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VIA EMAIL

Ms. Astra Iheukumere, Interim Director
Dane County Department of Human Services
1202 Northport Dr.
Madison, WI 53704
iheukumere.astra@danecounty.gov

RE: Transfer of Huber Functions to the Department of Human Services

Dear Ms. Iheukumere:

You have requested an opinion as to what aspects of the Huber program may be delegated to the Department of Human Services (Department). Participants in the Huber program are sentenced to the county jail and under the custody of the Sheriff, who is primarily responsible for the program. The Legislature has provided that the county board may direct certain aspects of the Huber program to the Department. But, that delegation is limited to job search and training and the collection and disbursement of wages and benefits. All other aspects of the Huber program are the sole responsibility of the sheriff.

Since time immemorial the operation of the jail and custody and care of inmates are the duty of the sheriff. *Kocken v. Wis. Council 40, AFSCME, AFL-CIO*, 301 Wis. 2d 266, ¶ 44 (2007); *State ex rel Kennedy v. Brunst*, 26 Wis. 2d 412, 414 (1870). One of the sheriff's duties is to "take charge and custody of the jail maintained by the county and the persons in the jail..." Wis. Stat. § 59.27(1). By express statutory language, a person granted Huber privileges by the court is a person sentenced to the county jail. Wis. Stat. § 303.08(1). The courts have made clear that Huber law prisoners are sentenced to county jails and are in the sole custody of the sheriff. *State v. Schaller*, 70 Wis. 2d 107, 113 (1975).

With that background, the Legislature has authorized the transfer of some aspects of the Huber program to the Department. The provisions of the Huber program are set forth in Wis. Stat. § 303.08. Subsection (8) provides that the Board of Supervisors "may by resolution direct that the functions of the sheriff under sub. (3) or (5), or both, be performed by" the Department. Subsection (3) provides job search and training and collection of wages and benefits, as follows:

(3) The sheriff shall endeavor to secure employment or employment training for unemployed prisoners under this section. If a prisoner is employed for wages or salary or receives unemployment insurance or employment training benefits while in custody in the jail, the sheriff shall collect the wages or salary or require the prisoner to turn over the wages, salary or benefits in full when received. The sheriff shall deposit the wages, salary or benefits in a trust checking account and shall keep a ledger showing the status of

the account of each prisoner. Such wages or salary are not subject to garnishment in the hands of either the employer or the sheriff during the prisoner's term, and shall be disbursed only as provided in this section; but for tax purposes they are income of the prisoner.

Subsection (5) then provides disbursement of wages and benefits received:

- (5) By order of the court or, for a person subject to a confinement sanction under s. [302.113 \(8m\)](#) or [302.114 \(8m\)](#), by order of the department (of corrections), the wages, salary and unemployment insurance and employment training benefits received by prisoners shall be disbursed by the sheriff for the following purposes, in the order stated:
 - (b) Necessary travel expense to and from work;
 - (c) Court-ordered support of the prisoner's dependents, if any;
 - (cg) The board of the prisoner;
 - (cr) Other incidental expenses of the prisoner;
 - (d) Payment, either in full or ratably, of the prisoner's obligations acknowledged by the prisoner in writing or which have been reduced to judgment;
 - (e) The balance, if any, to the prisoner upon the prisoner's discharge.

The functions set forth in Wis. Stat. § 303.08(3) & (5) are the only aspects of the Huber program that can be delegated to the Department. The remaining functions of the Huber program remain the sole responsibility of the sheriff.

In conclusion, the job search and training and fiscal functions set forth in Wis. Stat. 303.08(3) & (5) may by resolution be transferred by the County Board to the Department. All other aspects of the Huber program must remain the responsibility of the Sheriff. Please contact me if I can provide further assistance on this matter.

Sincerely,

David R. Gault

David R. Gault
Deputy Corporation Counsel