



1999 SENATE BILL 404

February 23, 2000 - Introduced by Senators CLAUSING, BURKE and ROESSLER, cosponsored by Representatives HUBER, POCAN and SERATTI. Referred to Committee on Judiciary and Consumer Affairs.

1 **AN ACT** *to repeal* 51.30 (4) (b) 10m., 980.02 (2) (ag), 980.05 (1m) and 980.07 (3);
2 *to renumber* 980.01 (1); *to renumber and amend* 938.396 (2) (e), 939.623 (1),
3 939.624 (1), 980.015 (4), 980.03 (4), 980.03 (5) and 980.04 (2); *to amend* 48.396
4 (1), 48.396 (5) (a) (intro.), 48.78 (1), 51.20 (13) (ct) 1m., 51.30 (3) (a), 51.30 (4)
5 (b) 8m., 146.82 (2) (c), 756.06 (2) (b), 801.52, 808.04 (3), 808.04 (4), 809.10 (1) (a),
6 809.30 (1) (a), 809.30 (1) (b), 809.40 (1), 905.04 (4) (a), 911.01 (4) (c), 938.34
7 (15m) (am), 938.396 (1), 938.396 (5) (a) (intro.), 938.78 (2) (e), 946.42 (1) (a),
8 971.17 (1m) (b) 1m., 972.15 (4), 973.048 (1m), 978.045 (1r) (intro.), 980.01 (2),
9 980.01 (5), 980.01 (6) (a), 980.01 (6) (b), 980.01 (6) (c), 980.01 (7), 980.015 (2)
10 (intro.), 980.015 (2) (a), 980.015 (2) (b), 980.015 (2) (c), 980.02 (1) (a), 980.02 (4)
11 (intro.), 980.03 (2) (intro.), 980.03 (3), 980.04 (1), 980.04 (3), 980.05 (1), 980.05
12 (3) (a), 980.05 (3) (b), 980.07 (1), 980.08 (3), 980.08 (4), 980.09 (1) (b), 980.09 (2)
13 (a), 980.09 (2) (b) and 980.12 (1); and *to create* 48.396 (6), 48.78 (2) (e), 48.981
14 (7) (a) 8s., 51.30 (3) (bm), 51.30 (4) (b) 8s., 118.125 (2) (ck), 146.82 (2) (cm), 756.06

SENATE BILL 404

1 (2) (cm), 814.61 (1) (c) 6., 938.35 (1) (e), 939.623 (1) (b), 939.624 (1) (b), 946.42
2 (3m), 972.15 (6), 980.01 (1g), 980.01 (6) (am), 980.01 (6) (bm), 980.01 (6) (d),
3 980.015 (2) (d), 980.02 (1) (b) 3., 980.02 (1m), 980.02 (6), 980.031 (title), 980.031
4 (1) and (2), 980.034, 980.035, 980.036, 980.038, 980.04 (2) (b), 980.05 (2m),
5 980.09 (3), 980.14 (title) and 980.14 (1) of the statutes; **relating to:** sexually
6 violent person commitment proceedings, escape from custody by a person who
7 is subject to a sexually violent person commitment proceeding, sentencing of
8 persons who have prior convictions for certain crimes, requiring persons who
9 commit certain offenses to register as a sex offender and providing penalties.

Analysis by the Legislative Reference Bureau

Sexually violent person commitment proceedings

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 may be filed by the department of justice (DOJ) or, if DOJ does not file a petition, by a district attorney. The petition must be filed before the person is going to be released from confinement that resulted from the commission of a sexually violent offense. The court in which the 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 and order the person to be sent to an appropriate facility for an evaluation.

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

SENATE BILL 404

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 method 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 numerous changes to the current sexually violent person commitment procedure. Among the changes made by the bill are the following:

1. *Definition of sexually violent offenses.* A person may be subject to a proceeding for commitment as a sexually violent person only if the person has committed certain sexually violent offenses. This bill adds additional offenses to the current list of sexually violent offenses that may serve as a basis for a petition. Currently, the list includes such offenses as first and second degree sexual assault, first and second degree sexual assault of a child, incest with a child and child enticement. This bill adds sexual exploitation by a therapist and third degree sexual assault to the list.

The current list of sexually violent offenses also includes offenses such as homicide, certain battery offenses, kidnapping and burglary, if the offense is found to have been sexually motivated. Under the bill, the following crimes are considered to be sexually violent crimes if they are found to have been sexually motivated: a) felony murder; b) administering a dangerous or stupefying drug with the intent to facilitate the commission of a crime; c) soliciting a child to participate in criminal gang activity; d) arson to a building; e) robbery; and f) physical abuse of a child.

In addition, the bill provides that an offense that was a crime under an earlier law of this state that is comparable to any of the sexually violent offenses included in the list is also considered to be a sexually violent offense.

Finally, the bill includes in the list of sexually violent offenses the offense of escape, if the escape was from any type of custody that is related to a sexually violent person commitment proceeding (see *Escape*, below).

2. *Expert examinations of persons who are subject to sexually violent person petitions.* Under current law, if a person who is the subject of a sexually violent person petition or who has been committed as a sexually violent person is required to submit to an examination, he or she may retain experts or professional persons to perform an examination. If the person is indigent, the court must, upon the person's request, appoint a qualified and available expert or professional person to perform an examination of the person on the person's behalf.

This bill maintains the current provision concerning retention of an expert by a person who is subject to a petition or appointment of an expert for the person. The bill also provides that, if a person who is subject to a sexually violent person petition denies the facts alleged in the petition, the court may appoint at least one expert to conduct an examination of the person and testify at the trial on the petition. The bill also provides that the state may retain an expert to examine a person who is subject to a sexually violent person petition and testify at the trial on the petition or at other proceedings. Finally, the bill provides that an expert retained or appointed under any of these provisions must be a licensed physician, licensed psychologist or other mental health professional.

SENATE BILL 404

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 or a proceeding to determine whether he or she is in need of protection or services, 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 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 authorized representatives of DHFS, DOJ, the department of corrections (DOC) or a district attorney for use in the evaluation or prosecution of a sexually violent person proceeding if the records involve or relate to an individual who is the subject of or who is being evaluated for the proceeding. 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 and that any representative of DHFS, DOJ or DOC or a district attorney may disclose information obtained from the records for any purpose consistent with any sexually violent person proceeding.

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 law enforcement records concerning juveniles, records concerning required reports of abused or neglected children, court records of other civil commitment proceedings, pupil records maintained by a school and 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 these records and reports must be released to authorized representatives of DHFS, DOJ, DOC or a district attorney for use in the evaluation or prosecution of a sexually violent person proceeding if the records involve or relate to an individual who is the subject of or who is being evaluated for the proceeding. 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 and that any representative of DHFS, DOJ or DOC or a district attorney may disclose information obtained from the records for any purpose consistent with any sexually violent person proceeding.

4. *Timing of probable cause hearing.* Under current law, the court in which a sexually violent person petition has been filed must conduct a probable cause hearing on the petition within a reasonable period of time after the filing of the

SENATE BILL 404

petition, except that the probable cause hearing must be held within 72 hours after the petition is filed (excluding Saturdays, Sundays and legal holidays) if the person is being held in custody pending trial on the petition.

This bill provides that the probable cause hearing generally must be held within 30 days after the filing of the petition, excluding Saturdays, Sundays and legal holidays, unless that time limit is extended by the court for good cause. However, if the person who is subject to the petition is in custody under a criminal sentence, a juvenile dispositional order or a commitment order that is based on the person's commission of a sexually violent offense and the probable cause hearing is scheduled to be held after the date on which the person is scheduled to be released or discharged from the sentence, dispositional order or commitment order, then the probable cause hearing must be held no later than ten days after the person's scheduled date of release or discharge, excluding Saturdays, Sundays and legal holidays, unless that time limit is extended by the court for good cause.

5. *Timing of the trial on a sexually violent person petition.* Under current law, a trial to determine whether the person who is the subject of a petition is a sexually violent person must commence no later than 45 days after the date of the probable cause hearing, unless the court grants a continuance of the trial date for good cause. The bill provides that the trial must begin no later than 90 days after the date of the probable cause hearing, except that the court may grant one or more continuances for good cause.

6. *Rights of a person who is subject to a petition.* Under current law, the rules of evidence applicable at a criminal trial apply to a trial on a sexually violent person petition and a person who is subject to a sexually violent person petition generally has the same constitutional rights available to a defendant in a criminal proceeding. Current law also specifically provides that the person has the right to counsel, the right to remain silent, the right to present and cross-examine witnesses and the right to have the allegations in the petition proven beyond a reasonable doubt.

This bill eliminates the requirement that the rules of evidence applicable at a criminal trial also apply at a trial on a petition. In addition, the bill eliminates the general provision affording a person who is subject to a petition the same constitutional rights as are available to a defendant in a criminal proceeding. The bill does not eliminate the person's specified rights to counsel, to present and cross-examine witnesses and to have the petition proven beyond a reasonable doubt. Likewise, the bill does not eliminate the person's specified right to remain silent; however, the bill does provide that the state may present evidence that a person who is the subject of a petition refused to participate in an examination that was conducted for the purpose of evaluating whether to file a petition against the person or for the purpose of evaluating the person after a petition had been filed.

7. *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. This bill

SENATE BILL 404

provides that DHFS is not required to examine the person until 18 months after the person's initial commitment. The bill does not change the requirement that DHFS conduct further evaluations at least once each 12 months thereafter.

