

1999 DRAFTING REQUEST

Bill

Received: 10/02/1999

Received By: **olsenje**

Wanted: **As time permits**

Identical to LRB:

For: **Gary Drzewiecki (608) 266-5670**

By/Representing: **Louie**

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

Drafter: **olsenje**

May Contact:

Alt. Drafters:

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

Extra Copies: **MGD**

Pre Topic:

No specific pre topic given

Topic:

Sexually violent person commitments

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/P1	olsenje 12/09/1999	jgeller 12/14/1999	martykr 12/15/1999	_____	lrb_docadmin 12/15/1999		S&L
/1	olsenje 02/07/2000	csicilia 02/08/2000	hhagen 02/08/2000	_____	lrb_docadmin 02/08/2000	lrb_docadmin	S&L 02/08/2000

FE Sent For:

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11/1
2/16/00

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/P1	olsenje 12/09/1999	ygeller 12/14/1999	martykr 12/15/1999	_____	lrb_docadmin 12/15/1999		S&L

FE Sent For:

1 2/8 jcg
kh 2/8
whf 12/18

<END>

Jacket "1" for Senate

JEO

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/?	olsenje	1/12/14 JL	1/14/14 JL	2/12/14 SM			

FE Sent For:

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3694

From Kendall Kelly

Proposed Changes to Chapter 980, Wisconsin Statutes

972.15

PSI Confidentiality: Add Ch.980 cases to list of exceptions to confidentiality of PSI (Presentence Investigation), for preparing Ch.980 petitions and at all hearings and proceedings.

?

Modify Annual Court Reviews: Modify 908.02(a), either requiring an annual court review (Prob. Cause Hrg) or require that Respondent affirmatively file a petition to obtain court review. Specify whether Respondent is entitled to counsel or not.

of Paulik

980.09(2)(a) - eliminate auto of review

980.07

Limit Annual Re-examinations for Inmates: Eliminate annual Ch.980 re-examinations for individuals who have an intervening criminal conviction that removes them from treatment and places them in jail/prison for the new offense.

Review upon release to es/parole

more of p.c. Chew 980.03 staff too

Refocus the WRC Treatment Program: Following Ninth Circuit decision, it is essential to change the treatment program at Wis. Resource Center. Stress that treatment there is not same as Sex Offender Treatment, Sex Offender Treatment Program, or other programs offered by DOC for benefit of inmates; rather, it is a DHFS treatment program that is - of necessity - completed in a secure environment. Focus is on treatment, not incarceration; decisionmaking priority given to treating professionals, not DOC personnel.

Remove Ch.980 Cases from Victim Notification Requirements: Ch.980 is a civil proceeding and does not impact victim's rights. Moreover, victimization occurred -in most cases- at a much earlier date, and notification is costly and/or impossible, and often re-victimizes by raising painful memories.

Remove Criminal Constitutional Rights: Modify extent to which criminal Constitutional rights are included, or remove them altogether. This is single largest source of motions, and other states (and Wis. Chap. 51 cases) do not include Constitutional guarantees afforded to criminal defendants, and have still been found to be Constitutional.

Specifically Remove Right of Confrontation: Right of confrontation provides a basis for limiting expert testimony to *opinion only*, without the basis or foundation (which often includes hearsay) of opinion to help jury.

Limit Right to Remain Silent: Right to remain silent not to apply to pre-trial proceedings or any discovery requests. At present, civil rules of discovery apply to State (allowing Respondent to make burdensome discovery requests and require depositions, etc.), but, when State makes discovery request, Respondent invokes right to remain silent and provides little or nothing.

Limit Rules of Evidence: Add Probable Cause hearing to list of proceeding with limited rules of evidence, and use civil rules of evidence at trial.

Clarify D.A. Right to File Petition Without Referral by Any State Agency. This issue is currently on appeal since statute is arguably unclear.

local court - not, but - 6/23

938.396

938.78

Allow use of Juvenile Records: Juvenile records, including proof of adjudication, need to be used without qualification or limitation when preparing a petition, preparing for trial, and during all proceedings, including the trial.

980.05(4)?

Allow for Use of All Prior Acts: Allow for use, at all proceedings and during trial, of all "other acts" (e.g., under 901.04, 904.03, or 904.04(2)) including prior criminal offenses, uncharged misconduct, etc. so long as the same is relevant to the diagnosis of Respondent, or predictions regarding future dangerousness.

