

2003 DRAFTING REQUEST

Bill

Received: **02/05/2003**

Received By: **rnelson2**

Wanted: **As time permits**

Identical to LRB:

For: **John Gard (608) 266-3387**

By/Representing: **Jeff S**

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

Drafter: **rnelson2**

May Contact:

Addl. Drafters:

Subject: **Correctional System - jails**

Extra Copies:

Submit via email: **NO**

Pre Topic:

No specific pre topic given

Topic:

Housing of prisoners from counties from Michigan in WI county jails

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>
/?				_____			Local
/1	rnelson2 03/06/2003	jdyer 03/17/2003	rschluet 03/17/2003	_____	lemery 03/17/2003		Local
		jdyer 03/17/2003		_____			
/2	rnelson2 03/18/2003	jdyer 03/18/2003	pgreensl 03/18/2003	_____	sbasford 03/18/2003	amentkow 03/18/2003	Local

FE Sent For: *Att intro,*

<END>

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/?							Local
/1	rnelson2 03/06/2003	jdyer 03/17/2003	rschluet 03/17/2003		lemery 03/17/2003		Local

Handwritten notes and signatures:

- Under 'Reviewed' for jdye: 1/2 3/18 jld
- Under 'Typed' for rschluet: 3/18 ps
- Under 'Proofed': 3/18 [signature]

FE Sent For:

<END>

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/?	rnelson2	1 3/17 jld					

FE Sent For:

<END>



OFFICE OF CORPORATION COUNSEL

GALE MATTISON
Corporation Counsel

MARY A. SULLIVAN
Legal Secretary

31 January 2003

To: Roger DeGroot

From: Gale Mattison

RE: Housing Menominee County Michigan inmates in Marinette County

To house out-of-state inmates in the Marinette County Jail would require an express grant of power from the legislature.

A way to achieve this goal would be modification of §302.31 Use of Jails and §302.44 Cooperation between counties regarding prisoners.

Suggested modifications of §302.21 and §302.44:

302.31 Use of jails.

The county jail may be used for the detention of persons charged with crime and committed for trial; for the detention of persons committed to secure their attendance as witnesses; to imprison persons committed pursuant to a sentence or held in custody by the sheriff for any cause authorized by law; for the detention of persons sentenced to imprisonment in state penal institutions or a county house of correction, until they are removed to those institutions; *for the detention of State of Michigan border county persons detained or imprisoned by that county before, during and after trial*; for the detention of persons participating in the intensive sanctions program; for the temporary detention of persons in the custody of the department; and for other detentions authorized by law. The county jail may be used for the temporary placement of persons in the custody of the department, other than persons under 17 years of age, and persons who have attained the age of 17 years but have not attained the age of 25 years who are under the supervision of the department under s. 48.366 or 938.355(4) and who have been taken into custody pending revocation of aftercare supervision under s. 48.366(5) or 938.357(5) (e).

302.44 Cooperation between counties regarding prisoners.

Two or more counties may agree under s. 66.0301 *or s. 66.0303* for the cooperative establishment and use of the jails and rehabilitation facilities of any of them for the detention or imprisonment of prisoners before, during and after trial and for sharing the expense without reference to s. 302.34. The sheriffs of the counties shall lodge prisoners in any jail

Page 2

31 January 2003

Roger DeGroot

or rehabilitation facility authorized by the agreement and shall endorse the commitment, if any, under s. 302.35 in case detention or imprisonment is in the jail or rehabilitation facility of another county. Only jails and rehabilitation facilities approved by the department for the detention of prisoners may be used under the agreement. The sheriff of the county of arrest shall transport the prisoner to and from court and to any other institution whenever necessary.

A copy of §66.0303 is attached.

66.0303. Municipal interstate cooperation

(1) In this section, "municipality" has the meaning given in s. 66.0301(1)(a).

(2) A municipality may contract with municipalities of another state for the receipt or furnishing of services or the joint exercise of any power or duty required or authorized by statute to the extent that laws of the other state or of the United States permit the joint exercise.

