State of Wisconsin
2003 - 2004 LEGISLATURE

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2003 ASSEMBLY BILL 945

March 11, 2004 - Introduced by Representatives STASKUNAS, KRUG, MOLEPSKE, HUBLER, CULLEN, RICHARDS, TAYLOR, ZEPNICK, SINICKI and HUBER, cosponsored by Senators PLALE, HANSEN, MOORE, REYNOLDS and CARPENTER, by request of Attorney General Peg Lautenschlager. Referred to Committee on Rules.

AN ACT ***to repeal*** 51.30 (4) (b) 10m., 980.02 (2) (ag), 980.03 (5), 980.05 (1m), 980.09 (1) (title), 980.09 (2) and 980.10; ***to renumber*** 46.055, 978.13 (2) and 980.01 (1); ***to renumber and amend*** 938.396 (2) (e), 978.043, 980.015 (1), 980.015 (4), 980.03 (4), 980.04 (2), 980.07 (1), 980.09 (1) (a), 980.09 (1) (b) and 980.09 (1) (c); ***to amend*** 20.435 (2) (bm), 46.03 (1), 46.055 (title), 46.058 (2m), 48.396 (1), 48.396 (5) (a) (intro.), 51.30 (3) (a), 51.30 (3) (b), 51.30 (4) (b) 8m., 51.30 (4) (b) 11., 51.375 (1) (a), 109.09 (1), 146.82 (2) (c), 301.45 (1g) (dt), 301.45 (3) (a) 3r., 301.45 (3) (b) 3., 301.45 (5) (b) 2., 756.06 (2) (b), 801.52, 808.04 (3), 808.04 (4), 808.075 (4) (h), 905.04 (4) (a), 911.01 (4) (c), 938.396 (1), 938.396 (5) (a) (intro.), 938.78 (2) (e), 946.42 (1) (a), 950.04 (1v) (xm), 967.03, 972.15 (4), 978.03 (3), 978.045 (1r) (intro.), 978.05 (6) (a), 978.05 (8) (b), 980.01 (5), 980.01 (6) (a), 980.01 (6) (b), 980.01 (6) (c), 980.01 (7), 980.015 (2) (intro.), 980.015 (2) (a), 980.015 (2) (b), 980.015 (2) (c), 980.02 (1) (a), 980.02 (2) (c), 980.02 (4) (intro.), 980.03 (2) (intro.), 980.03 (3), 980.04 (1), 980.04 (3), 980.05 (1), 980.05

(3) (a), 980.05 (3) (b), 980.065 (1m), 980.07 (2), 980.07 (3), 980.09 (title), 980.101 (2) (a), 980.11 (2) (intro.) and 980.12 (1); ***to repeal and recreate*** 809.10 (1) (d), 809.30 (1) (c), 809.30 (1) (f) and 980.08; and ***to create*** 46.055 (2), 48.396 (6), 48.78 (2) (e), 48.981 (7) (a) 8s., 51.30 (3) (bm), 51.30 (4) (b) 8s., 118.125 (2) (ck), 146.82 (2) (cm), 756.06 (2) (cm), 814.61 (1) (c) 6., 938.35 (1) (e), 946.42 (3m), 972.15 (6), 973.155 (1) (c), 978.043 (2), 978.13 (2) (a), 980.01 (1g), 980.01 (1m), 980.01 (6) (am), 980.01 (6) (bm), 980.015 (1) (b), 980.015 (2) (d), 980.02 (1) (b) 3., 980.02 (1m), 980.02 (6), 980.031 (title), 980.031 (1) and (2), 980.034, 980.036, 980.038, 980.04 (2) (b), 980.05 (2m), 980.07 (1) (b), 980.07 (1g), 980.07 (1m), 980.07 (4) to (7), 980.093, 980.095, 980.14 (title) and 980.14 (1) of the statutes; **relating to:** the definition of sexually violent person, sexually violent person commitment proceedings, criteria for supervised release, escape from custody by a person who is subject to a sexually violent person commitment proceeding, creating a committee to make recommendations regarding the location of a facility for the treatment of sexual predators, payments in lieu of taxes and grants for a municipality in which such a facility is located, making an appropriation, 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 a sexually violent offense (the offense criterion) and who is dangerous because he or she suffers from a mental disorder that makes it substantially probable (much more likely than not) that the person will engage in acts of sexual violence (the dangerousness criterion).

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 a prosecutor representing the state — either 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 released from the 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, a judge or jury finds the person to be a sexually violent person, the person must be committed to the custody of DHFS and placed in institutional care.

After 18 months of institutional care (and periodically thereafter), a sexually violent person may petition the court for supervised release, which allows the person to reside in the community subject to the conditions set by the court and to the rules of DHFS. If a person petitions the court for supervised release, the court must grant the petition unless the state proves that it is still substantially probable that the person will engage in future acts of sexual violence if institutionalized care is not continued.

If a court determines that supervised release is appropriate, DHFS must make its best effort to place the person in the county in which the person lived at the time of the sexually violent offense. DHFS and the county in which the person is to be placed must then prepare a plan for treating and monitoring the person upon his or her release. Current law specifies what the plan must contain (such as what services the person will receive in the community). In addition, current law requires DHFS, when developing the supervised release plan, to consider the proximity of the person's proposed residence to the homes of certain other sex offenders. Then, within 60 days after the court's determination that supervised release is appropriate, DHFS and the county in which the person is to be placed must submit the supervised release plan to the court for its approval. (This two–part hearing process, in which the court determines whether supervised release is appropriate before reviewing the supervised release plan, is sometimes referred to as a bifurcated hearing.)

If a person is placed on supervised release, the person remains in DHFS's legal custody and is subject to the conditions set by the court and to the rules of the DHFS. If the person violates a condition or rule or if the safety of others requires that supervised release be revoked, DHFS may take custody of the person and request that the court revoke supervised release. If the state proves, by clear and convincing evidence, that any rule or condition of release has been violated or that the safety of others requires that supervised release be revoked, the court may revoke supervised release and return the person to institutional care.

If a person remains in or is returned to institutional care after revocation, DHFS must periodically reexamine the person to assess the need for continued institutional care.

Finally, under current law, these are three ways by which a person committed as a sexually violent person and who is in institutional care or on supervised release

can obtain a hearing to determine whether he or she can be released (discharged) from his or her commitment. First, if DHFS determines that the person is no longer a sexually violent person, it authorizes the person to file a petition with the court, which must conduct a hearing on whether to discharge the person from the commitment (a discharge hearing) within 45 days. Second, unless the person waives his or her right to such a hearing, the court, after each evaluation that DHFS conducts of the person (that is, at least every 12 months), must hold a hearing (a probable cause hearing) to determine whether facts exist to warrant a discharge hearing. The committed person has a right to have an attorney represent him or her at a probable cause hearing but does not have the right to be present. If the court determines that there is probable cause to believe that the person is no longer a sexually violent person, the court holds a discharge hearing. Third, the committed person may petition the court for discharge, but only if: 1) the person has not previously filed a petition for discharge without DHFS's approval; or 2) the petition contains new facts that may warrant discharge. If one of those requirements is met, the court conducts a probable cause hearing and, if there is probable cause, a discharge hearing.