980.02(2)

NB: recent overt act

Alter Filing Requirements: Allow for filing of petition either 90 days prior to or 90 days following release.

leave out for now

Give DA/DOJ right to independent exam.

Just clarify rights of DA to petition?

Specify Advisory Nature of Psychologists' Opinions: Clarify impact of psychologist opinions, specifically not limiting prosecutorial discretion.

Identify Role of Expert Testimony at Trial: Specify that expert testimony at all hearings, including trial, is helpful and permissible for diagnosis of mental disorder, determining sexual motivation for predicate offense, and prediction of future dangerousness, but is required to assist jury/court only in the area of diagnosis of mental disorder.

Adjust Staff or Timelines: Extend timelines or increase staff of psychologists so that timelines can be met.

DHS Rules?

Add Special Purpose Evaluation: Adopt current Special Purpose Evaluation program and provide legal authority to D.A. or DOC to review records and interview potential respondent to evaluate the suitability of Ch.980 petition.

gen'l authority 980.015

Improved notification and information sharing: Require minimum 60-day notice to D.A.'s and DOJ of referral by DOC or results of Special Purpose Evaluation. Expand amount of information to be provided by DOC to DA and DOJ.

right to remain silent?

980.015(2)

D-N School records etc. really confidential records

Both DOC & DA Inform of rights

cf.
938.33
(1)(a)

Allow use of ^{cf.} juvenile records in 930 ~~year~~ proceedings ✓

Give cf. discretion to open/close books
seal records →

Use 938 std. ? - 938.299
(1)(a)
to (a)

cf. 938.78(2)(e)

X Notice to DA at time of ECRIS

All material forwarded to DOJ also to DA
- Evals
- records

X Discovery rules ... NB: right to remain silent

X Broaden immunity → opinions

X 18 mos. discharge limitation

Require 6/12 mos DHFS | 980.07
Report to Ct.

Consistency w/ Act 9 changes

Screening & Petitioning & changes

Initial Determination - 6 mos.

May meet criteria

Doesn't meet criteria

Special purpose eval

- w/in 2 mos (4 mos 64 cases)

Recommendation

tell DOJ & DAs w/in 15 days

DOJ or DAs may further review case → internal → interview → independent eval.

45 days for decision

Yes = report to DA/DOJ w/in 5 days - request (w/in 5 days) DOJ to petitioner

No - 5 days to give DOJ/DA report

~~DOJ decide within 30 days~~

DOJ has 30 days to decide to petitioner & inform DA

- if yes - done
- if no

DA may petition

DOJ/DA may do further review etc.

~ 2 mos 25 days left till releases at this point

51.375 (1) (a) - fix reference to supervised release
~~6112816~~

Records exceptions

(3) (b) - Add D/F/DOJ to (3) (c); (3) (b)

51.30 (4) (b) 8m. - ~~41600~~

(2m. (2) - ~~41600~~

146.82 (2) (c)

11.

905.04 (4) (a)

118.125 fed law problem

938.396 (2) (e)

938.78 (2) (e)

~~938.35 (1) (e)~~

Electronic tracking of predicate offences

↓
Screening by staff member

↓
ECRB Board → 7 members (by policy, not rule)

End of
Confinement
Review Board

Admin. review → Risk assessment

- not pursue
- may meet

(Also sex offender
notice cases
+ chem. castration)

Clinicians
do an eval.
(diagnosis, etc.)

↓
Yes, meet criteria

↓
Don't meet
end.

↓
petition

Sections Affected Post-Drafting-Check For 99-3694/P1

Wednesday, December 8, 1999 6:53 pm

Current Wisconsin Statutes updated through 1999 Act 10

SECTION (Sub)(Par)	TREATMENT	AFFECTED BY
301.45(3)(a)3r.	am.	Act 0009
950.04(1v)(xm)	am.	Act 0009
980.015(2)(b)	am. effec. 1-1-2000	Act 0009
980.02(1)(b)2.	am. effec. 1-1-2000	Act 0009
980.03(4)	am.	Act 0009
980.07(1)	am.	Act 0009
980.08(3)	am.	Act 0009
980.08(4)	am.	Act 0009
980.11(2)(intro.)	am.	Act 0009



