

1999 DRAFTING REQUEST

Bill

Received: 02/15/2000

Received By: olsenje

Wanted: Soon

Identical to LRB:

For: Michael Huebsch (608) 266-0631

By/Representing: John Kiesow

This file may be shown to any legislator: NO

Drafter: olsenje

May Contact:

Alt. Drafters:

Subject: Mental Health - detent/commit
Criminal Law - miscellaneous

Extra Copies: MGD
DAK

Pre Topic:

No specific pre topic given

Topic:

Treatment rights of sexually violent persons

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>Reauired</u>
/?	olsenje 02/15/2000	gilfokm 02/15/2000		_____			State
/1			jfrantze 02/16/2000	_____	lrb-docadmin 02/16/2000	lrb_docadmin 02/16/2000	State
/2	olsenje 02/23/2000	chanaman 02/23/2000	martykr 02/23/2000	_____	lrb-docadmin 02/23/2000	lrb-docadmin 02/23/2000	

FE Sent For:

<END>

02-29-00
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FE Sent For:		<i>cmh 2/2</i>	<i>jm 2/23</i>	<i>km 2/23</i>			

<END>

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*Due at
11:00*

Instructions:

8

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/?	olsenje		<i>J 2/16</i>	<i>J/Self 2/16</i>			

FE Sent For:

<END>

*Jacket "1" for
Assembly*

JEU

Weds 2/16 by 8:00 am

1999 BILL

4558/1

1 **AN ACT to amend** 6.30 (4), 51.61 (1) (intro.), 980.065 (1m), 980.065 (2), 980.08 (1),
2 980.08 (6m), 980.09 (1) (c) and 980.09 (2) (c); and **to create** 6.10 (7m), 51.30 (4)
3 (b) 25., 227.01 (13) (sp), 801.02 (8), 905.04 (4) (j) and 980.066 of the statutes;
4 **relating to:** policies concerning treatment and conduct of persons detained
5 during a sexually violent person commitment proceeding and person
6 committed for treatment after being found to be a sexually violent person.

Analysis by the Legislative Reference Bureau

This bill makes changes in the statutory rights afforded to persons detained or committed under the sexually violent person law. Current law and the changes made by this bill are described in more detail below.

Current law

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

A procedure 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

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person. The petition must be filed shortly before the person is going to be released from confinement that resulted from the commission of a sexually violent offense. The court in which the petition is filed must review the petition and decide whether to detain the person in a facility approved by DHFS pending a trial to determine whether the person is a sexually violent person. If, after the trial, a person is found by a judge or jury to be a sexually violent person, the person must be committed to the custody of DHFS and placed in institutional care.

A person detained pending trial or placed in institutional care under the sexually violent person law has the same patient rights accorded under the mental health statutes to other persons who have been civilly committed for mental health treatment. Among these patient rights are the following:

1) A right to refuse all medication and treatment. This right, however, may be denied in a situation in which the medication or treatment is necessary to prevent serious physical harm to the patient or to others or when a court has found that the individual is not competent to refuse medication or treatment either because the individual is incapable of expressing an understanding of the advantages and disadvantages of accepting medication or treatment and the alternatives to medication or treatment or because the individual is substantially incapable of applying an understanding of the advantages, disadvantages and alternatives to his or her mental illness in order to make an informed choice as to whether to accept or refuse medication or treatment.

2) A right to be free from physical restraint and isolation except for emergency situations or when isolation or restraint is a part of a treatment program. Generally, isolation or restraint may be used only when less restrictive measures are ineffective or not feasible, must be used for the shortest time possible, and, when used, are subject to frequent period review. However, patients at the maximum security facility at the Mendota Mental Health Institute may, under certain specified conditions, be locked in their rooms during the night shift, during each change of shift by staff and when needed for security purposes during certain emergencies, such as an escape or attempted escape.

3) A right not to be subjected to experimental research without the express and informed consent of the patient and of the patient's guardian, after consultation with independent specialists and the patient's legal counsel, and a right not to be subjected to electroconvulsive treatment or certain drastic treatment procedures, such as psychosurgery, without the express and informed consent of the patient after consultation with his or her counsel and legal guardian, if any.

4) A right not to be filmed or taped without the informed and voluntary consent of the patient, except that certain patients may generally be filmed or taped for security purposes without informed consent.

5) A right to access to a telephone to make and receive telephone calls, within reasonable limits, and a right to be permitted to see visitors each day.

6) A right to use and wear his or her own clothing and personal articles and to use his or her money as he or she chooses.

7) A right to present grievances under a grievance procedure that DHFS must establish to assure that these rights are protected and enforced (except that certain

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institutions, such as Mendota Mental Health Institute, establish their own grievance procedures).

The patient rights guaranteed under current law may be denied for cause after review by the director of the facility in which the patient is residing and may be denied for medical or therapeutic reasons, as documented by the patient's physician or licensed psychologist in the patient's treatment record. The patient may have the withdrawal of the right reviewed by using an informal hearing procedure or the established grievance procedure or by bringing a civil action for an injunction or money damages.

What this bill does

This bill provides that a person who has been detained pending a trial in a sexually violent person proceeding or who has been committed to institutional care after being found to be a sexually violent person is not subject to the patient rights provisions of the mental health statutes. Instead, the bill requires DHFS to establish and implement policies relating to treatment for and conduct of these persons.

Under the bill, the policies established and implemented by DHFS may provide for distinct management levels that are based on a person's treatment needs, on the person's participation in treatment and conduct, on the management and security needs of the facility at which a person is detained or placed and on other relevant factors, as determined by DHFS. Except as noted below, instead of guaranteeing a specific set of rights that may be denied for cause or for medical reasons, as current law does, the management levels may differ from each other as to the responsibilities required of, and the institution privileges allowed to, a person assigned to the management level.

The bill specifies that the policies established and implemented by DHFS may provide for a person to be assigned to a management level that allows additional institution privileges if the person complies with the policies relating to conduct and participates in and completes prescribed treatment or any part or phase of prescribed treatment. Likewise, the policies may provide for a person to be assigned to a management level that limits or denies institution privileges if the person violates any policy relating to conduct or fails or refuses to participate in or complete prescribed treatment or any part or phase of prescribed treatment. The institution privileges that may be granted or denied based on a person's management level include liberty to move around the facility, visitation privileges, access to and use of personal property, receipt and sending of mail, receipt and making of telephone calls, and time to engage in exercise or other recreation or leisure activities. The bill specifies also that the policies may provide for the use of physical restraint and isolation for purposes relating to a person's treatment, to protect persons from physical harm, and to provide security while transporting a person to or from a facility, and during night shift, shift changes and emergencies.

The policies established under the bill must also provide certain rights to persons detained or committed to institutional care under the sexually violent person law, including the right to refuse psychotropic medication except in an emergency situation or when a court has determined, under the same standard provided under current law (see item 1 under ***Current Law***, above), that a person is

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not competent to refuse psychotropic medication, and the right not to be subjected, without the person's informed written consent, to drastic treatment procedures, such as psychosurgery or electroconvulsive therapy, or to experimental treatment or research that involves the use of any drug, ingested substance, surgical procedure or other drastic or extreme behavior modification techniques.

The bill also requires DHFS to establish a system by which a person may file a grievance concerning the policies or an action taken under the policies. The grievance system must be in writing and may provide for an informal process for resolving grievances, a formal process for resolving grievances in cases in which the informal process fails to resolve grievances, and a process to appeal to the director of the unit or facility a decision made as part of any formal process for resolving grievances. A person may not commence any kind of civil action relating to the policies or an action taken under the policies until he or she has first gone through the grievance process established by DHFS.

Finally, the bill provides that a person who has been detained or committed to institutional care under the sexually violent person law is not deemed incompetent to manage his or her affairs, to contract, to hold professional, occupational or motor vehicle operator's licenses, to marry or to obtain a divorce, to vote, to make a will or to exercise any other civil right solely by reason of his or her detention or commitment. However, the policies relating to treatment and conduct that are established and implemented under the bill may limit the exercise of a civil right by a person or may require the person to obtain the approval of DHFS before exercise of a civil right, if the limitation or the requirement for approval is reasonably related to the person's treatment needs, to the security of the facility or unit in which the person has been placed or to the safety of others. With respect to the right of a person to vote, the bill specifically provides that the person's residence as an elector is to be determined based on his or her residence at the time he or she committed the sexually violent offense that was the basis for the petition that initiated the sexually violent person commitment proceeding. Under the bill, the person is presumed to intend to return to the place where he or she resided at the time of the commission of the sexually violent offense unless he or she presents information that indicates that he or she would not be likely to return to that place if released from detention or institutional care.

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

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

- 1 **SECTION 1.** 6.10 (7m) of the statutes is created to read:
- 2 6.10 (7m) The residence of a person who is detained under s. 980.04 (1) or
- 3 committed under s. 980.06 and placed in institutional care shall be determined by

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1 applying the standard specified in sub. (1) to the facts that existed on the date that
2 the person committed the sexually violent offense that resulted in the sentence,
3 placement or commitment that was in effect when the petition against the person
4 was filed under s. 980.02 and by considering the person's residence at the place where
5 the person resided on the date of that sexually violent offense to be prima facie
6 evidence of intent to return to that place. The prima facie evidence of intent to return
7 to a place may be rebutted by presenting information that indicates that the person
8 would not be likely to return to that place if the person is released from detention or
9 institutional care.

