Chap 980 & 301 DHFS

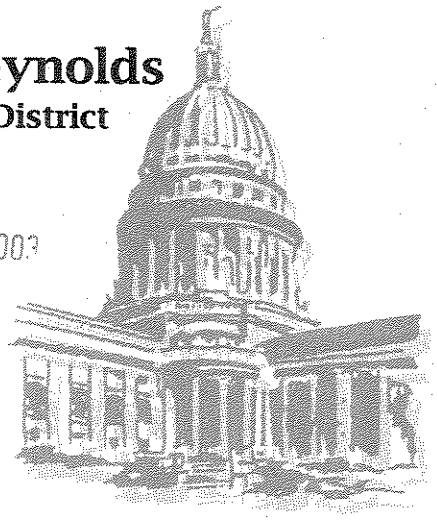
Department of Health and Family Services and Department of Correction Policies

Relating to the placement of sexual predators in a community under Chapters 980 and 301. Testimony will only be heard from the Departments of Corrections and Health and Family Services

DHFS Chap. 980

State Senator Tom Reynolds

5th Senate District



AUG 15 2003

August 11, 2003

Senator Joseph Leibham
Room 409 South; State Capitol
Madison, WI 53701

Dear ~~Senator Leibham:~~ Joe

During the past several weeks the City of West Allis and the Fifth Senate District have been faced with a significant problem over the placement of a pedophile in our neighborhood. The proposed placement of Billy Lee Morford in West Allis without benefit of the community involvement or any written process or procedure has furthered our distrust of government.

At recent meetings, the Department of Health and Family Services freely admitted that it did not communicate with neighbors, police officials or local elected officials regarding this placement. The Department indicated that it did not have any statutory or administrative requirement to work with any local groups prior to recommending placement to the court. The Department has indicated that it does not have any written criteria or policy drafted to govern sexual predator placements in residential areas.

I believe that the absence of administrative rules or formal written guidelines for the placement of sex offenders is a serious problem that needs to be addressed. Further, the reluctance of the Department to discuss standards reflects a disregard of the public.

Accordingly, I would ask that the Joint Committee for the Review of Administrative Rules convene a public hearing under ss. 227.12 and 227.26 ***(2)*** *to determine the extent which there are unwritten guidelines or policies that currently being used to place sexual predators under Chapter 980 and which of these unwritten policies should be written into the administrative codes for the public's security.*

I would appreciate your prompt attention to this issue. I look forward to working with all parties to bring this problem to a successful conclusion.

Sincerely,

Tom Reynolds
State Senator
5th Senate District

TGR/lhw

State Capitol · Room 306 South · P.O. Box 7882 · Madison, WI 53707
Office: (608) 266-2512 · Toll Free: (866) 817-6061 · Fax: (608) 267-0367 · In-District: (414) 456-9230
Web Site: SenReynolds.com

November 18, 2003

Governor Jim Doyle
115 East State Capitol
Madison, WI 53702

Governor Doyle,

I have corresponded with your office and that of your cabinet secretary on numerous occasions over the last five months to no avail. Billy Lee Morford, despite an order by Judge Franke that he be removed immediately, remains in the 6535 N. 51st Street property. This situation is unacceptable.

The Department of Health and Family Services has failed to locate a residence for Mr. Morford and has continuously proven its complete incompetence in dealing with the situation. Mr. Morford is in direct violation of his supervised release plan and must be removed from his current location immediately. The Department has admitted that they erred in judgement for many reasons, including the placement of Mr. Morford adjacent to a DHFS licensed shelter care facility.

The DHFS hired ATTIC Correctional Services to purchase the property at 6535 N. 51st Street for use as a halfway house for sexually violent persons without public consultation. Why is it that not once, but twice, DHFS has gone public with sites without owning the property or having a legally defensible lease? It was explained to the department, prior to their second and third attempts to place Mr. Morford, that this was a necessity and that the chosen location would need to meet all of the identified proximity concerns.

My patience and that of the neighborhood is not just wearing thin - it's gone.

I would like to schedule a meeting with you and your cabinet secretary as soon as possible. Leadership is needed in this area, and I believe that working together we can finally put this issue to rest.

Please contact me for scheduling at the number below. I would like to get together to discuss the strategy for the immediate removal of Mr. Morford to a court approved site at our earliest mutual convenience.

Sincerely,

Robert Krug
Milwaukee County Supervisor, 9th District
901 N. 9th Street, Courthouse Room 201
Milwaukee, WI 53233
(414) 278-4235

By Supervisor Krug

A RESOLUTION

Asking the Governor and the State Legislature (1) to review and enact stricter release criteria for Chapter 980 Sexually Violent Persons, (2) to release funds and expedite the building of a Chapter 980 Sexually Violent Persons Release Facility in an isolated area, (3) to direct the Department of Health and Family Services (DHFS) to amend their administrative rules to have placement site research account for the prohibitions typically found in the supervised release plans of Chapter 980 releases, (4) to require the Department of Health and Family Services (DHFS) to give mandatory public notification of release addresses to the community and their chief elected representatives prior to a Judge's release order, and (5) to clarify the County's advisory role in the Chapter 980 supervised placement process and preparation of supervised release plans

WHEREAS, there has been great public concern due to the release of convicted sex offenders from the Wisconsin State Statute, Chapter 980 civil commitment, with approximately 260 sexually violent persons being treated in Wisconsin; and

WHEREAS, Chapter 980 releases must be returned to their county of residence per Chapter 980.105, with 57 sexually violent persons in treatment centers statewide to be reviewed for potential release into Milwaukee County; and

WHEREAS, Chapter 980 is fashioned after Mental Health Law, not criminal statutes, and likely would not be upheld by the Wisconsin Supreme Court if it was the policy of the State of Wisconsin to hold Chapter 980 patients for life indiscrimanantly and without regard to their specific treatment plans; and

WHEREAS, Wisconsin has been shown to have the most liberal release policy of any state in the entire nation, with each individual County being an implied partner in the process and placement of these individuals per Wisconsin State Statute 980.08(5); and

WHEREAS, the State of Wisconsin has reversed its decision to recommend release on several occasions since 1998, has had DHFS-approved sites found inconsistent with the rules and conditions of Chapter 980 supervised release plans by the Court, has failed to do the necessary due diligence in selecting potential sites for Chapter 980 releases, and have returned or have pending action to return 15 of the 32 total Chapter 980 releases to the secure treatment facility for violation of supervised release rules; and

WHEREAS, the state statutes and administrative rules for the DHFS do not require placement site research to be inclusive of school district child density statistics, day care centers, DHFS certified shelter care facilities, target population traffic patterns, parks,

community based residential facilities, playgrounds, and other places target populations tend to congregate; and

WHEREAS, placement of Chapter 980 sexually violent persons in proximity to target populations is an undesirable end for the State, community, past victims, potential future victims, patient, and his or her treatment professionals; and

WHEREAS, there is no strict, clearly written, and extensively defined standard to apply by health care professionals, Judges, and District Attorneys when attempting to determine whether or not a patient has "demonstrated significant progress" in treatment or is "much more likely than not" to "engage in acts of sexual violence" per *State v. Curiel*, 227 Wis. 2d 389 and Wisconsin State Statute, Chapter 980.02(5); and

WHEREAS, the public currently has no right to prior notification in the event of a Chapter 980 sexually violent person's release into the community, except for at the discretion of "the municipal police department and county sheriff for the municipality and county in which the person will be residing" per Wisconsin State Statute 980.08(6m); and

WHEREAS, sufficient funds have been appropriated by the State Legislature for the sole purpose of building a supervised halfway house release facility for the location of Chapter 980 Sexually Violent Persons into less restrictive living arrangements after an order for release by a Judge; and

WHEREAS, seven Chapter 980 Sexually Violent Persons have been outright released, without supervision, into the community, with two being released into Milwaukee County without prior public notification; and

WHEREAS, notifying the public can result in essential information being brought forward to the Court, District Attorney, and State regarding the suitability of a Chapter 980 release site and placement in a community; and,

WHEREAS, the County is a statutory partner in the preparation of supervised release plans per Wisconsin State Statute, Chapter 980.08(5); now therefore,

BE IT RESOLVED, that the Milwaukee County Board of Supervisors hereby urges the Governor and the Wisconsin Legislature to support legislation to modify the Wisconsin State Statute, Chapter 980 so that more strict, clearly defined, and uniform standards are applied to the determination of eligibility for release of a Chapter 980 patient, with those new standards being applied narrowly and only to cases with documented evidence of extensive, successful medical treatment; and

BE IT FURTHER RESOLVED, that the State release funds and expedite the building of a multi-bed facility in an isolated area for Chapter 980 sexually violent persons in

Milwaukee County that will meet the less restrictive living arrangement requirement set forth by the courts while also providing strict supervision; and

BE IT FURTHER RESOLVED, that Governor direct the Department of Health and Family Services to adopt administrative rules and standards which would require their Chapter 980 search process to account for, but not be limited to, the following proximity considerations when recommending a potential release site: school district child density statistics, day care centers, DHFS certified shelter care facilities, target population traffic patterns, community based residential facilities, playgrounds, and other places target populations tend to congregate, live, or have a reasonable expectation of being found; and

BE IT FURTHER RESOLVED, that the Governor and the State Legislature make administrative rule and state statutory changes to mandate the Department of Health and Family Services to provide public notification to the surrounding community prior to a Judge's order for release of a sexually violent person; and

BE IT FURTHER RESOLVED, that the County Clerk is hereby authorized and directed to send a copy of this resolution to the Governor and members of the Wisconsin Legislature; and

BE IT FURTHER RESOLVED, that the Division of Intergovernmental Relations is hereby authorized and directed to convey the position established by this resolution to the Governor and members of the Wisconsin Legislature.

FISCAL NOTE: Adoption of this resolution would result in no tax levy impact for Milwaukee County, though an expenditure of staff time by the Intergovernmental Relations Division would be required.

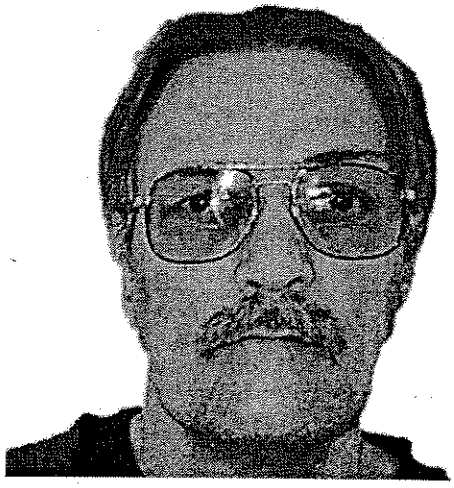
Milwaukee Police Department

CHAPTER 980 - SPECIAL BULLETIN NOTIFICATION

MORFORD, Billy Lee.

6535 N. 51st Street

MILWAUKEE



Date of Birth	*01/19/46*
Race	*White*
Height	*5'-6"*
Weight	*160 lbs.*
Hair	*Grey*
Eyes	*Hazel*
Tattoos / Marks	*3" scar on right arm*

The State Department of Health and Family Services (DHFS) will release Billy Lee MORFORD from the Sand Ridge Secure Treatment Center (SRSTC) to the City of Milwaukee on June 2, 2003. Mr. MORFORD is committed to the DHFS pursuant to Chapter 980. Mr. MORFORD served his sentence for Child Enticement after which he was confined to a secure treatment facility for clinical treatment related to his sex offense. Subsequent to Mr. MORFORD'S court-ordered release, he will remain on indefinite supervision by the Department of Corrections -Division of Community Corrections Probation and Parole. **Mr. MORFORD on one occasion took an 11-year old male for a ride on a 4-wheeler and attempted to have sexual contact with the victim. Mr. MORFORD upon release will be residing at 6535 N. 51st Street in the City of Milwaukee.**

Terms of Release

Subject will be under 24 hour electronic monitoring and must comply with all rules of high risk sex offender supervision. He will be subjected to frequent unannounced home visits by his supervising agents.

In addition to his supervision rules, he is not to have unsupervised contact with any victims or minors. He is not to consume any alcohol or any illegal drugs. Subject cannot frequent taverns, bars or liquor stores.

Subject is required to register with the Sex Offender Registry and has been taken to the Milwaukee Police Department for a face-to-face registration. He must comply with all requirements of the Wisconsin Sex Offender Registration Program.

If Subject violates any of theses rules or conditions of his parole, he will be taken into custody and placed in confinement pending review of possible revocation proceedings.

Witnessed violations should be reported to Probation and Parole Agent Mark KLUCK, phone 414-229-0428

Disclaimer:
The following information was provided by the State of Wisconsin Department of Corrections. The Milwaukee Police Department only publishes the following information as provided by the Department of Corrections and makes no claim to the immediate accuracy of these listings. For complete information contact the listed subject's probation/parole agent at the above number.

State of Wisconsin
Department of Health and Family Services

Jim Doyle, Governor
Helene Nelson, Secretary

Community Release Programs

Change to Base	FY 04		FY 05	
	GPR	All Funds	GPR	All Funds
Reestimate Community Release Programs caseload	$1,337,200	$1,337,200	$2,675,500	$2,675,500

Description of Proposal

- Funds the cost of the three community release programs administered by the Department: outpatient competency examinations, conditional release, and supervised release, based on projected caseloads.
- Ensure that the Department is responsible only for those outpatient competency examinations that are performed in locked facilities and not for exams for individuals out on bail.

Background

Outpatient Competency

- Competency-to-stand-trial examinations are performed by the Department on an inpatient or outpatient basis. Inpatient examinations are conducted by departmental staff in one of the Mental Health Institutes (MHIs). The Department currently contracts with a private provider to conduct outpatient competency examinations in a jail or locked unit of a facility. Between July 2002 and January 2003, 497 outpatient and 88 inpatient exams were performed.
- Caseload has increased in the outpatient competency program for several years. Courts are ordering competency evaluations more frequently.
- Competency examinations performed on an inpatient basis are very expensive. The person for whom the exam is ordered must be admitted to a Mental Health Institute for a two week period, at a cost in excess of $500/day.
- To control costs, the Department increased the use of outpatient competency exams, which made it possible to meet the demand for examinations without increasing populations at the MHIs. Costs for the program continue to increase, however, because caseload is increasing.

Conditional Release

- The conditional release program provides treatment to individuals who have been found not guilty by reason of mental disease or defect and either directly placed on conditional release by the court or conditionally released from mental health institutions. There are currently 245 clients on conditional release.
- Caseload in the conditional release program is projected to increase by 4% in each year of the biennium.

Fiscal Effect Summary

Source of Funds	FY 2004		FY 2005		Biennial Total	
	Dollars	FTE	Dollars	FTE	Dollars	FTE
GPR	$ 2,053,100	21.81	$ 2,076,400	21.81	$ 4,129,500	43.62
FED						
PR	$ (2,053,100)	(21.81)	$ (2,076,400)	(21.81)	$ (4,129,500)	(43.62)
PRS						
SEG						
Total	$ -	-	$ -	-	$ -	-

Shared Services
(DIN 5201)

The Department requests an increase of 31.62 GPR FTE and 15.76 PR FTE and a decrease of ($2,116,200) PR–S and (47.38) PR-S FTE in both years of the biennium to delete the PR-S expenditure authority at DCTF institutions related to shared services. Positions formerly funded as PR-S and billed back to institution appropriations will be directly funded in those appropriations. An administrative efficiency will be achieved by eliminating the bill-back process currently in place at the institutions.

Fiscal Effect Summary

Source of Funds	FY 2004		FY 2005		Biennial Total	
	Dollars	FTE	Dollars	FTE	Dollars	FTE
GPR	$ -	31.62	$ -	31.62	$ -	63.24
FED						
PR	$ -	15.76	$ -	15.76	$ -	31.52
PRS	$ (2,116,200)	(47.38)	$ (2,116,200)	(47.38)	$ (4,232,400)	(94.76)
SEG						
Total	$ (2,116,200)	-	$ (2,116,200)	-	$ (4,232,400)	-

Community Release Programs
(DIN 5202)

The Department requests $1,743,700 GPR in FY 04 and $3,256,100 GPR in FY 05 for the costs of outpatient competency examinations and the conditional and supervised release programs in the 2003-05 biennium. These costs are based on projections of the client populations and the service costs per client in the programs.

The Conditional Release program provides treatment to individuals who have been conditionally released from mental health institutions. The program is a state-funded, community-based program administered by private and public agencies under the supervision of the Department. There are currently 251 individuals on conditional release.

WISCONSIN'S SEXUALLY VIOLENT PERSONS LAW
CHAPTER 980

Presentation to Joint Committee for Review of Administrative Rules

"Placement of 'Sexually Violent Persons' in the Community"

Steve Watters
Department of Health & Family Services
Sand Ridge Secure Treatment Center
November 19, 2003

Presentation Overview

- Chapter 980 Overview
- The Supervised Release Program
- Community Placement Process
- Placement Criteria

CHAPTER 980 "RELEASES"

Two versions of release:

1. **Supervised Release**- person placed in least restrictive alternative because of court determination that the individual's risk can be managed in the community.
   - At present 14 individuals are in the community on SR.
   - During history of program, there have been 13 revocations.
2. **Discharge**-person released from the commitment because of court determination that criteria no longer met; no conditions attached to person.
   - A total of 10 individuals have been discharged (not counting 5 deaths).
   - Of total discharges, 5 were on SR and 5 were not on SR.

Perspectives on the Chapter 980 and Supervised Release Populations

Legal:

- Chapter 980 is a civil commitment.
- Applies to individuals only after they have completed their institutional time.
- Significant constitutional issues need to be considered.

Interstate:

- Over 2/3's of the States do not have the option of civil commitment at end of sentence.
- In those states, high risk sex offenders are released at the end of sentence.
- WI has higher number of SVP community releases than the other civil commitment states.

Perspectives Cont.

Statistical:

- WI has approximately 10,700 registered sex offenders living in the community. Of this total, 4,200 are on some type of community supervision, while 6,500 have completed their supervision.
- The 14 Supervised Releases presently in the community represent only a small percentage of sex offenders already in the community. Specifically, of the 10,700 registered sex offenders living in the community, Supervised Release placements represent only 0.1% of this total.

Programmatic:

- Chapter 980 is intended to address the highest risk for re-offense sex offenders in the State.
- State has targeted an array of specialized resources toward this very significant problem-- extensive treatment programming, release process based on individualized decision by Courts, substantial resources for community supervision and treatment, etc.

Conclusion:

- Important to consider the issue of Supervised Releases within the overall context for Chapter 980.

Supervised Release Process

The following steps outline the Supervised Release process:

- Patient petitions Court for Supervised Release.
- Court conducts hearing to collect and consider evidence.
- Court either grants or denies the patient's request based on the Court's conclusion whether the patient's risk is appropriate for a community placement.
- If granted, Court orders DHFS to prepare a comprehensive Supervised Release plan.
- DHFS prepares plan in consultation with other involved parties--e.g., Probation and Parole, law enforcement, prosecutor, treatment staff, local officials, etc.
- Plan submitted to the Court for its review and approval.
- Final plan approved by the Court.
- DHFS provides Special Bulletin Notice to local law enforcement.
- Core team meeting to discuss the nature and process for community notification.
- Community notification is completed by local law enforcement, with participation by DHFS and DOC.
- Placement occurs and the plan is implemented.
- The individual placement and plan is monitored for compliance.

Who or how specifically.

301.45

Supervised Release Plan

- Each plan is individualized to reflect the individual's needs and risks, as well as the characteristics of the community setting.
- Plan includes the following components:
  - **Location of residence** -- almost always the most difficult part of the plan to complete.
  - **Ongoing sex offender treatment services**--sometimes difficult to identify treatment commensurate with the patient's treatment status/needs.
  - **Community supervision and monitoring**--consists of electronic monitoring, at least weekly Probation and Parole visits, usually twice daily monitoring visits, and chaperoned transportation.
  - **Any other treatment issues** --plan addresses any other treatment (physical or mental) that the patient requires.
  - **Maintenance polygraph exams**-- periodic exams to assess individual's adherence to plan.
  - **Review and approval for any major changes**-- if patient wants to make significant change in his circumstance (such as getting a job, participating in some activity, etc.), his request is reviewed and decided by his treatment team.
  - **Standard rules for sex offenders** -- comprehensive list of rules applied to all sex offenders on supervision.

Process for Residence Selection

- Residential searches start when the Court approves a Supervised Release.
- Typically, the search is performed by a private provider under contract with the Department --searching for residence that meets the criteria specified by DHFS.
- In some situations, DHFS staff also directly search for potential residences.
- Once a potential residence is identified, it is reviewed for appropriateness by DHFS Supervised Release program staff and Probation and Parole staff.
- If residence is determined to be appropriate, it is included in the Supervised Release plan for the Court's review and approval.
- If appropriate residence can not be identified within the allotted time frame (60 days by statute), the Department requests an extension.
- Most residential SR placements are in rented houses or apartments--landlord is fully informed about the individual and Chapter 980.
- Any involved parties who want to participate in the residential search process are welcomed to participate by the Department (specific contacts with law enforcement are also made).

Criteria for Residence Selection

- Residence selection is an individualized decision within the context of each Supervised Release case. Need to consider the characteristics of the individual (e.g., victim profile, physical limitations, etc.) as well as the characteristics of the community (e.g., range of available housing, law enforcement presence, etc.).
- The following criteria are utilized to identify, screen and review potential housing options:
  1. **Legal Criteria**: The logic of Chapter 980 is that individuals should be returned to their county of residence for placement. Out-of-county placements are possible under Chapter 980, but would generally be used only for extraordinary reasons. In addition, the law specifies that in developing placements the Department is directed to work to minimize to the greatest extent possible, the residential population density of sex offenders.
  2. **General Proximity Guidelines**: To the extent practicable, the Department attempts to rule out placements that are in close proximity to certain types of facilities: schools, licensed day cares, parks, other licensed child facilities, and other entities at which children may congregate. The Department does not have an absolute rule on minimum distances, but rather uses a rule of reasonableness that considers the specifics of the case. (It should be noted that there is no documented impact of proximity to certain facilities in re-offenses.)

Criteria Cont.

3. **Proximity to Potential Victims**: If a potential residence does not provide reasonable physical distance away from vulnerable potential victims, the residence will be eliminated from consideration. For example, if children live in a multi-unit apartment building, and the individual has a history of offending against children, the apartment would be ruled out.
4. **Victim Proximity**: If the victims of an individual live in a concentrated area, the Department would attempt to locate the residence in an alternate location.
5. **Market Availability and Price**: Supervised Release clients are placed only in settings where the landlord understands the characteristics of the Chapter 980 population.
6. **Proximity to Services**: Specialized Probation and Parole Agents, specialized sex offender treatment providers, health care providers, and vocational opportunities.

CONCLUSION:

In reality, there is no such thing as an "ideal" residence for a high-risk sex offender. In virtually every case, the selection of a residence does not come down to a choice between multiple locations. Rather, the choice comes down to selecting the best available location, and then building supervision and other services around the best available site.

Testimony to the Joint Committee for Review of Administrative Rules
Regarding the DHFS Process for Determining the Community Placements of Sex Offenders
State Senator Tom Reynolds
November 19, 2003

Good morning Chairman Leibham, Chairman Grothman, and members of the committee. Thank you for taking the time to give the folks here today an opportunity to he heard on this very important issue.

The difficult problem of community placements of sex offenders came to the fore in my district at the beginning of August of this year. The residents of West Allis learned that Billy Lee Morford, a five-time child molester, was recommended for placement in a high-density neighborhood full of young children on National Avenue. This location had been recommended to the Milwaukee County Circuit Court by the Department of Health and Family Services.

At a public hearing in West Allis on August 7th, we were all shocked to learn that no one locally had been consulted – not the Mayor, not the Chief of Police, and certainly not the six day care centers or the parents of the 871 children within a half-mile of the proposed site. Eventually, the plan to locate Morford in West Allis collapsed only because neighbors convinced the owner of the residence not to sell to the Department. More interestingly, though, we learned that the Department of Health and Family Services has no administrative rules to guide its search for and selection of community supervision sites for Chapter 980 sex offenders. This is why I am before you today.

Chairmen and members, regardless of where any of us falls on the notion of releasing sex offenders into the community, we can all agree on one thing – the citizens of this state have the right to know, step by step, how the Department goes about selecting community placement sites for these dangerous criminals. They have the right to expect that, at a bare minimum, their local

police officials will be involved to some degree in the Department's planning. The have the right to be able to go to their local library, or onto the Internet, and to be able to find a written copy of this process, in rule, just as they can for any other DHFS program found in administrative rule or statute. Most of all, they absolutely have the right to have a voice in the rule development process, just as they would with any other rule. The citizens of this state currently lack these rights, and are instead subject to a "star chamber" proceeding in which only the *outcome* is open to public view. This needs to be changed, and I am respectfully asking you to change it.

