

1           **SECTION 50.** 973.155 (1) (c) of the statutes is created to read:

2           973.155 (1) (c) The categories in par. (a) include time during which the  
3 convicted offender was in the custody of the department of health and family services  
4 under ch. 980 only if the offender was confined during that time and the confinement  
5 and the offender's conviction resulted from the same course of conduct.

6           **SECTION 51.** 978.03 (3) of the statutes, as affected by 2005 Wisconsin Act 25,  
7 is amended to read:

8           978.03 (3) Any assistant district attorney under sub. (1), (1m), or (2) must be  
9 an attorney admitted to practice law in this state and, except as provided in s.  
10 978.043 (1), may perform any duty required by law to be performed by the district  
11 attorney. The district attorney of the prosecutorial unit under sub. (1), (1m), or (2)  
12 may appoint such temporary counsel as may be authorized by the department of  
13 administration.

14           **SECTION 52.** 978.04 of the statutes is amended to read:

15           **978.04 Assistants in certain prosecutorial units.** The district attorney of  
16 any prosecutorial unit having a population of less than 100,000 may appoint one or  
17 more assistant district attorneys as necessary to carry out the duties of his or her  
18 office and as may be requested by the department of administration authorized in  
19 accordance with s. 16.505. Any such assistant district attorney must be an attorney  
20 admitted to practice law in this state and, except as provided in s. 978.043 (1), may  
21 perform any duty required by law to be performed by the district attorney.

22           **SECTION 53.** 978.043 of the statutes is renumbered 978.043 (1) and amended  
23 to read.

24           978.043 (1) The district attorney of the prosecutorial unit that consists of  
25 Brown County and the district attorney of the prosecutorial unit that consists of

1 Milwaukee County shall each assign one assistant district attorney in his or her  
2 prosecutorial unit to be a sexually violent person commitment prosecutor. An  
3 assistant district attorney assigned under this ~~section~~ subsection to be a sexually  
4 violent person commitment prosecutor may engage only in the prosecution of  
5 sexually violent person commitment proceedings under ch. 980 and, at the request  
6 of the district attorney of the prosecutorial unit, may file and prosecute sexually  
7 violent person commitment proceedings under ch. 980 in any prosecutorial unit in  
8 this state.

9 **SECTION 54.** 978.043 (2) of the statutes is created to read:

10 978.043 (2) If an assistant district attorney assigned under sub. (1) prosecutes  
11 or assists in the prosecution of a case under ch. 980 in a prosecutorial unit other than  
12 his or her own, the prosecutorial unit in which the case is heard shall reimburse the  
13 assistant district attorney's own prosecutorial unit for his or her reasonable costs  
14 associated with the prosecution, including transportation, lodging, and meals.  
15 Unless otherwise agreed upon by the prosecutorial units involved, the court hearing  
16 the case shall determine the amount of money to be reimbursed for expert witness  
17 fees under this subsection.

18 **SECTION 55.** 978.045 (1r) (intro.) of the statutes is amended to read:

19 978.045 (1r) (intro.) Any judge of a court of record, by an order entered in the  
20 record stating the cause ~~therefor~~ for it, may appoint an attorney as a special  
21 prosecutor to perform, for the time being, or for the trial of the accused person, the  
22 duties of the district attorney. An attorney appointed under this subsection shall  
23 have all of the powers of the district attorney. The judge may appoint an attorney  
24 as a special prosecutor at the request of a district attorney to assist the district  
25 attorney in the prosecution of persons charged with a crime, in grand jury or John

1 Doe proceedings, in proceedings under ch. 980, or in investigations. The judge may  
2 appoint an attorney as a special prosecutor if any of the following conditions exists:

3 **SECTION 56.** 978.05 (6) (a) of the statutes is amended to read:

4 978.05 **(6)** (a) Institute, commence or appear in all civil actions or special  
5 proceedings under and perform the duties set forth for the district attorney under ch.  
6 980 and ss. 17.14, 30.03 (2), 48.09 (5), 59.55 (1), 59.64 (1), 70.36, 103.50 (8), 103.92  
7 (4), 109.09, 343.305 (9) (a), 453.08, 806.05, 938.09, 938.18, 938.355 (6) (b) and (6g) (a),  
8 946.86, 946.87, 961.55 (5), 971.14 and 973.075 to 973.077, perform any duties in  
9 connection with court proceedings in a court assigned to exercise jurisdiction under  
10 chs. 48 and 938 as the judge may request and perform all appropriate duties and  
11 appear if the district attorney is designated in specific statutes, including matters  
12 within chs. 782, 976 and 979 and ss. 51.81 to 51.85. Nothing in this paragraph limits  
13 the authority of the county board to designate, under s. 48.09 (5), that the corporation  
14 counsel provide representation as specified in s. 48.09 (5) or to designate, under s.  
15 48.09 (6) or 938.09 (6), the district attorney as an appropriate person to represent the  
16 interests of the public under s. 48.14 or 938.14.

17 **SECTION 57.** 978.05 (8) (b) of the statutes, as affected by 2005 Wisconsin Act 25,  
18 is amended to read:

19 978.05 **(8)** (b) Hire, employ, and supervise his or her staff and, subject to s.  
20 978.043 (1), make appropriate assignments of the staff throughout the prosecutorial  
21 unit. The district attorney may request the assistance of district attorneys, deputy  
22 district attorneys, or assistant district attorneys from other prosecutorial units or  
23 assistant attorneys general who then may appear and assist in the investigation and  
24 prosecution of any matter for which a district attorney is responsible under this  
25 chapter in like manner as assistants in the prosecutorial unit and with the same

1 authority as the district attorney in the unit in which the action is brought. Nothing  
2 in this paragraph limits the authority of counties to regulate the hiring, employment,  
3 and supervision of county employees.

4 **SECTION 58.** 978.13 (2) of the statutes is renumbered 978.13 (2) (b).

5 **SECTION 59.** 978.13 (2) (a) of the statutes is created to read:

6 978.13 (2) (a) In this subsection, “costs related to the operation of the district  
7 attorney’s office” include costs that a prosecutorial unit must pay under s. 978.043  
8 (2) but do not include costs for which a prosecutorial unit receives reimbursement  
9 under s. 978.043 (2).

10 **SECTION 60.** 980.01 (1) of the statutes is renumbered 980.01 (1h).

11 **SECTION 61.** 980.01 (1b) of the statutes is created to read:

12 980.01 (1b) “Act of sexual violence” means conduct that constitutes the  
13 commission of a sexually violent offense.

14 **SECTION 62.** 980.01 (1j) of the statutes is created to read:

15 980.01 (1j) “Incarceration” includes confinement in a secured correctional  
16 facility, as defined in s. 938.02 (15m), or a secured child caring institution, as defined  
17 in s. 938.02 (15g), or a secured group home, as defined in s. 938.02 (15p), if the person  
18 was placed in the facility for being adjudicated delinquent under s. 48.34, 1993 stats.,  
19 or under s. 938.183 or 938.34 on the basis of a sexually violent offense.

20 **SECTION 63.** 980.01 (3) of the statutes is created to read:

21 980.01 (3) Except in ss. 980.09, ~~980.093~~ and 980.095, “petitioner” means the  
22 agency or person that filed a petition under s. 980.02.

23 **SECTION 64.** 980.01 (5) of the statutes is amended to read:

980.075j

1           980.01 (5) “Sexually motivated” means that one of the purposes for an act is  
2 for the actor’s sexual arousal or gratification or for the sexual humiliation or  
3 degradation of the victim.

