

1999 DRAFTING REQUEST

Assembly Substitute Amendment (ASA-AB777)

Received: **03/02/2000**

Received By: **olsenje**

Wanted: **Soon**

Identical to LRB:

For: **Gary Drzewiecki (608) 266-5670**

By/Representing: **Louie**

This file may be shown to any legislator: NO

Drafter: olsenje

May Contact:

Alt. Drafters:

Subject: **Mental Health - detent/commit**

Extra Copies: **MGD**

Pre Topic:

No specific pre topic given

Topic:

Sexually violent person commitment proceedings

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>
/?	olsenje 03/04/2000	jgeller 03/06/2000		_____			
/P1			martykr 03/06/2000	_____			
/P2	olsenje 03/07/2000	jgeller 03/07/2000	hhagen 03/07/2000	_____			
/1	olsenje 03/15/2000	j geller 03/15/2000	hhagen 03/15/2000	_____	lrb-docadmin 03/15/2000	lrb-docadmin 03/15/2000	

FE Sent For:

<END>

1999 DRAFTING REQUEST

Assembly Substitute Amendment (ASA-AB777)

Received: **03/02/2000**

Received By: **olsenje**

Wanted: **Soon**

Identical to LRB:

For: **Gary Drzewiecki (608) 2664670**

By/Representing: **Louie**

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

Drafter: **olsenje**

May Contact:

Alt. Drafters:

Subject: **Mental Health - detent/commit**

Extra Copies: **MGD**

Pre Topic:

No specific pre topic given

Topic:

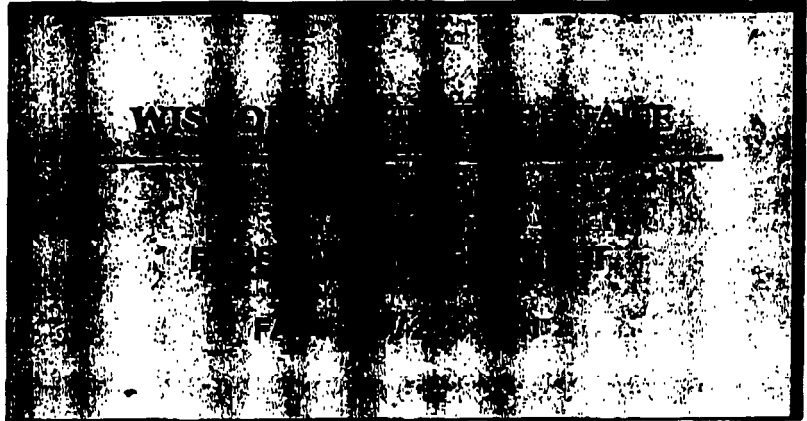
Sexually violent person commitment proceedings

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>
1?	olsenje	1/1 3/6 jlg	1/1 3/6	1/1 3/6 am			
FE Sent For:		***NOTE 1/2 3/7 jlg	1/1 hh 3/15	hh/am/d/15 <END>			



PLEASE DELIVER TO: *Jeffrey*

FROM: *Louie Schubert*
State Senator Gary F. Drzewiecki
119 Martin Luther King, Jr. Boulevard . Madison, WI 53703 - (608) 266-5670

FAX NUMBER OF ADDRESSEE:

264-8522

NUMBER OF PAGES - INCLUDING COVER PAGE

4

IF ALL PAGES ARE **NOT RECEIVED** OR ARC ILLEGIBLE. PLEASE CALL 606 / 266-5670

DISTRICT ATTORNEY

Brown County

300 FAST WALNUT
P.O. BOX 23600
GREEN BAY, WISCONSIN 54305-3600

PHONE (920) 448-4180
FAX (920) 446.4189

JOHN P. ZAKOWSKI
DISTRICT ATTORNEY

Victim Witness Coordinator

Karen H. Dorau
(920) 448-4194

Assistant District Attorney

Roger J. Shaha
Patrick C. Hill
Lawrence J. Lasee
Mary M. Kerrigan-Maros
Steven J. Madson
Kevin A. Rathburn

Assistant District Attorney

Dana J Johnson
Wendy W. Lomkuil
John F. Luetscher
Kendall M. Kelley
Donsia R Strong-Hill

January 19, 2000

Louis Schubert
Office of Senator Gary Drzewiecki
P.O. Box 7882
Madison, WI 53707-7882

RE: Suggested Modifications to Proposed Legislation

Dear Louis,

I've had the opportunity to review the legislative draft created by Jefren Olsen at the Legislative Reference Bureau. The proposal is thorough, well written, and generally exactly as I had expected. However, there are a few issues I would like to raise for purposes of discussion.

I was concerned that the changes previously made under the Budget Bill to Statute Section 078.043 regarding my position as an Assistant District Attorney assigned to handle Chapter 980 cases may cause some confusion under Chapter 980. In other words, Chapter 980 refers to district attorneys. While my authority as an Assistant District Attorney or Special Prosecutor derives from that of the District Attorney. I am concerned that motions may be filed suggesting that I do not have the same authority to act as a District Attorney. This matter would be easily resolved by either a) adding a definitional section to Chapter 980 which specifies that a District Attorney, when referred to in that Chapter includes an Assistant District Attorney or Special Prosecutor, or b) amend Chapter 978.043 with language such as "An Assistant District Attorney acting under this section has the same powers and duties as a District Attorney under Chapter 980." --

Am
967.03 ✓

I would also suggest that we change Section 3 of the proposal (beginning on line 14 on page 2 and ending on line 2 of page 3) by including "court appointed qualified experts or professional persons." Mr. Olsen asked the question on page 3 after line 2: "Does anyone else need access to these court records?", The answer is yes and I believe it should include the court appointed qualified experts and professional persons.

ok

I would also propose a change to Section 11 (beginning on line 16 of page 4 of the proposal). Under Section 165.255, I would add a line at the end of that paragraph as follows: "A District Attorney may represent the State in sexually violent person commitment proceedings under Chapter 980 if the District Attorney files the petition to initiate the proceedings as provided under Section 980.02(1)(6)."

Not needed
165 is
DAS
only

978.05(6) ✓

I would also suggest under Section 19 (beginning on page 7 of the proposed legislation) that WC. again, add "court appointed qualified experts or professional persons" as eligible for access to those records.

ok

As I was reading Section 29 (beginning on line 18 of page 10), I wondered if it might not read more smoothly if - beginning on line 4 of page 11 - it would read: "whether the agency with jurisdiction has determined -that the person may meet the criteria for commitment or that the person does not appear to meet the criteria for commitment." This is just a suggestion, however, as Mr. Olsen has a great deal of drafting experience and may have other reasons for using that language.

ok in past

Another suggestion would be that Section 39 (beginning on line 24 of page 14) be amended to read as follows, "980.14(2) Any agency, officer, employee or agent of an agency, or qualified expert or professional person retained by a District Attorney or the Department of Justice acting under this Chapter or appointed by the Court to evaluate or examine a person under this chapter is immune from criminal or civil liability for any acts or omissions as the result of a good faith effort to comply with any provision of this chapter." I appreciated Mr. Olsen's question on page 15 (following line 4), and I think it's a good question. It is certainly not our intention to invite the use of incompetent experts who may render opinions without accountability. However, I believe we'll have to rely upon the Court screening process for appointment of those experts in order to ensure that they are qualified and competent to participate in the proceeding. I'm not sure that any other arrangement would be fair to all parties involved.

ok

In Section 44 (beginning on page 16 of the proposal), I would change the line beginning at line 15 to read "professional person to perform an examination and, if appropriate, participate in a trial or other proceeding under this chapter." I think the language as it is proposed may create the impression that an expert who is retained and may conclude that the respondent is a sexually violent person is still somehow required to advocate on behalf of that person in a Chapter 980 proceeding. I'm concerned that it may raise ethical problems or concerns for the experts involved. As experts, they are, of course, offering their expert opinions and are not present as advocates for either party in the proceeding.

ok?

Another suggestion that I have would be that the language in line 19 of page 21 under Section 48 of the proposal should be reworded following the word "certifies" to clarify the intention within that sentence.

ok

I have also read Section 51 (beginning on line 12 of page 23). I would not agree that we would like those to be closed hearings, and would propose that that Section be reworked or omitted altogether.

ok
Just it

With regard to the questions asked following Section 53 after line 16 of page 26, I agree that DHS should not have to provide periodic notice of the persons right to petition for discharge.

ok

Under Section 54, I would use language saying that the expert or professional person shall place a copy of the report in the person's medical records and shall provide a copy of the report to the Court that committed the person under Section 980.06 and to the District Attorney or the Department of Justice, which ever filed the original petition.

ok

Another suggested change would be **under** Section 58 (which begins on line 24 of page 28). I would recommend that, to be **consistent** with other portions of the statute, we include the court as one of the parties listed in the line beginning on line 5 of page 29. For example, it could read "the court, or the district attorney or the Department of Justice..."

✓
 ↙
 Res. Sec. 980.10
 N/A

Also, regarding Section 61, which begins at line 3 of page 31. I'm not sure if WC can or should **repeal** Statutory Section **980.10**. I have heard judges take the **position** that they believe the **constitutionality** of the statute requires that a **patient** may request **judicial review** at any time.

Another question that I would have **regarding** the proposed legislation regards Section 64. I **understand** that a title is created, but I was **confused** because I wasn't **sure** how the title of the "Immunity" in Section **64** related to the definitions in Section **65**.

Finally, I **appreciated** the remarks that Mr. Olsen **made** after line 4 on page 32 and would agree that we should consider the issue of **initial** applicability as it **pertains** to those cases in which there has not **been** a filing of the petition. I have only **two** other areas that I would like to address. **The first** is that I have received information from **some** of the experts that they are continuing to have **difficulties** getting information from the **medical** records of the patients, particularly during **reexaminations**. **The** institutions will **sometimes** place **psychological** or **psychiatric** evaluation in the medical file and then **claim** that the information is **privileged** and will **decline** to release it. I believe that the **sections** that have **been** proposed will address the release of medical records, but I am also **trying** to **ensure** that **there** are no other **statutory** sections, which the institution can rely upon to **continue** to conceal **those** records. **The other** proposed change that we had originally discussed was the inclusion of **language** which would indicate that the expert opinions were **advisory** in **nature** and that the **court** or jury will **decide** the ultimate question of **whether** a **person** **should** be committed as a sexually violent person.

Should we
 have authority?
 un-
 needed.
 de as
 is

I hope that these recommendations are **clear**. As I stated **earlier**, I believe that Mr. Olsen did an **excellent** job translating our request into well-crafted, **proposed** legislation. I would be happy to discuss these suggestions **with** Mr. Olsen, District Attorney Paul Hucher, or any other interested party prior to their introduction into the **Assembly**. Please **do not** **hesitate** to contact me if any portion of this letter is unclear or if you would like to arrange a **meeting** to discuss these or other suggestions. Thank you again for all of our **efforts** on our behalf. I can't **emphasize** how **important** it will be to pass this legislation in terms of our **effectiveness** in **prosecuting** sexually violent persons, while at the same time **protecting** their constitutional rights and interests.

Sincerely,

W



Kendall M. Kelley
 Assistant District Attorney

KMK/bd

3/1 mtg w/ Kendall Kelly

✓ Guidelines → not specific day numbers

✓ Add ch. 48 records

✓ Restore 980.10

Apply as much as possible to pending cases

1

1999

Date (time) needed

Monday 3/6

LRB s 0369, P1

SUBSTITUTE AMENDMENT [TO A BILL]

IEO: jg:

Use the appropriate components and routines developed for substitute amendments.

S A SUBSTITUTE AMENDMENT

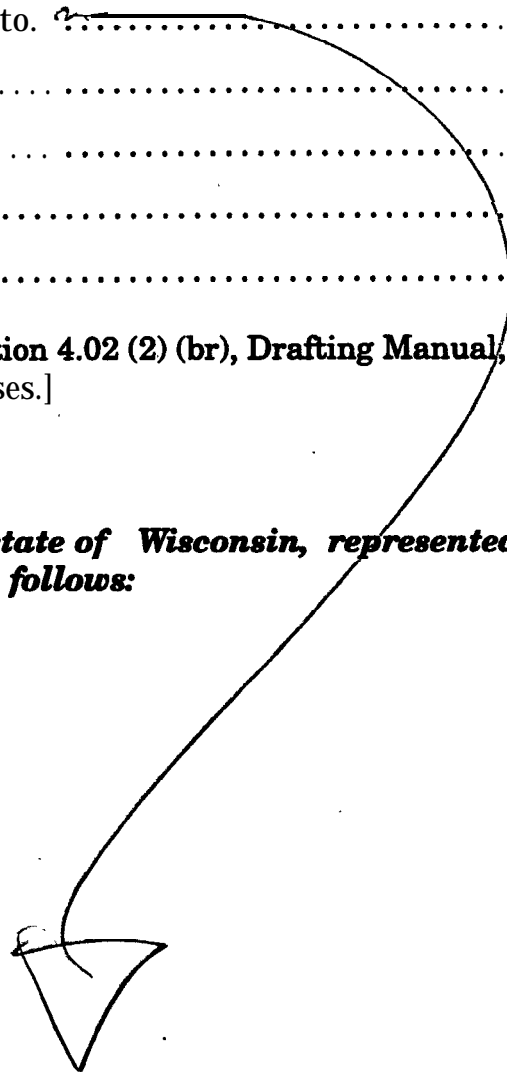
TO 1999 SB AB 777 (LRB-)

AN ACT . . . [generate catalog] to repeal . . . ; to renumber . . . ; to consolidate and renumber . . . ; to renumber and amend . . . ; to consolidate, renumber and amend . . . ; to amend . . . ; to repeal and recreate . . . ; and to create . . . of the statutes; relating to.

[NOTE: See section 4.02 (2) (br), Drafting Manual, for specific order of standard phrases.]

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

SECTION #.





ASSEMBLY BILL 777

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

Analysis by the Legislative Reference Bureau

Current law provides a procedure for involuntarily committing sexually violent persons to the department of health and family services (DHFS) for control, care and treatment. A sexually violent person is a person who has committed certain sexually violent offenses and who is dangerous because he or she suffers from a mental disorder that makes it substantially probable that the person will engage in acts of sexual violence.

A proceeding for the involuntary commitment of a sexually violent person is begun by the filing of a petition that alleges that the person is a sexually violent person. The petition must be filed before the person is released from confinement that resulted from the commission of a sexually violent offense. The agency that has custody of a person who may be a sexually violent person must, as soon as possible beginning three months before the person's release date, notify the department of justice (DOJ) and certain district attorneys that the person is going to be released from custody. A petition alleging that the person is a sexually violent person must then be filed either by DOJ at the request of the agency that has custody of the person or, if DOJ does not file a petition, by one of the district attorneys who received notice of the person's release date.

