

**1999 DRAFTING REQUEST**

**Assembly Amendment (AA-AB769)**

Received: **03/20/2000**

Received By: **olsenje**

Wanted: Soon

Identical to LRB:

For: **Shirley Krug (608) 2664813**

By/Representing: **George (ADC)**

This file may be shown to any legislator: **NO**

Drafter: **olsenje**

May Contact:

Alt. Drafters: **nilsepe**

Subject: **Criminal Law - law enforcement  
Transportation - driver licenses**

Extra Copies:

**Pre Topic:**

No specific pre topic given

**Topic:**

Expand to cover all other states

**Instructions:**

See Attached

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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FE Sent For:

<END>

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/1	olsenje	1/3/20 jlg	3/21	Self			

FE Sent For:

&lt;END&gt;

~~Krug~~

AB 769

George  
75155

→ expand to cover all state,  
regardless of whether physically  
adjacent

The statute dictates who may file a petition alleging that a person is a sexually violent person. See § 980.02(1), Stats. Paragraph (a) allows the DOJ to file at the request of the DOC. See § 980.02(1), Stats. at para. [\*4] (a). Paragraph (b) allows the district attorney to file, but only if the DOJ has not filed under para. (a). This last phrase is crucial: the district attorney may only file if the steps described in para. (a) have not been taken. Thus, in order for filing power to extend to the district attorney, the DOC must have requested a petition and the DOJ must have refused. That is the procedure prescribed by para. (a), and that is what must occur before filing power is vested in the district attorney under para. (b). To read the statute otherwise would essentially delete the words “under par. (a)” from the statute. Surely if this had been the legislature’s intent it would not have inserted those words. See *NCR Corp. v. DOR*, 128 Wis. 2d 442, 456, 384 N.W.2d 355, 362 (Ct. App. 1986) (statutes should be construed to avoid rendering a word or clause superfluous).

Our conclusion that the legislature did not intend to grant the district attorney independent authority to file a petition absent a request from the DOC is confirmed by the legislative history of ch. 980, Stats. n1 The drafting record to 1993 Wis. Act 479, creating ch. 980, shows that under the original proposed language either [\*5] the district attorney, on his or her own, or the DOJ, at the request of the DOC or the district attorney, could file a petition for commitment. See A.B. 3, May 1994 Spec. Sess., Analysis by the Legislative Reference Bureau, at 2-3, 21. The bill was amended, replacing that language with the language currently in the statute. See Senate

amend. to S.B. 3, May 1994 Spec. Sess., at 2; Assembly amend. to A.B. 3, May 1994 Spec. Sess., at 2. Thus, the bill as originally introduced would have allowed the district attorney to file absent DOC request and DOJ refusal. This is how the district attorney in this case reads the current statute. But, the fact that the legislature felt it necessary to amend this language bolsters our conclusion that such is not the correct reading of the statute. Under § 980.02, Stats., a district attorney may file a commitment petition only if the DOJ has declined to do so following a DOC request.

n1 We acknowledge that we may not look to legislative history to create ambiguity in a statute. We may, however, use statutory history to “demonstrate that a statute plain on its face, when viewed historically, is indeed unambiguous.” *State v. Martin*, 162 Wis. 2d 883, 897 n.5, 470 N.W.2d 900, 905 (1991).

[\*6]

Because the district attorney acted outside his jurisdiction in filing the petition, the petition should have been dismissed. Cf. *State v. Braun*, 152 Wis. 2d 500, 539, 449 N.W.2d 851, 855 (Ct. App. 1989) (vacating conviction where special prosecutor acted outside appointment order). We thus reverse the circuit court’s order denying dismissal of the petition.

By the Court.-Order reversed.

Recommended for publication in the official reports



Tuesday  
3/21

Jg

**ASSEMBLY AMENDMENT,  
TO 1999 ASSEMBLY BILL 769**

1 At the locations indicated, amend the bill as follows:

2 1. Page 2, line 1: delete lines 1 to 7<sup>✓</sup> and substitute:

3 **SECTION Ig.** 343.237 (1) (a)<sup>x</sup> of the statutes is renumbered 343.237 (1) (ar) and  
4 amended to read:

5 343.237 (1) (ar) "Law enforcement agency of a ~~physically adjacent~~<sup>✓</sup> another  
6 state" ~~has the meaning given in s. 175.46 (1) (b)~~ means a governmental unit of one  
7 or more persons employed by a state other than this state or by a political subdivision  
8 of a state other than this state for the purpose of preventing and detecting crime and  
9 enforcing laws or ordinances of that state or a political subdivision of that state,  
10 employees of which unit are authorized to make arrests for crimes while acting within  
11 the scope of their authority.

History: 1997 a. 119,237.

12 **SECTION Ir.** 343.237 (1) (ag)<sup>x</sup> of the statutes is created to read:

1 343.237 (1) (ag) "Federal law enforcement agency" means a governmental unit  
2 of one or more persons employed by the federal government for the purpose of  
3 preventing and detecting crime and enforcing federal laws, employees of which unit  
4 are authorized to make arrests for crimes while acting within the scope of their  
5 authority.

6 **2.** Page 2, line 9: delete lines 9 and 13 and substitute:

7 "343.237 (3) (intro.) The department shall provide a Wisconsin law  
8 enforcement agency or a federal law enforcement agency with a copy of a photograph  
9 taken on or after September 1, 1997, of an applicant under s. 343.14 (3) or 343.50 (4)  
10 if the department receives a written request on the ~~Wisconsin~~ law enforcement  
11 agency's letterhead that contains all of the following:"

12 **3.** Page 3, line 3: delete "local, state or federal"!

13 **4.** Page 3, line 6: delete "local, state or federal".

14 **5.** Page 3, line 8: delete lines 8 to 20 and substitute:

15 "**SECTION 5m.** 343.237 (4) (intro.) of the statutes is amended to read:

16 343.237 (4) (intro.) If a law enforcement agency of a ~~physically adjacent~~  
17 another state makes a request meeting all the requirements specified for a request  
18 by a Wisconsin law enforcement agency or federal law enforcement agency under  
19 sub. (3), the department shall comply with the request if all of the following apply:

20 History: 1997 a. 119, 237.

**SECTION 5t.** 343.237 (4) (a) of the statutes is amended to read:

21 343.237 (4) (a) The law enforcement agency of the ~~physically adjacent~~ other  
22 state agrees to comply with all the requirements under this section.

23 History: 1997 a. 119, 237.

**SECTION 6m.** 343.237 (4) (b) of the statutes is amended to read:

