SECTION 90. 980.034 of the statutes is created to read:

980.034 Change of place of trial or jury from another county. (1) A person who is the subject of a petition filed under s. 980.02 or who has been committed under this chapter may move to change the place of a jury trial under s. 980.05 on the ground that an impartial trial cannot be had in the county in which the trial is set to be held. The motion shall be made within 20 days after the completion or waiver of the probable cause hearing under s. 980.04 (2), whichever is applicable, except that it may be made after that time for cause.

(2) The motion shall be in writing and supported by affidavit which shall state evidentiary facts showing the nature of the prejudice alleged. The petitioner may file counter affidavits.

(3) If the court determines that there exists in the county where the action is pending such prejudice that a fair trial cannot be had, it shall, except as provided in sub. (4), order that the trial be held in any county where an impartial trial can be had. Only one change may be granted under this subsection. The judge who orders the change in the place of trial shall preside at the trial. Preliminary matters before trial may be conducted in either county at the discretion of the court.

(4) (a) Instead of changing the place of trial under sub. (3), the court may require the selection of a jury under par. (b) if all of the following apply:

1. The court will sequester the jurors during the trial.

2. There are grounds for changing the place of trial under sub. (1).

3. The estimated cost to the county of using the procedure under this subsection is less than the estimated cost to the county of holding the trial in another county.

(b) A court that proceeds under this subsection shall follow the procedure under sub. (3) until the jury is chosen in the 2nd county. At that time, the proceedings shall

return to the original county using the jurors selected in the 2nd county. The original county shall reimburse the 2nd county for all applicable costs under s. 814.22.

NOTE: Creates new s. 980.034 that: (1) specifies that the general statutory "change of venue" provision does not apply to SVP proceedings; and (2) establishes a change of venue procedure specific to ch. 980 proceedings. Under the bill, the person who is the subject of a commitment petition or who has been committed as an SVP may move for a change of the place of a jury trial on the ground that an impartial jury cannot be had in the county in which the trial is set to be held. If the court determines that there exists in the county such prejudice that a fair trial cannot be had, it must, with one exception, order that the trial be held in any county where an impartial trial can be had. Only one change may be granted and the judge who orders the change in the place of trial must preside over the trial.

Alternatively, instead of changing the place of the trial, the court may order that the jury be selected in another county if all of the following apply:

1. The court will sequester jurors during the trial.
2. There are grounds for changing the place of the trial.
3. The estimated cost to the county of using an alternate jury is less than the estimated cost to the county of changing the place of the trial.

SECTION 91. 980.036 of the statutes is created to read:

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

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

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

(2) WHAT A PROSECUTING ATTORNEY MUST DISCLOSE TO A PERSON SUBJECT TO THIS CHAPTER. Upon demand, a prosecuting attorney shall disclose to a person subject to this chapter or his or her attorney, and permit the person subject to this chapter or his or her attorney to inspect and copy or photograph, all of the following materials and information, if the material or information is within the possession, custody, or control of the state:

(a) Any written or recorded statement made by the person subject to this chapter concerning the allegations in the petition filed under s. 980.02 or concerning

other matters at issue in the trial or proceeding and the names of witnesses to the written statements of the person subject to this chapter.

(b) A written summary of all oral statements of the person subject to this chapter that the prosecuting attorney plans to use at the trial or proceeding and the names of witnesses to the oral statements of the person subject to this chapter.

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

(d) A copy of the criminal record of the person subject to this chapter.

(e) A list of all witnesses whom the prosecuting attorney intends to call at the trial or proceeding, together with their addresses. This paragraph does not apply to rebuttal witnesses or witnesses called for impeachment only.

(f) Any relevant written or recorded statements of a witness listed under par. (e), including all of the following:

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

2. Any reports prepared in accordance with s. 980.031 (5).

(g) The criminal record of a witness listed under par. (e) that is known to the prosecuting attorney.

(h) The results of any physical or mental examination or any scientific or psychological test, instrument, experiment, or comparison that the prosecuting attorney intends to offer in evidence at the trial or proceeding, and any raw data that were collected, used, or considered in any manner as part of the examination, test, instrument, experiment, or comparison.

(i) Any physical or documentary evidence that the prosecuting attorney intends to offer in evidence at the trial or proceeding.

(j) Any exculpatory evidence.

(3) WHAT A PERSON SUBJECT TO THIS CHAPTER MUST DISCLOSE TO THE PROSECUTING ATTORNEY. Upon demand, a person who is subject to this chapter or his or her attorney shall disclose to the prosecuting attorney, and permit the prosecuting attorney to inspect and copy or photograph, all of the following materials and information, if the material or information is within the possession, custody, or control of the person who is subject to this chapter or his or her attorney:

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

(b) Any relevant written or recorded statements of a witness listed under par. (a), including any reports prepared in accordance with s. 980.031 (5).

(c) The criminal record of a witness listed under par. (a) if the criminal record is known to the attorney for the person who is subject to this chapter.

(d) The results of any physical or mental examination or any scientific or psychological test, instrument, experiment, or comparison that the person who is subject to this chapter intends to offer in evidence at the trial or proceeding, and any raw data that were collected, used, or considered in any manner as part of the examination, test, instrument, experiment, or comparison.

(e) Any physical or documentary evidence that the person who is subject to this chapter intends to offer in evidence at the trial or proceeding.

(3m) WHEN DISCLOSURE MUST BE MADE. A party required to make a disclosure under this section shall do so within a reasonable time after the probable cause hearing and within a reasonable time before a trial under s. 980.05, if the other party's demand is made in connection with a trial. If the demand is made in

connection with a proceeding under s. 980.07 (7), 980.09 (2m), or 980.093 (3), the party shall make the disclosure within a reasonable time before the start of that proceeding.

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

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

(6) PROTECTIVE ORDER. Upon motion of a party, the court may at any time order that discovery, inspection, or the listing of witnesses required under this section be denied, restricted, or deferred, or make other appropriate orders. If the prosecuting attorney or the attorney for a person subject to this chapter certifies that listing a witness under sub. (2) (e) or (3) (a) may subject the witness or others to physical or economic harm or coercion, the court may order that the deposition of the witness be taken under s. 967.04 (2) to (6). The name of the witness need not be divulged prior to the taking of such deposition. If the witness becomes unavailable or changes his or her testimony, the deposition shall be admissible at trial as substantive evidence.

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

(8) CONTINUING DUTY TO DISCLOSE. If, after complying with a requirement of this section, and before or during trial, a party discovers additional material or the names of additional witnesses requested that are subject to discovery, inspection, or production under this section, the party shall promptly notify the other party of the existence of the additional material or names.