4           **SECTION 65.** 980.01 (6) (a) of the statutes is amended to read:

5           980.01 (6) (a) Any crime specified in s. 940.225 (1) ~~or~~ (2), or (3), 948.02 (1) or  
6 (2), 948.025, 948.06, or 948.07.

7           **SECTION 66.** 980.01 (6) (am) of the statutes is created to read:

8           980.01 (6) (am) An offense that, prior to June 2, 1994, was a crime under the  
9 law of this state and that is comparable to any crime specified in par. (a).

10          **SECTION 67.** 980.01 (6) (b) of the statutes is amended to read:

11          980.01 (6) (b) Any crime specified in s. 940.01, 940.02, 940.03, 940.05, 940.06,  
12 940.19 (4) ~~or~~ (5), <sup>or (6)</sup> 940.195 (4) or (5), 940.30, 940.305, 940.31 ~~or~~ 941.32, 943.10, 943.32,  
13 or 948.03 that is determined, in a proceeding under s. 980.05 (3) (b), to have been  
14 sexually motivated.

15          **SECTION 68.** 980.01 (6) (bm) of the statutes is created to read:

16          980.01 (6) (bm) An offense that, prior to June 2, 1994, was a crime under the  
17 law of this state, that is comparable to any crime specified in par. (b) and that is  
18 determined, in a proceeding under s. 980.05 (3) (b), to have been sexually motivated.

19          **SECTION 69.** 980.01 (6) (c) of the statutes is amended to read:

20          980.01 (6) (c) Any solicitation, conspiracy, or attempt to commit a crime under  
21 par. (a) ~~or~~ (am), (b), or (bm).

22          **SECTION 70.** 980.01 (7) of the statutes is amended to read:

23          980.01 (7) “Sexually violent person” means a person who has been convicted  
24 of a sexually violent offense, has been adjudicated delinquent for a sexually violent  
25 offense, or has been found not guilty of or not responsible for a sexually violent

1 offense by reason of insanity or mental disease, defect, or illness, and who is  
2 dangerous because he or she suffers from a mental disorder that makes it likely that  
3 the person will engage in one or more acts of sexual violence.

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4 **SECTION 71.** 980.015 (1) of the statutes is renumbered 980.01 (1d) and amended  
5 to read:

6 980.01 (1d) ~~In this section,~~ “Agency Agency with jurisdiction” means the  
7 agency with the authority or duty to release or discharge the person.

8 **SECTION 72.** 980.015 (2) (intro.) of the statutes is amended to read:

9 980.015 (2) (intro.) If an agency with jurisdiction has control or custody over  
10 a person who may meet the criteria for commitment as a sexually violent person, the  
11 agency with jurisdiction shall inform each appropriate district attorney and the  
12 department of justice regarding the person as soon as possible beginning ~~3 months~~  
13 90 days prior to the applicable date of the following:

14 **SECTION 73.** 980.015 (2) (a) of the statutes is amended to read:

15 980.015 (2) (a) The anticipated discharge ~~from a sentence, anticipated or~~  
16 ~~release, on parole or, extended supervision, or anticipated release otherwise,~~ from a  
17 sentence of imprisonment of a person who has been convicted of or term of  
18 confinement in prison that was imposed for a conviction for a sexually violent offense,  
19 from a continuous term of incarceration, any part of which was imposed for a sexually  
20 violent offense, or from a placement in a Type 1 prison under s. 301.048 (3) (a) 1., any  
21 part of which was required as a result of a conviction for a sexually violent offense.

22 **SECTION 74.** 980.015 (2) (b) of the statutes is amended to read:

23 980.015 (2) (b) The anticipated release from a secured correctional facility, as  
24 defined in s. 938.02 (15m), or a secured child caring institution, as defined in s. 938.02  
25 (15g), or a secured group home, as defined in s. 938.02 (15p), ~~of a~~ if the person was

1 placed in the facility as a result of being adjudicated delinquent under s. 48.34, 1993  
2 stats., or under s. 938.183 or 938.34 on the basis of a sexually violent offense.

3 **SECTION 75.** 980.015 (2) (c) of the statutes is amended to read:

4 980.015 (2) (c) The anticipated release of a person on conditional release under  
5 s. 971.17, the anticipated termination of a commitment order under 971.17, or the  
6 anticipated discharge of a person from a commitment order under s. 971.17, if the  
7 person who has been found not guilty of a sexually violent offense by reason of mental  
8 disease or defect under s. 971.17.

9 **SECTION 76.** 980.015 (2) (d) of the statutes is created to read:

10 980.015 (2) (d) The anticipated release on parole or discharge of a person  
11 committed under ch. 975 for a sexually violent offense.

12 **SECTION 77.** 980.015 (4) of the statutes is renumbered 980.14 (2) and amended  
13 to read:

14 980.14 (2) Any agency or officer, employee, or agent of an agency is immune  
15 from criminal or civil liability for any acts or omissions as the result of a good faith  
16 effort to comply with any provision of this section chapter.

17 **SECTION 78.** 980.02 (1) (a) of the statutes is amended to read:

18 980.02 (1) (a) The department of justice at the request of the agency with  
19 jurisdiction, ~~as defined in s. 980.015 (1),~~ over the person. ~~If the department of justice~~  
20 ~~decides to file a petition under this paragraph, it shall file the petition before the date~~  
21 ~~of the release or discharge of the person.~~

22 **SECTION 79.** 980.02 (1) (b) 3. of the statutes is created to read:

23 980.02 (1) (b) 3. The county in which the person is in custody under a sentence,  
24 a placement to a secured correctional facility, as defined in s. 938.02 (15m), a secured

1 child caring institution, as defined in s. 938.02 (15g), or a secured group home, as  
2 defined in s. 938.02 (15p), or a commitment order.

3 SECTION 80. 980.02 (1m) of the statutes is created to read:

4 980.02 (1m) A petition filed under this section shall be filed before the person  
5 is released or discharged.

6 SECTION 81. 980.02 (2) (ag) of the statutes is repealed.

7 SECTION 82. 980.02 (4) (intro.) of the statutes is amended to read:

8 980.02 (4) (intro.) A petition under this section shall be filed in any one of the  
9 following:

10 SECTION 83. 980.02 (6) of the statutes is created to read:

11 980.02 (6) A court assigned to exercise jurisdiction under chs. 48 and 938 does  
12 not have jurisdiction over a petition filed under this section alleging that a child is  
13 a sexually violent person.

14 SECTION 84. 980.03 (2) (intro.) of the statutes is amended to read:

15 980.03 (2) (intro.) Except as provided in ss. ~~980.09 (2) (a)~~ 980.038 (2) and  
16 ~~980.10 980.093~~ and without limitation by enumeration, at any hearing under this  
17 chapter, the person who is the subject of the petition has the right to:

18 SECTION 85. 980.03 (3) of the statutes is amended to read:

19 980.03 (3) The person who is the subject of the petition, the person's attorney,  
20 ~~or the department of justice or the district attorney~~ petitioner may request that a  
21 trial under s. 980.05 be to a jury of 12. A request for a jury trial shall be made as  
22 provided under s. 980.05 (2). Notwithstanding s. 980.05 (2), if the person, the  
23 person's attorney, ~~or the department of justice or the district attorney~~ petitioner does  
24 not request a jury trial, the court may on its own motion require that the trial be to

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1 a jury of 12. The jury shall be selected as provided under s. 980.05 (2m). A verdict  
2 of a jury under this chapter is not valid unless it is unanimous.