There is no question that offenders currently in the system under Chapter 980 will need to be placed somewhere. And that "somewhere" may well fall in every Senate and Assembly district in the state. Your constituents and mine deserve a process that is set forth in a publicly-available rule; a process that they can understand, a process that includes them to the greatest extent feasible, and a process that they can appeal to us to review if it needs changing.

As you know, Wisconsin's Administrative Procedures Act allows the JCRAR to demand that an agency like DHFS promulgate as a rule any policy or practice that the agency is treating as a rule. Clearly, there are few things that the DHFS can do to average citizens that will have more impact on their quality of life than to plunk a child molester into their neighborhood. This process clearly has the force of law, and I strongly urge the committee to order the DHFS to promulgate this process as a rule. This action will, at long last, give a voice to the average citizen in this contentious and difficult problem.

Thank you, Mr. Chairmen and members. I'd be happy to answer any questions you may have.

OFFICE OF SENATOR TOM REYNOLDS

State Capitol Room 306 South, PO Box 7882, Madison, Wisconsin 53707-7882

TO: MEMBERS
JOINT COMMITTEE FOR THE REVIEW OF ADMINISTRATIVE RULES

From: Adam Peer, Senior Policy Advisor

Date: November 14, 2003

RE: Background on the Policy, Standards, and Practices of the Department of Health and Family Services in Placing Committed Sexually violent Persons under Chapter 980

On August 7, 2003 in West Allis, a public hearing was held by local officials relating to the placement of Billy Lee Morford in the Fifth Senate District. Residents as well as local officials expressed extreme frustration over the perceived closed process used by the Department of Health and Family Services in recommending a location for the sexual offender to the court.

At that hearing, the department was less than forthcoming on how this particular location was selected much to the dissatisfaction of those in attendance. In response, on August 11, 2003 Senator Reynolds requested a hearing by the Joint Committee of the Review of Administrative Rules to determine the policies, standards, and practices of the department in placing committed sexually violent persons under Chapter 980.

It is Senator Reynolds's request that the committee require the department under §227.26(2)(b) to promulgate rules on the department's policies and interpretation relating to Chapter 980 placements so that the department's unwritten guidelines may be subject to public and legislative scrutiny.

For your reference, our office is providing you the following information for your consideration:

1. Letter from Senator Reynolds to JCRAR Co-Chairs Requesting a Hearing
2. "Molester may move to West Allis", *Milwaukee Journal Sentinel*, July 21, 2003
3. "State finds two sites in Milwaukee for Morford", *Milwaukee Journal Sentinel*, July 28, 2003
4. Information Memorandum 00-6, Wisconsin Legislative Council Staff, June 15, 2000
5. Audio File of the Public Hearing held in West Allis, WI on Morford Placement, August 7, 2003[1]

If you have any questions, please feel free to contact our office.

[1] A copy was sent to the office of Co-Chair Grothman, please let our office know if you would like a copy.

Supervisor Adam S. Peer, Senior Policy Advisor

Office 608-266-1106 Fax 608-267-0367 Email: Adam.Peer@legis.state.wi.us

OFFICE OF SENATOR TOM REYNOLDS

State Capitol Room 306 South, PO Box 7882, Madison, Wisconsin 53707-7882

August 11, 2003

The Honorable Glen Grothman, Co-Chair
The Honorable Joseph Leibham, Co-Chair
Joint Committee on the Review of Administrative Rules
One East Main Street, Suite 401
Madison, Wisconsin 53701

Dear Representative Grothman and Senator Leibham,

During the past several weeks the City of West Allis and the sixth senate district have been faced with a significant problem over the placement of a pedophile in their neighborhood. The placement of Billy Lee Morford in a community of West Allis without benefit of the community involvement or understanding of any written process or procedure has furthered the distrust of these people of their government.

At recent meetings, the Department of Health and Family Services freely admitted that it did not talk with neighbors, police officials or local elected politicians regarding this placement. The Department indicated that it did not have any statutory or administrative requirement to work with any local groups prior to recommending placement to the court. The Department has indicated that it does not have any written criteria or policy drafted to cover how placements are made under Chapter 980.

I believe that the absence of written administrative rules or statutory guidelines that suggest how a decision is reached on a placement of this nature is an area of administrative procedure that needs to be addressed. Further, the reluctance of the Department to discuss standards reflects a disregard of the public.

Accordingly, I would ask that the committee convene a public hearing under ss. 227.12 and 227.26 **(2)** and determine to the extent which there are unwritten guidelines, policies etc. that are currently being used to place sexual predators under Chapter 980 and which of these should be written into the administrative codes for public guidance.

I would appreciate your prompt attention to this issue. I look forward to working with all parties to bring this problem to a successful conclusion.

Sincerely:

Tom Reynolds
State Senator
Fifth Senate District

Enclosures

Office 608-266-1106 Fax 608-267-0367 Email: Sen.Reynolds @legis.state.wi.us

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Molester may move to West Allis

Residents object as state considers new home for Morford

By JESSICA McBRIDE and TOM RYBARCZYK
jmcbride@journalsentinel.com

Last Updated: July 31, 2003

State officials have their eye on a new home for child molester Billy Lee Morford, this time in West Allis.

To no one's surprise, residents and city officials don't want him there, either.

"It is ridiculous," said West Allis Ald. Michael Czaplewski, who lives three blocks from the three-bedroom bungalow at 5619 W. National Ave.

"They want to use taxpayer dollars to move him into a neighborhood where absolutely no one wants him to be. Why don't they move him in the area where the judge lives?"

At a hearing Wednesday, prosecutors told Milwaukee County Circuit Judge John Franke that they also oppose the new address for Morford, a 57-year-old sex predator.

Though the surrounding area is mostly commercial, said Assistant District Attorney Rebecca Dallet, the house's backyard abuts a residential neighborhood with children, and there is a day care center and Head Start program within four blocks.

Franke, who said he visited the neighborhood this week, did not rule on the alternative residence Wednesday but said he will do so in writing later.

Last month, Franke approved Morford's placement at his current address, on N. 51st St. in Milwaukee. But after strong public objection over the fact there are many children in the area, he ordered the state Department of Health and Family Services to find an alternative site.

The West Allis house is one of two being considered by the department. Franke ordered the address released Wednesday but kept the address of the second home secret for now.

The owner of the West Allis house, Ferdinand Vargas, said he did not know about the state's interest until reporters informed him Wednesday morning. At first, he said he would have no problem selling if the price is right, but during a protest rally in front of his home Wednesday evening, he came out and stated he would not sell his home to the state for the safety of neighborhood children.

The home is listed at $89,900 on a real estate Web site, but Steve Watters, the director of the Sand Ridge Secure Treatment Center in Mauston, where Morford stayed until his supervised release, and who is spearheading the effort to relocate him, said the state was prepared to pay $100,000.

West Allis Mayor Jeannette Bell said the city would not welcome Morford. "We want to protect our community," she said.

Molestor Controversy

Photo/Michael Sears

Ferdinand Vargas owns the West Allis home the state is interested in buying as a residence for child molester Billy Lee Morford. Vargas said Wednesday evening that he would not sell the house to the state.

Photo/File

Billy Lee Morford

Background

Relocation: State finds two sites in Milwaukee for Morford (7/27/03)

Washington County: Talk of halfway house site sparks outrage (7/2/03)

Decision: Morford must move, judge rules (6/16/03)

Milwaukee: Reaction to sex predator seen as rare

Residents were equally upset. "We got schools and we have a civic center over here. We don't need sex offenders around here," said William Carr, a resident with nieces and nephews in the area.

At the hearing, Franke warned that, "without any residential option available, at some point the (sexual predator) law will become unworkable."

The law enables the state to commit certain sex offenders to civil treatment after they've already served their sentences. Franke ruled in November that Morford was entitled to supervised release, under several strict conditions, but the state has run into roadblock after roadblock trying to place him in the community.

Robert Peterson, Morford's attorney, challenged the judge to find any home in Milwaukee County not near some children.

Department of Health and Family Services officials asked the judge to keep the address secret until it could negotiate a purchase. But Franke said the community's right to a voice in the process outweighed the risk that publicity would affect the deal.

Journal Sentinel staff writer Rachel McCormick contributed to this report

(6/8/03)

Home: Values not hurt by predators (6/07/03)

Proximity: Morford home near abused children (6/06/03)

Morford: Neighbors voice opinions at meeting (6/05/03)

Residents: Set to discuss sex predator's placement (6/4/03)

N. 51st St.: Morford's new home may get second molester (6/3/03)

Decision: Judge allows placement of predator, despite fears (6/2/03)

Hearing requested: 11th-hour hearing to debate release of sexual predator (6/1/03)

From the July 31, 2003 editions of the Milwaukee Journal Sentinel

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State finds two sites in Milwaukee for Morford

Judge orders addresses kept secret; decision to be made Wednesday

By REID J. EPSTEIN
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Last Updated: July 28, 2003

The state has found two potential new homes for convicted child molester Billy Lee Morford, but a Milwaukee judge ordered the locations kept secret Monday.

Milwaukee County Circuit Judge John Franke sealed the addresses - both of which are in the city of Milwaukee - because he said "public disclosure might well mean that the site is no longer an option."

Franke scheduled a hearing at 8:30 a.m. Wednesday to choose between the two locations. Assistant District Attorney Rebecca Dallet said she will investigate the addresses.

"Hopefully one of the residences will be appropriate" for Morford, she said. "We need to see what kind of communities these are."

Deb McCulloch, the state Department of Health and Family Services' community services director, said the addresses had been disclosed only to the Department of Corrections. A corrections spokeswoman referred all questions about Morford to Health and Family Services.

Milwaukee Police Chief Arthur Jones said the Department of Health and Family Services told him that it is considering two Milwaukee locations for Morford but did not tell him the specific addresses.

In the past week, the Department of Health and Family Services narrowed the list of potential placements for Morford from six to two. A rental property the department was considering was eliminated from consideration last week, McCulloch said, when it was determined that children lived nearby.

Morford, who has been living without incident at 6535 N. 51st St. for two months, was the center of extraordinary public outcry when the sex predator was released from the Sand Ridge Secure Treatment Center in Mauston to the northwest side neighborhood. He did not attend the Monday hearing.

The secrecy of the potential addresses is similar to Morford's first placement, June 2, when Franke ordered him released to the N. 51st St. address without any prior community notice. At a May 1 session in his chambers, Franke ordered the participants to not disclose that address.

When Morford was released to N. 51st St., outraged neighbors and elected officials protested the placement, which they said was in an area teeming with children, at a series of heated community meetings. Dallet said she hoped to be able to eliminate any unacceptable locations.

"I think we learned a lesson from the way things were done in the first place," Dallet said. "Looking at what Ms. McCulloch puts on paper cannot be the same as us seeing it in person."

Billy Lee Morford

Photo/File

Billy Lee Morford

Background

Washington County: Talk of halfway house site sparks outrage (7/2/03)

Decision: Morford must move, judge rules (6/16/03)

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Morford: Neighbors voice opinions at meeting (6/05/03)

Residents: Set to discuss sex predator's placement (6/4/03)

N. 51st St.: Morford's new home may get second molester (6/3/03)

Decision: Judge allows placement of predator, despite fears (6/2/03)

The home in which Morford was placed in June is owned by Madison-based Attic Correctional Services and rented to the state. Now the Department of Health and Family Services plans to buy a home for Morford. At the Monday hearing, McCulloch said the department has been in negotiations with two different real estate agents about the purchase.

Hearing requested: 11th-hour hearing to debate release of sexual predator (6/1/03)

She said the agents are aware that Morford would move into the home should it be purchased by the state but added that disclosing the specific addresses would jeopardize the state's ability to buy the homes.

"If those addresses are disclosed, it would limit our options to purchase," she said.

Sand Ridge Director Steve Watters, who along with McCulloch is involved with the purchase, said he wanted the addresses kept secret because he wants "room to negotiate with the owners on the purchase price."

From the July 29, 2003 editions of the Milwaukee Journal Sentinel

State of Wisconsin

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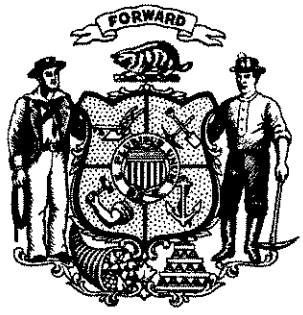

"SEXUAL PREDATOR" LAW: CIVIL COMMITMENT OF SEXUALLY VIOLENT PERSONS UNDER CH. 980, STATS.

Information Memorandum 00-6

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June 15, 2000
(Revised August 21, 2000)

www.legis.state.wi.us/lc

Wisconsin Legislative Council Staff

June 15, 2000
(Revised August 21, 2000)

Information Memorandum 00-6

"SEXUAL PREDATOR" LAW: CIVIL COMMITMENT OF SEXUALLY VIOLENT PERSONS UNDER CH. 980, STATS.

INTRODUCTION

This Information Memorandum describes the so-called "Sexual Predator Law," relating to civil commitment of sexually violent persons under ch. 980, Stats. The Act which created this law (1993 Wisconsin Act 479) was signed into law on May 26, 1994, by Governor Tommy G. Thompson. The ***effective date*** of Act 479 was ***June 2, 1994***.

This Information Memorandum was prepared by Don Salm, Senior Staff Attorney, Legislative Council Staff.

The Information Memorandum is divided into the following parts:

I. BACKGROUND

A. HISTORY

The current Sexual Predator Law in Wisconsin was created by 1993 Wisconsin Act 479. The history of that Act is as follows:

On May 19, 1994:

1. May 1994 Special Session Assembly Bill 3 was introduced by the Joint Finance Committee (JFC), by request of Governor Tommy G. Thompson. The JFC reported adoption of Assembly Amendments 1 (Ayes, 15; Noes, 0), 2 (Ayes, 14; Noes, 1) and 3 (Ayes, 15; Noes, 10).

2. The Assembly adopted Assembly Amendments 1, 2 (as amended by Assembly Amendment 1) and 3. The Assembly then passed the bill, as amended, on a vote of Ayes, 93; Noes, 2.

3. The Senate concurred in the bill, as amended by the Assembly, on a votes of Ayes, 30; Noes, 3.

May 1994 Special Session Assembly Bill 3 was approved and signed by the Governor, with several minor vetoes, on May 26, 1994, and was published on June 1, 1994 as 1993 Wisconsin Act 479. The effective date of the Act was June 2, 1994.

B. CURRENT INVOLUNTARY COMMITMENT STANDARDS UNDER CH. 51, STATS.

1. Five Standards of Dangerousness

Since the concept of involuntary civil commitment is central to the Sexual Predator Law, it should be noted that, under current Wisconsin law, in general, for a person to be subject to ***involuntary*** commitment under ch. 51, Stats. (the Mental Health Act), the person must:

a. Be mentally ill, drug dependent or developmentally disabled;

b. Be a proper subject for treatment; and

c. Satisfy one of five standards of dangerousness.

The standards of dangerousness are set forth in s. 51.20 (1) (a) 2., Stats., which provides that a person is dangerous if he or she:

a. Evidences a substantial probability of physical harm to himself or herself as manifested by evidence of recent threats of or attempts at suicide or serious bodily harm.

b. Evidences a substantial probability of physical harm to other individuals as manifested by: (1) evidence of recent homicidal or other violent behavior; or (2) evidence that others are placed in reasonable fear of violent behavior and serious physical harm to them, as evidenced by a recent overt act, attempt or threat to do serious physical harm.

c. Evidences such impaired judgment, manifested by evidence of a pattern of recent acts or omissions, that there is a substantial probability of physical impairment or injury to himself or herself. The probability of physical impairment or injury is not substantial under this standard: (1) if reasonable probability that the individual will avail himself or herself of these services; (2) if the individual is appropriate for protective placement under s. 55.06, Stats.; or (3) in the case of a minor, if the individual is appropriate for services or placement under s. 48.13 (4) or (11), Stats.

d. Evidences behavior manifested by recent acts or omissions that, due to mental illness, he or she is unable to satisfy basic needs for nourishment, medical care, shelter or safety without prompt and adequate treatment so that a substantial probability exists that death, serious physical injury, serious physical debilitation or serious physical disease will imminently ensue unless the individual receives prompt and adequate treatment for this mental illness. No substantial probability of harm under this standard exists: (1) if reasonable provision for the individual's treatment and protection is available in the community and there is a reasonable probability that the individual will avail himself or herself of these services; (2) if the individual is appropriate for protective placement under s. 55.06, Stats.; or (3) in the case of a minor, if the individual is appropriate for services or placement under s. 48.13 (4) or (11), Stats.

e. For an individual, other than an individual who is alleged to be drug dependent or developmentally disabled, after the advantages and disadvantages of and alternatives to accepting a particular medication or treatment have been explained to him or her and because of mental illness, evidences either incapability of expressing an understanding of the advantages and disadvantages of accepting medication or treatment and the alternatives, or substantial incapability of applying an understanding of the advantages, disadvantages and alternatives to his or her mental illness in order to make an informed choice as to whether to accept or refuse medication or treatment; and evidences a substantial probability, as demonstrated by both the individual's treatment history and his or her recent acts or omissions, that the individual needs care or treatment to prevent further disability or deterioration and a substantial probability that he or she will, if left untreated, lack services necessary for his or her health or safety and suffer severe mental, emotional or physical harm that will result in the loss of the individual's ability to function independently in the community or the loss of cognitive or volitional control over his or her thoughts or actions. The probability of suffering severe mental, emotional or physical harm is not substantial under this provision if reasonable provision for the individual's care or treatment is available in the community and there is a reasonable probability that the individual will avail himself or herself of these services or if the individual is appropriate for protective placement under s. 55.06. Food, shelter or other care that is provided to an individual who is substantially incapable of obtaining food, shelter or other care for himself or herself by any person other than a treatment facility does not constitute reasonable provision for the individual's care or treatment in the community under this provision. The individual's status as a minor does

not automatically establish a substantial probability of suffering severe mental, emotional or physical harm under this provision. This provision does not apply after November 30, 2001. This fifth standard, created by 1995 Wisconsin Act 292, ***sunsets five years*** after its effective date.

2. Procedure

a. Petition

Under current law, a petition for examination for involuntary commitment must be signed by at least three adults, at least one of whom has personal knowledge of the conduct of the person to be committed. The petition must allege that the person satisfies the statutory standards for involuntary commitment cited in item 1., above.

b. Probable Cause and Final Hearings

The person who is named in the petition is first given a hearing to determine if there is probable cause to believe the allegations of the petition. If the court finds probable cause, a final hearing on commitment must be held within 30 days if the person is not detained or within 14 days of detention if the person is detained with certain exceptions.

c. Finding; Periods of Commitment

A person who is found at the final hearing to be mentally ill, drug dependent or developmentally disabled, to be a proper subject for treatment and to satisfy at least one of the five standards of dangerousness, may be involuntarily committed to the care and custody of a county department of community programs or developmental disabilities services for appropriate treatment. In general, the first final order of commitment is for a period of up to six months and all subsequent orders of commitment are for a period of up to one year, although other commitment periods exist for inmates of a state prison, county jail or house of correction. [s. 51.20, Stats.]

C. CONSTITUTIONALITY OF SEXUAL PREDATOR LAWS

1. U.S. Supreme Court Decision: Kansas v. Hendricks

In *Kansas v. Hendricks*, 521 U.S. 346 (1997), the U.S. Supreme Court upheld a Kansas state law [s. 59.29a01 *et seq.*, Kansas Stats. (1994)] establishing civil commitment procedures for "sexually violent predators" who have completed their prison sentences. In a 5-4 decision, the Court held that sexually violent offenders who are found to have a "mental abnormality" and who pose a danger to others may be confined pursuant to a civil commitment process, even if they are not found to have a "mental illness." The Kansas statute applies to "any person who has been convicted of or charged with a sexually violent offense and who suffers from a mental abnormality or personality disorder which makes the person likely to engage in the predatory acts of sexual violence." A legislative intent provisions in the statute acknowledges that the law

is intended to apply to a "small but extremely dangerous group of sexually violent predators . . . who do not have a mental disease or defect that renders them appropriate for involuntary treatment" pursuant to the state's general involuntary civil commitment procedures.

The Court's opinion, authored by Justice Clarence Thomas, addressed three specific challenges to the law:

a. ***Substantive due process.*** The Court reversed a Kansas Supreme Court ruling that the precommitment condition of a "mental abnormality" did not satisfy a "substantive" due process requirement that involuntary civil commitment must be predicated on a "mental illness" finding. Noting that the psychiatric community often disagrees on what constitutes mental illness, the Court said it has "traditionally left to legislators the task of defining terms of a medical nature that have legal significance." Three of the Court's four dissenters on the decision agreed with the majority on this point, noting that "[t]he law traditionally has considered this kind of abnormality akin to insanity for purposes of confinement."

b. ***Double jeopardy.*** The Court rejected Hendricks' claim that involuntary civil commitment for sexually violent predators violates the "double jeopardy" protections of the U.S. Constitution--that is, that the Kansas law constitutes a second prosecution and a second punishment for the same offense. The Court found that the Kansas statute is a civil rather than a criminal law and does not impose a "punishment" even if it follows expiration of a prison term.

c. ***Ex post facto law.*** The Court also rejected Hendricks' claim that the Kansas statute violates constitutional protections against imposing additional punishment after the fact for a crime already committed ("*ex post facto*" lawmaking). Since the Kansas statute does not impose a punishment, the Court reasoned, and because commitment is based on concerns about a sexually violent predator's future behavior (rather than past actions), the statute does not constitute *ex post facto* lawmaking. The dissent disagreed with the majority on this point, noting that Kansas' failure to provide treatment to Hendricks prior to his release date from prison and its provision of possibly inadequate treatment thereafter indicate that the purpose of the statute is to inflict further punishment.

2. Key Wisconsin Supreme Court Cases

Prior to the U.S. Supreme Court's decision in the *Hendricks* case, the Wisconsin Supreme Court, in two separate decisions, determined that:

a. The ch. 980, Stats., procedure for civil commitment of sexually violent persons does not violate equal protection or substantive due process. [*State v. Post*, 197 Wis. 2d 279, 541 N.W.2d 115 (1995), *cert. den.*; *Post v. Wisconsin*, 138 L. Ed. 2d 1011 (1997).]

b. Chapter 980, Stats., creates a civil commitment procedure that does ***not*** provide for a penalty and thus, does ***not*** violate *ex post facto* or double jeopardy principles of the constitution. [*State v. Carpenter*, 197 Wis. 2d 252, 541 N.W.2d 105 (1995), *cert. den.*; *Schmidt v. Wisconsin*, 138 L. Ed. 2d 1011 (1997).]

There have been similar results in other states with similar sexual predator laws [e.g., *In re Liveham*, 594 N.W.2d 867 (Minn. 1999); *Grosinger v. M.D.*, 1999 ND 160, 598 N.W.2d 799 (1999); *Martin v. Reinstein*, 987 P. 2d 779 (Ariz. App. (1999)].

II. DETAILED DESCRIPTION OF SEXUAL PREDATOR LAW

Wisconsin's Sexual Predator Law (hereafter "the Sexual Predator Law" or "the law") creates a procedure for the involuntary civil commitment of certain persons who are found to be "sexually violent persons," as set forth in ch. 980, Stats., entitled ***Sexually Violent Person Commitments***.

A. DEFINITION OF "SEXUALLY VIOLENT PERSON" AND "SEXUALLY VIOLENT OFFENSE" [S. 980.01, STATS.]

The Sexual Predator Law defines "***sexually violent person***" to mean a person who meets the following criteria:

1. The person has been convicted of a sexually violent offense, has been adjudicated delinquent for a sexually violent offense, or has been found guilty of or not responsible for a sexually violent offense by reason of insanity or mental disease, defect or illness.

2. The person 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. "***Mental disorder***" is defined to mean a congenital or acquired condition affecting the emotional or volitional capacity that predisposes a person to engage in acts of sexual violence. In *State v. Curiel*, 227 Wis. 2d 389, 597 N.W.2d 697 (1999), the Wisconsin Supreme Court held that, as used in ch. 980, Stats.: (a) "substantial probability" and "substantially probable" both mean "much more likely than not"; and (b) this standard for dangerousness does not violate equal protection nor is the term unconstitutionally vague.