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

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

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

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

NOTE: Creates, in new s. 980.036, provisions that are specific to discovery in proceedings relating to SVPs and specifically provides that the general discovery process in civil actions does not apply in ch. 980, stats., proceedings. Under the bill:

1. Upon demand, a *PA must disclose* and permit the person or the person's attorney to inspect and copy or photograph all of the following if it is in the possession, custody, or control of the state:

a. Any written or recorded statement made by the person concerning the allegations in a petition to commit the person as an SVP or concerning other matters at issue in the trial or proceeding.

b. A written summary of all oral statements of the person that the PA plans to use in the course of the trial or proceeding.

c. Evidence obtained by intercepting any oral communication that the PA intends to use as evidence.

d. A copy of the person's criminal record.

e. A list of all witnesses whom the PA intends to call, except rebuttal or impeachment witnesses.

f. Any relevant written or recorded statements of a witness.

g. The results of any physical or mental examination or any scientific or psychological test, instrument, experiment, or comparison that the PA intends to offer in evidence and any raw data that were collected, used, or considered in any manner as part of the examination, test, instrument, experiment, or comparison.

h. The criminal record of a witness for the state that is known to the PA.

i. Any physical or documentary evidence that the PA intends to offer as evidence.

j. Any exculpatory evidence.

2. Upon demand, *the person who is subject to SVP proceedings must disclose* all of the following:

a. A list of all witnesses whom the person intends to call.

b. Any relevant written or recorded statements of a witness, except rebuttal or impeachment witnesses.

c. The results of any physical or mental examination or any scientific or psychological test, instrument, experiment, or comparison that the person intends to offer as evidence and any raw data that were collected, used, or considered in any manner as part of the examination, test, instrument, experiment, or comparison.

d. The criminal record of a witness for the person that is known to the person's attorney.

e. Any physical or documentary evidence that the person intends to offer as evidence.

3. If, subsequent to compliance with these requirements, and prior to or during trial, a party discovers additional material or the names of additional witnesses, the party must promptly notify the other party of the existence of the additional materials or names.

4. The court must exclude any witness not listed or evidence not presented for inspection unless good cause is shown for failure to comply. The court may advise the jury of the nonresponsiveness of a party.

SECTION 92. 980.038 of the statutes is created to read:

980.038 Miscellaneous procedural provisions. (1) MOTIONS CHALLENGING JURISDICTION OR COMPETENCY OF COURT OR TIMELINESS OF PETITION. (a) A motion challenging the jurisdiction or competency of the court or the timeliness of a petition filed under s. 980.02 shall be filed within 10 days after the court holds the probable cause hearing under s. 980.04 (2). Failure to file a motion within the time specified

in this paragraph waives the right to challenge the jurisdiction or competency of the court or the timeliness of a petition filed under s. 980.02.

(b) Notwithstanding s. 801.11, a court may exercise personal jurisdiction over a person who is the subject of a petition filed under s. 980.02 even though the person is not served as provided under s. 801.11 (1) or (2) with a verified petition and summons or with an order for detention under s. 980.04 (1) and the person has not had a probable cause hearing under s. 980.04 (2).

(2) EVIDENCE OF REFUSAL TO PARTICIPATE IN EXAMINATION. (a) At any hearing under this chapter, the state may present evidence or comment on evidence that a person who is the subject of a petition filed under s. 980.02 or a person who has been committed under this chapter refused to participate in an examination of his or her mental condition that was being conducted under this chapter or that was conducted for the purpose of evaluating whether to file a petition before the petition under s. 980.02 was filed.

(b) A licensed physician, licensed psychologist, or other mental health professional may indicate in any written report that he or she prepares in connection with a proceeding under this chapter that the person whom he or she examined refused to participate in the examination.

(3) TESTIMONY BY TELEPHONE OR LIVE AUDIOVISUAL MEANS. Unless good cause to the contrary is shown, proceedings under ss. 980.04 (2) (a) and 980.08 (5) (d) may be conducted by telephone or audiovisual means, if available. If the proceedings are required to be reported under SCR 71.02 (2), the proceedings shall be reported by a court reporter who is in simultaneous voice communication with all parties to the proceeding. Regardless of the physical location of any party to the telephone call, any action taken by the court or any party has the same effect as if made in open court.

A proceeding under this subsection shall be conducted in a courtroom or other place reasonably accessible to the public. Simultaneous access to the proceeding shall be provided to a person entitled to attend by means of a loudspeaker or, upon request to the court, by making the person party to the telephone call without charge.

(4) MOTIONS FOR POSTCOMMITMENT RELIEF; APPEAL. (a) A motion for postcommitment relief by a person committed under s. 980.06 shall be made in the time and manner provided in ss. 809.30 and 809.40. An appeal by a person who has been committed under s. 980.06 from a final order under s. 980.06, 980.08, or 980.09 or from an order denying a motion for postcommitment relief or from both shall be taken in the time and manner provided in ss. 808.04 (3), 809.30, and 809.40. If a person is seeking relief from an order of commitment under s. 980.06, the person shall file a motion for postcommitment relief in the trial court prior to an appeal unless the grounds for seeking relief are sufficiency of the evidence or issues previously raised.

(b) An appeal by the state from a final judgment or order under this chapter may be taken to the court of appeals within the time specified in s. 808.04 (4) and in the manner provided for civil appeals under chs. 808 and 809.

(5) FAILURE TO COMPLY WITH TIME LIMITS; EFFECT. Failure to comply with any time limit specified in this chapter does not deprive the circuit court of personal or subject matter jurisdiction or of competency to exercise that jurisdiction. Failure to comply with any time limit specified in this chapter is not grounds for an appeal or grounds to vacate any order, judgment, or commitment issued or entered under this chapter. Failure to object to a period of delay or a continuance waives the time limit that is the subject of the period of delay or continuance.

(6) ERRORS AND DEFECTS NOT AFFECTING SUBSTANTIAL RIGHTS. The court shall, in every stage of a proceeding under this chapter, disregard any error or defect in the pleadings or proceedings that does not affect the substantial rights of either party.

NOTE: Creates s. 980.038, providing that:

1. Notwithstanding the normal process for gaining personal jurisdiction in a judicial proceeding, a court may exercise personal jurisdiction over the subject of an SVP petition even though the person is not served under the normal process with a verified petition and summons or served with an order for detention and the person has not had a probable cause hearing.

2. A motion for post–commitment relief by an SVP or an appeal from a final order or from an order denying a motion for post–commitment relief must follow criminal appellate procedure.