At any discharge hearing, the prosecutor may oppose discharge and may require the person to be examined by an expert or professional person of its choice. At the hearing (at which the committed person has the right to be present), the state has the burden of proving by clear and convincing evidence that the person is still a sexually violent person. If the state does not meet its burden, the court must discharge the person from DHFS's custody and supervision. If the court meets its burden, the court may authorize supervised release for the person if appropriate.

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.* The bill modifies the offense criterion, which needs to be satisfied to show that someone is a sexually violent person. Currently, the list of sexually violent offenses that may be used to satisfy that criterion 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 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) robbery; and d) 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.

2. *Dangerousness criterion.* The bill changes the dangerousness criterion so that a person who has committed a sexually violent offense may be committed to DHFS if the state merely shows that the person is dangerous because he or she suffers from a mental disorder that makes it more likely than not (as opposed to

substantially probable or much more likely than not) that he or she will engage in acts of sexual violence.

3. *When may a petition be filed.* Current law requires the state to allege and prove that the date on which the petition was filed coincides with, or precedes by no more than 90 days, the date on which the person is to be released from the confinement resulting from his or her sexually violent offense (which is generally in a state prison). This bill replaces that requirement with a requirement that the petition be filed before the person is released.

4. *Who may file a petition.* Under current law, a petition alleging that a person is a sexually violent person may be filed by DOJ at the request of the agency that has custody of the person or, if DOJ elects not to file, by the district attorney for the county in which the person committed the sexually violent offense or the district attorney for the county in which the person will reside after being released from confinement for the offense. Under the bill, the district attorney for the county in which the person is being confined is also authorized to file a petition if DOJ elects not to do so.

5. *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.

6. *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 specifies that a person who is subject to sexually violent person commitment proceedings has access to certain other mental health records in order to prepare for those proceedings.

The bill also 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.

7. *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 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.

8. *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.

9. *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 apply also 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.

10. *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 provides that DHFS is not required to examine the person until 18 months after the person's initial commitment. The bill does not affect the requirement that DHFS conduct further evaluations at least once each 12 months thereafter or the court's authority to order an evaluation at any time.

The bill also establishes new requirements regarding the preparation of the examiner's report. First, whenever an evaluation is to be conducted, DHFS must prepare a treatment report based on its treating professionals' evaluation of the person's progress in treatment and of whether that progress has been sufficient and their description of the type of treatment that the person would need in the

community if supervised release were ordered. DHFS must then provide that report to the examiner. Second, the bill specifies that the examiner's report must include an assessment of:

a. The risk that the person will reoffend.

b. Whether the risk can be safely managed in the community if reasonable conditions of supervision and security are imposed.

c. Whether the treatment that the person needs is available in the community.

Third, the bill requires the examiner to complete the report within 30 days after the examination. Fourth, after receiving the report, DHFS is required to send it, along with its own treatment report and a written statement recommending either continued institutional care, supervised release, or discharge, to the court, the prosecutor, and the person's attorney.

11. *Supervised release proceedings.* The bill eliminates the process by which a person may petition the court to authorize supervised release. Instead, under the bill, the court reviews the appropriateness of supervised release for a person in institutional care in connection with periodic evaluations conducted on the person by DHFS (as opposed to reviewing the appropriateness of discharge in connection with those reports as provided under current law). Under the bill, if DHFS recommends supervised release, or if it recommends continued institutional care and a party files an objection advocating supervised release within 30 days after DHFS makes its recommendation, the court must consider whether the person should remain in institutional care, and, if the person should be placed on supervised release, where he or she should be placed. (If a person advocates discharge through his or her objection, the court shall consider the objection only if the person files a separate discharge petition.) If the committed person is indigent and is unrepresented, the court must appoint an attorney to represent the person.

Within 30 days after the deadline for objections, the court must hold a hearing (at which DHFS, through its agency counsel, may appear and be heard) to decide whether to authorize supervised release and, if it authorizes supervised release, where the person should be placed. (This requirement does not apply if DHFS recommends continued institutional care and no party objects.) In making those decisions, the court may consider: the nature and circumstances of the behavior that led to the person's commitment; the person's mental history and present mental condition; the person's progress or lack of progress in treatment; and, if the court were to authorize supervised release, where the person would live, how the person would support himself or herself, and what arrangements would be available to ensure that the person would have access to and would participate in necessary treatment.

In the process, the court must select a county — generally the person's county of residence — to prepare a report, either independently or with DHFS, identifying prospective residential options for community placement (unless the court determines that the person has not made sufficient progress in treatment to warrant supervised release). In identifying prospective residential options, the county must consider the proximity of any potential placement to the residence of certain other sex offenders. If the court determines that the prospective residential options

identified in the county's report are inadequate, the court may, but is not required to, select one or more other counties to prepare another placement report.

12. *Standard for granting supervised release.* As noted above, under current law, if a person petitions the court for supervised release, the court must grant the petition unless the state proves that it is still substantially probable that the person will engage in future acts of sexual violence if institutionalized care is not continued. Under the bill, the court may not order that a person be placed on supervised release unless it finds, based on all of the reports, trial records, and evidence presented, that all of the following apply:

a. The person who will be placed on supervised release has made sufficient progress in treatment such that the risk that the person will reoffend can be safely managed in the community.

b. The person who will be placed on supervised release will be treated by a qualified treatment provider.

c. The provider presents a specific course of treatment for the person, agrees to provide for the person's treatment, agrees to comply with the rules and conditions of supervision imposed by the court and DHFS, agrees to report on the person's progress to the court on a regular basis, and agrees to report violations of supervised release immediately to the court and the prosecutor.

d. The person who will be placed on supervised release has housing arrangements that are sufficiently secure to protect the community, and the person or agency that is providing the housing to the person who will be placed on supervised release agrees, among other things, to report the unauthorized absence of the person immediately to the court and the prosecutor.

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

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

13. *Implementing a supervised release order.* If the court authorizes supervised release, the court must order the county in which the person will be placed to assist DHFS in implementing the supervised release placement. If DHFS imposes rules governing supervised release beyond the conditions set by the court, it must file them with the court within 10 days of imposing the rule. In addition, the rules may not conflict with the conditions imposed by the court. If DHFS wishes to change a rule of supervision imposed by the court, it must obtain the court's approval.