10 SECTION 2. 6.30 (4) of the statutes is amended to read:

11 6.30 (4) BY MAIL. Any eligible elector who is located not more than 50 miles from
12 his or her legal voting residence or any person who is detained under s. 980.04 (1) or
13 committed under s. 980.06 and nplaced in institutional care may register by mail on
14 a form prescribed by the board and provided by each municipality. The form shall
15 be designed to obtain the information required in ss. 6.33 (1) and 6.40 (1) (a) and (b).
16 The form shall contain a certification by the elector that all statements are true and
17 correct. The form shall be prepostpaid for return when mailed at any point within
18 the United States, ~~and. The form~~ shall be signed by a special registration deputy, or
19 shall be signed and substantiated by one other elector residing in the same
20 municipality in which the registering elector resides or. in the case of a person
21 detained under s. 980.04 (1) or committed under s. 980.06 and nplaced in institutional
22 care. by a designated emplove of the denartment of health and family services.
23 corroborating all material statements therein. The form shall be available in the
24 municipal clerk's office and may be distributed by any elector of the municipality.
25 The clerk shall mail a registration form to any elector upon written or oral request.

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1 **SECTION 3.** 51.30 (4) (b) 25. of the statutes is created to read:

2 51.30 (4) (b) 25. To a law enforcement agency, as defined in s. 165.83 (1) (b), for
3 the purpose of investigating a criminal offense. Records released under this
4 subdivision are limited to records concerning a person detained under s. 980.04 (1)
5 or committed under s. 980.06 and placed in institutional care that are relevant to the
6 investigation of the offense.

7 **SECTION 4.** 51.61 (1) (intro.) of the statutes is amended to read:

8 51.61 **(1)** (intro.) In this section, “patient” means any individual who is
9 receiving services for mental illness, developmental disabilities, alcoholism or drug
10 dependency, including any individual who is admitted to a treatment facility in
11 accordance with this chapter or ch. 48 or 55 or who is detained, committed or placed
12 under this chapter or ch. 48, 55, 971, or 975 ~~or 980~~, or who is transferred to a
13 treatment facility under s. 51.35 (3) or 51.37 or who is receiving care or treatment
14 for those conditions through the department or a county department under s. 51.42
15 or 51.437 or in a private treatment facility. “Patient” does not include persons
16 committed under ch. 975 who are transferred to or residing in any state prison listed
17 under s. 302.01 or persons detained under s. 980.04 (1) or committed under s. 980.06
18 and placed in institutional care. In private hospitals and in public general hospitals,
19 “patient” includes any individual who is admitted for the primary purpose of
20 treatment of mental illness, developmental disability, alcoholism or drug abuse but
21 does not include an individual who receives treatment in a hospital emergency room
22 nor an individual who receives treatment on an outpatient basis at those hospitals,
23 unless the individual is otherwise covered under this subsection. Except as provided
24 in sub. (2), each patient shall:

25 **SECTION 5.** 227.01 (13) (sp) of the statutes is created to read:

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1 227.01 (13) (sp) Establishes policies under s. 980.066 (2) relating to treatment
2 for and conduct of persons who have been detained under s. 980.04 (1) or committed
3 under s. 980.06 and placed in institutional care, or establishes a grievance system
4 under s. 980.066 (6).

5 **SECTION 6.** 801.02 (8) of the statutes is created to read:

6 801.02 (8) No person detained under s. 980.04 (1) or committed under s. 980.06
7 and placed in institutional care may commence a civil action or special proceeding,
8 including a petition for a writ of certiorari, with respect to a policy established under
9 s. 980.066 (2) or an action taken to implement those policies until the person has
10 exhausted all available administrative remedies provided by the grievance system
11 established under s. 980.066 (6).

12 **SECTION 7.** 905.04 (4) (j) of the statutes is created to read:

13 905.04 (4) (j) *Investigation of crimes; sexually violent persons.* There is no
14 privilege under this section as to a communication made by or information
15 concerning a person detained under s. 980.04 (1) or committed under s. 980.06 and
16 placed in institutional care if the communication or information is relevant to the
17 investigation of a criminal offense by a law enforcement agency, as defined in s.
18 165.83 (1) (b), and is contained in a record released under s. 51.30 (4) (b) 25.

19 **SECTION 8.** 980.065 (1m) of the statutes, as affected by 1999 Wisconsin Act 9,
20 is amended to read:

21 980.065 (1m) ~~The department shall place~~ If a person is committed under s.
22 980.06 and placed in institutional care. the department shall place the person at the
23 secure mental health facility established under s. 46.055, the Wisconsin resource
24 center established under s. 46.056 or a secure mental health unit or facility provided
25 by the department of corrections under sub. (2).

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1 SECTION 9. 980.065 (2) of the statutes, as affected by 1999 Wisconsin Act 9, is
2 amended to read:

3 980.065 (2) The department may contract with the department of corrections
4 for the provision of a secure mental health unit or facility for persons committed
5 under s. 980.06 and placed in institutional care. The department shall operate a
6 secure mental health unit or facility provided by the department of corrections under
7 this subsection and shall promulgate rules governing the custody and discipline of
8 persons placed by the department in the secure mental health unit or facility
9 provided by the department of corrections under this subsection.

10 **SECTION 10.** 980.066 of the statutes is created to read:

11 **980.066 Policies concerning treatment and conduct of detained and**
12 **committed persons. (1) DEFINITION.** In this section, "institution privileges"
13 include liberty to move around a facility or a unit within a facility, visitation
14 privileges, access to and use of personal property, including clothing, money, bank
15 accounts and televisions, radios and other entertainment devices, access to reading
16 material, receipt and sending of mail, receipt and making of telephone calls, access
17 to religious worship or other religious activities, and time to engage in exercise or
18 other recreation or leisure activities.

19 **(2) POLICIES RELATING TO TREATMENT AND CONDUCT.** Subject to sub. (3), the
20 department shall establish and implement policies relating to treatment for and
21 conduct of persons who have been detained under s. 980.04 (1) or committed under
22 s. 980.06 and placed in institutional care. The policies may provide for distinct
23 management levels that are based on a person's treatment needs, on the person's
24 participation in treatment and conduct, on the management and security needs of
25 the facility at which a person is detained or placed and on other relevant factors, as

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1 determined by the department. The management levels may differ from each other
2 as to the responsibilities required of, and the institution privileges allowed to, a
3 person assigned to the management level. The policies may also provide for all of the
4 following:

5 (a) That a person may be assigned to a management level that allows additional
6 institution privileges if the person complies with the policies relating to conduct and
7 participates in and completes prescribed treatment or any part or phase of prescribed
8 treatment.

9 (b) That a person may be assigned to a management level that limits or denies
10 institution privileges if the person violates any policy relating to conduct or fails or
11 refuses to participate in or complete prescribed treatment or any part or phase of
12 prescribed treatment.

13 (c) The use of physical restraint and isolation for purposes relating to a person's
14 treatment or for purposes of preventing a person from physically harming others or
15 protecting a person from being physically harmed by others.

16 (d) That all persons in a facility or in a unit of a facility may be locked in their
17 rooms during the night shift, for a specified period during each change of shift by staff
18 or as an emergency measure as needed for security purposes. If the policies provide
19 for periods of unit-wide or facility-wide isolation, the policies shall require staff to
20 periodically review the status of each person to ensure the health and safety of the
21 person.

22 (e) The use of physical restraint for security reasons during transport to or from
23 the facility in which the person has been detained or placed.

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1 (3) **RIGHTS OF DETAINED AND COMMITTED PERSONS.** The policies relating to
2 treatment and conduct that are established and implemented under sub. (2) shall
3 provide the following rights to a person to whom the policies apply:

4 (a) The right not to be subjected, without the person's informed written consent,
5 to drastic treatment procedures, such as psychosurgery or electroconvulsive therapy,
6 or experimental treatment or research that involves the use of any drug, ingested
7 substance, surgical procedure or other drastic or extreme behavior modification
8 techniques.

9 (b) The right to be informed of any experimental treatment or research that will
10 be used, or that is being considered for use, to treat the person.

11 (c) The right to refuse psychotropic *medication except in an emergency
12 situation or as ordered under sub. (5).

13 (d) The right to reasonable privacy in toileting and bathing, subject to
14 reasonable measures, including video and audio monitoring, that are related to the
15 protection of the person from harm, to the protection of other persons from harm or
16 to other security or management needs of the facility or unit.

17 (4) **COMPETENCY GENERALLY.** (a) No person is deemed incompetent to manage
18 his or her affairs, to contract, to hold professional, occupational or motor vehicle
19 operator's licenses, to marry or to obtain a divorce, to vote, to make a will or to
20 exercise any other civil right solely by reason of his or her detention under s. 980.04
21 (1) or commitment under s. 980.06.