(3)(a) Except as provided in par. (b), an agreement made under this section shall, prior to and as a condition precedent to taking effect, be submitted to the attorney general who shall determine whether the agreement is in proper form and compatible with the laws of this state. The attorney general shall

approve any agreement submitted under this paragraph unless the attorney general finds that it does not meet the conditions set forth in this section and details in writing addressed to the concerned municipal governing bodies the specific respects in which the proposed agreement fails to meet the requirements of law. Failure to disapprove an agreement submitted under this paragraph within 90 days of its submission constitutes approval. The attorney general, upon submission of an agreement, shall transmit a copy of the agreement to the governor who shall consult with any state department or agency affected by the agreement. The governor shall forward to the attorney general any comments the governor may have concerning the agreement.

(b) An agreement under this section between a municipality of this state and a municipality of another state that relates to the receipt, furnishing, or joint exercise of fire fighting or emergency medical services need not be submitted to or approved by the attorney general before the agreement may take effect.

(4) An agreement entered into under this section has the status of an interstate compact, but in any case or controversy involving performance or interpretation of or liability under the agreement, the municipalities party to the agreement are real parties in interest and the state may commence an action to recoup or otherwise make itself whole for any damages or liability which it may incur by reason of being joined as a party. The action by the state may be maintained against any municipality whose act or omission caused or contributed to the incurring of damage or liability by the state.



D-N

Jld

BILL

LPS-
These 2
drafts are
identical
D-N

1 AN A Act relating to: housing of out-of-state prisoners in county jails.

Analysis by the Legislative Reference Bureau ^{semicolon}

Under current law, county jails have the authority to use the county jail to detain certain persons, including those charged with a crime, committed pursuant to a sentence to the county jail or a state penal institution, participating in the intensive sanctions program, and ~~those~~ ^{persons} who are in the custody of the Department of Corrections. This bill allows county jails to detain persons who are detained by a county that borders this state and is located in the state of Michigan if the counties involved enter into an interstate cooperation agreement that takes into account all the requirements of Wisconsin law regarding the detention of persons in county jails.

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

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

② ^{Fix component} SECTION 1. 302.31 ^{renumbered 302.31 (intro.) and} of the statutes is amended to read:

③ **302.31 Use of jails.** ^(intro.) The county jail may be used for the any of the following purposes:

- 4 purposes:
- 5 (1) The detention of persons charged with crime and committed for trial; for
- 6 the

BILL**SECTION 1**

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

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

5 (4) The detention of persons sentenced to imprisonment in state penal
6 institutions or a county house of correction, until they are removed to those
7 institutions; ~~for the.~~

8 (5) The detention of persons participating in the intensive sanctions program;
9 ~~for the.~~

10 (6) The temporary detention of persons in the custody of the department; ~~and~~
11 ~~for other detentions authorized by law. The county jail may be used for the.~~

12 (7) The temporary placement of persons in the custody of the department, other
13 than persons under 17 years of age, and persons who have attained the age of 17
14 years but have not attained the age of 25 years who are under the supervision of the
15 department under s. 48.366 or 938.355 (4) and who have been taken into custody
16 pending revocation of aftercare supervision under s. 48.366 (5) or 938.357 (5) (e).

17 History: 1981 c. 20; 1989 a. 31 s. 1646; Stats. 1989 s. 302.31[✓]; 1989 a. 336; 1991 a. 39; 1993 a. 16, 89, 385, 490; 1995 a. 27, 77.

SECTION 2. 302.31 (8) of the statutes is created to read:

18 302.31 (8) Under an agreement under s. 66.0303[✓], the detention of persons
19 detained or imprisoned before, during, or after trial by a county that borders on this
20 state and is located in the state of Michigan. The agreement under s. 66.0303 for the
21 detention of persons from another state shall take into account the provisions of this
22 chapter [✓] regarding the detention of persons in county jails.

