1) ✓ of the statutes is amended to read:

15 893.735 **(1)** In this section, “prisoner” has the meaning given in s. ~~801.02 (7)~~
16 ~~(a) 2.~~ 806.025 (1). ↓

History: 1997 a. 133.

17 **SECTION 123.** 898.01 ✓ of the statutes is amended to read:

18 **898.01 Discharge of persons confined for tort.** Every person confined in
19 jail on an execution issued on a judgment recovered in an action founded on a tort
20 shall be discharged therefrom upon the conditions hereinafter specified. This
21 chanter does not apply to persons confined in a private orison. as defined in s. 7. ✓ XX

22 **SECTION 124.** 940.20 (1) ✓ of the statutes is amended to read:

1 940.20 (1) BATTERY BY PRISONERS. Any prisoner confined to a state prison ~~or~~
 2 ~~either, a state, county or municipal detention facility or a private prison, as defined~~
 3 ~~in s. ^{XX} ~~who~~~~ intentionally causes bodily harm to an officer, employe, visitor or another
 4 inmate of such prison, facility or institution, without ~~his or her~~ the consent of the
 5 person injured, is guilty of a Class D felony.

6 **SECTION 125.** 940.29[✓] of the statutes is amended to read:

7 **940.29 Abuse of residents of ~~penal facilities~~ correctional institutions.**

8 Any person in charge of or employed in a ~~penal~~ or correctional institution or other
 9 place of confinement who abuses, neglects or ill-treats any person confined in or a
 10 resident of any such institution or place or who knowingly permits another person
 11 to do so is guilty of a Class E felony.

12 **SECTION 126.** 941.237 (1) (b)[✓] of the statutes is amended to read:

13 941.237 **(1)** (b) "Correctional officer" means any person employed by the state
 14 or any political subdivision as a guard or officer whose principal duties are the
 15 supervision and discipline of inmates. "Correctional officer" includes an
 16 out-of-state correctional officer, as defined in s. ^{(e)✓14(1)}

17 **SECTION 127.** 941.29 (6)[✓] of the statutes is amended to read:

18 941.29 (6) The prohibition against firearm possession under this section does
 19 not apply to any correctional officer employed by the state or by a county, city, town
 20 or village of this state before May 1, 1982, who is required to possess a firearm as a
 21 condition of employment. This exemption applies if the officer is eligible to possess
 22 a firearm under any federal law and applies while the officer is acting in an official
 23 capacity.

24 **History:** 1981 c. 141, 317; 1983 a. 269; 1985 a. 259, 1993 a.[✓] 195, 196, 491, 1995 a. 71, 77, 306, 417.

SECTION. 128. 946.43[✓] of the statutes is amended to read:

1 **946.43 Assaults by prisoners.** Any prisoner confined to a state prison ~~or~~
2 ~~other, a state,~~ county or municipal detention facility or a private prison, as defined
3 in s. ~~XX~~ who intentionally does any of the following is guilty of a Class C felony:

4 (1) Places an officer, employe, visitor or another inmate of such prison, facility
5 or institution in apprehension of an immediate battery likely to cause death or great
6 bodily harm; or

7 (2) Confines or restrains an officer, employe, visitor or another inmate of such
8 prison, facility or institution without the person's consent.

9 **SECTION 129. 946.44 (2) (c)** [✓] of the statutes is amended to read:

10 946.44 (2) (c) "Institution" includes a private prison, as defined in s. ~~XX~~, a
11 secured correctional facility, as defined in s. 938.02 (15m), a secured child caring
12 institution, as defined in s. 938.02 (15g), and a Type 2 child caring institution, as
13 defined in s. 938.02 (19r).