22 (b) Notwithstanding par. (a), the policies relating to treatment and conduct
23 that are established and implemented under sub. (2) may limit the exercise of a civil
24 right by a person who has been detained under s. 980.04 (1) or committed under s.
25 980.06 and placed in institutional care or may require the person to obtain the

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1 department's approval before exercise of a civil right, if the limitation or the
2 requirement for the department's approval is reasonably related to the person's
3 treatment needs, to the security or management needs of the facility or unit in which
4 the person has been detained or placed or to the safety of others.

5 (5) COMPETENCY TO REFUSE PSYCHOTROPIC MEDICATION. (a) If a person detained
6 under s. 980.04 (1) or committed under s. 980.06 and placed in institutional care is
7 not subject to a court order determining the person to be not competent to refuse
8 psychotropic medication for the defendant's mental condition and if the facility at
9 which the person has been detained or placed determines that the defendant should
10 be subject to such a court order, the department may file with the court, with notice
11 to the person and, if applicable, the person's attorney, a motion for a hearing under
12 the standard specified in s. 51.61 (1) (g) 4., on whether the person is not competent
13 to refuse psychotropic medication. A report on which the motion is based shall
14 accompany the motion and notice of motion and shall include a statement signed by
15 a licensed physician that asserts that the defendant needs psychotropic medication
16 and that the person is not competent to refuse psychotropic medication, based on an
17 examination of the person by a licensed physician.

18 (b) Within 10 days after a motion is filed under par. (a), the court, without a jury,
19 shall determine the person's competency to refuse psychotropic medication. At the
20 request of the person or the person's counsel, the hearing may be postponed, but in
21 no case may the postponed hearing be held more than 20 days after a motion is filed
22 under this subsection. If the person and the person's counsel waive the opportunity
23 to present other evidence on the issue, the court shall determine the person's
24 competency to refuse psychotropic medication on the basis of the report
25 accompanying the motion. In the absence of these waivers, the court shall hold an

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1 evidentiary hearing on the issue. Upon consent of all parties and approval by the
2 court for good cause shown, testimony may be received into the record of the hearing
3 by telephone or live audiovisual means.

4 (c) If, at a hearing under par. (b), the department proves by evidence that is
5 clear and convincing that the person is not competent to refuse psychotropic
6 medication under the standard specified in s. 51.61 (1) (g) 4., the court shall make
7 a determination and issue as part of the detention order under s. 980.04 (1) or the
8 commitment order under s. 980.06, whichever is applicable, an order that the person
9 is not competent to refuse psychotropic medication and that whoever administers the
10 medication to the person shall observe appropriate medical standards.

11 (6) **GRIEVANCE SYSTEM.** The department shall establish a system by which a
12 person detained under s. 980.04 (1) or committed under s. 980.06 and placed in
13 institutional care may file a grievance concerning a policy established under sub. (2)
14 or an action taken toward the person under those policies. The grievance system
15 shall have written policies and procedures regarding the uses and operation of the
16 grievance system and may provide for an informal process for resolving grievances,
17 a formal process for resolving grievances in cases in which the informal process fails
18 to resolve grievances, and a process to appeal to the director of the unit or facility a
19 decision made as part of any formal process for resolving grievances.

20 (7) **NOTICE OF POLICIES AND GRIEVANCE SYSTEM.** A person detained under s.
21 980.04 (1) or committed under s. 980.06 and placed in institutional care shall, upon
22 admission to the facility at which he or she is detained or placed, be informed orally
23 and in writing of the policies established under sub. (2) and the grievance system
24 established under sub. (6). Copies of the policies relating to conduct shall be posted

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1 conspicuously in areas of the facility that are regularly accessible to persons detained
2 under s. 980.04 (1) or committed under s. 980.06 and placed in institutional care.

3 (8) **APPLICABILITY.** A person detained under s. 980.04 (1) or committed under
4 s. 980.06 and placed in institutional care is subject to the policies established under
5 sub. (2) and is not subject to s. 51.61, 1997 stats., regardless of whether the detention
6 order or commitment order was issued before, on or after the effective date of this
7 subsection [revisor inserts date].

8 **SECTION 11.** 980.08 (1) of the statutes, as affected by 1999 Wisconsin Act 9, is
9 amended to read:

10 980.08 (1) Any person who is committed under s. 980.06 and placed in
11 institutional care may petition the committing court to modify ~~its~~ the commitment
12 order by authorizing placement on supervised release if at least 18 months have
13 elapsed since the initial commitment order was entered or at least 6 months have
14 elapsed since the most recent release petition was denied or the most recent order
15 for supervised release was revoked. The director of the facility at which the person
16 is placed may file a petition under this subsection on the person's behalf at any time.

17 **SECTION 12.** 980.08 (6m) of the statutes, as affected by 1999 Wisconsin Act 9,
18 is amended to read:

19 980.08 (6m) An order for supervised release places the person in the custody
20 and control of the department. The department shall arrange for control, care and
21 treatment of the person in the least restrictive manner consistent with the
22 requirements of the person and in accordance with the plan for supervised release
23 approved by the court under sub. (5). A person on supervised release is subject to the
24 conditions set by the court and to the rules of the department. Before a person is
25 placed on supervised release by the court under this section, the court shall so notify

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SECTION 12

1 the municipal police department and county sheriff for the municipality and county
2 in which the person will be residing. The notification requirement under this
3 subsection does not apply if a municipal police department or county sheriff submits
4 to the court a written statement waiving the right to be notified. If the department
5 alleges that a released person has violated any condition or rule, or that the safety
6 of others requires that supervised release be revoked, he or she may be taken into
7 custody under the rules of the department. The department shall submit a
8 statement showing probable cause of the detention and a petition to revoke the order
9 for supervised release to the committing court and the regional office of the state
10 public defender responsible for handling cases in the county where the committing
11 court is located within 72 hours after the detention, excluding Saturdays, Sundays
12 and legal holidays. The court shall hear the petition within 30 days, unless the
13 hearing or time deadline is waived by the detained person. Pending the revocation
14 hearing, the department may detain the person in a jail or in a hospital, center or
15 facility specified by s. 51.15 (2). The state has the burden of proving by clear and
16 convincing evidence that any rule or condition of release has been violated, or that
17 the safety of others requires that supervised release be revoked. If the court
18 determines after hearing that any rule or condition of release has been violated, or
19 that the safety of others requires that supervised release be revoked, it may revoke
20 the order for supervised release and order that the released person be placed again
21 ~~in an appropriate institution~~ institutional care until the person is discharged from
22 the commitment under s. 980.09 or until again placed on supervised release under
23 this section.

24 **SECTION 13.** 980.09 (1) (c) of the statutes, as affected by 1999 Wisconsin Act 9,
25 is amended to read:

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1 980.09 (1) (c) If the court is satisfied that the state has not met its burden of
2 proof under par. (b), the petitioner shall be discharged from the custody or
3 supervision of the department. If the court is satisfied that the state has met its
4 burden of proof under par. (b), the court may proceed to determine, using the criterion
5 specified in s. 980.08 (4), whether to modify the petitioner's existing commitment
6 order by authorizing placement on supervised release.

7 **SECTION 14.** 980.09 (2) (c) of the statutes, as affected by 1999 Wisconsin Act 9,
8 is amended to read:

9 980.09. (2) (c) If the court is satisfied that the state has not met its burden of
10 proof under par. (b), the person shall be discharged from the custody or supervision
11 of the department. If the court is satisfied that the state has met its burden of proof
12 under par. (b), the court may proceed to determine, using the criterion specified in
13 s. 980.08 (4), whether to modify the person's existing commitment order by
14 authorizing placement on supervised release.

15 **SECTION 15. Nonstatutory provisions.**

16 (1) DETERMINATION OF MANAGEMENT LEVEL FOR PERSONS COMMITTED UNDER
17 CHAPTER 980. If the policies established under section 980.066 (2) of the statutes, as
18 created by this act, relating to treatment for and conduct of persons detained or
19 committed under chapter 980 of the statutes create distinct management levels for
20 those persons, the department of health and family services shall, no later than the
21 first day of the 7th month beginning after the date on which the policies take effect,
22 conduct an assessment of each person in its custody who has been detained under
23 section 980.04 (1) of the statutes or placed in institutional care pursuant to a
24 commitment order issued under section 980.06 of the statutes, regardless of the date

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1 on which the detention order or commitment order was issued, to determine the
2 management level at which the person is to be placed.

3 **SECTION 16. Effective date.**

4 (1) This act takes effect on the first day of the 7th month beginning after
5 publication.

6 (END)

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1 **AN ACT** to amend 6.30 (4), 51.61 (1) (intro.), 980.065 (1m), 980.065 (2), 980.08 (l),
 2 980.08 (6m), 980.09 (1) (c) and 980.09 (2) (c); and to **create** 6.10 (7m), 51.30 (4)
 3 (b) 25., 227.01 (13) (sp), 801.02 (8), 905.04 (4) (j) and 980.066 of the statutes;
 4 **relating to:** policies concerning treatment and conduct of persons detained
 5 during a sexually violent person commitment proceeding and person
 6 committed for treatment after being found to be a sexually violent person

persons

and granting rule-making authority

Analysis by the Legislative Reference Bureau

This bill makes changes in the statutory rights afforded to persons detained or committed under the sexually violent person law. Current law and the changes made by this bill are described in more detail below.