3. An appeal by the state from a final judgment or order must follow the procedure for civil appeals.

4. The state is permitted to present evidence or comment on evidence that a person who is the subject of an SVP commitment petition, or that a person who has been committed, refused to participate in an examination of his or her mental condition that was being conducted as part of an SVP proceeding or that was conducted before the commitment petition was filed for the purpose of evaluating whether to file a petition. The bill does not affect the general right to remain silent at any hearing relating to an SVP commitment.

The bill also creates new provisions relating to failure to comply with time limits, specifying that:

1. Failure to comply with any time limit specified in ch. 980, stats., does not deprive the court of personal or subject matter jurisdiction or of competency to exercise that jurisdiction.

2. Failure to comply with any time limit is not grounds for an appeal or grounds to vacate any order, judgment, or commitment issued or entered.

3. Failure to object to a period of delay or a continuance waives the time limit that is the subject of the period of delay or continuance.

SECTION 93. 980.04 (1) of the statutes is amended to read:

980.04 **(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 probable 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~~ petition is dismissed after a hearing under sub. (3) or after a trial under s. 980.05 (5) or until the effective date of a commitment order under s. 980.06, whichever is applicable.

SECTION 94. 980.04 (2) of the statutes is renumbered 980.04 (2) (a) and amended to read:

980.04 **(2)** (a) 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~~

(b) 1. Except as provided in subd. 2., the court shall hold the probable cause hearing within ~~a reasonable time~~ 30 days, excluding Saturdays, Sundays, and legal holidays, after the filing of the petition, unless that time is extended by the court for good cause shown upon its own motion, the motion of any party, or the stipulation of the parties.

SECTION 95. 980.04 (2) (b) 2. of the statutes is created to read:

980.04 **(2)** (b) 2. If the person named in the petition is in custody under a sentence, dispositional order, or commitment and the probable cause hearing will be held after the date on which the person is scheduled to be released or discharged from the sentence, dispositional order, or commitment, the probable cause hearing under par. (a) shall be held no later than 10 days after the person's scheduled release or

discharge date, excluding Saturdays, Sundays, and legal holidays, unless that time is extended by the court for good cause shown upon its own motion, the motion of any party, or the stipulation of the parties.

NOTE: Revises current law [s. 980.04 (2)] which specifies that: (1) whenever an SVP commitment petition is filed, the court must hold a hearing to determine whether there is probable cause to believe that the person named in the petition is an SVP; (2) if the person 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; and (3) if the person is not in custody, the court must hold the hearing within a reasonable time after the filing of the petition.

The bill:

1. Requires the court, in general, to hold the probable cause hearing within 30 days, excluding Saturdays, Sundays, and legal holidays, after the filing of the petition, unless that time is extended by the court for good cause shown.

2. If the person named in the petition is in custody and the probable cause hearing will be held after the date on which the person is scheduled to be released or discharged, requires the hearing to be held no later than 10 days after the person's scheduled release or discharge date, excluding Saturdays, Sundays, and legal holidays, unless that time is extended by the court for good cause. See, also, SECTION 96.

SECTION 96. 980.04 (3) of the statutes is amended to read:

980.04 **(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 specified by the department for an evaluation by the department 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.

SECTION 97. 980.04 (5) of the statutes is amended to read:

980.04 **(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) (a), refer the person to the authority for indigency determinations under s. 977.07 (1) and, if applicable, the appointment of counsel.

SECTION 98. 980.05 (1) of the statutes is amended to read:

980.05 **(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~~ 90 days after the date of the probable cause hearing under s. 980.04 (2) (a). The court may grant ~~a continuance~~ one or more continuances of the trial date for good cause upon its own motion, the motion of any party or the stipulation of the parties.

NOTE: Revises s. 980.05 (1), stats., to require the trial to commence no later than *90 days* after the probable cause hearing (45 days under current law) and permits the court to grant one or more continuances of the trial date for good cause (current law permits granting "a continuance").

SECTION 99. 980.05 (1m) of the statutes is repealed.

NOTE: Specifies, by repealing s. 980.05 (1m), that constitutional rights available to a defendant in a criminal proceeding are not necessarily available to the person who is the subject to an SVP commitment petition. Current s. 980.05 (1m), stats., specifies that: (1) at the trial to determine whether the person is a "sexually violent person," all rules of evidence in criminal actions apply; and (2) all constitutional rights available to a defendant in a criminal proceeding are available to the person.

SECTION 100. 980.05 (2) of the statutes is amended to read:

980.05 **(2)** The person who is the subject of the petition, the person's attorney, or the ~~department of justice or the district attorney~~ petitioner 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 (2) (a). 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,~~ petitioner 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.

SECTION 101. 980.05 (2m) of the statutes is created to read:

980.05 **(2m)** (a) At a jury trial under this section, juries shall be selected and treated in the same manner as they are selected and treated in civil actions in circuit court, except that, notwithstanding s. 805.08 (3), each party shall be entitled to 4

peremptory challenges or, if the court orders additional jurors to be selected under s. 805.08 (2), to 5 peremptory challenges. A party may waive in advance any or all of its peremptory challenges and the number of jurors called under par. (b) shall be reduced by this number.

(b) The number of jurors selected shall be the number prescribed in sub. (2), unless a lesser number has been stipulated to and approved under par. (c) or the court orders that additional jurors be selected. That number of jurors, plus the number of peremptory challenges available to all of the parties, shall be called initially and maintained in the jury box by calling others to replace jurors excused for cause until all jurors have been examined. The parties shall exercise in their order, the state beginning, the peremptory challenges available to them, and if any party declines to challenge, the challenge shall be made by the clerk by lot.

(c) At any time before the verdict in a jury trial under this section, the parties may stipulate in writing or by statement in open court, on the record, with the approval of the court, that the jury shall consist of any number less than the number prescribed in sub. (2).

NOTE: Revises current law specifying that: (1) the person who is the subject of an SVP commitment petition, the person's attorney, DOJ, or the DA may request that the trial be to a jury of 12 in order to determine whether the person who is the subject of a commitment petition is an SVP; (2) the court may also, on its own motion, require that the trial be to a jury of 12; and (3) a verdict of a jury is not valid unless it is unanimous.

The bill creates s. 980.05 (2m) to provide:

1. For a jury of 12, but the parties may stipulate to a smaller number of jurors.
2. That juries must be selected and treated in the same manner as they are selected and treated in civil actions in circuit court, except that each party is entitled to 4 peremptory challenges (instead of 3, as for other civil actions), unless fewer jurors are to serve on the jury.

SECTION 102. 980.05 (3) (a) of the statutes is amended to read:

980.05 **(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 that the person who is the subject of the petition is a sexually violent person.

NOTE: Revises s. 980.05 (3) (a) to clarify that in a trial under ch. 980, the petitioner's burden is to prove beyond a reasonable doubt *that the person is an SVP* (and not the general "allegations in the petition" ~~under current law~~).