In addition, under current law the court that committed the person may order a reexamination of the person at any time. The bill eliminates the ability of the court to order a reexamination of the person at any time.

8. *Miscellaneous procedural provisions.* Current law does not explicitly address various procedural issues relating to sexually violent person commitment proceedings. This bill creates new procedural provisions addressing a number of these issues. Among the issues addressed by new procedural provisions are the following:

- a. Substitution of judge.
- b. Making motions to challenge the jurisdiction of the court or the timeliness of the filing of a petition.
- c. Methods by which one party may discover and inspect material in the possession of the other party.
- d. Changing the place where the trial on the petition is held.
- e. Jury selection.
- f. Filing motions for relief from a commitment order that is entered after a person has been found to be a sexually violent person.

The bill also provides that the rules applicable to appeals in criminal, juvenile and other civil commitment cases will generally apply in an appeal from an order committing a person as a sexually violent person.

9. *Codification of certain case law interpretations.* The bill codifies certain Wisconsin appellate court decisions relating to the sexually violent person commitment procedure, including the following:

a. The bill provides that a person may be subject to a sexually violent person commitment proceeding at the time that he or she is being paroled under or discharged from a commitment under a previous sex crimes commitment law that was repealed in 1980. This codifies a holding of *State v. Post*, 197 Wis. 2d 279 (1995).

b. The bill provides that, for purposes of determining the proper time to file a petition, confinement under a sentence of imprisonment that was imposed for a sexually violent offense includes confinement that was imposed consecutively to any sentence for a sexually violent offense. This codifies a holding of *State v. Keith*, 216 Wis. 2d 61 (Ct. App. 1997).

c. The bill provides that a person committed as a sexually violent person must be afforded the right to request a jury for a hearing on his or her petition for a discharge from the commitment. This codifies a holding of *State v. Post*, 197 Wis. 2d 279 (1995).

d. The bill provides that, when reviewing a person's petition for discharge from a commitment as a sexually violent person, the court does not hold an evidentiary hearing but instead considers only reports concerning reexaminations of the person and any relevant documentation submitted by the parties. This codifies the holding of *State v. Paulick*, 213 Wis. 2d 432 (Ct. App. 1997).

SENATE BILL 404***Escape***

Current law provides penalties for escaping from certain types of custody, including actual physical custody in a jail, state prison or juvenile correctional institution, actual physical custody of a law enforcement officer or institution guard and constructive custody of prisoners and juveniles temporarily outside an institution for the purpose of work, school, medical care or other authorized temporary leave. A person who is convicted of escape is subject to fines or imprisonment or both. The maximum term of imprisonment that may be imposed depends on the type of custody from which the person escapes. For instance, a person who escapes after being arrested for, charged with or sentenced for a crime may be imprisoned for not more than ten years or fined not more than \$10,000 or both, while a person who escapes after being arrested for, charged with or convicted of a violation of a law that is penalized with a forfeiture (a civil monetary penalty) may be imprisoned for not more than nine months or fined not more than \$10,000 or both.

This bill provides that a person may be imprisoned for not more 60 years if he or she escapes while he or she is in custody in connection with a sexually violent person commitment proceeding or while he or she is in institutional care or on supervised release after having been found to be a sexually violent person.

Sentence enhancement for repeat serious sex crimes and repeat violent crimes

Under current law, a person must be sentenced to not less than five years of imprisonment if he or she commits a serious sex crime after having previously been convicted of a serious sex crime. The serious sex crimes covered by this requirement are first and second degree sexual assault, which generally involves sexual intercourse or sexual contact with another without the other person's consent under certain aggravating circumstances (such as the use or the threat of use of a weapon, force or violence). This bill adds third degree sexual assault (sexual intercourse or sexual contact with another without the other person's consent) to the list of serious sex crimes covered by this minimum sentence requirement. In addition, the bill provides that a person is covered by this minimum sentence requirement if any of the following applies: 1) the person was previously convicted of a crime under an earlier law of this state that is comparable to first, second or third degree sexual assault; or 2) the person has previously been convicted of a crime under federal law or the law of another state and that federal or state law is comparable to first, second or third degree sexual assault.

Current law also provides that a person must be sentenced to not less than five years of imprisonment if he or she commits a serious violent crime after having previously been convicted of a serious violent crime. The serious violent crimes covered by this requirement are felony murder (causing the death of another during the commission of certain felonies) and second degree intentional homicide. This bill provides that a person is covered by this minimum sentence requirement if he or she has previously been convicted of a crime under federal law or the law of another state and that federal or state law is comparable to felony murder or second degree intentional homicide.

SENATE BILL 404***Sex offender registration requirements***

Under current law, with certain exceptions, a person must register as a sex offender if he or she has committed certain sex offenses, such as sexual assault, sexual assault of a child, incest, sexual exploitation of a child or child enticement. In addition, current law allows a court to order a person to register as a sex offender if the person has committed certain serious felony offenses that are not sex offenses, such as homicide, battery or burglary, but that the court finds were sexually motivated. This bill provides that a court may order a person to register as a sex offender if the person has committed the offense of administering a dangerous or stupefying drug with the intent to facilitate the commission of a crime or the offense of soliciting a child to participate in criminal gang activity if the court finds that the offense was sexually motivated.

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.** 48.396 (1) of the statutes is amended to read:
2 48.396 (1) Law enforcement officers' records of children shall be kept separate
3 from records of adults. Law enforcement officers' records of the adult expectant
4 mothers of unborn children shall be kept separate from records of other adults. Law
5 enforcement officers' records of children and the adult expectant mothers of unborn
6 children shall not be open to inspection or their contents disclosed except under sub.
7 (1b), (1d) ~~or~~ (5) or (6) or s. 48.293 or by order of the court. This subsection does not
8 apply to the representatives of newspapers or other reporters of news who wish to
9 obtain information for the purpose of reporting news without revealing the identity
10 of the child involved, to the confidential exchange of information between the police
11 and officials of the school attended by the child or other law enforcement or social
12 welfare agencies or to children 10 years of age or older who are subject to the
13 jurisdiction of the court of criminal jurisdiction. A public school official who obtains
14 information under this subsection shall keep the information confidential as

SENATE BILL 404

1 required under s. 118.125 and a private school official who obtains information under
2 this subsection shall keep the information confidential in the same manner as is
3 required of a public school official under s. 118.125. A law enforcement agency that
4 obtains information under this subsection shall keep the information confidential as
5 required under this subsection and s. 938.396 (1). A social welfare agency that
6 obtains information under this subsection shall keep the information confidential as
7 required under ss. 48.78 and 938.78.

8 **SECTION 2.** 48.396 (5) (a) (intro.) of the statutes is amended to read:

9 48.396 (5) (a) (intro.) Any person who is denied access to a record under sub.
10 (1), (1b) ~~or~~, (1d) or (6) may petition the court to order the disclosure of the records
11 governed by the applicable subsection. The petition shall be in writing and shall
12 describe as specifically as possible all of the following:

13 **SECTION 3.** 48.396 (6) of the statutes is created to read:

14 48.396 (6) Records of law enforcement officers and of the court assigned to
15 exercise jurisdiction under this chapter and ch. 938 shall be open for inspection by
16 and production to authorized representatives of the department of corrections, the
17 department of health and family services, the department of justice or a district
18 attorney for use in the evaluation or prosecution of any proceeding under ch. 980, if
19 the records involve or relate to an individual who is the subject of or who is being
20 evaluated for a proceeding under ch. 980. The court in which the proceeding under
21 ch. 980 is pending may issue any protective orders that it determines are appropriate
22 concerning information made available or disclosed under this subsection. Any
23 representative of the department of corrections, the department of health and family
24 services, the department of justice or a district attorney may disclose information

SENATE BILL 404**SECTION 3**

1 obtained under this subsection for any purpose consistent with any proceeding under
2 ch. 980.

3 **SECTION 4.** 48.78 (1) of the statutes is amended to read:

4 48.78 (1) In this section, unless otherwise qualified, "agency" means the
5 department, a county department, a licensed child welfare agency, a licensed day
6 care center ~~or~~, a licensed maternity hospital or any public or private institution in
7 which a child has been placed pursuant to a court order under this chapter.

8 **SECTION 5.** 48.78 (2) (e) of the statutes is created to read:

9 48.78 (2) (e) Notwithstanding par. (a), an agency shall, upon request, disclose
10 information to authorized representatives of the department of corrections, the
11 department of health and family services, the department of justice or a district
12 attorney for use in the evaluation or prosecution of any proceeding under ch. 980, if
13 the information involves or relates to an individual who is the subject of or who is
14 being evaluated for a proceeding under ch. 980. The court in which the proceeding
15 under ch. 980 is pending may issue any protective orders that it determines are
16 appropriate concerning information made available or disclosed under this
17 paragraph. Any representative of the department of corrections, the department of
18 health and family services, the department of justice or a district attorney may
19 disclose information obtained under this paragraph for any purpose consistent with
20 any proceeding under ch. 980.

21 **SECTION 6.** 48.981 (7) (a) 8s. of the statutes is created to read:

22 48.981 (7) (a) 8s. Authorized representatives of the department of corrections,
23 the department of health and family services, the department of justice or a district
24 attorney for use in the evaluation or prosecution of any proceeding under ch. 980, if
25 the reports or records involve or relate to an individual who is the subject of or who

SENATE BILL 404

1 is being evaluated for a proceeding under ch. 980. The court in which the proceeding
2 under ch. 980 is pending may issue any protective orders that it determines are
3 appropriate concerning information made available or disclosed under this
4 subdivision. Any representative of the department of corrections, the department
5 of health and family services, the department of justice or a district attorney may
6 disclose information obtained under this subdivision for any purpose consistent with
7 any proceeding under ch. 980.