The court in which a sexually violent person petition is filed must review the petition and decide whether to hold the person in custody pending a trial on the petition. The court must also hold a hearing to determine whether there is probable cause to believe that the person is a sexually violent person. If the court finds that there is probable cause to believe that the person is a sexually violent person, the court must schedule a trial on the petition.

If, after the trial on a sexually violent person petition, the person is found by a judge or jury to be a sexually violent person, the person must be committed to the custody of DHFS and placed in institutional care. A person who is committed as a sexually violent person and placed in institutional care may petition the committing court to modify its order by authorizing supervised release in the community if at least 18 months have elapsed since the initial commitment order was entered or at least six months have elapsed since the most recent release petition was denied or the most recent order for supervised release was revoked. In addition, current law provides for periodic reexaminations of a person committed as a sexually violent person and provides a means by which the person may petition the court for discharge from the commitment on the grounds that he or she is no longer a sexually violent person.

This bill makes a number of changes to the current sexually violent person commitment procedure. Among the changes made by the bill are the following:

1. Procedure for evaluating potential sexually violent person cases. This bill specifies a procedure for conducting evaluations of persons who may meet the

ASSEMBLY BILL 777

criteria for asexually violent person commitment. Under the bill an agency that has custody of a person who has committed a sexually violent offense must, no later than 180 days before the person's anticipated release date, conduct an initial evaluation of the person to determine whether he or she may meet the criteria for commitment as a sexually violent person. No later than 15 days after completing the initial evaluation, the agency must inform both DOJ and certain specified district attorneys of the result of the initial evaluation. If the agency determines that the person may meet the criteria for commitment as a sexually violent person, the agency must then obtain a special purpose evaluation of the person by a qualified expert, who must make a recommendation in a written report as to whether a commitment proceeding should be commenced. The report must be completed no later than 120 days before the anticipated release date of the person, and the agency must, no later than five days after it receives the report, provide DOJ and the district attorneys with a copy of the report. The bill also provides that DOJ or a district attorney who received notice of the initial evaluation may retain a qualified expert to conduct a separate evaluation of the person that is in addition to the agency's initial evaluation and to any special purpose evaluation that may be conducted.

2. *Procedures for filing sexually violent person petitions.* The bill creates new provisions concerning the filing of petitions to begin sexually violent person commitment proceedings. Under the bill, if an agency that has custody of a person who may be a sexually violent person determines in its initial evaluation of the person (see paragraph 1., above) that the person does not meet the criteria for commitment, then DOJ must decide whether to file a petition regardless of the agency's determination. DOJ must make this decision no later than 45 days after it receives notice of the agency's initial evaluation and must provide notice of its decision to the district attorneys who received notice of the initial evaluation of the agency. However, if the agency obtains a special purpose evaluation of the person (see paragraph 1., above), DOJ must, no later than 30 days after it receives a copy of the report of the special purpose evaluation, decide whether to file a petition and provide notice of its decision to the district attorneys who received a copy of the special purpose evaluation report.

Whenever DOJ notifies the district attorneys that it has decided not to file a petition, one of the district attorneys may then file a petition. Under the bill, either DOJ or a district attorney may file a petition regardless of the outcome of an agency's initial evaluation as to whether a person meets the criteria for commitment as a sexually violent person and regardless of the conclusion of the expert who conducts a special purpose evaluation at the request of the agency.

3. *Access to confidential records.* Under current law, with certain exceptions, a person's medical records (including mental health treatment records) are confidential. Also, if a juvenile has been subject to a delinquency proceeding, the records concerning the court proceeding and any placement or treatment resulting from the proceeding are generally confidential. Among the exceptions to the confidentiality requirements that apply to medical and juvenile records are exceptions allowing access to certain persons for use in connection with proceedings to commit a person as a sexually violent person. Specifically, current law allows

ASSEMBLY BILL 777

access to" these records by an expert who is examining 'a person for purposes of providing an opinion as to whether the person may meet the criteria for commitment' as a sexually violent person. Current law also provides access to the records by DOJ or a district attorney for purposes of prosecuting a sexually violent person commitment proceeding.

This bill modifies the current exceptions to medical and juvenile records confidentiality by broadening the provisions concerning who may have access to the records and by clarifying how those persons may use information obtained from the records. Under the bill, the records must be released to DOJ, a district attorney, a qualified expert retained by DOJ, a district attorney or an agency that has custody of a person, or a qualified expert retained by or appointed for a person who is subject to a sexually violent person petition. A person who obtains information from these records under the bill may redisclose the information to the extent that is necessary for the conduct of an evaluation, examination or sexually violent person proceeding for which the information was obtained. The bill also provides that the court in which the proceeding is pending may issue any protective orders that it determines are appropriate concerning the records.

In addition, the bill allows for access to other confidential records and reports which, under current law, are not generally available for use in connection with a sexually violent person commitment proceeding. Specifically, the bill allows access to records of the department of corrections (DOC), including presentence investigation reports prepared by DOC in connection with the sentencing of a person convicted of a crime. As with the exception for medical and juvenile records, the bill provides that DOC records and reports must be released to DOJ, a district attorney, a qualified expert retained by DOJ, a district attorney or an agency that has custody of a person, or a qualified expert retained by or appointed for a person who is subject to a sexually violent person petition. The bill also provides that DOJ or a district attorney must be given access to law enforcement records concerning juveniles and court records of other civil commitment proceedings.

As with the exception for medical and juvenile records, a person who obtains information from DOC records, law enforcement records or court records under the bill may redisclose the information to the extent that is necessary for the conduct of an evaluation, examination or sexually violent person proceeding for which the information was obtained. The bill also provides that the court in which the proceeding is pending may issue any protective orders that it determines are appropriate concerning the records.

4. *Reexaminations of persons found to be sexually violent persons.* Under current law, a person who has been committed as a sexually violent person must be examined by DHFS within six months after the initial commitment and again thereafter & least once each 12 months for the purpose of determining whether the person has made sufficient progress for the court to consider whether the person should be placed on supervised release or discharged from the commitment. In addition, under current law the court that committed the person may order a reexamination of the person at any time.

ASSEMBLY BILL 777

This bill provides that DHFS is not required to examine a person who is incarcerated in a county jail or a state correctional institution or is placed in a treatment facility or a juvenile correctional facility for an offense that the person committed or is alleged to have committed since being committed as a sexually violent person. Instead, DHFS must conduct an examination of the person upon the person's release from the county jail, state correctional institution, treatment facility or juvenile correctional facility. The court may still order a reexamination of the person at any time even though he or she is incarcerated or placed in a treatment facility or juvenile correctional facility.

5. *Petitions for discharge from a sexually violent person commitment.* Under current law, a person who has been found to be a sexually violent person and committed to the custody of DHFS may petition for discharge from the commitment. The petition may be with or without the approval of DHFS. DHFS must provide a person with notice of the right to petition for discharge without the approval of DHFS at the time of the person's periodic reexamination (see paragraph 4., above). If the person does not waive the right to petition at that time, the court must, without holding a hearing, review the report of the periodic reexamination to determine whether facts exist that warrant a hearing to determine whether the person is still a sexually violent person.

In addition, a person may petition for discharge without the approval of DHFS at any other time, but if a person has previously filed a petition for discharge without the approval of DHFS and the court determined, either upon review of the petition or following a hearing, that the person's petition was frivolous or that the person was still a sexually violent person, then the court must deny any subsequent petition, without a hearing unless the petition contains facts upon which a court could find that the condition of the person had so changed that a hearing was warranted.

This bill provides that a person who has been committed as a sexually violent person may not petition for discharge without the approval of DHFS unless at least 18 months have elapsed since he or she was first committed to the custody of DHFS or unless at least six months have elapsed since the most recent petition for discharge was denied (regardless of whether the most recent petition was filed with or without the approval of DHFS). If a person files a petition for discharge without the approval of DHFS under the bill, the court must, without holding a hearing, review the most recent report of the annual reexamination and other relevant documentation to determine whether there is probable cause to believe that the person is no longer a sexually violent person. If the court finds such probable cause, it must set a hearing on the petition.

In addition, the bill provides that a person committed as a sexually violent person must be afforded the right to request a jury of six persons for any hearing that is held to decide his or her petition for a discharge from the commitment. This codifies a holding from the case of *State v. Post*, 197 Wis. 2d 279 (1995).

6. *Miscellaneous procedural provisions.* This bill creates new provisions that address some procedural issues that are not explicitly addressed under current law relating to sexually violent person commitment proceedings. Among the issues addressed by new provisions are methods by which one party may discover and

ASSEMBLY BILL 777

inspect material in the possession of the other party and procedures allowing for closed hearings in sexually violent person proceedings that are based solely on allegations that the person committed sexually violent offenses as a juvenile.

For further information see the *state* and *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:

INS
6-1 ✓

1 SECTION 1. 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 2. 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 3. 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 a district attorney specified under s. 980.02 (1) ~~or~~ the
15 department of justice in accordance with s. 980.015 (3m). Information obtained from
16 files and records under this paragraph shall be kept confidential except to the extent
17 that redisclosure of that information is necessary for the conduct of an evaluation or
18 proceeding under ch. 980 for which the information was obtained.

EXAMINATION ✓

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

~~with~~ appropriate persons in accordance
with ss. 980.015 (3m), (3r) and (3x), 980.031
(3) and 980.08 (3) ✓

ASSEMBLY BILL 777

1 51.30 (4) (b) 8m. To appropriate examiners and facilities in accordance with s.
2 971.17 (2) (e), (4) (c) and (7) (c), ~~980.03 (4) or 980.08 (3)~~. The recipient of any
3 information from the records shall keep the information confidential except as
4 necessary to comply with s. 971.17 ~~or ch. 980~~.

5 **SECTION 5.** 51.30 (4) (b) 8s. ✓ of the statutes is created to read:

6 51.30 (4) (b) 8s. To appropriate persons in accordance with ss. 980.015 (3) (b),
7 (3m) ^{(3r) ✓} and (3x), 980.031 (3) and 980.08 (3). Information obtained under this
8 subdivision shall be kept confidential except to the extent that redisclosure of the
9 information is necessary for the conduct of an evaluation, examination or proceeding
10 under ch. 980 for which the information was obtained.

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

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

13 51.30 (4) (b) 11. To the subject individual's counsel or guardian ad litem,
14 without modification, at any time in order to prepare for involuntary commitment
15 or recommitment proceedings, reexaminations, appeals or other actions relating to
16 detention, admission, commitment or patients' rights under this chapter or ch. 48,
17 971 ~~or~~, 975 or 980.

18 **SECTION 8.** 51.375 (1) (a) of the statutes is amended to read:

19 51.375 (1) (a) "Community placement" means conditional transfer into the
20 community under s. 51.35 (1), conditional release under s. 971.17, parole from a
21 commitment for specialized treatment under ch. 975 or ~~conditional~~ sunervised
22 release under ch. 980.

23 **SECTION 9.** 146.82 (2) (c) of the statutes is amended to read:

24 146.82 (2) (c) Notwithstanding sub. (l), patient health care records shall be
25 released to appropriate examiners and facilities in accordance with ~~ss. s.~~ s. 971.17 (2)

1 (e), (4) (c) and (7) (c), ~~980.03 (4) and 980.08 (3)~~. The recipient of any information from
2 the records shall keep the information confidential except as necessary to comply
3 with s. 971.17 or ~~ch. 980~~.

4 **SECTION 10.** 146.82 (2) (cm) of the statutes is created to read:

5 146.82 (2) (cm) Notwithstanding sub. (1), patient health care records shall be
6 released to appropriate persons in accordance with ss. 980.015 (3) (b), ^(3r) ~~(3m)~~ [✓] or ~~(3x)~~,
7 980.031 (3) and 980.08 (3). Information obtained under this paragraph shall be kept
8 confidential except to the extent that redisclosure of the information is necessary for
9 the conduct of an evaluation, examination or proceeding under ch. 980 for which the
10 information was obtained.

11 **SECTION 11.** 165.255 of the statutes is amended to read:

12 **165.255 Representation in sexually violent person commitment**
13 **proceedings.** The department of justice may, ~~at the request of an agency under s.~~
14 ~~980.02 (1)~~, represent the state in sexually violent person commitment proceedings
15 under ch. 980 if it files the netition to initiate the proceedings as nrovided under s.
16 980.02 (1) (a).

17 **SECTION 12.** 301.355 of the statutes is created to read:

18 **301.355 Access to records for sexually violent person commitment**
19 **proceedings. (1)** The department shall allow the following persons to have access
20 to a departmental record relating to an individual who has been convicted of a
21 sexually violent offense, as defined in s. 980.01 (6):

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

23 (b) The department of justice.

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

ASSEMBLY BILL 777

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

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

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

8 **SECTION 13.** 301.45 (3) (a) 3r. of the statutes, as affected by 1999 Wisconsin Act
9 9, is amended to read:

10 301.45 (3) (a) 3r. If the person has been committed under ch. 980, he or she is
11 subject to this subsection upon being placed on supervised release under s. 980.06
12 (2), 1997 stats., or s. 980.08 or, if he or she was not placed on supervised release,
13 before being discharged under s. 980.09 or 980.10.

14 **SECTION 14.** 808.075 (4) (h) of the statutes is amended to read:

15 808.075 (4) (h) Commitment, supervised release, recommitment and discharge
16 under ss. 980.06, 980.08, and 980.09 and 980.10 of a person found to be a sexually
17 violent person under ch. 980.

18 **SECTION 15.** 904.04 (2) of the statutes is amended to read:

19 904.04 (2) OTHER CRIMES, WRONGS, OR ACTS. Evidence of other crimes, wrongs,
20 or acts is not admissible to prove the character of a person in order to show that the
21 person acted in conformity therewith. This subsection does not exclude the evidence
22 when it is offered for other purposes, such as proof of motive, opportunity, intent,
23 preparation, plan, knowledge, identity, or absence of mistake or accident, or when it
24 is offered at a trial or other proceeding under ch. 980 for the purpose of proving the

1 diagnosis of a nerson or showing the basis of an opinion concerning the probability
2 that a nerson will engage in acts of sexual violence.