SECTION 103. 980.05 (3) (b) of the statutes is amended to read:

980.05 **(3)** (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) or (bm), the state is required to prove beyond a reasonable doubt that the alleged sexually violent act was sexually motivated.

SECTION 104. 980.07 (1) of the statutes is renumbered 980.07 (1) (intro.) and amended to read:

980.07 **(1)** (intro.) If a person ~~has been~~ is committed under s. 980.06 and has not been discharged under s. 980.09 (3) or 980.093, the department shall conduct an examination of his or her mental condition within ~~6~~ 12 months after ~~an~~ the date of the initial commitment order under s. 980.06 and again thereafter at least once each 12 months ~~for the purpose of determining~~ to determine 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~~ any of the following:

(a) An examiner as provided under s. ~~980.03 (4)~~ 980.031 (3), except that the court is not required to appoint an examiner if supervised release or discharge is supported by the examination conducted by the department. The county shall pay

the costs of an examiner appointed under this paragraph as provided under s. 51.20 (18) (a).

NOTE: Provides that a court is not required to appoint an examiner at the request of a petitioner for supervised release when supervised release or discharge is supported by the examination conducted by DHFS. See, also, NOTE to SECTION 108.

SECTION 105. 980.07 (1) (b) of the statutes is created to read:

980.07 **(1)** (b) An attorney as provided under s. 980.03 (2) (a).

SECTION 106. 980.07 (1g) of the statutes is created to read:

980.07 **(1g)** Any examiners under this section 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).

SECTION 107. 980.07 (1m) of the statutes is created to read:

980.07 **(1m)** At the time for any examination under sub. (1), the department shall prepare a treatment report based on its treating professionals' evaluation of the person and shall provide a copy of the report to any examiner conducting an examination under sub. (1). The report shall consider all of the following:

(a) The specific factors associated with the person's risk for committing another sexually violent offense.

(b) Whether the person has made significant progress in treatment or has refused treatment.

(c) The ongoing treatment needs of the person.

(d) Any specialized needs or conditions associated with the person that must be considered in future treatment planning.

NOTE: See the NOTE to SECTION 108.

SECTION 108. 980.07 (2) of the statutes is amended to read:

980.07 **(2)** Any examiner conducting an examination under ~~this section~~ sub. (1) 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 department. The report shall include an assessment of the risk that the person will reoffend, whether the risk can be safely managed in the community if reasonable conditions of supervision and security are imposed, and whether the treatment that the person needs is available in the community. The department shall then send the treatment report, the written examination report, and a written statement from the department recommending continued institutional care, supervised release, or discharge to the court that committed the person under s. 980.06. A copy of each report and the department's recommendation shall be provided also to the petitioner and to the person's attorney as soon as he or she is retained or appointed. If the department concludes that the person does not meet the criteria for commitment as a sexually violent person, the department shall petition for discharge in accordance with the provisions of s. 980.09 (1).

NOTE: Revises, in SECTIONS 104 to 108, current law requiring DHFS to conduct an examination of the mental condition of each person who has been committed as an SVP within 6 months of the initial commitment and every 12 months thereafter to determine whether the person has made sufficient progress for the court to consider whether the person should be placed on supervised release or discharged. Current law requires any examiner conducting an examination to prepare a written report of the examination no later than 30 days after the date of the examination, and requires the report to be placed in the person's medical records and a copy must be given to the court.

Under the bill:

1. DHFS must conduct the examination *within 12 months* after the date of the initial commitment order and every 12 months thereafter.

2. At the time of the examination, DHFS must prepare a treatment report based on its treating professionals' evaluation of: (a) the specific factors associated with the person's risk for committing another sexually violent offense; (b) whether the person has made significant progress in treatment or has refused treatment; (c) the ongoing treatment needs of the person; and (d) any specialized needs or conditions associated with the person that must be considered in future treatment planning. A copy of the report must be given to the examiner.

3. The examiner's report must include an assessment of the risk that the person will reoffend, whether the risk can be safely managed in the community if reasonable conditions of supervision and security are imposed, and whether the treatment that the person needs is available in the community. The report must be prepared no later than 30 days after the date of the examination and must be provided to DHFS.

4. DHFS must send the treatment report, the written examination report, and a written statement from DHFS recommending either continued institutional care, supervised release, or discharge to the court. Copies of these documents must also be provided to the petitioner and to the person's attorney.

5. If the report concludes that the person does not meet the criteria for commitment as an SVP, DHFS must petition for discharge.

SECTION 109. 980.07 (3) of the statutes is amended to read:

980.07 **(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. Any report ordered under this subsection shall conform to subs. (1m) and (2).

SECTION 110. 980.07 (4) to (7) of the statutes are created to read:

980.07 **(4)** (a) Within 30 days after the filing of the reexamination report, treatment report, and recommendation under this section, the person subject to the commitment or the petitioner may object to the department's recommendation under sub. (2) by filing a written objection with the court.

(b) If no timely objection is filed under par. (a), one of the following applies:

1. If the department's recommendation under sub. (2) is for continued institutional care, the department's recommendation shall be implemented without a hearing.

2. If the department's recommendation under sub. (2) is for supervised release or discharge, the court shall proceed under sub. (7) or s. 980.09.

(5) (a) If the person files a timely objection without counsel, the court shall serve a copy of the objection and any supporting documents on the petitioner. If the

person objects through counsel, his or her attorney shall serve the petitioner. If the petitioner objects, it shall serve the person or his or her counsel.

(b) If the person filing an objection is requesting discharge, the court may not proceed under sub. (7). The court may proceed under s. 980.093 if the person files a petition under that section.

(6) The petitioner may employ experts or professional persons to support or oppose any recommendation.

(6m) Subject to s. 980.03 (2) (a), the court, before proceeding under sub. (7), shall 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 is not represented by counsel. The determination of indigency and the appointment of counsel shall be done as soon as circumstances permit.

(7) (a) Except as provided in subs. (4) (b) 1. and (5) (b), unless the department recommends discharge, the court, without a jury, shall hold a hearing to determine whether to authorize supervised release. The court shall hold the hearing within 30 days after the date on which objections are due under sub. (4), 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).

(am) The department of justice shall represent the department of health and family services at any hearing under this subsection unless the departments have adverse interests. If the departments have adverse interests, the department of health and family services shall be represented at the hearing by its agency counsel or by an attorney that it retains.

(b) The court shall determine from all of the evidence whether to continue institutional care and, if not, what the appropriate placement would be for the person

while on supervised release. 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, whether the person has demonstrated significant progress in his or her treatment, whether the person has refused treatment, and, if the court were to authorize supervised release, where the person would live, how the person would support himself or herself, and what arrangements would be available to ensure that the person would have access to and would participate in necessary treatment.