8 **SECTION 7.** 51.20 (13) (ct) 1m. of the statutes is amended to read:

9 51.20 (13) (ct) 1m. Except as provided in subd. 2m., if the subject individual is
10 before the court on a petition filed under a court order under s. 938.30 (5) (c) 1. and
11 is found to have committed any violation, or to have solicited, conspired or attempted
12 to commit any violation, of ch. 940, 944 or 948 or ss. 941.32, 941.38 or 943.01 to
13 943.15, the court may require the subject individual to comply with the reporting
14 requirements under s. 301.45 if the court determines that the underlying conduct
15 was sexually motivated, as defined in s. 980.01 (5), and that it would be in the interest
16 of public protection to have the subject individual report under s. 301.45.

17 **SECTION 8.** 51.30 (3) (a) of the statutes is amended to read:

18 51.30 (3) (a) Except as provided in pars. (b) and, (bm), (c) and (d), the files and
19 records of the court proceedings under this chapter shall be closed but shall be
20 accessible to any individual who is the subject of a petition filed under this chapter.

21 **SECTION 9.** 51.30 (3) (bm) of the statutes is created to read:

22 51.30 (3) (bm) The files and records of court proceedings under this chapter
23 shall be released to authorized representatives of the department of corrections, the
24 department of health and family services, the department of justice or a district
25 attorney for use in the evaluation or prosecution of any proceeding under ch. 980, if

SENATE BILL 404**SECTION 9**

1 the files or records involve or relate to an individual who is the subject of or who is
2 being evaluated for a proceeding under ch. 980. The court in which the proceeding
3 under ch. 980 is pending may issue any protective orders that it determines are
4 appropriate concerning information made available or disclosed under this
5 paragraph. Any representative of the department of corrections, the department of
6 health and family services, the department of justice or a district attorney may
7 disclose information obtained under this paragraph for any purpose consistent with
8 any proceeding under ch. 980.

9 **SECTION 10.** 51.30 (4) (b) 8m. of the statutes is amended to read:

10 51.30 (4) (b) 8m. To appropriate examiners and facilities in accordance with s.
11 971.17 (2) (e), (4) (c) and (7) (c), ~~980.03 (4) or 980.08 (3)~~. The recipient of any
12 information from the records shall keep the information confidential except as
13 necessary to comply with s. 971.17 ~~or ch. 980~~.

14 **SECTION 11.** 51.30 (4) (b) 8s. of the statutes is created to read:

15 51.30 (4) (b) 8s. To appropriate persons in accordance with s. 980.031 (4) and
16 to authorized representatives of the department of corrections, the department of
17 health and family services, the department of justice or a district attorney for use in
18 the evaluation or prosecution of any proceeding under ch. 980, if the treatment
19 records involve or relate to an individual who is the subject of or who is being
20 evaluated for a proceeding under ch. 980. The court in which the proceeding under
21 ch. 980 is pending may issue any protective orders that it determines are appropriate
22 concerning information made available or disclosed under this subdivision. Any
23 representative of the department of corrections, the department of health and family
24 services, the department of justice or a district attorney may disclose information

SENATE BILL 404

1 obtained under this subdivision for any purpose consistent with any proceeding
2 under ch. 980.

3 **SECTION 12.** 51.30 (4) (b) 10m. of the statutes is repealed.

4 **SECTION 13.** 118.125 (2) (ck) of the statutes is created to read:

5 118.125 (2) (ck) The school district clerk or his or her designee shall make pupil
6 records available for inspection or disclose the contents of pupil records to authorized
7 representatives of the department of corrections, the department of health and
8 family services, the department of justice or a district attorney for use in the
9 evaluation or prosecution of any proceeding under ch. 980, if the pupil records involve
10 or relate to an individual who is the subject of or who is being evaluated for a
11 proceeding under ch. 980. The court in which the proceeding under ch. 980 is pending
12 may issue any protective orders that it determines are appropriate concerning pupil
13 records made available or disclosed under this paragraph. Any representative of the
14 department of corrections, the department of health and family services, the
15 department of justice or a district attorney may disclose information obtained under
16 this paragraph for any purpose consistent with any proceeding under ch. 980.

17 **SECTION 14.** 146.82 (2) (c) of the statutes is amended to read:

18 146.82 (2) (c) Notwithstanding sub. (1), patient health care records shall be
19 released to appropriate examiners and facilities in accordance with ~~ss. s.~~ 971.17 (2)
20 (e), (4) (c) and (7) (c), ~~980.03 (4) and 980.08 (3)~~. The recipient of any information from
21 the records shall keep the information confidential except as necessary to comply
22 with s. 971.17 ~~or ch. 980~~.

23 **SECTION 15.** 146.82 (2) (cm) of the statutes is created to read:

24 146.82 (2) (cm) Notwithstanding sub. (1), patient health care records shall be
25 released to appropriate persons in accordance with s. 980.031 (4) and to authorized

SENATE BILL 404

1 representatives of the department of corrections, the department of health and
2 family services, the department of justice or a district attorney for use in the
3 evaluation or prosecution of any proceeding under ch. 980, if the treatment records
4 involve or relate to an individual who is the subject of or who is being evaluated for
5 a proceeding under ch. 980. The court in which the proceeding under ch. 980 is
6 pending may issue any protective orders that it determines are appropriate
7 concerning records made available or disclosed under this paragraph. Any
8 representative of the department of corrections, the department of health and family
9 services, the department of justice or a district attorney may disclose information
10 obtained under this paragraph for any purpose consistent with any proceeding under
11 ch. 980.

12 **SECTION 16.** 756.06 (2) (b) of the statutes is amended to read:

13 756.06 (2) (b) Except as provided in ~~par.~~ pars. (c) and (cm), a jury in a civil case
14 shall consist of 6 persons unless a party requests a greater number, not to exceed 12.
15 The court, on its own motion, may require a greater number, not to exceed 12.

16 **SECTION 17.** 756.06 (2) (cm) of the statutes is created to read:

17 756.06 (2) (cm) A jury in a trial under s. 980.05 shall consist of the number of
18 persons specified in s. 980.05 (2) unless a lesser number has been stipulated to and
19 approved under s. 980.05 (2m) (c). A jury in a hearing under s. 980.09 (1) (b) or (2)
20 (b) shall consist of the number of persons specified in s. 980.09 (1) (b) or (2) (b),
21 whichever is applicable, unless a lesser number has been stipulated to and approved
22 under s. 980.09 (3) (c).

23 **SECTION 18.** 801.52 of the statutes is amended to read:

24 **801.52 Discretionary change of venue.** The court may at any time, upon
25 its own motion, the motion of a party or the stipulation of the parties, change the

SENATE BILL 404

1 venue to any county in the interest of justice or for the convenience of the parties or
2 witnesses. This section does not apply to proceedings under ch. 980.

3 **SECTION 19.** 808.04 (3) of the statutes is amended to read:

4 808.04 (3) Except as provided in subs. (4) and (7), an appeal in a criminal case
5 or a case under ch. 48, 51, 55 ~~or~~, 938 or 980 shall be initiated within the time period
6 specified in s. 809.30.

7 **SECTION 20.** 808.04 (4) of the statutes is amended to read:

8 808.04 (4) Except as provided in sub. (7m), an appeal by the state in either a
9 criminal case under s. 974.05 or a case under ch. 48 ~~or~~, 938 or 980 shall be initiated
10 within 45 days of entry of the judgment or order appealed from.

11 **SECTION 21.** 809.10 (1) (a) of the statutes is amended to read:

12 809.10 (1) (a) *Filing.* A person shall initiate an appeal by filing a notice of
13 appeal with the clerk of the trial court in which the judgment or order appealed from
14 was entered and shall specify in the notice of appeal the judgment or order appealed
15 from, whether the appeal is in one of the types of cases specified in s. 752.31 (2), and
16 whether the appeal is one of those to be given preference in the circuit court or court
17 of appeals pursuant to statute. The person at the same time shall notify the court
18 of appeals of the filing of the appeal by sending a copy of the notice of appeal to the
19 clerk of the court. The person shall also send the court of appeals an original and one
20 copy of a completed docketing statement on a form prescribed by the court of appeals.
21 The statement shall accompany the court of appeals' copy of the notice of appeal. The
22 person shall also send a copy of the completed docketing statement to opposing
23 counsel. Docketing statements need not be filed in criminal cases, in cases under ch.
24 980 or in cases in which a party appears pro se.

25 **SECTION 22.** 809.30 (1) (a) of the statutes is amended to read:

SENATE BILL 404

1 809.30 (1) (a) “Postconviction relief” means, in a felony or misdemeanor case,
2 an appeal or a motion for postconviction relief other than a motion under s. 973.19
3 or 974.06. In a ch. 48, 51, 55 or 938 case, other than a termination of parental rights
4 case under s. 48.43, it means an appeal or a motion for reconsideration by the trial
5 court of its final judgment or order; in such cases a notice of intent to pursue such
6 relief or a motion for such relief need not be styled as seeking “postconviction” relief.
7 In a ch. 980 case, it means an appeal or a motion for postcommitment relief under
8 s. 980.038 (4).