The law defines "***sexually violent offense***" to mean any of the following offenses:

1. First- or second-degree sexual assault. [s. 940.225 (1) or (2), Stats.] In general, these offenses involve sexual assault that causes great bodily harm or other injury or that involve the use or threat of use of a dangerous weapon or of force or violence.

2. First- or second-degree sexual assault of a child [s. 948.02 (1) or (2), Stats.], engaging in repeated acts of sexual assault of the same child [s. 948.025, Stats.], incest with a child [s. 948.06, Stats.] or enticement of a child [s. 948.07, Stats.].

3. ***If the offense was sexually motivated***, first- or second-degree intentional or reckless homicide [s. 940.01, 940.02, 940.05 or 940.06, Stats.], aggravated battery [s. 940.19 (4) or (5), Stats.], false imprisonment [s. 940.30, Stats.], hostage-taking [s. 940.305, Stats.], kidnapping [s. 940.31, Stats.] or burglary [s. 943.10, Stats.]. The law defines "sexually motivated" to mean that one of the purposes for an act is for the actor's sexual arousal or gratification. The law specifies

that it must be determined, in a proceeding under Section F., below, that the offense was sexually motivated.

4. Any solicitation, conspiracy or attempt to commit a crime under items 1. to 3., above.

Under current law:

1. First-degree sexual assault and engaging in repeated acts of sexual assault of the same child are Class B felonies, punishable by imprisonment not to exceed 60 years.

2. Second-degree sexual assault in a Class C felony, punishable by a fine not to exceed $10,000 or imprisonment not to exceed 15 years, or both.

3. Intentional homicide, kidnapping and hostage-taking are punishable by up to 60 years imprisonment (if a Class B felony) or life imprisonment (if a Class A felony), depending on the circumstances. Reckless homicide and burglary are punishable by: (a) a fine of up to $10,000 and imprisonment of up to 15 years or both (if a Class C felony); or (b) by imprisonment up to 60 years (if a Class B felony), depending on the circumstances.

4. Aggravated battery, incest with a child and child enticement are Class C felonies, punishable by a fine of up to $10,000 or imprisonment of up to 15 years, or both.

5. False imprisonment is a Class E felony, punishable by a fine of up to $10,000 and imprisonment of up to five years, or both.

B. NOTICE TO THE DEPARTMENT OF JUSTICE AND DISTRICT ATTORNEY [S. 980.015, STATS.]

Under the law, if an "***agency with jurisdiction***" (defined in the law to mean the agency with the authority or duty to release or discharge the person; in general, the Department of Corrections (DOC) or the Department of Health and Family Services (DHFS)) has control or custody over a person who may meet the criteria for commitment as a sexually violent person, the agency with jurisdiction is required to inform each appropriate district attorney and the Department of Justice (DOJ) regarding the person as soon as possible beginning ***three months prior*** to the applicable date of the following:

1. ***Discharge of convicted person.*** The anticipated discharge from a sentence, anticipated release on parole or extended supervision or anticipated release from imprisonment of a person who has been convicted of a sexually violent offense.

2. ***Release of adjudicated delinquent.*** The anticipated release from a juvenile secured correctional facility, as defined in s. 938.02 (15m), Stats. (e.g., Ethan Allen), or a secured child caring institution, as defined in s. 938.02 (15g), Stats., or a secured group home, as defined in s.

938.02 (15p), Stats., of a person adjudicated delinquent under s. 938.183 or 938.34, Stats., on the basis of a sexually violent offense.

3. ***Discharge of person not guilty by a reason of mental disease or defect.*** The termination of discharge of a person who has been found not guilty of a sexually violent offense by a reason of mental disease or defect under s. 971.17, Stats.

The agency with jurisdiction must provide the district attorney and DOJ with ***all of the following***:

1. The person's name, identifying factors, anticipated future residence and offense history.

2. If applicable, documentation of any treatment and the person's adjustment to any institutional placement.

The law provides that any agency or officer, employe or agent of an agency is ***immune from criminal or civil liability*** for any acts or omissions as the result of a good faith effort to comply with this notice requirement.

C. SEXUALLY VIOLENT PERSON PETITION; CONTENTS; FILING [S. 980.02, STATS.]

1. Who May File the Petition

Under the law, a petition alleging that a person is a sexually violent person may be filed by one of the following:

a. The ***DOJ***, at the request of the agency with jurisdiction over the person, as defined in Section B., above. If the DOJ decides to file a petition under this provision, it is required to file the petition before the date of the release or discharge of the person.

b. If the ***DOJ*** does ***not*** file a petition under item a., above, the ***district attorney*** for one of the following:

(1) The county in which the person was convicted of a sexually violent offense, adjudicated delinquent for a sexually violent offense or found not guilty of or not responsible for a sexually violent offense by reason of insanity or mental disease, defect or illness.

(2) The county in which the person ***will reside or be placed upon his or her discharge*** from a sentence, release on parole or extended supervision, release from imprisonment, release from a juvenile secured correctional facility, from a secured child caring institution or from a secured group home or release from a commitment order.

2. Allegation That a Person is a Sexually Violent Person

Under the law, the petition must allege that ***all of the following*** apply to the person alleged to be a sexually violent person:

a. The person satisfies ***any*** of the following criteria:

(1) The person has been convicted of a sexually violent offense.

(2) The person has been found delinquent under ch. 938, Stats. (the Juvenile Code), for a sexually violent offense.

(3) The person has been found not guilty of a sexually violent offense by reason of mental disease or defect.

b. The person is within 90 days of discharge or release, on parole, extended supervision or otherwise: (1) from a sentence that was imposed for a conviction for a sexually violent offense; (2) from a juvenile secured correctional facility, a secured child caring institution, or a secured group home, if the person was placed in the facility for being adjudicated delinquent under s. 938.183 or 938.34, Stats., on the basis of a sexually violent offense; or (3) from a commitment order under s. 971.17, Stats., that was entered as a result of a sexually violent offense.

c. The person has a ***mental disorder.***

d. The person is ***dangerous to others*** because the person's mental disorder creates a ***substantial probability*** that he or she will engage in acts of sexual violence.

3. Other Requirements in Petition

The law provides that the petition must also:

a. State with particularity essential facts to establish probable cause to believe the person is a sexually violent person.

b. If the petition alleges that a sexually violent offense or act that is a basis for the allegation under item 2. a., above, was an act that was ***sexually motivated***, state the grounds on which the offense or act is alleged to be sexually motivated.

4. Filing Petition

The law specifies that the petition must be filed in any of the following:

a. The circuit court for the county in which the person was ***convicted*** of a sexually violent offense, adjudicated delinquent for a sexually violent offense or found not guilty of a sexually violent offense by reason of mental disease or defect.

b. The circuit court for the county in which the person ***will reside or be placed upon his or her discharge*** from a sentence, release on parole or extended supervision, release from imprisonment, release from a secured juvenile correctional facility, secured child caring institution, or secured group home, or release from a commitment order.

c. The circuit court for the county in which the person ***is in custody*** under a sentence, a placement to a juvenile secured correctional facility, secured child caring institution, or secured group home, or a commitment order.

Notwithstanding the above, if the DOJ decides to file a petition, it may file the petition in the circuit court for ***Dane County***.

D. RIGHTS OF PERSONS SUBJECT TO SEXUALLY VIOLENT PERSON PETITION [S. 980.03, STATS.]

1. Rights in General

The law specifies that the circuit court in which a sexually violent person petition is filed must conduct all of the hearings relevant to that petition (i.e., all the hearings under ch. 980, Stats.). The court: (a) must give the person who is the subject of the petition ***reasonable notice*** of the time and place of each such hearing; and (b) may designate additional persons to receive these notices.

Except as provided in Sections K. and L., below (relating to petitions for discharge), and without limitation by enumeration, at any such hearing, the person who is the subject of the petition has the right to:

a. Counsel. If the person claims or appears to be indigent, the court must refer the person to the State Public Defender, the authority for indigency determinations under s. 977.07 (1), Stats., and, if applicable, the appointment of counsel.

b. Remain silent.

c. Present and cross-examine witnesses.

d. Have the hearing recorded by a court reporter.

2. Right to Jury Trial; Unanimous Verdict Required

The person who is the subject of the petition, the person's attorney, the DOJ or the district attorney may request that a trial under Section F., below, be to a jury of 12, with the request for

a jury trial being made as provided in that section. If a jury trial is not requested, the court may on its own motion require that the trial be to a jury of 12. A ***verdict*** of a jury in a "sexually violent person" case is ***not valid unless it is unanimous***.

3. Right to Retain Experts to Perform Examination Under Ch. 980, Stats.

Whenever the person who is the subject of the petition is required to submit to an examination under ch. 980, he or she may retain expert or professional persons to perform an examination. If the person retains a qualified expert or professional person of his or her own choice to conduct an examination, the examiner must have reasonable access to the person for the purpose of the examination, as well as to the person's past and present ***treatment records***, as defined in s. 51.30 (1) (b), Stats., and ***patient health care records*** as provided under s. 146.82 (2) (c), Stats. If the person is ***indigent***, the court is required, upon the person's request, to appoint a qualified and available expert or professional person to perform an examination and participate in a trial on the person's behalf. Upon the order of the circuit court, the county must pay, as part of the costs of the action, the costs of a court-appointed expert or professional person to perform an examination and participate in a trial or other proceeding on behalf of an indigent person. The law also specifies that:

a. An expert or professional person appointed to assist an indigent person who is subject to a petition may not be subject to any order by the court for the sequestration of witnesses at any proceeding under ch. 980.

b. Upon a showing by the proponent of good cause under s. 807.13 (2) (c), Stats., testimony may be received into the record of a hearing under this provision ***by telephone or live audio-visual means***.

E. DETENTION; PROBABLE CAUSE HEARING; TRANSFER FOR EXAMINATION [S. 980.04, STATS.]

1. Detention

Under the law, upon the filing of the petition, the court must review the petition to determine whether to issue an order for detention of the person who is the subject of the petition. The person must be detained only if there is cause to believe that the person is eligible for commitment under Section F. 6., below. A person detained must be held in a facility approved by the DHFS. If the person is serving a sentence of imprisonment, is in a juvenile secured correctional facility, a secured child caring institution or a secured group home, or is committed to institutional care, and the court orders detention under this provision, the court must order that the person be transferred to a detention facility approved by DHFS. A detention order under this provision remains in effect until the person is discharged after a trial under Section F., below, or until the effective date of a commitment order under Section G., below, whichever is applicable.

2. Probable Cause Hearing; Time Limits

Whenever a "sexually violent person" petition is filed, the court must hold a hearing to determine whether there is a probable cause to believe that the person named in the petition is a sexually violent person. If the person named in the petition is in custody, the court must hold the probable cause hearing within 72 hours after the petition is filed, excluding Saturdays, Sundays and legal holidays. If the person named in the petition is not in custody, the court must hold the probable cause hearing within a reasonable time after the filing of the petition.

3. Probable Cause Determination; Evaluation

a. ***If probable cause found.*** If the court determines after a hearing that there is probable cause to believe that the person named in the petition is a sexually violent person, the court must: (1) order that the person be taken into custody if he or she is not in custody; and (2) must order the person to be transferred within a reasonable time to an appropriate facility for an evaluation as to whether the person is a sexually violent person. The law requires the DHFS to promulgate rules that provide the qualifications for persons conducting such evaluations.

b. ***If no probable cause found.*** If the court determines that probable cause does not exist to believe that the person is a sexually violent person, the court must dismiss the petition.

4. Indigency Determination and Appointment of Counsel

If the person named in the petition claims or appears to be indigent, the court must, prior to the probable cause hearing, refer the person to the State Public Defender to determine indigency and the need for appointment of counsel.

F. TRIAL [S. 980.05, STATS.]

1. Time Limit for Commencement; Continuance

Under the law, a trial to determine whether the person who is the subject of the petition is a sexually violent person must commence no later than ***45 days*** after the date of the probable cause hearing under Section E., above. The court may grant a continuance of the trial date for good cause upon its own motion, the motion of any party or the stipulation of the parties.

2. Rules of Evidence; Constitutional Rights

The law specifies that, at the trial, all rules of evidence in criminal actions apply and all constitutional rights available to a defendant in criminal proceeding are available to the person.

3. Request for Jury Trial; Withdrawal of Request

The person who is the subject of the petition, the person's attorney, the DOJ or the district attorney may request that the trial be to a jury of 12. A request for a jury trial under this provision shall be made within 10 days after the probable cause hearing under Section E., above. If no request is made, the trial must be to the court. The person, the person's attorney or the district attorney or DOJ, whichever is applicable, may withdraw his, her or its request for a jury trial if the two persons who did not make the request consent to the withdrawal.

4. Burden of Proof at Trial

At the trial, the petitioner (i.e., the state) has the burden of proving the allegations in the petition ***beyond a reasonable doubt.*** If the state alleges that the sexually violent offense that forms the basis for the petition was an act that was "***sexually motivated,***" the state is required to prove ***beyond a reasonable doubt*** that the alleged sexually violent act was sexually motivated. As noted in Section A., above, "sexually motivated" is defined in the law to mean that one of the purposes for an act is for the actor's sexual arousal or gratification.

5. Evidence of Prior Convictions or Commitments

Evidence that the person who is the subject of the petition was convicted for or committed sexually violent offenses before committing the offense or act on which the petition is based is ***not*** sufficient to establish beyond a reasonable doubt that the person has a mental disorder.

6. Determination That a Person is or is Not a Sexually Violent Person

If the court or jury determines that the person who is the subject of the petition ***is*** a sexually violent person, the court must enter a judgment on that finding and must commit the person as provided under Section G., below. If the court or jury ***is not*** satisfied beyond a reasonable doubt that the person is a sexually violent person, the court must dismiss the petition and direct that the person be released unless he or she is under some other lawful restriction.

7. Deoxyribonucleic Acid Analysis (DNA) Requirements

If a person is found to be a sexually violent person under ch. 980, the court must require the person to provide a biological specimen to the state crime laboratories for DNA analysis. The results from DNA analysis of a specimen may be used only as authorized under s. 165.77 (3), Stats., and the state crime laboratories must destroy any such specimen in accordance with that provision.

The law specifies that the DOJ must promulgate rules providing for procedures for defendants to provide such specimens and for the transportation of those specimens to the state crime laboratories for analysis. [s. 980.063, Stats.]

G. ORDER FOR AND LENGTH OF COMMITMENT [S. 980.06, STATS.]

Under the law, if a court or jury determines that the person is a sexually violent person, the court must order the person to be committed to the custody of the DHFS for control, care and treatment ***until such time as the person is no longer a sexually violent person***. The commitment order must specify that the person be placed in institutional care.

H. SECURED MENTAL HEALTH UNIT OR FACILITY FOR SEXUALLY VIOLENT PERSONS [S. 980.065, STATS.]

The law specifies that:

1. The DHFS must place a person committed to a secure mental health unit or facility under Section G., above, at one of the following:

   a. The secure mental health facility established under s. 46.055, Stats.

   b. The Wisconsin Resource Center established under s. 46.056, Stats.

   c. A secure mental health unit or facility provided by DOC under item 2., below.

2. The DHFS may contract with DOC for the provision of a secure mental health unit or facility for persons committed under Section G. 3., above, to a secure mental health unit or facility. The law requires DHFS to operate the secure mental health unit or facility provided by DOC and to promulgate rules governing the custody and discipline of persons placed in the unit or facility provided by DOC.

I. PERIODIC REEXAMINATION; REPORT; USE OF EXPERTS [S. 980.07, STATS.]

Under the law, if a person has been committed under Section G., above, and has not been discharged under Section K., below, the DHFS ***must*** conduct an examination of his or her mental condition: (1) ***within six months*** after an initial commitment under Section G., above; and (2) again thereafter at least ***once each 12 months***. The examination is 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. At the time of such reexamination under this provision, the person who has been committed may retain or seek to have the court appoint an examiner as provided under Section D. 3., above.

Notwithstanding this provision, the court that committed a person under Section G., above, may order a reexamination of the person ***at any time*** during the period in which the person is subject to the commitment order.

Any examiner conducting an examination under this provision must prepare a ***written report*** of the examination no later than ***30 days*** after the date of the examination. The examiner

must: (1) place a copy of the report in the person's medical records; and (2) provide a copy of the report to the court that committed the person under Section G., above.

J. PETITION FOR SUPERVISED RELEASE [S. 980.08, STATS.]

1. When Petition May Be Filed

The law specifies that any person who is committed for institutional care in a secure mental health facility or other facility under Section H., above, may petition the committing court to modify its order by authorizing supervised release if: (a) at least 18 months have elapsed since the initial commitment order was entered; or (b) ***at least six months*** have elapsed since the most recent such petition was denied, or the most recent order for supervised release was revoked. The ***director of the facility*** at which the person is placed may file such a petition for supervised release under this provision on the person's behalf ***at any time***.

2. Service of Petition on District Attorney or DOJ

If the person files a timely petition ***without counsel***, the court must serve a copy of the petition on the district attorney or DOJ, whichever is applicable, and refer the matter to the State Public Defender for an indigency determination and the possible appointment of counsel. If the person petitions ***through counsel***, his or her attorney must serve the district attorney or DOJ, whichever is applicable.

3. Appointment of Examiners by Court

Within 20 days after receipt of the petition, the court must appoint one or more examiners having the specialized knowledge determined by the court to be appropriate, who must examine the person and furnish a written report of the examination to the court ***within 30 days*** after appointment. The examiners must have reasonable access to the person for purposes of examination and to the person's past and present treatment records and patient health care records. If any such examiner believes that the person is appropriate for supervised release under the criterion in item 4., below, the examiner must report on the type of treatment and services that the person may need while in the community on supervised release. The county must pay the costs of an examiner appointed under this provision as provided in s. 51.20 (18) (1), Stats.

4. Court Hearing on Petition; Finding Relating to Dangerousness

The court, without a jury, must hear the petition ***within 30 days*** after the report of the court-appointed examiner is filed with the court, unless the petitioner ***waives*** this time limit. Expenses of the proceedings must be paid as provided in s. 51.20 (18) (b), (c) and (d), Stats. The court must grant the petition unless the state proves ***by clear and convincing evidence*** that the person is still a sexually violent person and that it is ***still substantially probable*** that the person will engage in acts of sexual violence if the person is not continued in institutional care.

In making this determination, the court ***may consider***, without limitation because of enumeration: (a) the nature and circumstances of the behavior that was alleged in the petition under Section C. 2., above; (b) the person's mental history and present mental condition; (c) where the person will live; (d) how the person will support himself or herself; and (e) what arrangements are available to ensure that the person has access to and will participate in necessary treatment, including pharmacological treatment using an antiandrogen or the chemical equivalent of an antiandrogen if the person is a serious child sex offender. A decision under this provision on a petition filed by a person who is a serious child sex offender may not be made based on: (a) the fact that the person is a proper subject for pharmacological treatment using an antiandrogen or the chemical equivalent of an antiandrogen; or (b) the fact that the person is willing to participate in pharmacological treatment using an antiandrogen or the chemical equivalent of an antiandrogen.

If the court finds that the person is appropriate for supervised release, the court must notify the DHFS. The DHFS and the county department under s. 51.42, Stats., in the county of residence of the person, must prepare ***a plan*** that identifies the treatment and services, if any, that the person will receive in the community. The plan must address the person's need, if any, for supervision, counseling, medication, community support services, residential services, vocational services and alcohol and other drug abuse treatment services, vocational services, and alcohol or other drug abuse treatment. If the person is a serious child sex offender, the plan must address the person's need for pharmacological treatment using an antiandrogen or the chemical equivalent of an antiandrogen. The DHFS may contract with a county department (under s. 51.42 (3) (aw) 1. d., Stats.), with another public agency or with a private agency to provide the treatment and services identified in the plan. The plan must:

a. Specify who will be responsible for providing the treatment and services identified in the plan.

b. Be presented to the court for its approval ***within 60 days*** after the court finding that the person is appropriate for supervised release, unless the DHFS, the county department and the person to be released request additional time to develop the plan.

If the county department of the person's county of residence declines to prepare a plan, the DHFS may arrange for another county to prepare the plan if that county agrees to prepare the plan and if the person will be living in that county. If DHFS is unable to arrange for another county to prepare a plan, the court must designate a county department to prepare the plan, order the county department to prepare the plan and place the person on supervised release in that county.

However, the court may not so designate the county department in any county where there is a facility in which persons committed to institutional care under this chapter are placed unless that county is also the person's county of residence.

5. Order for Supervised Release [s. 980.08 (6m), Stats.]

The law specifies that an order for supervised release places the person in the custody and control of the DHFS. The DHFS must arrange for control, care and treatment of the person ***in the least restrictive manner*** consistent with the requirements of the person and in accordance with the plan for supervised release approved by the court under item 4., above. A person on supervised release is subject to the conditions set by the court and to the rules of the DHFS. Before a person is placed on supervised release by the court under this provision, the court must so notify the municipal police department and county sheriff for the municipality and county in which the person will be residing. The notification requirement under this provision does not apply if a municipal police department or county sheriff submits to the court a written statement waiving the right to be notified.

If the DHFS alleges that a released person has violated any condition or rule, or that the safety of others requires that supervised release be revoked, he or she may be taken into custody under the rules of the DHFS. The DHFS must submit a statement showing probable cause of the detention and a petition to revoke the order for supervised release to the committing court and the regional office of the state public defender responsible for handling cases in the county where the committing court is located ***within 72 hours*** after the detention, excluding Saturdays, Sundays and legal holidays. The court must hear the petition ***within 30 days***, unless the hearing or time deadline is waived by the detained person. Pending the revocation hearing, the DHFS may detain the person in a jail or in a hospital, center or facility specified by s. 51.15 (2), Stats. The state has the burden of providing ***by clear and convincing evidence*** that any rule or condition of release has been violated, or that the safety of others requires that supervised release be revoked. If the court determines after hearing that any rule or condition of release has been violated, or that the safety of others requires that supervised release be revoked, it ***may*** revoke the order for supervised release and order that the released person be placed in an appropriate institution until the person is discharged from commitment under s. 980.09, Stats., or until placed on supervised release under this provision.

K. PETITION FOR DISCHARGE; PROCEDURE [S. 980.09, STATS.]

1. Petition With Secretary's Approval

Under the law, if the Secretary of DHFS determines at any time that a person committed under new ch. 980 is no longer a sexually violent person, the Secretary must authorize the person to petition the committing court for discharge. The person must file the petition with the court and serve a copy upon DOJ or the district attorney's office that filed the petition for discharge, whichever is applicable. The court, upon receiving the petition for discharge, must order a hearing to be held ***within 45 days*** after the date of the receipt of the petition.

At the hearing, the district attorney or DOJ, whichever filed the original petition, must represent the state and has the right to have the petitioner examined by an expert or professional person of his, her or its choice. The hearing must be before the court without a jury. The state

has the burden of proving ***by clear and convincing evidence*** that the petitioner is still a sexually violent person.

If the court is satisfied that the state has not met its burden of proof, the petitioner must be discharged from the custody or supervision of the DHFS. If the court is satisfied that the state has met its burden of proof, the court may proceed to determine using the criterion in s. 980.08 (4), above, whether to modify the petitioner's existing commitment order by authorizing supervised release.

2. Petition Without Secretary's Approval

A person may petition the committing court for discharge from custody or supervision without the Secretary's approval. At the time of an examination under Section I., above, the Secretary of DHFS must provide the committed person with a written notice of the person's right to petition the court for discharge over the Secretary's objection. The notice must contain a waiver of rights. The Secretary must forward the notice and waiver form to the court with the report of the DHFS's examination under Section I., above. If the person does not affirmatively waive the right to petition, the court must set a ***probable cause hearing*** to determine whether facts exist that warrant a hearing on whether the person is still a sexually violent person. The committed person has a right to have an attorney represent him or her at the probable cause hearing, but the person is not entitled to be present at the probable cause hearing.

If the court determines at the probable cause hearing that probable cause exists to believe that the committed person is no longer a sexually violent person, then the court must set a ***hearing*** on the issue. At the hearing, the committed person is entitled to be present and to the benefit of the protections afforded to the person under Section D., above. The district attorney or the DOJ, whichever filed the original petition, must represent the state at the the hearing and the hearing must be to the court. The state has the right to have the committed person evaluated by experts chosen by the state. At the hearing, the ***state*** has the burden of providing ***by clear and convincing evidence*** that the committed person is still a sexually violent person.