14 **SECTION 130. 946.44 (2) (d)** [✓] of the statutes is amended to read:

15 946.44 (2) (d) "Prisoner" includes a person who is under the supervision of the
16 department of corrections under s. 938.34 (4h) or placed in a secured correctional
17 facility or secured child caring institution under s. 938.34 (4m) or 938.357 (4) or (5)
18 (e) or placed in a Type 2 child caring institution under s. 938.34 (4d) ~~or~~, who is subject
19 to an order under s. 48.366 or who is an inmate of a private prison, as defined in s.

20 XX.

History: 1917 c. 173; 1985 a. 320; 1987 a. 27, 236, 238, 403; 1989 a. 3 107; 1993 a. 16, 377, 385, 486, 491; 1995 a. 27, 77, 352

21 **SECTION 131. 946.45 (2) (c)** [✓] of the statutes is amended to read:

22 946.45 (2) (c) "Institution" includes a private prison, ~~operating under a contract~~
23 ~~under s. 301.21 (2),~~ a secured correctional facility, as defined in s. 938.02 (15m), a

as defined in s. XX → *scored comma*

1 secured child caring institution, as defined in s. 938.02 (15g), and a Type 2 child
2 caring institution, as defined in s. 938.02 (19r).

3 SECTION 132. 946.45 (2) (d) of the statutes is amended to read:

4 946.45 (2) (d) "Prisoner" includes a person who is under the supervision of the
5 department of corrections under s. 938.34 (4h) or placed in a secured correctional
6 facility or secured child caring institution under s. 938.34 (4m) or 938.357 (4) or (5)
7 (e) or placed in a Type 2 child caring institution under s. 938.34 (4d) ~~or~~, who is subject
8 to an order under s. 48.366 or who is an inmate of a private prison, as defined in s.

9

XX.

History: 1977 c. 173; 1985 a. 320; 1987 a. 27,238; 1989 a. 31,107; 1993 a. 16, 377, 385, 491; 1995 a. 27, 77, 352.

10 SECTION 133. 946.47 (2) (b) of the statutes is amended to read:

11 946.47 (2) (b) A person who commits an act within the jurisdiction of another
12 state which is punishable by imprisonment for one year or more in ~~a state prison or~~
13 ~~penitentiary~~ under the law of that state and would, if committed in this state,
14 constitute a felony under the law of this state.

History: 1977 c. 173; 1993 a. 213, 215, 491.

15 SECTION 134. 948.50 (4) (a) of the statutes is amended to read:

16 948.50 (4) (a) Is serving a sentence, pursuant to a conviction, in a jail, ~~state~~
17 prison or house of correction.

18

History: 1983 a. 489; 1987 a. 332 s. 38; Stats. 1987 s. 948.50; 1995 a. 77. 9

SECTION 135. 961.01 (12m) of the statutes is created to read:

19

961.01 (12m) A private prison, as defined in s. . XX

20

SECTION 136. 968.255 (7) (a) of the statutes is amended to read:

21 968.255 (7) (a) Is serving a sentence, pursuant to a conviction, in a jail, ~~state~~
22 prison or house of correction.

History: 1979 c. 240; 1981 c. 297; 1987 a. 332; 1991 a. 17; 1993 a. 95, 105; 1995 a. 77,154; 1997 a. 35.

23

SECTION 137. 971.11 (title) of the statutes is amended to read:

1 **971.11 (title) Prompt disposition of intrastate detainees.**

2 History: 1983 a. 528; 1989 a. 31; 1993 a. 486; 1995 a. 48; 1997 a. 283

3 SECTION 138. 971.11 (1) of the statutes is amended to read:

4 971.11 (1) Whenever the warden or superintendent receives notice of an
5 untried criminal case pending in this state against an inmate of a state prison, the
6 warden or superintendent shall, at the request of the inmate, send by certified mail
7 a written request to the district attorney for prompt disposition of the case. The
8 request shall state the sentence then being served, the date of parole eligibility, if
9 applicable, or the date of release to extended supervision, the approximate discharge
10 or conditional release date, and prior decision relating to parole. If there has been
11 no preliminary examination on the pending case, the request shall state whether the
12 inmate waives such examination, and, if so, shall be accompanied by a written
13 waiver signed by the inmate.

