

**ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO 1999 ASSEMBLY BILL 777**

March 16, 2000 – Offered by COMMITTEE ON JUDICIARY AND PERSONAL PRIVACY.

1 **AN ACT** *to repeal* 51.30 (4) (b) 10m.; *to renumber and amend* 980.015 (1),
2 980.015 (2) (intro.), 980.015 (2) (a), 980.015 (2) (b), 980.015 (2) (c), 980.015 (4),
3 980.03 (4) and 980.03 (5); *to amend* 48.396 (1), 48.396 (5) (a) (intro.), 51.30 (3)
4 (a), 51.30 (3) (b), 51.30 (4) (b) 8m., 51.30 (4) (b) 11., 51.375 (1) (a), 146.82 (2) (c),
5 165.255, 904.04 (2), 905.04 (4) (a), 938.396 (1), 938.396 (2) (e), 938.396 (5) (a)
6 (intro.), 938.78 (2) (e), 967.03, 972.15 (4), 978.05 (6), 980.015 (title), 980.015 (3)
7 (intro.), 980.015 (3) (b), 980.02 (1) (intro.), 980.02 (1) (a), 980.02 (1) (b) (intro.),
8 980.03 (2) (intro.), 980.07 (1), 980.07 (2), 980.07 (3), 980.08 (3), 980.08 (4),
9 980.09 (1) (b), 980.09 (2) (a), 980.09 (2) (b), 980.10 and 980.12 (1); and *to create*
10 48.396 (6), 48.78 (2) (e), 51.30 (3) (bm), 51.30 (4) (b) 8s., 146.82 (2) (cm), 301.355,
11 938.35 (1) (e), 938.396 (1k), 972.15 (6), 980.015 (1) (b) (intro.), 980.015 (2) (bm),
12 980.015 (3m), 980.015 (3r), 980.015 (3x), 980.031 (title), 980.031 (2), 980.036,

1 980.038 (title), 980.038 (2), 980.038 (3), 980.07 (1g), 980.14 (title) and 980.14 (1)
2 of the statutes; **relating to:** sexually violent person commitment proceedings.

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

3 **SECTION 1.** 48.396 (1) of the statutes is amended to read:

4 48.396 (1) Law enforcement officers' records of children shall be kept separate
5 from records of adults. Law enforcement officers' records of the adult expectant
6 mothers of unborn children shall be kept separate from records of other adults. Law
7 enforcement officers' records of children and the adult expectant mothers of unborn
8 children shall not be open to inspection or their contents disclosed except under sub.
9 (1b), (1d) ~~or~~, (5) or (6) or s. 48.293 or by order of the court. This subsection does not
10 apply to the representatives of newspapers or other reporters of news who wish to
11 obtain information for the purpose of reporting news without revealing the identity
12 of the ~~or adult expectant mother~~ child or adult expectant mother involved, to the
13 confidential exchange of information between the police and officials of the school
14 attended by the child or other law enforcement or social welfare agencies or to
15 children 10 years of age or older who are subject to the jurisdiction of the court of
16 criminal jurisdiction. A public school official who obtains information under this
17 subsection shall keep the information confidential as required under s. 118.125 and
18 a private school official who obtains information under this subsection shall keep the
19 information confidential in the same manner as is required of a public school official
20 under s. 118.125. A law enforcement agency that obtains information under this
21 subsection shall keep the information confidential as required under this subsection
22 and s. 938.396 (1). A social welfare agency that obtains information under this

1 subsection shall keep the information confidential as required under ss. 48.78 and
2 938.78.

3 **SECTION 2.** 48.396 (5) (a) (intro.) of the statutes is amended to read:

4 48.396 (5) (a) (intro.) Any person who is denied access to a record under sub.
5 (1), (1b) ~~or~~ (1d) or (6) may petition the court to order the disclosure of the records
6 governed by the applicable subsection. The petition shall be in writing and shall
7 describe as specifically as possible all of the following:

8 **SECTION 3.** 48.396 (6) of the statutes is created to read:

9 48.396 (6) Records of law enforcement officers and of the court assigned to
10 exercise jurisdiction under this chapter and ch. 938 shall be open for inspection by
11 and production to appropriate persons in accordance with ss. 980.015 (3m), (3r) and
12 (3x), 980.031 (3) and 980.08 (3), if the records involve or relate to an individual who
13 is the subject of or who is being evaluated for a proceeding under ch. 980. Information
14 obtained from records under this subsection shall be kept confidential except to the
15 extent that redisclosure of that information is necessary for the conduct of an
16 evaluation, examination or proceeding under ch. 980 for which the information was
17 obtained.

18 **SECTION 4.** 48.78 (2) (e) of the statutes is created to read:

19 48.78 (2) (e) Notwithstanding par. (a), an agency shall, upon request, disclose
20 information to appropriate persons in accordance with ss. 980.015 (3m), (3r) and (3x),
21 980.031 (3) and 980.08 (3), if the information involves or relates to an individual who
22 is the subject of or who is being evaluated for a proceeding under ch. 980. Information
23 obtained under this paragraph shall be kept confidential except to the extent that
24 redisclosure of that information is necessary for the conduct of an evaluation,
25 examination or proceeding under ch. 980 for which the information was obtained.

1 **SECTION 5.** 51.30 (3) (a) of the statutes is amended to read:

2 51.30 **(3)** (a) Except as provided in pars. (b) ~~and, (bm),~~ (c) and (d), the files and
3 records of the court proceedings under this chapter shall be closed but shall be
4 accessible to any individual who is the subject of a petition filed under this chapter.

5 **SECTION 6.** 51.30 (3) (b) of the statutes is amended to read:

6 51.30 **(3)** (b) An individual's attorney or guardian ad litem shall have access to
7 the files and records of the court proceedings under this chapter without the
8 individual's consent and without modification of the records in order to prepare for
9 involuntary commitment or recommitment proceedings, reexaminations, appeals, or
10 other actions relating to detention, admission or commitment under this chapter or
11 ch. 971 ~~or~~ 975 or 980.

12 **SECTION 7.** 51.30 (3) (bm) of the statutes is created to read:

13 51.30 **(3)** (bm) The files and records of court proceedings under this chapter
14 shall be released to appropriate persons in accordance with ss. 980.015 (3m), (3r) and
15 (3x), 980.031 (3) and 980.08 (3). Information obtained from files and records under
16 this paragraph shall be kept confidential except to the extent that redisclosure of
17 that information is necessary for the conduct of an evaluation, examination or
18 proceeding under ch. 980 for which the information was obtained.

19 **SECTION 8.** 51.30 (4) (b) 8m. of the statutes is amended to read:

20 51.30 **(4)** (b) 8m. To appropriate examiners and facilities in accordance with s.
21 971.17 (2) (e), (4) (c) and (7) (c), ~~980.03 (4) or 980.08 (3)~~. The recipient of any
22 information from the records shall keep the information confidential except as
23 necessary to comply with s. 971.17 ~~or ch. 980~~.