9 **SECTION 23.** 809.30 (1) (b) of the statutes is amended to read:

10 809.30 (1) (b) “Sentencing” means, in a felony or misdemeanor case, the
11 imposition of a sentence, fine or probation. In a ch. 48, 51, 55 or 938 case, other than
12 a termination of parental rights case under s. 48.43, it means the entry of the trial
13 court’s final judgment or order. In a ch. 980 case, it means the entry of an order under
14 s. 980.06.

15 **SECTION 24.** 809.40 (1) of the statutes is amended to read:

16 809.40 (1) An appeal to the court of appeals from a judgment or order in a
17 misdemeanor case or a ch. 48, 51, 55 ~~or~~ 938 or 980 case, or a motion for postconviction
18 relief in a misdemeanor case or a motion for postcommitment relief under s. 980.038
19 (4) must be initiated within the time periods specified in s. 808.04 and is governed
20 by the procedures specified in ss. 809.30 to 809.32.

21 **SECTION 25.** 814.61 (1) (c) 6. of the statutes is created to read:

22 814.61 (1) (c) 6. An action for civil commitment under ch. 51, 55 or 980.

23 **SECTION 26.** 905.04 (4) (a) of the statutes is amended to read:

24 905.04 (4) (a) *Proceedings for hospitalization, control, care and treatment of a*
25 *sexually violent person, guardianship, protective services or protective placement.*

SENATE BILL 404

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

11 **SECTION 27.** 911.01 (4) (c) of the statutes is amended to read:

12 911.01 (4) (c) *Miscellaneous proceedings.* Proceedings for extradition or
13 rendition; sentencing, or granting or revoking probation, issuance of arrest
14 warrants, criminal summonses and search warrants; hearings under s. 980.08 or
15 980.09; proceedings under s. 971.14 (1) (c); proceedings with respect to pretrial
16 release under ch. 969 except where habeas corpus is utilized with respect to release
17 on bail or as otherwise provided in ch. 969.

18 **SECTION 28.** 938.34 (15m) (am) of the statutes is amended to read:

19 938.34 (15m) (am) Except as provided in par. (bm), if the juvenile is adjudicated
20 delinquent on the basis of any violation, or the solicitation, conspiracy or attempt to
21 commit any violation, under ch. 940, 944 or 948 or ss. 941.32, 941.38 or 943.01 to
22 943.15, the court may require the juvenile to comply with the reporting requirements
23 under s. 301.45 if the court determines that the underlying conduct was sexually
24 motivated, as defined in s. 980.01 (5), and that it would be in the interest of public
25 protection to have the juvenile report under s. 301.45.

SENATE BILL 404

1 **SECTION 29.** 938.35 (1) (e) of the statutes is created to read:

2 938.35 (1) (e) In a hearing, trial or other proceeding under ch. 980 relating to
3 a juvenile.

4 **SECTION 30.** 938.396 (1) of the statutes is amended to read:

5 938.396 (1) Law enforcement officers' records of juveniles shall be kept
6 separate from records of adults. Law enforcement officers' records of juveniles shall
7 not be open to inspection or their contents disclosed except under sub. (1b), (1d), (1g),
8 (1m), (1r), (1t) ~~or~~ (1x) ~~or~~ (5) or (10) or s. 938.293 or by order of the court. This
9 subsection does not apply to representatives of the news media who wish to obtain
10 information for the purpose of reporting news without revealing the identity of the
11 juvenile involved, to the confidential exchange of information between the police and
12 officials of the school attended by the juvenile or other law enforcement or social
13 welfare agencies or to juveniles 10 years of age or older who are subject to the
14 jurisdiction of the court of criminal jurisdiction. A public school official who obtains
15 information under this subsection shall keep the information confidential as
16 required under s. 118.125 and a private school official who obtains information under
17 this subsection shall keep the information confidential in the same manner as is
18 required of a public school official under s. 118.125. A law enforcement agency that
19 obtains information under this subsection shall keep the information confidential as
20 required under this subsection and s. 48.396 (1). A social welfare agency that obtains
21 information under this subsection shall keep the information confidential as
22 required under ss. 48.78 and 938.78.

23 **SECTION 31.** 938.396 (2) (e) of the statutes is renumbered 938.396 (10) and
24 amended to read:

SENATE BILL 404

1 938.396 (10) ~~Upon request of the department of corrections to review court A~~
2 ~~law enforcement agency's records and records for the purpose of providing, under s.~~
3 ~~980.015 (3) (a), of the court assigned to exercise jurisdiction under this chapter and~~
4 ~~ch. 48 shall be open for inspection by authorized representatives of the department~~
5 ~~of corrections, the department of health and family services, the department of~~
6 ~~justice or a district attorney with a person's offense history, the court shall open for~~
7 ~~inspection by authorized representatives of the department of corrections the~~
8 ~~records of the court relating to any juvenile who has been adjudicated delinquent for~~
9 ~~a sexually violent offense, as defined in s. 980.01 (6) for use in the evaluation or~~
10 ~~prosecution of any proceeding under ch. 980, if the records involve or relate to an~~
11 ~~individual who is the subject of or who is being evaluated for a proceeding under ch.~~
12 ~~980. The court in which the proceeding under ch. 980 is pending may issue any~~
13 ~~protective orders that it determines are appropriate concerning information made~~
14 ~~available or disclosed under this subsection. Any representative of the department~~
15 ~~of corrections, the department of health and family services, the department of~~
16 ~~justice or a district attorney may disclose information obtained under this subsection~~
17 ~~for any purpose consistent with any proceeding under ch. 980.~~

18 **SECTION 32.** 938.396 (5) (a) (intro.) of the statutes is amended to read:

19 938.396 (5) (a) (intro.) Any person who is denied access to a record under sub.
20 (1), (1b), (1d), (1g), (1m), (1r) ~~or~~, (1t) or (10) may petition the court to order the
21 disclosure of the records governed by the applicable subsection. The petition shall
22 be in writing and shall describe as specifically as possible all of the following:

23 **SECTION 33.** 938.78 (2) (e) of the statutes is amended to read:

24 938.78 (2) (e) Paragraph (a) ~~does not prohibit~~ Notwithstanding par. (a), the
25 department ~~from disclosing~~ shall, upon request, disclose information about an

SENATE BILL 404**SECTION 33**

1 individual adjudged delinquent under s. ~~938.183~~ or ~~938.34~~ for a sexually violent
2 offense, as defined in s. 980.01 (6), to authorized representatives of the department
3 of corrections, the department of health and family services, the department of
4 justice, or a district attorney or a judge acting under ch. 980 or to an attorney who
5 represents a person subject to a petition for use in the evaluation or prosecution of
6 any proceeding under ch. 980, if the information involves or relates to an individual
7 who is the subject of or who is being evaluated for a proceeding under ch. 980. The
8 court in which the ~~petition~~ proceeding under s. ~~980.02~~ is filed ch. 980 is pending may
9 issue any protective orders that it determines are appropriate concerning
10 information disclosed under this paragraph. Any representative of the department
11 of corrections, the department of health and family services, the department of
12 justice or a district attorney may disclose information obtained under this paragraph
13 for any purpose consistent with any proceeding under ch. 980.

14 **SECTION 34.** 939.623 (1) of the statutes is renumbered 939.623 (1) (intro.) and
15 amended to read:

16 939.623 (1) (intro.) In this section, "serious sex crime" means a any of the
17 following:

18 (a) A violation of s. 940.225 (1) or, (2) or (3).

19 **SECTION 35.** 939.623 (1) (b) of the statutes is created to read:

20 939.623 (1) (b) A crime at any time under federal law or the law of any other
21 state or, prior to the effective date of this paragraph [revisor inserts date], under
22 the law of this state that is comparable to a crime specified in par. (a).

23 **SECTION 36.** 939.624 (1) of the statutes is renumbered 939.624 (1) (intro.) and
24 amended to read:

SENATE BILL 404

1 939.624 (1) (intro.) In this section, “serious violent crime” means a any of the
2 following:

3 (a) A violation of s. 940.03 or 940.05.

4 **SECTION 37.** 939.624 (1) (b) of the statutes is created to read:

5 939.624 (1) (b) A crime at any time under federal law or the law of any other
6 state or, prior to the effective date of this paragraph ... [revisor inserts date], under
7 the law of this state that is comparable to a crime specified in par. (a).

8 **SECTION 38.** 946.42 (1) (a) of the statutes, as affected by 1999 Wisconsin Act 9,
9 is amended to read:

10 946.42 (1) (a) “Custody” includes without limitation actual custody of an
11 institution, including a secured correctional facility, as defined in s. 938.02 (15m), a
12 secured child caring institution, as defined in s. 938.02 (15g), a secured group home,
13 as defined in s. 938.02 (15p), a secure detention facility, as defined in s. 938.02 (16),
14 a Type 2 child caring institution, as defined in s. 938.02 (19r), a facility used for the
15 detention of persons detained under s. 980.04 (1), a facility specified in s. 980.065 or
16 a juvenile portion of a county jail, or actual custody of a peace officer or institution
17 guard. “Custody” also includes without limitation the constructive custody of
18 persons placed on supervised release under a commitment order issued under ch. 980
19 and constructive custody of prisoners and juveniles subject to an order under s.
20 48.366, 938.183, 938.34 (4d), (4h) or (4m) or 938.357 (4) or (5) (e) temporarily outside
21 the institution whether for the purpose of work, school, medical care, a leave granted
22 under s. 303.068, a temporary leave or furlough granted to a juvenile or otherwise.
23 Under s. 303.08 (6) it means, without limitation, that of the sheriff of the county to
24 which the prisoner was transferred after conviction. It does not include the custody
25 of a probationer, parolee or person on extended supervision by the department of

SENATE BILL 404

1 corrections or a probation, extended supervision or parole officer or the custody of a
2 person who has been released to aftercare supervision under ch. 938 unless the
3 person is in actual custody or is subject to a confinement order under s. 973.09 (4).