14. *Revoking supervised release.* This bill makes the following changes related to revoking an order granting supervised release:

a. Under current law, if DHFS alleges that a person on supervised release has violated a condition or rule of supervised release or that the safety of others necessitates revocation, DHFS is authorized, but not required, to detain the person and file a revocation petition. This bill requires DHFS to detain a person on supervised release and file a revocation petition if it concludes that the person is a threat to the safety of others.

b. The bill permits DHFS to detain a person and file a revocation petition based on the person threatening to violate a rule or condition.

c. Under current law, if DHFS detains a person pending a revocation hearing, it may detain the person in the county jail; in certain hospitals (such as one that is approved by DHFS for use as a detention facility); with certain treatment agencies (such as those operating under DHFS's direction and control or providing treatment through a contract with DHFS); at a center for the developmentally disabled; in a state mental health treatment facility; or in an approved private treatment facility, if the facility agrees to detain the individual. Under the bill, DHFS may detain a person who is the subject of a revocation petition in the county jail or return him or her to institutional care.

d. Current law permits, but does not require, the court to revoke supervised release if the state proves: 1) that the person violated a condition or rule of supervised release; or 2) that the safety of others requires that supervised release be revoked. This bill requires the court to revoke supervised release if the latter condition applies. In addition, the bill permits the court to revoke extended supervision in the former case only if it finds that the violation of the rule or condition merits revocation.

e. The bill specifies that supervised release may be revoked even if the person has not yet been placed in the community.

f. The bill requires the court to make a decision on a revocation petition within 90 days after it was filed. Current law contains no such deadline.

15. *Discharge proceedings.* The bill changes the procedures by which a person in institutional care or on supervised release may be discharged from DHFS's custody and supervision in the following ways:

a. The bill eliminates the requirement that the court review a person's eligibility for discharge whenever DHFS conducts a periodic evaluation of the person. Under the bill, the court conducts discharge proceedings only upon the filing of a discharge petition.

b. If DHFS determines that a committed person should be discharged, DHFS — not the person — files a petition with the court.

c. The bill eliminates the probable cause hearing for discharge petitions that are filed without DHFS's approval. Instead, the court bases its determination on whether to conduct a discharge hearing on the petition, the prosecutor's written response, and any supporting documentation that either party files.

d. The bill requires that discharge hearings be held within 90 days after DHFS files the discharge petition or within 90 days after the court determines that a hearing on a petition brought by a committed person is warranted, whichever is appropriate. (Current law requires that a discharge petition filed with DHFS's approval be heard within 45 days after its filing but does not set a deadline for other discharge hearings.)

e. The bill gives DHFS the right to appear and be heard (through its agency counsel) at any discharge hearing.

f. The bill permits the prosecutor or the committed person to request that a discharge hearing be held before a six–person jury. Five members of the jury must agree to a verdict on the discharge petition for it to be valid.

16. *Miscellaneous procedural provisions.* Current law does not explicitly address various procedural issues relating to sexually violent person commitment and discharge 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. Making motions to challenge the jurisdiction of the court or the timeliness of the filing of a petition.

b. Methods by which one party may discover and inspect material in the possession of the other party.

c. Changing the place where the trial on the petition is held.

d. Jury selection.

e. Filing a motion for relief from a commitment order and appeals of other orders.

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.

17. *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).

18. *Enforceability of time limits.* The bill specifies that a party's failure to comply with a time limit relating to proceedings involving sexually violent persons does not affect the court's jurisdiction or its ability to exercise that jurisdiction, nor is it a ground for an appeal.

Reimbursement for Brown County and Milwaukee County prosecutors

Current law requires the district attorneys for Brown County and Milwaukee County to each assign an assistant district attorney to work exclusively on sexually violent person commitment cases. These specialized prosecutors may prosecute cases in any other county at the request of the district attorney for that county. This bill requires, in those cases, that the district attorney for the county in which the case is being heard reimburse the specialized prosecutor's home county (*i.e.*, Brown County or Milwaukee County) for reasonable costs incurred by the specialized prosecutor, including expert witness fees.

Transitional facility for supervised release of sexually violent persons

This bill creates a committee composed of officials from the city of Milwaukee and Milwaukee County and individual residents of Milwaukee County to prepare recommendations regarding the location of a proposed transitional facility for persons who have been committed to the custody of DHFS as sexually violent persons. The bill also requires DHFS to pay annually to the municipality in which the transitional facility is ultimately located a sum in lieu of property taxes for the services, improvements, or facilities that the municipality furnishes to the transitional facility. The amount of the payment may not exceed the amount that the municipality would have otherwise levied upon the transitional facility. DHFS must also make an annual grant of $100,000 to the municipality for the cost of providing additional security near the facility.

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 six 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 the maximum term of imprisonment for escape is 12.5 years if the person 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.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

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:

SECTION 1. 20.435 (2) (bm) of the statutes is amended to read:

20.435 **(2)** (bm) *Secure mental health units or facilities; payments relating to transitional facilities.* The amounts in the schedule for the general program operations of secure mental health units or facilities under s. 980.065 for persons committed under s. 980.06 and placed in a secure mental health unit or facility and for making payments to municipalities under s. 46.055 (2) (b) and grants to municipalities under s. 46.055 (2) (c).

SECTION 2. 46.03 (1) of the statutes is amended to read:

46.03 **(1)** INSTITUTIONS GOVERNED. Maintain and govern the Mendota and the Winnebago mental health institutes; the secure mental health facility established under s. 46.055 (1); and the centers for the developmentally disabled.

SECTION 3. 46.055 (title) of the statutes is amended to read:

46.055 (title) ~~**Secure mental health facility**~~ **Facilities for sexually violent persons.**

SECTION 4. 46.055 of the statutes is renumbered 46.055 (1).

SECTION 5. 46.055 (2) of the statutes is created to read:

46.055 **(2)** (a) In this subsection, "transitional facility" means the facility that is enumerated in 2001 Wisconsin Act 16, section 9107 (1) (d) 1., and that will be a transitional facility for the housing of persons committed to the custody of the department under ch. 980.

(b) Annually, from the appropriation under s. 20.435 (2) (bm), the department shall pay a municipality in which a transitional facility is located a sum in lieu of taxes for the services, improvements, or facilities that the municipality furnishes to the transitional facility. The municipality shall determine the amount that the department shall pay, but it may not exceed the amount that would be levied as the annual property tax of the municipality upon the transitional facility.

(c) Annually, from the appropriation under s. 20.435 (2) (bm), the department shall make a grant of $100,000 to a municipality in which a transitional facility is located to reimburse the municipality for the cost of providing additional security for the area in which the transitional facility is located.

SECTION 6. 46.058 (2m) of the statutes is amended to read:

46.058 **(2m)** The superintendents of the secure mental health facility established under s. 46.055 (1), the Wisconsin resource center established under s. 46.056 and any secure mental health unit or facility provided by the department of corrections under s. 980.065 (2) shall adopt proper means to prevent escapes of persons detained or committed to the facility, center or unit under ch. 980 and may adopt proper means to pursue and capture persons detained or committed to the facility, center or unit under ch. 980 who have escaped. In adopting means under this subsection to prevent escape and pursue and capture persons who have escaped, a superintendent may delegate to designated staff members of the facility, center or unit the power to use necessary and appropriate force, as defined by the department by rule, to prevent escapes and capture escaped persons.