24 **SECTION 9.** 51.30 (4) (b) 8s. of the statutes is created to read:

1 51.30 **(4)** (b) 8s. To appropriate persons in accordance with ss. 980.015 (3) (b),
2 (3m), (3r) and (3x), 980.031 (3) and 980.08 (3). Information obtained under this
3 subdivision shall be kept confidential except to the extent that redisclosure of the
4 information is necessary for the conduct of an evaluation, examination or proceeding
5 under ch. 980 for which the information was obtained.

6 **SECTION 10.** 51.30 (4) (b) 10m. of the statutes is repealed.

7 **SECTION 11.** 51.30 (4) (b) 11. of the statutes is amended to read:

8 51.30 **(4)** (b) 11. To the subject individual's counsel or guardian ad litem,
9 without modification, at any time in order to prepare for involuntary commitment
10 or recommitment proceedings, reexaminations, appeals or other actions relating to
11 detention, admission, commitment or patients' rights under this chapter or ch. 48,
12 971 ~~or~~ 975 or 980.

13 **SECTION 12.** 51.375 (1) (a) of the statutes is amended to read:

14 51.375 **(1)** (a) "Community placement" means conditional transfer into the
15 community under s. 51.35 (1), conditional release under s. 971.17, parole from a
16 commitment for specialized treatment under ch. 975 or ~~conditional~~ supervised
17 release under ch. 980.

18 **SECTION 13.** 146.82 (2) (c) of the statutes is amended to read:

19 146.82 **(2)** (c) Notwithstanding sub. (1), patient health care records shall be
20 released to appropriate examiners and facilities in accordance with ~~ss. s.~~ 971.17 (2)
21 (e), (4) (c) and (7) (c), ~~980.03 (4) and 980.08 (3)~~. The recipient of any information from
22 the records shall keep the information confidential except as necessary to comply
23 with s. 971.17 ~~or ch. 980~~.

24 **SECTION 14.** 146.82 (2) (cm) of the statutes is created to read:

1 146.82 (2) (cm) Notwithstanding sub. (1), patient health care records shall be
2 released to appropriate persons in accordance with ss. 980.015 (3) (b), (3m), (3r) or
3 (3x), 980.031 (3) and 980.08 (3). Information obtained under this paragraph shall be
4 kept confidential except to the extent that redisclosure of the information is
5 necessary for the conduct of an evaluation, examination or proceeding under ch. 980
6 for which the information was obtained.

7 **SECTION 15.** 165.255 of the statutes is amended to read:

8 **165.255 Representation in sexually violent person commitment**
9 **proceedings.** The department of justice may, ~~at the request of an agency under s.~~
10 ~~980.02 (1),~~ represent the state in sexually violent person commitment proceedings
11 under ch. 980 if it files the petition to initiate the proceedings as provided under s.
12 980.02 (1) (a).

13 **SECTION 16.** 301.355 of the statutes is created to read:

14 **301.355 Access to records for sexually violent person commitment**
15 **proceedings. (1)** The department shall allow the following persons to have access
16 to a departmental record relating to an individual who has been convicted of a
17 sexually violent offense, as defined in s. 980.01 (6):

18 (a) The department of health and family services.

19 (b) The department of justice.

20 (c) A district attorney specified in s. 980.02 (1) (b) or an agent or employe of the
21 district attorney.

22 (d) The person who is the subject of the departmental record, his or her attorney
23 or an agent or employe of the attorney.

24 (e) An expert or professional person who has been retained or appointed under
25 ch. 980 to evaluate or examine the subject of the departmental record.

1 **(2)** Information obtained from a departmental record under sub. (1) may be
2 used in an evaluation, examination, trial or other proceeding under ch. 980 by any
3 person specified in sub. (1).

4 **SECTION 17.** 904.04 (2) of the statutes is amended to read:

5 904.04 **(2)** OTHER CRIMES, WRONGS, OR ACTS. Evidence of other crimes, wrongs,
6 or acts is not admissible to prove the character of a person in order to show that the
7 person acted in conformity therewith. This subsection does not exclude the evidence
8 when it is offered for other purposes, such as proof of motive, opportunity, intent,
9 preparation, plan, knowledge, identity, or absence of mistake or accident, or when it
10 is offered at a trial or other proceeding under ch. 980 for the purpose of proving the
11 diagnosis of a person or showing the basis of an opinion concerning the probability
12 that a person will engage in acts of sexual violence.

13 **SECTION 18.** 905.04 (4) (a) of the statutes is amended to read:

14 905.04 **(4)** (a) *Proceedings for hospitalization, control, care and treatment of a*
15 *sexually violent person, guardianship, protective services or protective placement.*
16 There is no privilege under this rule as to communications and information relevant
17 to an issue in proceedings to hospitalize the patient for mental illness, to appoint a
18 guardian under s. 880.33, for control, care and treatment of a sexually violent person
19 under ch. 980, for court-ordered protective services or protective placement or for
20 review of guardianship, protective services or protective placement orders, if the
21 physician, registered nurse, chiropractor, psychologist, social worker, marriage and
22 family therapist or professional counselor in the course of diagnosis or treatment has
23 determined that the patient is in need of hospitalization, control, care and treatment
24 as a sexually violent person, guardianship, protective services or protective
25 placement.

1 **SECTION 19.** 938.35 (1) (e) of the statutes is created to read:

2 938.35 (1) (e) In a hearing, trial or other proceeding under ch. 980 relating to
3 a juvenile.

4 **SECTION 20.** 938.396 (1) of the statutes is amended to read:

5 938.396 (1) Law enforcement officers' records of juveniles shall be kept
6 separate from records of adults. Law enforcement officers' records of juveniles shall
7 not be open to inspection or their contents disclosed except under sub. (1b), (1d), (1g),
8 (1k), (1m), (1r), (1t) or (1x) or (5) or s. 938.293 or by order of the court. This subsection
9 does not apply to representatives of the news media who wish to obtain information
10 for the purpose of reporting news without revealing the identity of the juvenile
11 involved, to the confidential exchange of information between the police and officials
12 of the school attended by the juvenile or other law enforcement or social welfare
13 agencies or to juveniles 10 years of age or older who are subject to the jurisdiction of
14 the court of criminal jurisdiction. A public school official who obtains information
15 under this subsection shall keep the information confidential as required under s.
16 118.125 and a private school official who obtains information under this subsection
17 shall keep the information confidential in the same manner as is required of a public
18 school official under s. 118.125. A law enforcement agency that obtains information
19 under this subsection shall keep the information confidential as required under this
20 subsection and s. 48.396 (1). A social welfare agency that obtains information under
21 this subsection shall keep the information confidential as required under ss. 48.78
22 and 938.78.