WISCONSIN
DEPARTMENT of CORRECTIONS
SEXUALLY VIOLENT PERSON LAW
CHAPTER 980

Briefing Materials
for
Secretary Jon Litscher

January 1999

Anthony Streveler, Director
Bureau of Offender Programs
608-266-3831

STATE of WISCONSIN
SEXUALLY VIOLENT PERSON LAW

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EXECUTIVE SUMMARY

- Sexually Violent Person Law Effective Date – June 2, 1994
- Law creates a process for indefinite civil commitment, for treatment purposes, of persons convicted, adjudicated or committed for a sexually violent offense.
- Commitment requires proof, beyond a reasonable doubt, of the following three (3) basic criteria:
 1. Person has been **convicted** of a sexually violent or motivated offense;
 2. Person has a **mental disorder** predisposes him/her to engage in acts of sexual violence; and,
 3. Mental disorder creates a **substantial probability** that he/she will engage in future acts of sexual violence.
- Commitment process involves six (6) primary steps:
 1. Administrative case review by the DOC End of Confinement Review Board (ECRB) indicating the case warrants clinical evaluation;
 2. Special Purpose Evaluation (SPE) conducted by a licensed psychologist indicating that the case meets all commitment criteria, as indicated above;
 3. Referral is made from the DOC Secretary to the Department of Justice recommending commencement of commitment proceedings;
 4. Probable cause is found and offender transferred to the custody of the Department of Health and Family Services (DHFS);
 5. Clinical evaluation is conducted by a licensed psychologist from DHFS indicating that the case meets all commitment criteria;
 6. Commitment trial is held – possible dispositions include: dismissal; commitment to supervised release; or commitment inpatient to Wisconsin Resource Center.
- Case review, evaluation and commitment statistics to date:
 - Total DOC adult cases 2695
 - Total Special Purpose Evaluations 636
 - Total referrals to DOJ 240
 - Total commitments 140

➤ OVERVIEW OF LAW

Page 1

- Law Effective Date – June 2, 1994
- Affected agencies – Departments of Corrections, Health and Family Services, Justice; Office of District Attorney, Public Defenders; and Courts
- Law creates a process for indefinite civil commitment, for treatment purposes, of persons convicted, adjudicated or committed for a sexually violent offense.
- Law applies to offenders (Adult, Juvenile and Mental Health) convicted of a **Sexually Violent Offense or Sexually Motivated Offense**. Applicable offenses include:

➤ **Sexually Violent Offenses** (not all listed)

- 1st/2nd Degree Sexual Assault
- 1st/2nd Degree Sexual Assault of a Child
- Repeated Acts of Sexual Assault of a Child
- Incest with a Child
- Child Enticement

➤ **Sexually Motivated Offenses** (not all listed)

- 1st/2nd Degree Intentional or Reckless Homicide
- Aggravated Battery
- Kidnapping
- Burglary

COMMITMENT CRITERIA

- Commitment requires proof, beyond a reasonable doubt, of the following three basic criteria:
 1. Person has been **convicted** of a **sexually violent or motivated offense**;
 2. Person has a **mental disorder** predisposes him/her to engage in acts of sexual violence; and,
 3. Mental disorder creates a **substantial probability** that he/she will engage in future acts of sexual violence.

COMMITMENT PROCESS

Page 2

- Commitment process involves the following:
 1. Petition referral from an **Agency of Jurisdiction** (Corrections/Mental Health) to the Department of Justice **prior** to the offender's scheduled **release date** from confinement.
 - The referring agency has made a determination that the offender meets the 3 basic criteria for commitment. This requires a licensed Psychologist or Psychiatrist, who has conducted a clinical examination, and who has determined, to reasonable medical/psychological certainty, that the offender meets the criteria of this law.
 2. Department of Justice (**Attorney's General Office**) either accepts the case for prosecution or refers the case to the District Attorney's office in the offender's county of conviction or planned county of release.
 - *Majority of cases, to date, have been prosecuted through the county district attorney's office. DOJ has recently received additional prosecutors to now handle up to 50% of all petition referrals.*
 - *Only 8 of the total 240 petition referrals from DOC have been rejected for initial prosecution, to date (many of these occurred shortly after passage of the law).*
 3. A **Probable Cause Hearing** is conducted.
 - *Probable Cause has been found, and the offender is bound over for commitment proceedings, in over 98% of all referrals.*
 4. Person is remanded to the Department of Health and Family Services (DHFS) for **Pre-Trial Evaluation**.
 - This serves as a second evaluation by a separate agency and clinician. Same legal criteria apply for determination for commitment.
 - Following the DHFS evaluation, the evaluator submits a report to the court with one of two possible clinical findings:
 - a. offender **does not meet** criteria of law – leads to prosecuting attorney decision to pursue or suspend the commitment proceedings; or

- b. offender **does meet** criteria of law – leads to scheduling of commitment trial.