(bm) If the court finds that all of the criteria in par. (b) are met, the court shall select a county to prepare a report under par. (c). Unless the court has good cause to select another county, the court shall select the person's county of residence. A preliminary decision by the court under this paragraph or under par. (cm) to refer a case to a county department or the court's failure to make such a decision shall not affect the court's power to authorize or not authorize supervised release under this subsection.

(c) The court shall order the county department under s. 51.42 in the county of intended placement to prepare a report, either independently or with the department of health and family services, identifying prospective residential options for community placement. In identifying prospective residential options, the county 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). The county department shall submit its report to the department within 30 days following the court order.

(cm) If the court determines that the prospective residential options identified in the report under par. (c) are inadequate, the court shall select another county to prepare a report under par. (c).

(d) The court may order that a person be placed on supervised release only if it finds, based on all of the reports, trial records, and evidence presented, that all of the following apply:

1. The person who will be placed on supervised release meets all of the following criteria:

a. The person has made sufficient progress in treatment such that the risk that he or she will reoffend can be safely managed in the community and the person's treatment progress can be sustained in the community.

b. The person's risk for reoffense has been reduced to a level that it is not likely that the person will reoffend if so placed.

2. Treatment is reasonably available in the community and the person who will be placed on supervised release will be treated by a provider who is qualified to provide the necessary treatment in this state.

3. The provider presents a specific course of treatment for the person who will be placed on supervised release, agrees to assume responsibility for the person's treatment, agrees to comply with the rules and conditions of supervision imposed by the court and the department, agrees to report on the person's progress to the court on a regular basis, and agrees to report any violations of supervised release immediately to the court and the petitioner.

4. The person who will be placed on supervised release has housing arrangements that are sufficiently secure to protect the community, and the person

or agency that is providing the housing to the person who will be placed on supervised release agrees in writing to the following conditions:

a. To accept the person who will be placed supervised release.

b. To provide or allow for the level of safety that the court requires.

c. To report immediately to the court and the petitioner any unauthorized absence of the person who will be placed on supervised release from the housing arrangement to which the person has been assigned. This subd. 4. c. applies only if the person or agency that is providing the housing is a state or local government agency or is licensed by the department.

5. The person who will be placed on supervised release will comply with the provider's treatment requirements and all of the requirements that are imposed by the department and the court.

6. The department has made provisions for the necessary services, including sex offender treatment, other counseling, medication, community support services, residential services, vocational services, and alcohol or other drug abuse treatment.

7. The degree of supervision and ongoing treatment needs of the person who will be placed on supervised release that is required for the safe management of him or her in the community can be provided through the allocation of a reasonable level of resources.

NOTE: Creates new s. 980.07 (4) to (7) revising current law relating to requests for supervised release. Under current law:

1. A person who is committed as an SVP may petition the committing court to authorize 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 petition on the person's behalf at any time.

2. Within 20 days after receiving the petition, the court must appoint one or more examiners who have specialized knowledge determined by the court to be appropriate, who must examine the person and furnish a written report to the court within 30 days after the appointment. If any examiner believes that the person is appropriate for

supervised release, the examiner must report on the type of treatment and services that the person may need while in the community on supervised release.

3. The court, without a jury, must hear the petition within 30 days after the examiner's report is filed, unless the time limit is waived by the petitioner.

4. The court must grant the petition unless the state proves by clear and convincing evidence that: (a) it is still likely that the person will engage in acts of sexual violence if the person is not continued in institutional care; or (b) the person has not demonstrated significant progress in his or her treatment or the person has refused treatment.

5. In making this decision, the court may consider: (a) The nature and circumstances of the behavior that was the basis of the allegation in the petition to commit the person; (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 if the person is a serious child sex offender.

6. If the court finds that the person is appropriate for supervised release, the court must notify DHFS. DHFS must 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.

7. DHFS and the county department in the county of residence must prepare a plan that does all of the following: (a) identifies the treatment and services, if any, that the person will receive in the community; (b) addresses the person's need, if any, for supervision, counseling, medication, community support services, residential services, vocational services, and AODA treatment; and (c) specifies who will be responsible for providing the treatment and services identified in the plan.

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

The bill creates a new process for granting supervised release. As noted above, DHFS must recommend continued institutional care, supervised release, or discharge through the reexamination process. The new process is:

1. Within 30 days after the filing of the reexamination report, treatment report, and DHFS recommendation, the person subject to the SVP commitment or the petitioner may object to the recommendation by filing a written objection with the court.

2. If DHFS's recommendation is continued institutional care, and there is no objection, the recommendation is implemented without a hearing. If DHFS recommends discharge or the person files an objection requesting discharge, the court shall proceed with determining whether discharge is appropriate. Otherwise the court, without a jury, must hold a hearing to determine whether to authorize supervised release within 30 days after the date on which objections are due, unless the time limit is waived by the petitioner.

3. The court must determine from all of the evidence whether to continue institutional care and, if not, what the appropriate placement would be for the person while on supervised release. As under current law, in making this decision, the court may consider the following: (a) the nature and circumstances of the behavior that was the basis of the allegation in the commitment petition; (b) the person's mental history and present mental condition; (c) the person's progress in treatment; (d) the person's refusal to participate in treatment; and (e) if the court were to authorize supervised release, where the person would live, how the person would support himself or herself, and what arrangements would be available to ensure that the person would have access to and would participate in treatment.

4. The court must select a county to prepare a report on the person's prospective residential options. Unless the court has good cause to select another county, the court must select the person's county of residence.

5. The court must order the county department in the county of intended placement to prepare the report, either independently or with DHFS, identifying prospective residential options. In identifying prospective residential options, the county department must 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 DOC and regarding whom a sex offender notification bulletin has been issued. The county department must complete its report within 30 days following the court order.

6. If the court determines that the prospective residential options identified in the report are inadequate, the court must select one or more other counties to prepare a report.