23 **SECTION 3.** 302.31 (9)[✓] of the statutes is created to read:

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1947/1dn

RPN:.....

JLD

Limiting this draft to detaining persons from border counties, or from counties only in Michigan, may be unconstitutional under article I, ^{section} § 8, of the U.S. Constitution. That article gives Congress the power to regulate commerce among the states. The U.S. Supreme Court has interpreted that clause to limit the states' power to affect the interstate flow of articles of commerce. That court has long held that the transportation of individuals is "commerce" within the meaning of the commerce clause. The court determines if a state law affects the interstate flow of articles of commerce by determining if the law regulates evenhandedly with only incidental effects on interstate commerce or if it discriminates against interstate commerce. "Discrimination" means differential treatment of in-state and out-of-state economic interests, and is unconstitutional on its face. Incidental effects on interstate commerce are valid unless the burden imposed on such commerce is clearly excessive in relation to the local benefits. *

This proposal does not create differential treatment between in-state and out-of-state economic interests, but it does give some states the right to have interstate commerce with this state while denying that right to other states. The local benefits of that treatment include keeping the prisoner near his or her family, easing the burden of transportation to the court in the other state when necessary, and being able to return the prisoner to the other state for medical or other services when appropriate. The courts would weigh these benefits against the differential treatment to determine if the provision is constitutional. Having the draft apply only to Michigan counties could shift the court's opinion toward finding it unconstitutional because the local benefits do not apply to Michigan only, but to border counties in all border states. (sit)

Robert P. Nelson
Senior Legislative Attorney
Phone: (608) 267-7511
E-mail: robert.nelson@legis.state.wi.us

check
Δ

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1947/1dn
RPN:jld:rs

March 17, 2003

Limiting this draft to detaining persons from border counties, or from counties only in Michigan, may be unconstitutional under article I, section 8, of the U.S. Constitution. That article gives Congress the power to regulate commerce among the states. The U.S. Supreme Court has interpreted that clause to limit the states' power to affect the interstate flow of articles of commerce. That court has long held that the transportation of individuals is "commerce" within the meaning of the commerce clause. The court determines if a state law affects the interstate flow of articles of commerce by determining if the law regulates evenhandedly with only incidental effects on interstate commerce or if it discriminates against interstate commerce. "Discrimination" means differential treatment of in-state and out-of-state economic interests, and is unconstitutional on its face. Incidental effects on interstate commerce are valid unless the burden imposed on such commerce is clearly excessive in relation to the local benefits.

This proposal does not create differential treatment between in-state and out-of-state economic interests, but it does give some states the right to have interstate commerce with this state while denying that right to other states. The local benefits of that treatment include keeping the prisoner near his or her family, easing the burden of transportation to the court in the other state when necessary, and being able to return the prisoner to the other state for medical or other services when appropriate. The courts would weigh these benefits against the differential treatment to determine if the provision is constitutional. By having the draft apply only to Michigan counties, it could shift the court's opinion toward finding it unconstitutional because the local benefits do not apply to Michigan only, but to border counties in all border states.

Robert P. Nelson
Senior Legislative Attorney
Phone: (608) 267-7511
E-mail: robert.nelson@legis.state.wi.us



2003 BILL

Regen

1 AN ACT *to renumber and amend* 302.31; and *to create* 302.31 (8) and 302.31
2 (9) of the statutes; **relating to:** housing of ~~offenders~~ ^{from Michigan} prisoners in county ^{Wisconsin}
3 jails. _{county}

Analysis by the Legislative Reference Bureau

Under current law, county jails have the authority to use the county jail to detain certain persons, including those charged with a crime, committed pursuant to a sentence to the county jail or a state penal institution; persons participating in the intensive sanctions program; and persons who are in the custody of the Department of Corrections. This bill allows county jails to detain persons who are detained by a county that borders this state and is located in the state of Michigan if the counties involved enter into an interstate cooperation agreement that takes into account all the requirements of Wisconsin law regarding the detention of persons in county jails.