→ *There has been full agreement between DHFS and DOC clinical evaluation findings in 82% of all cases.*

5. Commitment **Trial** is held – either by Judge or Jury.

- Legal standard from civil commitment is **Beyond a Reasonable Doubt**.
- Two primary dispositions can be made by trial court:

1. Offender **is not found** to be a Sexually Violent Person. With this disposition the offender is either released back to the custody of the Department of Corrections to serve the remainder of his parole or probation term - or - directly released from custody to the community; **or**

→ *Vast majority of offenders not committed under this law is released to parole supervision.*

→ *47 cases have been dismissed by the court*

2. Offender **is found** to be a Sexually Violent Person. With this disposition the court remands to offender to the custody of the Department of Health and Family Services for an evaluation to determine the type of civil commitment warranted in the case – either:

- a. Indefinite **Inpatient** treatment; or
- b. Indefinite **Supervised Release** to the community.

→ *This post-commitment phase of the law was a major legal benefit related to “least restrictive” commitment and potential legal challenges. Under Wisconsin law, the offender may be committed, but commitment did not automatically mean indefinite confinement.*

→ *Offenders committed to inpatient have a right to petition the court for a re-evaluation of their inpatient commitment 6 months after initial commitment and annually thereafter. The offender may be released from inpatient to supervised release. This has occurred in one case to date.*

STATISTICS

Page 4

Total # Cases Reviewed for Civil Commitment = **2695** total

→ *this includes the total number of adult sex offenders who have approached release from prison since the enactment of the Sexually Violent Person Law on June 9, 1994.*

Total # Cases that underwent a Clinical Evaluation = **636** 23% of total

→ *this represents the number of adult sex offenders that had a face-to-face clinical evaluation with a licensed Ph.D. Psychologist in order to determine if they meet the criteria for civil commitment.*

Total # Petitions referred to DOJ for civil commitment = **240** <10% of total

→ *this represents the number of adult sex offenders that had a face-to-face clinical evaluation with a licensed this represents the number of adult sex offenders, following a clinical evaluation, that were referred to the Department of Justice to begin civil commitment proceedings.*

→ *Consistently average 6 petition referrals per month from DOC to DOJ.*

→ *of the total eligible population, this number 10% of the total population of sex offenders released from custody since June, 1994.*