13 History: 1983 a. 528; 1989 a. 31; 1993 a. 486; 1995 a. 48; 1997 a. 283

14 SECTION 139. 971.11 (6) of the statutes is amended to read:

15 971.11 (6) The prisoner shall be delivered into the custody of the sheriff of the
16 county in which the charge is pending for transportation to the court, and the
17 prisoner shall be retained in that custody during all proceedings under this section.
18 The sheriff shall return the prisoner to the prison upon the completion of the
19 proceedings and during any adjournments or continuances and between the
20 preliminary examination and the trial, except that if the department certifies a jail
21 as being suitable to detain the prisoner, he or she may be detained there until the
22 court disposes of the case. ~~The~~ Unless the prisoner is an inmate of a private prison,
23 as defined in s. 1, the prisoner's existing sentence continues to run and he or she
24 receives time credit under s. 302.11 while in custody.

24 History: 1983 a. 528; 1989 a. 31; 1993 a. 486; 1995 a. 48; 1997 a. 283

SECTION 140. 973.15 (4) (a) of the statutes is amended to read:

1 973.15 (4) (a) The court shall order the department to immediately inform the
2 appropriate authorities in the jurisdiction w-here ~~which~~^{that} imposed the prior sentence
3 ~~is to be served~~ that the convicted offender is presently available to commence or
4 resume serving that sentence; and

5 History: 1973 c. 90; 1977 c. 347, 353, 447; 1981 c. 50, 292; 1983 a. 528; 1989 a. 31, 85, 1991 a. 39; 1993 a. 79; 1995 a. 390, 1997 a. 283.

5 SECTION 141. 976.01 (4m) of the statutes is created to read:

6 976.01 (4m) JURISDICTION OVER PRIVATE PRISONERS. For the purposes of this
7 section, the circuit court of the county in which a private prison, as defined in s. ~~301.371(4)~~^{XX},
8 is located has jurisdiction over an inmate confined there.

9 SECTION 142. 976.05 (16) of the statutes is created to read:

10 976.05 (16) For the purposes of this section, an inmate of a private prison, as
11 defined in s. ~~301.371(4)~~^{XX}, is incarcerated in and by the sending jurisdiction, as defined by s. ~~301.371(4)~~^{XX}.

12 SECTION 143. 976.06 of the statutes is ~~amended to read~~^{renumbered 976.06 (1) A}

WPO:
Please
fix
component

13 **976.06 Agreement on detainers; additional procedure. (1)** Following
14 receipt of the officer's written request as provided in s. 976.05 (4) (a), the prisoner
15 shall forthwith be taken before a judge of a court of record of his state, who shall
16 inform the prisoner of the request for temporary custody or availability, the crime
17 with which charged and that the prisoner has the right to petition the governor to
18 deny the request, to contest the request and to demand and procure legal counsel.
19 If the prisoner or the prisoner's counsel shall state that the prisoner or the prisoner
20 and counsel desire to test the legality of granting temporary custody or availability,
21 the judge shall set a date for hearing which shall be not later than the expiration of
22 the 30-day period established by s. 976.05 (4) (a). If a hearing is set, notice of the
23 hearing shall be given to the appropriate officer of the state requesting temporary
24 custody or availability and to the authorities having custody of the prisoner in this

301.371(4)

1 ~~state. The scope of any hearing or ruling under this section shall be confined to the~~
 2 ~~request for temporary custody or availability, and to the identification of the person~~
 3 ~~sought by the requesting state, but shall not encompass the guilt or innocence of the~~
 4 ~~prisoner as to the crime charged by the requesting state.~~

History: 1975 c. 158,199; 1981 c. 390.

5 **SECTION 144.** 976.06 (2) of the statutes is created to read:

6 976.06 (2) This section does not apply to inmates of a private prison, as defined

7 in s. ~~XX~~

AUTO REF A.