3 **SECTION 16.** 905.04 (4) (a) of the statutes is amended to read:

4 *905.04 (4) (a) Proceedings for hospitalization, control, care and treatment of a*
5 *sexually violent person, guardianship, protective services or protective placement.*

6 There is no privilege under this rule as to communications and information relevant
7 to an issue in proceedings to hospitalize the patient for mental illness, to appoint a
8 guardian under s. 880.33, for control, care and treatment of a sexuallyviolent nerson
9 under ch. 980, for court-ordered protective services or protective placement or for
10 review of guardianship, protective services or protective placement orders, if the
11 physician, registered nurse, chiropractor, psychologist, social worker, marriage and
12 family therapist or professional counselor in the course of diagnosis or treatment has
13 determined that the patient is in need of hospitalization, control, care and treatment
14 as a sexually violent nerson, guardianship, protective services or protective
15 placement.

16 **SECTION 17.** 938.35 (1) (e) of the statutes is created to read:

17 938.35 (1) (e) In a hearing, trial or other proceeding under ch. 980 relating to
18 a juvenile.

19 **SECTION 18.** 938.396 (1) of the statutes is amended to read:

20 938.396 (1) Law enforcement officers' records of juveniles shall be kept
21 separate from records of adults. Law enforcement officers' records ofjuveniles shall
22 not be open to inspection or their contents disclosed except under sub. (lb), (Id), (lg),
23 (1k), (1m), (1r), (1t) or (1x) or (5) or s. 938.293 or by order of the court. This subsection
24 does not apply to representatives of the news media who wish to obtain information
25 for the purpose of reporting news without revealing the identity of the juvenile

ASSEMBLY BILL 777

1 involved, to the confidential exchange of information between the police and officials
 2 of the school attended by the juvenile or other law enforcement or social welfare
 3 agencies or to juveniles 10 years of age or older who are subject to the jurisdiction of
 4 the court of criminal jurisdiction. A public school official who obtains information
 5 under this subsection shall keep the information confidential as required under s.
 6 118.125 and a private school official who obtains information under this subsection
 7 shall keep the information confidential in the same manner as is required of a public
 8 school offkial under s. 118.125. A law enforcement agency that obtains information
 9 under this subsection shall keep the information confidential as required under this
 10 subsection and s. 48.396 (1). A social welfare agency that obtains information under
 11 this subsection shall keep the information confidential as required under ss. 48.78
 12 - and 938.78.

SRJ
11-13

13

SECTION 19. 938.396 (1k) of the statutes is created to read:

14 938.396 (1k) If the department of justice or a district attorney requests access
 15 to a law enforcement agency's records under s. 980.015 (3r), the law enforcement
 16 agency shall open for inspection by authorized representatives of the department of
 17 justice or a district attorney the records of the law enforcement agency relating to any
 18 juvenile who has been adjudicated delinquent for a sexually violent offense, as
 19 defined in s. 980.01 (6). Information obtained from a law enforcement agency's
 20 records under this subsection shall be kept confidential except to the extent that
 21 redisclosure of that information is necessary for the conduct of an evaluation or
 22 proceeding under ch. 980 for which the information was obtained.

23

SECTION 20. 938.396 (2) (e) of the statutes is amended to read:

24

938.396 (2) (e) Upon request of the department of corrections, the department

25

of health and family services, the department of justice or a district attorney to

1 review court records for the purpose of providing, under s. 980.015 (3) (a), the
2 department of justice or a district attorney with a person's offense history conducting
3 an evaluation, examination or proceeding under ch. 980, the court shall open for
4 inspection by authorized representatives of the department of corrections, the
5 department of health and family services, the department of justice or a district
6 attorney the records of the court relating to any juvenile who has been adjudicated
7 delinquent for a sexually violent offense, as defined in s. 980.01 (6). Information
8 obtained from court records under this paragraph shall be kept confidential except
9 as necessary for the conduct of an evaluation, examination or proceeding under ch.
10 980 for which the information was obtained.

11 SECTION 21. 938.396 (5) (a) (intro.) of the statutes is amended to read:

12 938.396 (5) (a) (intro.) Any person who is denied access to a record under sub.
13 (l), (lb), (ld), (lg), (1k), (1m), (lr) or (1t) may petition the court to order the disclosure
14 of the records governed by the applicable subsection. The petition shall be in writing
15 and shall describe as specifically as possible all of the following:

16 SECTION 22. 938.78 (2) (e) of the statutes is amended to read:

17 938.78 (2) (e) Paragraph (a) does not prohibit the department from disclosing
18 information about an individual adjudged delinquent under s. 938.183 or 938.34 for
19 a sexually violent offense, as defined in s. 980.01 (6), to the department of justice, or
20 a district attorney or a judge acting under ch. 980, to an expert or professional person
21 conducting an evaluation or examination of a person under ch. 980 or to an attorney
22 who represents a person subject to a petition under ch. 980. The court in which the
23 petition under s. 980.02 is filed may issue any protective orders that it determines
24 are appropriate concerning information disclosed under this paragraph. Information
25 obtained from the department under this paragraph shall be kept confidential except

INS
12-
16

ASSEMBLY BILL 777

1 ~~as necessary for the conduct of an evaluation, examination or proceeding under ch.~~
2 ~~980 for which the information was obtained.~~

3 ~~SECTION 23. 950.64 (1v) (xm) of the statutes, as affected by 1999 Wisconsin Act~~
4 ~~9, is amended to read:~~

5 ~~950.04 (1v) (xm) To have the department of health and family services make~~
6 ~~a reasonable attempt to notify the victim under s. 980.11 regarding supervised~~
7 ~~release under s. 980.08 and discharge under s. 980.09 or 980.10.~~

INS
13-8

8 SECTION 24. 972.15 (4) of the statutes is amended to read:

9 972.15 (4) After sentencing, unless otherwise authorized under ~~sub.~~ subs. (5)
10 and (6) or ordered by the court, the presentence investigation report shall be
11 confidential and shall not be made available to any person except upon specific
12 authorization of the court.

13 SECTION 25. 972.15 (6) of the statutes is created to read:

14 972.15 (6) The presentence investigation report and any information contained
15 in it may be used by any of the following persons in an evaluation, examination,
16 hearing, trial or other proceeding under ch. 980:

- 17 (a) The department of corrections.
- 18 (b) The department of health and family services.
- 19 (c) The person who is the subject of the presentence investigation report, his
- 20 or her attorney or an agent or employe of the attorney.
- 21 (d) The attorney representing the state or an agent or employe of the attorney.
- 22 (e) An expert or professional person who has been retained or appointed to

23 ~~ate or examine the subject of the presentence investigation report.~~

24 SECTION 26. 980.015 (title) of the statutes is amended to read:

INS
13-
23

ASSEMBLY BILL 777

1 980.015 (title) ~~Notice~~ **Evaluations of persons who may meet**
2 **commitment criteria: notice to the department of justice and district**
3 **attorney.**

4 **SECTION 27.** 980.015 (1) of the statutes is renumbered 980.015 (1) (intro.) and
5 amended to read:

6 980.015 (1) (intro.) In this section, ~~“agency and s. 980.02:~~

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

9 **SECTION 28.** 980.015 (1) (b) (intro.) of the statutes is created to read:

10 980.015 (1) (b) (intro.) “Anticipated release date” means whichever of the
11 following is applicable:

12 **SECTION 29.** 980.015 (2) (intro.) of the statutes is renumbered 980.015 (2) (am)
13 and amended to read:

14 980.015 (2) (am) If an agency with jurisdiction has control or custody over a
15 person who meets any of the criteria specified in s. 980.02 (2) (a), the agency with

16 jurisdiction shall, ^{as soon as possible but no earlier than} ~~no later than~~ 180 days before the anticipated release date of the
17 person, evaluate whether the person may meet the criteria for commitment as a

18 sexually violent person or whether the person does not meet the criteria for
19 commitment as a sexually violent person. ^{As soon as possible, but in no case} ~~No~~ later than 15 days after the completion

20 of its evaluation, the agency with jurisdiction shall inform each appropriate district
21 attorney specified under s. 980.02 (1) (b) and the department of justice regarding the

22 person as soon as possible beginning 3 months prior to the applicable date of the
23 following: whether the agency with jurisdiction has determined ^{that} ~~whether~~ the person

24 may meet the criteria for commitment or ^{that} ~~whether~~ the person does not meet the
25 criteria for commitment.

ASSEMBLY BILL 777

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

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

6 **SECTION 31.** 980.015 (2) (b) of the statutes, as affected by 1999 Wisconsin Act
7 9, is renumbered 980.015 (1) (b) 2. and amended to read:

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

13 **SECTION 32.** 980.015 (2) (bm) of the statutes is created to read:

14 980.015 (2) (bm) If an agency with jurisdiction determines in an evaluation
15 under par. (am) that the person may meet the criteria for commitment as a sexually
16 violent person, the agency with jurisdiction shall obtain a special purpose evaluation
17 of the person by a qualified expert or professional person, who shall make a
18 recommendation as to whether a commitment proceeding under this chapter should
19 be initiated. A qualified expert or professional person who conducts a special purpose
20 evaluation under this paragraph shall make a written report of his or her evaluation

21 to the agency with jurisdiction ~~no later than 120 days before the anticipated release~~

22 ~~date of the person.~~ as soon as possible after completing the evaluation ✓ The report shall specify the recommendation of the qualified

23 expert or professional person and the bases for the recommendation. The agency

24 with jurisdiction shall, as soon as possible but in no case ✓ ~~no~~ later than 5 days after it receives the report, provide each

25 district attorney specified under s. 980.02 (1) (b) and the department of justice with

1 a copy of the report of the qualified expert or professional person who conducted the
2 special purpose evaluation.

3 SECTION 33. 980.015 (2) (c) of the statutes is renumbered 980.015 (1) (b) 3. and
4 amended to read:

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

8 SECTION 34. 980.015 (3) (intro.) of the statutes is amended to read:

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

14 SECTION 35. 980.015 (3) (b) of the statutes is amended to read:

15 980.015 (3) (b) If applicable, Copies of or access to documentation of in the
16 possession of the agency with jurisdiction relating to the person, including any
17 treatment records, as ^{provided under} ~~defined in~~ s. 51.30 (1) (b), health care records, as ^{provided under} ~~defined in~~ s.
18 146.82 (2) (d), and records concerning the person's adjustment to and conduct in any
19 institutional placement.

20 SECTION 36. 980.015 (3m) of the statutes is created to read:

21 980.015 (3m) (a) A qualified expert or professional person who conducts a
22 special purpose evaluation under sub. (2) (bm) shall have reasonable access to the
23 person for the purpose of the evaluation. The expert or professional person shall also
24 have access to the person's past and present treatment records, as ^{provided under} ~~defined in~~ s. 51.30
25 (1) (b), past and present patient health care records, as provided under s. 146.82 (2)

8s. ✓

ASSEMBLY BILL 777

-17-

to records of law enforcement officers and law enforcement agencies, as provided under ss. 48.396 (6) and 938.396 (1k),

LRB-4508/1
JEO:jlj:jf
SECTION 36

1 (d), and past and present correctional records, as provided under ss. 301.355 and 938.78 (2) (e), and to the records of a court assigned to exercise jurisdiction under ch. 938, as provided under s. 938.396 (2) (e), and presentence investigation reports, as provided under s. 972.15 (6).

ss. 48.396 (6) and

2 (b) A qualified expert or professional person who conducts a special purpose evaluation under sub. (2) (bm) shall, when requested to do so, provide a district attorney who receives a copy of the report of the special purpose evaluation and the department of justice with copies of or access to any documentation used by the expert or professional person in preparing the report, including any treatment records, ~~as defined in s. 51.30 (1) (b)~~, health care records, as defined in s. 146.82 (2)

3 correctional records, records of a court assigned to exercise jurisdiction under ch. 938, and presentence investigation reports.

chs. 48 and

records of court proceedings under ch. 51, records of law enforcement officers

4 SECTION 37. 980.015 (3r) of the statutes is created to read:

5 980.015 (3r) For purposes of evaluating a case to decide whether to initiate commitment proceedings under this chapter or for the purpose of conducting a commitment proceeding under this chapter, a district attorney specified under s. 980.02 (1) (b) or the department of justice may request copies of or access to all of the following concerning a person who is the subject of an evaluation by an agency with jurisdiction under sub. (2) (am):

or has been

J
INS
17-
19

6 (a) Files and records of court proceedings under ch. 51, as provided under s. 51.30 (3) (bm).

7 (b) If the person has been adjudicated delinquent for a sexually violent offense, law enforcement agency records, as provided under s. 938.396 (1k), records of a court assigned to exercise jurisdiction under ch. 938, as provided under s. 938.396 (2) (e), and records of the department of corrections, as provided under s. 938.78 (2) (e).

Records of law enforcement officers and agencies

ss. 48.396 (6) and

chs. 48 and

ss. 48.78 (2) (e) and

files and records of court proceedings under ch. 51, as provided under s. 51.30 (3) (bm), and

ASSEMBLY BILL 777

- 1 (d) Correctional records, as provided under s. 301.355.
- 2 (e) (d) A presentence investigation report, as provided under s. 972.15 (6).

3 SECTION 38. 980.015 (3x) of the statutes is created to read:

4 980.015 (3x) A district attorney specified under s. 980.02 (1) (b) or the
 5 department of justice may, at any time after it receives notification of the evaluation
 6 of an agency with jurisdiction under sub. (2) (am), retain a qualified expert or
 7 professional person to evaluate the person who is the subject of the agency's
 8 evaluation. If a district attorney or the department of justice retains a qualified
 9 expert or professional person to conduct an evaluation of a person under this
 10 subsection, the examiner shall have reasonable access to the person for the purpose
 11 of the evaluation. The expert or professional person shall also have access to the
 12 person's past and present treatment records, as provided under s. 51.30 (1) (b), 4 85. ✓
 13 present patient health care records, as provided under s. 146.82 (2) (e), cm and past and
 14 present correctional records, as provided under ss. 48.78 (2) (e), 301.355 and 938.78 (2) (e), cm
 15 to the records of a court assigned to exercise jurisdiction under chs. 48 and 938, as provided
 16 under ss. 48.396 (6) and 938.396 (2) (e), and presentence investigation reports, as provided under s.
 17 972.15 (6). to

18 SECTION 39. 980.015 (4) of the statutes is renumbered 980.14 (2) and amended
19 to read: by a district attorney or the department of justice

20 980.14 (2) Any agency ~~or~~ officer, employe or agent of an agency or qualified
 21 expert or professional person retained or appointed to evaluate or examine a person
 22 under this chapter is immune from criminal or civil liability for any acts or omissions
 23 as the result of a good faith effort to comply with any provision of this section chapter. by a court ✓

24 SECTION 40. 980.02 (1) (intro.) of the statutes is amended to read:

files and records of court proceedings under ch. 51, as provided under s. 51.30 (3) (bm), and

to records of law enforcement officers and law enforcement agencies, as provided under ss. 48.396 (6) and 938.396 (1k),

ASSEMBLY BILL 777

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

3 SECTION 41. 980.02 (1) (a) of the statutes is amended to read:

4 980.02 (1) (a) The department of justice ~~at the request of.~~ If the agency with
5 jurisdiction, as defined in s. 980.015 (1), over the person determined in an evaluation
6 under s. 980.015 (2) (am) that the person does not meet the criteria for commitment,

7 the department of justice shall decide whether to file a petition under this paragraph,

8 and shall inform the district attorneys specified under par. (b) of its decision ~~no~~ ^{as soon as possible, but in no case} later

9 than 45 days after it receives notice of the agency's evaluation. If the agency with

10 jurisdiction over the person obtained a special nurse evaluation of the person

11 under s. 980.015 (2) (bm), the department of justice shall decide whether to file a

12 petition under this paragraph, and shall inform the district attorneys specified

13 under par. (b) of its decision, ~~no~~ ^{as soon as possible, but in no case} later than 30 days after it receives a copy of the report.