SECTION 7. 48.396 (1) of the statutes is amended to read:

48.396 **(1)** Law enforcement officers' records of children shall be kept separate from records of adults. Law enforcement officers' records of the adult expectant mothers of unborn children shall be kept separate from records of other adults. Law enforcement officers' records of children and the adult expectant mothers of unborn children shall not be open to inspection or their contents disclosed except under sub. (1b), (1d) ~~or,~~ (5), or (6) or s. 48.293 or by order of the court. This subsection does not apply to the representatives of newspapers or other reporters of news who wish to obtain information for the purpose of reporting news without revealing the identity

of the child or expectant mother involved, to the confidential exchange of information between the police and officials of the school attended by the child or other law enforcement or social welfare agencies or to children 10 years of age or older who are subject to the jurisdiction of the court of criminal jurisdiction. A public school official who obtains information under this subsection shall keep the information confidential as required under s. 118.125 and a private school official who obtains information under this subsection shall keep the information confidential in the same manner as is required of a public school official under s. 118.125. A law enforcement agency that obtains information under this subsection shall keep the information confidential as required under this subsection and s. 938.396 (1). A social welfare agency that obtains information under this subsection shall keep the information confidential as required under ss. 48.78 and 938.78.

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

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

SECTION 9. 48.396 (6) of the statutes is created to read:

48.396 **(6)** Records of law enforcement officers and of the court assigned to exercise jurisdiction under this chapter and ch. 938 shall be open for inspection by and production to authorized representatives of the department of corrections, the department of health and family services, the department of justice, or a district attorney for use in the evaluation or prosecution of any proceeding under ch. 980, if the records involve or relate to an individual who is the subject of or who is being evaluated for a proceeding under ch. 980. The court in which the proceeding under

ch. 980 is pending may issue any protective orders that it determines are appropriate concerning information made available or disclosed under this subsection. Any representative of the department of corrections, the department of health and family services, the department of justice, or a district attorney may disclose information obtained under this subsection for any purpose consistent with any proceeding under ch. 980.

SECTION 10. 48.78 (2) (e) of the statutes is created to read:

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

SECTION 11. 48.981 (7) (a) 8s. of the statutes is created to read:

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

under ch. 980 is pending may issue any protective orders that it determines are appropriate concerning information made available or disclosed under this subdivision. Any representative of the department of corrections, the department of health and family services, the department of justice, or a district attorney may disclose information obtained under this subdivision for any purpose consistent with any proceeding under ch. 980.

SECTION 12. 51.30 (3) (a) of the statutes is amended to read:

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

SECTION 13. 51.30 (3) (b) of the statutes is amended to read:

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

SECTION 14. 51.30 (3) (bm) of the statutes is created to read:

51.30 **(3)** (bm) The files and records of court proceedings under this chapter shall be released to authorized representatives of the department of corrections, the department of health and family services, the department of justice, or a district attorney for use in the evaluation or prosecution of any proceeding under ch. 980, if the files or records involve or relate to an individual who is the subject of or who is being evaluated for a proceeding under ch. 980. The court in which the proceeding under ch. 980 is pending may issue any protective orders that it determines are

appropriate concerning information made available or disclosed under this paragraph. Any representative of the department of corrections, the department of health and family services, the department of justice, or a district attorney may disclose information obtained under this paragraph for any purpose consistent with any proceeding under ch. 980.

SECTION 15. 51.30 (4) (b) 8m. of the statutes is amended to read:

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

SECTION 16. 51.30 (4) (b) 8s. of the statutes is created to read:

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

SECTION 17. 51.30 (4) (b) 10m. of the statutes is repealed.

SECTION 18. 51.30 (4) (b) 11. of the statutes is amended to read:

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

SECTION 19. 51.375 (1) (a) of the statutes is amended to read:

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

SECTION 20. 109.09 (1) of the statutes is amended to read:

109.09 **(1)** The department shall investigate and attempt equitably to adjust controversies between employers and employees as to alleged wage claims. The department may receive and investigate any wage claim which is filed with the department, or received by the department under s. 109.10 (4), no later than 2 years after the date the wages are due. The department may, after receiving a wage claim, investigate any wages due from the employer against whom the claim is filed to any employee during the period commencing 2 years before the date the claim is filed. The department shall enforce this chapter and ss. 66.0903, 103.02, 103.49, 103.82, 104.12 and 229.8275. In pursuance of this duty, the department may sue the employer on behalf of the employee to collect any wage claim or wage deficiency and ss. 109.03 (6) and 109.11 (2) and (3) shall apply to such actions. Except for actions under s. 109.10, the department may refer such an action to the district attorney of the county in which the violation occurs for prosecution and collection and the district attorney shall commence an action in the circuit court having appropriate

jurisdiction. Any number of wage claims or wage deficiencies against the same employer may be joined in a single proceeding, but the court may order separate trials or hearings. In actions that are referred to a district attorney under this subsection, any taxable costs recovered by the district attorney shall be paid into the general fund of the county in which the violation occurs and used by that county to meet its financial responsibility under s. 978.13 (2) (b) for the operation of the office of the district attorney who prosecuted the action.

SECTION 21. 118.125 (2) (ck) of the statutes is created to read:

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

SECTION 22. 146.82 (2) (c) of the statutes is amended to read:

146.82 **(2)** (c) Notwithstanding sub. (1), patient health care records shall be released to appropriate examiners and facilities in accordance with ~~ss.~~ s. 971.17 (2) (e), (4) (c) and (7) (c)~~, 980.03 (4) and 980.08 (3)~~. The recipient of any information from

the records shall keep the information confidential except as necessary to comply with s. 971.17 ~~or ch. 980~~.

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

146.82 **(2)** (cm) Notwithstanding sub. (1), patient health care records shall be released to appropriate persons in accordance with s. 980.031 (4) and to authorized representatives of the department of corrections, the department of health and family services, the department of justice, or a district attorney for use in the evaluation or prosecution of any proceeding under ch. 980, if the treatment records involve or relate to an individual who is the subject of or who is being evaluated for a proceeding under ch. 980. The court in which the proceeding under ch. 980 is pending may issue any protective orders that it determines are appropriate concerning records made available or disclosed under this paragraph. Any representative of the department of corrections, the department of health and family services, the department of justice, or a district attorney may disclose information obtained under this paragraph for any purpose consistent with any proceeding under ch. 980.

SECTION 24. 301.45 (1g) (dt) of the statutes is amended to read:

301.45 **(1g)** (dt) Is in institutional care or on ~~conditional~~ supervised release under ch. 980 on or after June 2, 1994.

SECTION 25. 301.45 (3) (a) 3r. of the statutes is amended to read:

301.45 **(3)** (a) 3r. If the person has been committed under ch. 980, he or she is subject to this subsection upon being placed on supervised release under s. 980.06 (2), 1997 stats., or s. 980.08 or, if he or she was not placed on supervised release, before being discharged under s. 980.09 or ~~980.10~~ 980.093.

SECTION 26. 301.45 (3) (b) 3. of the statutes is amended to read:

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

SECTION 27. 301.45 (5) (b) 2. of the statutes is amended to read:

301.45 **(5)** (b) 2. The person has been found to be a sexually violent person under ch. 980, regardless of whether the person ~~is~~ has been discharged under s. 980.10, 2001 stats., s. 980.09 or ~~980.10~~ 980.093 from the sexually violent person commitment, except that the person no longer has to comply with this section if the finding that the person is a sexually violent person has been reversed, set aside or vacated.