If the court is satisfied that the state has not met its burden of proof, the person must be discharged from the custody or supervision of the DHFS. If the court is satisfied that the state has met its burden of proof, the court may proceed using the criterion specified in s. 980.08 (4), Stats., above, to determine whether to modify the person's existing commitment order by authorizing supervised release.

L. ADDITIONAL DISCHARGE PETITIONS [S. 980.10, STATS.]

The law specifies that, in addition to the procedures under Section K., above, a committed person may petition the committing court for discharge at any time, but if a person has previously filed a petition without the DHFS Secretary's approval 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 under this provision 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. If the court finds that a hearing is warranted, the court must set a probable cause hearing in accordance with Section K., above, and continue proceedings under Section K., if appropriate. If the person has not previously filed a petition for discharge without the Secretary's approval, the court must set a probable cause hearing in accordance with Section K., above, and continue proceedings under Section K., if appropriate.

M. PERSON'S COUNTY OF RESIDENCE [S. 980.105, STATS.]

Current law provides that the court must determine a person's county of residence for the purposes of ch. 980 by doing all of the following:

1. The court must consider residence as the voluntary concurrence of physical presence with intent to remain in a place of fixed habitation and must consider physical presence as prima facie evidence of intent to remain.

2. The court must apply the criteria for consideration of residence and physical presence under item 1., to the facts that existed on the date that the person committed the sexually violent offense that resulted in the sentence, placement or commitment that was in effect when the petition was filed under s. 980.02, Stats. [See Section C., above.]

N. NOTICE OF SUPERVISED RELEASE OR DISCHARGE [S. 980.11, STATS.]

1. Persons to Be Notified

The law provides that if the court places a person on supervised release under Section G., above, or discharges a person under Section K. or L., above, the DHFS must do ***all of the following***:

a. Make a reasonable attempt to notify whichever of the following persons is appropriate, if he or she can be found in accordance with item 2., below:

(1) The ***victim*** of the act of sexual violence. "Victim" is defined to mean a person against whom an act of sexual violence has been committed. "Act of sexual violence" is defined to mean an act or attempted act that is a basis for the allegation made in a petition under Section C. 2., above.

(2) An ***adult member of the victim's family***, if the victim died as a result of the act of sexual violence. "Member of the family" is defined to mean a spouse, child, sibling, parent or legal guardian.

(3) The victim's ***parent or legal guardian***, if the victim is ***younger than 18 years old***.

b. Notify the DOC.

2. Contents of Notice; When Notice is Sent

The notice must inform the DOC and the person under item 1., above, of the name of the person who was committed under ch. 980 and the date the person is placed on supervised release or discharged. The DHFS must send the notice, postmarked at least seven days before the date the person committed is placed on supervised release or discharged, to the DOC and the last-known address of the person under item 1., above.

3. Notification of Cards for Persons With Right to Notice

The DHFS must design and prepare cards for persons specified in item 1., above, to send to the DHFS. The cards must have space for these persons to provide their names and addresses, the name of the person committed and any other information the DHFS determines is necessary. The DHFS must provide the cards, ***without charge***, to DOJ and district attorneys. The DOJ and district attorneys must provide the cards, ***without charge***, to persons specified in item 1. a., above. These persons may send completed cards to the DHFS. All DHFS records or portions of records that relate to mailing addresses of these persons ***are not subject to inspection or copying*** under the Open Records Law [s. 19.35 (1), Stats.], except as needed to comply with a written request by DOC under s. 301.46 (3) (d), Stats.

4. DOC Notice Requirement

The law contains similar provisions for notification by DOC of the victim and any witness who testified against the prisoner in any court proceeding involving the offense ***before a prisoner*** who has been convicted of one of the crimes specified in the definition of "sexually violent offense" in Section A., above, ***is***:

a. Released from imprisonment because he or she has reached the expiration date of his or her sentence for the crime; or

b. Released on leave under s. 303.068, Stats.

The law also amends current DOC requirements for notice to certain victims of serious crimes upon placement of a prisoner in community residential confinement, in the Intensive Sanctions Program or on parole to: (a) include all of the crimes in the definition of "sexually violent offense" in ch. 980 (i.e., adds ss. 948.06 and 948.07, Stats.), which are not currently included in those notice provisions; and (b) include notice to any witness who testified against the inmate in any court proceeding involving the offense.

O. DHFS DUTIES; PAYMENT OF COSTS FOR EVALUATION, TREATMENT AND CARE [S. 980.12, STATS.]

The law specifies that:

1. Except as provided in ss. 980.03 (4) and 980.08 (3), Stats., ***DHFS*** must pay for all costs relating to the evaluation, treatment and care of persons evaluated or committed under ch. 980.

2. By February 1, 2002, DHFS must submit a ***report*** to the Legislature under s. 13.172 (2), Stats., concerning the extent to which pharmacological treatment using ***an antiandrogen*** or the chemical equivalent of an antiandrogen has been required as a condition of supervised release under s. 980.06, 1997 Stats., or s. 980.08, Stats., and the effectiveness of the treatment in the cases in which its use has been required.

P. ACCESS TO RECORDS AND OTHER INFORMATION RELATING TO PERSONS SUBJECT TO CH. 980, STATS.

Current law sets forth exceptions to the confidentiality of juvenile court and DHFS records provisions in the Juvenile Code [ss. 938.396 (2) and 938.78 (2) (a), Stats., respectively]. The law specifies that:

1. With reference to the confidentiality of juvenile court records requirements, upon request of DHFS to review court records for the purpose of providing, under Section B., above, the DOJ or district attorney with a person's offense history, the court ***must*** open for inspection by authorized representatives of DHFS the records of the court relating to any child who has been adjudicated delinquent for a "sexually violent offense," as defined in ch. 980.

2. The requirement of confidentiality of DHFS records under the Juvenile Code does not prohibit DHFS from disclosing information about an individual adjudged delinquent for a sexually violent offense, as defined in ch. 980, to: (a) the DOJ; (b) a district attorney or a judge acting under ch. 980; or (c) an attorney who represents a person subject to a petition under ch. 980. The court in which the petition under ch. 980 is filed may issue any protective orders that it determines are appropriate concerning information disclosed under this provision.

Q. APPLICABILITY

The law, as created by 1993 Act 479, applies to a sexually violent person regardless of whether the person engaged in acts of sexual violence ***before, on or after*** the effective date of Act 479, June 2, 1994.

DLS:ksm:tlu;jal

CITY OF WEST ALLIS

WISCONSIN

Wisconsin Award for Municipal Excellence

DEPARTMENT OF POLICE
Dean Puschnig
Chief of Police

February 23, 2004

State Senator Reynolds
5th Senate District
Madison, WI. 53707

RE: Placement of sexual predators

Dear Senator Reynolds:

In late July, I received a phone call from a friend informing me that sexual predator Billy Lee Morford was going to be placed in a home in West Allis located at 5619 W. National Ave. My friend doesn't work for the Department of Health and Family Services, but he knew this placement was about to occur and he also knew that neither I nor any other official in the city was consulted on this matter.

I immediately called Judge Franke to discuss this matter with him. He confirmed that representatives of the Department of Health and Family Services provided him with this location. He also told me that he and representatives from DHFS had toured the area. As we discussed this matter, I pointed out many different problems associated with this placement such as: number of children, schools, child day care facilities in the area etc.

Although he invited me to send him a letter, I received the distinct impression that the judge had already made up his mind. No representative from DHFS contacted me or anyone else in the city and I don't believe they provided the Judge with any of the specific demographics of this area. Some very pertinent information is listed below:

- Although National Ave. is a busy street, this location is surrounded by residential neighborhoods. There are hundreds of single-family homes, duplexes and apartment buildings in the immediate area.

- The 2000 census data for the City of West Allis, shows there are 871 children between the ages of 1 and 17 living between South 56th and 62nd Streets and West Burnham to Walker Streets (this is within one half mile of this location and **does not** include any residents in the Village of West Milwaukee – who live east of S. 56th Street).

- There are several schools within very close proximity to this home. West Milwaukee Middle School is located on S. 52nd Street, which is 5 blocks away. Last school year 596 students (280 seventh grade and 315 eighth grade) from West Allis and West Milwaukee attended this school.

- Horace Mann elementary school is located within one half mile, this year the School District is anticipating an enrollment of 450 students. In addition, Pershing Elementary school is located three blocks east of West Milwaukee Middle School and has a projected enrollment of 375 students and Saint Florian Catholic School is 2 blocks east of this location.

- Horace Mann Elementary school is also the home of the Family Resource Center for preschool children.

- Registered day cares centers in the area include: The Learning Years located at S. 60th and W. Walker Street, Little Treasure Day Care located at S. 60th and W. Madison Street, Head Start program at S. 61st and W. Madison Street, Kids Come First located at S. 59th and W. National Ave. and Milwaukee School of the Arts Day Care located at 815 S. 60th. Hundreds of children attend these various day care centers.

- Many children from these neighborhoods walk down National Ave and through the Veterans Administration grounds to attend Milwaukee Brewer games at Miller Park.

- This property is located about 100 feet from our east border with the Village of West Milwaukee. This placement would have a direct impact on residential neighborhoods in two municipalities.

- Directly west of this home on National Ave. is a KWIK Pantry food store. The employees have told us that neighborhood children frequent this location throughout the day and evening hours to purchase candy and other items.

- Directly east of this home is a "Drop in Center" for developmentally disabled adults. The Director of this facility, Ms. Joann Corrao, described her clients as mentally retarded individuals. Because of their inability to protect themselves, many of these people have been victims of sexual abuse in the past. Ms. Corrao explained that these individuals would be very vulnerable to those who perpetrate sexual violence. It should be noted that this organization receives annual funding from Milwaukee County and DHFS.

As you can see from the above information, we strongly opposed Morford's placement at this location. We set up a meeting to discuss this matter with the DHFS but their minds were already made up. Quite honestly, I felt representatives from DHFS lied to us at this meeting. Should you have any additional questions, please don't hesitate to contact me at (414) 302-8070.

Sincerely,

Dean Pusdhnig
Chief of Police

CITY OF WEST ALLIS

WISCONSIN

Wisconsin Award for Municipal Excellence

MAYOR'S OFFICE

JEANNETTE BELL
Mayor

February 26, 2004

RECEIVED
MAR - 1 2004

The Honorable Tom Reynolds
State Senator – 5th District
State Capitol, Room 306 South
P.O. Box 7882
Madison WI 53707

Dear Senator Reynolds:

Thank you for your February 12, 2004 letter in regard to your request for a letter of support from elected leaders and law enforcement officials about being notified when sexual predators are being considered for placement in communities. You indicated that you are working with the Joint Committee for the Review of Administrative Rules to require notification as part of a more defined process for such placements.

This subject was discussed by the City's Legislative Committee, and this Committee supports giving notice to a community, its elected leaders, and its law enforcement officials prior to any decisions being made to place a sexual predator in any community. In this regard, the City's Legislative Committee would like to review any legislation or administrative rules that may be proposed prior to passage or adoption.

I trust this position of the City's Legislative Committee is clear and understood. However, if you have any questions or need further information or clarification, please do not hesitate to contact me.

Sincerely,

Jeannette Bell

Jeannette Bell,
Mayor

JB:jfw
cc: Alderpersons
Rep. Staskunas
Rep. Vukmir

MYR\CORR\REYNOLDS.SEXPRED 0204

City Hall, 7525 West Greenfield Avenue 53214 ■ Phone (414)302-8290 ■ Fax (414)302-8207 ■ TDD (414)302-8432
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SENATOR JOSEPH LEIBHAM
CO-CHAIR

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CO-CHAIR

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APR 02 2004

March 31, 2004

Helene Nelson, Secretary
Department of Health and Family Services
1 West Wilson Street, Ste. 650
Madison, WI 53702

Matthew Frank, Secretary
Department of Corrections
3099 East Washington Avenue
Madison, WI 53707-7925

Dear Secretaries Nelson and Frank:

As you may be aware, the Joint Committee for the Review of Administrative Rules met today regarding your respective departments' policies on Wis. Stats. Chapters 980 and 301.

As a result of this hearing, we ask that you would provide us with your written internal policy on your implementation of Chapters 980 and 301, specifically regarding your notification of local law enforcement and local government officials when placement or change of status of a sex offender occurs. We are interested in the particular methods you use in your notification process.

Thank you for your attention to this matter. If you have any questions regarding this request, please do not hesitate to contact either of our offices.

Sincerely,

Joe Leibham
Senator Joseph Leibham
Senate Co-Chair

Glenn Grothman
Representative Glenn Grothman
Assembly Co-Chair

JKL:GSG:mjd

CHAPTER 980

SEXUALLY VIOLENT PERSON COMMITMENTS

980.01 Definitions. In this chapter:

(1) "Department" means the department of health and family services.

(2) "Mental disorder" means a congenital or acquired condition affecting the emotional or volitional capacity that predisposes a person to engage in acts of sexual violence.

(4) "Secretary" means the secretary of health and family services.

(4m) "Serious child sex offender" means a person who has been convicted, adjudicated delinquent or found not guilty or not responsible by reason of insanity or mental disease, defect or illness for committing a violation of a crime specified in s. 948.02 (1) or (2) or 948.025 (1) against a child who had not attained the age of 13 years.

(5) "Sexually motivated" means that one of the purposes for an act is for the actor's sexual arousal or gratification.

(6) "Sexually violent offense" means any of the following:

(a) Any crime specified in s. 940.225 (1) or (2), 948.02 (1) or (2), 948.025, 948.06 or 948.07.

(b) Any crime specified in s. 940.01, 940.02, 940.05, 940.06, 940.19 (4) or (5), 940.195 (4) or (5), 940.30, 940.305, 940.31 or 943.10 that is determined, in a proceeding under s. 980.05 (3) (b), to have been sexually motivated.

(c) Any solicitation, conspiracy or attempt to commit a crime under par. (a) or (b).

(7) "Sexually violent person" means a person who has been convicted of a sexually violent offense, has been adjudicated delinquent for a sexually violent offense, or has been found not guilty of or not responsible for a sexually violent offense by reason of insanity or mental disease, defect or illness, 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.

History: 1993 a. 479; 1995 a. 27 s. 9126 (19); 1997 a. 284, 295.

Chapter 980 creates a civil commitment procedure primarily intended to provide treatment and protect the public, not to punish the offender. As such the chapter does not provide for "punishment" in violation of the constitutional prohibitions against double jeopardy or ex post facto laws. State v. Carpenter, 197 Wis. 2d 252, 541 N.W.2d 105 (1995).

Chapter 980 does not violate substantive due process guarantees. The definitions of "mental disorder" and "dangerous" are not overbroad. The treatment obligations under ch. 980 are consistent with the nature and duration of commitments under the chapter. The lack of a precommitment finding of treatability is not offensive to due process requirements. State v. Post, 197 Wis. 2d 279, 541 N.W.2d 115 (1995).

Chapter 980 does not violate equal protection guarantees. The state's compelling interest in protecting the public justifies the differential treatment of the sexually violent persons subject to the chapter. State v. Post, 197 Wis. 2d 279, 541 N.W.2d 115 (1995).

A child enticement conviction under a statute that had been repealed and recreated under a new statute number was a sexually violent offense under sub. (6), although the former number was not listed in the new statute. State v. Irish, 210 Wis. 2d 107, 565 N.W.2d 161 (Ct. App. 1997).

Under sub. (7), a "mental disorder that makes it substantially probable that the person will engage in acts of sexual violence" is a disorder that predisposes the affected person to sexual violence. A person diagnosed with "antisocial personality disorder" coupled with another disorder may be found to be sexually violent. State v. Adams, 223 Wis. 2d 60, 588 N.W.2d 336 (Ct. App. 1998).

Definitions in ch. 980 serve a legal, and not medical, function. The court will not adopt a definition of pedophilia for ch. 980 purposes. State v. Zanelli, 223 Wis. 2d 545, 589 N.W.2d 687 (Ct. App. 1998).

That the state's expert's opined that pedophilia is a lifelong disorder did not mean that commitment was based solely on prior bad acts rather than a present condition. Jury instructions are discussed. State v. Matek, 223 Wis. 2d 611, 589 N.W.2d 441 (Ct. App. 1998).

As used in this chapter, "substantial probability" and "substantially probable" both mean much more likely than not. This standard for dangerousness does not violate equal protection nor is the term unconstitutionally vague. State v. Curiel, 227 Wis. 2d 389, 597 N.W.2d 697 (1999).

The definition of "sexually violent person" includes conduct prohibited by a previous version of a statute enumerated in sub. (6) as long as the conduct prohibited under the predecessor statute remains prohibited under the current statute. State v. Pharm, 2000 WI App 167, 238 Wis. 2d 97, 617 N.W.2d 163.

The Kansas Sexually Violent Predator Act comports with due process requirements, does not run afoul of double jeopardy principles, and is not an *ex post facto* law. Kansas v. Hendricks, 521 U.S. 346, 138 L. Ed. 2d 501 (1997).

The constitutionality of Wisconsin's Sexual Predator Law. Straub & Kachelski. Wis. Law. July, 1995.

980.015 Notice to the department of justice and district attorney. (1) In this section, "agency with jurisdiction" means the agency with the authority or duty to release or discharge the person.

(2) If an agency with jurisdiction has control or custody over a person who may meet the criteria for commitment as a sexually violent person, the agency with jurisdiction shall inform each appropriate district attorney and the department of justice regarding the person as soon as possible beginning 3 months prior to the applicable date of the following:

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

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

(c) The termination or discharge of a person who has been found not guilty of a sexually violent offense by reason of mental disease or defect under s. 971.17.

(3) The agency with jurisdiction shall provide the district attorney and department of justice with all of the following:

(a) The person's name, identifying factors, anticipated future residence and offense history.

(b) If applicable, documentation of any treatment and the person's adjustment to any institutional placement.

(4) Any agency or officer, employee or agent of an agency is immune from criminal or civil liability for any acts or omissions as the result of a good faith effort to comply with this section.

History: 1993 a. 479; 1995 a. 77; 1997 a. 205, 283; 1999 a. 9.

The "appropriate district attorney" under sub. (2) is the district attorney in the county of conviction or the county to which prison officials propose to release the person. In re Commitment of Goodson, 199 Wis. 2d 426, 544 N.W.2d 611 (Ct. App. 1996).

980.02 Sexually violent person petition; contents; filing. (1) A petition alleging that a person is a sexually violent person may be filed by one of the following:

(a) The department of justice at the request of the agency with jurisdiction, as defined in s. 980.015 (1), over the person. If the department of justice decides to file a petition under this paragraph, it shall file the petition before the date of the release or discharge of the person.

(b) If the department of justice does not file a petition under par. (a), the district attorney for one of the following:

1. The county in which the person was convicted of a sexually violent offense, adjudicated delinquent for a sexually violent offense or found not guilty of or not responsible for a sexually violent offense by reason of insanity or mental disease, defect or illness.

2. The county in which the person will reside or be placed upon his or her discharge from a sentence, release on parole or extended supervision, or release from imprisonment, from a secured correctional facility, as defined in s. 938.02 (15m), from a secured child caring institution, as defined in s. 938.02 (15g), from a secured group home, as defined in s. 938.02 (15p), or from a commitment order.

(2) A petition filed under this section shall allege that all of the following apply to the person alleged to be a sexually violent person:

(a) The person satisfies any of the following criteria:

1. The person has been convicted of a sexually violent offense.

2. The person has been found delinquent for a sexually violent offense.

3. The person has been found not guilty of a sexually violent offense by reason of mental disease or defect.

(ag) The person is within 90 days of discharge or release, on parole, extended supervision or otherwise, from a sentence that was imposed for a conviction for a sexually violent offense, from a secured correctional facility, as defined in s. 938.02 (15m), from a secured child caring institution, as defined in s. 938.02 (15g), or from a secured group home, as defined in s. 938.02 (15p), if the person was placed in the facility for being adjudicated delinquent under s. 938.183 or 938.34 on the basis of a sexually violent offense or from a commitment order that was entered as a result of a sexually violent offense.

(b) The person has a mental disorder.

(c) The person is dangerous to others because the person's mental disorder creates a substantial probability that he or she will engage in acts of sexual violence.

(3) A petition filed under this section shall state with particularity essential facts to establish probable cause to believe the person is a sexually violent person. If the petition alleges that a sexually violent offense or act that is a basis for the allegation under sub. (2) (a) was an act that was sexually motivated as provided under s. 980.01 (6) (b), the petition shall state the grounds on which the offense or act is alleged to be sexually motivated.

(4) A petition under this section shall be filed in any of the following:

(a) The circuit court for the county in which the person was convicted of a sexually violent offense, adjudicated delinquent for a sexually violent offense or found not guilty of a sexually violent offense by reason of mental disease or defect.

(am) The circuit court for the county in which the person will reside or be placed upon his or her discharge from a sentence, release on parole or extended supervision or release from imprisonment, from a secured correctional facility, as defined in s. 938.02 (15m), from a secured child caring institution, as defined in s. 938.02 (15g), from a secured group home, as defined in s. 938.02 (15p), or from a commitment order.

(b) The circuit court for the county in which the person is in custody under a sentence, a placement to a secured correctional facility, as defined in s. 938.02 (15m), a secured child caring institution, as defined in s. 938.02 (15g), or a secured group home, as defined in s. 938.02 (15p), or a commitment order.

(5) Notwithstanding sub. (4), if the department of justice decides to file a petition under sub. (1) (a), it may file the petition in the circuit court for Dane County.

History: 1993 a. 479; 1995 a. 77, 225; 1997 a. 27, 205, 283; 1999 a. 9.

A ch. 980 commitment is not an extension of a commitment under ch. 975, and s. 975.12 does not limit the state's ability to seek a separate commitment under ch. 980 of a person originally committed under ch. 975. State v. Post, 197 Wis. 2d 279, 541 N.W.2d 115 (1995).

For purposes of determining the proper time to file a ch. 980 petition under sub. (2) (ag), a sentence imposed for a sexually violent offense includes a sentence imposed consecutively to any sentence for a sexually violent offense. State v. Keith, 216 Wis. 2d 61, 573 N.W.2d 888 (Ct. App. 1997).

As used in this chapter, "substantial probability" and "substantially probable" both mean much more likely than not. This standard for dangerousness does not violate equal protection nor is the term unconstitutionally vague. State v. Curiel, 227 Wis. 2d 389, 597 N.W.2d 697 (1999).

In deciding whether there is a substantial probability that the subject will commit future acts of sexual violence, the trier of fact is free to weigh expert testimony that conflicts and decide which is more reliable, to accept or reject an expert's testimony, including accepting only parts of the testimony, and to consider all non–expert testimony. State v. Kienitz, 227 Wis. 2d 423, 597 N.W.2d 712 (1999).

To the extent that s. 938.35 (1) prohibits the admission of delinquency adjudications in ch. 980 proceedings, it is repealed by implication. State v. Matthew A.B. 231 Wis. 2d 688, 605 N.W.2d 598 (Ct. App. 1999)

In a trial on a petition filed under sub. (2), the state has the burden to prove beyond a reasonable doubt that the petition was filed within 90 days of the subject's release or discharge based on a sexually violent offense. State v. Thiel, 2000 WI 67, 235 Wis. 2d 823, 612 N.W.2d 94. See also State v. Thiel, 2001 WI App 52, 241 Wis. 2d 439, 625 N.W.2d 321.

While a commitment under ch. 980 is civil, a court does not lose subject matter jurisdiction because a petition is filed under a criminal case number. State v. Pharm, 2000 WI App 167, 238 Wis. 2d 97, 617 N.W.2d 163.

The mandatory release date is not excluded in determining whether under sub. (2) (ag) a petition is filed within "90 days of discharge or release." State v. Pharm, 2000 WI App 167, 238 Wis. 2d 97, 617 N.W.2d 163.

The time limit in sub. (2) (ag) is mandatory. There is no authority for the state to hold a person beyond the discharge date of a criminal sentence in order to file a ch. 980 petition. State v. Thomas, 2000 WI App 162, 238 Wis. 2d 216, 617 N.W.2d 230.

Although sub. (2) (ag) refers to the current juvenile code, ch. 938, and makes no reference to the 1993–94 juvenile code, ch. 48, the circuit court has authority to proceed under ch. 980 against a person adjudicated delinquent under the former ch. 48. State v. Gibbs, 2001 WI App 83, 242 Wis.2d 640, 625 N.W.2d 666.