7. The court may order that a person be placed on supervised release if it finds that all of the following apply:

a. The person who will be placed on supervised release: (1) has made sufficient progress in treatment such that the risk that the person will reoffend can be safely managed in the community and the progress can be sustained; and (2) the person's risk for reoffense has been reduced to a level that it is not likely that the person will reoffend if so placed.

b. That there is treatment reasonably available in the community and the person who will be placed on supervised release will be treated by a provider who is qualified to provide the necessary treatment in this state.

c. The provider presents a specific course of treatment for the person who will be placed on supervised release, agrees to assume responsibility for the person's treatment, agrees to comply with the rules and conditions of supervision imposed by the court and DHFS, agrees to report on the person's progress to the court on a regular basis, and agrees to report any violations of supervised release immediately to the court and the petitioner.

d. The person who will be placed on supervised release has housing arrangements that are sufficiently secure to protect the community, and the person or agency that is providing the housing to the person agrees in writing to accept the person, provide or allow for the level of safety the court requires, and, if the person or agency providing the housing is a state or local government agency or is licensed by DHFS, immediately report to the court and the petitioner any unauthorized absence of the person from the housing arrangement.

e. The person who will be placed on supervised release will comply with the provider's treatment requirements and all of the requirements that are imposed by DHFS and the court.

f. DHFS has made provisions for the necessary services, including sex offender treatment, other counseling, medication, community support services, residential services, vocational services, and AODA treatment.

g. The degree of supervision and ongoing treatment needs of the person who will be placed on supervised release that is required for the safe management for him or her in the community can be provided through the allocation of a reasonable level of resources.

SECTION 111. 980.08 of the statutes is repealed and recreated to read:

980.08 Supervised release; procedures, implementation, revocation. **(1)** If the court determines under s. 980.07 (7) that supervised release is appropriate, the court shall order the county department under s. 51.42 in the county of intended

placement to assist the department of health and family services in implementing the supervised release placement.

(2) The department shall file with the court any additional rules of supervision not inconsistent with the rules or conditions imposed by the court within 10 days of imposing the rule.

(3) If the department wishes to change a rule or condition of supervision imposed by the court, it must obtain the court's approval.

(4) An order granting supervised release places the person in the care, control, and custody of the department. The department shall arrange for the care, control, and treatment of the person in the least restrictive manner consistent with the requirements of the person and in accordance with the order for supervised release. Before a person is actually released under this section, the court shall 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.

(5) (a) If the department concludes that a person on supervised release, or awaiting placement on supervised release, violated or threatened to violate a rule of supervised release, it may petition for revocation of the order granting supervised release. The department may also detain the person.

(b) If the department concludes that a person on supervised release, or awaiting placement on supervised release, is a threat to the safety of others, it shall detain the person and petition for revocation of the order granting supervised release.

(c) If the department concludes that the order granting supervised release should be revoked, it shall file a statement alleging the violation and a petition to revoke the order for supervised release with the committing court and provide a copy of each to the regional office of the state public defender responsible for handling cases in the county where the committing court is located. If the department has detained the person under par. (a) or (b), the department shall file the statement and the petition and provide them to the state public defender within 72 hours after the detention, excluding Saturdays, Sundays, and legal holidays. The court shall refer the matter to the authority for indigency determinations under s. 977.07 (1) and appointment of counsel under s. 977.05 (4) (j). The determination of indigency and the appointment of counsel shall be done as soon as circumstances permit.

(d) The court shall hear the petition within 30 days, unless the hearing or time deadline is waived. A final decision on the petition to revoke shall be made within 90 days of the filing of the petition. Pending the final revocation hearing, the department may detain the person in the county jail or return him or her to institutional care.

(6) (a) If the court finds after a hearing, by clear and convincing evidence, that any rule has been violated and the court finds that the violation of the rule merits the revocation of the order granting supervised release, the court may revoke the order for supervised release and order that the person be placed in institutional care. The person shall remain in institutional care until he or she is discharged from the commitment or again placed on supervised release.

(b) If the court finds after a hearing, by clear and convincing evidence, that the safety of others requires that supervised release be revoked, the court shall revoke the order granting supervised release and order that the person be placed in

institutional care. The person shall remain in institutional care until he or she is discharged from the commitment or again placed on supervised release.

NOTE: Revises, by repealing and recreating s. 980.08, stats., current law relating to supervision of persons on supervised release. Under current law:

1. An order for supervised release places the person in the custody and control of DHFS. 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. A person on supervised release is subject to the conditions set by the court and to DHFS rules.

2. If DHFS alleges that a 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 DHFS rules. 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 for that court's county within 72 hours after the detention.

3. The court must hear the petition within 30 days, unless the deadline is waived by the detained person. 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 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 person be placed in an appropriate institution.

The bill modifies current law relating to revocation of supervised release as follows:

1. If DHFS concludes that a person on supervised release, or awaiting placement on supervised release, violated or threatened to violate a rule of supervised release, it may petition for revocation of the order granting supervised release.

2. As under current law, DHFS may detain a person for a violation or threatened violation. In addition, under the bill, if DHFS concludes that such a person is a threat to the safety of others, it must detain the person and petition for revocation of the order granting supervised release.

3. If DHFS concludes that the order granting supervised release should be revoked, it must file a statement alleging the violation and a petition to revoke the order with the committing court and provide a copy of each to the regional office of the state public defender within 72 hours after the detention. The court must hear the petition within 30 days, unless the hearing or time deadline is waived. A final decision on the petition must be made within 90 days of its filing.

4. If the court finds after a hearing, by clear and convincing evidence, that any rule has been violated and that the violation merits the revocation of the order granting supervised release, the court may revoke the order and order that the person be placed in institutional care. If the court finds by clear and convincing evidence that the safety of others requires that supervised release be revoked, the court must revoke the order granting supervised release and order that the person be placed in institutional care.

SECTION 112. 980.09 (title) of the statutes is amended to read:

980.09 (title) **Petition for discharge; ~~procedure~~ with department's approval.**

SECTION 113. 980.09 (1) (title) of the statutes is repealed.

SECTION 114. 980.09 (1) (a) of the statutes is renumbered 980.09 (1) and amended to read:

980.09 **(1)** If the ~~secretary~~ department determines at any time that a person committed under this chapter ~~is no longer~~ does not meet the criteria for commitment as a sexually violent person, the ~~secretary~~ department shall ~~authorize the person to~~ petition the committing court for discharge. The ~~person~~ department 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~~ 90 days after the date of receipt of the petition.

NOTE: Amends s. 980.09 (1), as renumbered, to:
1. Change the time limit for a hearing on a DHFS petition for discharge from within 45 days to within 90 days (after the date of receipt of the petition).
2. Require DHFS, not the person committed, to file the petition when the department determines that the person does not meet the criteria of an SVP.

SECTION 115. 980.09 (1) (b) of the statutes is renumbered 980.09 (2m) and amended to read:

980.09 **(2m)** At a hearing under this ~~subsection~~ section, 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~~ currently meets the criteria for commitment as a sexually violent person.

SECTION 116. 980.09 (1) (c) of the statutes is renumbered 980.09 (3) and amended to read:

980.09 **(3)** If the court is satisfied that the state has not met its burden of proof under ~~par. (b)~~ sub. (2m), 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)~~ sub. (2m), the court may proceed under 980.07 (7) (b) to (d) to determine~~, using the criterion specified in s. 980.08 (4) (b),~~ whether to modify the petitioner's existing commitment order by authorizing supervised release.