14 of the special nurse evaluation. If the department of justice decides to file a

15 petition under this paragraph, it shall file the petition before the date of the release

16 or discharge of the person.

17 SECTION 42. 980.02 (1) (b) (intro.) of the statutes is amended to read:

18 980.02 (1) (b) (intro.) If the department of justice does decides not to file a
19 petition under par. (a), the district attorney for one of the following:

20 SECTION 43. 980.03 (2) (intro.) of the statutes is amended to read:

21 980.03 (2) (intro.) ~~Except as provided in ss. 980.09 (2) (a) and 980.10 and~~
22 without Without limitation by enumeration, at any hearing under this chapter, the
23 person who is the subject of the petition has the right to:

24 SECTION 44. 980.03 (4) of the statutes, as affected by 1999 Wisconsin Act 9, is [✓]
25 renumbered 980.031 (1) and amended to read:

ASSEMBLY BILL 777

1 980.031 (1) Whenever a person who is the subject of a petition filed under s.
 2 980.02 or who has been committed under s. 980.06 is required to submit to an
 3 examination or reexamination under this chapter, he or she may retain experts or
 4 professional persons to perform an examination. If the person is indigent, the court
 5 shall, upon the person's request, appoint a qualified and available expert or
 6 professional person to perform an examination and participate on the person's behalf
 7 in a trial or other proceeding under this chapter.

8 (3) If ~~the person~~ a party retains or the court appoints a qualified expert or
 9 professional person ~~of his or her own choice~~ to conduct an examination of a person
 10 who is the subject of a petition filed under s. 980.02 or who has been committed under
 11 s. 980.06, the ~~examiner~~ expert or professional person shall have reasonable access
 12 to the person for the purpose of the examination, ~~as well as~~. The expert or
 13 professional person shall also have access to the person's past and present treatment
 14 records, as defined in s. 51.30 (1) (b), and past and present patient health care records
 15 as provided under s. 146.82 (2) (c). ~~If the person is indigent, the court shall, upon the~~
 16 ~~person's request, appoint a qualified and available expert or professional person to~~
 17 ~~perform an examination and participate in the trial or other proceeding on the~~
 18 ~~person's behalf, and past and present correctional records, as provided under ss.~~

19 ~~301.355 and 938.78 (2) (e), and to the records of a court assigned to exercise~~
 20 ~~jurisdiction under ch. 938, as provided under s. 938.396 (2) (e), and presentence~~
 21 investigation reports, as provided under s. 972.15 (6).

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

IAS
20-
19

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

5 **SECTION 45.** 980.03 (5) of the statutes is renumbered 980.038 (1) and amended
6 to read:

7 980.038 (1) TESTIMONY BY TELEPHONE OR LIVE AUDIOVISUAL MEANS. Upon a
8 showing by the proponent of good cause under s. 807.13 (2) (c), testimony may be
9 received into the record of a hearing under this ~~section~~ chapter by telephone or live
10 audiovisual means.

11 **SECTION 46.** 980.031 (title) of the statutes is created to read:

12 **980.031 (title) Examinations.**

13 **SECTION 47.** 980.031 (2) of the statutes is created to read:

14 980.031 (2) The department of justice or a district attorney, whichever is
15 applicable, may retain an expert or professional person to examine a person who is
16 the subject of a petition under s. 980.02 or who has been committed under s. 980.06
17 and to testify at trial or at any other proceeding under this chapter.

18 **SECTION 48.** 980.036 of the statutes is created to read:

19 **980.036 Discovery and inspection. (1) DEFINITIONS.** In this section:

20 (a) "Person subject to this chapter" means a person who is subject to a petition
21 filed under s. 980.02 or a person who has been committed under s. 980.06.

22 (b) "Prosecuting attorney" means an attorney representing the state in a
23 proceeding under this chapter.

24 (2) **WHAT A PROSECUTING ATTORNEY MUST DISCLOSE TO A PERSON SUBJECT TO THIS**
25 **CHAPTER.** Upon demand, a prosecuting attorney shall, within a reasonable **time**

ASSEMBLY BILL 777

1 before a trial or other proceeding under this chapter, disclose to a person subject to
2 this chapter or the person's attorney and permit the person or the person's attorney
3 to inspect and copy or photograph all of the following materials and information, if
4 the material or information is within the possession, custody or control of the state:

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

8 (b) A written summary of all oral statements of the person that the prosecuting
9 attorney plans to use in the course of the trial or other proceeding and the names of
10 witnesses to the person's oral statements.

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

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

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

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

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

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

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

ASSEMBLY BILL 777

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

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

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

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

13 (k) Any exculpatory evidence.

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

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

24 (b) Any relevant written or recorded statements of a witness named on a list
25 under par. (a), including any reports or statements made in connection with the case

ASSEMBLY BILL 777

SECTION 48

1 by a witness who conducted an examination under s. 980.031 or, if the witness does
2 not prepare a report or statement, a written summary of the findings of the witness
3 or the subject matter of his or her testimony.

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

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

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

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

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

22 (6) PROTECTIVE ORDER. Upon motion of a party, the court may at any time order
23 that discovery, inspection or the listing of witnesses required under this section be
24 denied, restricted or deferred, or make other appropriate orders. If the prosecuting
attorney or the attorney for a person subject to this chapter certifies that ~~to list~~ a

25

listing ✓

ASSEMBLY BILL 777

1 witness may subject the witness or others to physical or economic harm or coercion,
2 the court may order that the deposition of the witness be taken pursuant to s. 967.04
3 (2) to (6). The name of the witness need not be divulged prior to the taking of such
4 deposition. If the witness becomes unavailable or changes his or her testimony, the
5 deposition shall be admissible at trial as substantive evidence.

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

10 (8) **CONTINUING DUTY TO DISCLOSE.** If, subsequent to compliance with a
11 requirement of this section, and prior to or during trial or other proceeding under this
12 chapter, a party discovers additional material or the names of additional witnesses
13 requested that are subject to discovery, inspection or production under this section,
14 the party shall promptly notify the other party of the existence of the additional
15 material or names.

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

20 (b) In add'i'on to or in lieu of any sanction specified in par. (a), a court may,
21 subject to sub. (4), advise the jury of any failure or refusal to disclose material or
22 information required to be disclosed under sub. (2) or (3), or of any untimely
23 disclosure of material or information required to be disclosed under sub. (2) or (3).

24 (10) **PAYMENT OF PHOTOCOPY COSTS IN CASES INVOLVING INDIGENT RESPONDENTS.**
25 When the state public defender or a private attorney appointed under s. 977.08

1 requests photocopies of any item that is discoverable under this section, the state
2 public defender shall pay any fee charged for the photocopies from the appropriation
3 under s. 20.550 (1) (a). If the person providing photocopies under this section charges
4 the state public defender a fee for the photocopies, the fee may not exceed the actual,
5 necessary and direct cost of photocopying.

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

9 **SECTION 49.** 980.038 (title) of the statutes is created to read:

10 980.038 (title) **Miscellaneous procedural provisions.**

11 **SECTION 50.** 980.038 (2) of the statutes is created to read:

12 980.038 (2) **PROTECTIVE ORDERS.** In addition to any protective order that may
13 be issued under s. 980.036 (6), the court in which a proceeding under this chapter is
14 pending may deny, defer or restrict, or issue any other appropriate protective order
15 concerning, the disclosure or redisclosure of information obtained under s. 980.015
16 (3) (b), (3m), (3r) or (3x), 980.031 (3) or 980.08 (3).

17 **SECTION 51.** 980.038 (3) of the statutes is created to read:

18 980.038 (3) **PROCEEDINGS RELATING TO THE COMMITMENT OF JUVENILES.** (a) If a
19 person is subject to a petition that, with respect to the criteria under s. 980.02 (2) (a),
20 alleges only that the person has been found delinquent for a sexually violent offense,
21 the general public shall be excluded from any trial or or other hearing under this
22 chapter unless any of the following applies:

- 23 1. There was one or more public hearings under s. 938.299 (1) in the proceeding
24 in which the person was found delinquent.

ASSEMBLY BILL 777

. - P I - * - -

1 2. The person, through his or her counsel, requests a public trial or hearing,
2 except that the court shall refuse to grant the request for a public hearing if the
3 victim of any of the person's sexually violent offenses objects or, in the case of a person
4 who has not attained the age of 17, if a parent or guardian objects.

5 (b) If a public hearing is not held in a trial or other hearing under this chapter,
6 only the following persons may be present:

7 1. The person and his or her attorney.

8 2. In the case of a person who has not attained the age of 17, a parent or
9 guardian.

10 3. The attorney representing the state in the proceeding.

11 4. A victim of any of the person's sexually violent offenses, a member of the
12 victim's family and, at the request of the victim, a representative of an organization
13 providing support services to the victim.

14 5. Witnesses who are testifying or expected to testify at the trial or other
15 hearing.

16 6. A representative of the news media who wishes to attend the trial or other
17 hearing for the purpose of reporting news without revealing the identity of the
18 person involved.

19 7. Other persons requested by a party and approved by the court.

20 8. Any other person the court finds to have a proper interest in the case or in
21 the work of the court, including a member of the bar.

22 (c) Notwithstanding par. (b), if a public hearing is not held the court may
23 exclude any person specified in par. (b) 5. to 8. from any portion of the hearing if that
24 portion of the hearing deals with sensitive personal information of the person or the
25 person's family or if the court determines that excluding the person would be in the

1 best interests of the person. In addition, a judge may exclude any person specified
 2 in par. (b) 4. from any portion of a hearing that deals with sensitive personal matters
 3 of the person or the person's family and that does not directly relate to the act or
 4 alleged act committed against the victim.

5 (d) If a public hearing is held, the court may, in its discretion, exclude the
 6 general public from any portion of a trial or hearing that deals with sensitive
 7 personal matters of the person or the person's family and that does not relate to the
 8 acts of sexual violence committed by the person. If the court excludes the general
 9 public from a trial or hearing under this subsection, only those persons who are
 10 permitted under par. (b) to attend a hearing from which the general public is
 11 excluded may attend.

12 (e) If a public hearing is not held under par. (a) or (d), any person who divulges
 13 any information that would identify the person or the family involved in any
 14 proceeding under this chapter is subject to ch. 785.

15 SECTION 52. 980.07 (1) of the statutes, as affected by 1999 Wisconsin Act 9, is
 16 amended to read:

17 980.07 (1) If Except as provided in sub. (1g), if a person has been committed
 18 under s. 980.06 and has not been discharged under s. 980.09, the department shall
 19 conduct an examination of ~~his or her mental condition~~ the person within 6 months
 20 after an initial commitment under s. 980.06 and again thereafter at least once each
 21 12 months for the purpose of determining whether the person has made sufficient
 22 progress for the court to consider whether the person should be placed on supervised
 23 release or discharged.

24 (1m)he time of a reexamination under this section, the person who has
 25 been committed may retain or seek to have the court appoint an examiner expert or

ASSEMBLY BILL 777

1 professional person to conduct an examination as provided under s. ~~980.03 (4)~~
2 980.031 (1).

3 **SECTION 53.** 980.07 (lg) of the statutes is created to read:

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

15 **SECTION 54.** 980.07 (2) of the statutes is amended to read:

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

22 **SECTION 55.** 980.07 (3) of the statutes is amended to read:

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

ASSEMBLY BILL 777

1 SECTION 56. 980.08 (3) ✓ of the statutes, as affected by 1999 Wisconsin Act 9, is
2 amended to read:

3 980.08 (3) Within 20 days after receipt of the petition, the court shall appoint
4 one or more ~~examiners~~ qualified experts or professional persons having the
5 specialized knowledge determined by the court to be appropriate, who shall examine
6 the person and furnish a written report of the examination to the court within 30
7 days after appointment. The ~~examiners~~ experts or professional persons shall have
8 reasonable access to the person for purposes of examination and. The experts or

9 professional persons shall also have access to the person's past and present
10 treatment records, as defined in s. 51.30 (1) (b), and patient health care records, as
11 provided under s. 146.82 (2) (e), and correctional records, as provided under ss.

12 301.355 and 938.78 (2) (e), and to the records of a court assigned to exercise
13 jurisdiction under ch. 938, as provided under s. 938.396 (2) (e), and presentence

14 investigation reports, as provided under s. 972.15 (6). If any such ~~examiner~~ expert
15 or professional person believes that the person is appropriate for supervised release
16 under the criterion specified in sub. (4), the ~~examiner~~ expert or professional person
17 shall report on the type of treatment and services that the person may need while in
18 the community on supervised release. The county shall pay the costs of an ~~examiner~~
19 expert or professional person appointed under this subsection as provided under s.
20 51.20 (18) (a).