3 **SECTION 86.** 980.03 (4) of the statutes is renumbered 980.031 (3) and amended  
4 to read:

5 980.031 (3) Whenever a person who is the subject of a petition filed under s.  
6 980.02 or who has been committed under s. 980.06 is required to submit to an  
7 examination of his or her mental condition under this chapter, he or she may retain  
8 ~~experts or~~ a licensed physician, licensed psychologist, or other mental health  
9 ~~professional persons~~ to perform an examination. If the person is indigent, the court  
10 shall, upon the person's request, appoint a qualified and available licensed  
11 physician, licensed psychologist, or other mental health professional to perform an  
12 examination of the person's mental condition and participate on the person's behalf  
13 in a trial or other proceeding under this chapter at which testimony is authorized.  
14 Upon the order of the circuit court, the county shall pay, as part of the costs of the  
15 action, the costs of a licensed physician, licensed psychologist, or other mental health  
16 professional appointed by a court under this subsection to perform an examination  
17 and participate in the trial or other proceeding on behalf of an indigent person.

18 (4) ~~If the person~~ a party retains ~~a qualified expert~~ or the court appoints a  
19 licensed physician, licensed psychologist, or other mental health professional person  
20 ~~of his or her own choice~~ to conduct an examination under this chapter of the person's  
21 mental condition, the examiner shall have reasonable access to the person for the  
22 purpose of the examination, as well as to the person's past and present treatment  
23 records, as defined in s. 51.30 (1) (b), and patient health care records as provided  
24 under s. 146.82 (2) (e). ~~If the person is indigent, the court shall, upon the person's~~  
25 ~~request, appoint a qualified and available expert or professional person to perform~~

1 ~~an examination and participate in the trial or other proceeding on the person's~~  
2 ~~behalf. Upon the order of the circuit court, the county shall pay, as part of the costs~~  
3 ~~of the action, the costs of an expert or professional person appointed by a court under~~  
4 ~~this subsection to perform an examination and participate in the trial or other~~  
5 ~~proceeding on behalf of an indigent person. An expert (cm), past and present juvenile~~  
6 ~~records, as provided under ss. 48.396 (6), 48.78 (2) (e), 938.396 (10), and 938.78 (2)~~  
7 ~~(e), and the person's past and present correctional records, including presentence~~  
8 ~~investigation reports under s. 972.15 (6).~~

9 (5) A licensed physician, licensed psychologist, or other mental health  
10 professional person appointed to assist an indigent person who is subject to a petition  
11 who is expected to be called as a witness by one of the parties or by the court may not  
12 be subject to any order by the court for the sequestration of witnesses at any  
13 proceeding under this chapter. No licensed physician, licensed psychologist, or other  
14 mental health professional who is expected to be called as a witness by one of the  
15 parties or by the court may testify at any proceeding under this chapter unless a  
16 written report of his or her examination has been submitted to the court and to both  
17 parties at least 10 days before the proceeding.

18 **SECTION 87.** 980.03 (5) of the statutes is repealed.

19 **SECTION 88.** 980.031 (title) of the statutes is created to read:

20 **980.031** (title) **Examinations.**

21 **SECTION 89.** 980.031 (1) and (2) of the statutes are created to read:

22 980.031 **(1)** If a person who is the subject of a petition filed under s. 980.02  
23 denies the facts alleged in the petition, the court may appoint at least one qualified  
24 licensed physician, licensed psychologist, or other mental health professional to  
25 conduct an examination of the person's mental condition and testify at trial.

1           (2) The state may retain a licensed physician, licensed psychologist, or other  
2           mental health professional to examine the mental condition of a person who is the  
3           subject of a petition under s. 980.02 or who has been committed under s. 980.06 and  
4           to testify at trial or at any other proceeding under this chapter at which testimony  
5           is authorized.

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

7           **980.034 Change of place of trial or jury from another county.** (1) A  
8           person who is the subject of a petition filed under s. 980.02 or who has been  
9           committed under this chapter may move to change the place of a jury trial under s.  
10          980.05 on the ground that an impartial trial cannot be had in the county in which the  
11          trial is set to be held. The motion shall be made within 20 days after the completion  
12          or waiver of the probable cause hearing under s. 980.04 (2), whichever is applicable,  
13          except that it may be made after that time for cause.

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

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

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

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

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

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

4           (b) A court that proceeds under this subsection shall follow the procedure under  
5 sub. (3) until the jury is chosen in the 2nd county. At that time, the proceedings shall  
6 return to the original county using the jurors selected in the 2nd county. The original  
7 county shall reimburse the 2nd county for all applicable costs under s. 814.22.

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

9           **980.036 Discovery and inspection. (1) DEFINITIONS.** In this section:

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

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

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

20           (a) Any written or recorded statement made by the person subject to this  
21 chapter concerning the allegations in the petition filed under s. 980.02 or concerning  
22 other matters at issue in the trial or proceeding and the names of witnesses to the  
23 written statements of the person subject to this chapter.

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

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

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

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

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

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

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

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

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

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

23 (j) Any exculpatory evidence.

24 **(3) WHAT A PERSON SUBJECT TO THIS CHAPTER MUST DISCLOSE TO THE PROSECUTING**  
25 **ATTORNEY.** Upon demand, a person who is subject to this chapter or his or her attorney

1 shall disclose to the prosecuting attorney, and permit the prosecuting attorney to  
2 inspect and copy or photograph, all of the following materials and information, if the  
3 material or information is within the possession, custody, or control of the person who  
4 is subject to this chapter or his or her attorney:

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

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

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

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

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

20 **(3m)** WHEN DISCLOSURE MUST BE MADE. A party required to make a disclosure  
21 under this section shall do so within a reasonable time after the probable cause  
22 hearing and within a reasonable time before a trial under s. 980.05, if the other  
23 party's demand is made in connection with a trial. If the demand is made in  
24 connection with a proceeding under s. 980.07 (7), 980.09 (2m), or 980.093 (3), the

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1 party shall make the disclosure within a reasonable time before the start of that  
2 proceeding.

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

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

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

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

24 (8) CONTINUING DUTY TO DISCLOSE. If, after complying with a requirement of this  
25 section, and before or during trial, a party discovers additional material or the names

1 of additional witnesses requested that are subject to discovery, inspection, or  
2 production under this section, the party shall promptly notify the other party of the  
3 existence of the additional material or names.

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

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

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

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

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

23 **980.038 Miscellaneous procedural provisions. (1) MOTIONS CHALLENGING**  
24 **JURISDICTION OR COMPETENCY OF COURT OR TIMELINESS OF PETITION.** (a) A motion  
25 challenging the jurisdiction or competency of the court or the timeliness of a petition

1 filed under s. 980.02 shall be filed within 10<sup>f 30</sup> days after the court holds the probable  
2 cause hearing under s. 980.04 (2). Failure to file a motion within the time specified  
3 in this paragraph waives the right to challenge the jurisdiction or competency of the  
4 court or the timeliness of a petition filed under s. 980.02.

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

10 (2) EVIDENCE OF REFUSAL TO PARTICIPATE IN EXAMINATION. (a) At any hearing  
11 under this chapter, the state may present evidence or comment on evidence that a  
12 person who is the subject of a petition filed under s. 980.02 or a person who has been  
13 committed under this chapter refused to participate in an examination of his or her  
14 mental condition that was being conducted under this chapter or that was conducted  
15 for the purpose of evaluating whether to file a petition before the petition under s.  
16 980.02 was filed.