8 **SECTION 145. Nonstatutory provisions.**

9 (1) In this section, "department" means the department of corrections.

10 (2) The department shall submit in proposed form the rules required under section

11 301.03 (8) of the statutes, as created by this act, to the legislative council staff under

12 section 227.15 (1) of the statutes no later than the first day of the 6th month

13 beginning after the effective date of this subsection.

14 No 2

AUTO REF B

14 ~~No~~ later than the first day of the 6th month beginning after the effective date

15 of this subsection, the department shall establish fees for private prison construction

16 licenses and private prison operating licenses for the fiscal biennium during which

17 this act takes effect. The department shall base the fee for a private prison

18 construction license on its estimate of the direct and indirect costs it will incur in

19 reviewing the application for and issuing such a license. The department shall base

20 the fee for a private prison operating license on its estimate of the direct and indirect

21 costs it will incur in reviewing the application for and issuing such a license and its

22 supervision of the private prison. The department may set separate fees for an initial

23 private prison operating license and for the renewal of a private prison operating

24 license. The department may set variable fees for operating licenses based on the

1 size of the prison and the costs ^{that} ~~which~~ the department has incurred in licensing or
 2 supervising individual licensees. The department may set a separate application fee
 3 to be paid upon the application for a private prison construction license or a private
 4 prison operating license or both, to cover its ^{anticipated} ~~approximate~~ costs of reviewing such
 5 applications. If the department imposes a separate application fee for either type of
 6 license, the department shall not consider the costs of reviewing applications in
 7 determining the relevant license fee.

8 **SECTION 146. Effective dates.** This act takes effect on the day after
 9 publication, except as follows:

A.R.
↓
C

51.37 (5) (b) (by Section 32)
a ✓ of = 65

10 ~~10.37 (1)~~ (A) The amendment of sections 301.372 and 301.373 (9) ~~(intro)~~ the statutes
 11 takes effect on July 1, 2001.

(END)

~~under the agenda
and recreation
of section 5.57~~

12
 ¶ (2) The repeal and recreation of Section
~~302.095 (2)~~ 302.095 (2) ~~will~~
 of the statutes takes
 effect on December 31, 1999,
 or the day after publication,
 whichever is later.

12/31/99
Publ. ~~whichever later~~

~~13.37 (1)~~

INSERT 34-5

1
 2 (b) ~~The~~ private prison operator shall reimburse the state and the political
 3 subdivisions of this state for all court costs incurred in connection with any judicial
 4 or administrative proceeding involving the care and treatment of inmates of private
 5 prisons if the state or the political subdivision is not a party to the proceeding or is
 6 a prevailing party in the proceeding and the costs are not reimbursed by one of the
 7 parties to the proceeding. If the state, a political subdivision of this state, or a local
 8 educational agency, as defined in s. 115.76 (10), is a prevailing party in such a
 9 proceeding, the private prison shall also reimburse ~~them~~ for attorneys' fees and all
 10 other expenses incurred in connection with such a proceeding, if the attorneys' fees
 11 and other expenses are not reimbursed by ~~one of the parties~~ to the proceeding.

any other party,
the state, the political subdivision of this state or the local educational agency

INSERT 35-4

SECTION 301.373 (9) (a) of the statutes, as created by 1999 Wisconsin Act

(this act), is amended to read:

16 (9) (a) A private prison operator shall pay the fee for its private prison operating
 17 license and any application fee set under 1999 Wisconsin Act (this act), section
 18 s. 301.379: all forfeitures, attorneys' fees ^{and other sanctions} and costs imposed under sub. (10), and
 19 all charges for which indemnification is required under ^{operator} . The private prison shall
 20 reimburse this state, the political subdivisions of this state and any local educational
 21 agency, as defined in s. 115.76 (10), for expenses they incur in connection with
 22 providing health, mental health or educational services to inmates of private
 23 prisons.