21 SECTION 57. 980.08 (4) ✓ of the statutes, as affected by 1999 Wisconsin Act 9, is
22 amended to read:

23 980.08 (4) The court, without a jury, shall hear the petition within 30 days after
24 the report of the court-appointed ~~examiner~~ expert or professional person is filed with
25 the court, unless the petitioner waives this time limit. Expenses of proceedings

INS
39-
12

provided under
(4) (b) 85.9 past and present
(cm)

301.355 and 938.78 (2) (e), and to the records of a court assigned to exercise jurisdiction under ch. 938, as provided under s. 938.396 (2) (e), and presentence

ASSEMBLY BILL 777

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

19 **SECTION 58.** 980.09 (1) (b) of the statutes is amended to read:

20 980.09 (1) (b) At a hearing under this subsection, the district attorney or the
21 department of justice, whichever filed the original petition, shall represent the state
22 and ~~shall have the right to~~ may have the petitioner examined by an expert or
23 professional person of his, her or its choice. ~~The hearing shall be before the court~~
24 ~~without a jury.~~ The district attorney or the denartment of justice, whichever filed the
25 original netition. or the netitioner or his or her attorney may reauest that the hearing

ASSEMBLY BILL 777

or the court may on its own motion require that the hearing be to a jury of 6 persons

LRB-4508/1 JEO:jlj:jf

SECTION 58

1 under this subsection be to a jury of 6 persons. At a hearing under this subsection,
2 the state has the burden of proving by clear and convincing evidence that the
3 petitioner is still a sexually violent person.

INS 32-4

SECTION 59. 980.09 (2) (a) of the statutes is amended to read:

5 980.09 (2) (a) A person may petition the committing court for discharge from
6 custody or supervision without the secretary's approval, as provided under par. (am).
7 At the time of an examination under s. 980.07 (1) (sec'ry), the secretary shall provide
8 the committed person with a written notice of the person's right to petition the court
9 for discharge over the secretary's objection. The notice shall contain a waiver of
10 rights under par. (am). The secretary shall forward a copy of the notice and waiver
11 form to the court with the report of the department's examination under s. 980.07.

12 If the
13 (am) e r s o n does not affirmatively waive the right to petition may petition
14 for discharge from custody or supervision without the secretary's approval if at least
15 18 months have elapsed since the initial commitment order was entered or at least
16 6 months have elapsed since the most recent petition for discharge under this
17 paragraph or under sub. (1) (a) was denied. If a person petitions for discharge under
18 this paragraph, the court shall set a probable cause hearing review the petition, the
19 most recent examination report filed under s. 980.07 (2) and any relevant written
20 arguments or supporting documentation provided by the person, the person's
21 attorney or the state to determine whether facts exist that warrant a hearing on
22 whether there is nrobable cause to believe that the person is still no longer a sexually
23 violent person. The committed person has a right to have an attorney represent him
24 or her at the probable cause hearing, but the person is not entitled to be present at

ASSEMBLY BILL 777

1 ~~the probable cause hearing file a petition, written arguments and supporting~~
2 ~~documentation on the person's behalf.~~

3 SECTION 60. 980.09 (2) (b) of the statutes is amended to read:

4 980.09 (2) (b) If the court determines ~~at the probable cause hearing~~ after a

5 review of a netition filed under par. (a) ^{plainly} ~~that~~ that there is probable cause ~~exists~~ to

6 believe that the committed person is no longer a sexually violent person, then the

7 court shall set a hearing on the issue. At a hearing under this paragraph, the

8 committed person is entitled to be present and to the benefit of the protections

9 afforded to the person under s. 980.03. The district attorney or the department of

10 justice, whichever filed the original petition, shall represent the state at a hearing

11 under this paragraph. ~~The hearing under this paragraph shall be to the court.~~ The

12 district attorney or the department of justice, whichever filed the original netition,

13 or the committed person or his or her attorney may request that the hearing under

14 this subsection be to a iurv of 6 persons. The state ~~has the right to~~ may have the

15 committed person ~~evaluated~~ examined by experts or professional nersons chosen by

16 the state. At the hearing, the state has the burden of proving by clear and convincing

17 evidence that the committed person is still a sexually violent person.

18 ~~SECTION 61. 980.10 of the statutes is repealed.~~

19 SECTION 62. 980.11 (2) (intro.) of the statutes, as affected by 1999 Wisconsin

20 Act 9, is amended to read:

21 980.11 (2) (intro.) If the court places a person on supervised release under s.

22 980.08 or discharges a person under s. 980.09 ~~or 980.10~~, the department shall do all

23 of the following:

24 SECTION 63. 980.12 (1) ^{ix} of the statutes, as affected by 1999 Wisconsin Act 9,

25 section 3239, is amended to read:

s or the court may on its own motion
require that the hearing be to a jury
of 6 persons

INS
33-18

ASSEMBLY BILL 777

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

5 **SECTION 64.** 980.14 (title) of the statutes is created to read:

6 **980.14** (title) **Immunity.**

7 **SECTION 65.** 980.14 (1) of the statutes is created to read:

8 980.14 (1) In this section, "agency" means the department of corrections, the
9 department of health and family services, the department of justice or a district
10 attorney.

11 **SECTION 66. Initial applicability.**

48.396 (6), 48.78 (2) (e),

12 (1) GENERALLY. The treatment of sections 51.30 (3) (bm) and (4) (b) 8m., 8s. and
13 10m., 146.82 (2) (c) and (cm), 165.255, 301.355, 905.04 (4) (a), 938.35 (1) (e), 938.396
14 (lk) and (2) (e), 938.78 (2) (e), 972.15 (6), 980.015 (2) (intro.), (a), (b), (bm) and (c), (3)
15 (intro.) and (b), (3m), (3r) and (3x), 980.02 (1) (intro.), (a) and (b) (intro.), 980.03 (2)
16 (intro.), (4) and (5), 980.031 (2), 980.036, 980.038 (2) ~~and (3)~~, 980.07 (l), (lg), (2) and
17 (3), 980.08 (3) and (4), 980.09 (1) (b) and (2) (a) and (b) and 980.10 of the statutes, the
18 renumbering and amendment of section 980.015 (1) of the statutes and the creation
19 of section 980.015 (1) (b) (intro.) of the statutes first apply to proceedings under
20 chapter 980 of the statutes that are initiated by a petition filed under section 980.02
21 of the statutes on the effective date of this subsection.

22 (2) IMMUNITY PROVISIONS. The treatment of sections 980.015 (4) and 980.14 (1)
23 of the statutes first applies to acts or omissions occurring on the effective date of this
24 subsection.

25 (END) ✓

1 **INSERT 6-1:**

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

3 48.396 (1) Law enforcement officers' records of children shall be kept separate
4 from records of adults. Law enforcement officers' records of the adult expectant
5 mothers of unborn children shall be kept separate from records of other adults. Law
6 enforcement officers' records of children and the adult expectant mothers of unborn
7 children shall not be open to inspection or their contents disclosed except under sub.
8 (1b), (1d) ~~or~~, (5) or (6) or s. 48.293 or by order of the court. This subsection does not
9 apply to the representatives of newspapers or other reporters of news who wish to
10 obtain information for the purpose of reporting news without revealing the identity
11 of the child involved, to the confidential exchange of information between the police
12 and officials of the school attended by the child or other law enforcement or social
13 welfare agencies or to children 10 years of age or older who are subject to the
14 jurisdiction of the court of criminal jurisdiction. A public school official who obtains
15 information under this subsection shall keep the information confidential as
16 required under s. 118.125 and a private school official who obtains information under
17 this subsection shall keep the information confidential in the same manner as is
18 required of a public school official under s. 118.125. A law enforcement agency that
19 obtains information under this subsection shall keep the information confidential as
20 required under this subsection and s. 938.396 (1). A social welfare agency that
21 obtains information under this subsection shall keep the information confidential as
22 required under ss. 48.78 and 938.78.

NOTE: NOTE: The bracketed language was inserted before "child" by 1997 Wis. Act 292. It is shown here in its correct location. Corrective legislation is pending. NOTE:

History: 1971 c. 278; 1977 c. 354 s. 47; 1977 c. 449; Stats. 1977 s. 48.396; 1979 c. 300, 1979 c. 333 s. 5; 1983 a. 74 s. 32, 1983 a. 487, 538, 1985 a. 311, 332; 1987 a. 27, 180, 403; 1989 a. 31, 107, 145; 1991 a. 39, 263; 1993 a. 98, 195, 228, 334, 479, 491; 1995 a. 27 ss. 2479 to 2480m, 9126 (19); 1995 a. 77, 173, 275, 352, 440, 448; 1997 a. 35, 80, 191, 205, 252, 292.

1 **SECTION 2.** 48.396 (5) (a) (intro.)^{✓x} of the statutes is amended to read:

2 48.396 (5) (a) (intro.) Any person who is denied access to a record under sub.
3 (1), (1b) ~~or~~, (1d) or (6)[✓] may petition the court to order the disclosure of the records
4 governed by the applicable subsection. The petition shall be in writing and shall
5 describe as specifically as possible all of the following:

History: 1971 c. 278; 1977 c. 354 s. 47; 1977 c. 449; Stats. 1977 s. 48.396; 1979 c. 300; 1979 c. 333 s. 5; 1983 a. 74 s. 32; 1983 a. 487,538; 1985 a. 311,332; 1987 a. 27, 180,403; 1989 a. 31, 107, 145; 1991 a. 39,263; 1993 a. 98, 195, 228, 334, 479, 491; 1995 a. 27 ss. 2479 to 2480m, 9126 (19); 1995 a. 77, 173, 275, 352, 440, 448; 1997 a. 35, 80, 191,205, 252,292.

6 **SECTION 3.** 48.396 (6)^{✓x} of the statutes is created to read:

7 48.396 (6) Records of law enforcement officers and of the court assigned to
8 exercise jurisdiction under this chapter and ch. 938[✓] shall be open for inspection by
9 and production to appropriate persons in accordance with ss. 980.015[✓] (3m), (3r) and
10 (3x), 980.031 (3)[✓] and 980.08 (3)[✓], if the records involve or relate to an individual who
11 is the subject of or who is being evaluated for a proceeding under ch. 980. Information
12 obtained from records under this subsection shall be kept confidential except to the
13 extent that redisclosure of that information is necessary for the conduct of an
14 evaluation, examination or proceeding under ch. 980 for which the information was
15 obtained.

16 **SECTION 4.** 48.78 (2) (e)^{✓x} of the statutes is created to read:

17 48.78 (2) (e) Notwithstanding par. (a),[✓] an agency shall, upon request, disclose
18 information to appropriate persons in accordance with ss. 980.015 (3m), (3r) and (3x),
19 980.031 (3) and 980.08 (3)[✓], if the information involves or relates to an individual who
20 is the subject of or who is being evaluated for a proceeding under ch. 980.[✓] Information
21 obtained under this paragraph shall be kept confidential except to the extent that
22 redisclosure of that information is necessary for the conduct of an evaluation,
23 examination or proceeding under ch. 980 for which the information was obtained.

24

INSERT 11-13:

SECTION 5. 938.396 (lk) of the statutes is created to read:

938.396 **(lk)** A law enforcement agency shall open its records for inspection by and production to appropriate persons in accordance with ss. 980.015 (3m), (3r) and (3x), 980.031 (3) and 980.08 (3), if the records of the law enforcement agency involve or relate to an individual who is the subject of or who is being evaluated for a proceeding under ch. 980. Information obtained from a law enforcement agency's records under this subsection shall be kept confidential except to the extent that redisclosure of that information is necessary for the conduct of an evaluation or proceeding under ch. 980 for which the information was obtained.

SECTION 6. 938.396 (2) (e) of the statutes is amended to read:

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

INSERT 12-16:

SECTION 7. 938.78 (2) (e) ^X of the statutes is amended to read:

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

History: 1995 a. 27 s. 9126 (19); 1995 a. 77, 230, 352; 1997 a. 205, 207, 283; 1999 a. 9.

INSERT 13-8:

SECTION 8. 967.03 of the statutes is amended to read:

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

History: 1979 c. 89.

INSERT 13-23:

SECTION 9. 978.05 (6) ^X of the statutes is amended to read:

978.05 (6) (a) Institute, commence or appear in all civil actions or special proceedings under and perform the duties set forth for the district attorney under ss. 17.14, 30.03 (2), 48.09 (5), 59.55 (l), 59.64 (l), 70.36, 103.50 (8), 103.92 (4), 109.09, 343.305 (9) (a), 453.08, 806.05, 938.09, 938.18, 938.355 (6) (b) and (6g) (a), 946.86,

1 946.87, 961.55 (5), 971.14 and 973.075 to 973.077, perform any duties in connection
 2 with court proceedings in a court assigned to exercise jurisdiction under chs. 48 and
 3 938 as the judge may request and perform all appropriate duties and appear if the
 4 district attorney is designated in specific statutes, including matters within chs. 782,
 5 976 ~~and~~, 979 and 980 ✓ and ss. 51.81 to 51.85. Nothing in this paragraph limits the
 6 authority of the county board to designate, under s. 48.09 (5), that the corporation
 7 counsel provide representation as specified in s. 48.09 (5) or to designate, under s.
 8 48.09 (6) or 938.09 (6), the district attorney as an appropriate person to represent the
 9 interests of the public under s. 48.14 or 938.14.

10 History: 1989 a. 31, 117, 336; 1991 a. 16, 32, 39; 1993 a. 98; 1995 a. 27 ss. 7291, 7292, 9116 (5), 9130 (4); 1995 a. 77, 201, 448; Sup. ✓ Order No. 96-08, 207 Wis. 2d
 xv (1997); 1997 a. 35, 73, 1999 a. 9.

INSERT 17-19:

11 (a) Past and present treatment records, as provided under s. 51.30 (4) (b) 8s.,
 12 and past and present patient health care records, as provided under s. 146.82 (2)
 13 (cm). ✓

-/INSERT 20-19:

15 48.78 (2) (e), 301.355 and 938.78 (2) (e) ✓ to files and records of court proceedings
 16 under ch. 51. as provided under s. 51.30 (3) (bm) ✓ and the records of a court assigned
 17 to exercise jurisdiction under chs. 48 and 938 ✓, as provided under ss. 48.396 (6) ✓ and
 18 938.396 (2) (e) ✓, to records of law enforcement officers and law enforcement agencies,
 19 as provided under ss. 48.396 (6) ✓ and 938.396 (lk) ✓ and to nresentence (NO P)

INSERT 30-12:

21 48.78 (2) (e), 301.355 and 938.78 (2) (e), to files and records of court proceedings
 22 under ch. 51. as provided under s. 51.30 (3) (bm) ✓ and the records of a court assigned
 23 to exercise jurisdiction under chs. 48 and 938, as provided under ss. 48.396 (6) and

1 938.396 (2) (e), to records of law enforcement officers and law enforcement agencies,
2 as provided under ss. 48.396 (6) and 938.396 (1k), and to presentence NO
AP

3 **INSERT 32-4:**

4 SECTION 10. 980.09 (2) (a) of the statutes is amended to read:

5 980.09 (2) (a) A person may petition the committing court for discharge from
6 custody or supervision without the secretary's approval. ~~At the time of an~~
7 ~~examination under s. 980.07 (1), the secretary shall provide the committed person~~
8 ~~with a written notice of the person's right to petition the court for discharge over the~~
9 ~~secretary's objection. The notice shall contain a waiver of rights. The secretary shall~~
10 ~~forward the notice and waiver form to the court with the report of the department's~~
11 ~~examination under s. 980.07. If the person does not affirmatively waive the right to~~
12 petition if at least 18 months have elapsed since the initial commitment order was
13 entered or at least 6 months have elapsed since the most recent petition for discharge
14 under this paragraph or under sub. (1) (a) was denied. If a person petitions for
15 discharge under this paragraph, the court shall set a probable cause hearing review
16 the petition, the most recent examination report filed under s. 980.07 (2) and any
17 relevant written arguments or supporting documentation provided by the person,
18 the person's attorney or the state to determine whether facts exist that warrant a
19 hearing on whether there is probable cause to believe that the person is still no longer
20 a sexually violent person. The committed person has a right to have an attorney
21 represent him or her at the probable cause hearing, but the person is not entitled to
22 be present at the probable cause hearing file a petition, written arguments and
23 supporting documentation on the person's behalf.