4 **SECTION 39.** 946.42 (3m) of the statutes is created to read:

5 946.42 (3m) A person in custody under any of the following circumstances who
6 intentionally escapes from that custody is guilty of a Class B felony:

7 (a) While subject to a detention order under s. 980.04 (1) or a custody order
8 under s. 980.04 (3).

9 (b) While subject to an order issued under s. 980.06 committing the person to
10 custody of the department of health and family services, regardless of whether the
11 person is placed in institutional care or on supervised release.

12 **SECTION 40.** 971.17 (1m) (b) 1m. of the statutes is amended to read:

13 971.17 (1m) (b) 1m. Except as provided in subd. 2m., if the defendant under
14 sub. (1) is found not guilty by reason of mental disease or defect for any violation, or
15 for the solicitation, conspiracy or attempt to commit any violation, of ch. 940, 944 or
16 948 or ss. 941.32, 941.38 or 943.01 to 943.15, the court may require the defendant to
17 comply with the reporting requirements under s. 301.45 if the court determines that
18 the underlying conduct was sexually motivated, as defined in s. 980.01 (5), and that
19 it would be in the interest of public protection to have the defendant report under s.
20 301.45.

21 **SECTION 41.** 972.15 (4) of the statutes is amended to read:

22 972.15 (4) After sentencing, unless otherwise authorized under sub. (5) or (6)
23 or ordered by the court, the presentence investigation report shall be confidential
24 and shall not be made available to any person except upon specific authorization of
25 the court.

SENATE BILL 404

1 **SECTION 42.** 972.15 (6) of the statutes is created to read:

2 972.15 (6) The presentence investigation report and any information contained
3 in it or upon which it is based may be used by any of the following persons in any
4 evaluation, examination, referral, hearing, trial, postcommitment relief proceeding,
5 appeal or other proceeding under ch. 980:

6 (a) The department of corrections.

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

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

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

11 (e) A licensed physician, licensed psychologist or other mental health
12 professional who is examining the subject of the presentence investigation report.

13 (f) The court and, if applicable, the jury hearing the case.

14 **SECTION 43.** 973.048 (1m) of the statutes is amended to read:

15 973.048 (1m) Except as provided in sub. (2m), if a court imposes a sentence or
16 places a person on probation for any violation, or for the solicitation, conspiracy or
17 attempt to commit any violation, under ch. 940, 944 or 948 or ss. 941.32, 941.38 or
18 943.01 to 943.15, the court may require the person to comply with the reporting
19 requirements under s. 301.45 if the court determines that the underlying conduct
20 was sexually motivated, as defined in s. 980.01 (5), and that it would be in the interest
21 of public protection to have the person report under s. 301.45.

22 **SECTION 44.** 978.045 (1r) (intro.) of the statutes is amended to read:

23 978.045 (1r) (intro.) Any judge of a court of record, by an order entered in the
24 record stating the cause therefor, may appoint an attorney as a special prosecutor to
25 perform, for the time being, or for the trial of the accused person, the duties of the

SENATE BILL 404**SECTION 44**

1 district attorney. An attorney appointed under this subsection shall have all of the
2 powers of the district attorney. The judge may appoint an attorney as a special
3 prosecutor at the request of a district attorney to assist the district attorney in the
4 prosecution of persons charged with a crime, in grand jury or John Doe proceedings,
5 in proceedings under ch. 980 or in investigations. The judge may appoint an attorney
6 as a special prosecutor if any of the following conditions exists:

7 **SECTION 45.** 980.01 (1) of the statutes is renumbered 980.01 (1r).

8 **SECTION 46.** 980.01 (1g) of the statutes is created to read:

9 980.01 (1g) "Act of sexual violence" means conduct that constitutes the
10 commission of a sexually violent offense.

11 **SECTION 47.** 980.01 (2) of the statutes is amended to read:

12 980.01 (2) "Mental disorder" means a congenital or acquired condition affecting
13 the emotional, cognitive or volitional capacity that predisposes a person to engage
14 in acts of sexual violence.

15 **SECTION 48.** 980.01 (5) of the statutes is amended to read:

16 980.01 (5) "Sexually motivated" means that one of the purposes for an act is
17 for the actor's sexual arousal or gratification or for the sexual humiliation or
18 degradation of the victim.

19 **SECTION 49.** 980.01 (6) (a) of the statutes is amended to read:

20 980.01 (6) (a) Any crime specified in s. 940.22 (2), 940.225 (1) or (2) or (3),
21 948.02 (1) or (2), 948.025, 948.06 or 948.07.

22 **SECTION 50.** 980.01 (6) (am) of the statutes is created to read:

23 980.01 (6) (am) An offense that, prior to June 2, 1994, was a crime under the
24 law of this state and that is comparable to any crime specified in par. (a).

25 **SECTION 51.** 980.01 (6) (b) of the statutes is amended to read:

SENATE BILL 404

1 980.01 (6) (b) Any crime specified in s. 940.01, 940.02, 940.03, 940.05, 940.06,
2 940.19 (4) or (5), 940.195 (4) or (5), 940.30, 940.305, 940.31 ~~or~~, 941.32, 941.38, 943.02,
3 943.10, 943.32 or 948.03 that is determined, in a proceeding under s. 980.05 (3) (b),
4 to have been sexually motivated.

5 **SECTION 52.** 980.01 (6) (bm) of the statutes is created to read:

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

9 **SECTION 53.** 980.01 (6) (c) of the statutes is amended to read:

10 980.01 (6) (c) Any solicitation, conspiracy or attempt to commit a crime under
11 par. (a) ~~or~~, (am), (b) or (bm).

12 **SECTION 54.** 980.01 (6) (d) of the statutes is created to read:

13 980.01 (6) (d) An escape punishable under s. 946.42 (3m).

14 **SECTION 55.** 980.01 (7) of the statutes is amended to read:

15 980.01 (7) "Sexually violent person" means a person who has been convicted
16 of a sexually violent offense, has been adjudicated delinquent for a sexually violent
17 offense, or has been found not guilty of or not responsible for a sexually violent
18 offense by reason of insanity or mental disease, defect or illness, and who is
19 dangerous because he or she suffers from a mental disorder that makes it
20 substantially probable that the person will engage in one or more acts of sexual
21 violence.

22 **SECTION 56.** 980.015 (2) (intro.) of the statutes is amended to read:

23 980.015 (2) (intro.) If an agency with jurisdiction has control or custody over
24 a person who may meet the criteria for commitment as a sexually violent person, the
25 agency with jurisdiction shall inform each appropriate district attorney and the

SENATE BILL 404

1 department of justice regarding the person as soon as possible beginning ~~3 months~~
2 90 days prior to the applicable date of the following:

3 **SECTION 57.** 980.015 (2) (a) of the statutes is amended to read:

4 980.015 (2) (a) The anticipated discharge ~~from a sentence, anticipated or~~
5 ~~release, on parole or, extended supervision or anticipated release otherwise,~~ from a
6 sentence of imprisonment of a person who has been convicted of or term of
7 confinement in prison that was imposed for a conviction for a sexually violent offense,
8 from a continuous term of incarceration, any part of which was imposed for a sexually
9 violent offense, or from a placement in a Type 1 prison under s. 301.048 (3) (a) 1., any
10 part of which was imposed for a sexually violent offense.

11 **SECTION 58.** 980.015 (2) (b) of the statutes, as affected by 1999 Wisconsin Act
12 9, is amended to read:

13 980.015 (2) (b) The anticipated release from a secured correctional facility, as
14 defined in s. 938.02 (15m), or a secured child caring institution, as defined in s. 938.02
15 (15g), or a secured group home, as defined in s. 938.02 (15p), ~~of a~~ if the person was
16 placed in the facility for being adjudicated delinquent under s. 938.183 or 938.34 on
17 the basis of a sexually violent offense.

18 **SECTION 59.** 980.015 (2) (c) of the statutes is amended to read:

19 980.015 (2) (c) The anticipated release on conditional release under s. 971.17
20 or the anticipated termination of or discharge of a from a commitment order under
21 s. 971.17, if the person who has been found not guilty of a sexually violent offense by
22 reason of mental disease or defect under s. 971.17.

23 **SECTION 60.** 980.015 (2) (d) of the statutes is created to read:

24 980.015 (2) (d) The anticipated release on parole or discharge of a person
25 committed under ch. 975 for a sexually violent offense.

SENATE BILL 404

1 **SECTION 61.** 980.015 (4) of the statutes is renumbered 980.14 (2) and amended
2 to read:

3 980.14 (2) Any agency or officer, employe or agent of an agency is immune from
4 criminal or civil liability for any acts or omissions as the result of a good faith effort
5 to comply with any provision of this section chapter.

6 **SECTION 62.** 980.02 (1) (a) of the statutes is amended to read:

7 980.02 (1) (a) The department of justice at the request of the agency with
8 jurisdiction, as defined in s. 980.015 (1), over the person. ~~If the department of justice
9 decides to file a petition under this paragraph, it shall file the petition before the date
10 of the release or discharge of the person.~~

11 **SECTION 63.** 980.02 (1) (b) 3. of the statutes is created to read:

12 980.02 (1) (b) 3. The county in which the person is in custody under a sentence,
13 a placement to a secured correctional facility, as defined in s. 938.02 (15m), a secured
14 child caring institution, as defined in s. 938.02 (15g), or a secured group home, as
15 defined in s. 938.02 (15p), or a commitment order.