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

21 (3) TESTIMONY BY TELEPHONE OR LIVE AUDIOVISUAL MEANS. Unless good cause to  
22 the contrary is shown, proceedings under ss. 980.04 (2) (a) and 980.08 (7) (d) may be  
23 conducted by telephone or audiovisual means, if available. If the proceedings are  
24 required to be reported under SCR 71.02 (2), the proceedings shall be reported by a  
25 court reporter who is in simultaneous voice communication with all parties to the

1 proceeding. Regardless of the physical location of any party to the telephone call, any  
2 action taken by the court or any party has the same effect as if made in open court.  
3 A proceeding under this subsection shall be conducted in a courtroom or other place  
4 reasonably accessible to the public. Simultaneous access to the proceeding shall be  
5 provided to a person entitled to attend by means of a loudspeaker or, upon request  
6 to the court, by making the person party to the telephone call without charge.

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

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

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

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

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

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

7 980.04 (1) Upon the filing of a petition under s. 980.02, the court shall review  
8 the petition to determine whether to issue an order for detention of the person who  
9 is the subject of the petition. The person shall be detained only if there is probable  
10 cause to believe that the person is eligible for commitment under s. 980.05 (5). A  
11 person detained under this subsection shall be held in a facility approved by the  
12 department. If the person is serving a sentence of imprisonment, is in a secured  
13 correctional facility, as defined in s. 938.02 (15m), a secured child caring institution,  
14 as defined in s. 938.02 (15g), or a secured group home, as defined in s. 938.02 (15p),  
15 or is committed to institutional care, and the court orders detention under this  
16 subsection, the court shall order that the person be transferred to a detention facility  
17 approved by the department. A detention order under this subsection remains in  
18 effect until the ~~person is discharged~~ petition is dismissed after a hearing under sub.  
19 (3) or after a trial under s. 980.05 (5) or until the effective date of a commitment order  
20 under s. 980.06, whichever is applicable.

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

23 980.04 (2) (a) Whenever a petition is filed under s. 980.02, the court shall hold  
24 a hearing to determine whether there is probable cause to believe that the person  
25 named in the petition is a sexually violent person. ~~If the person named in the petition~~

1 ~~is in custody, the court shall hold the probable cause hearing within 72 hours after~~  
2 ~~the petition is filed, excluding Saturdays, Sundays and legal holidays. If the person~~  
3 ~~named in the petition is not in custody~~

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

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

10 980.04 (2) (b) 2. If the person named in the petition is in custody under a  
11 sentence, dispositional order, or commitment and the probable cause hearing will be  
12 held after the date on which the person is scheduled to be released or discharged from  
13 the sentence, dispositional order, or commitment, the probable cause hearing under  
14 par. (a) shall be held no later than 10 days after the person's scheduled release or  
15 discharge date, excluding Saturdays, Sundays, and legal holidays, unless that time  
16 is extended by the court for good cause shown upon its own motion, the motion of any  
17 party, or the stipulation of the parties.

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

19 980.04 (3) If the court determines after a hearing that there is probable cause  
20 to believe that the person named in the petition is a sexually violent person, the court  
21 shall order that the person be taken into custody if he or she is not in custody and  
22 shall order the person to be transferred within a reasonable time to an appropriate  
23 facility specified by the department for an evaluation by the department as to  
24 whether the person is a sexually violent person. If the court determines that

1 probable cause does not exist to believe that the person is a sexually violent person,  
2 the court shall dismiss the petition.

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

4 980.04 (5) If the person named in the petition claims or appears to be indigent,  
5 the court shall, prior to the probable cause hearing under sub. (2) <sup>✓</sup>(a), refer the person  
6 to the authority for indigency determinations under s. 977.07 (1) and, if applicable,  
7 the appointment of counsel.

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

9 980.05 (1) A trial to determine whether the person who is the subject of a  
10 petition under s. 980.02 is a sexually violent person shall commence no later than 45  
11 90 days after the date of the probable cause hearing under s. 980.04 <sup>✓</sup>(2) (a). The court  
12 may grant ~~a continuance~~ one or more continuances of the trial date for good cause  
13 upon its own motion, the motion of any party or the stipulation of the parties.

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

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

16 980.05 (2) The person who is the subject of the petition, the person's attorney,  
17 ~~or the department of justice or the district attorney~~ petitioner may request that a  
18 trial under this section be to a jury of 12. A request for a jury trial under this  
19 subsection shall be made within 10 days after the probable cause hearing under s.  
20 980.04 (2) (a). If no request is made, the trial shall be to the court. The person, the  
21 person's attorney, or the ~~district attorney or department of justice, whichever is~~  
22 ~~applicable,~~ petitioner may withdraw his, her, or its request for a jury trial if the 2  
23 persons who did not make the request consent to the withdrawal.

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

1           980.05 (2m) (a) At a jury trial under this section, juries shall be selected and  
2 treated in the same manner as they are selected and treated in civil actions in circuit  
3 court, except that, notwithstanding s. 805.08 (3), each party shall be entitled to 4  
4 peremptory challenges or, if the court orders additional jurors to be selected under  
5 s. 805.08 (2), to 5 peremptory challenges. A party may waive in advance any or all  
6 of its peremptory challenges and the number of jurors called under par. (b) shall be  
7 reduced by this number.

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

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

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

21           980.05 (3) (a) At a trial on a petition under this chapter, the petitioner has the  
22 burden of proving ~~the allegations in the petition~~ beyond a reasonable doubt that the  
23 person who is the subject of the petition is a sexually violent person.

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

1 980.05 (3) (b) If the state alleges that the sexually violent offense or act that  
2 forms the basis for the petition was an act that was sexually motivated as provided  
3 in s. 980.01 (6) (b) or (bm), the state is required to prove beyond a reasonable doubt  
4 that the alleged sexually violent act was sexually motivated.

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

7 980.07 (1) (intro.) If a person has been is committed under s. 980.06 and has  
8 not been discharged under s. 980.09 (3) or 980.093, the department shall conduct ~~an~~  
9 examination of his or her mental condition within 6 12 months after an the date of  
10 the initial commitment order under s. 980.06 and again thereafter at least once each  
11 12 months for the purpose of determining to determine whether the person has made  
12 sufficient progress for the court to consider whether the person should be placed on  
13 supervised release or discharged. At the time of a reexamination under this section,  
14 the person who has been committed may retain or seek to have the court appoint an  
15 any of the following:

16 (a) An examiner as provided under s. 980.03 (4) 980.031 (3), except that the  
17 court is not required to appoint an examiner if supervised release or discharge is  
18 supported by the examination conducted by the department. The county shall pay  
19 the costs of an examiner appointed under this paragraph as provided under s. 51.20  
20 (18) (a).

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

22 980.07 (1) (b) An attorney as provided under s. 980.03 (2) (a).

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

24 980.07 (1g) Any examiners under this section shall have reasonable access to  
25 the person for purposes of examination and to the person's past and present

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1 treatment records, as defined in s. 51.30 (1) (b), and patient health care records, as  
2 provided under s. 146.82 (2) (c).

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

4 **980.07 (1m)** The department shall prepare a treatment report based on its  
5 treating professionals' evaluation of the person and shall provide a copy of the report  
6 to any examiner conducting an examination under sub. (1). The report shall consider  
7 all of the following:

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

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

12 (c) The ongoing treatment needs of the person.

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

\*\*\*\*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.