Keith is inapplicable to juveniles. The concept of consecutive sentences is foreign in the context of juvenile adjudications and dispositions. It was proper under sub. (2) (ag) to file a ch. 980 petition two days prior to the defendant's discharge from the sexual offense disposition although the defendant was subject to another adjudication that did not expire. State v. Wolfe, 2001 WI App 136, 246 Wis. 2d 233, 631 N.W.2d 240.

Chapter 980 provides its own procedures for commencing actions, and, as such, chs. 801 and 802 are inapplicable to the commencement of ch. 980 actions. State v. Wolfe, 2001 WI App 136, 246 Wis. 2d 233, 631 N.W.2d 240.

When a ch. 980 petition was filed within 90 days of release from a sentence for an offense that was not a sexually violent offense, which was being served concurrently with a shorter sentence imposed for a sexually violent offense, the petition was timely. State v. Treadway, 2002 WI App 195, 257 Wis. 2d. 467, 651 N.W.2d 334.

The state was not precluded from seeking a ch. 980 commitment following the defendant's parole revocation, even though the state had failed to prove that the defendant was a sexually violent person in need of commitment in a previous ch. 980 trial that took place prior to the defendant's parole. State v. Parrish, 2002 WI App 263, 258 Wis. 2d 521, 654 N.W.2d 273.

Under sub. (2) (ag), the petition must be filed within 90 days of the actual discharge from prison. A subsequent sentence modification to allow sentence credit has no effect if the state filed the petition within 90 days of the actual release from prison. State v. Virlee, 2003 WI App 4, 259 Wis. 2d 718, 657 N.W.2d 106.

The circuit court had jurisdiction to conduct ch. 980 proceedings involving an enrolled tribal member who committed the underlying sexual offense on an Indian reservation. State v. Burgess, 2003 WI 71, 262 Wis. 2d 354, 665 N.W.2d 124.

Under sub. (1), a request from the agency with jurisdiction and a subsequent decision by the department of justice not to file are prerequisites to a district attorney's authority to file a ch. 980 petition. State v. Byers, 2003 WI 86, 263 Wis. 2d 113, 665 N.W.2d 729.

980.03 Rights of persons subject to petition. (1) The circuit court in which a petition under s. 980.02 is filed shall conduct all hearings under this chapter. The court shall give the per-

son who is the subject of the petition reasonable notice of the time and place of each such hearing. The court may designate additional persons to receive these notices.

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

(a) Counsel. If the person claims or appears to be indigent, the court shall refer the person to the authority for indigency determinations under s. 977.07 (1) and, if applicable, the appointment of counsel.

(b) Remain silent.

(c) Present and cross–examine witnesses.

(d) Have the hearing recorded by a court reporter.

(3) The person who is the subject of the petition, the person's attorney, the department of justice or the district attorney may request that a trial under s. 980.05 be to a jury of 12. A request for a jury trial shall be made as provided under s. 980.05. Notwithstanding s. 980.05 (2), if the person, the person's attorney, the department of justice or the district attorney does not request a jury trial, the court may on its own motion require that the trial be to a jury of 12. A verdict of a jury under this chapter is not valid unless it is unanimous.

(4) Whenever a person who is the subject of a petition filed under s. 980.02 or who has been committed under s. 980.06 is required to submit to an examination under this chapter, he or she may retain experts or professional persons to perform an examination. If the person retains a qualified expert or professional person of his or her own choice to conduct an examination, the examiner shall have reasonable access to the person for the purpose of the examination, as well as to the person's past and present treatment records, as defined in s. 51.30 (1) (b), and patient health care records as provided under s. 146.82 (2) (c). If the person is indigent, the court shall, upon the person's request, appoint a qualified and available expert or professional person to perform an examination and participate in the trial or other proceeding on the person's behalf. Upon the order of the circuit court, the county shall pay, as part of the costs of the action, the costs of an expert or professional person appointed by a court under this subsection to perform an examination and participate in the trial or other proceeding on behalf of an indigent person. An expert or professional person appointed to assist an indigent person who is subject to a petition may not be subject to any order by the court for the sequestration of witnesses at any proceeding under this chapter.

(5) Upon a showing by the proponent of good cause under s. 807.13 (2) (c), testimony may be received into the record of a hearing under this section by telephone or live audiovisual means.

History: 1993 a. 479; 1997 a. 252; 1999 a. 9.

There are circumstances when comment on the defendant's silence is permitted. If a defendant refuses to be interviewed by the state's psychologist and the defense attorney challenges the psychologist's findings based on the lack of an interview, it is appropriate for the psychologist to testify about the refusal. State v. Adams, 223 Wis. 2d 60, 588 N.W.2d 336 (Ct. App. 1998).

If all jurors agree that the defendant suffers from a mental disease, unanimity requirements are met even if the jurors disagree on the disease that predisposes the defendant to reoffend. State v. Pletz, 2000 WI App 221, 239 Wis. 2d 49, 619 N.W.2d 97.

Chapter 980 provides its own procedures for commencing actions, and, as such, chs. 801 and 802 are inapplicable to the commencement of ch. 980 actions. State v. Wolfe, 2001 WI App 136, 246 Wis. 2d 233, 631 N.W.2d 240.

980.04 Detention; probable cause hearing; transfer for examination. (1) Upon the filing of a petition under s. 980.02, the court shall review the petition to determine whether to issue an order for detention of the person who is the subject of the petition. The person shall be detained only if there is cause to believe that the person is eligible for commitment under s. 980.05 (5). A person detained under this subsection shall be held in a facility approved by the department. If the person is serving a sentence of imprisonment, is in a secured correctional facility, as defined in s. 938.02 (15m), a secured child caring institution, as defined in s. 938.02 (15g), or a secured group home, as defined in s. 938.02 (15p), or is committed to institutional care, and the court orders detention under this subsection, the court shall order that the person be transferred to a detention facility approved by the department. A detention order under this subsection remains in effect until the person is discharged after a trial under s. 980.05 or until the effective date of a commitment order under s. 980.06, whichever is applicable.

(2) Whenever a petition is filed under s. 980.02, the court shall hold a hearing to determine whether there is probable cause to believe that the person named in the petition is a sexually violent person. If the person named in the petition is in custody, the court shall hold the probable cause hearing within 72 hours after the petition is filed, excluding Saturdays, Sundays and legal holidays. If the person named in the petition is not in custody, the court shall hold the probable cause hearing within a reasonable time after the filing of the petition.

(3) If the court determines after a hearing that there is probable cause to believe that the person named in the petition is a sexually violent person, the court shall order that the person be taken into custody if he or she is not in custody and shall order the person to be transferred within a reasonable time to an appropriate facility for an evaluation as to whether the person is a sexually violent person. If the court determines that probable cause does not exist to believe that the person is a sexually violent person, the court shall dismiss the petition.

(4) The department shall promulgate rules that provide the qualifications for persons conducting evaluations under sub. (3).

(5) If the person named in the petition claims or appears to be indigent, the court shall, prior to the probable cause hearing under sub. (2), refer the person to the authority for indigency determinations under s. 977.07 (1) and, if applicable, the appointment of counsel.

History: 1993 a. 479; 1995 a. 77; 1999 a. 9.

Cross Reference: See also ch. HFS 99, Wis. adm. code.

The rules of evidence apply to probable cause hearings under ch. 980. The exceptions to the rules for preliminary examinations also apply. Although s. 907.03 allows an expert to base an opinion on hearsay, an expert's opinion based solely on hearsay cannot constitute probable cause. State v. Watson, 227 Wis. 2d 167, 595 N.W.2d 403 (1999).

In sub. (2), "in custody" means in custody pursuant to ch. 980 and does not apply to custody under a previously imposed sentence. State v. Brissette, 230 Wis. 2d 82, 601 N.W.2d 678 (Ct. App. 1999).

Chapter 980 provides its own procedures for commencing actions, and, as such, chs. 801 and 802 are inapplicable to the commencement of ch. 980 actions. State v. Wolfe, 2001 WI App 136, 246 Wis. 2d 233, 631 N.W.2d 240.

The 72–hour time limit in sub. (2) is directory rather than mandatory. However, the individual's due process rights prevent the state from indefinitely delaying the probable cause hearing when the subject of the petition is in custody awaiting the hearing and has made a request for judicial substitution. State v. Beyer, 2001 WI App 184, 247 Wis. 2d 1, 632 N.W.2d 872.

Sub. (3) is not a rule regarding the admissibility of expert testimony. It provides the procedure for determining probable cause to believe a person is a sexually violent offender. The general rule for determining the qualification of an expert applies. State v. Sprosty, 2001 WI App 231, 248 Wis. 2d 480, 636 N.W.2d 213.

980.05 Trial. (1) A trial to determine whether the person who is the subject of a petition under s. 980.02 is a sexually violent person shall commence no later than 45 days after the date of the probable cause hearing under s. 980.04. The court may grant a continuance of the trial date for good cause upon its own motion, the motion of any party or the stipulation of the parties.

(1m) At the trial to determine whether the person who is the subject of a petition under s. 980.02 is a sexually violent person, all rules of evidence in criminal actions apply. All constitutional rights available to a defendant in a criminal proceeding are available to the person.

(2) The person who is the subject of the petition, the person's attorney, the department of justice or the district attorney may request that a trial under this section be to a jury of 12. A request for a jury trial under this subsection shall be made within 10 days after the probable cause hearing under s. 980.04. If no request is made, the trial shall be to the court. The person, the person's attorney or the district attorney or department of justice, whichever is applicable, may withdraw his, her or its request for a jury trial if the 2 persons who did not make the request consent to the withdrawal.

(3) (a) At a trial on a petition under this chapter, the petitioner has the burden of proving the allegations in the petition beyond a reasonable doubt.

(b) If the state alleges that the sexually violent offense or act that forms the basis for the petition was an act that was sexually motivated as provided in s. 980.01 (6) (b), the state is required to prove beyond a reasonable doubt that the alleged sexually violent act was sexually motivated.

(4) Evidence that the person who is the subject of a petition under s. 980.02 was convicted for or committed sexually violent offenses before committing the offense or act on which the petition is based is not sufficient to establish beyond a reasonable doubt that the person has a mental disorder.

(5) If the court or jury determines that the person who is the subject of a petition under s. 980.02 is a sexually violent person, the court shall enter a judgment on that finding and shall commit the person as provided under s. 980.06. If the court or jury is not satisfied beyond a reasonable doubt that the person is a sexually violent person, the court shall dismiss the petition and direct that the person be released unless he or she is under some other lawful restriction.

History: 1993 a. 479; 1999 a. 9.

Sub. (1m) extends the rule protecting prearrest silence under the right against self-incrimination to the refusal of a commitment subject to participate in a formal evaluation prior to the filing of the commitment petition. State v. Zanelli, 212 Wis. 2d 358, 569 N.W.2d 301(Ct. App. 1997).

Sub. (1m) does not require a sworn petition. There is no constitutional right to a sworn complaint in a criminal case. State v. Zanelli, 212 Wis. 2d 358, 569 N.W.2d 301 (Ct. App. 1997).

This section does not confine expert testimony to any specific standard nor mandate the type or character of relevant evidence that the state may choose to meet its burden of proof. State v. Zanelli, 223 Wis. 2d 545, 589 N.W.2d 687 (Ct. App. 1998).

The standard of review for commitments under ch. 980 is the standard applicable to the review of criminal cases—whether the evidence could have led the trier of fact to find beyond a reasonable doubt that the person subject to commitment is a sexually violent person. State v. Curiel, 227 Wis. 2d 389, 597 N.W.2d (1999).

Sub. (1m) provides a respondent with a statutory right to be competent at trial. The procedure to effect that right should adhere to ss. 971.13 and 971.14. State v. Smith, 229 Wis. 2d 720, 600 N.W.2d 258 (Ct. App. 1999).

The right to a jury trial under ch. 980 is governed by sub. (2) rather than case law governing the right to a jury trial in criminal proceedings. State v. Bernstein, 231 Wis. 2d 392, 605 N.W.2d 555 (1999).

The sub. (2) requirement that the 2 persons who did not request the withdrawal of a request for a jury trial consent to the withdrawal does not require a personal statement from the person subject to the commitment proceeding. Consent may be granted by defense counsel. State v. Bernstein, 231 Wis. 2d 392, 605 N.W.2d 555 (1999).

To the extent that s. 938.35 (1) prohibits the admission of delinquency adjudications in ch. 980 proceedings, it is repealed by implication. State v. Matthew A.B. 231 Wis. 2d 688, 605 N.W.2d 598 (Ct. App. 1999)

Sub. (2) does not require that a respondent be advised by the court that a jury verdict must be unanimous in order for the withdrawal of a request for a jury trial to be valid. State v. Denman, 2001 WI App 96, 243 Wis. 2d 14, 626 N.W.2d 296.

Chapter 980 respondents are afforded the same constitutional protections as criminal defendants. Although the doctrine of issue preclusion may generally apply in ch. 980 cases, application of the doctrine may be fundamentally unfair. When new evidence of victim recantation was offered at the ch. 980 trial, the defendant had a due process interest in gaining admission of the evidence to ensure accurate expert opinions on his mental disorder and future dangerousness when the experts' opinions presented were based heavily on the fact that the defendants committed the underlying crime. State v. Sorenson, 2002 WI 78, 254 Wis. 2d 54, 646 N.W.2d 354.

A sexually violent person committed under ch. 980 preserves the right to appeal, as a matter of right, by filing postverdict motions within 20 days of the commitment order. State v. Treadway, 2002 WI App 195, 257 Wis. 2d. 467, 651 N.W.2d 334.

A parole and probation agent who had been employed full-time in a specialized sex-offender unit for 3 years during which he had supervised hundreds of sex offenders was prepared by both training and experience to assess a sex offender, and was qualified to render an opinion on whether he would reoffend. That the agent did not provide the nexus to any mental disorder did not render his testimony inadmissible. State v. Treadway, 2002 WI App 195, 257 Wis. 2d. 467, 651 N.W.2d 334.

Neither ch. 980 nor ch. 51 grants persons being committed under ch. 980 the right to request confidential proceedings. That ch. 51 hearings are closed while ch. 980 hearings are not does not violate equal protection. State v. Burgess, 2002 WI App 264, 258 Wis. 2d 548, 654 N.W.2d 81. Affirmed. 2003 WI 71, 262 WI 2d 354, 665 NW2d 124.

Article I, section 7 does not prohibit the legislature from enacting statutes requiring that trials be held in certain counties. The legislature could properly provide in sub. (2) that ch. 980 proceedings be held in a county other than the one in which the predicate offense was committed. State v. Tainter, 2002 WI App 296, 259 Wis. 2d 387, 655 N.W.2d 538.

While the state may not comment at a ch. 980 trial upon a respondent's refusal to participate in a formal evaluation made prior to the filing of a ch. 980 petition, the state may use at the trial any statements made by the respondent to a pre-petition examiner that could not subject the respondent to future criminal prosecution, regardless of whether the respondent was warned that the state may use those statements at a ch. 980 trial. State v. Lombard, 2003 WI App 163, 266 Wis. 2d 887, 669 N.W.2d 157.

980.06 Commitment. If a court or jury determines that the person who is the subject of a petition under s. 980.02 is a sexually violent person, the court shall order the person to be committed to the custody of the department for control, care and treatment until such time as the person is no longer a sexually violent person. A commitment order under this section shall specify that the person be placed in institutional care.

History: 1993 a. 479; 1995 a. 276; 1997 a. 27, 275, 284; 1999 a. 9.

In the event that there is a failure to develop an appropriate treatment program, the remedy is to obtain appropriate treatment and not supervised release. State v. Seibert, 220 Wis. 2d 308, 582 N.W.2d 745 (Ct. App. 1998).

Chapter 980 and s. 51.61 provide the statutory basis for a court to issue an involuntary medication order for individuals who suffer from a chronic mental illness and are committed under ch. 980. State v. Anthony D.B. 2000 WI 94, 237 Wis. 2d 1, 614 N.W.2d 435.

The incremental infringement by s. 980.06 on the liberty interests of those who have a sexually-violent, predatory past and are currently suffering from a mental disorder that makes them dangerous sexual predators does not violate constitutional guarantees of due process. State v. Ransdell, 2001 WI App 202, 247 Wis. 2d 613, 634 N.W.2d 871.

Although ch. 51 is more "lenient" with those who are subject to its provisions than is ch. 980, the significant differences between the degree of danger posed by each of the two classes of persons subject to commitment under the two chapters, as well as the differences in what must be proven in order to commit under each, does not result in a violation of equal protection. State v. Williams, 2001 WI App 263, 249 Wis. 2d 1, 637 N.W.2d 791.

Chapter 980, as amended, is not a punitive criminal statute. Because whether a statute is punitive is a threshold question for both double jeopardy and ex post facto analysis, neither of those clauses is violated by ch. 980. State v. Rachel, 2002 WI 81, 254 Wis. 2d 215, 646 N.W.2d 375.

The mere limitation of a committed person's access to supervised release does not impose a restraint to the point that it violates due process. As amended, ch. 980 serves the legitimate and compelling state interests of providing treatment to, and protecting the public from, the dangerously mentally ill. The statute and is narrowly tailored to meet those interests, and, as such, it does not violate substantive due process. State v. Rachel, 2002 WI 81, 254 Wis. 2d 215, 646 N.W.2d 375.

Commitment under ch. 980 does not require a separate factual finding that an individual's mental disorder involves serious difficulty for the person in controlling his or her behavior. Proof that the person's mental disorder predisposes the individual to engage in acts of sexual violence and establishes a substantial probability that the person will again commit those acts necessarily and implicitly includes proof that the person's mental disorder involves serious difficulty in controlling his or her behavior. State v. Laxton, 2002 WI 82, 254 Wis. 2d 185, 647 N.W.2d 784.

Chapter 980 does not preclude finding that a person with a sexually-related mental disorder has difficulty in controlling his or her behavior even if that person is able to conform his conduct to the requirements of the law. State v. Burgess, 2002 WI App 264, 258 Wis. 2d 548, 654 N.W.2d 81. Affirmed. 2003 WI 71, 262 WI 2d 354, 665 NW2d 354.

To the extent that plaintiffs are uncontrollably violent and pose a danger to others, the state is entitled to hold them in segregation for that reason alone. Preserving the safety of the staff and other detainees takes precedence over medical goals. West v. Schwebke, 333 F. 3d 745 (2003).

980.063 Deoxyribonucleic acid analysis requirements. (1) (a) If a person is found to be a sexually violent person under this chapter, the court shall require the person to provide a biological specimen to the state crime laboratories for deoxyribonucleic acid analysis.

(b) The results from deoxyribonucleic acid analysis of a specimen under par. (a) may be used only as authorized under s. 165.77 (3). The state crime laboratories shall destroy any such specimen in accordance with s. 165.77 (3).

(2) The department of justice shall promulgate rules providing for procedures for defendants to provide specimens under sub. (1) and for the transportation of those specimens to the state crime laboratories for analysis under s. 165.77.

History: 1995 a. 440.

980.065 Institutional care for sexually violent persons. (1m) The department shall place a person committed under s. 980.06 at the secure mental health facility established under s. 46.055, the Wisconsin resource center established under s. 46.056 or a secure mental health unit or facility provided by the department of corrections under sub. (2).

(1r) Notwithstanding sub. (1m), the department may place a female person committed under s. 980.06 at Mendota Mental Health Institute, Winnebago Mental Health Institute, or a privately operated residential facility under contract with the department of health and family services.

(2) The department may contract with the department of corrections for the provision of a secure mental health unit or facil-

ity for persons committed under s. 980.06. The department shall operate a secure mental health unit or facility provided by the department of corrections under this subsection and shall promulgate rules governing the custody and discipline of persons placed by the department in the secure mental health unit or facility provided by the department of corrections under this subsection.

History: 1993 a. 479; 1997 a. 27; 1999 a. 9; 2001 a. 16.

980.067 Activities off grounds. The superintendent of the facility at which a person is placed under s. 980.065 may allow the person to leave the grounds of the facility under escort. The department of health and family services shall promulgate rules for the administration of this section.

History: 2001 a. 16.

Cross Reference: See also s. HFS 95.10, Wis. adm. code.

980.07 Periodic reexamination; report. (1) If a person has been committed under s. 980.06 and has not been discharged under s. 980.09, the department shall conduct an examination of his or her mental condition within 6 months after an initial commitment under s. 980.06 and again thereafter at 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. At the time of a reexamination under this section, the person who has been committed may retain or seek to have the court appoint an examiner as provided under s. 980.03 (4).

(2) Any examiner conducting an examination under this section shall prepare a written report of the examination no later than 30 days after the date of the examination. The examiner 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 s. 980.06.

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

History: 1993 a. 479; 1999 a. 9.

The 6–month period under sub. (1) for the 1st reexamination does not begin to run until the court conducts the dispositional hearing and issues an initial commitment order under s. 980.06 (2). State v. Marberry, 231 Wis. 2d 581, 605 N.W.2d 512 (Ct. App. 1999).

As part of an annual review, an involuntary medication order must be reviewed following the same procedure used to obtain the initial order. State v. Anthony D.B. 2000 WI 94, 237 Wis. 2d 1, 614 N.W.2d 435.

It is within the committed person's discretion to ask for an independent examination. The trial court does not have discretion to refuse the request. State v. Thiel, 2001 WI App 52, 241 Wis. 2d 465, 626 N.W.2d 26.

The 6–month time period in sub. (1) for an initial reexamination is mandatory. State ex rel. Marberry v. Macht, 2003 WI 79, 262 Wis. 2d 720, 665 N.W.2d 155.

980.08 Petition for supervised release. (1) Any person who is committed under s. 980.06 may petition the committing court to modify its order by authorizing supervised release if at least 18 months have elapsed since the initial commitment order was entered or at least 6 months have elapsed since the most recent release petition was denied or the most recent order for supervised release was revoked. The director of the facility at which the person is placed may file a petition under this subsection on the person's behalf at any time.

(2) If the person files a timely petition without counsel, the court shall serve a copy of the petition on the district attorney or department of justice, whichever is applicable and, subject to s. 980.03 (2) (a), refer the matter to the authority for indigency determinations under s. 977.07 (1) and appointment of counsel under s. 977.05 (4) (j). If the person petitions through counsel, his or her attorney shall serve the district attorney or department of justice, whichever is applicable.

(3) Within 20 days after receipt of the petition, the court shall appoint one or more examiners having the specialized knowledge determined by the court to be appropriate, who shall examine the person and furnish a written report of the examination to the court within 30 days after appointment. The examiners shall have reasonable access to the person for purposes of examination and to the person's past and present treatment records, as defined in s. 51.30 (1) (b), and patient health care records, as provided under s. 146.82 (2) (c). If any such examiner believes that the person is appropriate for supervised release under the criterion specified in sub. (4), the examiner shall report on the type of treatment and services that the person may need while in the community on supervised release. The county shall pay the costs of an examiner appointed under this subsection as provided under s. 51.20 (18) (a).

(4) The court, without a jury, shall hear the petition within 30 days after the report of the court–appointed examiner is filed with the court, unless the petitioner waives this time limit. Expenses of proceedings under this subsection shall be paid as provided under s. 51.20 (18) (b), (c) and (d). The court shall grant the petition unless the state proves by clear and convincing evidence that the person is still a sexually violent person and that it is still substantially probable that the person will engage in acts of sexual violence if the person is not continued in institutional care. In making a decision under this subsection, the court may consider, without limitation because of enumeration, the nature and circumstances of the behavior that was the basis of the allegation in the petition under s. 980.02 (2) (a), the person's mental history and present mental condition, where the person will live, how the person will support himself or herself and what arrangements are available to ensure that the person has access to and will participate in necessary treatment, including pharmacological treatment using an antiandrogen or the chemical equivalent of an antiandrogen if the person is a serious child sex offender. A decision under this subsection on a petition filed by a person who is a serious child sex offender may not be made based on the fact that the person is a proper subject for pharmacological treatment using an antiandrogen or the chemical equivalent of an antiandrogen or on the fact that the person is willing to participate in pharmacological treatment using an antiandrogen or the chemical equivalent of an antiandrogen.