16 **SECTION 64.** 980.02 (1m) of the statutes is created to read:

17 980.02 (1m) A petition filed under this section shall be filed before the person
18 is released or discharged.

19 **SECTION 65.** 980.02 (2) (ag) of the statutes, as affected by 1999 Wisconsin Act
20 9, is repealed.

21 **SECTION 66.** 980.02 (4) (intro.) of the statutes is amended to read:

22 980.02 (4) (intro.) A petition under this section shall be filed in any one of the
23 following:

24 **SECTION 67.** 980.02 (6) of the statutes is created to read:

SENATE BILL 404**SECTION 67**

1 980.02 (6) A court assigned to exercise jurisdiction under chs. 48 and 938 does
2 not have jurisdiction over a petition filed under this section alleging that a child is
3 a sexually violent person.

4 **SECTION 68.** 980.03 (2) (intro.) of the statutes is amended to read:

5 980.03 (2) (intro.) Except as provided in ss. 980.038 (2), 980.09 (2) (a) and
6 980.10 and without limitation by enumeration, at any hearing under this chapter,
7 the person who is the subject of the petition has the right to:

8 **SECTION 69.** 980.03 (3) of the statutes is amended to read:

9 980.03 (3) The person who is the subject of the petition, the person's attorney,
10 the department of justice or the district attorney may request that a trial under s.
11 980.05 be to a jury of 12. A request for a jury trial shall be made as provided under
12 s. 980.05 (2). Notwithstanding s. 980.05 (2), if the person, the person's attorney, the
13 department of justice or the district attorney does not request a jury trial, the court
14 may on its own motion require that the trial be to a jury of 12. The jury shall be
15 selected as provided under s. 980.05 (2m). A verdict of a jury under this chapter is
16 not valid unless it is unanimous.

17 **SECTION 70.** 980.03 (4) of the statutes, as affected by 1999 Wisconsin Act 9, is
18 renumbered 980.031 (3) and amended to read:

19 980.031 (3) Whenever a person who is the subject of a petition filed under s.
20 980.02 or who has been committed under s. 980.06 is required to submit to an
21 examination of his or her mental condition under this chapter, he or she may retain
22 experts or a licensed physician, licensed psychologist or other mental health
23 professional persons to perform an examination. If the person is indigent, the court
24 shall, upon the person's request, appoint a qualified and available licensed
25 physician, licensed psychologist or other mental health professional to perform an

SENATE BILL 404

1 examination of the person's mental condition and participate on the person's behalf
2 in a trial or other proceeding under this chapter at which testimony is authorized.
3 Upon the order of the circuit court, the county shall pay, as part of the costs of the
4 action, the costs of a licensed physician, licensed psychologist or other mental health
5 professional appointed by a court under this subsection to perform an examination
6 and participate in the trial or other proceeding on behalf of an indigent person.

7 ~~(4) If the person a party retains a qualified expert or the court appoints a~~
8 ~~licensed physician, licensed psychologist or other mental health professional person~~
9 ~~of his or her own choice to conduct an examination under this chapter of the person's~~
10 ~~mental condition, the examiner shall have reasonable access to the person for the~~
11 ~~purpose of the examination, as well as to the person's past and present treatment~~
12 ~~records, as defined in s. 51.30 (1) (b), and patient health care records as provided~~
13 ~~under s. 146.82 (2) (e). If the person is indigent, the court shall, upon the person's~~
14 ~~request, appoint a qualified and available expert or professional person to perform~~
15 ~~an examination and participate in the trial or other proceeding on the person's~~
16 ~~behalf. Upon the order of the circuit court, the county shall pay, as part of the costs~~
17 ~~of the action, the costs of an expert or professional person appointed by a court under~~
18 ~~this subsection to perform an examination and participate in the trial or other~~
19 ~~proceeding on behalf of an indigent person. An expert (cm), past and present juvenile~~
20 ~~records, as provided under ss. 48.396 (6), 48.78 (2) (e), 938.396 (10) and 938.78 (2) (e),~~
21 ~~and the person's past and present correctional records, including presentence~~
22 ~~investigation reports under s. 972.15 (6).~~

23 (5) A licensed physician, licensed psychologist or other mental health
24 professional person appointed to assist an indigent person who is subject to a petition
25 who is expected to be called as a witness by one of the parties or by the court may not

SENATE BILL 404**SECTION 70**

1 be subject to any order by the court for the sequestration of witnesses at any
2 proceeding under this chapter. No licensed physician, licensed psychologist or other
3 mental health professional who is expected to be called as a witness by one of the
4 parties or by the court may be permitted to testify at any proceeding under this
5 chapter unless a written report of his or her examination has been submitted to the
6 court and to both parties at least 10 days before the proceeding.

7 **SECTION 71.** 980.03 (5) of the statutes is renumbered 980.038 (3) (a) and
8 amended to read:

9 980.038 (3) (a) ~~Upon~~ Except as provided in par. (b), upon a showing by the
10 proponent of good cause under s. 807.13 (2) (c), testimony may be received into the
11 record of a hearing under this ~~section~~ chapter by telephone or live audiovisual
12 means.

13 **SECTION 72.** 980.031 (title) of the statutes is created to read:

14 **980.031 (title) Examinations.**

15 **SECTION 73.** 980.031 (1) and (2) of the statutes are created to read:

16 980.031 (1) If a person who is the subject of a petition filed under s. 980.02
17 denies the facts alleged in the petition, the court may appoint at least one qualified
18 licensed physician, licensed psychologist or other mental health professional to
19 conduct an examination of the person's mental condition and testify at trial.

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

25 **SECTION 74.** 980.034 of the statutes is created to read:

SENATE BILL 404

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

8 (2) The motion shall be in writing and supported by affidavit which shall state
9 evidentiary facts showing the nature of the prejudice alleged. The department of
10 justice or the district attorney, whichever filed the petition under s. 980.02, may file
11 counter affidavits.

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

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

20 1. The court has decided to sequester the jurors after the commencement of the
21 trial.

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

23 3. The estimated costs to the county appear to be less using the procedure under
24 this subsection than using the procedure for holding the trial in another county.

SENATE BILL 404**SECTION 74**

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

6 **SECTION 75.** 980.035 of the statutes is created to read:

7 **980.035 Substitution of judge. (1) ONE SUBSTITUTION.** Any party to a
8 proceeding under this chapter may file a written request with the clerk of courts for
9 a substitution of a new judge for the judge assigned to the case. Except as provided
10 in sub. (5), no party may file more than one such written request in any one action,
11 nor may any single such request name more than one judge.

12 **(2) SUBSTITUTION OF JUDGE ASSIGNED TO PROBABLE CAUSE HEARING.** A written
13 request for the substitution of a different judge for the judge assigned to preside at
14 the probable cause hearing under s. 980.04 (2) may be filed a reasonable time before
15 the date of the probable cause hearing.

16 **(3) SUBSTITUTION OF TRIAL JUDGE ORIGINALLY ASSIGNED.** A written request for the
17 substitution of a different judge for the judge originally assigned to the trial under
18 s. 980.05 may be filed with the clerk within 10 days of the clerk's giving actual notice
19 or sending notice of the assignment to the parties.

20 **(4) SUBSTITUTION OF TRIAL JUDGE SUBSEQUENTLY ASSIGNED.** If a new judge is
21 assigned to the trial under s. 980.05 and the party has not exercised the right to
22 substitute an assigned judge, a written request for the substitution of the new judge
23 may be filed with the clerk within 10 days of the clerk's giving actual notice or
24 sending notice of the assignment to the parties. If the notification occurs within 20
25 days of the date set for trial, the request shall be filed within 48 hours of the clerk's

SENATE BILL 404

1 giving actual notice or sending notice of the assignment. If the notification occurs
2 within 48 hours of the trial or if there has been no notification, the party may make
3 an oral or written request for substitution prior to the commencement of the
4 proceedings.

5 (5) SUBSTITUTION OF JUDGE FOLLOWING APPEAL. If an appellate court orders a new
6 trial, a new commitment hearing or a new hearing on a petition for supervised
7 release or discharge, a request under this section may be filed within 20 days after
8 the filing of the remittitur by the appellate court, whether or not a request for
9 substitution was made prior to the time that the appeal was taken.

10 (6) PROCEDURES FOR CLERK. Upon receiving a request for substitution, the clerk
11 shall immediately contact the judge whose substitution has been requested for a
12 determination of whether the request was made timely and in proper form. If no
13 determination is made within 7 days, the clerk shall refer the matter to the chief
14 judge for the determination and reassignment of the action as necessary. If the
15 request is determined to be proper, the clerk shall request the assignment of another
16 judge under s. 751.03.

17 (8) RETURN OF ACTION TO SUBSTITUTED JUDGE. Upon the filing of an agreement
18 signed by the person and the person's attorney and by the prosecuting attorney, the
19 substituted judge and the substituting judge, the action and all pertinent records
20 shall be transferred back to the substituted judge.

21 **SECTION 76.** 980.036 of the statutes is created to read:

22 **980.036 Discovery and inspection.** (1) DEFINITIONS. In this section:

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

SENATE BILL 404**SECTION 76**

1 (b) “Prosecuting attorney” means an attorney representing the state in a
2 proceeding under this chapter.