SECTION 28. 756.06 (2) (b) of the statutes is amended to read:

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

SECTION 29. 756.06 (2) (cm) of the statutes is created to read:

756.06 **(2)** (cm) A jury in a trial under s. 980.05 shall consist of the number of persons specified in s. 980.05 (2) unless a lesser number has been stipulated to and approved under s. 980.05 (2m) (c). A jury in a hearing under s. 980.09 (2m) or 980.093 (3) shall consist of the number of persons specified in s. 980.09 (2m) or 980.093 (3), whichever is applicable, unless a lesser number has been stipulated to and approved under s. 980.095 (3).

SECTION 30. 801.52 of the statutes is amended to read:

801.52 Discretionary change of venue. The court may at any time, upon its own motion, the motion of a party or the stipulation of the parties, change the venue to any county in the interest of justice or for the convenience of the parties or witnesses. This section does not apply to proceedings under ch. 980.

SECTION 31. 808.04 (3) of the statutes is amended to read:

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

SECTION 32. 808.04 (4) of the statutes is amended to read:

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

SECTION 33. 808.075 (4) (h) of the statutes is amended to read:

808.075 **(4)** (h) Commitment, supervised release, recommitment, discharge, and postcommitment relief under ss. 980.06, 980.08, 980.09, ~~980.10~~ 980.093, and 980.101 of a person found to be a sexually violent person under ch. 980.

SECTION 34. 809.10 (1) (d) of the statutes, as affected by Supreme Court Order 02–01, is repealed and recreated to read:

809.10 **(1)** (d) *Docketing statement.* The person shall send the court of appeals an original and one copy of a completed docketing statement on a form prescribed by the court of appeals. The docketing statement shall accompany the court of appeals' copy of the notice of appeal. The person shall send a copy of the completed docketing statement to the other parties to the appeal. Docketing statements need not be filed in appeals brought under s. 809.105, 809.107, 809.32, or 974.06 (7), in cases under ch. 980, or in cases in which a party represents himself or herself. Docketing

statements need not be filed in appeals brought under s. 809.30 or 974.05, or by the state or defendant in permissive appeals in criminal cases pursuant to s. 809.50, except that docketing statements shall be filed in cases arising under chs. 48, 51, 55, or 938.

SECTION 35. 809.30 (1) (c) of the statutes, as affected by Supreme Court 02–01, is repealed and recreated to read:

809.30 **(1)** (c) "Postconviction relief" means an appeal or a motion for postconviction relief in a criminal case, other than an appeal, motion, or petition under ss. 302.113 (7m), 302.113 (9g), 973.19, 973.195, 974.06, or 974.07 (2). In a ch. 980 case, the term means an appeal or a motion for postcommitment relief under s. 980.038 (4).

SECTION 36. 809.30 (1) (f) of the statutes, as affected by Supreme Court 02–01, is repealed and recreated to read:

809.30 **(1)** (f) "Sentencing" means the imposition of a sentence, a fine, or probation in a criminal case. In a ch. 980 case, the term means the entry of an order under s. 980.06.

SECTION 37. 814.61 (1) (c) 6. of the statutes is created to read:

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

SECTION 38. 905.04 (4) (a) of the statutes is amended to read:

905.04 **(4)** (a) *Proceedings for hospitalization, control, care, and treatment of a sexually violent person, guardianship, protective services, or protective placement.* There is no privilege under this rule as to communications and information relevant to an issue in proceedings to hospitalize the patient for mental illness, to appoint a guardian under s. 880.33, for control, care, and treatment of a sexually violent person under ch. 980, for court–ordered protective services or protective placement, or for

review of guardianship, protective services, or protective placement orders, if the physician, registered nurse, chiropractor, psychologist, social worker, marriage and family therapist, or professional counselor in the course of diagnosis or treatment has determined that the patient is in need of hospitalization, control, care, and treatment as a sexually violent person, guardianship, protective services, or protective placement.

SECTION 39. 911.01 (4) (c) of the statutes is amended to read:

911.01 **(4)** (c) *Miscellaneous proceedings.* Proceedings for extradition or rendition; sentencing, granting or revoking probation, modification of a bifurcated sentence under s. 302.113 (9g), adjustment of a bifurcated sentence under s. 973.195 (1r), issuance of arrest warrants, criminal summonses and search warrants; hearings under s. 980.093 (2); proceedings under s. 971.14 (1) (c); proceedings with respect to pretrial release under ch. 969 except where habeas corpus is utilized with respect to release on bail or as otherwise provided in ch. 969.

SECTION 40. 938.35 (1) (e) of the statutes is created to read:

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

SECTION 41. 938.396 (1) of the statutes is amended to read:

938.396 **(1)** Law enforcement officers' records of juveniles shall be kept separate from records of adults. Law enforcement officers' records of juveniles shall not be open to inspection or their contents disclosed except under sub. (1b), (1d), (1g), (1m), (1r), (1t), (1x) ~~or,~~ (5), or (10) or s. 938.293 or by order of the court. This subsection does not apply to representatives of the news media who wish to obtain information for the purpose of reporting news without revealing the identity of the juvenile involved, to the confidential exchange of information between the police and

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

SECTION 42. 938.396 (2) (e) of the statutes is renumbered 938.396 (10) and amended to read:

938.396 **(10)** ~~Upon request of the department of corrections to review court~~ A law enforcement agency's records and records ~~for the purpose of providing, under s. 980.015 (3) (a),~~ of the court assigned to exercise jurisdiction under this chapter and ch. 48 shall be open for inspection by authorized representatives of the department of corrections, the department of health and family services, the department of justice, or a district attorney ~~with a person's offense history, the court shall open for inspection by authorized representatives of the department of corrections the records of the court relating to any juvenile who has been adjudicated delinquent for a sexually violent offense, as defined in s. 980.01 (6)~~ for use in the evaluation or prosecution of any proceeding under ch. 980, if the records involve or relate to an individual who is the subject of or who is being evaluated for a proceeding under ch. 980. The court in which the proceeding under ch. 980 is pending may issue any

protective orders that it determines are appropriate concerning information made available or disclosed under this subsection. Any representative of the department of corrections, the department of health and family services, the department of justice, or a district attorney may disclose information obtained under this subsection for any purpose consistent with any proceeding under ch. 980.

SECTION 43. 938.396 (5) (a) (intro.) of the statutes is amended to read:

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

SECTION 44. 938.78 (2) (e) of the statutes is amended to read:

938.78 **(2)** (e) ~~Paragraph (a) does not prohibit the department from disclosing~~ Notwithstanding par. (a), an agency shall, upon request, disclose information ~~about an individual adjudged delinquent under s. 938.183 or 938.34 for a sexually violent offense, as defined in s. 980.01 (6),~~ to authorized representatives of the department of corrections, the department of health and family services, the department of justice, or a district attorney ~~or a judge acting under ch. 980 or to an attorney who represents a person subject to a petition~~ for use in the evaluation or prosecution of any proceeding under ch. 980, if the information involves or relates to an individual who is the subject of or who is being evaluated for a proceeding under ch. 980. The court in which the ~~petition~~ proceeding under ~~s. 980.02 is filed~~ ch. 980 is pending may issue any protective orders that it determines are appropriate concerning information disclosed under this paragraph. Any representative of the department of corrections, the department of health and family services, the department of

justice, or a district attorney may disclose information obtained under this paragraph for any purpose consistent with any proceeding under ch. 980.