(5) If the court finds that the person is appropriate for supervised release, the court shall notify the department. The department shall make its best effort to arrange for placement of the person in a residential facility or dwelling that is in the person's county of residence, as determined by the department under s. 980.105. The department and the county department under s. 51.42 in the county of residence of the person shall prepare a plan that identifies the treatment and services, if any, that the person will receive in the community. The plan shall address the person's need, if any, for supervision, counseling, medication, community support services, residential services, vocational services, and alcohol or other drug abuse treatment. In developing a plan for where the person may reside while on supervised release, the department shall consider the proximity of any potential placement to the residence of other persons on supervised release and to the residence of persons who are in the custody of the department of corrections and regarding whom a sex offender notification bulletin has been issued to law enforcement agencies under s. 301.46 (2m) (a) or (am). If the person is a serious child sex offender, the plan shall address the person's need for pharmacological treatment using an antiandrogen or the chemical equivalent of an antiandrogen. The department may contract with a county department, under s. 51.42 (3) (aw) 1. d., with another public agency or with a private agency to provide the treatment and services identified in the plan. The plan shall specify who will be responsible for providing the treatment and services identified in the plan. The plan shall be presented to the court for its approval within 60 days after the court finding that the person is appropriate for supervised release, unless the department, county department and person to be released request additional time to develop the plan. If the county department of the person's county of residence declines to prepare a plan, the department may arrange for another county to prepare the plan if that county agrees to prepare the plan and if the person will be living in that county. If the department is unable to arrange for another county to prepare a plan, the court

shall designate a county department to prepare the plan, order the county department to prepare the plan and place the person on supervised release in that county, except that the court may not so designate the county department in any county where there is a facility in which persons committed to institutional care under this chapter are placed unless that county is also the person's county of residence.

(6m) An order for supervised release places the person in the custody and control of the department. The department shall arrange for control, care and treatment of the person in the least restrictive manner consistent with the requirements of the person and in accordance with the plan for supervised release approved by the court under sub. (5). A person on supervised release is subject to the conditions set by the court and to the rules of the department. Before a person is placed on supervised release by the court under this section, the court shall so notify the municipal police department and county sheriff for the municipality and county in which the person will be residing. The notification requirement under this subsection does not apply if a municipal police department or county sheriff submits to the court a written statement waiving the right to be notified. If the department alleges that a released person has violated any condition or rule, or that the safety of others requires that supervised release be revoked, he or she may be taken into custody under the rules of the department. The department shall submit a statement showing probable cause of the detention and a petition to revoke the order for supervised release to the committing court and the regional office of the state public defender responsible for handling cases in the county where the committing court is located within 72 hours after the detention, excluding Saturdays, Sundays and legal holidays. The court shall hear the petition within 30 days, unless the hearing or time deadline is waived by the detained person. Pending the revocation hearing, the department may detain the person in a jail or in a hospital, center or facility specified by s. 51.15 (2). The state has the burden of proving by clear and convincing evidence that any rule or condition of release has been violated, or that the safety of others requires that supervised release be revoked. If the court determines after hearing that any rule or condition of release has been violated, or that the safety of others requires that supervised release be revoked, it may revoke the order for supervised release and order that the released person be placed in an appropriate institution until the person is discharged from the commitment under s. 980.09 or until again placed on supervised release under this section.

History: 1993 a. 479; 1995 a. 276; 1997 a. 27, 275, 284; 1999 a. 9 ss. 3223L, 3232p to 3238d; 1999 a. 32; 2001 a. 16.

Cross Reference: See also ch. HFS 98, Wis. adm. code.

Sub. (6m) [formerly s. 980.06 (2) (d)] requires post–hearing notice to the local law enforcement agencies. In re Commitment of Goodson, 199 Wis. 2d 426, 544 N.W.2d 611 (Ct. App. 1996).

Whether in a proceeding for an initial ch. 980 commitment or a later petition for supervised release, there is no requirement that the state prove the person is treatable. State v. Seibert, 220 Wis. 2d 308, 582 N.W.2d 745 (Ct. App. 1998).

There is no exception under sub. (5) for a court to refuse to order release after it determines under sub. (4) that release is appropriate. If treatment programs are unavailable, the court shall order a county, through DHFS, to prepare a plan and place the person on supervised release in that county The court may order the county to create whatever programs or facilities are necessary to accommodate the supervised release. State v. Sprosty, 227 Wis. 2d 316, 595 N.W.2d 692 (1999).

As used in this chapter, "substantial probability" and "substantially probable" both mean much more likely than not. This standard for dangerousness does not violate equal protection nor is the term unconstitutionally vague. State v. Curiel, 227 Wis. 2d 389, 597 N.W.2d 697 (1999).

An institutionalized sex offender who agreed to a stipulation providing supervised release, giving up his right to a jury trial on his discharge petition in exchange, had a constitutional right to enforcement of the agreement. State v. Krueger, 2001 WI App 76, 242 Wis. 2d 793, 626 N.W.2d 83.

An indigent sexually violent person is constitutionally entitled to assistance of counsel in bringing a first appeal as of right from a denial of his or her petition for supervised release. State ex rel. Seibert v. Macht, 2001 WI 67, 244 Wis. 2d 378, 627 N.W.2d 881.

A person subject to a proceeding to revoke supervised release is entitled to the same due process protections as afforded persons in probation and parole revocation proceedings. Notice of the grounds that are the basis for the revocation must be given. A court can only base a revocation on the grounds of public safety under sub. (6m) when notice has been properly given. State v. VanBronkhorst, 2001 WI App 190, 247 Wis. 2d 247, 633 N.W.2d 236.

A sexual assault need not occur and the person's behavior need not be criminal before the court can conclude that there is a substantial probability that a person will reoffend if institutional care is not continued. The relevant inquiry under sub. (4) is whether the behavior indicates a likelihood to reoffend. State v. Sprosty, 2001 WI App 231, 248 Wis. 2d 480, 636 N.W.2d 213.

A trial court's decision whether to grant a request for conditional release is subject to a discretionary standard of review of whether the trial court properly exercised its discretion in making its decision. State v. Wenk, 2001 WI App 268, 248 Wis. 2d 714, 637 N.W.2d 417.

Under sub. (6m) [formerly s. 980.06 (2) (d)], a circuit court must determine whether any rule or condition of release has been violated or whether the safety of others requires revocation. If either of these conditions is met, the circuit court may revoke an order for supervised release. However, upon a finding that the safety of others requires revocation, the plain language of the statute removes any discretion from the circuit court. State v. Burris, 2002 WI App 262, 258 Wis. 2d 454, 654 N.W.2d 866.

Sub. (6m), not s. 806.07 (1) (h), governs granting relief to the state from a ch. 980 committee's supervised release when the committee is confined in an institution awaiting placement on supervised release. Sub. (6m) provides no procedure for initiating revocation other than by the department of health and family services action, preventing courts or prosecutors from initiating revocations. State v. Morford, 2004 WI 5, ___ Wis. 2d ___, ___ N.W.2d ___.

980.09 Petition for discharge; procedure. (1) PETITION WITH SECRETARY'S APPROVAL. (a) If the secretary determines at any time that a person committed under this chapter is no longer a sexually violent person, the secretary shall authorize the person to petition the committing court for discharge. The person shall file the petition with the court and serve a copy upon the department of justice or the district attorney's office that filed the petition under s. 980.02 (1), whichever is applicable. The court, upon receipt of the petition for discharge, shall order a hearing to be held within 45 days after the date of receipt of the petition.

(b) At a hearing under this subsection, the district attorney or the department of justice, whichever filed the original petition, shall represent the state and shall have the right to have the petitioner examined by an expert or professional person of his, her or its choice. The hearing shall be before the court without a jury. The state has the burden of proving by clear and convincing evidence that the petitioner is still a sexually violent person.

(c) If the court is satisfied that the state has not met its burden of proof under par. (b), the petitioner shall be discharged from the custody or supervision of the department. If the court is satisfied that the state has met its burden of proof under par. (b), the court may proceed to determine, using the criterion specified in s. 980.08 (4), whether to modify the petitioner's existing commitment order by authorizing supervised release.

(2) PETITION WITHOUT SECRETARY'S APPROVAL. (a) A person may petition the committing court for discharge from custody or supervision without the secretary's approval. At the time of an examination under s. 980.07 (1), the secretary shall provide the committed person with a written notice of the person's right to petition the court for discharge over the secretary's objection. The notice shall contain a waiver of rights. The secretary shall forward the notice and waiver form to the court with the report of the department's examination under s. 980.07. If the person does not affirmatively waive the right to petition, the court shall set a probable cause hearing to determine whether facts exist that warrant a hearing on whether the person is still a sexually violent person. The committed person has a right to have an attorney represent him or her at the probable cause hearing, but the person is not entitled to be present at the probable cause hearing.

(b) If the court determines at the probable cause hearing under par. (a) that probable cause exists to believe that the committed person is no longer a sexually violent person, then the court shall set a hearing on the issue. At a hearing under this paragraph, the committed person is entitled to be present and to the benefit of the protections afforded to the person under s. 980.03. The district attorney or the department of justice, whichever filed the original petition, shall represent the state at a hearing under this paragraph. The hearing under this paragraph shall be to the court. The state has the right to have the committed person evaluated by experts chosen by the state. At the hearing, the state has the burden of

proving by clear and convincing evidence that the committed person is still a sexually violent person.

(c) If the court is satisfied that the state has not met its burden of proof under par. (b), the person shall be discharged from the custody or supervision of the department. If the court is satisfied that the state has met its burden of proof under par. (b), the court may proceed to determine, using the criterion specified in s. 980.08 (4), whether to modify the person's existing commitment order by authorizing supervised release.

History: 1993 a. 479; 1999 a. 9.

Persons committed under ch. 980 must be afforded the right to request a jury for discharge hearings under this section. State v. Post, 197 Wis. 2d 279, 541 N.W.2d 115 (1995).

Sub. (2) (a) does not contemplate an evidentiary hearing as is provided under sub. (2) (b). Under sub. (2) (a), the hearing is a paper review of the reexamination reports that allows the committing court to weed out frivolous petitions. State v. Paulick, 213 Wis. 2d 432, 570 N.W.2d 626 (Ct. App. 1997).

The right to counsel under sub. (2) (a) is subject to the same standards and procedures for resolving right to counsel issues as in criminal cases. State v. Thiel, 2001 WI App 52, 241 Wis. 2d 465, 626 N.W.2d 26.

Sub. (2) (a) does not allow unlimited submission of evidence, but does allow the submission of a second medical examination report. State v. Thayer, 2001 WI App 51, 241 Wis. 2d 417, 626 N.W.2d 811.

Probable cause that a detainee is no longer a sexually violent person is not demonstrated by an expert's conclusion that the detainee has the ability to control his or her behavior. A court must not only consider whether the person has the ability to make choices, but the degree to which those choices are driven by a mental disorder. Pedophilia is a mental disorder that by definition includes a diagnosis of lack of control. State v. Schiller, 2003 WI App 195, 266 Wis. 2d 992, 669 N.W.2d 747.

Progress in treatment is one way of showing that a person is not still a sexually violent person under sub. (2) (a). A new diagnosis is another way. A new diagnosis need not attack the original finding that an individual was a sexually violent person, but focuses on the present and is evidence of whether an individual is still a sexually violent person. State v. Pocan, 2003 WI App 233, ___ Wis. 2d ___, 671 N.W.2d 680.

980.10 Additional discharge petitions. In addition to the procedures under 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 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 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 hearing was warranted. If the court finds that a hearing is warranted, the court shall set a probable cause hearing in accordance with s. 980.09 (2) (a) and continue proceedings under s. 980.09 (2) (b), if 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 s. 980.09 (2) (a) and continue proceedings under s. 980.09 (2) (b), if appropriate.

History: 1993 a. 479.

Persons committed under ch. 980 must be afforded the right to request a jury for discharge hearings under this section. State v. Post, 197 Wis. 2d 279, 541 N.W.2d 115 (1995).

980.101 Reversal, vacation or setting aside of judgment relating to a sexually violent offense; effect. (1) In this section, "judgment relating to a sexually violent offense" means a judgment of conviction for a sexually violent offense, an adjudication of delinquency on the basis of a sexually violent offense, or a judgment of not guilty of a sexually violent offense by reason of mental disease or defect.

(2) If, at any time after a person is committed under s. 980.06, a judgment relating to a sexually violent offense committed by the person is reversed, set aside, or vacated and that sexually violent offense was a basis for the allegation made in the petition under s. 980.02 (2) (a), the person may bring a motion for postcommitment relief in the court that committed the person. The court shall proceed as follows on the motion for postcommitment relief:

(a) If the sexually violent offense was the sole basis for the allegation under s. 980.02 (2) (a) and there are no other judgments relating to a sexually violent offense committed by the person, the court shall reverse, set aside, or vacate the judgment under s. 980.05 (5) that the person is a sexually violent person, vacate the commitment order, and discharge the person from the custody or supervision of the department.

(b) If the sexually violent offense was the sole basis for the allegation under s. 980.02 (2) (a) but there are other judgments relating to a sexually violent offense committed by the person that have not been reversed, set aside, or vacated, or if the sexually violent offense was not the sole basis for the allegation under s. 980.02 (2) (a), the court shall determine whether to grant the person a new trial under s. 980.05 because the reversal, setting aside, or vacating of the judgment for the sexually violent offense would probably change the result of the trial.

(3) An appeal may be taken from an an order entered under sub. (2) as from a final judgment.

History: 2001 a. 16.

980.105 Determination of county of residence. The department shall determine a person's county of residence for the purposes of this chapter by doing all of the following:

(1) The department shall consider residence as the voluntary concurrence of physical presence with intent to remain in a place of fixed habitation and shall consider physical presence as prima facie evidence of intent to remain.

(2) The department shall apply the criteria for consideration of residence and physical presence under sub. (1) to the facts that existed on the date that the person committed the sexually violent offense that resulted in the sentence, placement or commitment that was in effect when the petition was filed under s. 980.02.

History: 1995 a. 276; 2001 a. 16.

A person's county of residence shall be determined based on the facts that existed on the date of the underlying offense. A court does not have jurisdiction merely because the defendant was in a Wisconsin prison at the time the petition was filed. State v. Burgess, 2002 WI App 264, 258 Wis. 2d 548, 654 N.W.2d 81. Affirmed on other grounds. 2003 WI 71, ___ WI 2d ___, 665 N.W.2d 124.

The circuit court had jurisdiction to conduct ch. 980 proceedings involving an enrolled tribal member who committed the underlying sexual offense on an Indian reservation. State v. Burgess, 2003 WI 71, ___ Wis. 2d ___, 665 N.W.2d 124.

980.11 Notice concerning supervised release or discharge. (1) In this section:

(a) "Act of sexual violence" means an act or attempted act that is a basis for an allegation made in a petition under s. 980.02 (2) (a).

(b) "Member of the family" means spouse, child, sibling, parent or legal guardian.

(c) "Victim" means a person against whom an act of sexual violence has been committed.

(2) If the court places a person on supervised release under s. 980.08 or discharges a person under s. 980.09 or 980.10, the department shall do all of the following:

(am) Make a reasonable attempt to notify whichever of the following persons is appropriate, if he or she can be found, in accordance with sub. (3):

1. The victim of the act of sexual violence.

2. An adult member of the victim's family, if the victim died as a result of the act of sexual violence.

3. The victim's parent or legal guardian, if the victim is younger than 18 years old.

(bm) Notify the department of corrections.

(3) The notice under sub. (2) shall inform the department of corrections and the person under sub. (2) (am) of the name of the person committed under this chapter and the date the person is placed on supervised release or discharged. The department shall send the notice, postmarked at least 7 days before the date the person committed under this chapter is placed on supervised release or discharged, to the department of corrections and to the last–known address of the person under sub. (2) (am).

(4) The department shall design and prepare cards for persons specified in sub. (2) (am) to send to the department. The cards shall have space for these persons to provide their names and addresses, the name of the person committed under this chapter

and any other information the department determines is necessary. The department shall provide the cards, without charge, to the department of justice and district attorneys. The department of justice and district attorneys shall provide the cards, without charge, to persons specified in sub. (2) (am). These persons may send completed cards to the department of health and family services. All records or portions of records of the department of health and family services that relate to mailing addresses of these persons are not subject to inspection or copying under s. 19.35 (1), except as needed to comply with a request by the department of corrections under s. 301.46 (3) (d).

History: 1993 a. 479; 1995 a. 27 s. 9126 (19); 1995 a. 440; 1997 a. 181; 1999 a. 9.

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

(2) By February 1, 2002, the department shall submit a report to the legislature under s. 13.172 (2) concerning the extent to which pharmacological treatment using an antiandrogen or the chemical equivalent of an antiandrogen has been required as a condition of supervised release under s. 980.06, 1997 stats., or s. 980.08 and the effectiveness of the treatment in the cases in which its use has been required.

History: 1993 a. 479; 1997 a. 284; 1999 a. 9.

980.13 Applicability. This chapter applies to a sexually violent person regardless of whether the person engaged in acts of sexual violence before, on or after June 2, 1994.

History: 1993 a. 479.

CHAPTER 301

CORRECTIONS

301.001 Purposes of chapters. The purposes of this chapter and chs. 302 to 304 are to prevent delinquency and crime by an attack on their causes; to provide a just, humane and efficient program of rehabilitation of offenders; and to coordinate and integrate corrections programs with other social services. In creating the department of corrections, chs. 301 to 304, the legislature intends that the state continue to avoid sole reliance on incarceration of offenders and continue to develop, support and maintain professional community programs and placements.

History: 1989 a. 31, 107; 1995 a. 27.

The department must follow its own rules. It is not harmless error for an agency to disobey its own procedural regulations. State ex rel. Anderson–El v. Cooke, 2000 WI 40, 234 Wis. 2d 626, 610 N.W.2d 821.

301.01 Definitions. In this chapter and chs. 302 to 304:

(1) "Department" means the department of corrections.

(2) "Prisoner" means any person who is either arrested, incarcerated, imprisoned or otherwise detained in excess of 12 hours by any law enforcement agency of this state, except when detention is pursuant to s. 51.15, 51.20, 51.45 (11) (b) or 55.06 (11) (a) or ch. 980. "Prisoner" does not include any of the following:

(a) Any person who is serving a sentence of detention under s. 973.03 (4) unless the person is in the county jail under s. 973.03 (4) (c).

(b) Any resident of a secured correctional facility, a secured child caring institution or a secured group home.

(c) Any child held in custody under ss. 48.19 to 48.21.

(cm) Any expectant mother held in custody under ss. 48.193 to 48.213.

(d) Any child participating in the mother–young child care program under s. 301.049.

(3) "Secretary" means the secretary of corrections.

(3k) "Secured child caring institution" has the meaning given in s. 938.02 (15g).

(3m) "Secured correctional facility" has the meaning given in s. 938.02 (15m).

(3p) "Secured group home" has the meaning given in s. 938.02 (15p).

(4) "State correctional institution" means a state prison under s. 302.01 or a secured correctional facility operated by the department.

(5) "Type 1 prison" means a state prison under s. 302.01, but excludes any institution that meets the criteria under s. 302.01 solely because of its status under s. 301.048 (4) (b).

(6) "Type 2 prison" means a state prison under s. 302.01 that meets the criteria under s. 302.01 solely because of its status under s. 301.048 (4) (b).

History: 1989 a. 31, 107; 1991 a. 39; 1993 a. 479; 1995 a. 27, 77; 1997 a. 27, 292; 1999 a. 9.

301.02 Institutions governed. The department shall maintain and govern the state correctional institutions.

History: 1989 a. 31.

Cross Reference: See also ch. DOC 310, Wis. adm. code.

301.025 Division of juvenile corrections. The division of juvenile corrections shall exercise the powers and perform the duties of the department that relate to juvenile correctional services and institutions, juvenile offender review, aftercare, corrective sanctions, the serious juvenile offender program under s. 938.538, and youth aids.

History: 1995 a. 27, 77; 2003 a. 33.

301.027 Treatment program at one or more juvenile secured correctional facilities. The department shall maintain a cottage–based intensive alcohol and other drug abuse program at one or more juvenile secured correctional facilities.
History: 1995 a. 27; 1999 a. 9.

301.029 Contracts requiring prisoner access to personal information. (1) In this section, "financial transaction card" has the meaning given in s. 943.41 (1) (em).

(2) (a) The department may not enter into any contract or other agreement if, in the performance of the contract or agreement, a prisoner would perform data entry or telemarketing services and have access to an individual's financial transaction card numbers, checking or savings account numbers or social security number.

(b) The department may not enter into any contract or other agreement if, in the performance of the contract or agreement, a prisoner would perform data entry services or telemarketing services and have access to any information that may serve to identify a minor.
History: 1999 a. 9.

301.03 General corrections authority. The department shall:

(1) Supervise, manage, preserve and care for the buildings, grounds and other property pertaining to the state correctional institutions and promote the objectives for which they are established.

(2) Supervise the custody and discipline of all prisoners and the maintenance of state correctional institutions and the prison industries under s. 303.01.

(2g) Provide alcohol or other drug abuse assessments so that a prisoner can receive such an assessment either during his or her initial assessment and evaluation period in the state prison system or at the prison where he or she is placed after the initial assessment and evaluation period.

(2m) Provide alcohol or other drug abuse treatment at each state prison except a Type 2 prison, the correctional institution authorized under s. 301.046, a minimum security correctional institution authorized under s. 301.13 or a state–local shared correctional facility established under s. 301.14.

(2r) Conduct drug testing of prospective parolees or persons to be placed on extended supervision who have undergone treatment while in state prison.

(3) Administer parole, extended supervision and probation matters, except that the decision to grant or deny parole to inmates shall be made by the parole commission and the decision to revoke probation, extended supervision or parole in cases in which there is no waiver of the right to a hearing shall be made by the division of hearings and appeals in the department of administration. The secretary may grant special action parole releases under s. 304.02. The department shall promulgate rules establishing a drug testing program for probationers, parolees and persons placed on extended supervision. The rules shall provide for assessment of fees upon probationers, parolees and persons placed on extended supervision to partially offset the costs of the program.

(3b) Establish regulations for persons placed on lifetime supervision under s. 939.615, supervise and provide services to persons placed on lifetime supervision under s. 939.615 and promulgate rules for the administration of matters relating to lifetime supervision under s. 939.615.

(3c) If requested by the department of health and family services, contract with that department to supervise and provide services to persons who are conditionally transferred or discharged under s. 51.37 (9), conditionally released under s. 971.17 (3) or placed on supervised release under s. 980.06 (2), 1997 stats., or s. 980.08.

(3d) If requested by the department of health and family services, contract with that department to provide a secure mental health unit or facility under s. 980.065 (2).

(3g) Provide treatment for alcoholics and intoxicated persons on parole or extended supervision.

(3m) Monitor compliance with deferred prosecution agreements under s. 971.39.

(3r) If any restitution ordered under s. 973.20 (1r) remains unpaid at the time that a person's probation or sentence expires, or he or she is discharged by the department, give to the person upon release, or send to the person at his or her last–known address, written notification that a civil judgment may be issued against the person for the unpaid restitution.

(4) If requested by the governor, make recommendations as to pardons or commutations of sentence.

(5) Examine all institutions authorized by law to receive and detain witnesses, prisoners or convicted persons, and inquire into all matters relating to their management, including the management of witnesses, prisoners or convicted persons, and the condition of buildings and grounds and other property connected with the institutions.

(6) Direct the correctional psychiatric service in all state correctional institutions.

(6m) On or before January 30 of each year, after consultation with the department of health and family services, report to the joint committee on finance and to the chief clerk of each house of the legislature, for distribution to the appropriate standing committees under s. 13.172 (3), on all of the following:

(a) The number of prisoners transferred to a mental health institute under s. 51.20 (13) (a) 4. and their average length of stay and the number of prisoners transferred to a mental health institute on a voluntary basis and their average length of stay.

(b) The number of prisoners being treated with psychotropic drugs on both a voluntary and involuntary basis and the types of drugs being used.

(c) A description of the mental health services available to prisoners on both a voluntary and involuntary basis.

(6r) By January 30 of each year, submit a report to the joint committee on finance and to the chief clerk of each house of the legislature, for distribution to the appropriate standing committees under s. 13.172 (3), on the number of prisoners that the department considers to be violent and the total number of prisoners.

(7) Direct the educational programs, including an adult basic education program, in all state correctional institutions. The department shall test the reading ability of each prisoner.

(7m) Supervise criminal defendants accepted into the custody of the department under s. 969.02 (3) (a) or 969.03 (1) (a). The department shall charge the county that is prosecuting the defendant a fee for providing this supervision. The department shall set the fee by rule.

(9) Supervise all persons placed under s. 48.366 (8) or 938.183 in a state prison.

(9r) Supervise all persons placed in the serious juvenile offender program under s. 938.538.

(10) (a) Execute the laws relating to the detention, reformation and correction of delinquents.

(b) Direct the aftercare of and supervise all delinquents under its jurisdiction and exercise such functions as it deems appropriate for the prevention of delinquency.