23 **SECTION 21.** 938.396 (1k) of the statutes is created to read:

24 938.396 (1k) A law enforcement agency shall open its records for inspection by
25 and production to appropriate persons in accordance with ss. 980.015 (3m), (3r) and

1 (3x), 980.031 (3) and 980.08 (3), if the records of the law enforcement agency involve
2 or relate to an individual who is the subject of or who is being evaluated for a
3 proceeding under ch. 980. Information obtained from a law enforcement agency's
4 records under this subsection shall be kept confidential except to the extent that
5 redisclosure of that information is necessary for the conduct of an evaluation,
6 examination or proceeding under ch. 980 for which the information was obtained.

7 **SECTION 22.** 938.396 (2) (e) of the statutes is amended to read:

8 938.396 (2) (e) Upon request of the department of corrections to review court
9 records for the purpose of providing, an appropriate person under s. 980.015 (3) (a)
10 (3m), (3r) and (3x), 980.031 (3) and 980.08 (3) for the purpose of conducting an
11 evaluation, examination or proceeding under ch. 980, the department of justice or a
12 district attorney with a person's offense history, the court shall open for inspection
13 by authorized representatives of the department of corrections the appropriate
14 person the records of the court relating to any juvenile who has been adjudicated
15 delinquent for a sexually violent offense, as defined in s. 980.01 (6). Information
16 obtained from a law enforcement agency's records under this subsection shall be kept
17 confidential except to the extent that redisclosure of that information is necessary
18 for the conduct of an evaluation, examination or proceeding under ch. 980 for which
19 the information was obtained.

20 **SECTION 23.** 938.396 (5) (a) (intro.) of the statutes is amended to read:

21 938.396 (5) (a) (intro.) Any person who is denied access to a record under sub.
22 (1), (1b), (1d), (1g), (1k), (1m), (1r) or (1t) may petition the court to order the disclosure
23 of the records governed by the applicable subsection. The petition shall be in writing
24 and shall describe as specifically as possible all of the following:

25 **SECTION 24.** 938.78 (2) (e) of the statutes is amended to read:

1 938.78 (2) (e) Paragraph (a) does not prohibit the department from disclosing
2 information about an individual adjudged delinquent under s. 938.183 or 938.34 for
3 a sexually violent offense, as defined in s. 980.01 (6), to ~~the department of justice, or~~
4 ~~a district attorney or a judge acting under ch. 980~~ appropriate persons under ss.
5 980.015 (3m), (3r) or (3x), 980.031 (3) and 980.08 (3) or to an attorney who represents
6 a person subject to a petition under ch. 980. ~~The court in which the petition under~~
7 ~~s. 980.02 is filed may issue any protective orders that it determines are appropriate~~
8 ~~concerning information disclosed under this paragraph~~ Information obtained from
9 the department under this paragraph shall be kept confidential except as necessary
10 for the conduct of an evaluation, examination or proceeding under ch. 980 for which
11 the information was obtained.

12 **SECTION 25.** 967.03 of the statutes is amended to read:

13 **967.03 District attorneys.** Wherever in chs. 967 to 979 980 powers or duties
14 are imposed upon district attorneys, the same powers and duties may be discharged
15 by any of their duly qualified deputies or assistants.

16 **SECTION 26.** 972.15 (4) of the statutes is amended to read:

17 972.15 (4) After sentencing, unless otherwise authorized under ~~sub.~~ subs. (5)
18 and (6) or ordered by the court, the presentence investigation report shall be
19 confidential and shall not be made available to any person except upon specific
20 authorization of the court.

21 **SECTION 27.** 972.15 (6) of the statutes is created to read:

22 972.15 (6) The presentence investigation report and any information contained
23 in it may be used by any of the following persons in an evaluation, examination,
24 hearing, trial or other proceeding under ch. 980:

25 (a) The department of corrections.

1 (b) The department of health and family services.

2 (c) The person who is the subject of the presentence investigation report, his
3 or her attorney or an agent or employe of the attorney.

4 (d) The attorney representing the state or an agent or employe of the attorney.

5 (e) An expert or professional person who has been retained or appointed to
6 evaluate or examine the subject of the presentence investigation report.

7 **SECTION 28.** 978.05 (6) of the statutes is amended to read:

8 978.05 **(6)** (a) Institute, commence or appear in all civil actions or special
9 proceedings under and perform the duties set forth for the district attorney under ss.
10 17.14, 30.03 (2), 48.09 (5), 59.55 (1), 59.64 (1), 70.36, 103.50 (8), 103.92 (4), 109.09,
11 343.305 (9) (a), 453.08, 806.05, 938.09, 938.18, 938.355 (6) (b) and (6g) (a), 946.86,
12 946.87, 961.55 (5), 971.14 and 973.075 to 973.077, perform any duties in connection
13 with court proceedings in a court assigned to exercise jurisdiction under chs. 48 and
14 938 as the judge may request and perform all appropriate duties and appear if the
15 district attorney is designated in specific statutes, including matters within chs. 782,
16 976 ~~and~~, 979 and 980 and ss. 51.81 to 51.85. Nothing in this paragraph limits the
17 authority of the county board to designate, under s. 48.09 (5), that the corporation
18 counsel provide representation as specified in s. 48.09 (5) or to designate, under s.
19 48.09 (6) or 938.09 (6), the district attorney as an appropriate person to represent the
20 interests of the public under s. 48.14 or 938.14.

21 **SECTION 29.** 980.015 (title) of the statutes is amended to read:

22 **980.015** (title) **Notice Evaluations of persons who may meet**
23 **commitment criteria; notice to the department of justice and district**
24 **attorney.**

1 **SECTION 30.** 980.015 (1) of the statutes is renumbered 980.015 (1) (intro.) and
2 amended to read:

3 980.015 (1) (intro.) In this section, “agency and s. 980.02:

4 (a) “Agency with jurisdiction” means the agency with the authority or duty to
5 release or discharge the person.

6 **SECTION 31.** 980.015 (1) (b) (intro.) of the statutes is created to read:

7 980.015 (1) (b) (intro.) “Anticipated release date” means whichever of the
8 following is applicable:

9 **SECTION 32.** 980.015 (2) (intro.) of the statutes is renumbered 980.015 (2) (am)
10 and amended to read:

11 980.015 (2) (am) If an agency with jurisdiction has control or custody over a
12 person who meets any of the criteria specified in s. 980.02 (2) (a), the agency with
13 jurisdiction shall, as soon as possible beginning 180 days before the anticipated
14 release date of the person, evaluate whether the person may meet the criteria for
15 commitment as a sexually violent person or whether the person does not meet the
16 criteria for commitment as a sexually violent person. As soon as possible, but in no
17 case later than 15 days after the completion of its evaluation, the agency with
18 jurisdiction shall inform each appropriate district attorney specified under s. 980.02
19 (1) (b) and the department of justice regarding the person as soon as possible
20 beginning 3 months prior to the applicable date of the following: whether the agency
21 with jurisdiction has determined that the person may meet the criteria for
22 commitment or that the person does not meet the criteria for commitment.