SECTION 45. 946.42 (1) (a) of the statutes is amended to read:

946.42 **(1)** (a) "Custody" includes without limitation actual custody of an institution, including a secured correctional facility, as defined in s. 938.02 (15m), a secured child caring institution, as defined in s. 938.02 (15g), a secured group home, as defined in s. 938.02 (15p), a secure detention facility, as defined in s. 938.02 (16), a Type 2 child caring institution, as defined in s. 938.02 (19r), a facility used for the detention of persons detained under s. 980.04 (1), a facility specified in s. 980.065, or a juvenile portion of a county jail, or actual custody of a peace officer or institution guard. "Custody" also includes without limitation the constructive custody of persons placed on supervised release under a commitment order issued under ch. 980 and constructive custody of prisoners and juveniles subject to an order under s. 48.366, 938.183, 938.34 (4d), (4h) or (4m) or 938.357 (4) or (5) (e) temporarily outside the institution whether for the purpose of work, school, medical care, a leave granted under s. 303.068, a temporary leave or furlough granted to a juvenile or otherwise. Under s. 303.08 (6) it means, without limitation, that of the sheriff of the county to which the prisoner was transferred after conviction. It does not include the custody of a probationer, parolee or person on extended supervision by the department of corrections or a probation, extended supervision or parole officer or the custody of a person who has been released to aftercare supervision under ch. 938 unless the person is in actual custody or is subject to a confinement order under s. 973.09 (4).

SECTION 46. 946.42 (3m) of the statutes is created to read:

946.42 **(3m)** A person who intentionally escapes from custody under any of the following circumstances is guilty of a Class F felony:

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

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

SECTION 47. 950.04 (1v) (xm) of the statutes is amended to read:

950.04 **(1v)** (xm) To have the department of health and family services make a reasonable attempt to notify the victim under s. 980.11 regarding supervised release under s. 980.08 and discharge under s. 980.09 or ~~980.10~~ 980.093.

SECTION 48. 967.03 of the statutes is amended to read:

967.03 District attorneys. Wherever in chs. 967 to ~~979~~ 980 powers or duties are imposed upon district attorneys, the same powers and duties may be discharged by any of their duly qualified deputies or assistants.

SECTION 49. 972.15 (4) of the statutes is amended to read:

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

SECTION 50. 972.15 (6) of the statutes is created to read:

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

(a) The department of corrections.

(b) The department of health and family services.

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

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

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

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

SECTION 51. 973.155 (1) (c) of the statutes is created to read:

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

SECTION 52. 978.03 (3) of the statutes is amended to read:

978.03 **(3)** Any assistant district attorney under sub. (1), (1m) or (2) must be an attorney admitted to practice law in this state and, except as provided in ss. 978.043 (1) and 978.044, may perform any duty required by law to be performed by the district attorney. The district attorney of the prosecutorial unit under sub. (1), (1m), or (2) may appoint such temporary counsel as may be authorized by the department of administration.

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

978.043 **(1)** The district attorney of the prosecutorial unit that consists of Brown County and the district attorney of the prosecutorial unit that consists of Milwaukee County shall each assign one assistant district attorney in his or her prosecutorial unit to be a sexually violent person commitment prosecutor. An assistant district attorney assigned under this ~~section~~ subsection to be a sexually

violent person commitment prosecutor may engage only in the prosecution of sexually violent person commitment proceedings under ch. 980 and, at the request of the district attorney of the prosecutorial unit, may file and prosecute sexually violent person commitment proceedings under ch. 980 in any prosecutorial unit in this state.

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

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

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

978.045 **(1r)** (intro.) Any judge of a court of record, by an order entered in the record stating the cause ~~therefor~~ for it, may appoint an attorney as a special prosecutor to perform, for the time being, or for the trial of the accused person, the duties of the district attorney. An attorney appointed under this subsection shall have all of the powers of the district attorney. The judge may appoint an attorney as a special prosecutor at the request of a district attorney to assist the district attorney in the prosecution of persons charged with a crime, in grand jury or John Doe proceedings, in proceedings under ch. 980, or in investigations. The judge may appoint an attorney as a special prosecutor if any of the following conditions exists:

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

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

SECTION 57. 978.05 (8) (b) of the statutes is amended to read:

978.05 **(8)** (b) Hire, employ, and supervise his or her staff and, subject to ss. 978.043 (1) and 978.044, make appropriate assignments of the staff throughout the prosecutorial unit. The district attorney may request the assistance of district attorneys, deputy district attorneys, or assistant district attorneys from other prosecutorial units or assistant attorneys general who then may appear and assist in the investigation and prosecution of any matter for which a district attorney is responsible under this chapter in like manner as assistants in the prosecutorial unit and with the same authority as the district attorney in the unit in which the action is brought. Nothing in this paragraph limits the authority of counties to regulate the hiring, employment, and supervision of county employees.

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

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

978.13 **(2)** (a) In this subsection, "costs related to the operation of the district attorney's office" include costs that a prosecutorial unit must pay under s. 978.043 (2) but do not include costs for which a prosecutorial unit receives reimbursement under s. 978.043 (2).

SECTION 60. 980.01 (1) of the statutes is renumbered 980.01 (1m).

SECTION 61. 980.01 (1g) of the statutes is created to read:

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

SECTION 62. 980.01 (1m) of the statutes is created to read:

980.01 **(1m)** "Likely" means more likely than not.

SECTION 63. 980.01 (5) of the statutes is amended to read:

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

SECTION 64. 980.01 (6) (a) of the statutes is amended to read:

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

SECTION 65. 980.01 (6) (am) of the statutes is created to read:

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

SECTION 66. 980.01 (6) (b) of the statutes is amended to read:

980.01 **(6)** (b) Any crime specified in s. 940.01, 940.02, 940.03, 940.05, 940.06, 940.19 (4) or (5), 940.195 (4) or (5), 940.30, 940.305, 940.31 ~~or~~, 941.32, 943.10, 943.32,

or 948.03 that is determined, in a proceeding under s. 980.05 (3) (b), to have been sexually motivated.

SECTION 67. 980.01 (6) (bm) of the statutes is created to read:

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

SECTION 68. 980.01 (6) (c) of the statutes is amended to read:

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

SECTION 69. 980.01 (7) of the statutes is amended to read:

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

SECTION 70. 980.015 (1) of the statutes is renumbered 980.015 (1) (intro.) and amended to read:

980.015 **(1)** (intro.) In this section~~, "agency:~~

(a) "Agency with jurisdiction" means the agency with the authority or duty to release or discharge the person.