Current law

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

A procedure 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

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person. The petition must be filed shortly before the person is going to be released from confinement that resulted from the commission of a sexually violent offense. The court in which the petition is filed must review the petition and decide whether to detain the person in a facility approved by DHFS pending a trial to determine whether the person is a sexually violent person. If, after the trial, a person is found by a judge or jury to be a sexually violent person, the person must be committed to the custody of DHFS and placed in institutional care.

A person detained pending trial or placed in institutional care under the sexually violent person law has the same patient rights accorded under the mental health statutes to other persons who have been civilly committed for mental health treatment. Among these patient rights are the following:

1) A right to refuse all medication and treatment. This right, however, may be denied in a situation in which the medication or treatment is necessary to prevent serious physical harm to the patient or to others or when a court has found that the individual is not competent to refuse medication or treatment either because the individual is incapable of expressing an understanding of the advantages and disadvantages of accepting medication or treatment and the alternatives to medication or treatment or because the individual is substantially incapable of applying an understanding of the advantages, disadvantages and alternatives to his or her mental illness in order to make an informed choice as to whether to accept or refuse medication or treatment.

2) A right to be free from physical restraint and isolation except for emergency situations or when isolation or restraint is a part of a treatment program. Generally, isolation or restraint may be used only when less restrictive measures are ineffective or not feasible, must be used for the shortest time possible, and, when used, are subject to frequent period review. However, patients at the maximum security facility at the Mendota Mental Health Institute may, under certain specified conditions, be locked in their rooms during the night shift, during each change of shift by staff and when needed for security purposes during certain emergencies, such an escape or attempted escape.

3) A right not to be subjected to experimental research without the express and informed consent of the patient and of the patient's guardian, after consultation with independent specialists and the patient's legal counsel, and a right not to be subjected to electroconvulsive treatment or certain drastic treatment procedures, such as psychosurgery, without the express and informed consent of the patient after consultation with his or her counsel and legal guardian, if any.

4) A right not to be filmed or taped without the informed and voluntary consent of the patient, except that certain patients may generally be filmed or taped for security purposes without informed consent.

5) A right to access to a telephone to make and receive telephone calls, within reasonable limits, and a right to be permitted to see visitors each day.

6) A right to use and wear his or her own clothing and personal articles and to use his or her money as he or she chooses.

7) A right to present grievances under a grievance procedure that DHFS must establish to assure that these rights are protected and enforced (except that certain

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institutions, such as Mendota Mental Health Institute, establish their own grievance procedures).

The patient rights guaranteed under current law may be denied for cause after review by the director of the facility in which the patient is residing and may be denied for medical or therapeutic reasons, as documented by the patient's physician or licensed psychologist in the patient's treatment record. The patient may have the withdrawal of the right reviewed by using an informal hearing procedure or the established grievance procedure or by bringing a civil action for an injunction or money damages.

What this bill does

This bill provides that a person who has been detained pending a trial in a sexually violent person proceeding or who has been committed to institutional care after being found to be a sexually violent person is not subject to the patient rights provisions of the mental health statutes. Instead, the bill requires DHFS to establish and implement policies relating to treatment for and conduct of these persons.

Under the bill, the policies established and implemented by DHFS may provide for distinct management levels that are based on a person's treatment needs, on the person's participation in treatment and conduct, on the management and security needs of the facility at which a person is detained or placed and on other relevant factors, as determined by DHFS. Except as noted below, instead of guaranteeing a specific set of rights that may be denied for cause or for medical reasons, as current law does, the management levels may differ from each other as to the responsibilities required of, and the institution privileges allowed to, a person assigned to the management level.

The bill specifies that the policies established and implemented by DHFS may provide for a person to be assigned to a management level that allows additional institution privileges if the person complies with the policies relating to conduct and participates in and completes prescribed treatment or any part or phase of prescribed treatment. Likewise, the policies may provide for a person to be assigned to a management level that limits or denies institution privileges if the person violates any policy relating to conduct or fails or refuses to participate in or complete prescribed treatment or any part or phase of prescribed treatment. The institution privileges that may be granted or denied based on a person's management level include liberty to move around the facility, visitation privileges, access to and use of personal property, receipt and sending of mail, receipt and making of telephone calls, and time to engage in exercise or other recreation or leisure activities. The bill specifies also that the policies may provide for the use of physical restraint and isolation for purposes relating to a person's treatment, to protect persons from physical harm, and to provide security while transporting a person to or from a facility, and during night shift, shift changes and emergencies.

The policies established under the bill must also provide certain rights to persons detained or committed to institutional care under the sexually violent person law, including the right to refuse psychotropic medication except in an emergency situation or when a court has determined, under the same standard provided under current law (see item 1 under **Current law**, above), that a person is

ANALYSIS
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The assignment of a person to a particular management level must be based on the assessment of a qualified professional.

Conditions in the facility in which he or she is detained or committed

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not competent to refuse psychotropic medication, and the right not to be subjected, without the person's informed written consent, to drastic treatment procedures, such as psychosurgery or electroconvulsive therapy, or to experimental treatment or research that involves the use of any drug, ingested substance, surgical procedure or other drastic or extreme behavior modification techniques.

The bill also requires DHFS to establish a system by which a person may file a grievance concerning the policies or an action taken under the policies. The grievance system must be in writing and may provide for an informal process for resolving grievances, a formal process for resolving grievances in cases in which the informal process fails to resolve grievances, and a process to appeal to the director of the unit or facility a decision made as part of any formal process for resolving grievances. A person may not commence any kind of civil action relating to the policies or an action taken under the policies until he or she has first gone through the grievance process established by DHFS.

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Finally, the bill provides that a person who has been detained or committed to institutional care under the sexually violent person law is not deemed incompetent to manage his or her affairs, to contract, to hold professional, occupational or motor vehicle operator's licenses, to marry or to obtain a divorce, to vote, to make a will or to exercise any other civil right solely by reason of his or her detention or commitment. However, the policies relating to treatment and conduct that are established and implemented under the bill may limit the exercise of a civil right by a person or may require the person to obtain the approval of DHFS before exercise of a civil right, if the limitation or the requirement for approval is reasonably related to the person's treatment needs, to the security of the facility or unit in which the person has been placed or to the safety of others. With respect to the right of a person to vote, the bill specifically provides that the person's residence as an elector is to be determined based on his or her residence at the time he or she committed the sexually violent offense that was the basis for the petition that initiated the sexually violent person commitment proceeding ~~under the bill~~ (the person is presumed to intend to return to the place where he or she resided at the time of the commission of the sexually violent offense unless he or she presents information that indicates that he or she would not be likely to return to that place if released from detention or institutional care.

is not for the purpose of punishment and

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For further information see the *state* 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:

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4-1

SECTION 1. 6.10 (7m) of the statutes is created to read:

6.10 (7m) The residence of a person who is detained under s. 980.04 (1) or committed under s. 980.06 and placed in institutional care shall be determined by

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1 applying the standard specified in sub. (1) to the facts that existed on the date that
2 the person committed the sexually violent offense that resulted in the sentence,
3 placement or commitment that was in effect when the petition against the person
4 was filed under s. 980.02 and by considering the person's residence at the place where
5 the person resided on the date of that sexually violent offense to be prima facie
6 evidence of intent to return to that place. The prima facie evidence of intent to return
7 to a place may be rebutted by presenting information that indicates that the person
8 would not be likely to return to that place if the person is released from detention or
9 institutional care.

10 **SECTION 2.** 6.30 (4) of the statutes is amended to read:

11 6.30 (4) BY MAIL. Any eligible elector who is located not more than 50 miles from
12 his or her legal voting residence or any person who is detained under s. 980.04 (1) or
13 committed under s. 980.06 and placed in institutional care may register by mail on
14 a form prescribed by the board and provided by each municipality. The form shall
15 be designed to obtain the information required in ss. 6.33 (1) and 6.40 (1) (a) and (b).
16 The form shall contain a certification by the elector that all statements are true and
17 correct. The form shall be prepostpaid for return when mailed at any point within
18 the United States, ~~and.~~ The form shall be signed by a special registration deputy, or
19 shall be signed and substantiated by one other elector residing in the same
20 municipality in which the registering elector resides or, in the case of a person
21 detained under s. 980.04 (1) or committed under s. 980.06 and placed in institutional
22 care, by a designated employe of the department of health and family services,
23 corroborating all material statements therein. The form shall be available in the
24 municipal clerk's office and may be distributed by any elector of the municipal? by.
25 The clerk shall mail a registration form to any elector upon written or oral request.

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1 **SECTION 3.** 51.30 (4) (b) 25. of the statutes is created to read:

2 51.30 (4) (b) 25. To a law enforcement agency, as defined in s. 165.83 (1)(b), for
3 the purpose of investigating a criminal offense. Records released under this
4 subdivision are limited to records concerning a person detained under s. 980.04 (1)
5 or committed under s. 980.06 and placed in institutional care that are relevant to the
6 investigation of the offense.