23 **SECTION 33.** 980.015 (2) (a) of the statutes is renumbered 980.015 (1) (b) 1. and
24 amended to read:

1 980.015 (1) (b) 1. The anticipated date of discharge from a sentence, anticipated
2 date of release on parole or extended supervision or anticipated date of release from
3 imprisonment of a person who has been convicted of a sexually violent offense.

4 **SECTION 34.** 980.015 (2) (b) of the statutes, as affected by 1999 Wisconsin Act
5 9, is renumbered 980.015 (1) (b) 2. and amended to read:

6 980.015 (1) (b) 2. The anticipated date of release from a secured correctional
7 facility, as defined in s. 938.02 (15m), ~~or~~ a secured child caring institution, as defined
8 in s. 938.02 (15g), or a secured group home, as defined in s. 938.02 (15p), of a person
9 adjudicated delinquent under s. 938.183 or 938.34 on the basis of a sexually violent
10 offense.

11 **SECTION 35.** 980.015 (2) (bm) of the statutes is created to read:

12 980.015 (2) (bm) If an agency with jurisdiction determines in an evaluation
13 under par. (am) that the person may meet the criteria for commitment as a sexually
14 violent person, the agency with jurisdiction shall obtain a special purpose evaluation
15 of the person by a qualified expert or professional person, who shall make a
16 recommendation as to whether a commitment proceeding under this chapter should
17 be initiated. A qualified expert or professional person who conducts a special purpose
18 evaluation under this paragraph shall make a written report of his or her evaluation
19 to the agency with jurisdiction as soon as possible after completing the evaluation.
20 The report shall specify the recommendation of the qualified expert or professional
21 person and the bases for the recommendation. The agency with jurisdiction shall,
22 as soon as possible but in no case later than 5 days after it receives the report, provide
23 each district attorney specified under s. 980.02 (1) (b) and the department of justice
24 with a copy of the report of the qualified expert or professional person who conducted
25 the special purpose evaluation.

1 **SECTION 36.** 980.015 (2) (c) of the statutes is renumbered 980.015 (1) (b) 3. and
2 amended to read:

3 980.015 (1) (b) 3. The anticipated date of termination or discharge of the
4 commitment of a person who has been found not guilty of a sexually violent offense
5 by reason of mental disease or defect under s. 971.17.

6 **SECTION 37.** 980.015 (3) (intro.) of the statutes is amended to read:

7 980.015 (3) (intro.) The When informing a district attorney and the department
8 of justice of its evaluation under sub. (2) (am) and, if applicable, when providing a
9 copy of the report of a special purpose evaluation conducted under sub. (2) (bm), the
10 agency with jurisdiction shall provide the district attorney and department of justice
11 with all of the following:

12 **SECTION 38.** 980.015 (3) (b) of the statutes is amended to read:

13 980.015 (3) (b) ~~If applicable,~~ Copies of or access to documentation of in the
14 possession of the agency with jurisdiction relating to the person, including any
15 treatment records, as provided under s. 51.30 (4) (b) 8s., health care records, as
16 provided under s. 146.82 (2) (cm), and records concerning the person's adjustment
17 to and conduct in any institutional placement.

18 **SECTION 39.** 980.015 (3m) of the statutes is created to read:

19 980.015 (3m) (a) A qualified expert or professional person who conducts a
20 special purpose evaluation under sub. (2) (bm) shall have reasonable access to the
21 person for the purpose of the evaluation. The expert or professional person shall also
22 have access to the person's past and present treatment records, as provided under
23 s. 51.30 (4) (b) 8s., past and present patient health care records, as provided under
24 s. 146.82 (2) (cm), and past and present correctional records, as provided under ss.
25 48.78 (2) (e), 301.355 and 938.78 (2) (e), to files and records of court proceedings under

1 ch. 51, as provided under s. 51.30 (3) (bm), and the records of a court assigned to
2 exercise jurisdiction under chs. 48 and 938, as provided under ss. 48.396 (6) and
3 938.396 (2) (e), to records of law enforcement officers and law enforcement agencies,
4 as provided under ss. 48.396 (6) and 938.396 (1k), and to presentence investigation
5 reports, as provided under s. 972.15 (6).

6 (b) A qualified expert or professional person who conducts a special purpose
7 evaluation under sub. (2) (bm) shall, when requested to do so, provide a district
8 attorney who receives a copy of the report of the special purpose evaluation and the
9 department of justice with copies of or access to any documentation used by the
10 expert or professional person in preparing the report, including any treatment
11 records, health care records, correctional records, records of a court assigned to
12 exercise jurisdiction under chs. 48 and 938, records of court proceedings under ch.
13 51, records of law enforcement officers and presentence investigation reports.

14 **SECTION 40.** 980.015 (3r) of the statutes is created to read:

15 980.015 (3r) For purposes of evaluating a case to decide whether to initiate
16 commitment proceedings under this chapter or for the purpose of conducting a
17 commitment proceeding under this chapter, a district attorney specified under s.
18 980.02 (1) (b) or the department of justice may request copies of or access to all of the
19 following concerning a person who is or has been the subject of an evaluation by an
20 agency with jurisdiction under sub. (2) (am):

21 (a) Past and present treatment records, as provided under s. 51.30 (4) (b) 8s.,
22 and past and present patient health care records, as provided under s. 146.82 (2)
23 (cm).

24 (b) Files and records of court proceedings under ch. 51, as provided under s.
25 51.30 (3) (bm).

1 (c) Records of law enforcement officers and law enforcement agencies, as
2 provided under ss. 48.396 (6) and 938.396 (1k), records of a court assigned to exercise
3 jurisdiction under chs. 48 and 938, as provided under ss. 48.396 (6) and 938.396 (2)
4 (e), and records of the department of corrections and other agencies, as provided
5 under ss. 48.78 (2) (e) and 938.78 (2) (e).

6 (d) Correctional records, as provided under s. 301.355.

7 (e) A presentence investigation report, as provided under s. 972.15 (6).

8 **SECTION 41.** 980.015 (3x) of the statutes is created to read:

9 980.015 (3x) A district attorney specified under s. 980.02 (1) (b) or the
10 department of justice may, at any time after it receives notification of the evaluation
11 of an agency with jurisdiction under sub. (2) (am), retain a qualified expert or
12 professional person to evaluate the person who is the subject of the agency's
13 evaluation. If a district attorney or the department of justice retains a qualified
14 expert or professional person to conduct an evaluation of a person under this
15 subsection, the examiner shall have reasonable access to the person for the purpose
16 of the evaluation. The expert or professional person shall also have access to the
17 person's past and present treatment records, as provided under s. 51.30 (4) (b) 8s.,
18 past and present patient health care records, as provided under s. 146.82 (2) (cm),
19 and past and present correctional records, as provided under ss. 48.78 (2) (e), 301.355
20 and 938.78 (2) (e), to files and records of court proceedings under ch. 51, as provided
21 under s. 51.30 (3) (bm), and the records of a court assigned to exercise jurisdiction
22 under chs. 48 and 938, as provided under ss. 48.396 (6) and 938.396 (2) (e), to records
23 of law enforcement officers and law enforcement agencies, as provided under ss.
24 48.396 (6) and 938.396 (1k), and to presentence investigation reports, as provided
25 under s. 972.15 (6).