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

16 **980.07 (2)** Any examiner conducting an ~~examination~~ <sup>a reexamination</sup> under this section sub. (1)  
17 shall prepare a written report of the ~~examination~~ <sup>reexamination</sup> no later than 30 days after the date  
18 of the ~~examination~~ <sup>reexamination</sup>. The examiner shall place a copy of the report in the person's  
19 ~~medical records and~~ <sup>↓</sup> shall provide a copy of the report to the department. The report  
20 shall include an assessment of the risk that the person will reoffend, whether the risk  
21 can be safely managed in the community if reasonable conditions of supervision and  
22 security are imposed, and whether the treatment that the person needs is available  
23 in the community. The department shall then send the treatment report and the

department

1 written examination report to the court that committed the person under s. 980.06.

2 A copy of each report shall be provided also to the petitioner and to the person's  
3 attorney as soon as he or she is retained or appointed.

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

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

5 980.07 (3) Notwithstanding sub. (1), the court that committed a person under  
6 s. 980.06 may order a reexamination of the person at any time during the period in  
7 which the person is subject to the commitment order. Any report ordered under this  
8 subsection shall conform to subs. (1m) and (2).

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9 ~~SECTION 110. 980.07 (5) to (7) of the statutes are created to read:~~

10 980.07 (5) At any time before a hearing for supervised release begins, the  
11 department may file a supplemental report if the department determines that more  
12 information is available for the court to consider.

13 (6) The petitioner may employ experts or professional persons to support or  
14 oppose any information in any report under this section.

15 (6m) Subject to s. 980.03 (2) (a), the court, before proceeding under sub. (7),  
16 shall refer the matter to the authority for indigency determinations under s. 977.07  
17 (1) and appointment of counsel under s. 977.05 (4) (j) if the person is not represented  
18 by counsel. The determination of indigency and the appointment of counsel shall be  
19 done as soon as circumstances permit.

20 (7) (a) The court, without a jury, shall hold a hearing to determine whether to  
21 authorize supervised release. The court shall begin the hearing within 60 days after  
22 the date on which copies of the reports are provided to the petitioner under sub. (2),

1 unless the petitioner waives this time limit. Expenses of proceedings under this  
2 subsection shall be paid as provided under s. 51.20 (18) (b), (c), and (d).

3 (am) The department of justice shall represent the department of health and  
4 family services at any hearing under this subsection.

\*\*\*\*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.

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

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

10 2. It is substantially probable that the person will not engage in an act of sexual  
11 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. 2d 389 (1999). The court may interpret "substantially probable" the same way here. Please review and make sure you intend that standard to apply.

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

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

17 5. A reasonable level of resources can provide for the level of residential  
18 placement, supervision, and ongoing treatment needs that are required for the safe  
19 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.

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

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

12 (c) The court shall order the county department under s. 51.42 in the county  
13 of intended placement to prepare a report, either independently or with the  
14 department of health and family services, identifying prospective residential options  
15 for community placement. In identifying prospective residential options, the county  
16 department shall consider the proximity of any potential placement to the residence  
17 of other persons on supervised release and to the residence of persons who are in the  
18 custody of the department of corrections and regarding whom a sex offender  
19 notification bulletin has been issued to law enforcement agencies under s. 301.46  
20 (2m) (a) or (am). The county department shall submit its report to the department  
21 within 60 days following the court order.

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

4 (d) The court shall review the plan submitted by the department under par.  
5 (cm). If the details of the plan adequately meet the treatment needs of the individual  
6 and the safety needs of the community, then the court shall approve the plan and  
7 determine that supervised release is appropriate. If the details of the plan do not  
8 adequately meet the treatment needs of the individual or the safety needs of the  
9 community, then the court shall determine that supervised release is not  
10 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? (w/in 30 days, etc.)

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

12 **980.08 (Title) Supervised release; procedures, implementation, revocation.**

13 (1) If the court determines under s. 980.07 (7) that supervised release is appropriate,  
14 the court shall order the county department under s. 51.42 in the county of intended  
15 placement to assist the department of health and family services in implementing  
16 the supervised release placement.

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

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

22 (4) An order granting supervised release places the person in the care, control,  
23 and custody of the department. The department shall arrange for the care, control,

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1 and treatment of the person in the least restrictive manner consistent with the  
2 requirements of the person and in accordance with the order for supervised release.  
3 Before a person is actually released under this section, the court shall notify the  
4 municipal police department and county sheriff for the municipality and county in  
5 which the person will be residing. The notification requirement under this  
6 subsection does not apply if a municipal police department or county sheriff submits  
7 to the court a written statement waiving the right to be notified.

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

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

16 (c) If the department concludes that the order granting supervised release  
17 should be revoked, it shall file a statement alleging the violation and a petition to  
18 revoke the order for supervised release with the committing court and provide a copy  
19 of each to the regional office of the state public defender responsible for handling  
20 cases in the county where the committing court is located. If the department has  
21 detained the person under par. (a) or (b), the department shall file the statement and  
22 the petition and provide them to the state public defender within 72 hours after the  
23 detention, excluding Saturdays, Sundays, and legal holidays. The court shall refer  
24 the matter to the authority for indigency determinations under s. 977.07 (1) and

1 appointment of counsel under s. 977.05 (4) (j). The determination of indigency and  
2 the appointment of counsel shall be done as soon as circumstances permit.

3 (d) The court shall hear the petition within 30 days, unless the hearing or time  
4 deadline is waived. A final decision on the petition to revoke shall be made within  
5 90 days of the filing of the petition. Pending the final revocation hearing, the  
6 department may detain the person in the county jail or return him or her to  
7 institutional care.

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

14 (b) If the court finds after a hearing, by clear and convincing evidence, that the  
15 safety of others requires that supervised release be revoked, the court shall revoke  
16 the order granting supervised release and order that the person be placed in  
17 institutional care. The person shall remain in institutional care until he or she is  
18 discharged from the commitment or again placed on supervised release.

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

20 980.09 ~~(title)~~ **Petition for discharge; procedure.** *(no 9)*

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

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

24 980.09 (1) If the secretary department determines at any time that a person  
25 committed under this chapter is no longer does not meet the criteria for commitment

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renumbered*

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1 ~~as a sexually violent person, the secretary department shall authorize the person to~~  
2 ~~petition the committing court for discharge. The ~~person~~ department shall file the~~  
3 ~~petition with the court and serve a copy upon the department of justice or the district~~  
4 ~~attorney's office that filed the petition under s. 980.02 (1), whichever is applicable.~~  
5 ~~The court, upon receipt of the petition for discharge, shall order a hearing to be held~~  
6 ~~within 45 90 days after the date of receipt of the petition.~~

\*\*\*\*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?

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

9 980.09 **(2m)** At a hearing under this ~~subsection~~ section, the district attorney  
10 or the department of justice, whichever filed the original petition, shall represent the  
11 state and shall have the right to have the petitioner examined by an expert or  
12 professional person of his, her or its choice. ~~The hearing shall be before the court~~  
13 ~~without a jury.~~ The state has the burden of proving by clear and convincing evidence  
14 that the petitioner ~~is still~~ currently meets the criteria for commitment as a sexually  
15 violent person.

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

18 980.09 **(3)** If the court is satisfied that the state has not met its burden of proof  
19 under ~~par. (b) sub. (2m)~~, the petitioner shall be discharged from the custody or  
20 ~~supervision~~ of the department. If the court is satisfied that the state has met its  
21 burden of proof under ~~par. (b) sub. (2m)~~, the court may proceed under 980.07 (7) (b)  
22 to (d) to determine, ~~using the criterion specified in s. 980.08 (4) (b)~~, whether to modify  
23 the petitioner's existing commitment order by authorizing supervised release.

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

\*\*\*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.

2 **SECTION 118.** 980.09 (2g) of the statutes is created to read:

3 980.09 (2g) At any time before a hearing for discharge begins under this  
4 section, the department may file a report if the department determines that more  
5 information is available for the court to consider.