Total # Civil Commitments = **140** 5% of total

125 Inpatient

11 Supervised Release (4 out – 7 pending)

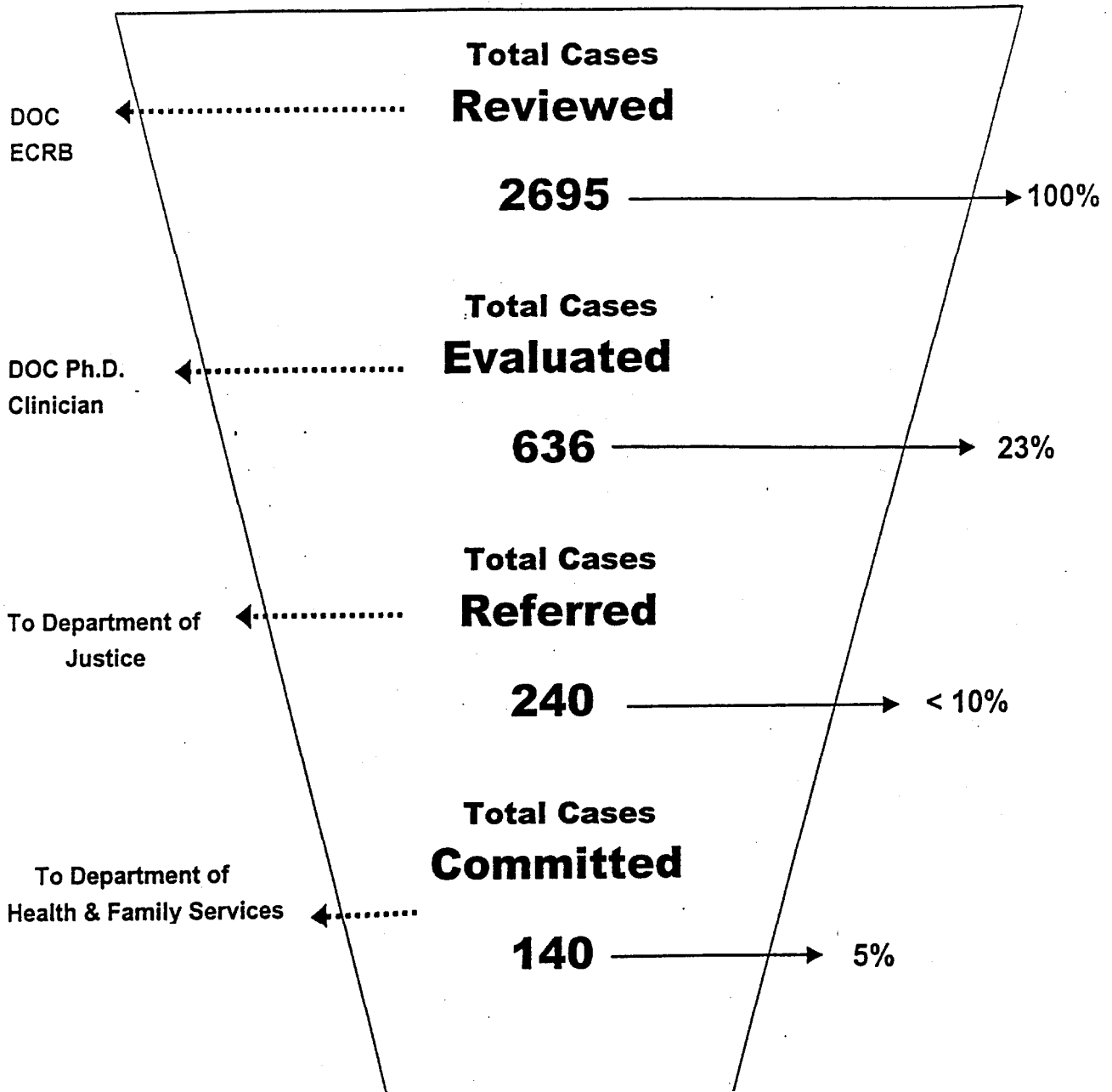
4 Discharged from Commitment

→ *of the total eligible population, this number 5 % of the total population of sex offenders released from custody since June 4, 1994)*

Original Commitment Projections

- The Department originally projected 10 to 12 civil commitments per year. Issue here is that the Wisconsin law has a wider net definition of who could be considered for civil commitment – including offenders who are related to the victim(s). Washington State and other “Sexual Predator” laws have a definition that excludes any offender who has established a relationship with the victim. This, in essence, excludes the vast majority of sexual offenders. This is why the Wisconsin law is called “Sexually Violent Person Commitment” vs. “Sexual Predator Commitment”.

Wisconsin DOC
Sexually Violent Person Commitment Law
Case Review and Commitment Statistics
As of July 1, 1998



CASE REVIEW & EVALUATION PROCESS

- **Case Identification:** All offenders who have been convicted of a crime that is eligible for review under the law are identified upon intake into the correctional system. The data system identifies these cases with an "S" after the offenders assigned number.

2695 total cases identified

- **Case Screening:** All cases that are considered for parole or are 6-8 months prior to their mandatory release date are referred for case screening and review under the law. An initial screening is conducted in order to determine if the case is statutorily eligible for consideration for civil commitment; i.e., is the offender convicted of, and serving time, for a crime that is listed in the commitment statute.

1168 total case screens conducted

- **End of Confinement Review Board (ECRB)** conducts an administrative case review of offenders approaching release from the institution. The ECRB documents, reviews and conducts a case staffing of the case based on a list of research-based sex offender risk factors. Following a case staffing, the ECRB makes a determination as to whether the case warrants further clinical evaluation or if there is insufficient evidence to pursue civil commitment.

1527 total ECRB reviews conducted

- **Special Purpose Evaluation** is conducted for all cases determined "may meet civil commitment criteria. Cases that the ECRB indicate warrant clinical review is referred to a licensed Ph.D. Psychologist for a comprehensive clinical evaluation. This evaluation involves a thorough review of records, face-to-face interview with the offender (if they agree to participate) and administration of various clinical instruments. A final clinical report is generated approximately 2 months prior to the offender's scheduled release date. This evaluation either indicates a recommendation for referral to begin civil commitment proceedings - or, recommendation that the case does not meet the criteria for civil commitment. Basic criteria include:

636 total Special Purpose Evaluations conducted

- **Petition Referral** is filed with the Department of Justice on all cases where a clinical evaluation recommends civil commitment.