INSERT 33-18:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19

SECTION 11. 980.10 of the statutes is amended to read:

980.10 Additional discharge petitions. ~~In addition to the procedures under~~
Notwithstanding s. 980.09, a committed person may petition the committing court
for discharge at any time, but if a person has previously filed a petition for discharge
without the secretary's approval under s. 980.09 (2) and the court determined, either
upon review of the petition under s. 980.09 (2) (a) or following a hearing under s.
980.09 (2) (b) that the person's petition was frivolous or that the person was still a
sexually violent person, then the court shall deny any subsequent petition under this
section without a hearing unless the petition contains facts upon which a court could
find that the condition of the person had so changed that a review of the petition
under s. 980.09 (2) (a) or a hearing was on the netition under s. 980.09 (2) (b) is
warranted. If the court finds that a review or hearing is warranted, the court shall
~~set a probable cause hearing proceed~~ in accordance with s. 980.09 (2) (a) ~~and continue~~
~~proceedings under s. 980.09 (2) or (b), if whichever is appropriate.~~ If the person has
not previously filed a petition for discharge without the secretary's approval, the
court shall set a ~~probable cause hearing in accordance with~~ review the netition as
provided under s. 980.09 (2) (a) and continue proceedings under s. 980.09 (2) (b), if
appropriate.

History: 1993 a. 479.

***NOTE: Keeping s. 980.10 seems to make the new time limits in s. 980.09 (2) (a)
virtually meaningless.



State of Wisconsin
1999 - 2000 LEGISLATURE

LRBs0369/P1
JEO:jlg:km

Today by
1:30

2
r.m.r.

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

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

Regen

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 (l), 48.396 (5) (a) (intro.), 51.30 (3)**
4 **(a), 51.30 (3) (b), 51.30 (4) (b) 8m., 51.30 (4) (b) ll., 51.375 (1) (a), 146.82 (2) (c),**
5 **165.255, 904.04 (2), 905.04 (4) (a), 938.396 (l), 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 (lk), 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), 980.07 (lg), 980.14 (title) and 980.14 (1) of the
2 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) ~~of (b) or s. 48.293~~ or by order of the court. n d o e s n o t
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. (lb), (ld), (lg),
8 (1k), (lm), (lr), (1t) or (lx) 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 redislosure of that information is necessary for the conduct of an evaluation, examination ✓
 6 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, 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 redislosure 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 (l), (lb), (ld), (lg), (1k), (lm), (lr) 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- and s. 980.02:

4 “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} but no earlier than 180 days before the
14 anticipated release date of the person, evaluate whether the person may meet the
15 criteria for commitment as a sexually violent person or whether the person does not
16 meet the criteria for commitment as a sexually violent person. As soon as possible,
17 but in no case later than 15 days after the completion of its evaluation, the agency
18 with jurisdiction shall inform each appropriate district attorney specified under s.
19 980.02 (1) (b) and the department of justice regarding the person as possible
20 # w h e t h e r t h e a g e n c y
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 (lk), ^{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 (lk), 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 (lk), 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 snecified 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 j u r i s d i c t i o n ~~-015(1)~~, over the person determined in an evaluation
14 under s. 980.015 (2) (am) that the nerson does not meet the criteria for commitment,
15 the denartment of iustice shall decide whether to file a netition under this paragraph,
16 and shall inform the district attorneys snecified under par. (b) of its decision, ^gas soon
17 as nossible, 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 nerson obtained a special purpose
19 evaluation of the nerson under s. 980.015 (2) (bm), the denartment of iustice shall
20 decide whether to file a netition under this paragraph, and shall inform the district
21 attornevs snecified under war. (b) of its decision, ^vas soon as wossible, 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 PHOTOCOPYCOSTS IN CASES INVOLVING INDIGENTRESPONDENTS.**
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.** 980.07 (1) of the statutes, as affected by 1999 Wisconsin Act 9, is
5 amended to read:

6 980.07 **(1)** If ~~Except as provided in sub. (1g),~~ if a person has been committed
7 under s. 980.06 and has not been discharged under s. 980.09, the department shall
8 conduct an examination of ~~his or her mental condition~~ the person within 6 months
9 after an initial commitment under s. 980.06 and again thereafter at least once each
10 12 months for the purpose of determining whether the person has made sufficient
11 progress for the court to consider whether the person should be placed on supervised
12 release or discharged.

13 **(1m)** ~~he~~ time of a reexamination under this section, the person who has
14 been committed may retain or seek to have the court appoint an ~~examiner expert or~~
15 professional person to conduct an examination as provided under s. ~~980.03 (4)~~
16 980.031 (1).

17 **SECTION 55.** 980.07 (lg) of the statutes is created to read:

18 980.07 **(1g)** If a person who has been committed under s. 980.06 has not been
19 discharged under s. 980.09 and the person is incarcerated in a county jail or a state
20 correctional institution or is placed in a treatment facility or a secured correctional
21 facility, as defined in s. 938.02 (15m), a secured child caring institution, as defined
22 in s. 938.01 (15g), or a secured group home, as defined in s. 938.02 (15p), for an offense
23 that the person committed or is alleged to have committed since being committed
24 under s. 980.06, the department need not conduct an examination of the person as
25 provided under sub. (1) but shall conduct an examination of the person upon the

1 person's release from the county jail, state correctional institution, treatment
2 facility, secured correctional facility, secured child caring institution or secured
3 group home.

4 **SECTION 56.** 980.07 (2) of the statutes is amended to read:

5 980.07 (2) Any ~~examiner expert or nrofessional person~~ conducting an
6 examination under this section shall prepare a written report of the examination no
7 later than 30 days after the date of the examination. The ~~examiner expert or~~
8 professional person shall place a copy of the report in the person's medical records
9 and shall provide a copy of the report to the court that committed the person under
10 s. 980.06 and to the district attorney or the denartment of justice, whichever filed the
11 original netition.

12 **SECTION 57.** 980.07 (3) of the statutes is amended to read:

13 980.07 (3) Notwithstanding ~~sub. subs. (1) and (1g)~~, the court that committed
14 a person under s. 980.06 may order a reexamination of the person at any time during
15 the period in which the person is subject to the commitment order.

16 **SECTION 58.** 980.08 (3) of the statutes, as affected by 1999 Wisconsin Act 9, is
17 amended to read:

18 980.08 (3) Within 20 days after receipt of the petition, the court shall appoint
19 one or more ~~examiners qualified exnerts or nrofessional persons~~ having the
20 specialized knowledge determined by the court to be appropriate, who shall examine
21 the person and furnish a written report of the examination to the court within 30
22 days after appointment. The ~~examiners exnerts or nrofessional persons~~ shall have
23 reasonable access to the person for purposes of examination ~~and. The exnerts or~~
24 professional persons shall also have access to the person's past and present
25 treatment records, as ~~defined in~~ provided under s. 51.30 (1)(b), and (4)(b) 8s.. past

1 and nresent patient health care records, as provided under s. 146.82 (2) ~~(e)~~ (cm), and
2 correctional records, as nrovided under ss. 48.78 (2) (e), 301.355 and 938.78 (2) (e),
3 to files and records of court proceedings under ch. 51, as nrovided under s. 51.30 (3)
4 (bm), and the records of a court assigned to exercise jurisdiction under chs. 48 and
5 938, as nrovided under ss. 48.396 (6) and 938.396 (2) (e), to records of law
6 enforcement officers and law enforcement agencies, as provided under ss. 48.396 (6)
7 and 938.396 (1k), and to presentence investigation reports, as nrovided under s.
8 972.15 (6). If any such ~~examiner~~ exnert or nrofessional nerson believes that the
9 person is appropriate for supervised release under the criterion specified in sub. (4),
10 the ~~examiner~~ exnert or nrofessional nerson shall report on the type of treatment and
11 services that the person may need while in the community on supervised release.
12 The county shall pay the costs of an ~~examiner~~ expert or nrofessional nerson
13 appointed under this subsection as provided under s. 51.20 (18) (a).

14 **SECTION 59.** 980.08 (4) of the statutes, as affected by 1999 Wisconsin Act 9, is
15 amended to read:

16 980.08 (4) The court, without a jury, shall hear the petition within 30 days after
17 the report of the court-appointed ~~examiner~~ exnert or nrofessional nerson is filed with
18 the court, unless the petitioner waives this time limit. Expenses of proceedings
19 under this subsection shall be paid as provided under s. 51.20 (18) (b), (c) and (d).
20 The court shall grant the petition unless the state proves by clear and convincing
21 evidence that the person is still a sexually violent person and that it is still
22 substantially probable that the person will engage in acts of sexual violence if the
23 person is not continued in institutional care. In making a decision under this
24 subsection, the court may consider, without limitation because of enumeration, the
25 nature and circumstances of the behavior that was the basis of the allegation in the

1 petition under s. 980.02 (2) (a), the person's mental history and present mental
2 condition, where the person will live, how the person will support himself or herself
3 and what arrangements are available to ensure that the person has access to and will
4 participate in necessary treatment, including pharmacological treatment using an
5 antiandrogen or the chemical equivalent of an antiandrogen if the person is a serious
6 child sex offender. A decision under this subsection on a petition filed by a person
7 who is a serious child sex offender may not be made based on the fact that the person
8 is a proper subject for pharmacological treatment using an antiandrogen or the
9 chemical equivalent of an antiandrogen or on the fact that the person is willing to
10 participate in pharmacological treatment using an antiandrogen or the chemical
11 equivalent of an antiandrogen.

12 **SECTION 60.** 980.09 (1) (b) of the statutes is amended to read:

13 980.09 (1) (b) At a hearing under this subsection, the district attorney or the
14 department of justice, whichever filed the original petition, shall represent the state
15 and ~~shall have the right to~~ may have the petitioner examined by an expert or
16 professional person of his, her or its choice. ~~The hearing shall be before the court~~
17 ~~without a jury.~~ The district attorney or the department of justice, whichever filed the
18 original petition, or the petitioner or his or her attorney may request that the hearing
19 under this subsection be to a jury of 6 persons, or the court may on its own motion
20 require that the hearing be to a jury of 6 persons. At a hearing under this subsection,
21 the state has the burden of proving by clear and convincing evidence that the
22 petitioner is still a sexually violent person.

23 **SECTION 61.** 980.09 (2) (a) of the statutes is amended to read:

24 980.09 (2) (a) A person may petition the committing court for discharge from
25 custody or supervision without the secretary's approval. ~~At the time of an~~

1 ~~examination under s. 980.07 (1), the secretary shall provide the committed person~~
2 ~~with a written notice of the person's right to petition the court for discharge over the~~
3 ~~secretary's objection. The notice shall contain a waiver of rights. The secretary shall~~
4 ~~forward the notice and waiver form to the court with the report of the department's~~
5 ~~examination under s. 980.07. If the person does not affirmatively waive the right to~~
6 ~~petition if at least 18 months have elapsed since the initial commitment order was~~
7 ~~entered or at least 6 months have elapsed since the most recent petition for discharge~~
8 ~~under this paragraph or under sub. (1) (a) was denied. If a person petitions for~~
9 ~~discharge under this paragraph, the court shall set a probable cause hearing review~~
10 ~~the petition, the most recent examination report filed under s. 980.07 (2) and any~~
11 ~~relevant written arguments or supporting documentation provided by the person,~~
12 ~~the person's attorney or the state to determine whether facts exist that warrant a~~
13 ~~hearing on whether there is probable cause to believe that the person is still no longer~~
14 ~~a sexually violent person. The committed person has a right to have an attorney~~
15 ~~represent him or her at the probable cause hearing, but the person is not entitled to~~
16 ~~be present at the probable cause hearing file a petition, written arguments and~~
17 ~~supporting documentation on the person's behalf.~~

18 SECTION 62. 980.09 (2) (b) of the statutes is amended to read:

19 980.09 (2) (b) If the court determines ~~at the probable cause hearing~~ after a
20 review of a petition filed under par. (a) that there is probable cause ~~exists~~ to believe
21 that the committed person is no longer a sexually violent person, then the court shall
22 set a hearing on the issue. At a hearing under this paragraph, the committed person
23 is entitled to be present and to the benefit of the protections afforded to the person
24 under s. 980.03. The district attorney or the department of justice, whichever filed
25 the original petition, shall represent the state at a hearing under this paragraph.

1 ~~The hearing under this paragraph shall be to the court.~~ The district attorney or the
2 department of justice, whichever filed the original petition, or the committed person
3 or his or her attorney may request that the hearing under this subsection be to a jury
4 of 6 persons, or the court may on its own motion require that the hearing be to a jury
5 of 6 persons. The state ~~has the right to~~ may have the committed person ~~evaluated~~
6 ~~examined~~ by experts or professional persons chosen by the state. , t h e
7 state has the burden of proving by clear and convincing evidence that the committed
8 person is still a sexually violent person.

