

1993 Assembly Bill 28

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1993 WISCONSIN ACT 48

AN ACT *to amend* 302.33 (title), 302.33 (2) (a) (intro.), 302.33 (2) (a) 1, 302.33 (2) (a) 3, 302.335 (title), 302.335 (2) (intro.), 302.335 (2) (a) (intro.), 302.335 (2) (b), 302.335 (3), 302.335 (4), 973.03 (3) (d) and 973.09 (4); and *to create* 301.37 (4), 302.33 (2) (c) and 302.445 of the statutes, **relating to:** confinement of county jail prisoners in tribal jails.

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

SECTION 1. 301.37 (4) of the statutes is created to read:

301.37 (4) The department's standards and regulations under sub. (1) for county jails apply to tribal jails used under s. 302.445. At least annually, the department shall inspect each such tribal jail with respect to safety, sanitation, adequacy and fitness, report to the sheriff and the tribal jail authorities regarding any deficiency found and order the necessary work to correct it. If within 6 months thereafter the work is not commenced, or not completed within a reasonable period thereafter to the satisfaction of the department, the department shall prohibit the use of the tribal jail for purposes of s. 302.445 until the order is complied with.

SECTION 2. 302.33 (title) of the statutes is amended to read:

302.33 (title) Maintenance of prisoners in county jail; state payments to counties and tribal governing bodies.

SECTION 3. 302.33 (2) (a) (intro.) of the statutes is amended to read:

302.33 (2) (a) (intro.) The department shall pay for the maintenance of persons in its custody who are placed in the county jail or other county facility, or in a tribal jail under s. 302.445, pending disposition of parole or probation revocation proceedings subject to the following conditions:

SECTION 4. 302.33 (2) (a) 1. of the statutes is amended to read:

302.33 (2) (a) 1. The department shall make payments under this paragraph beginning when an offender is detained in a county jail or other county facility, or in a tribal jail under s. 302.445, pursuant only to a departmental hold and ending when the revocation process is completed and a final order of the department of corrections or the division of hearings and appeals in the department of administration has been entered.

SECTION 5. 302.33 (2) (a) 3. of the statutes is amended to read:

302.33 (2) (a) 3. After verification by the department, it shall reimburse the county or tribal governing body at a rate of \$36 per person per day prior to January 1, 1993, and \$40 per person per day thereafter, subject to the conditions in subs. 1 and 2. If \$1,330,700 for fiscal year 1992-93, \$1,475,400 for fiscal year 1993-94 and \$1,620,100 for any fiscal year thereafter is insufficient to provide complete reimbursement at that rate, the department shall prorate the payments to counties or tribal governing bodies for that fiscal year. The department shall not reimburse a county or tribal governing body unless that county or tribal governing body informs the department of the amount of reimbursement to which it is entitled under this subsection no later than September 1 of the fiscal year following the fiscal year for which reimbursement is requested.

SECTION 6. 302.33 (2) (c) of the statutes is created to read:

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302.33 (2) (c) The department shall make payments under this subsection to the applicable county or tribal governing body on the basis of where the person is actually confined.

SECTION 7. 302.335 (title) of the statutes is amended to read:

302.335 (title) Restrictions on detaining probationers and parolees in county or tribal jail.

SECTION 8. 302.335 (2) (intro.) of the statutes is amended to read:

302.335 (2) (intro.) If a probationer or parolee is detained in a county jail or other county facility, or in a tribal jail under s. 302.445, pending disposition of probation or parole revocation proceedings, the following conditions apply:

SECTION 9. 302.335 (2) (a) (intro.) of the statutes is amended to read:

302.335 (2) (a) (intro.) The department shall begin a preliminary revocation hearing within 15 working days after the probationer or parolee is detained in the county jail ~~or~~ other county facility or the tribal jail. The department may extend, for cause, this deadline by not more than 5 additional working days upon written notice to the probationer or parolee and the sheriff, the tribal chief of police or other person in charge of the county facility. This paragraph does not apply under any of the following circumstances:

SECTION 10. 302.335 (2) (b) of the statutes is amended to read:

302.335 (2) (b) The division shall begin a final revocation hearing within 50 calendar days after the person is detained in the county jail ~~or~~ other county facility or the tribal jail. The department may request the division to extend this deadline by not more than 10 additional calendar days, upon notice to the probationer or parolee, the sheriff, the tribal chief of police or other person in charge of the facility, and the division. The division may grant the request. This paragraph does not apply if the probationer or parolee has waived the right to a final revocation hearing.

SECTION 11. 302.335 (3) of the statutes is amended to read:

302.335 (3) If there is a failure to begin a hearing within the time requirements under sub. (2), the sheriff, the tribal chief of police or other person in charge of a county facility shall notify the department at least 24 hours before releasing a probationer or parolee under this subsection.

SECTION 12. 302.335 (4) of the statutes is amended to read:

302.335 (4) This section applies to probationers or parolees who begin detainment in a county jail ~~or~~ other county facility or a tribal jail on or after July 1, 1990, except that this section does not apply to any probationer

or parolee who is in the county jail ~~or~~ other facility or the tribal jail and serving a sentence.

SECTION 13. 302.445 of the statutes is created to read:

302.445 Confinement of county jail prisoners in tribal jails. The county board and the sheriff of any county may enter into an agreement with the elected governing body of a federally recognized American Indian tribe or band in this state for the confinement in a tribal jail of county jail prisoners. The sheriff retains responsibility for the prisoners for providing custody, care, treatment, services, leave privileges and food and determining good time as if they remained county jail prisoners, except that the sheriff may delegate, under the agreement, any of the responsibility to the tribal chief of police. The tribal jail is subject to s. 301.37 (4) but is not subject to the requirements for county jails unless otherwise provided under the agreement.

SECTION 14. 973.03 (3) (d) of the statutes is amended to read:

973.03 (3) (d) This subsection applies to persons who are sentenced to a county jail but are transferred to a Huber facility under s. 303.09 or to a tribal jail under s. 302.445.

SECTION 15. 973.09 (4) of the statutes is amended to read:

973.09 (4) The court may also require as a condition of probation that the probationer be confined during such period of the term of probation as the court prescribes, but not to exceed one year. The court may grant the privilege of leaving the county jail ~~or~~ Huber facility or tribal jail during the hours or periods of employment or other activity under s. 303.08 (1) (a) to (e) while confined under this subsection. The court may specify the necessary and reasonable hours or periods during which the probationer may leave the jail ~~or~~ Huber facility or tribal jail or the court may delegate that authority to the sheriff. In those counties without a Huber facility under s. 303.09 or an agreement under s. 302.445, the probationer shall be confined in the county jail. In those counties with a Huber facility under s. 303.09, the sheriff shall determine whether confinement under this subsection is to be in that facility or in the county jail. The sheriff may transfer persons confined under this subsection between a Huber facility and the county jail. In those counties with an agreement under s. 302.445, the sheriff shall determine whether confinement under this subsection is to be in the tribal jail or the county jail, unless otherwise provided under the agreement. In those counties, the sheriff may transfer persons confined under this subsection between a tribal jail and a county jail, unless otherwise provided under the agreement. While subject to this subsection, the probationer is subject to s. 303.08 (1), (3) to (6), (8) to (12) and (14), all the rules of the county jail ~~or~~ Huber facility or tribal jail and the discipline of the sheriff.