3 (2) WHAT A PROSECUTING ATTORNEY MUST DISCLOSE TO A PERSON SUBJECT TO THIS
4 CHAPTER. Upon demand, a prosecuting attorney shall, within a reasonable time
5 before a trial or other proceeding under s. 980.05, 980.08 or 980.09, disclose to a
6 person subject to this chapter or the person’s attorney and permit the person or the
7 person’s attorney to inspect and copy or photograph all of the following materials and
8 information, if the material or information is within the possession, custody or
9 control of the state:

10 (a) Any written or recorded statement made by the person concerning the
11 allegations in the petition filed under s. 980.02 or concerning other matters at issue
12 in the trial or proceeding and the names of witnesses to the person’s written
13 statements.

14 (b) A written summary of all oral statements of the person which the
15 prosecuting attorney plans to use in the course of the trial or proceeding and the
16 names of witnesses to the person’s oral statements.

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

19 (d) A copy of the person’s criminal record.

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

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

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

SENATE BILL 404

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

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

7 (h) The criminal record of a witness for the state which is known to the
8 prosecuting attorney.

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

11 (j) Any exculpatory evidence.

12 **(3) WHAT A PERSON SUBJECT TO THIS CHAPTER MUST DISCLOSE TO THE PROSECUTING**
13 **ATTORNEY.** Upon demand, a person who is subject to this chapter or the person's
14 attorney shall, within a reasonable time before a trial or other proceeding under s.
15 980.05, 980.08 or 980.09, disclose to the prosecuting attorney and permit the
16 prosecuting attorney to inspect and copy or photograph all of the following materials
17 and information, if the material or information is within the possession, custody or
18 control of the person:

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

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

24 (c) The results of any physical or mental examination or any scientific or
25 psychological test, experiment or comparison that the person intends to offer in

SENATE BILL 404

1 evidence at the trial or proceeding, and any raw data that were collected, used or
2 considered in any manner as part of the examination, test, experiment or
3 comparison.

4 (d) The criminal record of a witness named on a list under par. (a) which is
5 known to the person's attorney.

6 (e) Any physical or documentary evidence that the person intends to offer in
7 evidence at the trial or proceeding.

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

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

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

SENATE BILL 404

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

5 **(8) CONTINUING DUTY TO DISCLOSE.** If, subsequent to compliance with a
6 requirement of this section, and prior to or during trial, a party discovers additional
7 material or the names of additional witnesses requested which are subject to
8 discovery, inspection or production under this section, the party shall promptly notify
9 the other party of the existence of the additional material or names.

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

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

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

SENATE BILL 404**SECTION 76**

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

4 **SECTION 77.** 980.038 of the statutes is created to read:

5 **980.038 Miscellaneous procedural provisions. (1) MOTIONS CHALLENGING**
6 JURISDICTION OF COURT OR TIMELINESS OF PETITION; GROUNDS FOR CHALLENGING
7 JURISDICTION. (a) A motion challenging the jurisdiction of the court or the timeliness
8 of a petition filed under s. 980.02 shall be filed within 10 days after the court holds
9 the probable cause hearing under s. 980.04 (2). Failure to file a motion within the
10 time specified in this paragraph waives the right to challenge the jurisdiction of the
11 court or the timeliness of a petition.

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

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

24 (b) A licensed physician, licensed psychologist or other mental health
25 professional may indicate in any written report that he or she prepares in connection

SENATE BILL 404

1 with a proceeding under this chapter that the person whom he or she examined
2 refused to participate in the examination.

3 **(3) TESTIMONY BY TELEPHONE OR LIVE AUDIOVISUAL MEANS.**

4 (b) Testimony may not be received by telephone or live audiovisual means at
5 a trial under s. 980.05 or a hearing under s. 980.09 (1) (b) or (2) (b).

6 **(4) MOTIONS FOR POSTCOMMITMENT RELIEF; APPEAL.** (a) A motion for
7 postcommitment relief by a person committed under s. 980.06 shall be made in the
8 time and manner provided in ss. 809.30 and 809.40. An appeal by a person who has
9 been committed under ch. 980 from a final order under s. 980.06, 980.08 or 980.09
10 or from an order denying a motion for postcommitment relief or from both shall be
11 taken in the time and manner provided in ss. 808.04 (3), 809.30 and 809.40. If a
12 person is seeking relief from an order of commitment under s. 980.06, the person
13 shall file a motion for postcommitment relief in the trial court prior to an appeal
14 unless the grounds for seeking relief are sufficiency of the evidence or issues
15 previously raised.

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

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

SENATE BILL 404

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

4 **SECTION 78.** 980.04 (1) of the statutes, as affected by 1999 Wisconsin Act 9, is
5 amended to read:

6 980.04 **(1)** Upon the filing of a petition under s. 980.02, the court shall review
7 the petition to determine whether to issue an order for detention of the person who
8 is the subject of the petition. The person shall be detained only if there is probable
9 cause to believe that the person is eligible for commitment under s. 980.05 (5). A
10 person detained under this subsection shall be held in a facility approved by the
11 department. If the person is serving a sentence of imprisonment, is in a secured
12 correctional facility, as defined in s. 938.02 (15m), a secured child caring institution,
13 as defined in s. 938.02 (15g), or a secured group home, as defined in s. 938.02 (15p),
14 or is committed to institutional care, and the court orders detention under this
15 subsection, the court shall order that the person be transferred to a detention facility
16 approved by the department. A detention order under this subsection remains in
17 effect until the ~~person is discharged~~ petition is dismissed after a hearing under sub.
18 (3) or after a trial under s. 980.05 (5) or until the effective date of a commitment order
19 under s. 980.06, whichever is applicable.

20 **SECTION 79.** 980.04 (2) of the statutes is renumbered 980.04 (2) (a) and
21 amended to read:

22 980.04 **(2)** (a) Whenever a petition is filed under s. 980.02, the court shall hold
23 a hearing to determine whether there is probable cause to believe that the person
24 named in the petition is a sexually violent person. ~~If the person named in the petition~~
25 ~~is in custody, the court shall hold the probable cause hearing within 72 hours after~~

SENATE BILL 404

1 the petition is filed, excluding Saturdays, Sundays and legal holidays. If the person
2 named in the petition is not in custody, the Except as provided in par. (b), the court
3 shall hold the probable cause hearing within a reasonable time 30 days, excluding
4 Saturdays, Sundays and legal holidays, after the filing of the petition, unless that
5 time is extended by the court for good cause shown upon its own motion, the motion
6 of any party or the stipulation of the parties.

7 **SECTION 80.** 980.04 (2) (b) of the statutes is created to read:

8 980.04 (2) (b) If the person named in the petition is in custody under a sentence,
9 dispositional order or commitment and the probable cause hearing will be held after
10 the date on which the person is scheduled to be released or discharged from the
11 sentence, dispositional order or commitment, the probable cause hearing under par.
12 (a) shall be held no later than 10 days after the person's scheduled release or
13 discharge date, excluding Saturdays, Sundays and legal holidays, unless that time
14 is extended by the court for good cause shown upon its own motion, the motion of any
15 party or the stipulation of the parties.

16 **SECTION 81.** 980.04 (3) of the statutes is amended to read:

17 980.04 (3) If the court determines after a hearing that there is probable cause
18 to believe that the person named in the petition is a sexually violent person, the court
19 shall order that the person be taken into custody if he or she is not in custody and
20 shall order the person to be transferred within a reasonable time to an appropriate
21 facility specified by the department for an evaluation by the department as to
22 whether the person is a sexually violent person. If the court determines that
23 probable cause does not exist to believe that the person is a sexually violent person,
24 the court shall dismiss the petition.

25 **SECTION 82.** 980.05 (1) of the statutes is amended to read:

SENATE BILL 404**SECTION 82**

1 980.05 (1) A trial to determine whether the person who is the subject of a
2 petition under s. 980.02 is a sexually violent person shall commence no later than 45
3 90 days after the date of the probable cause hearing under s. 980.04. The court may
4 grant ~~a continuance~~ one or more continuances of the trial date for good cause upon
5 its own motion, the motion of any party or the stipulation of the parties.

6 **SECTION 83.** 980.05 (1m) of the statutes is repealed.

7 **SECTION 84.** 980.05 (2m) of the statutes is created to read:

8 980.05 (2m) (a) At a jury trial under this section, the summoning of jurors, the
9 selection and qualifications of the jury, the challenge of jurors for cause and the duty
10 of the court in charging the jury and giving instructions and discharging the jury
11 when unable to agree shall be the same as in jury trials in civil actions, except that,
12 notwithstanding s. 805.08 (3), each party shall be entitled to 4 peremptory challenges
13 or, if the court orders additional jurors to be selected under s. 805.08 (2), to 5
14 peremptory challenges. A party may waive in advance any or all of its peremptory
15 challenges and the number of jurors called under par. (b) shall be reduced by this
16 number.

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

SENATE BILL 404

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

5 **SECTION 85.** 980.05 (3) (a) of the statutes is amended to read:

6 980.05 (3) (a) At a trial on a petition under this chapter, the petitioner has the
7 burden of proving ~~the allegations in the petition~~ beyond a reasonable doubt that the
8 person who is the subject of the petition is a sexually violent person.

9 **SECTION 86.** 980.05 (3) (b) of the statutes is amended to read:

10 980.05 (3) (b) If the state alleges that the sexually violent offense or act that
11 forms the basis for the petition was an act that was sexually motivated as provided
12 in s. 980.01 (6) (b) or (bm), the state is required to prove beyond a reasonable doubt
13 that the alleged sexually violent act was sexually motivated.