9 **SECTION 63.** 980.10 of the statutes is amended to read:

10 **980.10 Additional discharge petitions.** ~~In addition to the process under~~
11 Notwithstanding s. 980.09, a committed person may petition the committing court
12 for discharge at any time, but if a person has previously filed a petition for discharge
13 without the secretary's approval under s. 980.09 (2) and the court determined, either
14 upon review of the petition under s. 980.09 (2) (a) or following a hearing under s.
15 980.09 (2) (b), that the person's petition was frivolous or that the person was still a
16 sexually violent person, then the court shall deny any subsequent petition under this
17 section without a hearing unless the petition contains facts upon which a court could
18 find that the condition of the person had so changed that a review of the petition
19 under s. 980.09 (2) (a) or a hearing was on the petition under s. 980.09 (2) (b) is
20 warranted. If the court finds that a review or hearing is warranted, the court shall
21 ~~set a probable cause hearing proceed~~ in accordance with s. 980.09 (2)(a) and continue
22 ~~proceedings under s. 980.09 (2) or (b), if whichever is appropriate.~~ If the person has
23 not previously filed a petition for discharge without the secretary's approval, the
24 court shall ~~set a probable cause hearing in accordance with~~ review the petition as

1 provided under s. 980.09 (2) (a) and continue proceedings under s. 980.09 (2) (b), if
2 appropriate.

****NOTE: Keeping s. 980.10 seems to make the new time limits in s. 980.09 (2) (a)
virtually meaningless.

3 **SECTION 64. 980.12 (1)** of the statutes, as affected by 1999 Wisconsin Act 9,
4 section 3239, is amended to read:

5 980.12 (1) Except as provided in ss. ~~980.03~~ 980.031 (4) and 980.08 (3), the
6 department shall pay from the appropriations under s. 20.435 (2) (a) and (bm) for all
7 costs relating to the evaluation, treatment and care of persons evaluated, examined
8 or committed under this chapter.

9 **SECTION 65.** 980.14 (title) of the statutes is created to read:

10 **980.14 (title) Immunity.**

11 **SECTION 66.** 980.14 (1) of the statutes is created to read:

12 980.14 (1) In this section, "agency" means the department of corrections, the
13 department of health and family services, the department of justice or a district
14 attorney.

15 **SECTION 67. Initial applicability.**

16 (1) **GENERALLY.** The treatment of sections 48.396 (6), 48.78 (2) (e), 51.30 (3) (bm)
17 and (4) (b) 8m., 8s. and 10m., 146.82 (2) (c) and (cm), 165.255, 301.355, 905.04 (4) (a),
18 938.35 (1) (e), 938.396 (lk) and (2) (e), 938.78 (2) (e), 972.15 (6), 980.015 (2) (intro.),
19 (a), (b), (bm) and (c), (3) (intro.) and (b), (3m), (3r) and (3x), 980.02 (1) (intro.), (a) and
20 (b) (intro.), 980.03 (2) (intro.), (4) and (5), 980.031 (2), 980.036, 980.038 (2), 980.07
21 (l), (lg), (2) and (3), 980.08 (3) and (4), 980.09 (1) (b) and (2) (a) and (b) and 980.10
22 of the statutes, the renumbering and amendment of section 980.015 (1) of the
23 statutes and the creation of section 980.015 (1) (b) (intro.) of the statutes first apply

1 to proceedings under chapter 980 of the statutes that are initiated by a petition filed
2 under section 980.02 of the statutes on the effective date of this subsection.

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

6 (END)

Olsen, Jefren

From: Schubert, Louis
Sent: Tuesday, March 14, 2000 3:48 PM
To: Olsen, Jefren
Subject: RE: Substitute amendment to AB 777

Jefren,

I think Tony's suggestion works. Sorry for the delay in getting back to you.

Louie

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

From: Olsen, Jefren
Sent: Friday, March 10, 2000 5:07 PM
To: Schubert, Louis
Subject: FW: Substitute amendment to AB 777

Louie,

Do you agree with Tony? Any further instructions from you or Kendall Kelley? Let me know once you've decided how to proceed.

Attorney Jefren E. Olsen
Wisconsin Legislative Reference Bureau
P.O. Box 2037
Madison, WI 53701-2037
Tel: (608) 266-8906
Fax: (608) 264-8522
Email: jefren.olsen@legis.state.wi.us

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

From: Streveler, Anthony J. DOC
Sent: Friday, March 10, 2000 4:49 PM
To: Olsen, Jefren; Schubert, Louis
Subject: RE: Substitute amendment to AB 777

I like the idea.. . . at least this will make it clear.. legally.. thanks

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

From: Olsen, Jefren
Sent: Friday, March 10, 2000 2:44 PM
To: Streveler, Anthony J. DOC; Schubert, Louis
Subject: RE: Substitute amendment to AB 777

Louis and Tony:

To address Tony's legal concern, the draft could include some sort of language saying that failure to comply with a time period during the petitioning process (or at any point of a ch. 980 proceeding) does not deprive the court of jurisdiction. Compare subsection (5) of proposed s. 980.038, created by Section 77 of SB 404.

Attorney Jefren E. Olsen
Wisconsin Legislative Reference Bureau
P.O. Box 2037
Madison, WI 53701-2037
Tel: (608) 266-8906
Fax: (608) 264-8522
Email: jefren.olsen@legis.state.wi.us

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

From: Streveler, Anthony J. DOC
Sent: Friday, March 10, 2000 1:31 PM
To: Schubert, Louis

Cc: Margolies, Robert S. DOC; Tess, Sally J. DOC; Olsen, Jefren
Subject: RE: Substitute amendment to AB 777

Louis....

I have reviewed this draft substitute amendment to AB 777.. and the language change appears to meet our concerns related to the codified timelines to submit evaluations, etc... looks like it is more of a “guideline-like” wording... although somewhat difficult to comprehend.. . my only issue - an issue that would need to be clarified by an attorney - is whether the guideline/timeframes will set a means for a defense counsel challenge when, in fact, a case is referred for petition that does not meet the 180 days... in other words, we do not want to establish another technical means for additional hearing regarding the appropriateness or timeliness of the case review and evaluation..

a thought would be to add “or” in the language on page 12, line 13.. . . “.as soon as possible or beginning 180 days....”

thank you for the opportunity to review this draft...

<< File: 99s0369P.pdf >>

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

From: Olsen, Jefren
Sent: Tuesday, March 07, 2000 11 :16 AM
To: Schubert, Louis
cc: Streveler, Anthony J. DOC
Subject: Substitute amendment to AB 777

<< File: 99s0369/P2 >>

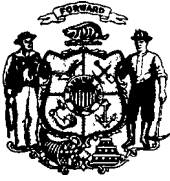
Louis and Tony:

Above is a preliminary draft of the substitute amendment to AB 777. In addition to making the petitioning timetable more guideline-like (in part by following some of the language in current law), I made some changes in the various record release provisions in order to make them all more consistent and provide access for expert examiners to material that they can't get at under current law or the original version of AB 777. Tony, after you have had a chance to look at this, let Louis in Sen. Drzewiecki's office know your thoughts and suggestions.

As always, let me know if you have questions or changes.

Jefren Olsen

Attorney Jefren E. Olsen
Wisconsin Legislative Reference Bureau
P.O. Box 2037
Madison, WI 53701-2037
Tel: (608) 266-8906
Fax: (608) 264-8522
Email: jefren.olsen@legis.state.wi.us



State of Wisconsin
1999 - 2000 LEGISLATURE

LRBs0369/P2
JEO:jlghmh

1
P.M.R.

Today

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

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

regenerate

1 **A N 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), 980.07 (lg), 980.14 (title) and 980.14 (1) of the
2 statutes; **relating to:** sexually violent person's 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 (lb), (ld) or (5) ~~of (6) or s. 48.293~~ or by order of the court. n d o e s n o t
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 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.** 980.07 (1) of the statutes, as affected by 1999 Wisconsin Act 9, is
 5 amended to read:

6 980.07 (1) ~~If~~ Except as provided in sub. (1g), if a person has been committed
 7 under s. 980.06 and has not been discharged under s. 980.09, the department shall
 8 conduct an examination of ~~his or her mental condition~~ the person within 6 months
 9 after an initial commitment under s. 980.06 and again thereafter at least once each
 10 12 months for the purpose of determining whether the person has made sufficient
 11 progress for the court to consider whether the person should be placed on supervised
 12 release or discharged.

13 (1m)he time of a reexamination under this section, the person who has
 14 been committed may retain or seek to have the court appoint an ~~examiner expert or~~
 15 professional person to conduct an examination as provided under s. ~~980.03 (4)~~
 16 980.031 (1).

17 **SECTION 55.** 980.07 (1g) of the statutes is created to read:

18 980.07 (1g) If a person who has been committed under s. 980.06 has not been
 19 discharged under s. 980.09 and the person is incarcerated in a county jail or a state
 20 correctional institution or is placed in a treatment facility or a secured correctional
 21 facility, as defined in s. 938.02 (15m), a secured child caring institution, as defined
 22 in s. 938.01 (15g), or a secured group home, as defined in s. 938.02 (15p), for an offense
 23 that the person committed or is alleged to have committed since being committed
 24 under s. 980.06, the department need not conduct an examination of the person as
 25 provided under sub. (1) but shall conduct an examination of the person upon the

INS
25-3

1 ~~The hearing under this paragraph shall be to the court. The district attorney or the~~
2 ~~department of justice, whichever filed the original petition, or the committed person~~
3 ~~or his or her attorney may request that the hearing under this subsection be to a jury~~
4 ~~of 6 persons, or the court may on its own motion require that the hearing be to a jury~~
5 ~~of 6 persons.~~ The state ~~has the right to~~ may have the committed person ~~evaluated~~
6 ~~examined~~ by experts or ~~professional persons~~ chosen by the state. At the hearing, the
7 state has the burden of proving by clear and convincing evidence that the committed
8 person is still a sexually violent person.

9 SECTION 63. 980.10 of the statutes is amended to read:

10 **980.10 Additional discharge petitions.** ~~In addition~~ ~~to~~ ~~the~~ ~~provisions~~ ~~under~~
11 ~~Notwithstanding~~ s. 980.09, a committed person may petition the committing court
12 for discharge at any time, but if a person has previously filed a petition for discharge
13 without the secretary's approval under s. 980.09 (2) and the court determined, either
14 upon review of the petition under s. 980.09 (2) (a) or following a hearing under s.
15 980.09 (2) (b), that the person's petition was frivolous or that the person was still a
16 sexually violent person, then the court shall deny any subsequent petition under this
17 section without a hearing unless the petition contains facts upon which a court could
18 find that the condition of the person had so changed that a review of the netition
19 under s. 980.09 (2) (a) or a hearing was on the netition under s. 980.09 (2) (b) is
20 warranted. If the court finds that a review or hearing is warranted, the court shall
21 ~~set a probable cause hearing proceed~~ in accordance with s. 980.09 (2)(a) ~~and continue~~
22 ~~proceedings under s 980.09 (2) or (b), if whichever is appropriate.~~ If the person has
23 not previously filed a petition for discharge without the secretary's approval, the
24 court shall ~~set a probable cause hearing in accordance with~~ review the netition as

1 provided under s. 980.09 (2) (a) and continue proceedings under s. 980.09 (2) (b), if
2 appropriate.

← ~~****NOTE: Keeping s. 980.10 seems to make the new time limits in s. 980.09 (2) (a) virtually meaningless.~~

3 SECTION 64. 980.12 (1) of the statutes, as affected by 1999 Wisconsin Act 9,
4 section 3239, is amended to read:

5 980.12 (1) Except as provided in ss. ~~980.03~~ 980.031 (4) and 980.08 (3), the
6 department shall pay from the appropriations under s. 20.435 (2) (a) and (bm) for all
7 costs relating to the evaluation, treatment and care of persons evaluated, examined
8 or committed under this chapter.

9 SECTION 65. 980.14 (title) of the statutes is created to read:

10 **980.14 (title) Immunity.**

11 SECTION 66. 980.14 (1) of the statutes is created to read:

12 980.14 (1) In this section, "agency" means the department of corrections, the
13 department of health and family services, the department of justice or a district
14 attorney.

15 SECTION 67. **Initial applicability.**

(CS) PETITIONING PROCESS.