240 total Petition Referrals to DOJ – or less than 10% of total cases

PROFILE OF PERSONS COMMITTED

- All **males** (8 female sex offenders have been reviewed/evaluated to date, none found eligible for commitment).
- most have been **convicted of 1st or 2nd degree sexual assault - primarily to children**
- most have **previous sexual assault convictions** and prior periods of incarceration
- many have been diagnosed as **pedophiles**, having convictions involving sexual aggression towards children. Assaults generally involved:
 - **multiple victims**, both male and female - majority towards females
 - **primary victim age range from 7-11 years old**
 - vast majority of the cases the offender knew and had a **relationship with the victim(s)**
 - **multiple acts of sexual violence**, with a high degree of hands-on violence and intrusiveness - ranging from fondling to penetration to use of physical force and/or threats of physical harm or retribution
- many either **refused to participate in sex offender programming** while in an institution or dropped out or were administratively terminated from a program

LEGAL ISSUES

- **Highly complex and unique law** involving a new melding of legal and mental health issues. Did not coincide with current mental health commitment laws. Set new precedent for civil commitment for post-incarceration offenders.
- Wisconsin has experienced a significant amount of legal and constitutional challenges. We continue to have numerous technical/legal challenges.
- Several constitutional challenges – upheld in Wisconsin Supreme Court - similar Kansas's law ultimately found constitutional by U.S. Supreme Court. Some issues included:
 - Law is retroactive – *Ex Post Facto* – can an offender be “punished twice” for the same crime
 - Commitment is based on a **prediction** on what the offender might do in the future. No proven predictive instrument or assessment to make this determination.
 - **Preventive detention vs. treatment commitment** – argument that the intent of the law may be to detain an offender indefinitely rather than provide appropriate treatment.
 - Issue of whether sexual violence is **treatable or curable** – commitment assumes the **offender can be adequately treated** to reduce risk to a point where he/she is no longer *substantially probable* to commit future acts of sexual violence.

IMPACT OF LAW

- Law has had a significant workload and fiscal impact on all involved agencies, including Corrections, Mental Health, Justice, District Attorneys, Public Defenders and the Courts.
- **Impact on Corrections**
 - **Case Review** - Had to develop and implement multiple-tier case identification, review and evaluation process involving staff from all levels of the organization. There is one full-time correction specialists dedicated to managing the case review and referral process.
 - **Clinical Staff Resources** – Special Purpose Evaluations are now conducted on a rotational basis among 30 licensed Psychologists throughout the Department. These evaluations require unique skills and knowledge, requiring the Department to establish specialized and intensive training. The Department is currently in the process of establishing a clinical evaluation unit, comprised of 5 full-time Psychologists, who will be solely dedicated to conducting Special Purpose Evaluations and expert court testimony.
 - **Programming - Initial** - Upon implementation of the law, many offenders involved in sex offender programming initially either stopped participating or dropped out, due to fear of possible commitment under this law.
 - **Programming - Now** - offenders have noticed that the majority of cases referred for commitment are those who have not completed sex offender programming, enrollment for programming has increased significantly, resulting in significant waiting lists for existing programs. This has put serious pressure on the Department's existing clinical/programming staff resources.
 - **Programming - Accountability** – the law has magnified the importance/need for the Department to ensure that the programs offered are providing state-of-the-art interventions (e.g., offender screen-out of case review process because he “successfully completed institutional programming” but there remains a potential risk for re-offense once released to the community.
 - **Community Supervision** – cases committed and placed under Supervised Release into the community pose a significant challenge to community correction agents. By definition a “sexually violent person” has been released to the community, requiring comprehensive and complex release planning, residence placements, treatment placements and specially trained agents to appropriate manage and supervise these cases. The Department established a statewide Sex Offender Intensive Supervision Program, involving a network of specially trained agents to supervise high risk sex offenders.

SEXUALLY VIOLENT PERSON COMMITMENTS APPLICABLE OFFENSES

Sexually Motivated Offenses

- 940.01** First-Degree Intentional Homicide
- 940.02** First-Degree Reckless Homicide
- 940.05** Second-Degree Intentional Homicide
- 940.06** Second-Degree Reckless Homicide
- 940.19** Battery; Aggravated Battery
- 940.30** False Imprisonment
- 940.305** Taking Hostages
- 940.31** Kidnapping
- 943.10** Burglary