7 **SECTION 4.** 51.61 (1) (intro.) of the statutes is amended to read:

8 51.61 (1) (intro.) In this section, "patient" means any individual who is
9 receiving services for mental illness, developmental disabilities, alcoholism or drug
10 dependency, including any individual who is admitted to a treatment facility in
11 accordance with this chapter or ch. 48 or 55 or who is detained, committed or placed
12 under this chapter or ch. 48, 55, 971, or 975 or 980, or who is transferred to a
13 treatment facility under s. 51.35 (3) or 51.37 or who is receiving care or treatment
14 for those conditions through the department or a county department under s. 51.42
15 or 51.437 or in a private treatment facility. "Patient" does not include persons
16 committed under ch. 975 who are transferred to or residing in any state prison listed
17 under s. 302.01 or persons detained under s. 980.04 (1) or committed under s. 980.06
18 and placed in institutional care. In private hospitals and in public general hospitals,
19 "patient" includes any individual who is admitted for the primary purpose of
20 treatment of mental illness, developmental disability, alcoholism or drug abuse but
21 does not include an individual who receives treatment in a hospital emergency room
22 nor an individual who receives treatment on an outpatient basis at those hospital &
23 unless the individual is otherwise covered under this subsection. Except as provided
24 in sub. (2), each patient shall:

25 **SECTION 5.** 227.01 (13) (sp) of the statutes is created to read:

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1 227.01 (13) (sp) Establishes policies under s. 980.066 (2) relating to treatment
2 for and conduct of persons who have been detained under s. 980.04 (1) or committed
3 under s. 980.06 and placed in institutional care, or establishes a grievance system
4 under s. 980.066 (6).

5 **SECTION 6.** 801.02 (8) of the statutes is created to read:

6 801.02 (8) No person detained under s. 980.04 (1) or committed under s. 980.06
7 and placed in institutional care may commence a civil action or special proceeding,
8 including a petition for a writ of certiorari, with respect to a policy established under
9 s. 980.066 (2) or an action taken to implement those policies until the person has
10 exhausted all available administrative remedies provided by the grievance system
11 established under s. 980.066 (6).

12 **SECTION 7.** 905.04 (4) (j) of the statutes is created to read:

13 905.04 (4) (j) *Investigation of crimes; sexually violent persons.* There is no
14 privilege under this section as to a communication made by or information
15 concerning a person detained under s. 980.04 (1) or committed under s. 980.06 and
16 placed in institutional care if the communication or information is relevant to the
17 investigation of a criminal offense by a law enforcement agency, as defined in s.
18 165.83 (1) (b), and is contained in a record released under s. 51.30 (4) (b) 25.

19 **SECTION 8.** 980.065 (1m) of the statutes, as affected by 1999 Wisconsin Act 9,
20 is amended to read:

21 980.065 (1m) ~~The department shall place~~ If a person is committed under s.
22 980.06 and placed in institutional care, the department shall place the person at the
23 secure mental health facility established under s. 46.055, the Wisconsin resource
24 center established under s. 46.056 or a secure mental health unit or facility provided
25 by the department of corrections under sub. (2).

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1 **SECTION 9.** 980.065 (2) of the statutes, as affected by 1999 Wisconsin Act 9, is
2 amended to read:

3 980.065 (2) The department may contract with the department of corrections
4 for the provision of a secure mental health unit or facility for persons committed
5 under s. 980.06 and placed in institutional care. The department shall operate a
6 secure mental health unit or facility provided by the department of corrections under
7 this subsection and shall promulgate rules governing the custody and discipline of
8 persons placed by the department in the secure mental health unit or facility
9 provided by the department of corrections under this subsection.

10 **SECTION 10. 980.066** of the statutes is created to read:

11 **980.066 Policies concerning treatment and conduct of detained and**
12 **committed persons. (1) DEFINITION.** In this section, "institution privileges"
13 include liberty to move around a facility or a unit within a facility, visitation
14 privileges, access to and use of personal property, including clothing, money, bank
15 accounts and televisions, radios and other entertainment devices, access to reading
16 material, receipt and sending of mail, receipt and making of telephone calls, access
17 to religious worship or other religious activities, and time to engage in exercise or
18 other recreation or leisure activities.

19 **(2) POLICIES RELATING TO TREATMENT AND CONDUCT.** Subject to sub. (3), the
20 department shall establish and implement policies relating to treatment for and
21 conduct of persons who have been detained under s. 980.04 (1) or committed under
22 s. 980.06 and placed in institutional care. The policies may provide for distinct
23 management levels that are based on a person's treatment needs, on the person's
24 participation in treatment and conduct, on the management and security **needs** of
25 the facility at which a person is detained or placed and on other relevant factors, as

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1 determined by the department. The management levels may differ from each other
2 as to the responsibilities required of, and the institution privileges allowed to, a
3 person assigned to the management level. The policies may also provide for all of the
4 following:

5 (a) That a person may be assigned to a management level that allows additional
6 institution privileges if the person complies with the policies relating to conduct and
7 participates in and completes prescribed treatment or any part or phase of prescribed
8 treatment.

9 (b) That a person may be assigned to a management level that limits or denies
10 institution privileges if the person violates any policy relating to conduct or fails or
11 refuses to participate in or complete prescribed treatment or any part or phase of
12 prescribed treatment.

13 (c) The use of physical restraint and isolation for purposes relating to a person's
14 treatment or for purposes of preventing a person from physically harming others or
15 protecting a person from being physically harmed by others.

16 (d) That all persons in a facility or in a unit of a facility may be locked in their
17 rooms during the night shift, for a specified period during each change of shift by staff
18 or as an emergency measure as needed for security purposes. If the policies provide
19 for periods of unit-wide or facility-wide isolation, the policies shall require staff to
20 periodically review the status of each person to ensure the health and safety of the
21 person.

22 (e) The use of physical restraint for security reasons during transport to or from
23 the facility in which the person has been detained or placed.

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SECTION 10

1 (3) RIGHTS OF DETAINED AND COMMITTED PERSONS. The policies relating to
2 treatment and conduct that are established and implemented under sub. (2) shall
3 provide the following rights to a person to whom the policies apply:

4 (a) The right not to be subjected, without the person's informed written consent,
5 to drastic treatment procedures, such as psychosurgery or electroconvulsive therapy,
6 or experiment@ treatment or research that involves the use of any drug, ingested
7 substance, surgical procedure or other drastic or extreme behavior modification
8 techniques.

9 (b) The right to be informed of any experimental treatment or research that will
10 be used, or that is being considered for use, to treat the person.

11 (c) The right to refuse psychotropic medication except in an emergency
12 situation or as ordered under sub. (5).

13 (d) The right to reasonable privacy in toileting and bathing, subject to
14 reasonable measures, including video and audio monitoring, that are related to the
15 protection of the person from harm, to the protection of other persons from harm or
16 to other security or management needs of the facility or unit.

17 (4) COMPETENCY GENERALLY. (a) No person is deemed incompetent to manage
18 his or her affairs, to contract, to hold professional, occupational or motor vehicle
19 operator's licenses, to marry or to obtain a divorce, to vote, to make a will or to
20 exercise any other civil right solely by reason of his or her detention under s. 980.04
21 (1) or commitment under s. 980.06.

22 (b) Notwithstanding par. (a), the policies relating to treatment and conduct
23 that are established and implemented under sub. (2) may limit the exercise of a civil
24 right by a person who has been detained under s. 980.04 (1) or committed under s.
25 980.06 and placed in institutional care or may require the person to obtain the

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1 department's approval before exercise of a civil right, if the limitation or the
2 requirement for the department's approval is reasonably related to the person's
3 treatment needs, to the security or management needs of the facility or unit in which
4 the person has been detained or placed or to the safety of others.

5 ~~(5) COMPETENCY TO REFUSE PSYCHOTROPIC MEDICATION.~~ (a) If a person detained
6 under s. 980.04 (1) or committed under s. 980.06 and placed in institutional care is
7 not subject to a court order determining the person to be not competent to refuse
8 psychotropic medication for the defendant's mental condition and if the facility at
9 which the person has been detained or placed determines that the defendant should
10 be subject to such a court order, the department may file with the court, with notice
11 to the person and, if applicable, the person's attorney, a motion for a hearing under
12 the standard specified in s. 51.61 (1) (g) 4., on whether the person is not competent
13 to refuse psychotropic medication. A report on which the motion is based shall
14 accompany the motion and notice of motion and shall include a statement signed by
15 a licensed physician that asserts that the defendant needs psychotropic medication
16 and that the person is not competent to refuse psychotropic medication, based on an
17 examination of the person by a licensed physician.

18 (b) Within 10 days after a motion is filed under par. (a), the court, without a jury,
19 shall determine the person's competency to refuse psychotropic medication. At the
20 request of the person or the person's counsel, the hearing may be postponed, but in
21 no case may the postponed hearing be held more than 20 days after a motion is filed
22 under this subsection. If the person and the person's counsel waive the opportunity
23 to present other evidence on the issue, the court shall determine the person's
24 competency to refuse psychotropic medication on the basis of the report
25 accompanying the motion. In the absence of these waivers, the court shall hold an

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1 evidentiary hearing on the issue. Upon consent of all parties and approval by the
2 court for good cause shown, testimony may be received into the record of the hearing
3 by telephone or live audiovisual means.