1 **SECTION 42.** 980.015 (4) of the statutes is renumbered 980.14 (2) and amended
2 to read:

3 980.14 **(2)** Any agency ~~or~~ officer, employe or agent of an agency or qualified
4 expert or professional person retained by a district attorney or the department of
5 justice or appointed by a court to evaluate or examine a person under this chapter
6 is immune from criminal or civil liability for any acts or omissions as the result of a
7 good faith effort to comply with any provision of this section chapter.

8 **SECTION 43.** 980.02 (1) (intro.) of the statutes is amended to read:

9 980.02 **(1)** (intro.) A petition alleging that a person is a sexually violent person
10 may be filed by one of the following in accordance with the specified procedure:

11 **SECTION 44.** 980.02 (1) (a) of the statutes is amended to read:

12 980.02 **(1)** (a) The department of justice ~~at the request of.~~ If the agency with
13 jurisdiction, as defined in s. 980.015 (1), over the person **determined in an evaluation**
14 under s. 980.015 (2) (am) that the person does not meet the criteria for commitment,
15 the department of justice shall decide whether to file a petition under this paragraph,
16 and shall inform the district attorneys specified under par. (b) of its decision as soon
17 as possible, but in no case later than 45 days after it receives notice of the agency's
18 evaluation. If the agency with jurisdiction over the person obtained a special purpose
19 evaluation of the person under s. 980.015 (2) (bm), the department of justice shall
20 decide whether to file a petition under this paragraph, and shall inform the district
21 attorneys specified under par. (b) of its decision as soon as possible, but in no case
22 later than 30 days after it receives a copy of the report of the special purpose
23 evaluation. If the department of justice decides to file a petition under this
24 paragraph, it shall file the petition before the date of the release or discharge of the
25 person.

1 **SECTION 45.** 980.02 (1) (b) (intro.) of the statutes is amended to read:

2 980.02 **(1)** (b) (intro.) If the department of justice ~~does~~ decides not to file a
3 petition under par. (a), the district attorney for one of the following:

4 **SECTION 46.** 980.03 (2) (intro.) of the statutes is amended to read:

5 980.03 **(2)** (intro.) ~~Except as provided in ss. 980.09 (2) (a) and 980.10 and~~
6 ~~without~~ Without limitation by enumeration, at any hearing under this chapter, the
7 person who is the subject of the petition has the right to:

8 **SECTION 47.** 980.03 (4) of the statutes, as affected by 1999 Wisconsin Act 9, is
9 renumbered 980.031 (1) and amended to read:

10 980.031 **(1)** Whenever a person who is the subject of a petition filed under s.
11 980.02 or who has been committed under s. 980.06 is required to submit to an
12 examination or reexamination under this chapter, he or she may retain experts or
13 professional persons to perform an examination. If the person is indigent, the court
14 shall, upon the person's request, appoint a qualified and available expert or
15 professional person to perform an examination and, if appropriate, participate in a
16 trial or other proceeding under this chapter.

17 **(3)** ~~If the person a party retains~~ or the court appoints a qualified expert or
18 professional person of his or her own choice to conduct an examination of a person
19 who is the subject of a petition filed under s. 980.02 or who has been committed under
20 s. 980.06, the examiner expert or professional person shall have reasonable access
21 to the person for the purpose of the examination, as well as. The expert or
22 professional person shall also have access to the person's past and present treatment
23 records, ~~as defined in provided under s. 51.30 (1) (b), and (4) (b) 8s.,~~ past and present
24 patient health care records as provided under s. 146.82 (2) (c). ~~If the person is~~
25 ~~indigent, the court shall, upon the person's request, appoint a qualified and available~~

1 expert or professional person to perform an examination and participate in the trial
2 or other proceeding on the person's behalf. (cm), and past and present correctional
3 records, as provided under ss. 48.78 (2) (e), 301.355 and 938.78 (2) (e), to files and
4 records of court proceedings under ch. 51, as provided under s. 51.30 (3) (bm), and
5 the records of a court assigned to exercise jurisdiction under chs. 48 and 938, as
6 provided under ss. 48.396 (6) and 938.396 (2) (e), to records of law enforcement
7 officers and law enforcement agencies, as provided under ss. 48.396 (6) and 938.396
8 (1k), and to presentence investigation reports, as provided under s. 972.15 (6).

9 **(4)** Upon the order of the circuit court, the county shall pay, as part of the costs
10 of the action, the costs of an expert or professional person appointed by a court under
11 ~~this subsection~~ sub. (1) to perform an examination and participate in the trial or
12 other proceeding on behalf of an indigent person.

13 **(5)** An expert or professional person retained by either party or appointed to
14 ~~assist an indigent person who is subject to a petition~~ by the court under sub. (1) may
15 not be subject to any order by the court for the sequestration of witnesses at any
16 proceeding under this chapter.

17 **SECTION 48.** 980.03 (5) of the statutes is renumbered 980.038 (1) and amended
18 to read:

19 **980.038 (1)** TESTIMONY BY TELEPHONE OR LIVE AUDIOVISUAL MEANS. Upon a
20 showing by the proponent of good cause under s. 807.13 (2) (c), testimony may be
21 received into the record of a hearing under this ~~section~~ chapter by telephone or live
22 audiovisual means.

23 **SECTION 49.** 980.031 (title) of the statutes is created to read:

24 **980.031 (title) Examinations.**

25 **SECTION 50.** 980.031 (2) of the statutes is created to read:

1 980.031 **(2)** The department of justice or a district attorney, whichever is
2 applicable, may retain an expert or professional person to examine a person who is
3 the subject of a petition under s. 980.02 or who has been committed under s. 980.06
4 and to testify at trial or at any other proceeding under this chapter.

5 **SECTION 51.** 980.036 of the statutes is created to read:

6 **980.036 Discovery and inspection. (1) DEFINITIONS.** In this section:

7 (a) “Person subject to this chapter” means a person who is subject to a petition
8 filed under s. 980.02 or a person who has been committed under s. 980.06.

9 (b) “Prosecuting attorney” means an attorney representing the state in a
10 proceeding under this chapter.