SECTION 71. 980.015 (1) (b) of the statutes is created to read:

980.015 **(1)** (b) "Continuous term of incarceration, any part of which was imposed for a sexually violent offense," includes confinement in a secured

correctional facility, as defined in s. 938.02 (15m), or a secured child caring institution, as defined in s. 938.02 (15g), or a secured group home, as defined in s. 938.02 (15p), if the person was placed in the facility for being adjudicated delinquent under s. 48.34, 1993 stats., or under s. 938.183 or 938.34 on the basis of a sexually violent offense.

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

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

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

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

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

980.015 **(2)** (b) The anticipated release from a secured correctional facility, as defined in s. 938.02 (15m), or a secured child caring institution, as defined in s. 938.02 (15g), or a secured group home, as defined in s. 938.02 (15p), ~~of a~~ if the person was placed in the facility as a result of being adjudicated delinquent under s. 48.34, 1993 stats., or under s. 938.183 or 938.34 on the basis of a sexually violent offense.

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 82. 980.02 (2) (c) of the statutes is amended to read:

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

SECTION 83. 980.02 (4) (intro.) of the statutes is amended to read:

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

SECTION 84. 980.02 (6) of the statutes is created to read:

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

SECTION 85. 980.03 (2) (intro.) of the statutes is amended to read:

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

SECTION 86. 980.03 (3) of the statutes is amended to read:

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

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

SECTION 87. 980.03 (4) of the statutes is renumbered 980.031 (3) and amended to read:

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

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

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

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

SECTION 88. 980.03 (5) of the statutes is repealed.

SECTION 89. 980.031 (title) of the statutes is created to read:

980.031 (title) **Examinations.**

SECTION 90. 980.031 (1) and (2) of the statutes are created to read:

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

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

SECTION 91. 980.034 of the statutes is created to read:

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

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

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

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

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

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

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

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

SECTION 92. 980.036 of the statutes is created to read:

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

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

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

(2) WHAT A PROSECUTING ATTORNEY MUST DISCLOSE TO A PERSON SUBJECT TO THIS CHAPTER. Upon demand, a prosecuting attorney shall, within a reasonable time after the probable cause hearing and before a trial under s. 980.05 or other proceeding under s. 980.07 (7), 980.09 (2m), or 980.093 (3), disclose to a person subject to this chapter or the person's attorney, and permit the person or the person's attorney to inspect and copy or photograph, all of the following materials and information, if the material or information is within the possession, custody, or control of the state:

(a) Any written or recorded statement made by the person concerning the allegations in the petition filed under s. 980.02 or concerning other matters at issue

in the trial or proceeding and the names of witnesses to the person's written statements.

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

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

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

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

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

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

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

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

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

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

(j) Any exculpatory evidence.

(3) WHAT A PERSON SUBJECT TO THIS CHAPTER MUST DISCLOSE TO THE PROSECUTING ATTORNEY. Upon demand, a person who is subject to this chapter or the person's attorney shall, within a reasonable time after the probable cause hearing and before a trial under s. 980.05 or other proceeding under s. 980.07 (7), 980.09 (2m), or 980.093 (3), disclose to the prosecuting attorney, and permit the prosecuting attorney to inspect and copy or photograph, all of the following materials and information, if the material or information is within the possession, custody, or control of the person or the person's attorney:

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

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

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

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

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

(4) COMMENT OR INSTRUCTION ON FAILURE TO CALL WITNESS. No comment or instruction regarding the failure to call a witness at the trial may be made or given

if the sole basis for the comment or instruction is the fact that the name of the witness appears upon a list furnished under this section.

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

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

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

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

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

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

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

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

SECTION 93. 980.038 of the statutes is created to read:

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

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

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

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

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

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

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

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

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

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

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

SECTION 94. 980.04 (1) of the statutes is amended to read:

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

SECTION 95. 980.04 (2) of the statutes is renumbered 980.04 (2) (a) and amended to read:

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

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

SECTION 96. 980.04 (2) (b) of the statutes is created to read:

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

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

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

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

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

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

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

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

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

(c) At any time before the verdict in a jury trial under this section, the parties may stipulate in writing or by statement in open court, on the record, with the

approval of the court, that the jury shall consist of any number less than the number prescribed in sub. (2).

SECTION 101. 980.05 (3) (a) of the statutes is amended to read:

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

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

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

SECTION 103. 980.065 (1m) of the statutes is amended to read:

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

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

980.07 **(1)** (intro.) If a person has been committed under s. 980.06 and has not been discharged under s. 980.09, the department shall conduct an examination of his or her mental condition within ~~6~~ 18 months after ~~an~~ the date of the initial commitment order under s. 980.06 and again thereafter at least once each 12 months ~~for the purpose of determining~~ to determine whether the person has made sufficient progress for the court to consider whether the person should be placed on supervised release or discharged. At the time of a reexamination under this section, the person

who has been committed may retain or ~~seek to~~ have the court appoint ~~an~~ any of the following:

(a) An examiner as provided under s. ~~980.03 (4)~~ 980.031 (3). The county shall pay the costs of an examiner appointed under this paragraph as provided under s. 51.20 (18) (a).

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

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

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

980.07 **(1g)** Any examiners under this section shall have reasonable access to the person for purposes of examination and to the person's past and present treatment records, as defined in s. 51.30 (1) (b), and patient health care records, as provided under s. 146.82 (2) (c).

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

980.07 **(1m)** At the time for any examination under sub. (1), the department shall prepare a treatment report based on its treating professionals' evaluation of the person's progress in treatment and of whether that progress has been sufficient and their description of the type of treatment that the person would need in the community if supervised release were ordered. The department shall provide a copy of this report to any examiner conducting an examination under sub. (1).

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

980.07 **(2)** Any examiner conducting an examination under ~~this section~~ sub. (1) shall prepare a written report of the examination no later than 30 days after the date of the examination. The examiner shall place a copy of the report in the person's medical records and shall provide a copy of the report to the department. The report shall include an assessment of the risk that the person will reoffend, whether the risk

can be safely managed in the community if reasonable conditions of supervision and security are imposed, and whether the treatment that the person needs is available in the community. The department shall then send the treatment report, the written examination report, and a written statement from the department recommending either continued institutional care, supervised release, or discharge to the court that committed the person under s. 980.06. A copy of each report and the department's recommendation shall be provided also to the district attorney or department of justice, whichever is applicable, and to the person's attorney as soon as he or she is retained or appointed. If the department's examiner concludes that the person does not meet the criteria for commitment as a sexually violent person, the department shall petition for discharge in accordance with the provisions of s. 980.09 (1).

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

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

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

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

(5) (a) If the person files a timely objection without counsel, the court shall serve a copy of the objection and any supporting documents on the district attorney or department of justice, whichever is applicable. If the person objects through

counsel, his or her attorney shall serve the district attorney or department of justice, whichever is applicable. If the district attorney or department of justice objects, it shall serve the person or his or her counsel.

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

(6) The district attorney or department of justice, whichever is applicable, may employ experts or professional persons to support or oppose any recommendation.