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

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

4 SECTION 1. 302.31 of the statutes is renumbered 302.31 (intro.) and amended
5 to read:

BILL

1 **302.31 Use of jails.** (intro.) The county jail may be used for ~~the~~ any of the
2 following purposes:

3 (1) The detention of persons charged with crime and committed for trial; ~~for~~
4 ~~the.~~

5 (2) The detention of persons committed to secure their attendance as
6 witnesses; ~~to.~~

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

9 (4) The detention of persons sentenced to imprisonment in state penal
10 institutions or a county house of correction, until they are removed to those
11 institutions; ~~for the.~~

12 (5) The detention of persons participating in the intensive sanctions program;
13 ~~for the.~~

14 (6) The temporary detention of persons in the custody of the department; ~~and~~
15 ~~for other detentions authorized by law. The county jail may be used for the.~~

16 (7) The temporary placement of persons in the custody of the department, other
17 than persons under 17 years of age, and persons who have attained the age of 17
18 years but have not attained the age of 25 years who are under the supervision of the
19 department under s. 48.366 or 938.355 (4) and who have been taken into custody
20 pending revocation of aftercare supervision under s. 48.366 (5) or 938.357 (5) (e).

21 **SECTION 2.** 302.31 (8) of the statutes is created to read:

22 302.31 (8) Under an agreement under s. 66.0303, the detention of persons
23 detained or imprisoned before, during, or after trial by a county that borders on this
24 state and is located in the state of Michigan. The agreement under s. 66.0303 for the

BILL

1 detention of persons from another state shall take into account the provisions of this
2 chapter regarding the detention of persons in county jails.

3 **SECTION 3.** 302.31 (9) of the statutes is created to read:

4 302.31 (9) Other detentions authorized by law.

5 (END)

Nelson, Robert P.

From: Schoenfeldt, Jeff
Sent: Tuesday, March 18, 2003 2:18 PM
To: Nelson, Robert P.
Subject: RE: Here is the redraft you requested.

perfect. let's jacket for the assembly

-----Original Message-----

From: Nelson, Robert P.
Sent: Tuesday, March 18, 2003 1:27 PM
To: Schoenfeldt, Jeff
Subject: Here is the redraft you requested.

<< File: 01-1947/2 >>

Robert P Nelson
Senior Legislative Attorney
Wisconsin Legislative Reference Bureau
608-267-7511



State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

100 NORTH HAMILTON STREET
5TH FLOOR
MADISON, WI 53701-2037

STEPHEN R. MILLER
CHIEF

LEGAL SECTION: (608) 266-3561
LEGAL FAX: (608) 264-6948

March 18, 2003

MEMORANDUM

To: Representative Gard

From: Robert P. Nelson, Senior Legislative Attorney

Re: LRB-1947/2 Housing of prisoners from counties from Michigan in WI county jails

The attached draft was prepared at your request. Please review it carefully to ensure that it is accurate and satisfies your intent. If it does and you would like it jacketed for introduction, please indicate below for which house you would like the draft jacketed and return this memorandum to our office. If you have any questions about jacketing, please call our program assistants at 266-3561. Please allow one day for jacketing.

JACKET FOR ASSEMBLY JACKET FOR SENATE

If you have any questions concerning the attached draft, or would like to have it redrafted, please contact me at (608) 267-7511 or at the address indicated at the top of this memorandum.

If the last paragraph of the analysis states that a fiscal estimate will be prepared, the LRB will request that it be prepared after the draft is introduced. You may obtain a fiscal estimate on the attached draft before it is introduced by calling our program assistants at 266-3561. Please note that if you have previously requested that a fiscal estimate be prepared on an earlier version of this draft, you will need to call our program assistants in order to obtain a fiscal estimate on this version before it is introduced.

Please call our program assistants at 266-3561 if you have any questions regarding this memorandum.