11 **(2) WHAT A PROSECUTING ATTORNEY MUST DISCLOSE TO A PERSON SUBJECT TO THIS**
12 **CHAPTER.** Upon demand, a prosecuting attorney shall, within a reasonable time
13 before a trial or other proceeding under this chapter, disclose to a person subject to
14 this chapter or the person’s attorney and permit the person or the person’s attorney
15 to inspect and copy or photograph all of the following materials and information, if
16 the material or information is within the possession, custody or control of the state:

17 (a) Any written or recorded statement made by the person concerning the
18 allegations in the petition filed under s. 980.02 or concerning other matters at issue
19 in the proceeding and the names of witnesses to the person’s written statements.

20 (b) A written summary of all oral statements of the person that the prosecuting
21 attorney plans to use in the course of the trial or other proceeding and the names of
22 witnesses to the person’s oral statements.

23 (c) Any information obtained by the prosecutor under s. 980.015 (3) (b), (3m)
24 (b), (3r) or (3x).

1 (d) Evidence obtained in the manner described under s. 968.31 (2) (b), if the
2 prosecuting attorney intends to use the evidence at trial.

3 (e) A copy of the person's criminal record.

4 (f) A list of all witnesses, and their addresses, whom the prosecuting attorney
5 intends to call at the trial. This paragraph does not apply to rebuttal witnesses or
6 those called for impeachment only.

7 (g) Any relevant written or recorded statements of a witness named on a list
8 under par. (f), including all of the following:

9 1. Any videotaped oral statement of a child under s. 908.08.

10 2. Any reports or statements made in connection with the case by a person who
11 conducts an evaluation or examination under this chapter.

12 3. If a person specified in subd. 2. does not prepare a report or statement, a
13 written summary of the person's findings or the subject matter of his or her
14 testimony.

15 (h) The results of any physical or mental examination, scientific test,
16 experiment or comparison that the prosecuting attorney intends to offer in evidence
17 at trial, and any test results, facts and data that were collected during and considered
18 as part of any evaluation or examination under this chapter and that the prosecuting
19 attorney intends to offer in evidence at a trial or other proceeding under this chapter.

20 (i) The criminal record of a witness for the state which is known to the
21 prosecuting attorney.

22 (j) Any physical evidence that the prosecuting attorney intends to offer in
23 evidence at a trial or other proceeding under this chapter.

24 (k) Any exculpatory evidence.

1 **(3)** WHAT A PERSON SUBJECT TO THIS CHAPTER MUST DISCLOSE TO THE PROSECUTING
2 ATTORNEY. Upon demand, a person who is subject to this chapter or the person's
3 attorney shall, within a reasonable time before trial or other proceeding under this
4 chapter, disclose to the prosecuting attorney and permit the prosecuting attorney to
5 inspect and copy or photograph all of the following materials and information, if the
6 material or information is within the possession, custody or control of the person:

7 (a) A list of all witnesses, other than the person, whom the person intends to
8 call at trial or other proceeding under this chapter, together with their addresses.
9 This paragraph does not apply to rebuttal witnesses or those called for impeachment
10 only.

11 (b) Any relevant written or recorded statements of a witness named on a list
12 under par. (a), including any reports or statements made in connection with the case
13 by a witness who conducted an examination under s. 980.031 or, if the witness does
14 not prepare a report or statement, a written summary of the findings of the witness
15 or the subject matter of his or her testimony.

16 (c) The results of any physical or mental examination, scientific test,
17 experiment or comparison that the person intends to offer in evidence at trial or other
18 proceeding under this chapter, and any test results, facts and data that were
19 collected during and evaluated as part of an examination under s. 980.031 and that
20 form the basis for an opinion contained in a report, statement or written summary
21 disclosed under par. (b).

22 (d) The criminal record of a witness named on a list under par. (a) that is known
23 to the person's attorney.

24 (e) Any physical evidence that the person intends to offer in evidence at the trial
25 or other proceeding under this chapter.

1 **(4) COMMENT OR INSTRUCTION ON FAILURE TO CALL WITNESS.** No comment or
2 instruction regarding the failure to call a witness at the trial shall be made or given
3 if the sole basis for such comment or instruction is the fact the name of the witness
4 appears upon a list furnished pursuant to this section.

5 **(5) TESTING OR ANALYSIS OF EVIDENCE.** On motion of a party, the court may order
6 the production of any item of evidence or data that is intended to be introduced at
7 the trial for testing or analysis under such terms and conditions as the court
8 prescribes.

9 **(6) PROTECTIVE ORDER.** Upon motion of a party, the court may at any time order
10 that discovery, inspection or the listing of witnesses required under this section be
11 denied, restricted or deferred, or make other appropriate orders. If the prosecuting
12 attorney or the attorney for a person subject to this chapter certifies that listing a
13 witness may subject the witness or others to physical or economic harm or coercion,
14 the court may order that the deposition of the witness be taken pursuant to s. 967.04
15 (2) to (6). The name of the witness need not be divulged prior to the taking of such
16 deposition. If the witness becomes unavailable or changes his or her testimony, the
17 deposition shall be admissible at trial as substantive evidence.

18 **(7) IN CAMERA PROCEEDINGS.** Either party may move for an in camera inspection
19 by the court of any document required to be disclosed under sub. (2) or (3) for the
20 purpose of masking or deleting any material that is not relevant to the case being
21 tried. The court shall mask or delete any irrelevant material.

22 **(8) CONTINUING DUTY TO DISCLOSE.** If, subsequent to compliance with a
23 requirement of this section, and prior to or during trial or other proceeding under this
24 chapter, a party discovers additional material or the names of additional witnesses
25 requested that are subject to discovery, inspection or production under this section,

1 the party shall promptly notify the other party of the existence of the additional
2 material or names.

3 **(9) SANCTIONS FOR FAILURE TO COMPLY.** (a) The court shall exclude any witness
4 not listed or evidence not presented for inspection or copying required by this section,
5 unless good cause is shown for failure to comply. The court may in appropriate cases
6 grant the opposing party a recess or a continuance.

7 (b) In addition to or in lieu of any sanction specified in par. (a), a court may,
8 subject to sub. (4), advise the jury of any failure or refusal to disclose material or
9 information required to be disclosed under sub. (2) or (3), or of any untimely
10 disclosure of material or information required to be disclosed under sub. (2) or (3).

11 **(10) PAYMENT OF PHOTOCOPY COSTS IN CASES INVOLVING INDIGENT RESPONDENTS.**
12 When the state public defender or a private attorney appointed under s. 977.08
13 requests photocopies of any item that is discoverable under this section, the state
14 public defender shall pay any fee charged for the photocopies from the appropriation
15 under s. 20.550 (1) (a). If the person providing photocopies under this section charges
16 the state public defender a fee for the photocopies, the fee may not exceed the actual,
17 necessary and direct cost of photocopying.

18 **(11) EXCLUSIVE METHOD OF DISCOVERY.** Chapter 804 does not apply to
19 proceedings under this chapter. This section provides the only methods of obtaining
20 discovery and inspection in proceedings under this chapter.