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

6 **SECTION 119.** 980.093 of the statutes is created to read:

7 **980.093 Petition for discharge by the committed person. (1) PETITIONS**

8 **IN GENERAL.** A committed person may petition the committing court for discharge  
9 ~~without the department's approval.~~ <sup>at any time</sup> The court shall deny the petition under this  
10 section without a hearing unless the petition alleges facts from which the court or  
11 jury may conclude the person's condition has changed <sup>since the date of his or her initial commitment order</sup> so that the person does not  
12 meet the criteria for commitment as a sexually violent person.

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

INS 53-2 (no 9)

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

3 (2m) SUPPLEMENTAL REPORTS. At any time before a hearing for discharge begins  
4 under this section, the department may file a supplemental report if the department  
5 determines that more information is available for the court to consider.  
\*\*\*\*NOTE: Please review this subsection to see if it is what you intended.

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

11 (4) DISPOSITION. If the court or jury is satisfied that the state has not met its  
12 burden of proof under sub. (3), the petitioner shall be discharged from the custody  
13 of the department. If the court or jury is satisfied that the state has met its burden  
14 of proof under sub. (3), the court may proceed under s. ~~980.07(7)(b) to (d)~~ <sup>980.08(4) ✓</sup> to  
15 determine whether to modify the petitioner's existing commitment order by  
16 authorizing supervised release.

17 SECTION 120. 980.095 of the statutes is created to read:

18 980.095 Procedures for discharge hearings. (1) USE OF JURIES. (a) The  
19 district attorney or the department of justice, whichever filed the original petition,  
20 or the petitioner or his or her attorney may request that a hearing under s. 980.095  
21 be to a jury of 6. A jury trial is deemed waived unless it is demanded within 10 days  
22 of the filing of the petition for discharge.

23 (b) Juries shall be selected and treated in the same manner as they are selected  
24 and treated in civil actions in circuit court. The number of jurors prescribed in par.

1 (a), plus the number of peremptory challenges available to all of the parties, shall be  
2 called initially and maintained in the jury box by calling others to replace jurors  
3 excused for cause until all jurors have been examined. The parties shall exercise in  
4 their order, the state beginning, the peremptory challenges available to them, and  
5 if any party declines to challenge, the challenge shall be made by the clerk by lot.

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

8 (2) DEPARTMENT'S RIGHT TO BE HEARD. The department of justice shall represent  
9 the department of health and family services at any discharge hearing.

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

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

14 SECTION 121. 980.10 of the statutes is repealed.

15 SECTION 122. 980.101 (2) (a) of the statutes is amended to read:

16 980.101 (2) (a) If the sexually violent offense was the sole basis for the  
17 allegation under s. 980.02 (2) (a) and there are no other judgments relating to a  
18 sexually violent offense committed by the person, the court shall reverse, set aside,  
19 or vacate the judgment under s. 980.05 (5) that the person is a sexually violent  
20 person, vacate the commitment order, and discharge the person from the custody or  
21 supervision of the department.

22 SECTION 123. 980.11 (2) (intro.) of the statutes is amended to read:

23 980.11 (2) (intro.) If the court places a person on supervised release under s.  
24 980.08 or discharges a person under s. 980.09 (3) or 980.10 980.093, the department  
25 shall do all of the following:

(4)

(4)

1           **SECTION 124.** 980.12 (1) of the statutes is amended to read:

2           980.12 (1) Except as provided in ss. ~~980.03 (4)~~ 980.031 (3) and ~~980.08 (3)~~ 980.07

3           ~~(1) (b)~~, the department shall pay from the appropriations under s. 20.435 (2) (a) and  
4           (bm) for all costs relating to the evaluation, treatment, and care of persons evaluated  
5           or committed under this chapter.

6           **SECTION 125.** 980.14 (title) of the statutes is created to read:

7           **980.14 (title) Immunity.**

8           **SECTION 126.** 980.14 (1) of the statutes is created to read:

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

12          **SECTION 127. Initial applicability.**

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

18          (2) This act first applies to periodic reexaminations conducted under section  
19          980.07 of the statutes, as affected by this act, begun on the effective date of this  
20          subsection and to court proceedings resulting from those reexaminations.

21          (3) This act first applies to proceedings to revoke supervised release under  
22          section 980.08 ~~(5)~~ of the statutes, as affected by this act, that are commenced on the  
23          effective date of this subsection, except that the treatment of section 980.08 ~~(5)~~ of the  
24          statutes, with respect to where a person may be detained while a petition to revoke

1 supervised release is pending, first applies to a person whose detention commences  
2 on the effective date of this subsection.

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

5 **SECTION 128. Effective date.**

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

8 (END)

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1 Ins 10-3

2 **SECTION 1.** 51.61 (1) (o) of the statutes is amended to read:

3 51.61 (1) (o) Except as otherwise provided, have a right not to be filmed or  
4 taped, unless the patient signs an informed and voluntary consent that specifically  
5 authorizes a named individual or group to film or tape the patient for a particular  
6 purpose or project during a specified time period. The patient may specify in such  
7 consent periods during which, or situations in which, the patient may not be filmed  
8 or taped. If a patient is legally incompetent, such consent shall be granted on behalf  
9 of the patient by the patient's guardian. A patient in Goodland Hall at the Mendota  
10 Mental Health Institute, or a patient detained or committed under ch. 980 and  
11 placed in a facility specified under s. 980.065, may be filmed or taped for security  
12 purposes without the patient's consent, except that such a patient may not be filmed  
13 in patient bedrooms or bathrooms ~~for any purpose~~ without the patient's consent  
14 unless the patient is engaged in dangerous or disruptive behavior. A treatment  
15 activity involving a patient committed or detained under ch. 980 may be filmed or  
16 taped if the purpose of the recording is to assess the quality of the treatment activity  
17 or to facilitate clinical supervision of the staff involved in the treatment activity.

18 **History:** 1975 c. 430; 1977 c. 428 ss. 96 to 109, 115; 1981 c. 20; 1981 c. 314 s. 144; 1983 a. 189 s. 329 (5); 1983 a. 293, 357, 538; 1985 a. 176; 1987 a. 366, 367, 403; 1989  
a. 31; 1993 a. 184, 445, 479; 1995 a. 27 s. 9126 (19); 1995 a. 92, 268, 292; 1997 a. 292; 2001 a. 16 ss. 1993j to 1993w, 4034zk, 4034zl; 2001 a. 104.

19 Ins 26-4

20 **SECTION 2.** 980.01 (8) of the statutes is created to read:

21 980.01 (8) "Significant progress in treatment" means that the person has done  
22 all of the following:

1 (a) Meaningfully participated in the treatment program specifically designed  
2 to reduce his or her risk to reoffend offered at a facility described under s. 980.065.

3 (b) Participated in the treatment program at a level that was sufficient to allow  
4 the identification of his or her specific treatment needs and then demonstrated,  
5 through overt behavior, a willingness to work on addressing the specific treatment  
6 needs.

7 (c) Demonstrated an understanding of the thoughts, attitudes, emotions,  
8 behaviors, and sexual arousal linked to his or her sexual offending and an ability to  
9 identify when the thoughts, emotions, behaviors, or sexual arousal occur.

10 (d) Demonstrated sufficiently sustained change in the thoughts, attitudes,  
11 emotions, and behaviors and sufficient management of sexual arousal such that one  
12 could reasonably assume that, with continued treatment, the change could be  
13 maintained.