SECTION 117. 980.09 (2) of the statutes is repealed.

NOTE: Repeals the current provision regarding a discharge petition brought without the approval of DHFS. See the NOTE to SECTION 118 for the replacement to s. 980.09 (2).

SECTION 118. 980.093 of the statutes is created to read:

980.093 Petition for discharge ~~without department's approval~~. (1) PETITIONS IN GENERAL. A committed person may petition the committing court for discharge without the department's approval. The court shall deny the petition under this section without a hearing unless the petition alleges facts from which the court or jury may conclude the person's condition has changed so that the person does not meet the criteria for commitment as a sexually violent person.

(2) COURT REVIEW OF PETITION. The court shall review the petition within 30 days and the court may hold a hearing to determine if it contains facts from which the court or jury may conclude that the person does not meet the criteria for commitment as a sexually violent person. In determining under this subsection whether facts exist that might warrant such a conclusion, the court shall consider any current or past reports filed under s. 980.07, relevant facts and arguments in the petition and in the state's written response, arguments of counsel, and any supporting documentation provided by the person or the state. If the court determines that the petition does not contain facts from which a court or jury may

conclude that the person does not meet the criteria for commitment, the court shall deny the petition.

INS 75-3

(3) HEARING. The court shall hold a hearing within 90 days of the determination that the petition contains facts from which the court or jury may conclude that the person does not meet the criteria for commitment as a sexually violent person. The state has the burden of proving by clear and convincing evidence that the person meets the criteria for commitment as a sexually violent person.

(4) DISPOSITION. If the court or jury is satisfied that the state has not met its burden of proof under sub. (3), the petitioner shall be discharged from the custody of the department. If the court or jury is satisfied that the state has met its burden of proof under sub. (3), the court may proceed under s. 980.07 (7) (b) to (d) to determine whether to modify the petitioner's existing commitment order by authorizing supervised release.

NOTE: Creates new s. 980.093 revising the current law relating to discharge from commitment. Under current law:

1. If the secretary of DHFS determines at any time that a person is no longer an SVP, the secretary must authorize the person to petition the committing court for discharge. The court must hold a hearing within 45 days after receipt of the petition. The hearing must be before the court without a jury. The state has the burden of proving by clear and convincing evidence that the person is still an SVP.

2. If the court is satisfied that the state has not met its burden of proof, the petitioner must be discharged from the custody and supervision of DHFS. If the court is satisfied that the state has met its burden, the court may proceed to determine whether to modify the person's existing commitment order by authorizing supervised release.

3. A person may also petition the court for discharge from custody or supervision without the approval of the secretary of DHFS.

4. At the time of the person's reexamination, the secretary of DHFS must provide the person with written notice of the person's right to petition for discharge over the secretary's objections. 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 an SVP.

5. If the court determines at the probable cause hearing that probable cause exists to believe that the committed person is no longer an SVP, the court must set a hearing on the issue. The hearing must be to the court. The state has the right to have the person evaluated by experts chosen by the state. The state has the burden of proving by clear and convincing evidence that the committed person is likely to engage in acts of sexual violence or has not made significant progress in treatment or has refused treatment. If the court is satisfied that the state has not met its burden of proof, the petitioner must

be discharged from the custody and supervision of DHFS. If the court is satisfied that the state has met its burden, the court may proceed to determine whether to modify the person's existing SVP commitment order by authorizing supervised release.

The bill modifies the provisions relating to petitions for discharge that do not have DHFS's approval as follows:

1. The court must deny the petition without a hearing unless the petition alleges facts from which the court may conclude that the person's condition has changed so that the person does not meet the criteria for commitment as an SVP. In determining whether such facts exist, the court must consider any current or past reports filed in connection with a reexamination, relevant facts and arguments in the petition and in the state's written response, arguments of counsel, and any supporting documentation provided by the person or the state.

2. The court must hold a hearing within 90 days of the determination that the petition contains facts from which the court may conclude that the person does not meet the criteria for commitment as an SVP. Upon request, the hearing may be to a jury of 6. A verdict must be agreed to by at least 5 of the 6 jurors. The state has the burden of proving by clear and convincing evidence that the person meets the criteria for commitment. The bill specifies that the general rules of evidence are inapplicable at such hearings.

3. If the court is satisfied that the state has not met its burden of proof, the petitioner must be discharged from the custody and supervision of DHFS. If the court is satisfied that the state has met its burden, the court may proceed to determine whether to modify the person's existing commitment order by authorizing supervised release.

SECTION 119. 980.095 of the statutes is created to read:

980.095 Procedures for discharge hearings. (1) USE OF JURIES. (a) The district attorney or the department of justice, whichever filed the original petition, or the petitioner or his or her attorney may request that a hearing under s. 980.093 be to a jury of 6. A jury trial is deemed waived unless it is demanded within 10 days of the filing of the petition for discharge.

(b) Juries shall be selected and treated in the same manner as they are selected and treated in civil actions in circuit court. The number of jurors prescribed in par. (a), plus the number of peremptory challenges available to all of the parties, shall be called initially and maintained in the jury box by calling others to replace jurors excused for cause until all jurors have been examined. The parties shall exercise in their order, the state beginning, the peremptory challenges available to them, and if any party declines to challenge, the challenge shall be made by the clerk by lot.

(c) No verdict shall be valid or received unless at least 5 of the jurors agree to it.

(2) DEPARTMENT'S RIGHT TO BE HEARD. The department of justice shall represent the department of health and family services at any discharge hearing unless the departments have adverse interest. If the departments have adverse interests, the department of health and family services shall be represented at the hearing by its agency counsel or an attorney that it retains.

(3) POST VERDICT MOTIONS. Motions after verdict may be made without further notice upon receipt of the verdict.

(4) APPEALS. Any party may appeal an order under this subsection as a final order under chs. 808 and 809.

NOTE: Creates new s. 980.095 providing for a separate jury requirement for discharge hearings. Specifically, the DA or DOJ, whichever filed the original petition, or the petitioner may request that the discharge hearing be to a jury of 6. A jury trial is deemed waived unless it is demanded within 10 days after the filing of the petition for discharge. No verdict is valid unless it is agreed to by at least 5 of the jurors. See, also, the NOTE to SECTION 118.

SECTION 120. 980.10 of the statutes is repealed.

NOTE: Repeals a provision granting an additional method by which a committed person may petition a committing court for discharge at any time. However, under this provision, if a person has previously filed a petition for discharge without the secretary's approval and the court determined that the petition was frivolous or that the petitioner remained an SVP, than the court was required to deny any subsequent petition without a hearing until the petition contained facts upon which a court could find that the condition of the person had so changed that a hearing was warranted.