4 (c) If, at a hearing under par. (b), the department proves by evidence that is
5 clear and convincing that the person is not competent to refuse psychotropic
6 medication under the standard specified in s. 51.61 (1) (g) 4, the court shall make
7 a determination and issue as part of the detention order under s. 980.04 (1) or the
8 commitment order under s. 980.06, whichever is applicable, an order that the person
9 is not competent to refuse psychotropic medication and that whoever administers the
10 medication to the person shall observe appropriate medical standards.

11 (6) GRIEVANCE SYSTEM. The department shall establish a system by which a
12 person detained under s. 980.04 (1) or committed under s. 980.06 and placed in
13 institutional care may file a grievance concerning a policy established under sub. (2)
14 or an action taken toward the person under those policies. The grievance system
15 shall have written policies and procedures regarding the uses and operation of the
16 grievance system and may provide for an informal process for resolving grievances,
17 a formal process for resolving grievances in cases in which the informal process fails
18 to resolve grievances, and a process to appeal to the director of the unit or facility a
19 decision made as part of any formal process for resolving grievances.

20 (7) NOTICE OF POLICIES AND GRIEVANCE SYSTEM. A person detained under s.
21 980.04 (1) or committed under s. 980.06 and placed in institutional care shall, upon
22 admission to the facility at which he or she is detained or placed, be informed orally
23 and in writing of the policies established under sub. (2) and the grievance system
24 established under sub. (6). Copies of the policies relating to conduct shall be posted%

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1 conspicuously in areas of the facility that are regularly accessible to persons detained
2 under s. 980.04 (1) or committed under s. 980.06 and placed in institutional care.

3 (8) APPLICABILITY. A person detained under s. 980.04 (1) or committed under
4 s. 980.06 and placed in institutional care is subject to the policies established under
5 sub. (2) and is not subject to s. 51.61, 1997 stats., regardless of whether the detention
6 order or commitment order was issued before, on or after the effective date of this
7 subsection [revisor inserts date].

8 SECTION 11. 980.08 (1) of the statutes, as affected by 1999 Wisconsin Act 9, is
9 amended to read:

10 980.08 (1) Any person who is committed under s. 980.06 and placed in
11 institutional care may petition the committing court to modify ~~its~~ the commitment
12 order by authorizing placement on supervised release if at least 18 months have
13 elapsed since the initial commitment order was entered or at least 6 months have
14 elapsed since the most recent release petition was denied or the most recent order
15 for supervised release was revoked. The director of the facility at which the person
16 is placed may file a petition under this subsection on the person's behalf at any time.

17 SECTION 12. 980.08 (6m) of the statutes, as affected by 1999 Wisconsin Act 9,
18 is amended to read:

19 980.08 (6m) An order for supervised release ~~places~~ the person in the custody
20 and control of the department. The department shall arrange for control, care and
21 treatment of the person in the least restrictive manner consistent with the
22 requirements of the person and in accordance with the plan for supervised release
23 approved by the court under sub. (5). A person on supervised release is subject to the
24 conditions set by the court and to the rules of the department. Before a p&son is
25 placed on supervised release by the court under this section, the court shall so notify

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1 the municipal police department and county sheriff for the municipality and county
2 in which the person will be residing. The notification requirement under this
3 subsection does not apply if a municipal police department or county sheriff submits
4 to the court a written statement waiving the right to be notified. If the department
5 alleges that a released person has violated any condition or rule, or that the safety
6 of others requires that supervised release be revoked, he or she may be taken into
7 custody under the rules of the department. The department shall submit a
8 statement showing probable cause of the detention and a petition to revoke the order
9 for supervised release to the committing court and the regional office of the state
10 public defender responsible for handling cases in the county where the committing
11 court is located within 72 hours after the detention, excluding Saturdays, Sundays
12 and legal holidays. The court shall hear the petition within 30 days, unless the
13 hearing or time deadline is waived by the detained person. Pending the revocation
14 hearing, the department may detain the person in a jail or in a hospital, center or
15 facility specified by s. 51.15 (2). The state has the burden of proving by clear and
16 convincing evidence that any rule or condition of release has been violated, or that
17 the safety of others requires that supervised release be revoked. If the court
18 determines after hearing that any rule or condition of release has been violated, or
19 **that the safety of others requires that supervised release be revoked, it may revoke**
20 **the order for supervised release and order that the released person be placed again**
21 **in an appropriate institution institutional care until the person is discharged from**
22 **the commitment under s. 980.09 or until again placed on supervised release under**
23 **this section.**

24 **SECTION 13.** 980.09 (1) (c) of the statutes, as affected by 1999 Wisconsin Act 9,
25 is amended to read:

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1 980.09 (1) (c) If the court is satisfied that the state has not met its burden of
 2 proof under par. (b), the petitioner shall be discharged from the custody or
 3 supervision of the department. If the court is satisfied that the state has met its
 4 burden of proof under par. (b), the court may proceed to determine, using the criterion
 5 specified in s. 980.08 (4), whether to modify the petitioner's existing commitment
 6 order by authorizing placement on supervised release.

7 **SECTION 14.** 980.09 (2) (c) of the statutes, as affected by 1999 Wisconsin Act 9,
 8 is amended to read:

9 980.09 (2) (c) If the court is satisfied that the state has not met its burden of
 10 proof under par. (b), the person shall be discharged from the custody or supervision
 11 of the department. If the court is satisfied that the state has met its burden of proof
 12 under par. (b), the court may proceed to determine, using the criterion specified in
 13 s. 980.08 (4), whether to modify the person's existing commitment order by
 14 authorizing placement on supervised release.

15 **SECTION 15. Nonstatutory provisions.**

16 (1) DETERMINATION OF MANAGEMENT LEVEL FOR PERSONS COMMITTED UNDER
 17 CHAPTER 980. If the policies established under section 980.066 (2) of the statutes, as
 18 created by this act, relating to treatment for and conduct of persons detained or
 19 committed under chapter 980 of the statutes create distinct management levels for
 20 those persons, the department of health and family services shall, no later than the
 21 first day of the 7th month beginning after the date on which the policies take effect,
 22 conduct an assessment of each person in its custody who has been detained under
 23 section 980.04 (1) of the statutes or placed in institutional care pursuant to a
 24k commitment order issued under section 980.06 of the statutes, regardless of the date

BILL

1 on which the detention order or commitment order was issued, to determine the
2 management level at which the person is to be placed

3 **SECTION 16. Effective date.**

4 (1) This act takes effect on the first day of the 7th month beginning after
5 publication.

6

(END)

LR3-4558/2 *wr*

JED :

ANALYSIS INSERT

no 9 The limitation or denial of institution
privileges ^{may not be for the purpose of punishment and} must be reasonably related to
the person's treatment needs, to the security
or management needs of the facility, or
to the safety of others. ~~and~~

may

(END OF INSERT)



**ASSEMBLY SUBSTITUTE AMENDMENT,
TO 1999 ASSEMBLY BILL (LRB-4558/1)**

INS 4-1
(entire 14
page document)

~~1 AN ACT to amend 6.30 (4), 51.61 (1) (intro.), 980.065 (1m), 980.065 (2), 980.08 (1),
2 980.08 (6m), 980.09 (1) (c) and 980.09 (2) (c); and to create 6.10 (7m), 51.30 (4)
3 (b) 25., 801.02 (8), 905.04 (4) (j) and 980.066 of the statutes; relating to: policies
4 concerning treatment and conduct of persons detained during a sexually
5 violent person commitment proceeding and persons committed for treatment
6 after being found to be a sexually violent person and granting rule-making
7 authority.~~

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

8 SECTION 1. 6.10 (7m) of the statutes is created to read:
9 6.10 (7m) The residence of a person who is detained under s. 980.04 (1) or
10 committed under s. 980.06 and placed in institutional care shall be determined by
11 applying the standard specified in sub. (1) to the facts that existed on the date that

1 the person committed the sexually violent offense that resulted in the sentence,
2 placement or commitment that was in effect when the petition against the person
3 was filed under s. 980.02 and by considering the person's residence at the place where
4 the person resided on the date of that sexually violent offense to be prima facie
5 evidence of intent to return to that place. The prima facie evidence of intent to return
6 to a place may be rebutted by presenting information that indicates that the person
7 would not be likely to return to that place if the person is released from detention or
8 institutional care.

9 SECTION 2. 6.30 (4) of the statutes is amended to read:

10 6.30 (4) BY MAIL. Any eligible elector who is located not more than 50 miles from
11 his or her legal voting residence or any person who is detained under s. 980.04 (1) or
12 committed under s. 980.06 and placed in institutional care may register by mail on
13 a form prescribed by the board and provided by each municipality. The form shall
14 be designed to obtain the information required in ss. 6.33 (1) and 6.40 (1) (a) and (b).
15 The form shall contain a certification by the elector that all statements are true and
16 correct. The form shall be prepostpaid for return when mailed at any point within
17 the United States, ~~and~~. The form shall be signed by a special registration deputy, or
18 shall be signed and substantiated by one other elector residing in the same
19 municipality in which the registering elector resides or in the case of a person
20 detained under s. 980.04 (1) or committed under s. 980.06 and placed in institutional
21 care. by a designated employe of the department of health and family services,
22 corroborating all material statements therein. The form shall be available in the
23 municipal clerk's office and may be distributed by any elector of the municipality.
24 The clerk shall mail a registration form to any elector upon written or oral request.