Sexually Violent Offenses

- 940.225(1)** First-Degree Sexual Assault
- 940.225(2)** Second-Degree Sexual Assault
 - 944.01** Rape (old)
 - 944.06** Incest
- 944.10** Sexual Intercourse with a Child (old)
- 944.11** Indecent Behavior with a Child (old)
- 944.12** Enticing a Child for Immoral Purposes (old)
- 948.02(1)** First-Degree Sexual Assault of a Child
- 948.02(2)** Second-Degree Sexual Assault of a Child
- 948.025** Repeated Acts of Sexual Assault of the Same Child
 - 948.06** Incest with a Child
 - 948.07** Child Enticement
- 971.17** Not Guilty by Reason of Mental Disease or Defect (for a sexually violent offense)
- 975.06** Sex Crimes Law Commitment

End of Confinement Review Board Case Review Summary and Disposition

Completed by ECRB Committee Member

OFFENDER NAME	DOC NUMBER	ECRB REVIEW DATE
INSTITUTION	AGENT NUMBER	

REVIEWER RECOMMENDATION & ECRB DISPOSITION

- MAY NOT MEET:** Insufficient evidence to pursue civil commitment pursuant to Chapter 980 criteria.
- MAY MEET:** Case warrants a - **Special Purpose Evaluation** – Automatic Special Bulletin Notification
- Mandatory Special Bulletin Notification (2-Strike case)
- Presumptive Mandatory Release

ECRB Disposition: <input type="checkbox"/> Concurs <input type="checkbox"/> Does Not Concur, Recommends: <input type="checkbox"/> May Meet <input type="checkbox"/> Does Not Meet
--

This case is being reviewed by the End of Confinement Review Board in order to determine if it warrants a Special Purpose Evaluation. This report is based on the review of ___ file(s), including available legal, social, clinical and other correctional documents. Findings contained in this report are strictly based on the legal criteria set forth in Chapter 980, and are not to be interpreted as a clinical assessment or prediction of this offender's risk to re-offend.

OFFENDER/CASE DESCRIPTIVE INFORMATION (Include offender name, age, date and county of conviction, conviction statute(s), plea, sentence, number of adult incarcerations, MR date and Max date):

DESCRIPTION OF QUALIFYING OFFENSE (Brief summary of offense(s) that qualify for review under ch. 980, including: age and sex of victims, degree of planning/grooming, relationship to victim, degree of violence/force used, frequency/duration of assault; use of a weapon/threats):

HISTORY OTHER SEXUAL ASSAULT(s) (Describe, as above, any other document adjudications, convictions, read-ins, arrests, allegations, formal complaints or admissions by the offender of sexually assaultive behavior):

HISTORY OTHER CRIMINAL CONVICTIONS (List any other juvenile adjudications or adult convictions with court disposition; identify whether misdemeanor or felony):

TREATMENT HISTORY (Include any history of psychiatric inpatient/outpatient treatment, documented mental health/psychosexual diagnosis, type of treatment involvement, involved in treatment at time of offense/revocation, length of treatment, participation outcome and degree of responsibility expressed by offender):

CORRECTIONAL ADJUSTMENT (Summary of offender's previous adjustment to community supervision, including description of violations or revocation, if applicable – describe any institution conduct reports related to sexual aggression or inappropriate sexual behavior while in an institution):

RISK FACTORS (Attach Completed SBN Supplement – Based on documents available, provide a √ in the appropriate next to each of the following items. • Indicates items on the Rapid Risk Assessment for Sexual Recidivism (RRASOR). Scores of 3 or greater display increased probability

of risk to re-offend. Narrative comments/explanations can be included at the end of the item listing):

	Present	Not Present	Unknown	Score
•Previous Sex Offense (1=1; 2=2to3; 3=4+]	<input type="checkbox"/> = 1, 2 or 3	<input type="checkbox"/> = 0	<input type="checkbox"/>	_____
•Extra-Familial Victim(s)	<input type="checkbox"/> = 1	<input type="checkbox"/> = 0	<input type="checkbox"/>	_____
•Male Victim(s)	<input type="checkbox"/> = 1	<input type="checkbox"/> = 0	<input type="checkbox"/>	_____
•Offender < Age 25 at Release	<input type="checkbox"/> = 1	<input type="checkbox"/> = 0	<input type="checkbox"/>	_____
Victims in Multiple Age/Gender Categories	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Force/Threat of Force Used	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Total _____
Offense Involved Genital-to-Genital Contact	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Both Hands-on & Hands-off Offenses	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Multiple Paraphilias	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Sexual Preoccupation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Denial/Minimization of Offense	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Never Married	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
History of Sexual/Physical Abuse as Child	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Lacking Social Competence	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Substance Abuse History	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Impulsive Lifestyle	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Personality Disordered	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Pervasive/Persistent Anger	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Non-Sexual Criminality	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Juvenile Antisocial Behavior	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Employment Instability	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Previous Failure on Supervision	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

ECRB Reviewer	ECRB Chairperson
Date: _____	Date: _____
OFFENDER NAME	DOC NUMBER



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-3694/P1

JEO:.....