(c) Promote the enforcement of laws for the protection of delinquent children. To this end, the department shall cooperate with courts assigned to exercise jurisdiction under chs. 48 and 938, county departments under ss. 46.215, 46.22 and 46.23 and licensed child welfare agencies and institutions in providing community–based programming, including in–home programming and intensive supervision, for delinquent children. The department shall also establish and enforce standards for the development and delivery of services provided by the department under ch. 938 in regard to juveniles who have been adjudicated delinquent.

(2) If a prisoner escapes from a Type 1 prison, the department shall make a reasonable attempt to notify all of the following persons, if they can be found, in accordance with sub. (3) and after receiving a completed card under sub. (4):

(a) The victim of the crime committed by the prisoner or, if the victim died as a result of the crime, an adult member of the victim's family or, if the victim is younger than 18 years old, the victim's parent or legal guardian.

(b) Any witness who testified against the prisoner in any court proceeding involving the offense.

(3) The department shall make a reasonable effort to notify the person by telephone as soon as possible after the escape and after any subsequent apprehension of the prisoner.

(4) The department shall design and prepare cards for any person specified in sub. (2) to send to the department. The cards shall have space for any such person to provide his or her name, telephone number and mailing address, the name of the applicable prisoner and any other information that the department determines is necessary. The department shall provide the cards, without charge, to district attorneys. District attorneys shall provide the cards, without charge, to persons specified in sub. (2). These persons may send completed cards to the department. All department records or portions of records that relate to telephone numbers and mailing addresses of these persons are not subject to inspection or copying under s. 19.35 (1).

History: 1995 a. 74; 1997 a. 181, 283.

301.45 Sex offender registration. (1d) DEFINITIONS. In this section:

(a) "Employed or carrying on a vocation" means employment or vocational activity that is full–time or part–time for a continuous period of time exceeding 14 days or for an aggregate period of time exceeding 30 days during any calendar year, whether financially compensated, volunteered or for the purpose of government or educational benefit.

(am) "Found to have committed a sex offense by another jurisdiction" means any of the following:

1. Convicted or found not guilty or not responsible by reason of mental disease or defect for a violation of a law of another state that is comparable to a sex offense.

2. Convicted or found not guilty by reason of mental disease or defect for a violation of a federal law that is comparable to a sex offense.

3. Convicted or found not guilty or not responsible by reason of mental disease or defect in the tribal court of a federally recognized American Indian tribe or band for a violation that is comparable to a sex offense.

4. Sentenced or found not guilty by reason of mental disease or defect by a court martial for a violation that is comparable to a sex offense.

(b) "Sex offense" means a violation, or the solicitation, conspiracy, or attempt to commit a violation, of s. 940.22 (2), 940.225 (1), (2) or (3), 944.06, 948.02 (1) or (2), 948.025, 948.05, 948.055, 948.06, 948.07, 948.075, 948.08, 948.095, 948.11 (2) (a) or (am), 948.12, 948.13, or 948.30, or of s. 940.30 or 940.31 if the victim was a minor and the person who committed the violation was not the victim's parent.

(c) "Student" means a person who is enrolled on a full–time or part–time basis in any public or private educational institution, including a secondary school, a business, trade, technical or vocational school or an institution of higher education.

(1g) WHO IS COVERED. Except as provided in sub. (1m), a person shall comply with the reporting requirements under this section if he or she meets one or more of the following criteria:

(a) Is convicted or adjudicated delinquent on or after December 25, 1993, for a sex offense.

(b) Is in prison, a secured correctional facility, a secured child caring institution or a secured group home or is on probation, extended supervision, parole, supervision or aftercare supervision on or after December 25, 1993, for a sex offense.

(bm) Is in prison, a secured correctional facility, a secured child caring institution or a secured group home or is on probation, extended supervision, parole, supervision or aftercare supervision on or after December 25, 1993, for a violation, or for the solicitation, conspiracy or attempt to commit a violation, of a law of this state that is comparable to a sex offense.

(c) Is found not guilty or not responsible by reason of mental disease or defect on or after December 25, 1993, and committed under s. 51.20 or 971.17 for a sex offense.

(d) Is in institutional care or on conditional transfer under s. 51.35 (1) or conditional release under s. 971.17 on or after December 25, 1993, for a sex offense.

(dd) Is in institutional care or on conditional transfer under s. 51.35 (1) or conditional release under s. 971.17 on or after December 25, 1993, for a violation, or for the solicitation, conspiracy or attempt to commit a violation, of a law of this state that is comparable to a sex offense.

(dh) Is on parole, extended supervision, or probation in this state from another state under s. 304.13 (1m), 304.135, or 304.16 on or after December 25, 1993, for a violation, or for the solicitation, conspiracy, or attempt to commit a violation, of the law of another state that is comparable to a sex offense.

(dj) Is a juvenile in this state on or after May 9, 2000, and is on supervision in this state from another state pursuant to the interstate compact on the placement of juveniles under s. 938.988 for a violation of a law of another state that is comparable to a sex offense.

(dL) Is placed on lifetime supervision under s. 939.615 on or after June 26, 1998.

(dp) Is in institutional care under, or on parole from, a commitment for specialized treatment under ch. 975 on or after December 25, 1993.

(dt) Is in institutional care or on conditional release under ch. 980 on or after June 2, 1994.

(e) Is ordered by a court under s. 51.20 (13) (ct) 1m., 938.34 (15m) (am), 938.345 (3), 971.17 (1m) (b) 1m. or 973.048 (1m) to comply with the reporting requirements under this section.

(em) Was required to register under s. 301.45 (1) (a), 1997 stats., based on a finding that he or she was in need of protection or services and is ordered to continue complying with the requirements of this section by a court acting under 1999 Wisconsin Act 89, section 107 (1) (e).

(f) On or after December 1, 2000, is registered as a sex offender in another state or is registered as a sex offender with the federal bureau of investigation under 42 USC 14072 and is a resident of this state, a student in this state or employed or carrying on a vocation in this state.

(g) Has been found to have committed a sex offense by another jurisdiction and, on or after December 1, 2000, is a resident of this state, a student in this state or employed or carrying on a vocation in this state. This paragraph does not apply if 10 years have passed since the date on which the person was released from prison or placed on parole, probation, extended supervision or other supervised release for the sex offense.

(1m) EXCEPTION TO REGISTRATION REQUIREMENT; UNDERAGE SEXUAL ACTIVITY. (a) A person is not required to comply with the reporting requirements under this section if all of the following apply:

1. The person meets the criteria under sub. (1g) (a) to (dd) based on any violation, or on the solicitation, conspiracy or attempt to commit any violation, of s. 948.02 (1) or (2) or 948.025.

1g. The violation, or the solicitation, conspiracy or attempt to commit the violation, of s. 948.02 (1) or (2) or 948.025 did not involve sexual intercourse, as defined in s. 948.01 (6), either by

the use or threat of force or violence or with a victim under the age of 12 years.

2. At the time of the violation, or of the solicitation, conspiracy or attempt to commit the violation, of s. 948.02 (1) or (2) or 948.025, the person had not attained the age of 19 years and was not more than 4 years older or not more than 4 years younger than the child.

3. It is not necessary, in the interest of public protection, to require the person to comply with the reporting requirements under this section.

(b) If a person believes that he or she is not required under par. (a) to comply with the reporting requirements under this section and the person is not before the court under s. 51.20 (13) (ct), 938.34 (15m), 971.17 (1m) (b) or 973.048, the person may move a court to make a determination of whether the person satisfies the criteria specified in par. (a). A motion made under this paragraph shall be filed with the circuit court for the county in which the person was convicted, adjudicated delinquent or found not guilty or not responsible by reason of mental disease or defect.

(be) A person who files a motion under par. (b) or s. 51.20 (13) (ct) 2m., 938.34 (15m) (bm), 971.17 (1m) (b) 2m. or 973.048 (2m) requesting a determination of whether the person is required to comply with the reporting requirements under this section shall send a copy of the motion to the district attorney for the county in which the motion is filed. The district attorney shall make a reasonable attempt to contact the victim of the crime that is the subject of the person's motion to inform the victim of his or her right to make or provide a statement under par. (bv).

(bm) A court shall hold a hearing on a motion made by a person under par. (b) or s. 51.20 (13) (ct) 2m., 938.34 (15m) (bm), 971.17 (1m) (b) 2m. or 973.048 (2m) requesting a determination of whether the person is required to comply with the reporting requirements under this section. The district attorney who receives a copy of a motion under par. (be) may appear at the hearing.

(bv) Before deciding a motion filed under par. (b) or s. 51.20 (13) (ct) 2m., 938.34 (15m) (bm), 971.17 (1m) (b) 2m. or 973.048 (2m) requesting a determination of whether the person is required to comply with the reporting requirements under this section, the court shall allow the victim of the crime that is the subject of the motion to make a statement in court at the hearing under par. (bm) or to submit a written statement to the court. A statement under this paragraph must be relevant to whether the person satisfies the criteria specified in par. (a).

(d) 1. Before deciding a motion filed by a person under par. (b) or s. 51.20 (13) (ct) 2m., 938.34 (15m) (bm), 971.17 (1m) (b) 2m. or 973.048 (2m) requesting a determination of whether the person is required to comply with the reporting requirements under this section, a court may request the person to be examined by a physician, psychologist or other expert approved by the court. If the person refuses to undergo an examination requested by the court under this subdivision, the court shall deny the person's motion without prejudice.

2. If a person is examined by a physician, psychologist or other expert under subd. 1., the physician, psychologist or other expert shall file a report of his or her examination with the court, and the court shall provide copies of the report to the person and, if he or she requests a copy, to the district attorney. The contents of the report shall be confidential until the physician, psychologist or other expert has testified at the hearing held under par. (bm). The report shall contain an opinion regarding whether it would be in the interest of public protection to have the person register under this section and the basis for that opinion.

3. A person who is examined by a physician, psychologist or other expert under subd. 1. is responsible for paying the cost of the services provided by the physician, psychologist or other expert, except that if the person is indigent the cost of the services provided by the physician, psychologist or other expert shall be paid by the county. If the person claims or appears to be indigent, the court shall refer the person to the authority for indigency determinations under s. 977.07 (1), except that the person shall be considered indigent without another determination under s. 977.07 (1) if the person is represented by the state public defender or by a private attorney appointed under s. 977.08.

(e) At the hearing held under par. (bm), the person who filed the motion under par. (b) or s. 51.20 (13) (ct) 2m., 938.34 (15m) (bm), 971.17 (1m) (b) 2m. or 973.048 (2m) has the burden of proving by clear and convincing evidence that he or she satisfies the criteria specified in par. (a). In deciding whether the person has satisfied the criterion specified in par. (a) 3., the court may consider any of the following:

1. The ages, at the time of the violation, of the person and of the child with whom the person had sexual contact or sexual intercourse.

2. The relationship between the person and the child with whom the person had sexual contact or sexual intercourse.

3. Whether the violation resulted in bodily harm, as defined in s. 939.22 (4), to the child with whom the person had sexual contact or sexual intercourse.

4. Whether the child with whom the person had sexual contact or sexual intercourse suffered from a mental illness or mental deficiency that rendered the child temporarily or permanently incapable of understanding or evaluating the consequences of his or her actions.

5. The probability that the person will commit other violations in the future.

6. The report of the examination conducted under par. (d).

7. Any other factor that the court determines may be relevant to the particular case.

(1p) EXCEPTION TO REGISTRATION REQUIREMENT; EXPUNGEMENT OF INVASION OF PRIVACY ADJUDICATION OR CONVICTION. If a person is covered under sub. (1g) based solely on an order that was entered under s. 938.34 (15m) (am) or 973.048 (1m) in connection with a delinquency adjudication or a conviction for a violation of s. 942.08 (2) (b), (c), or (d), the person is not required to comply with the reporting requirements under this section if the delinquency adjudication is expunged under s. 938.355 (4m) (b) or if the conviction is expunged under s. 973.015 (2).

(2) WHAT INFORMATION MUST BE PROVIDED, BY WHOM AND WHEN. (a) The department shall maintain a registry of all persons subject to sub. (1g). The registry shall contain all of the following with respect to each person:

1. The person's name, including any aliases used by the person.

2. Information sufficient to identify the person, including date of birth, gender, race, height, weight and hair and eye color.

3. The statute the person violated that subjects the person to the requirements of this section, the date of conviction, adjudication or commitment, and the county or, if the state is not this state, the state in which the person was convicted, adjudicated or committed.

4. Whichever of the following is applicable:

a. The date the person was placed on probation, supervision, conditional release, conditional transfer or supervised release.

b. The date the person was or is to be released from confinement, whether on parole, extended supervision or otherwise, or discharged or terminated from a sentence or commitment.

c. The date the person entered the state.

d. The date the person was ordered to comply with s. 301.45.

5. The address at which the person is or will be residing.

6. The name of the agency supervising the person, if applicable, and the office or unit and telephone number of the office or unit that is responsible for the supervision of the person.

8. The name and address of the place at which the person is or will be employed.

9. The name and location of any school in which the person is or will be enrolled.

9m. For a person covered under sub. (1g) (dt), a notation concerning the treatment that the person has received for his or her mental disorder, as defined in s. 980.01 (2).

10. The most recent date on which the information in the registry was updated.

(b) If the department has supervision over a person subject to sub. (1g), the department shall enter into the registry under this section the information specified in par. (a) concerning the person.

(c) If the department of health and family services has supervision over a person subject to sub. (1g), that department, with the assistance of the person, shall provide the information specified in par. (a) to the department of corrections in accordance with the rules under sub. (8).

(d) A person subject to sub. (1g) who is not under the supervision of the department of corrections or the department of health and family services shall provide the information specified in par. (a) to the department of corrections in accordance with the rules under sub. (8). If the person is unable to provide an item of information specified in par. (a), the department of corrections may request assistance from a circuit court or the department of health and family services in obtaining that item of information. A circuit court and the department of health and family services shall assist the department of corrections when requested to do so under this paragraph.

(e) The department of health and family services shall provide the information required under par. (c) or the person subject to sub. (1g) shall provide the information required under par. (d) in accordance with whichever of the following is applicable:

1. Within 10 days after the person is placed on probation, supervision, aftercare supervision, conditional release or supervised release.

1m. If the person is being released from a prison sentence and placed on parole or extended supervision, before he or she is released.

2. If the person is on parole, extended supervision, probation, or other supervision from another state under s. 304.13 (1m), 304.135, 304.16, or 938.988, before the person enters this state.

2m. If the person is registered as a sex offender in another state or is registered as a sex offender with the federal bureau of investigation under 42 USC 14072, within 10 days after the person enters this state to take up residence or begin school, employment or his or her vocation.

2t. If the person has been found to have committed a sex offense by another jurisdiction and subd. 2m. does not apply, within 10 days after the person enters this state to take up residence or begin school, employment or his or her vocation.

3. No later than 10 days before the person is terminated or discharged from a commitment.

4. If the person is being released from prison because he or she has reached the expiration date of his or her sentence, no later than 10 days before being released from prison.

5. If subd. 1., 1m., 2., 2m., 2t., 3. or 4. does not apply, within 10 days after the person is sentenced or receives a disposition.

(f) The department may require a person covered under sub. (1g) to provide the department with his or her fingerprints, a recent photograph of the person and any other information required under par. (a) that the person has not previously provided. The department may require the person to report to a place designated by the department, including an office or station of a law enforcement agency, for the purpose of obtaining the person's fingerprints, the photograph or other information.

(g) The department may send a person subject to sub. (1g) a notice or other communication requesting the person to verify the accuracy of any information contained in the registry. A person subject to sub. (1g) who receives a notice or communication sent by the department under this paragraph shall, no later than 10 days after receiving the notice or other communication, provide verification of the accuracy of the information to the department in the form and manner specified by the department.

(3) ANNUAL REGISTRATION REQUIREMENTS. (a) A person covered under sub. (1g) is subject to the annual registration requirements under par. (b) as follows:

1. If the person has been placed on probation or supervision, he or she is subject to this subsection upon being placed on probation or supervision.

1m. If the person is on parole, extended supervision, probation, or other supervision from another state under s. 304.13 (1m), 304.135, 304.16, or 938.988, he or she is subject to this subsection upon entering this state.

1r. If the person is registered as a sex offender in another state or is registered as a sex offender with the federal bureau of investigation under 42 USC 14072, within 10 days after the person enters this state to take up residence or begin school, employment or his or her vocation.

1t. If the person has been found to have committed a sex offense by another jurisdiction and subd. 1r. does not apply, within 10 days after the person enters this state to take up residence or begin school, employment or his or her vocation.

2. If the person has been sentenced to prison or placed in a secured correctional facility, a secured child caring institution or a secured group home, he or she is subject to this subsection upon being released on parole, extended supervision or aftercare supervision.

2m. If the person has been sentenced to prison and is being released from prison because he or she has reached the expiration date of his or her sentence, before being released from prison.

3. If the person has been committed under s. 51.20 or 971.17, he or she is subject to this subsection upon being placed on conditional release under s. 971.17 or on a conditional transfer under s. 51.35 (1) or, if he or she was not placed on conditional release or on a conditional transfer, before he or she is terminated under s. 971.17 (5) or discharged under s. 51.35 (4) or 971.17 (6).

3g. If the person has been committed for specialized treatment under ch. 975, he or she is subject to this subsection upon being released on parole under s. 975.10 or, if he or she was not released on parole, before being discharged from the commitment under s. 975.09 or 975.12.

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

4. If subd. 1., 1m., 1r., 1t., 2., 2m., 3., 3g. or 3r. does not apply, the person is subject to this subsection after he or she is sentenced or receives a disposition.

(b) 1. Except as provided in subd. 1m., a person who is subject to par. (a) shall notify the department once each calendar year, as directed by the department, of his or her current information specified in sub. (2) (a). The department shall annually notify registrants of their need to comply with this requirement. If the registrant is a person under the age of 18, the department may also annually notify the registrant's parent, guardian or legal custodian of the registrant's need to comply with this requirement.

1m. A person who is subject to lifetime registration under sub. (5) (b) 2. or (5m) (b) 4. shall notify the department once each 90 days, as directed by the department, of his or her current information specified in sub. (2) (a). Every 90 days, the department shall notify registrants subject to this subdivision of their need to comply with this requirement. If the registrant subject to this subdivision is a person under the age of 18, the department may also notify the registrant's parent, guardian or legal custodian every 90 days of the registrant's need to comply with this requirement.

2. The department shall notify a person who is being released from prison in this state because he or she has reached the expiration date of his or her sentence and who is covered under sub. (1g)

of the need to comply with the requirements of this section. Also, probation, extended supervision, and parole agents, aftercare agents, and agencies providing supervision shall notify any client who is covered under sub. (1g) of the need to comply with the requirements of this section at the time that the client is placed on probation, extended supervision, parole, supervision, or aftercare supervision or, if the client is on probation, extended supervision, parole, or other supervision from another state under s. 304.13 (1m), 304.135, 304.16, or 938.988, when the client enters this state.

3. The department of health and family services shall notify a person who is being placed on conditional release, conditional transfer or parole, or is being terminated or discharged from a commitment, under s. 51.20, 51.35 or 971.17 or ch. 975 or 980 and who is covered under sub. (1g) of the need to comply with the requirements of this section.

3m. After notifying a person under subd. 2. or 3. of the need to comply with this section, the person who is providing the notification shall require the person who is covered under sub. (1g) to read and sign a form stating that he or she has been informed of the requirements of this section.

4. It is not a defense to liability under sub. (6) (a) or (ag) that the person subject to sub. (1g) was not required to read and sign a form under subd. 3m., was not provided with a form to read and sign under subd. 3m. or failed or refused to read or sign a form under subd. 3m. It is not a defense to liability under sub. (6) (a) or (ag) that the person subject to sub. (1g) did not receive notice under this paragraph from the department of health and family services, the department of corrections, a probation, extended supervision and parole agent, an aftercare agent or an agency providing supervision.

(4) UPDATED INFORMATION. In addition to the requirements under sub. (3), a person who is covered under sub. (1g) shall update information under sub. (2) (a) as follows:

(a) Except as provided in par. (b), whenever any of the information under sub. (2) (a) changes, the person shall provide the department with the updated information within 10 days after the change occurs.

(b) If the person is on parole or extended supervision and the person knows that any of the information under sub. (2) (a) 5. will be changing, the person shall provide the department with the updated information before the change in his or her address occurs. If the person is on parole or extended supervision and any of the information under sub. (2) (a) 5. changes but the person did not know before the change occurred that his or her address would be changing, the person shall provide the department with the updated information within 24 hours after the change in his or her address occurs.

(4m) INFORMATION CONCERNING A MOVE TO OR SCHOOLING OR EMPLOYMENT IN ANOTHER STATE. In addition to the requirements under subs. (3) and (4), a person who is covered under sub. (1g) and who is changing his or her residence from this state to another state, is becoming a student in another state or is to be employed or carrying on a vocation in another state shall, no later than 10 days before he or she moves out of this state, begins school or begins employment or his or her vocation, notify the department that he or she is changing his or her residence from this state, is beginning school in another state or is beginning employment or the carrying on of a vocation in another state. The person shall also inform the department of the state to which he or she is moving his or her residence, the state in which he or she will be in school or the state in which he or she will be employed or carrying on a vocation. Upon receiving notification from a person under this subsection, the department shall do all of the following:

(a) Inform the person whether the state to which the person is moving, the state in which the person will be in school or the state in which the person will be employed or carrying on a vocation has sex offender registration requirements to which the person may be subject and, if so, the name of the agency to contact in that state for information concerning those requirements.

(b) Inform the agency responsible for sex offender registration in the state to which the person is moving, in which the person will be in school or in which the person will be employed or carrying on a vocation that the person is moving to the state, beginning school in the state or beginning employment or carrying on a vocation in the state, and provide the agency of the other state with all of the information specified in sub. (2) (a).

(4r) RESTRICTION ON CERTAIN REGISTRANTS ESTABLISHING OR CHANGING RESIDENCE. No person covered under sub. (1g) who is on parole or extended supervision may establish a residence or change his or her residence unless he or she has complied with all of the applicable requirements of subs. (2) (e), (3) (b) and (4) (b).

(5) RELEASE FROM REQUIREMENTS FOR PERSONS WHO COMMITTED A SEX OFFENSE IN THIS STATE. (a) Except as provided in pars. (am) and (b), a person who is covered under sub. (1g) (a), (b), (bm), (c), (d), (dd), (dp), (e) or (em) no longer has to comply with this section when the following applicable criterion is met:

1. If the person has been placed on probation or supervision for a sex offense, 15 years after discharge from the probation or supervision imposed for the sex offense.

2. If the person has been sentenced to prison for a sex offense or placed in a secured correctional facility, a secured child caring institution or a secured group home for a sex offense, 15 years after discharge from parole, extended supervision or aftercare supervision for the sex offense.

2m. If the person has been sentenced to prison for a sex offense and is being released from prison because he or she has reached the expiration date of the sentence for the sex offense, 15 years after being released from prison.

3. If the person has been committed to the department of health and family services under s. 51.20 or 971.17 and is in institutional care or on conditional transfer under s. 51.35 (1) or conditional release under s. 971.17 for a sex offense, 15 years after termination of the commitment for the sex offense under s. 971.17 (5) or discharge from the commitment for the sex offense under s. 51.35 (4) or 971.17 (6).

3m. If the person has been committed for specialized treatment under ch. 975, 15 years after discharge from the commitment under s. 975.09 or 975.12.

4. If subd. 1., 2., 2m., 3. or 3m. does not apply, 15 years after the date of conviction for the sex offense or 15 years after the date of disposition of the sex offense, whichever is later.

(am) 1. Except as provided in subd. 2., a person who is covered under sub. (1g) (dL) shall continue to comply with the requirements of this section until his or her death.

2. A person who is covered under sub. (1g) (dL) is not required to comply with the requirements of this section if a court orders that the person is no longer required to comply under s. 939.615 (6) (i).

(b) A person who is covered under sub. (1g) (a), (b), (bm), (c), (d), (dd), (dp) or (e) shall continue to comply with the requirements of this section until his or her death if any of the following applies:

1. The person has, on 2 or more separate occasions, been convicted or found not guilty or not responsible by reason of mental disease or defect for a sex offense, or for a violation, or the solicitation, conspiracy or attempt to commit a violation, of a federal law, a military law, a tribal law or a law of any state that is comparable to a sex offense. A conviction or finding of not guilty or not responsible by reason of mental disease or defect that has been reversed, set aside or vacated is not a conviction or finding for purposes of determining under this subdivision whether a person has been convicted on 2 or more separate occasions.