21 **SECTION 52.** 980.038 (title) of the statutes is created to read:

22 **980.038 (title) Miscellaneous procedural provisions.**

23 **SECTION 53.** 980.038 (2) of the statutes is created to read:

24 980.038 **(2) PROTECTIVE ORDERS.** In addition to any protective order that may
25 be issued under s. 980.036 (6), the court in which a proceeding under this chapter is

1 pending may deny, defer or restrict, or issue any other appropriate protective order
2 concerning, the disclosure or redisclosure of information obtained under s. 980.015
3 (3) (b), (3m), (3r) or (3x), 980.031 (3) or 980.08 (3).

4 **SECTION 54.** 980.038 (3) of the statutes is created to read:

5 **980.038 (3) FAILURE TO COMPLY WITH TIME LIMITS; EFFECT.** Failure to comply with
6 any time limit specified in this chapter does not deprive the circuit court of personal
7 or subject matter jurisdiction or of competency to exercise that jurisdiction. Failure
8 to comply with any time limit specified in this chapter is not grounds for an appeal
9 or grounds to vacate any order, judgment or commitment issued or entered under this
10 chapter.

11 **SECTION 55.** 980.07 (1) of the statutes, as affected by 1999 Wisconsin Act 9, is
12 amended to read:

13 **980.07 (1)** If Except as provided in sub. (1g), if a person has been committed
14 under s. 980.06 and has not been discharged under s. 980.09, the department shall
15 conduct an examination of ~~his or her mental condition~~ the person within 6 months
16 after an initial commitment under s. 980.06 and again thereafter at least once each
17 12 months for the purpose of determining whether the person has made sufficient
18 progress for the court to consider whether the person should be placed on supervised
19 release or discharged.

20 **(1m)** At the time of a reexamination under this section, the person who has
21 been committed may retain or seek to have the court appoint an ~~examiner~~ expert or
22 professional person to conduct an examination as provided under s. ~~980.03 (4)~~
23 980.031 (1).

24 **SECTION 56.** 980.07 (1g) of the statutes is created to read:

1 **980.07 (1g)** If a person who has been committed under s. 980.06 has not been
2 discharged under s. 980.09 and the person is incarcerated in a county jail or a state
3 correctional institution or is placed in a treatment facility or a secured correctional
4 facility, as defined in s. 938.02 (15m), a secured child caring institution, as defined
5 in s. 938.01 (15g), or a secured group home, as defined in s. 938.02 (15p), for an offense
6 that the person committed or is alleged to have committed since being committed
7 under s. 980.06, the department need not conduct an examination of the person as
8 provided under sub. (1) but shall conduct an examination of the person upon the
9 person's release from the county jail, state correctional institution, treatment
10 facility, secured correctional facility, secured child caring institution or secured
11 group home.

12 **SECTION 57.** 980.07 (2) of the statutes is amended to read:

13 **980.07 (2)** Any ~~examiner~~ expert or professional person conducting an
14 examination under this section shall prepare a written report of the examination no
15 later than 30 days after the date of the examination. The ~~examiner~~ expert or
16 professional person shall place a copy of the report in the person's medical records
17 and shall provide a copy of the report to the court that committed the person under
18 s. 980.06 and to the district attorney or the department of justice, whichever filed the
19 original petition.

20 **SECTION 58.** 980.07 (3) of the statutes is amended to read:

21 **980.07 (3)** Notwithstanding sub. ~~subs.~~ (1) and (1g), the court that committed
22 a person under s. 980.06 may order a reexamination of the person at any time during
23 the period in which the person is subject to the commitment order.

24 **SECTION 59.** 980.08 (3) of the statutes, as affected by 1999 Wisconsin Act 9, is
25 amended to read:

1 980.08 (3) Within 20 days after receipt of the petition, the court shall appoint
2 one or more examiners qualified experts or professional persons having the
3 specialized knowledge determined by the court to be appropriate, who shall examine
4 the person and furnish a written report of the examination to the court within 30
5 days after appointment. The examiners experts or professional persons shall have
6 reasonable access to the person for purposes of examination and. The experts or
7 professional persons shall also have access to the person's past and present
8 treatment records, as defined in provided under s. 51.30 (1) (b), and (4) (b) 8s., past
9 and present patient health care records, as provided under s. 146.82 (2) (c) (cm), and
10 correctional records, as provided under ss. 48.78 (2) (e), 301.355 and 938.78 (2) (e),
11 to files and records of court proceedings under ch. 51, as provided under s. 51.30 (3)
12 (bm), and the records of a court assigned to exercise jurisdiction under chs. 48 and
13 938, as provided under ss. 48.396 (6) and 938.396 (2) (e), to records of law
14 enforcement officers and law enforcement agencies, as provided under ss. 48.396 (6)
15 and 938.396 (1k), and to presentence investigation reports, as provided under s.
16 972.15 (6). If any such examiner expert or professional person believes that the
17 person is appropriate for supervised release under the criterion specified in sub. (4),
18 the examiner expert or professional person shall report on the type of treatment and
19 services that the person may need while in the community on supervised release.
20 The county shall pay the costs of an examiner expert or professional person
21 appointed under this subsection as provided under s. 51.20 (18) (a).

22 **SECTION 60.** 980.08 (4) of the statutes, as affected by 1999 Wisconsin Act 9, is
23 amended to read:

24 980.08 (4) The court, without a jury, shall hear the petition within 30 days after
25 the report of the court-appointed examiner expert or professional person is filed with

1 the court, unless the petitioner waives this time limit. Expenses of proceedings
2 under this subsection shall be paid as provided under s. 51.20 (18) (b), (c) and (d).
3 The court shall grant the petition unless the state proves by clear and convincing
4 evidence that the person is still a sexually violent person and that it is still
5 substantially probable that the person will engage in acts of sexual violence if the
6 person is not continued in institutional care. In making a decision under this
7 subsection, the court may consider, without limitation because of enumeration, the
8 nature and circumstances of the behavior that was the basis of the allegation in the
9 petition under s. 980.02 (2) (a), the person's mental history and present mental
10 condition, where the person will live, how the person will support himself or herself
11 and what arrangements are available to ensure that the person has access to and will
12 participate in necessary treatment, including pharmacological treatment using an
13 antiandrogen or the chemical equivalent of an antiandrogen if the person is a serious
14 child sex offender. A decision under this subsection on a petition filed by a person
15 who is a serious child sex offender may not be made based on the fact that the person
16 is a proper subject for pharmacological treatment using an antiandrogen or the
17 chemical equivalent of an antiandrogen or on the fact that the person is willing to
18 participate in pharmacological treatment using an antiandrogen or the chemical
19 equivalent of an antiandrogen.