SECTION 121. 980.101 (2) (a) of the statutes is amended to read:

980.101 **(2)** (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.

SECTION 122. 980.11 (2) (intro.) of the statutes is amended to read:

980.11 **(2)** (intro.) If the court places a person on supervised release under s. 980.08 or discharges a person under s. 980.09 (3) or ~~980.10~~ 980.093, the department shall do all of the following:

SECTION 123. 980.12 (1) of the statutes is amended to read:

980.12 **(1)** Except as provided in ss. ~~980.03 (4)~~ 980.031 (3) and ~~980.08 (3)~~ 980.07 (1) (a), 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.

SECTION 124. 980.14 (title) of the statutes is created to read:

980.14 (title) **Immunity.**

SECTION 125. 980.14 (1) of the statutes is created to read:

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

NOTE: See the NOTE to SECTION 77.

SECTION 126. Initial applicability.

(1) This act first applies to reviews regarding detention and probable cause hearings under section 980.04 of the statutes, as affected by this act, and trials under section 980.05 of the statutes, as affected by this act, that are based on a petition filed under s. 980.02 of the statutes, as affected by this act, on the effective date of this subsection.

(2) This act first applies to periodic reexaminations conducted under section 980.07 of the statutes, as affected by this act, begun on the effective date of this subsection and to court proceedings resulting from those reexaminations.

(3) This act first applies to proceedings to revoke supervised release under section 980.08 (5) of the statutes, as affected by this act, that are commenced on the effective date of this subsection, except that the treatment of section 980.08 (5) of the statutes, with respect to where a person may be detained while a petition to revoke supervised release is pending, first applies to a person whose detention commences on the effective date of this subsection.

(4) This act first applies to discharge proceedings commenced on the effective date of this subsection.

SECTION 127. Effective date.

(1) This act takes effect on the first day of the 2nd month beginning after publication.

(END)

Insert 61–22

****NOTE: You indicated that you did not want the substitute amendment to specify the timing or sequencing of the treatment reports. I eliminated the introductory phrase "At the time for any examination under sub. (1)," from the introduction. I am not sure if that was what you intended.

Insert 63–1

****NOTE: Per your request, I eliminated the requirement that DHFS submit a recommendation. Please review to be sure the result is what you intended.

Insert 64–6

980.07 **(5)** At any time before a hearing for supervised release begins, the department may file a supplemental report if the department determines that more information is available for the court to consider.

Insert 65–10

****NOTE: Your instructions asked to delete the provision that requires DHFS to be represented by counsel at proceedings. In par. (am) and again in s. 980.095 (2), I eliminated the requirement that, if DOC and DHFS have adverse interests, DHFS must be represented by its agency counsel, or an attorney it retains, by deleting all reference to adverse interests and DHFS representation. However, you may have intended something different—perhaps you wanted to permit DHFS to be represented. So please review these provisions closely.

em dash

(b) The court may not authorize supervised release unless, based on all of the reports, trial records, and evidence presented, the court finds that all of the following criteria are met:

1. The person has made significant progress in his or her treatment and the person's progress can be sustained while on supervised release.

2. It is substantially probable that the person will not engage in an act of sexual violence while on supervised release.

****NOTE: When the term was used in s. 980.01 (7), 2001 stats., the court defined "substantially probable" to be much more likely than not. *State v. Curiel*, 227 Wis. 2nd 389 (1999). The court may interpret "substantially probable" the same way here. Please review and make sure you intend that standard to apply.

3. Treatment that meets the person's needs and a qualified provider of the treatment are reasonably available.

4. The person can be reasonably expected to comply with his or her treatment requirements and with all of his or her conditions or rules of supervised release that are imposed by the court or by the department.

5. A reasonable level of resources can provide for the level of residential placement, supervision, and ongoing treatment needs that are required for the safe management of the person while on supervised release.

****NOTE: I am not sure if I understand how the court will be able to determine if subd. 5. is met. In your request, point 4., Residence search responsibilities, outlines the process for submitting potential residential options. But they must be submitted within 60 after the court determines that the criteria in par. (b) 1. to 5. are met. I do not know how the court will make the determination required in subd. 5. if the court does not yet have the information that helps make the determination.

Insert 65–25

(br) The court shall authorize the petitioner, the person's attorney, any law enforcement agency in the county of intended placement, and any local governmental unit in the county of intended placement to submit prospective residential options for community placement to the department within 60 days following the selection of the county under par. (bm).

(c) The court shall order the county department under s. 51.42 in the county of intended placement to prepare a report, either independently or with the department of health and family services, identifying prospective residential options for community placement. In identifying prospective residential options, the county 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). The county department shall submit its report to the department within 60 days following the court order.

(cm) The court shall direct the department to use any submissions under par. (br), the report submitted under par. (c), or other residential options identified by the department to prepare a supervised release plan for the person.

(d) The court shall review the plan submitted by the department under par. (cm). If the details of the plan adequately meet the treatment needs of the individual and the safety needs of the community, then the court shall approve the plan and determine that supervised release is appropriate. If the details of the plan do not adequately meet the treatment needs of the individual or the safety needs of the community, then the court shall determine that supervised release is not appropriate.

****NOTE: Please review this process very carefully. I merged the supervised release criteria and the residence search responsibilities because that method of organization made sense to me. Do you want a deadline by which DHFS must submit a plan to the court? (s/in 30 days, etc.)

Insert 73–11

****NOTE: You requested that this provision be modified to permit the Public Defender to petition for a discharge. Do you want DHFS to ask the Public Defender to petition or do you want to add to s. 980.093 the possibility for the Public Defender to petition for a discharge?

INSERT 74-7

insert moved from pg 4

SECTION 1. 980.09 (2g) of the statutes is created to read:

980.09 **(2g)** At any time before a hearing for discharge begins under this section, the department may file a report if the department determines that more information is available for the court to consider.

****NOTE: Please review this subsection to see if it is what you intended. ✓

end of insert 74-7

Insert 74-7 ✓ MOVE TO beginning of insert 74-7 (pg 3)

****NOTE: You requested that this substitute amendment modify s. 980.09 (2) to modify the passive petition process. But the WLC bill repealed s. 980.09 (2); the process for petitioning without the department's approval is now in created s. 980.093 and does not have the passive petition process. Please let me know if s. 980.093 does not reflect your intent. ✓

Insert 75–3 SUPPLEMENTAL REPORTS. -CS

(2m) At any time before a hearing for discharge begins under this section, the department may file a supplemental report if the department determines that more information is available for the court to consider. ✓

****NOTE: Please review this subsection to see if it is what you intended. ✓