1m. The person has been convicted or found not guilty or not responsible by reason of mental disease or defect for a violation,

or for the solicitation, conspiracy or attempt to commit a violation, of s. 940.225 (1) or (2), 948.02 (1) or (2) or 948.025. A conviction or finding of not guilty or not responsible by reason of mental disease or defect that has been reversed, set aside or vacated is not a conviction or finding for purposes of this subdivision.

2. The person has been found to be a sexually violent person under ch. 980, regardless of whether the person is discharged under s. 980.09 or 980.10 from the sexually violent person commitment, except that the person no longer has to comply with this section if the finding that the person is a sexually violent person has been reversed, set aside or vacated.

3. The court that ordered the person to comply with the reporting requirements of this section under s. 51.20 (13) (ct), 938.34 (15m), 938.345 (3), 971.17 (1m) (b) or 973.048 also ordered the person to comply with the requirements until his or her death.

(5m) RELEASE FROM REQUIREMENTS FOR PERSONS WHO COMMITTED A SEX OFFENSE IN ANOTHER JURISDICTION. (a) Except as provided in pars. (b) and (c), a person who is covered under sub. (1g) (dh), (dj), (f) or (g) no longer has to comply with this section when the following applicable criterion is met:

1. If the person is on parole, extended supervision, probation, or other supervision from another state under s. 304.13 (1m), 304.135, 304.16, or 938.988, 15 years after discharge from that parole, extended supervision, probation, or other supervision or the period of time that the person is in this state, whichever is less.

2. If the person is registered as a sex offender in another state or is registered as a sex offender with the federal bureau of investigation under 42 USC 14072, whichever of the following is less:

a. The period of time that the person is a resident of this state, a student in this state or employed or carrying on a vocation in this state.

b. The period of time that the person is registered as a sex offender in another state or with the federal bureau of investigation, or 10 years from the date on which the person was released from prison or placed on parole, probation, extended supervision or other supervised release for the sex offense which subjects the person to the requirements of this section, whichever is greater.

3. If the person has been found to have committed a sex offense by another jurisdiction and subd. 2. does not apply, whichever of the following is less:

a. The period of time that the person is a resident of this state, a student in this state or employed or carrying on a vocation in this state.

b. Ten years from the date on which the person was released from prison or placed on parole, probation, extended supervision or other supervised release for the sex offense that subjects the person to the requirements of this section.

(b) A person who is covered under sub. (1g) (dh), (dj), (f) or (g) shall continue to comply with the requirements of this section for as long as the person is a resident of this state, a student in this state or employed or carrying on a vocation in this state if one or more of the following apply:

1. The person is registered as a sex offender in another state or is registered as a sex offender with the federal bureau of investigation under 42 USC 14072 and the person is required to register with that other state or with the federal bureau of investigation until his or her death.

2. The person has been convicted or found not guilty or not responsible by reason of mental disease or defect for a violation of s. 940.225 (1) or (2), 948.02 (1) or (2) or 948.025, or for the solicitation, conspiracy or attempt to commit a violation, of a federal law, a military law, a tribal law or a law of any state that is comparable to a violation of s. 940.225 (1) or (2), 948.02 (1) or (2) or 948.025. A conviction or finding of not guilty or not responsible by reason of mental disease or defect that has been reversed, set aside or vacated is not a conviction or finding for purposes of this subdivision.

3. The person has, on 2 or more separate occasions, been convicted or found not guilty or not responsible by reason of mental disease or defect for a sex offense or for a violation, or the solicitation, conspiracy or attempt to commit a violation, of a federal law, military law, tribal law or law of any state that is comparable to a sex offense. A conviction or finding of not guilty or not responsible by reason of mental disease or defect that has been reversed, set aside or vacated is not a conviction or finding for purposes of determining under this subdivision whether a person has been convicted on 2 or more separate occasions.

4. A determination has been made as provided under 42 USC 14071 (a) (2) (A) or (B) that the person is a sexually violent predator, or lifetime registration by the person is required under measures approved by the attorney general of the United States under 42 USC 14071 (a) (2) (C).

(c) This subsection does not apply to a person who is required to register as a sex offender under one or more of the criteria specified in sub. (1g) (a), (b), (bm), (c), (d), (dd), (dp), (e) or (em).

(6) PENALTY. (a) Whoever knowingly fails to comply with any requirement to provide information under subs. (2) to (4) is subject to the following penalties:

1. Except as provided in subd. 2., the person is guilty of a Class H felony.

2. The person may be fined not more than $10,000 or imprisoned for not more than 9 months or both if all of the following apply:

a. The person was ordered under s. 51.20 (13) (ct) 1m., 938.34 (15m) (am), 938.345 (3), 971.17 (1m) (b) 1m., or 973.048 (1m) to comply with the reporting requirements under s. 301.45 based on a finding that he or she committed or solicited, conspired, or attempted to commit a misdemeanor.

b. The person was not convicted of knowingly failing to comply with any requirement to provide information under subs. (2) to (4) before committing the present violation.

(ag) Whoever intentionally violates sub. (4r) is subject to the following penalties:

1. Except as provided in subd. 2., the person is guilty of a Class H felony.

2. The person may be fined not more than $10,000 or imprisoned for not more than 9 months or both if all of the following apply:

a. The person was ordered under s. 51.20 (13) (ct) 1m., 938.34 (15m) (am), 938.345 (3), 971.17 (1m) (b) 1m., or 973.048 (1m) to comply with the reporting requirements under s. 301.45 based on a finding that he or she committed or solicited, conspired, or attempted to commit a misdemeanor.

b. The person was not convicted of another offense under sub. (4r) before committing the present violation.

(am) Whoever knowingly fails to keep information confidential as required under sub. (7) may be fined not more than $500 or imprisoned for not more than 30 days or both.

(bm) Subject to s. 971.19 (9), a district attorney or, upon the request of a district attorney, the department of justice may prosecute a knowing failure to comply with any requirement to provide information under subs. (2) to (4). If the department of corrections determines that there is probable cause to believe that a person has knowingly failed to comply with any requirement to provide information under subs. (2) to (4) or has intentionally violated sub. (4r), the department shall forward a certified copy of all pertinent departmental information to the applicable district attorney. The department shall certify the copy in accordance with s. 889.08.

(c) Notwithstanding par. (a), a person who first became subject to subs. (2) to (4) under 1995 Wisconsin Act 440 and who was in prison or a secured correctional facility or a secured child caring institution, in institutional care, or on probation, parole, supervision, aftercare supervision, corrective sanctions supervision, conditional transfer or conditional release during the period begin-

ning on December 25, 1993, and ending on May 31, 1997, shall be allowed until January 1, 1998, to comply with the requirements under subs. (2) to (4).

(d) Notwithstanding par. (a), a person who first became subject to subs. (2) to (4) under 1999 Wisconsin Act 89 and who was in prison or a secured correctional facility or a secured child caring institution, in institutional care, or on probation, parole, supervision, aftercare supervision, corrective sanctions supervision, conditional transfer or conditional release during the period beginning on December 25, 1993, and ending on May 31, 2000, shall be allowed until January 1, 2001, to comply with the requirements under subs. (2) to (4).

(6m) NOTICE TO OTHER JURISDICTIONS CONCERNING NONCOMPLIANCE. If the department has reasonable grounds to believe that a person who is covered under sub. (1g) (f) or (g) is residing in this state, is a student in this state or is employed or carrying on a vocation in this state and that the person is not complying with the requirements of this section, the department shall notify the state agency responsible for the registration of sex offenders in any state in which the person is registered that it believes the person is not complying with the requirements of this section. If the person is registered with the federal bureau of investigation under 42 USC 14072, the department shall notify the federal bureau of investigation that it believes the person is not complying with the requirements of this section.

(7) INFORMATION MAINTENANCE AND EXPUNGEMENT. (a) The department shall maintain information provided under sub. (2). The department shall keep the information confidential except as provided in ss. 301.03 (14) and 301.46, except as needed for law enforcement purposes and except to provide, in response to a request for information under s. 49.22 (2m) made by the department of workforce development or a county child support agency under s. 59.53 (5), the name and address of an individual registered under this section, the name and address of the individual's employer and financial information related to the individual.

(b) The department shall not charge a fee for providing information under this subsection.

(c) A person about whom information is maintained in the registry under sub. (2) may request expungement of all pertinent information in the registry if any of the following applies:

1m. The person's conviction, delinquency adjudication, finding of need of protection or services or commitment has been reversed, set aside or vacated.

2m. A court has determined under sub. (1m) (b) that the person is not required to comply with the reporting requirements under this section.

(d) The department shall purge all of the information maintained in the registry under sub. (2) concerning a person to whom par. (c) applies if the department receives all of the following:

1. The person's written request for expungement.

2. A certified copy of the court order reversing, setting aside or vacating the conviction, delinquency adjudication, finding of need of protection or services or commitment or a certified copy of the court's determination under sub. (1m) (b).

(e) The department shall purge all of the information maintained in the registry under sub. (2) concerning a person to whom sub. (1p) applies if any of the following occurs:

1. The department receives notice under s. 938.355 (4m) (b) that a court has expunged the record of the person's delinquency adjudication for the violation described in sub. (1p).

2. The department issues a certificate of discharge under s. 973.015 (2).

3. The department receives a certificate of discharge issued under s. 973.015 (2) by the detaining authority.

(8) RULES. The department shall promulgate rules necessary to carry out its duties under this section.

(9) COOPERATION. The department of health and family services, the department of workforce development, the department of transportation and all circuit courts shall cooperate with the department of corrections in obtaining information under this section.

History: 1995 a. 440 ss. 26 to 49, 53 to 74; Stats. 1995 s. 301.45; 1997 a. 3, 35, 130, 191, 237, 283; 1999 a. 9, 89, 156, 186; 2001 a. 38, 96, 109; 2003 a. 50, 53.

Cross Reference: See also chs. DOC 332 and Jus 8, Wis. adm. code.

That sub. (1m) allows minors found delinquent because of sexual contact to be excused from sex offender registration, but not juveniles convicted of false imprisonment, does not render it unconstitutional. Sub. (1m) creates a narrow exception for sex offenders in cases of factually consensual sexual contact between 2 minors. In contrast, false imprisonment is never consensual and never a crime solely because of age. State v. Joseph E.G. 2001 WI App 29, 240 Wis. 2d 481, 623 N.W.2d 137.

Sections 301.45 and 301.46 do not occupy the field in regulating the dissemination of sex offender registration information and do not prohibit a probation agent from requiring a probationer to inform the probationer's immediate neighbors of his or her status as a convicted sex offender, which was not unreasonable. State ex rel. Kaminski v. Schwarz, 2001 WI 94, 245 Wis. 2d 310, 630 N.W.2d 164.

301.46 Access to information concerning sex offenders.

(1) DEFINITIONS. In this section:

(a) "Agency with jurisdiction" means the state agency with the authority or duty to confine or supervise a person or release or discharge a person from confinement.

(b) "Sex offense" has the meaning given in s. 301.45 (1d) (b).

(2) ACCESS FOR LAW ENFORCEMENT AGENCIES. (a) When a person is registered with the department under s. 301.45 (2), the department shall immediately make the information specified in par. (b) available to the police chief of any community and the sheriff of any county in which the person is residing, is employed or is attending school. The department shall make information available under this paragraph through a direct electronic data transfer system.

(b) The department shall make all of the following information available under par. (a):

1. The person's name, including any aliases used by the person.

2. Information sufficient to identify the person, including date of birth, gender, race, height, weight and hair and eye color.

3. The statute the person violated, the date of conviction, adjudication or commitment, and the county or, if the state is not this state, the state in which the person was convicted, adjudicated or committed.

4. Whichever of the following is applicable:

a. The date the person was placed on probation, supervision, conditional release, conditional transfer or supervised release.

b. The date the person was released from confinement, whether on parole, extended supervision or otherwise, or discharged or terminated from a sentence or commitment.

c. The date the person entered the state.

d. The date the person was ordered to comply with s. 301.45.

5. The address at which the person is residing.

6. The name of the agency supervising the person, if applicable, and the office or unit and telephone number of the office or unit that is responsible for the supervision of the person.

8. The name and address of the place at which the person is employed.

9. The name and location of any school in which the person is enrolled.

10. The most recent date on which the information under s. 301.45 was updated.

(c) When a person who is registered under s. 301.45 (2) updates information under s. 301.45 (4), the department shall immediately make the updated information available to the police chief of any community and the sheriff of any county in which the person is residing, is employed or is attending school. The department shall make the updated information available under this paragraph through a direct electronic data transfer system.

(d) In addition to having access to information under pars. (a) and (c), a police chief or sheriff may request that the department provide the police chief or sheriff with information concerning any person registered under s. 301.45.

(e) A police chief or sheriff may provide any of the information to which he or she has access under this subsection, other than information specified in subs. (4) (ag) and (5) (c), to an entity in the police chief's community or the sheriff's county that is entitled to request information under sub. (4), to any person requesting information under sub. (5) or to members of the general public if, in the opinion of the police chief or sheriff, providing that information is necessary to protect the public.

(2m) BULLETINS TO LAW ENFORCEMENT AGENCIES. (a) If an agency with jurisdiction confines a person under s. 301.046, provides a person entering the intensive sanctions program under s. 301.048 with a sanction other than a placement in a Type 1 prison or a jail, or releases a person from confinement in a state correctional institution or institutional care, and the person has, on one occasion only, been convicted or found not guilty or not responsible by reason of mental disease or defect for a sex offense or for a violation of a law of this state that is comparable to a sex offense, the agency with jurisdiction may notify the police chief of any community and the sheriff of any county in which the person will be residing, employed or attending school if the agency with jurisdiction determines that such notification is necessary to protect the public. Notification under this paragraph may be in addition to providing access to information under sub. (2) or to any other notification that an agency with jurisdiction is authorized to provide.

(am) If an agency with jurisdiction confines a person under s. 301.046, provides a person entering the intensive sanctions program under s. 301.048 with a sanction other than a placement in a Type 1 prison or a jail, or releases a person from confinement in a state correctional institution or institutional care, and the person has been found to be a sexually violent person under ch. 980 or has, on 2 or more separate occasions, been convicted or found not guilty or not responsible by reason of mental disease or defect for a sex offense or for a violation of a law of this state that is comparable to a sex offense, the agency with jurisdiction shall notify the police chief of any community and the sheriff of any county in which the person will be residing, employed or attending school. Notification under this paragraph shall be in addition to providing access to information under sub. (2) and to any other notification that an agency with jurisdiction is authorized to provide.

(at) Paragraphs (a) and (am) do not apply to a person if a court has determined under s. 301.45 (1m) that the person is not required to comply with the reporting requirements under s. 301.45.

(b) The notification under par. (a) or (am) shall be in the form of a written bulletin to the police chief or sheriff that contains all of the following:

1. The information specified in sub. (2) (b).

1m. Notice that, beginning on June 1, 2001, information concerning persons registered under s. 301.45 will be available on the Internet site established by the department under sub. (5n).

2. Any other information that the agency with jurisdiction determines is necessary to assist law enforcement officers or to protect the public. Information under this subdivision may include a photograph of the person, other identifying information and a description of the person's patterns of violation.

(c) A police chief or sheriff who receives a bulletin under this subsection may provide any of the information in the bulletin, other than information specified in subs. (4) (ag) and (5) (c), to an entity in the police chief's community or the sheriff's county that is entitled to request information under sub. (4), to any person requesting information under sub. (5) or to members of the general public if, in the opinion of the police chief or sheriff, providing that information is necessary to protect the public.

(3) NOTIFICATION OF VICTIMS. (a) In this subsection:

1. "Member of the family" means spouse, child, parent, sibling or legal guardian.

2. "Victim" means a person against whom a crime has been committed.

(b) When a person is registered under s. 301.45 (2) or when the person informs the department of a change in information under s. 301.45 (4), the department shall make a reasonable attempt to notify the victim or a member of the victim's family who has, according to the records of the department or the information provided under par. (d), requested to be notified about a person required to register under s. 301.45.

(c) The notice under par. (b) shall be a written notice to the victim or member of the victim's family that the person required to register under s. 301.45 and specified in the information provided under par. (d) has been registered or, if applicable, has provided the department with updated information under s. 301.45 (4). The notice shall contain the information specified in sub. (2) (b) 1., 5., 6. and 10. or, if applicable, the updated information.

(d) The department of health and family services shall provide the department with access to the names of victims or the family members of victims who have completed cards requesting notification under s. 971.17 (6m) or 980.11.

(e) In addition to receiving the notice provided under par. (c), a person who receives notice under par. (b) may request that the department provide him or her with any of the information specified in sub. (2) (b) concerning the person required to register under s. 301.45.

(4) ACCESS TO INFORMATION FOR AGENCIES AND ORGANIZATIONS OTHER THAN LAW ENFORCEMENT AGENCIES. (a) Any of the following entities may request, in a form and manner specified by the department, information from the department concerning persons registered under s. 301.45:

1. A public or private elementary or secondary school.

2. A day care provider that holds a license under s. 48.65, that is certified under s. 48.651, that holds a probationary license under s. 48.69 or that is established or contracted for under s. 120.13 (14).

3. A child welfare agency licensed under s. 48.60.

4. A group home licensed under s. 48.625.

5. A shelter care facility licensed under s. 938.22.

6. A foster home or treatment foster home licensed under s. 48.62.

7. A county department under s. 46.21, 46.215, 46.22, 46.23, 51.42 or 51.437.

8. An agency providing child welfare services under s. 48.48 (17) (b) or 48.57 (2).

8m. The department of justice.

9. The department of public instruction.

10. The department of health and family services.

11. A neighborhood watch program authorized under s. 60.23 (17m) or by the law enforcement agency of a city or village.

12. An organized unit of the Boy Scouts of America, the Boys' Clubs of America, the Girl Scouts of America or Camp Fire Girls.

13. The personnel office of a sheltered workshop, as defined in s. 104.01 (6).

14. Any other community–based public or private, nonprofit organization that the department determines should have access to information under this subsection in the interest of protecting the public.

(ag) The department may not provide any of the following in response to a request under par. (a):

1. Any information concerning a child who is required to register under s. 301.45.

2. If the person required to register under s. 301.45 is an adult, any information concerning a juvenile proceeding in which the person was involved.

(am) Subject to par. (ag), an entity may make a request under par. (a) for information concerning a specific person registered under s. 301.45.

(ar) Subject to par. (ag), an entity specified in par. (a) 11. may request the names of and information concerning all persons registered under s. 301.45 who reside, are employed or attend school in the entity's community, district, jurisdiction or other applicable geographical area of activity.

(b) In response to a request under par. (a), the department shall, subject to par. (ag), provide all of the following information:

1. The name of the person who has registered under s. 301.45, including any aliases the person has used.

2. The date of the person's conviction or commitment, and the county or, if the state is not this state, the state in which the person was convicted or committed.

4. The most recent date on which the information under s. 301.45 was updated.

(c) On the request of a police chief or a sheriff, the department shall provide the police chief or sheriff with a list of entities in the police chief's community or the sheriff's county that have requested information under par. (a) for use by the police chief or sheriff under sub. (2) (e) or (2m) (c).

(d) The department shall coordinate with the department of health and family services the sharing of address information of persons regarding whom notification bulletins are issued under sub. (2m) (a) or (am).

(5) ACCESS TO INFORMATION FOR GENERAL PUBLIC. (a) The department or a police chief or sheriff may provide the information specified in par. (b) concerning a specific person required to register under s. 301.45 to a person who is not provided notice or access under subs. (2) to (4) if, in the opinion of the department or the police chief or sheriff, providing the information is necessary to protect the public and if the person requesting the information does all of the following:

1. Submits a request for information in a form and manner prescribed by the department or the police chief or sheriff. The department or a police chief or sheriff may require that a person state, in his or her request under this subdivision, his or her purpose for requesting the information.

2. Specifies by name the person about whom he or she is requesting the information.

4. Provides any other information the police chief or sheriff considers necessary to determine accurately whether the person specified in subd. 2. is registered under s. 301.45.

(b) If the department or a police chief or sheriff provides information under par. (a), the department or police chief or sheriff shall, subject to par. (c), provide all of the following concerning the person specified in the request under par. (a) 2.:

1. The date of the person's conviction or commitment, and the county or, if the state is not this state, the state in which the person was convicted or committed.

3. The most recent date on which the information under s. 301.45 was updated.

4. Any other information concerning the person that the department or the police chief or sheriff determines is appropriate.

(c) The department or a police chief or sheriff may not provide any of the following under par. (a):

1. Any information concerning a child who is required to register under s. 301.45.

2. If the person required to register under s. 301.45 is an adult, any information concerning a juvenile proceeding in which the person was involved.

(5n) INTERNET ACCESS. No later than June 1, 2001, the department shall provide access to information concerning persons registered under s. 301.45 by creating and maintaining an Internet site and by any other means that the department determines is appropriate. The information provided through the Internet site shall be organized in a manner that allows a person using the Internet site to obtain the information that the department is required to provide the person under sub. (2), (2m), (3), (4) or (5) and other information that the department determines is necessary to protect the public. The department shall keep the information provided on the Internet site and in other means used to allow access to the information secure against unauthorized alteration.

(6) PERIOD OF NOTIFICATION OF AND ACCESS TO INFORMATION. (a) Except as provided in par. (b), the department or an agency with jurisdiction may provide notice of or access to information under subs. (2) to (5) concerning a person registered under s. 301.45 only during the period under s. 301.45 (5) or (5m) for which the person is required to comply with s. 301.45.

(b) The department or an agency with jurisdiction may provide access to any information collected under s. 301.45, regardless of whether the person is still required to be registered, to a law enforcement agency for law enforcement purposes.

(7) IMMUNITY. A person acting under this section is immune from civil liability for any good faith act or omission regarding the release of information authorized under this section. The immunity under this subsection does not extend to a person whose act or omission constitutes gross negligence or involves reckless, wanton or intentional misconduct.

(8) RULES. The department shall promulgate rules necessary to carry out its duties under this section.

(9) EFFECT ON OPEN RECORDS REQUESTS. This section does not prohibit the department from providing to a person, in response to that person's request under s. 19.35 to inspect or copy records of the department, information that is contained in the sex offender registry under s. 301.45 concerning a person who is in the custody or under the supervision of the department if that information is also contained in records of the department, other than the sex offender registry, that are subject to inspection or copying under s. 19.35.

History: 1995 a. 440; 1997 a. 6, 27, 130, 181, 237, 283; 1999 a. 89; 2001 a. 16.
Cross Reference: See also s. DOC 332.01, Wis. adm. code.

Sections 301.45 and 301.46 do not occupy the field in regulating the dissemination of sex offender registration information and do not prohibit a probation agent from requiring a probationer to inform the probationer's immediate neighbors of his or her status as a convicted sex offender, which was not unreasonable. State ex rel. Kaminski v. Schwarz, 2001 WI 94, 245 Wis. 2d 310, 630 N.W.2d 164.

301.47 Sex offender name changes prohibited. (1) In this section, "sex offender" means a person who is subject to s. 301.45 (1g) but does not include a person who, as a result of a proceeding under s. 301.45 (1m), is not required to comply with the reporting requirements of s. 301.45.

(2) A sex offender may not do any of the following before he or she is released, under s. 301.45 (5) or (5m), from the reporting requirements of s. 301.45:

(a) Change his or her name.

(b) Identify himself or herself by a name unless the name is one by which the person is identified with the department.

NOTE: Pars. (a) and (b) were created as subds. 1. and 2. by 2003 Wis. Act 52 and renumbered by the revisor under s. 13.93 (1) (b).

(3) Whoever intentionally violates sub. (2) is subject to the following penalties:

(a) Except as provided in par. (b), the person is guilty of a Class H felony.

(b) The person may be fined not more than $10,000 or imprisoned for not more than 9 months or both if all of the following apply:

1. The person was ordered under s. 51.20 (13) (ct) 1m., 938.34 (15m) (am), 938.345 (3), 971.17 (1m) (b) 1m., or 973.048 (1m) to comply with the reporting requirements under s. 301.45 based on a finding that he or she committed or solicited, conspired, or attempted to commit a misdemeanor.

2. The person was not convicted of another offense under this section before committing the present violation.

(4) The department shall make a reasonable attempt to notify each person required to comply with the reporting requirements under s. 301.45 of the prohibition in sub. (2), but neither the department's failure to make such an attempt nor the department's

failure to notify a person of that prohibition is a defense to a prosecution under this section.

History: 2003 a. 52; s. 13.93 (1) (b).