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

(7) (a) Unless the department recommends continued institutional care and no party files a timely objection, the court, without a jury, shall hold a hearing to determine whether to authorize supervised release within 30 days after the date on which objections are due under sub. (4), unless the petitioner waives this time limit. Expenses of proceedings under this subsection shall be paid as provided under s. 51.20 (18) (b), (c), and (d).

(am) If the department chooses to appear and be heard at any hearing under this subsection, the department shall be represented at the hearing by its agency counsel.

(b) The court shall determine from all of the evidence whether to continue instrumental care and, if not, what the appropriate placement would be for the person while on supervised release. In making a decision under this subsection, the

court may consider, without limitation because of enumeration, the nature and circumstances of the behavior that was the basis of the allegation in the petition under s. 980.02 (2) (a), the person's mental history and present mental condition, the person's progress or lack of progress in treatment, and, if the court were to authorize supervised release, where the person would live, how the person would support himself or herself, and what arrangements would be available to ensure that the person would have access to and would participate in necessary treatment.

(bm) Unless the court determines that par. (d) 1. does not apply, the court shall select a county to prepare a report under par. (c). Unless the court has good cause to select another county, the court shall select the person's county of residence. A preliminary decision by the court under this paragraph or under par. (cm) to refer a case to a county department or the court's failure to make such a decision shall not affect the court's power to authorize or not authorize supervised release under this subsection.

(c) Unless the court determines that par. (d) 1. does not apply, the court shall order the county department under s. 51.42 in the county of intended placement to prepare a report, either independently or with the department of health and family services, identifying prospective residential options for community placement. In identifying prospective residential options, the county department shall consider the proximity of any potential placement to the residence of other persons on supervised release and to the residence of persons who are in the custody of the department of corrections and regarding whom a sex offender notification bulletin has been issued to law enforcement agencies under s. 301.46 (2m) (a) or (am).

(cm) If the court determines that the prospective residential options identified in the report under par. (c) are inadequate, the court may, but is not required to, select one or more other counties to prepare a report under par. (c).

(d) The court may not order that a person be placed on supervised release unless it finds, based on all of the reports, trial records, and evidence presented, that all of the following apply:

1. The person who will be placed on supervised release has made sufficient progress in treatment such that the risk that the person will reoffend can be safely managed in the community.

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

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

4. The person who will be placed on supervised release has housing arrangements that are sufficiently secure to protect the community, and the person or agency that is providing the housing to the person who will be placed on supervised release agrees in writing to the following conditions:

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

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

c. To immediately report to the court and the department of justice or the district attorney, as applicable, any unauthorized absence of the person who will be placed on supervised release from the housing arrangement to which the person has been assigned.

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

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

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

980.08 Supervised release; procedures, implementation, revocation. **(1)** If the court determines under s. 980.07 (7) that supervised release is appropriate, the court shall order the county department under s. 51.42 in the county of intended placement, whichever is appropriate, to assist the department of health and family services in implementing the supervised release placement.

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

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

(4) An order granting supervised release places the person in the care, control, and custody of the department. The department shall arrange for the care, control, and treatment of the person in the least restrictive manner consistent with the requirements of the person and in accordance with the order for supervised release.

Before a person is actually released under this section, the court shall notify the municipal police department and county sheriff for the municipality and county in which the person will be residing. The notification requirement under this subsection does not apply if a municipal police department or county sheriff submits to the court a written statement waiving the right to be notified.

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

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

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

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

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

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

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

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

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

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

980.09 **(1)** If the ~~secretary~~ department determines at any time that a person committed under this chapter ~~is no longer~~ does not meet the criteria for commitment as a sexually violent person, the ~~secretary~~ department shall ~~authorize the person to~~

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

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

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

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

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

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

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

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

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

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

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

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

980.095 Procedures for discharge hearings. (1) USE OF JURIES. (a) The district attorney or the department of justice, whichever filed the original petition, or the petitioner or his or her attorney may request that a hearing under s. 980.093 or 980.096 be to a jury of 6. A jury trial is deemed waived unless it is demanded within 10 days of the filing of the petition for discharge.

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

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

(2) DEPARTMENT'S RIGHT TO BE HEARD. If the department chooses to appear and be heard at any discharge hearing, the department shall be represented at the hearing by its agency counsel.

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

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

SECTION 120. 980.10 of the statutes is repealed.

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

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

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

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

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

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

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

980.14 (title) **Immunity.**

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

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

SECTION 126. Nonstatutory provisions.

(1) (a) There is created a committee to assist the state in determining the location for the facility enumerated in 2001 Wisconsin Act 16, section 9107 (1) (d) 1.,

that will be a transitional facility for the housing of persons committed to the custody of the department of health and family services under chapter 980 of the statutes.

(b) The departments of corrections and health and family services shall provide necessary administrative support services to the committee.

(c) The department of administration shall reimburse members of the committee for their actual and necessary expenses incurred in carrying out their functions, from the appropriation under section 20.505 (4) (ba) of the statutes, within the budget authorized under section 16.40 (14) of the statutes.

(d) The members of the committee shall be:

1. The chairperson of the Milwaukee County board of supervisors or his or her designee.

2. The chief of police of the city of Milwaukee or his or her designee.

3. The county executive of Milwaukee County or his or her designee.

4. The district attorney of Milwaukee County or his or her designee.

5. The mayor of the city of Milwaukee or his or her designee.

6. The sheriff of Milwaukee County or his or her designee.

7. One representative of the Milwaukee County Law Enforcement Executives Association who is not from the city of Milwaukee.

8. One representative of the intergovernmental cooperation council who is not from the city of Milwaukee.

9. Three other individuals who are residents of the city of Milwaukee, to be appointed by the governor.

10. Two other individuals who are residents of Milwaukee County but who are not residents of the city of Milwaukee, to be appointed by the governor.

(e) The governor shall appoint the chair of the committee from the individuals appointed under par. (d) 9. and 10.

(f) The committee shall hold public hearings in Milwaukee County regarding the selection of a location of the facility. The committee shall consider all of the following factors when determining the criteria for the location of the facility or when determining specific locations for the facility:

1. Community safety.

2. Proximity to sensitive locations.

3. Ability to make the facility secure.

4. Accessibility to treatment for the persons living in the facility.

(g) No later than December 31, 2004, the committee shall submit a report to the departments of corrections and health and family services recommending specific locations that the committee determines are appropriate for the placement of the facility.

SECTION 127. Initial applicability.

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

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

(3) This act first applies to proceedings to revoke supervised release under section 980.08 (5) of the statutes, as affected by this act, that are commenced on the

effective date of this subsection, except that the treatment of section 980.08 (5) of the statutes, with respect to where a person may be detained while a petition to revoke supervised release is pending, first applies to a person whose detention commences on the effective date of this subsection.

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

SECTION 128. Effective dates. This act takes effect on the first day of the 2nd month beginning after publication, except as follows:

(1) This treatment of section 946.42 (1) (a) and (3m) of the statutes takes effect on the day after publication.

(END)