14 **SECTION 87.** 980.07 (1) of the statutes, as affected by 1999 Wisconsin Act 9, is
15 amended to read:

16 980.07 (1) If a person has been committed under s. 980.06 and has not been
17 discharged under s. 980.09, the department shall conduct an examination of his or
18 her mental condition within 6 18 months after ~~an~~ the date of the initial commitment
19 order under s. 980.06 and again thereafter at least once each 12 months for the
20 purpose of determining whether the person has made sufficient progress for the
21 court to consider whether the person should be placed on supervised release or
22 discharged. At the time of a reexamination under this section, the person who has
23 been committed may retain or seek to have the court appoint an examiner as
24 provided under s. ~~980.03(4)~~ 980.031 (3).

25 **SECTION 88.** 980.07 (3) of the statutes is repealed.

SENATE BILL 404**SECTION 89**

1 **SECTION 89.** 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 having the specialized knowledge determined by the court to
5 be appropriate, who shall examine the mental condition of the person and furnish
6 a written report of the examination to the court within 30 days after appointment.
7 The district attorney or the department of justice, whichever filed the original
8 petition, may have the petitioner examined as provided under s. 980.031 (2). An
9 examiner retained by the district attorney or department of justice under s. 980.031
10 (2) or retained by or appointed for the petitioner under s. 980.031 (3) shall file a
11 written report of his or her examination with the court within 45 days of being
12 retained or appointed. All of the examiners acting under this subsection shall have
13 reasonable access to the person for purposes of examination and to the person's past
14 and present treatment records, as defined in s. 51.30 (1) (b), and patient health care
15 records, as provided under s. 146.82 (2) (c) 980.031 (4). If any such examiner believes
16 that the person is appropriate for supervised release under the criterion specified in
17 sub. (4), the examiner shall report on the type of treatment and services that the
18 person may need while in the community on supervised release. The county shall
19 pay the costs of an examiner appointed under this subsection as provided under s.
20 51.20 (18) (a).

21 **SECTION 90.** 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 is reports of all persons who examined
25 the petitioner under sub. (3) are filed with the court, unless the petitioner waives this

SENATE BILL 404

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

19 **SECTION 91.** 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 as provided under s. 980.031 (2).~~ The district attorney or the
25 department of justice, whichever filed the original petition, or the petitioner or his

SENATE BILL 404**SECTION 91**

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

4 **SECTION 92.** 980.09 (2) (a) of the statutes is amended to read:

5 980.09 (2) (a) A person may petition the committing court for discharge from
6 custody or supervision without the secretary's approval. At the time of an
7 examination under s. 980.07 (1), the secretary shall provide the committed person
8 with a written notice of the person's right to petition the court for discharge over the
9 secretary's objection. ~~The notice shall contain a waiver of rights.~~ The secretary shall
10 forward a copy of the notice and waiver form to the court with the report of the
11 department's examination under s. 980.07 and shall file with the court proof that the
12 person received the notice. If the person does not affirmatively waive the right to
13 petition petitions for discharge from custody or supervision without the secretary's
14 approval, the court shall set a ~~probable-cause~~ hearing to determine whether facts
15 exist that warrant a hearing on whether the person is still a sexually violent person.
16 The committed person has a right to have an attorney represent him or her at the
17 ~~probable-cause~~ hearing, but the person is not entitled to be present at the ~~probable~~
18 ~~cause~~ hearing. In determining under this paragraph whether facts exist that
19 warrant a hearing on whether the person is still a sexually violent person, the court
20 shall consider only the examination report filed under s. 980.07 (2) and relevant
21 arguments and supporting documentation provided by the person or the state.

22 **SECTION 93.** 980.09 (2) (b) of the statutes is amended to read:

23 980.09 (2) (b) If the court determines at the ~~probable-cause~~ hearing under par.
24 (a) that ~~probable-cause~~ exists to believe that the committed person is no longer facts
25 exist that warrant a hearing on whether the person is still a sexually violent person,

SENATE BILL 404

1 then the court shall set a hearing on the issue. At a hearing under this paragraph,
2 the committed person is entitled to be present and to the benefit of the protections
3 afforded to the person under s. 980.03. The district attorney or the department of
4 justice, whichever filed the original petition, shall represent the state at a hearing
5 under this paragraph. The hearing under this paragraph shall be to the court. The
6 district attorney or the department of justice, whichever filed the original petition,
7 or the petitioner or his or her attorney may request that the hearing under this
8 subsection be to a jury of 6. The state has the right to may have the committed person
9 evaluated by experts chosen by the state examined as provided under s. 980.031 (2).
10 At the hearing, the state has the burden of proving by clear and convincing evidence
11 that the committed person is still a sexually violent person.

12 **SECTION 94.** 980.09 (3) of the statutes is created to read:

13 980.09 (3) JURY SELECTION. (a) At a hearing to a jury under sub. (1) (b) or (2)
14 (b), the summoning of jurors, the selection and qualifications of the jury, the
15 challenge of jurors for cause and the duty of the court in charging the jury and giving
16 instructions and discharging the jury when unable to agree shall be the same as in
17 jury trials in civil actions. A party may waive in advance any or all of its peremptory
18 challenges and the number of jurors called under par. (b) shall be reduced by this
19 number.

20 (b) The number of jurors selected shall be the number prescribed in sub. (1) (b)
21 or (2) (b), whichever is applicable, unless a lesser number has been stipulated to and
22 approved under par. (c) or the court orders that additional jurors be selected. That
23 number, plus the number of peremptory challenges available to all of the parties,
24 shall be called initially and maintained in the jury box by calling others to replace
25 jurors excused for cause until all jurors have been examined. The parties shall

SENATE BILL 404

1 thereupon exercise in their order, the state beginning, the peremptory challenges
2 available to them, and if any party declines to challenge, the challenge shall be made
3 by the clerk by lot.

4 (c) At any time before the verdict in a hearing to a jury under sub. (1) (b) or (2)
5 (b), the parties may stipulate in writing or by statement in open court, on the record,
6 with the approval of the court, that the jury shall consist of any number less than the
7 number prescribed in sub. (1) (b) or (2) (b), whichever is applicable.

8 **SECTION 95.** 980.12 (1) of the statutes, as affected by 1999 Wisconsin Act 9, is
9 amended to read:

10 980.12 (1) Except as provided in ss. ~~980.03 (4)~~ 980.031 (3) and 980.08 (3), the
11 department shall pay from the appropriations under s. 20.435 (2) (a) and (bm) for all
12 costs relating to the evaluation, treatment and care of persons evaluated or
13 committed under this chapter.

14 **SECTION 96.** 980.14 (title) of the statutes is created to read:

15 **980.14 (title) Immunity.**

16 **SECTION 97.** 980.14 (1) of the statutes is created to read:

17 980.14 (1) In this section, “agency” means the department of corrections, the
18 department of health and family services, the department of justice or a district
19 attorney.

20 **SECTION 98. Initial applicability.**

21 (1) SEXUALLY VIOLENT PERSON COMMITMENT PROCEEDINGS GENERALLY. The
22 treatment of sections 48.396 (6), 48.78 (2) (e), 48.981 (7) (a) 8s., 51.30 (3) (bm) and
23 (4) (b) 8m., 8s. and 10m., 118.125 (2) (ck), 146.82 (2) (c) and (cm), 801.52, 808.04 (3)
24 and (4), 809.10 (1) (a), 809.30 (1) (a) and (b), 809.40 (1), 814.61 (1) (c) 6., 905.04 (4)
25 (a), 911.01 (4) (c), 938.35 (1) (e), 938.396 (2) (e), 938.78 (2) (e), 972.15 (6), 980.01 (2),

SENATE BILL 404

1 (5) and (6) (a), (am), (b), (bm), (c) and (d), 980.015 (2) (c), 980.03 (2) (intro.), (3), (4)
2 and (5), 980.031 (title), (1) and (2), 980.034, 980.035, 980.036, 980.038, 980.04 (1) and
3 (3), 980.05 (1), (1m), (2m) and (3) (a) and (b), 980.07 (1) and (3), 980.08 (3) and (4) and
4 980.09 (1) (b), (2) (a) and (b) and (3) of the statutes, the renumbering and amendment
5 of section 980.04 (2) of the statutes and the creation of section 980.04 (2) (b) of the
6 statutes first apply to proceedings under chapter 980 of the statutes that are
7 initiated by a petition filed under section 980.02 of the statutes, as affected by this
8 act, on the effective date of this subsection.

9 (2) SEXUALLY VIOLENT PERSON COMMITMENT PETITIONS. The treatment of section
10 980.02 (1) (a) and (b) 3., (1m), (2) (ag) and (4) (intro.) of the statutes first applies to
11 petitions filed on the effective date of this subsection.

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

15 (4) INCREASED PENALTY FOR PERSONS WITH PRIOR CONVICTIONS FOR CERTAIN CRIMES.
16 The renumbering and amendment of sections 939.623 (1) and 939.624 (1) of the
17 statutes and the creation of sections 939.623 (1) (b) and 939.624 (1) (b) of the statutes
18 first apply to offenses committed on the effective date of this subsection, but do not
19 preclude the counting of other offenses as prior serious sex crimes, prior serious
20 violent crimes or prior child sex crimes for purposes of sentencing a person under
21 section 939.623 or 939.624 of the statutes, as affected by this act.

22 (END)