



State of Wisconsin
1999 - 2000 LEGISLATURE

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JEO;jlg:hmh

1999 SENATE BILL 388

February 16, 2000 - Introduced by Senators DRZEWIECKI, HUELSMAN, FITZGERALD, DARLING, COWLES and ROSENZWEIG, cosponsored by Representatives HUEBSCH, KAUFERT, MUSSER, KELSO, OWENS, SYKORA, LADWIG, STONE, GUNDERSON and OLSEN. Referred to Committee on Judiciary and Consumer Affairs.

1 **AN ACT to repeal** 51.30 (4) (b) 10m. and 980.10; **to renumber and amend**
2 980.015 (1), 980.015 (2) (intro.), 980.015 (2) (a), 980.015 (2) (b), 980.015 (2) (c),
3 980.015 (4), 980.03 (4) and 980.03 (5); **to amend** 51.30 (3) (a), 51.30 (3) (b), 51.30
4 (4) (b) 8m., 51.30 (4) (b) 11., 51.375 (1) (a), 146.82 (2) (c), 165.255, 301.45 (3) (a)
5 3r., 808.075 (4) (h), 904.04 (2), 905.04 (4) (a), 938.396 (1), 938.396 (2) (e), 938.396
6 (5) (a) (intro.), 938.78 (2) (e), 950.04 (1v) (xm), 972.15 (4), 980.015 (title), 980.015
7 (3) (intro.), 980.015 (3) (b), 980.02 (1) (intro.), 980.02 (1) (a), 980.02 (1) (b)
8 (intro.), 980.03 (2) (intro.), 980.07 (1), 980.07 (2), 980.07 (3), 980.08 (3), 980.08
9 (4), 980.09 (1) (b), 980.09 (2) (a), 980.09 (2) (b), 980.11 (2) (intro.) and 980.12 (1);
10 and **to create** 51.30 (3) (bm), 51.30 (4) (b) 8s., 146.82 (2) (cm), 301.355, 938.35
11 (1) (e), 938.396 (1k), 972.15 (6), 980.015 (1) (b) (intro.), 980.015 (2) (bm), 980.015
12 (3m), 980.015 (3r), 980.015 (3x), 980.031 (title), 980.031 (2), 980.036, 980.038

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

Analysis by the Legislative Reference Bureau

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

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

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

5 **SECTION 2.** 51.30 (3) (b) of the statutes is amended to read:

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

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

13 51.30 (3) (bm) The files and records of court proceedings under this chapter
14 shall be released to a district attorney specified under s. 980.02 (1) (b) or to the
15 department of justice in accordance with s. 980.015 (3r). Information obtained from
16 files and records under this paragraph shall be kept confidential except to the extent
17 that redisclosure of that information is necessary for the conduct of an evaluation or
18 proceeding under ch. 980 for which the information was obtained.

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

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

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

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

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

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

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

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

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

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

24 146.82 (2) (c) Notwithstanding sub. (1), patient health care records shall be
25 released to appropriate examiners and facilities in accordance with ss. s. 971.17 (2)

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

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

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

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

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

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

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

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

23 (b) The department of justice.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 938.396 (2) (e) Upon request of the department of corrections, the department
25 of health and family services, the department of justice or a district attorney to

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

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

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

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

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

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

3 **SECTION 23.** 950.04 (1v) (xm) of the statutes, as affected by 1999 Wisconsin Act
4 9, is amended to read:

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

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

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

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

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

17 (a) The department of corrections.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 980.015 (2) (bm) If an agency with jurisdiction determines in an evaluation
15 under par. (am) that the person may meet the criteria for commitment as a sexually
16 violent person, the agency with jurisdiction shall obtain a special purpose evaluation
17 of the person by a qualified expert or professional person, who shall make a
18 recommendation as to whether a commitment proceeding under this chapter should
19 be initiated. A qualified expert or professional person who conducts a special purpose
20 evaluation under this paragraph shall make a written report of his or her evaluation
21 to the agency with jurisdiction no later than 120 days before the anticipated release
22 date of the person. The report shall specify the recommendation of the qualified
23 expert or professional person and the bases for the recommendation. The agency
24 with jurisdiction shall, no later than 5 days after it receives the report, provide each
25 district attorney specified under s. 980.02 (1) (b) and the department of justice with

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

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

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

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

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

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

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

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

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

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1 (c), and past and present correctional records, as provided under ss. 301.355 and
2 938.78 (2) (e), and to the records of a court assigned to exercise jurisdiction under ch.
3 938, as provided under s. 938.396 (2) (e), and presentence investigation reports, as
4 provided under s. 972.15 (6).