20 **SECTION 61.** 980.09 (1) (b) of the statutes is amended to read:

21 980.09 (1) (b) At a hearing under this subsection, the district attorney or the
22 department of justice, whichever filed the original petition, shall represent the state
23 and ~~shall have the right to~~ may have the petitioner examined by an expert or
24 professional person of his, her or its choice. ~~The hearing shall be before the court~~
25 ~~without a jury.~~ The district attorney or the department of justice, whichever filed the

1 original petition, or the petitioner or his or her attorney may request that the hearing
2 under this subsection be to a jury of 6 persons, or the court may on its own motion
3 require that the hearing be to a jury of 6 persons. At a hearing under this subsection,
4 the state has the burden of proving by clear and convincing evidence that the
5 petitioner is still a sexually violent person.

6 **SECTION 62.** 980.09 (2) (a) of the statutes is amended to read:

7 980.09 (2) (a) A person may petition the committing court for discharge from
8 custody or supervision without the secretary's approval. ~~At the time of an~~
9 ~~examination under s. 980.07 (1), the secretary shall provide the committed person~~
10 ~~with a written notice of the person's right to petition the court for discharge over the~~
11 ~~secretary's objection. The notice shall contain a waiver of rights. The secretary shall~~
12 ~~forward the notice and waiver form to the court with the report of the department's~~
13 ~~examination under s. 980.07. If the person does not affirmatively waive the right to~~
14 ~~petition if at least 18 months have elapsed since the initial commitment order was~~
15 ~~entered or at least 6 months have elapsed since the most recent petition for discharge~~
16 ~~under this paragraph or under sub. (1) (a) was denied. If a person petitions for~~
17 ~~discharge under this paragraph, the court shall set a probable cause hearing review~~
18 ~~the petition, the most recent examination report filed under s. 980.07 (2) and any~~
19 ~~relevant written arguments or supporting documentation provided by the person,~~
20 ~~the person's attorney or the state to determine whether facts exist that warrant a~~
21 ~~hearing on whether there is probable cause to believe that the person is still no longer~~
22 a sexually violent person. The committed person has a right to have an attorney
23 represent him or her at the probable cause hearing, but the person is not entitled to
24 be present at the probable cause hearing file a petition, written arguments and
25 supporting documentation on the person's behalf.

1 **SECTION 63.** 980.09 (2) (b) of the statutes is amended to read:

2 980.09 (2) (b) If the court determines ~~at the probable cause hearing~~ after a
3 review of a petition filed under par. (a) that there is probable cause ~~exists~~ to believe
4 that the committed person is no longer a sexually violent person, then the court shall
5 set a hearing on the issue. At a hearing under this paragraph, the committed person
6 is entitled to be present and to the benefit of the protections afforded to the person
7 under s. 980.03. The district attorney or the department of justice, whichever filed
8 the original petition, shall represent the state at a hearing under this paragraph.
9 ~~The hearing under this paragraph shall be to the court.~~ The district attorney or the
10 department of justice, whichever filed the original petition, or the committed person
11 or his or her attorney may request that the hearing under this subsection be to a jury
12 of 6 persons, or the court may on its own motion require that the hearing be to a jury
13 of 6 persons. The state ~~has the right to~~ may have the committed person evaluated
14 examined by experts or professional persons chosen by the state. At the hearing, the
15 state has the burden of proving by clear and convincing evidence that the committed
16 person is still a sexually violent person.

17 **SECTION 64.** 980.10 of the statutes is amended to read:

18 **980.10 Additional discharge petitions.** ~~In addition to the procedures under~~
19 Notwithstanding s. 980.09, a committed person may petition the committing court
20 for discharge at any time, but if a person has previously filed a petition for discharge
21 without the secretary's approval under s. 980.09 (2) and the court determined, either
22 upon review of the petition under s. 980.09 (2) (a) or following a hearing under s.
23 980.09 (2) (b), that the person's petition was frivolous or that the person was still a
24 sexually violent person, then the court shall deny any subsequent petition under this
25 section without a hearing unless the petition contains facts upon which a court could

1 find that the condition of the person had so changed that a review of the petition
2 under s. 980.09 (2) (a) or a hearing was on the petition under s. 980.09 (2) (b) is
3 warranted. If the court finds that a review or hearing is warranted, the court shall
4 ~~set a probable cause hearing proceed~~ in accordance with s. 980.09 (2) (a) ~~and continue~~
5 ~~proceedings under s. 980.09 (2) or (b), if whichever is~~ appropriate. If the person has
6 not previously filed a petition for discharge without the secretary's approval, the
7 court shall ~~set a probable cause hearing in accordance with~~ review the petition as
8 provided under s. 980.09 (2) (a) and continue proceedings under s. 980.09 (2) (b), if
9 appropriate.

10 **SECTION 65.** 980.12 (1) of the statutes, as affected by 1999 Wisconsin Act 9,
11 section 3239, is amended to read:

12 980.12 (1) Except as provided in ss. 980.03 980.031 (4) and 980.08 (3), the
13 department shall pay from the appropriations under s. 20.435 (2) (a) and (bm) for all
14 costs relating to the evaluation, treatment and care of persons evaluated, examined
15 or committed under this chapter.

16 **SECTION 66.** 980.14 (title) of the statutes is created to read:

17 **980.14 (title) Immunity.**

18 **SECTION 67.** 980.14 (1) of the statutes is created to read:

19 980.14 (1) In this section, "agency" means the department of corrections, the
20 department of health and family services, the department of justice or a district
21 attorney.

22 **SECTION 68. Initial applicability.**

23 (1) PETITIONING PROCESS. The treatment of sections 165.255, 980.015 (2) (intro.),
24 (a), (b), (bm) and (c), (3) (intro.) and (b), (3m), (3r) and (3x) and 980.02 (1) (intro.), (a)
25 and (b) (intro.) of the statutes, the renumbering and amendment of section 980.015

1 (1) of the statutes and the creation of section 980.015 (1) (b) (intro.) of the statutes
2 first apply to evaluations and examinations conducted on the effective date of this
3 subsection for the purpose of determining whether to file a petition under section
4 980.02 of the statutes.

5 (2) DISCOVERY. The treatment of section 980.036 of the statutes first applies to
6 proceedings under chapter 980 of the statutes that are initiated by a petition filed
7 under section 980.02 of the statutes on the effective date of this subsection.

8 (3) PERIODIC REEXAMINATIONS. The treatment of section 980.07 (1), (1g), (2) and
9 (3) of the statutes first applies to examinations of a sexually violent person that occur
10 on the effective date of this subsection.

11 (4) PETITIONS FOR DISCHARGE. The treatment of sections 980.09 (2) (a) and (b)
12 and 980.10 of the statutes first applies to petitions for discharge that are filed on the
13 effective date of this subsection.

14 (5) IMMUNITY PROVISIONS. The treatment of sections 980.015 (4) and 980.14 (1)
15 of the statutes first applies to acts or omissions occurring on the effective date of this
16 subsection.

17 (END)