14 **SECTION 3.** 980.01 (9) of the statutes is created to read:

15 980.01 (9) "Substantially probable" means much more likely than not.

16  
17 Ins 43-5

18 **SECTION 4.** 980.07 (title) of the statutes is amended to read:

19 **980.07 (title) Periodic reexamination and treatment progress; report**  
20 **from the department.**

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

end of ins 43-5

21  
22  
23  
24

\*\*\*NOTE: Should "treating professional" be defined?\*\*\*

1 Ins 43-13

2 *MP* The examiner shall apply the criteria under s. 980.08 (4) (cg) when considering  
3 if the person should be placed on supervised release and shall apply the criteria  
4 under s. 980.09 (3) when considering if the person should be discharged.

6 Insert 45-9

7 \*\*\*\*NOTE: Please review the cross-reference in the scored text. The instructions  
8 read "sub. (1)" but I changed it to "sub. (4)."

7 **SECTION 5.** 980.07 (4), (5) and (6) of the statutes are created to read:

8 980.07 (4) At any reexamination under sub. (1), the treating professional shall  
9 prepare a treatment progress report. The treating professional shall provide a copy  
10 of the treatment progress report to the department. The treatment progress report  
11 shall consider all of the following:

- 12 (a) The specific factors associated with the person's risk for committing another  
13 sexually violent offense.
- 14 (b) Whether the person has made significant progress in treatment or has  
15 refused treatment.
- 16 (c) The ongoing treatment needs of the person.
- 17 (d) Any specialized needs or conditions associated with the person that must  
18 be considered in future treatment planning.

19 (5) Any examiners under sub. (1) and treating professionals under sub. (4) shall  
20 have reasonable access to the person for purposes of reexamination, to the person's  
21 past and present treatment records, as defined in s. 51.30 (1) (b), and to the person's  
22 patient health care records, as provided under s. 146.82 (2) (c).

1           (6) The department shall submit an annual report comprised of the  
2 reexamination report under sub. (1) and the treatment progress report under sub.  
3 (4) to the court that committed the person under s. 980.06. A copy of the annual  
4 report shall be placed in the person's treatment records. The department shall  
5 provide a copy of the annual report to the person committed under s. 980.06, the  
6 department of justice, and the district attorney, if applicable. The court shall provide  
7 a copy of the annual report to the person's attorney as soon as he or she is retained  
8 or appointed.

9           **SECTION 6.** 980.075 of the statutes is created to read:

10           **980.075 Patient petition process.** (1) When the department submits its  
11 report to the court under s. 980.07 (6), the person who has been committed under s.  
12 980.06 may retain or have the court appoint an attorney as provided in s. 980.03 (2)  
13 (a).

14           **(1m)** (a) When the department provides a copy of the report under s. 980.07 (6)  
15 to the person who has been committed under s. 980.06, the department shall provide  
16 to the person a standardized petition form for supervised release under s. 980.08 and  
17 a standardized petition form for discharge under s. 980.09.

18           (b) The department shall, after consulting with the department of justice and  
19 the state public defender, develop the standardized petition forms required under  
20 par. (a).

21           **(2)** (a) Within 30 days after the department submits its report to the court  
22 under s. 980.07 (6), the person who has been committed under s. 980.06 or his or her  
23 attorney may submit one of the completed forms provided under sub. (1m) to the  
24 court to initiate either a petition for supervised release or a petition for discharge.

1 (b) If no completed petition is filed in a timely manner under par. (a), the person  
2 who has been committed under s. 980.06 will remain committed.

3 (3) If the person files a petition for discharge under s. 980.09 without counsel,  
4 the court shall serve a copy of the petition and any supporting documents on the  
5 district attorney or department of justice, whichever is applicable. If the person  
6 petitions <sup>for discharge under s. 980.09</sup> through counsel, his or her attorney shall serve the district attorney or  
7 department of justice, whichever is applicable.

8 (4) (a) The petitioner may use experts or professional persons to support his  
9 or her petition.

10 (b) The district attorney or the department of justice may use experts or  
11 professional persons to support or oppose any petition.

12 (5) Subject to s. 980.03 (2) (a), before proceeding under s. 980.08 or 980.09 but  
13 as soon as circumstances permit, the court shall refer the matter to the authority for  
14 indigency determinations under s. 977.07 (1) and appointment of counsel under s.  
15 977.05 (4) (j) if the person is not represented by counsel.

\*\*\*NOTE: See s. 980.08 (2)--is there any way to reduce the language redundancies?

16 (6) At any time before a hearing under s. 980.08 or 980.09, the department may  
17 file a supplemental report if the department determines that court should have  
18 additional information.

19  
20 Insert 50-19

21 SECTION 7. 980.08 (1) of the statutes is amended to read:

22 980.08 (1) Any person who is committed under s. 980.06 may petition the  
23 committing court to modify its order by authorizing supervised release if at least 18  
24 12 months have elapsed since the initial commitment order was entered or at least

✓  
 1     6 12 months have elapsed since the most recent release petition was denied or the  
 2     most recent order for supervised release was revoked. The director of the facility at  
 3     which the person is placed may file a petition under this subsection on the person's  
 4     behalf at any time. ✓

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; 2003 a. 187.

5           **SECTION 8.** 980.08 (3) of the statutes is amended to read:

6           980.08 (3) Within 20 days after receipt of the petition, the court shall appoint  
 7     one or more examiners having the specialized knowledge determined by the court to  
 8     be appropriate, who shall examine the person and furnish a written report of the  
 9     examination to the court within 30 days after appointment. The examiners shall  
 10    have reasonable access to the person for purposes of examination and to the person's  
 11    past and present treatment records, as defined in s. 51.30 (1) (b), and patient health  
 12    care records, as provided under s. 146.82 (2) (c). If any such examiner believes that  
 13    the person is appropriate for supervised release under the criteria specified in sub.  
 14    (4) (b) (cg), the examiner shall report on the type of treatment and services that the  
 15    person may need while in the community on supervised release. The county shall  
 16    pay the costs of an examiner appointed under this subsection as provided under s.  
 17    51.20 (18) (a).

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; 2003 a. 187.

18           **SECTION 9.** 980.08 (4) (a) of the statutes is amended to read:

19           980.08 (4) (a) The court, without a jury, shall hear the petition within 30 days  
 20    after the report of the court-appointed examiner is filed with the court, unless the  
 21    ~~petitioner waives~~ court for good cause extends this time limit. Expenses of  
 22    proceedings under this subsection shall be paid as provided under s. 51.20 (18) (b),  
 23    (c), and (d). ✓

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; 2003 a. 187.

24           **SECTION 10.** 980.08 (4) (b) of the statutes is repealed.

**SECTION 11.** 980.08 (4) (c) of the statutes is amended to read:

980.08 (4) (c) In making a decision under par. (b) (cg), 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 par. (b) (cg) 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.

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; 2003 a. 187.

**SECTION 12.** 980.08 (4) (cg) of the statutes is created to read:

980.08 (4) (cg) 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:

**INSERT BLUE (to insert 50-19)**

**SECTION 13.** 980.08 (4) (cm) of the statutes is created to read:

1            980.08 (4) (cm) If the court finds that all of the criteria in par. (cg) are met, the  
 2 court shall select a county to prepare a report under par. (e). Unless the court has  
 3 good cause to select another county, the court shall select the person's county of  
 4 residence as determined by the department under s. 980.105. The court may not  
 5 select a county where there is a facility in which persons committed to institutional  
 6 care under this chapter are placed unless that county is also that person's county of  
 7 residence.

8            **SECTION 14.** 980.08 (4) (d), (e), (f) and (g) of the statutes are created to read:

9            980.08 (4) **Insert YELLOW (to insert 50-19)**

10 *MP* The department shall prepare a supervised release plan that identifies the  
 11 proposed residence. The plan shall address the person's need, if any, for supervision,  
 12 counseling, medication, community support services, residential services, vocational  
 13 services, and alcohol or other drug abuse treatment. The supervised release plan  
 14 shall be submitted to the court within 90 days of the finding under par. (cg). The court  
 15 may grant extensions of this time period for good cause.

16            **INSERT PINK (to insert 50-19)**

17 *ns 91* or direct the preparation of another supervised release plan to be considered by  
 18 the court under this paragraph.

19            **SECTION 15.** 980.08 (5) of the statutes is repealed.

20            **SECTION 16.** 980.08 (6m) of the statutes is amended to read:

21            980.08 (6m) An order for supervised release places the person in the custody  
 22 and control of the department. The department shall arrange for control, care and  
 23 treatment of the person in the least restrictive manner consistent with the  
 24 requirements of the person and in accordance with the plan for supervised release  
 25 approved by the court under sub. ~~(5)~~ (4) (g). A person on supervised release is subject

1 to the conditions set by the court and to the rules of the department. Within 10 days  
2 of imposing a rule, the department shall file with the court any additional rule of  
3 supervision not inconsistent with the rules or conditions imposed by the court. If the  
4 department wants to change a rule or condition of supervision imposed by the court,  
5 the department must obtain the court's approval. Before a person is placed on  
6 supervised release by the court under this section, the court shall so notify the  
7 municipal police department and county sheriff for the municipality and county in  
8 which the person will be residing. The notification requirement under this  
9 subsection does not apply if a municipal police department or county sheriff submits  
10 to the court a written statement waiving the right to be notified.

11 (7) (a) If the department alleges believes that a released person on supervised  
12 release, or awaiting placement on supervised release, has violated, or threatened to  
13 violate, any condition or rule, or that of supervised release, the department may  
14 petition for revocation of the order granting supervised release as described in par.  
15 (c) or may detain the person.

16 (b) If the department believes that a person on supervised release, or awaiting  
17 placement on supervised release, is a threat to the safety of others requires that  
18 supervised release be revoked, he or she may be taken into custody under the rules  
19 of the department. The department shall submit a statement showing probable  
20 cause of the detention and a, the department shall detain the person and petition to  
21 revoke for revocation of the order for granting supervised release to as described in  
22 par. (c).

23 (c) If the department concludes that the order granting supervised release  
24 should be revoked, it shall file with the committing court a statement alleging the  
25 violation and or threat of a violation and a petition to revoke the order for supervised

1 release and provide a copy of each to the regional office of the state public defender  
2 responsible for handling cases in the county where the committing court is located.  
3 If the department has detained the person under par. (a) or (b), the department shall  
4 file the statement and the petition and provide them to the regional office of the state  
5 public defender within 72 hours after the detention, excluding Saturdays, Sundays  
6 and legal holidays. Pending the revocation hearing, the department may detain the  
7 person in a jail or in a hospital, center, or facility under s. 51.15 (2). The court shall  
8 refer the matter to the authority for indigency determinations under s. 977.07 (1) and  
9 appointment of counsel under s. 977.05 (4) (j). The determination of indigency and  
10 the appointment of counsel shall be done as soon as circumstances permit.

11 (d) The court shall hear the petition within 30 days, unless the hearing or time  
12 deadline is waived by the detained person. A final decision on the petition to revoke  
13 the order for supervised release shall be made within 90 days of the filing. Pending  
14 the revocation hearing, the department may detain the person in a jail or in a  
15 hospital, center or facility specified by s. 51.15 (2). The state has the burden of  
16 proving the county jail or return him or her to institutional care.

17 (8) (a) If the court finds after a hearing, by clear and convincing evidence, that  
18 any rule or condition of release has been violated, or and the court finds that the  
19 violation of the rule or condition merits the revocation of the order granting  
20 supervised release, the court may revoke the order for supervised release and order  
21 that the person be placed in institutional care. The court may consider alternatives  
22 to revocation. The person shall remain in institutional care until the person is  
23 discharged from the commitment under s. 980.09 or is placed again on supervised  
24 release under sub. (4) (g).

1           **(b) If the court finds after a hearing, by clear and convincing evidence, that the**  
2 **safety of others requires that supervised release be revoked.** ~~If the court determines~~  
3 ~~after hearing that any rule or condition of release has been violated, or that the safety~~  
4 ~~of others requires that supervised release be revoked, it may shall~~ ✓ **revoke the order**  
5 **for supervised release and order that the released person be placed in an appropriate** ✓  
6 **institution institutional care. The person shall remain in institutional care** ✓ **until the**  
7 **person is discharged from the commitment under s. 980.09 or until again is** ✓ **placed**  
8 **on supervised release under this section sub. (4) (g).** ✓

9 **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; 2003 a. 187.

10           Insert 53-2

11 *NOA* If the court determines that facts exist from which a court or jury could conclude  
12 the person does not meet criteria for commitment the court shall set the matter for  
13 hearing. ✓

INS 2 INS

1 unless the petitioner waives this time limit. Expenses of proceedings under this  
2 subsection shall be paid as provided under s. 51.20 (18) (b), (c), and (d).

3 (am) The department of justice shall represent the department of health and  
4 family services at any hearing under this subsection.

\*\*\*\*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.

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

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

10 2. It is substantially probable that the person will not engage in an act of sexual  
11 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. 2d 389 (1999). The court may interpret "substantially probable" the same way here. Please review and make sure you intend that standard to apply.

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

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

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

INS  
BLUE  
(to  
INS  
30-19)

(end of blue  
material)

\*\*\*\*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.

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

7  
NDR

d (br) The court shall authorize the petitioner, the person's attorney, <sup>the district attorney</sup> any law  
8 enforcement agency in the county of intended placement, and any local  
9 governmental unit in the county of intended placement to submit prospective  
10 residential options for community placement to the department within 60 days  
11 following the selection of the county under par. (bm). cm ✓

INS  
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(to INS  
5019)

e (d) The court shall order the county department under s. 51.42 in the county  
12 of intended placement to prepare a report, either independently or with the  
13 department of health and family services, identifying prospective residential options  
14 for community placement. In identifying prospective residential options, the county  
15 department shall consider the proximity of any potential placement to the residence  
16 of other persons on supervised release and to the residence of persons who are in the  
17 custody of the department of corrections and regarding whom a sex offender  
18 notification bulletin has been issued to law enforcement agencies under s. 301.46  
19 (2m) (a) or (am). The county department shall submit its report to the department  
20 within 60 days following the court order.  
21

✓

*INS YELLOW cont*

*d*  
*f*

*e*

1 (d) The court shall direct the department to use any submissions under par.  
2 (br), the report submitted under par. (c), or other residential options identified by the  
3 department to prepare a supervised release plan for the person. *(END OF INSERT YELLOW)*

4 *g* (d) The court shall review the plan submitted by the department under par.  
5 (cm). If the details of the plan adequately meet the treatment needs of the individual  
6 and the safety needs of the community, then the court shall approve the plan and  
7 determine that supervised release is appropriate. If the details of the plan do not  
8 adequately meet the treatment needs of the individual or the safety needs of the  
9 community, then the court shall determine that supervised release is not  
10 appropriate. *no p*

*INS  
PINK  
(to meet  
50-19)*

\*\*\*\*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? (w/in 30 days, etc.)

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,