5 (b) A qualified expert or professional person who conducts a special purpose
6 evaluation under sub. (2) (bm) shall, when requested to do so, provide a district
7 attorney who receives a copy of the report of the special purpose evaluation and the
8 department of justice with copies of or access to any documentation used by the
9 expert or professional person in preparing the report, including any treatment
10 records, as defined in s. 51.30 (1) (b), health care records, as defined in s. 146.82 (2)
11 (c), correctional records, records of a court assigned to exercise jurisdiction under ch.
12 938 and presentence investigation reports.

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

14 980.015 (3r) For purposes of evaluating a case to decide whether to initiate
15 commitment proceedings under this chapter or for the purpose of conducting a
16 commitment proceeding under this chapter, a district attorney specified under s.
17 980.02 (1) (b) or the department of justice may request copies of or access to all of the
18 following concerning a person who is the subject of an evaluation by an agency with
19 jurisdiction under sub. (2) (am):

20 (a) Files and records of court proceedings under ch. 51, as provided under s.
21 51.30 (3) (bm).

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

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1 (c) Correctional records, as provided under s. 301.355.

2 (d) A presentence investigation report, as provided under s. 972.15 (6).

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

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

18 **SECTION 39.** 980.015 (4) of the statutes is renumbered 980.14 (2) and amended
19 to read:

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

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

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

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

4 980.02 (1) (a) The department of justice ~~at the request of.~~ If the agency with
5 jurisdiction, as defined in s. 980.015 (1), over the person determined in an evaluation
6 under s. 980.015 (2) (am) that the person does not meet the criteria for commitment,
7 the department of justice shall decide whether to file a petition under this paragraph,
8 and shall inform the district attorneys specified under par. (b) of its decision, no later
9 than 45 days after it receives notice of the agency's evaluation. If the agency with
10 jurisdiction over the person obtained a special purpose evaluation of the person
11 under s. 980.015 (2) (bm), the department of justice shall decide whether to file a
12 petition under this paragraph, and shall inform the district attorneys specified
13 under par. (b) of its decision, no later than 30 days after it receives a copy of the report
14 of the special purpose evaluation. If the department of justice decides to file a
15 petition under this paragraph, it shall file the petition before the date of the release
16 or discharge of the person.

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

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

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

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

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

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

8 (3) ~~If the person a party retains or the court appoints a qualified expert or~~
9 ~~professional person of his or her own choice to conduct an examination of a person~~
10 ~~who is the subject of a petition filed under s. 980.02 or who has been committed under~~
11 ~~s. 980.06, the examiner expert or professional person shall have reasonable access~~
12 ~~to the person for the purpose of the examination, as well as. The expert or~~
13 ~~professional person shall also have access to the person's past and present treatment~~
14 ~~records, as defined in s. 51.30 (1) (b), and past and present patient health care records~~
15 ~~as provided under s. 146.82 (2) (c). If the person is indigent, the court shall, upon the~~
16 ~~person's request, appoint a qualified and available expert or professional person to~~
17 ~~perform an examination and participate in the trial or other proceeding on the~~
18 ~~person's behalf, and past and present correctional records, as provided under ss.~~
19 ~~301.355 and 938.78 (2) (e), and to the records of a court assigned to exercise~~
20 ~~jurisdiction under ch. 938, as provided under s. 938.396 (2) (e), and presentence~~
21 ~~investigation reports, as provided under s. 972.15 (6).~~

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

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

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

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

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

12 **980.031** (title) **Examinations.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 (k) Any exculpatory evidence.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 1. The person and his or her attorney.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 **SECTION 53.** 980.07 (1g) of the statutes is created to read:

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

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

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

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

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

SENATE BILL 388**SECTION 56**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 **SECTION 62.** 980.11 (2) (intro.) of the statutes, as affected by 1999 Wisconsin
20 Act 9, is amended to read:

21 980.11 (2) (intro.) If the court places a person on supervised release under s.
22 980.08 or discharges a person under s. 980.09 ~~or 980.10~~, the department shall do all
23 of the following:

24 **SECTION 63.** 980.12 (1) of the statutes, as affected by 1999 Wisconsin Act 9,
25 section 3239, is amended to read:

