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State of Wisconsin Department of Corrections

October 22, 2004

Mr. Don Salm, Senior Staff Attorney
Ms. Anne Sappenfield, Senior Staff Attorney
Wisconsin Legislative Council
P.O. Box 2536
Madison, WI 53701-2536

Dear Mr. Salm and Ms. Sappenfield:

You asked the Department of Corrections to provide opinions on a couple of issues considered by the Drafting Subcommittee at its September 23, 2004 meeting.

Terminology (WLC: 0005/1, Section 3) – “Secured” correctional facility vs. “juvenile” correctional facility. We believe that a change in terminology throughout the statutes from “secured correctional facility” to “juvenile correctional facility” would be more descriptive of the population served by these facilities, and would avoid some confusion when referring to Type 2 juvenile facilities. We understand that this change in terminology would require a substantial number of revisions to the statutes, not only in Ch. 938 but also Ch. 48, Ch. 301 and elsewhere. If the subcommittee were to recommend the change in terminology, the Department would support it.

Age of prison transfer (WLC: 0007/1, Section 29). The draft legislation asks whether s. 938.183 (3) should be repealed because it is inconsistent with other statutes. The following is a summary of the three statutes that pertain to the issue of placement of offenders under the age of 17 who are convicted under the adult criminal statutes in either juvenile or adult correctional institutions.

1. S. 302.18 (7) WI Stats; states that the Department shall keep a person under 15 years of age in a secured juvenile correctional institution, but the Department may transfer the person to an adult prison after they reach 15.
2. S. 938.183 (3) WI Stats; affects persons at least 15 years old who were subject to original adult court jurisdiction for certain serious crimes. It states that when the juvenile reaches the age of 17, the Department may place the person in a state prison. If a juvenile is 15 years of age or older, the Department may transfer the juvenile to the Racine Youthful Offender Correctional Facility.

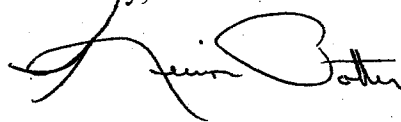
3. S. 973.013 (3m) appears to be the statute most relied on in practice. It states that a juvenile under 16 shall be placed at a secured juvenile correctional facility unless DOC determines that placement in a state prison is appropriate based on a number of enumerated factors. This can include prior record of adjustment in a correctional setting, vocational/educational needs, treatment services available etc.

All three statutes prohibit placement of any person under age 18 in the Wisconsin Secure Program Facility.

In practice, youth under the age of 16 are held in a juvenile facility. There are currently three juveniles with criminal convictions under 16 at Ethan Allen School and there are no offenders under 16 at an adult prison. We are not experiencing any problems with implementing these statutes and housing offenders in the most appropriate setting. However, if the Subcommittee chooses to amend them for clarity and consistency, we recommend that you model the language used in s. 973.013 (3m). That statute provides criteria that are used in making the decision whether to transfer a juvenile.

Thank you for the opportunity to provide input into the deliberations of your study committee.

Sincerely,

A handwritten signature in black ink, appearing to read "Kevin Potter". The signature is fluid and cursive, with a large initial "K" and a distinct "P" at the end.

Kevin Potter
Chief Legal Counsel