*Note -
Insert
34-10
is on p. 3*

Strike

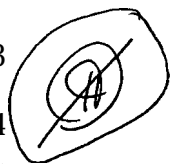
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~~sub. (2) (b)
or (a) or (b)~~

par. (a) or (b) or sub. (2) (b)

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INSERT 30-19



A private nrison operator mav also be subject to enforcement proceedings and sanctions under s. 301.373 (10) for violations of this subsection.

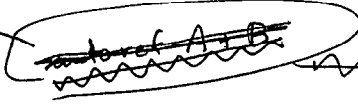
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private prison construction license under s. 301.378.^J

SECTION 4. 301.372 of the statutes, as created by 1999 Wisconsin Act (this act), is amended to read:

301.372 Private prison construction. No person may commence the construction of a private prison or the conversion of an existing building into a private prison without paying the license fee^{and any application fee} set under 1999 Wisconsin Act (this act), section ^J, s. 301.379 and obtaining a private prison construction license under s. 301.378.



INSERT 33-23

(9)^(a) A private prison operator shall pay the fee assessed^{and any application fee set} for its private prison operating license under 1999 Wisconsin Act (this act), section ^J, all forfeitures, attorneys' fees^{and} costs imposed

~~and other sanctions~~ and other sanctions

autoref A & B

1

INSERT 3410

2

6, With the agreement of the private prison operator, enter an order providing an appropriate remedy for the violation.

3

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2853/P1dn

MGD: /:....

WLJ

July 12, 1999

Rep. Walker:

1. Under the draft, costs incurred by the department of corrections (DOC) in overseeing private prisons will be funded by fees from construction and operating licenses. Since DOC will incur costs prior to the issuance of licenses, the draft authorizes it to incur expenses in anticipation of licensing revenue. If you want to fund DOC's start-up costs some other way, please let me know, and I will either redraft the proposal or draft an amendment, whichever is appropriate.

2. The definition of "private prison" does not include juvenile detention or correctional institutions or lockups or other facilities used to confine individuals who have not yet been sentenced, in large part because private prison companies are building prisons only to hold individuals who, as a result of criminal (as opposed to juvenile delinquency) proceedings, have been convicted and sentenced. Is this okay?

3. Do you want to include any limitations on where a private prison may be built? (Oklahoma, for example, prohibits private prisons from being built within a certain distance of a school.)

4. The draft prohibits a private prison from employing a person who has been convicted of a felony in any capacity. Is this okay?

5. The draft requires the private prison - rather than the sending jurisdiction - to pay for the costs of health care, education and other services provided by the state or by local government units, largely because the state and local government units will have more leverage over the private prison than another state. Is this okay? (Note that although contracts entered into under the draft require that the sending jurisdiction retain jurisdiction over conditions of confinement cases, Wisconsin courts would also remain open to prisoners. The private prison would be obligated to reimburse state and local government for the costs connected with such cases being heard in Wisconsin courts.)

6. The draft^{ed} version of s. 301.373 (10)[✓] provides for forfeitures of between \$100 and \$100,000 for violations of the terms of a license or violations of statutes or DOC rules relating to private prisons. Please let me know if you want to change the range of forfeitures.

7. Is there anything you want to include in the draft on the issue of prisoner employment programs at private prisons?

8. Apart from the license fees to be imposed under the nonstatutory provisions, the draft requires DOC to develop licensing fees biennially in conjunction with its budget request. As an alternative, you may want to consider requiring DOC to set its fees more frequently - perhaps annually by rule. If you would like to modify the provisions of the draft regarding this issue, please let me know.

9. For the purposes of s. 941.237, the draft treats out-of-state correctional officers in the same manner as Wisconsin correctional officers to enable them to transport prisoners from a sending jurisdiction to a private prison. Do you want to include an exception for employes of the private prison or employes of the private prison operator for the same purpose?

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