25 SECTION 3. 51.30 (4) (b) 25. of the statutes is created to read:

1 51.30 (4) (b) 25. To a law enforcement agency, as defined in s. 165.83 (1) (b), for
2 the purpose of investigating a criminal offense. Records released under this
3 subdivision are limited to records concerning a person detained under s. 980.04 (1)
4 or committed under s. 980.06 and placed in institutional care that are relevant to the
5 investigation of the offense.

6 **SECTION 4.** 51.61 (1) (intro.) of the statutes is amended to read:

7 51.61 (1) (intro.) In this section, “patient” means any individual who is
8 receiving services for mental illness, developmental disabilities, alcoholism or drug
9 dependency, including any individual who is admitted to a treatment facility in
10 accordance with this chapter or ch. 48 or 55 or who is detained, committed or placed
11 under this chapter or ch. 48, 55, 971, or 975 ~~or 980~~, or who is transferred to a
12 treatment facility under s. 51.35 (3) or 51.37 or who is receiving care or treatment
13 for those conditions through the department or a county department under s. 51.42
14 or 51.437 or in a private treatment facility. “Patient” does not include persons
15 committed under ch. 975 who are transferred to or residing in any state prison listed
16 under s. 302.01 ~~or persons detained under s. 980.04 (1) or committed under s. 980.06~~
17 and placed in institutional care. In private hospitals and in public general hospitals,
18 “patient” includes any individual who is admitted for the primary purpose of
19 treatment of mental illness, developmental disability, alcoholism or drug abuse but
20 does not include an individual who receives treatment in a hospital emergency room
21 nor an individual who receives treatment on an outpatient basis at those hospitals,
22 unless the individual is otherwise covered under this subsection. Except as provided
23 in sub. (2), each patient shall:

24 **SECTION 5.** 801.02 (8) of the statutes is created to read:

1 801.02 (8) No person detained under s. 980.04 (1) or committed under s. 980.06
2 and placed in institutional care may commence a civil action or special proceeding,
3 including a petition for a writ of certiorari, with respect to conditions in the facility
4 in which he or she has been detained or committed until the person has exhausted
5 all available administrative remedies provided by the grievance system established
6 under s. 980.066 (6).

7 **SECTION 6.** 905.04 (4) (j) of the statutes is created to read:

8 *905.04 (4) (j) Investigation of crimes; sexually violent persons.* There is no
9 privilege under this section as to a communication made by or information
10 concerning a person detained under s. 980.04 (1) or committed under s. 980.06 and
11 placed in institutional care if the communication or information is relevant to the
12 investigation of a criminal offense by a law enforcement agency, as defined in s.
13 165.83 (1) (b), and is contained in a record released under s. 51.30 (4) (b) 25.

14 **SECTION 7.** 980.065 (1m) of the statutes, as affected by 1999 Wisconsin Act 9,
15 is amended to read:

16 **980.065 (1m)** ~~The department shall place~~ If a person is committed under s.
17 980.06 ~~and placed in institutional care, the department shall place~~ the person at the
18 secure mental health facility established under s. 46.055, the Wisconsin resource
19 center established under s. 46.056 or a secure mental health unit or facility provided
20 by the department of corrections under sub. (2).

21 **SECTION 8.** 980.065 (2) of the statutes, as affected by 1999 Wisconsin Act 9, is
22 amended to read:

23 980.065 (2) The department may contract with the department of corrections
24 for the provision of a secure mental health unit or facility for persons committed
25 under s. 980.06 and placed in institutional care. The department shall operate a

1 secure mental health unit or facility provided by the department of corrections under
2 this subsection and shall promulgate rules governing the custody and discipline of
3 persons placed by the department in the secure mental health unit or facility
4 provided by the department of corrections under this subsection.

5 SECTION 9. 980.066 of the statutes is created to read:

6 **980.066 Policies concerning treatment and conduct of detained and**
7 **committed persons. (lg) LEGISLATIVE PURPOSE.** The legislature finds that patients
8 detained under s. 980.04 (1) or committed under s. 980.06 for control, care and
9 treatment have different needs for control, care and treatment from other civilly
10 committed patients. There are significant clinical differences between patients
11 detained or committed under this chapter and other civilly committed patients.
12 Patients detained or committed under this chapter are less vulnerable and more
13 dangerous as a population than other civilly committed patients. The special
14 treatment needs of patients detained or committed under this chapter conflict with
15 the patient rights provided under s. 51.61. The type of symptomology and behaviors
16 displayed by patients detained or committed under this chapter is better treated in
17 an environment of therapeutic levels and strict monitoring of institution privileges.
18 When patients detained or committed under this chapter are introduced into an
19 environment where they immediately receive a full range of institution privileges
20 and patient rights, they are more likely to engage in manipulative and predatory
21 behaviors. This undermines the treatment goals for patients detained or committed
22 under this chapter and could contribute to an increased recidivism rate. The purpose
23 of this section is to provide a therapeutic setting for the control, care and treatment
24 of patients detained or committed under this chapter that is safe and secure, that
25 prevents acts of victimization through abuse of patient rights and institution

1 privileges and that promotes progress in treatment so that the patient becomes less
2 likely to engage in acts of sexual violence in the future.

3 **(lr) DEFINITION.** In this section, “institution privileges” include liberty to move
4 around a facility or a unit within a facility, visitation privileges, access to and use of
5 personal property, including clothing, money, bank accounts and televisions, radios
6 and other entertainment devices, access to reading material, receipt and sending of
7 mail, receipt and making of telephone calls, time to engage in exercise or other
8 recreation or leisure activities, and any other activity that may affect institutional
9 security or the treatment or safety of a detained or committed person.

10 **(2) POLICIES RELATING TO TREATMENT AND CONDUCT.** Subject to sub. (3), the
11 department shall establish and implement policies relating to treatment for and
12 conduct of persons who have been detained under s. 980.04 (1) or committed under
13 s. 980.06 and placed in institutional care. The policies may provide for distinct
14 management levels that are based on a person’s treatment needs, on the person’s
15 participation in treatment and conduct, on the management and security needs of
16 the facility at which a person is detained or placed and on other relevant factors, as
17 determined by the department. The management levels may differ from each other
18 as to the responsibilities required of, and the institution privileges allowed to, a
19 person assigned to the management level, except that institution privileges may not
20 be limited to the extent that the limitations would violate the constitutional rights
21 of persons who have been detained under s. 980.04 (1) or committed under s. 980.06
22 and placed in institution care. If the policies provide for distinct management levels,
23 the policies shall also provide that a person’s assignment to a particular
24 management level shall be based on the assessment of a qualified professional. The
25 policies may also provide for all of the following:

1 (a) That for the purpose of determining the management level at which the
2 person is to be placed, a person may be assigned to a management level that provides
3 the minimum institution privileges allowed by the constitution for the time period
4 reasonably required to complete the assessment.

5 (b) That a person may be assigned to a management level that allows additional
6 institution privileges if the person complies with the policies relating to conduct and
7 participates in and completes prescribed treatment or any part or phase of prescribed
8 treatment.

9 (c) That a person may be assigned to a management level that limits or denies
10 institution privileges if the person violates any policy relating to conduct or fails or
11 refuses to participate in or complete prescribed treatment or any part or phase of
12 prescribed treatment. The limitation or denial of institution privileges shall be
13 reasonably related to the person's treatment needs, to the security or management
14 needs of the facility, or to the safety of others, and the limitation or denial of
15 institution privileges may not be for the purpose of punishment.

16 (d) The use of physical restraint and isolation for purposes relating to a person's
17 treatment or for purposes of preventing a person from physically harming others or
18 protecting a person from being physically harmed by others.

19 (e) That all persons in a facility or in a unit of a facility may be locked in their
20 rooms during the night shift, for a specified period during each change of shift by staff
21 or as an emergency measure as needed for security purposes. If the policies provide
22 for periods of unit-wide or facility-wide isolation, the policies shall require staff to
23 periodically review the status of each person to ensure the health and safety of the
24 person.

1 (f) The use of physical restraint for security reasons during transport to or from
2 the facility in which the person has been detained or placed.

3 (3) **RIGHTS OF DETAINED AND COMMITTED PERSONS.** The policies relating to
4 treatment and conduct that are established and implemented under sub. (2) shall
5 provide the following rights to a person to whom the policies apply:

6 (a) The right not to be subjected, without the person's informed written consent,
7 to drastic treatment procedures, such as psychosurgery or electroconvulsive therapy,
8 or experimental treatment or research that involves the use of any drug, ingested
9 substance, surgical procedure or other drastic or extreme behavior modification
10 techniques.

11 (b) The right to be informed of any experimental treatment or research that will
12 be used, or that is being considered for use, to treat the person.

13 (c) The right to refuse psychotropic medication except in an emergency
14 situation or as ordered under sub. (5).

15 (d) The right to reasonable privacy in toileting and bathing, subject to
16 reasonable measures, including video and audio monitoring and collecting
17 specimens for urinalysis, that are related to the protection of the person from harm,
18 to the protection of other persons from harm, to treatment needs or to other security
19 or management needs of the **facility** or unit.