16 (1) ~~GENERALLY~~ The treatment of sections ~~48.396 (6), 48.78 (2) (b), 51.30 (3) (b),~~
17 ~~and 41.11 (3m), 3 and 19m, 148.82 (2) (c) and (d), 165.255, 301.255 (2) (b),~~
18 ~~98.05 (1) (a), 98.05 (1) (b) and (2) (a), 98.78 (2) (a), 98.78 (2) (b),~~ 980.015 (2) (intro.),
19 (a), (b), (bm) and (c), (3) (intro.) and (b), (3m), (3r) and (3x), ^{and} 980.02 (1) (intro.), (a) and
20 (b) (intro.), ~~980.01 (intro.) and (a), 980.02 (1) (intro.), 980.02 (1) (a) and (b),~~
21 ~~980.02 (1) (c) and (d), 980.02 (2) (a) and (b), 980.02 (3) (a) and (b), 980.02 (3) (c) and (d),~~
22 ~~980.02 (3) (e) and (f), 980.02 (3) (g) and (h), 980.02 (3) (i) and (j), 980.02 (3) (k) and (l),~~
23 ~~980.02 (3) (m) and (n), 980.02 (3) (o) and (p), 980.02 (3) (q) and (r), 980.02 (3) (s) and (t),~~
24 ~~980.02 (3) (u) and (v), 980.02 (3) (w) and (x), 980.02 (3) (y) and (z), 980.02 (3) (aa) and (ab),~~
25 ~~980.02 (3) (ac) and (ad), 980.02 (3) (ae) and (af), 980.02 (3) (ag) and (ah), 980.02 (3) (ai) and (aj),~~
26 ~~980.02 (3) (ak) and (al), 980.02 (3) (am) and (an), 980.02 (3) (ao) and (ap), 980.02 (3) (aq) and (ar),~~
27 ~~980.02 (3) (as) and (at), 980.02 (3) (au) and (av), 980.02 (3) (aw) and (ax), 980.02 (3) (ay) and (az),~~
28 ~~980.02 (3) (ba) and (bb), 980.02 (3) (bc) and (bd), 980.02 (3) (be) and (bf), 980.02 (3) (bg) and (bh),~~
29 ~~980.02 (3) (bi) and (bj), 980.02 (3) (bk) and (bl), 980.02 (3) (bm) and (bn), 980.02 (3) (bo) and (bp),~~
30 ~~980.02 (3) (bq) and (br), 980.02 (3) (bs) and (bt), 980.02 (3) (bu) and (bv), 980.02 (3) (bw) and (bx),~~
31 ~~980.02 (3) (by) and (bz), 980.02 (3) (ca) and (cb), 980.02 (3) (cc) and (cd), 980.02 (3) (ce) and (cf),~~
32 ~~980.02 (3) (cg) and (ch), 980.02 (3) (ci) and (cj), 980.02 (3) (ck) and (cl), 980.02 (3) (cm) and (cn),~~
33 ~~980.02 (3) (co) and (cp), 980.02 (3) (cq) and (cr), 980.02 (3) (cs) and (ct), 980.02 (3) (cu) and (cv),~~
34 ~~980.02 (3) (cw) and (cx), 980.02 (3) (cy) and (cz), 980.02 (3) (da) and (db), 980.02 (3) (dc) and (dd),~~
35 ~~980.02 (3) (de) and (df), 980.02 (3) (dg) and (dh), 980.02 (3) (di) and (dj), 980.02 (3) (dk) and (dl),~~
36 ~~980.02 (3) (dm) and (dn), 980.02 (3) (do) and (dp), 980.02 (3) (dq) and (dr), 980.02 (3) (ds) and (dt),~~
37 ~~980.02 (3) (du) and (dv), 980.02 (3) (dw) and (dx), 980.02 (3) (dy) and (dz), 980.02 (3) (ea) and (eb),~~
38 ~~980.02 (3) (ec) and (ed), 980.02 (3) (ee) and (ef), 980.02 (3) (eg) and (eh), 980.02 (3) (ei) and (ej),~~
39 ~~980.02 (3) (ek) and (el), 980.02 (3) (em) and (en), 980.02 (3) (eo) and (ep), 980.02 (3) (eq) and (er),~~
40 ~~980.02 (3) (es) and (et), 980.02 (3) (eu) and (ev), 980.02 (3) (ew) and (ex), 980.02 (3) (ey) and (ez),~~
41 ~~980.02 (3) (fa) and (fb), 980.02 (3) (fc) and (fd), 980.02 (3) (fe) and (ff), 980.02 (3) (fg) and (fh),~~
42 ~~980.02 (3) (fi) and (fj), 980.02 (3) (fk) and (fl), 980.02 (3) (fm) and (fn), 980.02 (3) (fo) and (fp),~~
43 ~~980.02 (3) (fq) and (fr), 980.02 (3) (fs) and (ft), 980.02 (3) (fu) and (fv), 980.02 (3) (fw) and (fx),~~
44 ~~980.02 (3) (fy) and (fz), 980.02 (3) (ga) and (gb), 980.02 (3) (gc) and (gd), 980.02 (3) (ge) and (gf),~~
45 ~~980.02 (3) (gg) and (gh), 980.02 (3) (gi) and (gj), 980.02 (3) (gk) and (gl), 980.02 (3) (gm) and (gn),~~
46 ~~980.02 (3) (go) and (gp), 980.02 (3) (gq) and (gr), 980.02 (3) (gs) and (gt), 980.02 (3) (gu) and (gv),~~
47 ~~980.02 (3) (gw) and (gx), 980.02 (3) (gy) and (gz), 980.02 (3) (ha) and (hb), 980.02 (3) (hc) and (hd),~~
48 ~~980.02 (3) (he) and (hf), 980.02 (3) (hg) and (hh), 980.02 (3) (hi) and (hj), 980.02 (3) (hk) and (hl),~~
49 ~~980.02 (3) (hm) and (hn), 980.02 (3) (ho) and (hp), 980.02 (3) (hq) and (hr), 980.02 (3) (hs) and (ht),~~
50 ~~980.02 (3) (hu) and (hv), 980.02 (3) (hw) and (hx), 980.02 (3) (hy) and (hz), 980.02 (3) (ia) and (ib),~~
51 ~~980.02 (3) (ic) and (id), 980.02 (3) (ie) and (if), 980.02 (3) (ig) and (ih), 980.02 (3) (ii) and (ij),~~
52 ~~980.02 (3) (ik) and (il), 980.02 (3) (im) and (in), 980.02 (3) (io) and (ip), 980.02 (3) (iq) and (ir),~~
53 ~~980.02 (3) (is) and (it), 980.02 (3) (iu) and (iv), 980.02 (3) (iw) and (ix), 980.02 (3) (iy) and (iz),~~
54 ~~980.02 (3) (ja) and (jb), 980.02 (3) (jc) and (jd), 980.02 (3) (je) and (jf), 980.02 (3) (jg) and (jh),~~
55 ~~980.02 (3) (ji) and (jj), 980.02 (3) (jk) and (jl), 980.02 (3) (jm) and (jn), 980.02 (3) (jo) and (jp),~~
56 ~~980.02 (3) (jq) and (jr), 980.02 (3) (js) and (jt), 980.02 (3) (ju) and (jv), 980.02 (3) (jw) and (jx),~~
57 ~~980.02 (3) (jy) and (jz), 980.02 (3) (ka) and (kb), 980.02 (3) (kc) and (kd), 980.02 (3) (ke) and (kf),~~
58 ~~980.02 (3) (kg) and (kh), 980.02 (3) (ki) and (kj), 980.02 (3) (kk) and (kl), 980.02 (3) (km) and (kn),~~
59 ~~980.02 (3) (ko) and (kp), 980.02 (3) (kq) and (kr), 980.02 (3) (ks) and (kt), 980.02 (3) (ku) and (kv),~~
60 ~~980.02 (3) (kw) and (kx), 980.02 (3) (ky) and (kz), 980.02 (3) (la) and (lb), 980.02 (3) (lc) and (ld),~~
61 ~~980.02 (3) (le) and (lf), 980.02 (3) (lg) and (lh), 980.02 (3) (li) and (lj), 980.02 (3) (lk) and (ll),~~
62 ~~980.02 (3) (lm) and (ln), 980.02 (3) (lo) and (lp), 980.02 (3) (lq) and (lr), 980.02 (3) (ls) and (lt),~~
63 ~~980.02 (3) (lu) and (lv), 980.02 (3) (lw) and (lx), 980.02 (3) (ly) and (lz), 980.02 (3) (ma) and (mb),~~
64 ~~980.02 (3) (mc) and (md), 980.02 (3) (me) and (mf), 980.02 (3) (mg) and (mh), 980.02 (3) (mi) and (mj),~~
65 ~~980.02 (3) (mk) and (ml), 980.02 (3) (mm) and (mn), 980.02 (3) (mo) and (mp), 980.02 (3) (mq) and (mr),~~
66 ~~980.02 (3) (ms) and (mt), 980.02 (3) (mu) and (mv), 980.02 (3) (mw) and (mx), 980.02 (3) (my) and (mz),~~
67 ~~980.02 (3) (na) and (nb), 980.02 (3) (nc) and (nd), 980.02 (3) (ne) and (nf), 980.02 (3) (ng) and (nh),~~
68 ~~980.02 (3) (ni) and (nj), 980.02 (3) (nk) and (nl), 980.02 (3) (nm) and (nn), 980.02 (3) (no) and (np),~~
69 ~~980.02 (3) (nq) and (nr), 980.02 (3) (ns) and (nt), 980.02 (3) (nu) and (nv), 980.02 (3) (nw) and (nx),~~
70 ~~980.02 (3) (ny) and (nz), 980.02 (3) (oa) and (ob), 980.02 (3) (oc) and (od), 980.02 (3) (oe) and (of),~~
71 ~~980.02 (3) (og) and (oh), 980.02 (3) (oi) and (oj), 980.02 (3) (ok) and (ol), 980.02 (3) (om) and (on),~~
72 ~~980.02 (3) (oo) and (op), 980.02 (3) (oq) and (or), 980.02 (3) (os) and (ot), 980.02 (3) (ou) and (ov),~~
73 ~~980.02 (3) (ow) and (ox), 980.02 (3) (oy) and (oz), 980.02 (3) (pa) and (pb), 980.02 (3) (pc) and (pd),~~
74 ~~980.02 (3) (pe) and (pf), 980.02 (3) (pg) and (ph), 980.02 (3) (pi) and (pj), 980.02 (3) (pk) and (pl),~~
75 ~~980.02 (3) (pm) and (pn), 980.02 (3) (po) and (pp), 980.02 (3) (pq) and (pr), 980.02 (3) (ps) and (pt),~~
76 ~~980.02 (3) (pu) and (pv), 980.02 (3) (pw) and (px), 980.02 (3) (py) and (pz), 980.02 (3) (qa) and (qb),~~
77 ~~980.02 (3) (qc) and (qd), 980.02 (3) (qe) and (qf), 980.02 (3) (qg) and (qh), 980.02 (3) (qi) and (qj),~~
78 ~~980.02 (3) (qk) and (ql), 980.02 (3) (qm) and (qn), 980.02 (3) (qo) and (qp), 980.02 (3) (qq) and (qr),~~
79 ~~980.02 (3) (qs) and (qt), 980.02 (3) (qu) and (qv), 980.02 (3) (qw) and (qx), 980.02 (3) (qy) and (qz),~~
80 ~~980.02 (3) (ra) and (rb), 980.02 (3) (rc) and (rd), 980.02 (3) (re) and (rf), 980.02 (3) (rg) and (rh),~~
81 ~~980.02 (3) (ri) and (rj), 980.02 (3) (rk) and (rl), 980.02 (3) (rm) and (rn), 980.02 (3) (ro) and (rp),~~
82 ~~980.02 (3) (rq) and (rr), 980.02 (3) (rs) and (rt), 980.02 (3) (ru) and (rv), 980.02 (3) (rw) and (rx),~~
83 ~~980.02 (3) (ry) and (rz), 980.02 (3) (sa) and (sb), 980.02 (3) (sc) and (sd), 980.02 (3) (se) and (sf),~~
84 ~~980.02 (3) (sg) and (sh), 980.02 (3) (si) and (sj), 980.02 (3) (sk) and (sl), 980.02 (3) (sm) and (sn),~~
85 ~~980.02 (3) (so) and (sp), 980.02 (3) (sq) and (sr), 980.02 (3) (ss) and (st), 980.02 (3) (su) and (sv),~~
86 ~~980.02 (3) (sw) and (sx), 980.02 (3) (sy) and (sz), 980.02 (3) (ta) and (tb), 980.02 (3) (tc) and (td),~~
87 ~~980.02 (3) (te) and (tf), 980.02 (3) (tg) and (th), 980.02 (3) (ti) and (tj), 980.02 (3) (tk) and (tl),~~
88 ~~980.02 (3) (tm) and (tn), 980.02 (3) (to) and (tp), 980.02 (3) (tq) and (tr), 980.02 (3) (ts) and (tt),~~
89 ~~980.02 (3) (tu) and (tv), 980.02 (3) (tw) and (tx), 980.02 (3) (ty) and (tz), 980.02 (3) (ua) and (ub),~~
90 ~~980.02 (3) (uc) and (ud), 980.02 (3) (ue) and (uf), 980.02 (3) (ug) and (uh), 980.02 (3) (ui) and (uj),~~
91 ~~980.02 (3) (uk) and (ul), 980.02 (3) (um) and (un), 980.02 (3) (uo) and (up), 980.02 (3) (uq) and (ur),~~
92 ~~980.02 (3) (us) and (ut), 980.02 (3) (uu) and (uv), 980.02 (3) (uw) and (ux), 980.02 (3) (uy) and (uz),~~
93 ~~980.02 (3) (va) and (vb), 980.02 (3) (vc) and (vd), 980.02 (3) (ve) and (vf), 980.02 (3) (vg) and (vh),~~
94 ~~980.02 (3) (vi) and (vj), 980.02 (3) (vk) and (vl), 980.02 (3) (vm) and (vn), 980.02 (3) (vo) and (vp),~~
95 ~~980.02 (3) (vq) and (vr), 980.02 (3) (vs) and (vt), 980.02 (3) (vu) and (vv), 980.02 (3) (vw) and (vx),~~
96 ~~980.02 (3) (vy) and (vz), 980.02 (3) (wa) and (wb), 980.02 (3) (wc) and (wd), 980.02 (3) (we) and (wf),~~
97 ~~980.02 (3) (wg) and (wh), 980.02 (3) (wi) and (wj), 980.02 (3) (wk) and (wl), 980.02 (3) (wm) and (wn),~~
98 ~~980.02 (3) (wo) and (wp), 980.02 (3) (wq) and (wr), 980.02 (3) (ws) and (wt), 980.02 (3) (wu) and (wv),~~
99 ~~980.02 (3) (wz) and (xa) and (xb) and (xc) and (xd) and (xe) and (xf) and (xg) and (xh) and (xi) and (xj)~~
100 ~~and (xk) and (xl) and (xm) and (xn) and (xo) and (xp) and (xq) and (xr) and (xs) and (xt) and (xu) and (xv)~~
101 ~~and (xw) and (xx) and (xy) and (xz) and (ya) and (yb) and (yc) and (yd) and (ye) and (yf) and (yg) and (yh)~~
102 ~~and (yi) and (yj) and (yk) and (yl) and (ym) and (yn) and (yo) and (yp) and (yq) and (yr) and (ys) and (yt)~~
103 ~~and (yu) and (yv) and (yw) and (yx) and (yz) and (za) and (zb) and (zc) and (zd) and (ze) and (zf) and (zg)~~
104 ~~and (zh) and (zi) and (zj) and (zk) and (zl) and (zm) and (zn) and (zo) and (zp) and (zq) and (zr) and (zs)~~
105 ~~and (zt) and (zu) and (zv) and (zw) and (zx) and (zy) and (zz).~~

22 of the statutes, the renumbering and amendment of section 980.015 (1) of the
23 statutes and the creation of section 980.015 (1) (b) (intro.) of the statutes first apply

INS
32-2

1

evaluations conducted on the effective date of this subsection for the purpose of determining whether to file proceedings under chapter 980 of the statutes that are initiated by a petition filed under section 980.02 of the statutes on the effective date of this subsection.

2

3

(2) IMMUNITY PROVISIONS. The treatment of sections 980.015 (4) and 980.14 (1)

4

of the statutes first applies to acts or omissions occurring on the effective date of this

5

subsection.

6

(END)

1 **INSERT 25-3:**

2 **SECTION 1.** 980.038 (3) of the statutes is created to read:

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

9 **INSERT 32-2:**

10 #
10 (0) **DISCOVERY.** The treatment of section 980.036 of the statutes first applies to
11 proceedings under chapter 980 of the statutes that are initiated by a petition filed
12 under section 980.02 of the statutes on the effective date of this subsection.

13 #
13 (2) **PERIODIC REEXAMINATIONS.** The treatment of section 980.07 (1), (lg), (2) and
14 (3) of the statutes first applies to examinations of a sexually violent person that occur
15 on the effective date of this subsection.

16 #
16 (2) **PETITIONS FOR DISCHARGE.** The treatment of sections 980.09 (2) (a) and (b)
17 and 980.10 of the statutes first applies to petitions for discharge that are filed on the
18 effective date of this subsection.