



## 1999 SENATE BILL 440

March 7, 2000 - Introduced by Senator BRESKE, cosponsored by Representative WALKER. Referred to Committee on Insurance, Tourism, Transportation and Corrections.

1     **AN ACT to amend** 971.17 (3) (e) of the statutes; **relating to:** detention of persons  
2             placed on conditional release after being found not guilty of a crime by reason  
3             of mental disease and defect.

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### *Analysis by the Legislative Reference Bureau*

Currently, if a person is found not guilty of a crime by reason of mental disease or defect, the court in which the person was tried must commit the person to the custody of the department of health and family services (DHFS). The court must specify whether the person is to be committed to institutional care or to conditional release, under which the person is released in the community subject to the custody and control of DHFS and to conditions set by the court and DHFS. A person who is initially committed to institutional care may later be placed on conditional release if, after a petition and hearing, the court finds that the person is appropriate for conditional release.

If DHFS believes that a person placed on conditional release has violated any condition or rule of release or that the safety of the person or others requires that the person's conditional release be revoked, the person may be taken into custody. DHFS must then submit to the court that committed the person both a statement showing probable cause for the detention and a petition to revoke the conditional release. The probable cause statement and petition must be submitted within 48 hours after the person is detained, and the court must hear the petition to revoke conditional release within 30 days, unless the hearing or time deadline is waived by the detained person.

This bill changes the time limit for DHFS to submit the probable cause statement and petition from 48 hours after the person is detained to 72 hours after

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the person is detained. The bill also provides that Saturdays, Sundays and legal holidays are excluded when calculating the 72 hour time limit.

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

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

1           **SECTION 1.** 971.17 (3) (e) of the statutes is amended to read:

2           971.17 (3) (e) An order for conditional release places the person in the custody  
3 and control of the department of health and family services. A conditionally released  
4 person is subject to the conditions set by the court and to the rules of the department  
5 of health and family services. Before a person is conditionally released by the court  
6 under this subsection, the court shall so notify the municipal police department and  
7 county sheriff for the area where the person will be residing. The notification  
8 requirement under this paragraph does not apply if a municipal department or  
9 county sheriff submits to the court a written statement waiving the right to be  
10 notified. If the department of health and family services alleges that a released  
11 person has violated any condition or rule, or that the safety of the person or others  
12 requires that conditional release be revoked, he or she may be taken into custody  
13 under the rules of the department. The department of health and family services  
14 shall submit a statement showing probable cause of the detention and a petition to  
15 revoke the order for conditional release to the committing court and the regional  
16 office of the state public defender responsible for handling cases in the county where  
17 the committing court is located within 48 72 hours after the detention, excluding  
18 Saturdays, Sundays and legal holidays. The court shall hear the petition within 30  
19 days, unless the hearing or time deadline is waived by the detained person. Pending  
20 the revocation hearing, the department of health and family services may detain the

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1 person in a jail or in a hospital, center or facility specified by s. 51.15 (2). The state  
2 has the burden of proving by clear and convincing evidence that any rule or condition  
3 of release has been violated, or that the safety of the person or others requires that  
4 conditional release be revoked. If the court determines after hearing that any rule  
5 or condition of release has been violated, or that the safety of the person or others  
6 requires that conditional release be revoked, it may revoke the order for conditional  
7 release and order that the released person be placed in an appropriate institution  
8 under s. 51.37 (3) until the expiration of the commitment or until again conditionally  
9 released under this section.

10 **SECTION 2. Initial applicability.**

11 (1) This act first applies to detentions commencing on the effective date of this  
12 subsection.

13 (END)