20 (4) **COMPETENCY GENERALLY.** (a) No person is deemed incompetent to manage
21 his or her affairs, to contract, to hold professional, occupational or motor vehicle
22 operator's licenses, to marry or to obtain a divorce, to vote, to make a will or to
23 exercise any other civil right solely by reason of his or her detention under s. 980.04
24 (1) or commitment under s. 980.06.

1 (b) Notwithstanding par. (a), the policies relating to treatment and conduct
2 that are established and implemented under sub. (2) may limit the exercise of a civil
3 right by a person who has been detained under s. 980.04 (1) or committed under s.
4 980.06 and placed in institutional care or may require the person to obtain the
5 department's approval before exercise of a civil right, if both of the following apply:

6 1. The limitation or requirement for the department's approval is reasonably
7 related to the person's treatment needs, to the security or management needs of the
8 facility or to the safety of others.

9 2. The limitation or requirement for the department's approval is not for the
10 purpose of punishment.

11 (5) COMPETENCY TO REFUSE PSYCHOTROPIC MEDICATION. (a) If a person detained
12 under s. 980.04 (1) or committed under s. 980.06 and placed in institutional care is
13 not subject to a court order determining the person to be not competent to refuse
14 psychotropic medication for the defendant's mental condition and if the facility at
15 which the person has been detained or placed determines that the defendant should
16 be subject to such a court order, the department may file with the court, with notice
17 to the person and, if applicable, the person's attorney, a motion for a hearing under
18 the standard specified in s. 51.61 (1)(g) 4., on whether the person is not competent
19 to refuse psychotropic medication. A report on which the motion is based shall
20 accompany the motion and notice of motion and shall include a statement signed by
21 a licensed physician that asserts that the defendant needs psychotropic medication
22 and that the person is not competent to refuse psychotropic medication, based on an
23 examination of the person by a licensed physician.

24 (b) Within 10 days after a motion is filed under par. (a), the court, without a jury,
25 shall determine the person's competency to refuse psychotropic medication. At the

1 request of the person or the person's counsel, the hearing may be postponed, but in
2 no case may the postponed hearing be held more than 20 days after a motion is filed
3 under this subsection. If the person and the person's counsel waive the opportunity
4 to present other evidence on the issue, the court shall determine the person's
5 competency to refuse psychotropic medication on the basis of the report
6 accompanying the motion. In the absence of these waivers, the court shall hold an
7 evidentiary hearing on the issue. Upon consent of all parties and approval by the
8 court for good cause shown, testimony may be received into the record of the hearing
9 by telephone or live audiovisual means.

10 (c) If, at a hearing under par. (b), the department proves by evidence that is
11 clear and convincing that the person is not competent to refuse psychotropic
12 medication under the standard specified in s. 51.61 (1) (g) 4., the court shall make
13 a determination and issue as part of the detention order under s. 980.04 (1) or the
14 commitment order under s. 980.06, whichever is applicable, an order that the person
15 is not competent to refuse psychotropic medication and that whoever administers the
16 medication to the person shall observe appropriate medical standards.

17 (6) **GRIEVANCE SYSTEM.** The department shall establish a system by which a
18 person detained under s. 980.04 (1) or committed under s. 980.06 and placed in
19 institutional care may file a grievance concerning a policy established under sub. (2)
20 or an action taken toward the person under those policies. The grievance system
21 shall have written policies and procedures regarding the uses and operation of the
22 grievance system and may provide for an informal process for resolving grievances,
23 a formal process for resolving grievances in cases in which the informal process fails
24 to resolve grievances, and a process to appeal to the director of the unit or facility a
25 decision made as part of any formal process for resolving grievances.

1 (7) **NOTICE OF POLICIES AND GRIEVANCE SYSTEM.** A person detained under s.
2 980.04 (1) or committed under s. 980.06 and placed in institutional care shall, upon
3 admission to the facility at which he or she is detained or placed, be informed orally
4 and in writing of the policies established under sub. (2) and the grievance system
5 established under sub. (6). Copies of the policies relating to conduct shall be posted
6 conspicuously in areas of the facility that are regularly accessible to persons detained
7 under s. 980.04 (1) or committed under s. 980.06 and placed in institutional care.

8 (8) **APPLICABILITY.** A person detained under s. 980.04 (1) or committed under
9 s. 980.06 and placed in institutional care is subject to the policies established under
10 sub. (2) and is not subject to s. 51.61, 1997 stats., regardless of whether the detention
11 order or commitment order was issued before, on or after the effective date of this
12 subsection [revisor inserts date].

13 (9) **RULES.** The department may promulgate rules establishing guidelines for
14 the exercise of discretion under this section.

15 **SECTION 10.** 980.08 (1) of the statutes, as affected by 1999 Wisconsin Act 9, is
16 amended to read:

17 980.08 (1) Any person who is committed under s. 980.06 and placed in
18 institutional care may petition the committing court to modify ~~its~~ the commitment
19 order by authorizing placement on supervised release if at least 18 months have
20 elapsed since the initial commitment order was entered or at least 6 months have
21 elapsed since the most recent release petition was denied or the most recent order
22 for supervised release was revoked. The director of the facility at which the person
23 is placed may file a petition under this subsection on the person's behalf at any time.

24 **SECTION 11.** 980.08 (6m) of the statutes, as affected by 1999 Wisconsin Act 9,
25 is amended to read:

1 **980.08 (6m)** An order for supervised release places the person in the custody
2 and control of the department. The department shall arrange for control, care and
3 treatment of the person in the least restrictive manner consistent with the
4 requirements of the person and in accordance with the plan for supervised release
5 approved by the court under sub. (5). A person on supervised release is subject to the
6 conditions set by the court and to the rules of the department. Before a person is
7 placed on supervised release by the court under this section, the court shall so notify
8 the municipal police department and county sheriff for the municipality and county
9 in which the person will be residing. The notification requirement under this
10 subsection does not apply if a municipal police department or county sheriff submits
11 to the court a written statement waiving the right to be notified. If the department
12 alleges that a released person has violated any condition or rule, or that the safety
13 of others requires that supervised release be revoked, he or she may be taken into
14 custody under the rules of the department. The department shall submit a
15 statement showing probable cause of the detention and a petition to revoke the order
16 for supervised release to the committing court and the regional office of the state
17 public defender responsible for handling cases in the county where the committing
18 court is located within 72 hours after the detention, excluding Saturdays, Sundays
19 and legal holidays. The court shall hear the petition within 30 days, unless the
20 hearing or time deadline is waived by the detained person. Pending the revocation
21 hearing, the department may detain the person in a jail or in a hospital, center or
22 facility specified by s. 51.15 (2). The state has the burden of proving by clear and
23 convincing evidence that any rule or condition of release has been violated, or that
24 the safety of others requires that supervised release be revoked. If the court
25 determines after hearing that any rule or condition of release has been violated, or

1 that the safety of others requires that supervised release be revoked, it may revoke
2 the order for supervised release and order that the released person be placed again
3 in an appropriate institution institutional care until the person is discharged from
4 the commitment under s. 980.09 or until again placed on supervised release under
5 this section.

6 **SECTION 12.** 980.09 (1) (c) of the statutes, as affected by 1999 Wisconsin Act 9,
7 is amended to read:

8 980.09 **(1)** (c) If the court is satisfied that the state has not met its burden of
9 proof under par. (b), the petitioner shall be discharged from the custody or
10 supervision of the department. If the court is satisfied that the state has met its
11 burden of proof under par. (b), the court may proceed to determine, using the criterion
12 specified in s. 980.08 (4), whether to modify the petitioner's existing commitment
13 order by authorizing placement on supervised release.

14 **SECTION 13.** 980.09 (2) (c) of the statutes, as affected by 1999 Wisconsin Act 9,
15 is amended to read:

16 980.09 (2) (c) If the court is satisfied that the state has not met its burden of
17 proof under par. (b), the person shall be discharged from the custody or supervision
18 of the department. If the court is satisfied that the state has met its burden of proof
19 under par. (b), the court may proceed to determine, using the criterion specified in
20 s. 980.08 (4), whether to modify the person's existing commitment order by
21 authorizing placement on supervised release.

22 **SECTION 14. Nonstatutory provisions.**

23 (1) DETERMINATION OF MANAGEMENT LEVEL FOR PERSONS COMMITTED UNDER
24 CHAPTER 980. If the policies established under section 980.066 (2) of the statutes, as
25 created by this act, relating to treatment for and conduct of persons detained or

1 committed under chapter 980 of the statutes create distinct management levels for
2 those persons, the department of health and family services shall, no later than the
3 first day of the 13th month beginning after the date on which the policies take effect,
4 conduct an assessment of each person in its custody who has been detained under
5 section 980.04 (1) of the statutes or placed in institutional care pursuant to a
6 commitment order issued under section 980.06 of the statutes, regardless of the date
7 on which the detention order or commitment order was issued, to determine the
8 management level at which the person is to be placed.

9 **SECTION 15. Effective date.**

10 (1) This act takes effect on the first day of the 13th month beginning after
11 publication.

12

(END)

End of INS 4-1