D. Note

By 12/19

JG

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

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1 AN ACT ...; relating to: sexually violent person commitment proceedings.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version of the draft.

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

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

2 SECTION 1. 51.30 (3) (a) of the statutes is amended to read:

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

History: 1975 c. 430; 1977 c. 26 s. 75; 1977 c. 61, 428; 1979 c. 110 s. 60 (1); 1983 a. 27, 292, 398, 538; 1985 a. 29, 176; 1985 a. 292 s. 3; 1985 a. 332 ss. 97, 98, 251 (1); 1987 a. 352, 355, 362, 367, 399, 403; 1989 a. 31, 334, 336; 1991 a. 39, 189; 1993 a. 196, 445, 479; 1995 a. 169, 440; 1997 a. 35, 231, 237, 283, 292; s. 13.93 (2) (c).

6 SECTION 2. 51.30 (3) (b) of the statutes is amended to read:

7 51.30 (3) (b) An individual's attorney or guardian ad litem shall have access to
8 the files and records of the court proceedings under this chapter without the

1 individual's consent and without modification of the records in order to prepare for
 2 involuntary commitment or recommitment proceedings, reexaminations, appeals, or
 3 other actions relating to detention, admission or commitment under this chapter or
 4 ch. 971 ~~or~~, 975 or 980.

History: 1975 c. 430; 1977 c. 26 s. 75; 1977 c. 61, 428; 1979 c. 110 s. 60 (1); 1983 a. 27, 292, 398, 538; 1985 a. 29, 176; 1985 a. 292 s. 3; 1985 a. 332 ss. 97, 98, 251 (1); 1987 a. 352, 355, 362, 367, 399, 403; 1989 a. 31, 334, 336; 1991 a. 39, 189; 1993 a. 196, 445, 479; 1995 a. 169, 440; 1997 a. 35, 231, 237, 283, 292; s. 13.93 (2) (c).

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

6 51.30 (3) (bm) The files and records of court proceedings under this chapter
 7 shall be released to a district attorney specified under s. 980.02 (1) (b) or to the
 8 department of justice in accordance with ~~ss.~~ 980.015 (3r). Information obtained from
 9 files and records under this paragraph shall be kept confidential except to the extent
 10 that redisclosure of that information is necessary for the conduct of an evaluation or
 11 proceeding under ch. 980 for which the information was obtained.

****NOTE: Does anyone else need access to these court records?

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

13 51.30 (4) (b) 8m. To appropriate examiners and facilities in accordance with s.
 14 971.17 (2) (e), (4) (c) and (7) (c), ~~980.03 (4) or 980.08 (3)~~. The recipient of any
 15 information from the records shall keep the information confidential except as
 16 necessary to comply with s. 971.17 ~~or ch. 980~~.

History: 1975 c. 430; 1977 c. 26 s. 75; 1977 c. 61, 428; 1979 c. 110 s. 60 (1); 1983 a. 27, 292, 398, 538; 1985 a. 29, 176; 1985 a. 292 s. 3; 1985 a. 332 ss. 97, 98, 251 (1); 1987 a. 352, 355, 362, 367, 399, 403; 1989 a. 31, 334, 336; 1991 a. 39, 189; 1993 a. 196, 445, 479; 1995 a. 169, 440; 1997 a. 35, 231, 237, 283, 292; s. 13.93 (2) (c).

17 **SECTION 5.** 51.30 (4) (b) 8s. of the statutes is created to read:

18 51.30 (4) (b) 8s. To appropriate persons in accordance with ss. 980.015 (3) (b),
 19 (3m) and (3x), 980.031 (3) and 980.08 (3). Information obtained under this
 20 subdivision shall be kept confidential except to the extent that redisclosure of the
 21 information is necessary for the conduct of an evaluation, examination or proceeding
 22 under ch. 980 for which the information was obtained.

23 **SECTION 6.** 51.30 (4) (b) 10m. of the statutes is repealed.

1 **SECTION 7.** 51.30 (4) (b) 11. of the statutes is amended to read:

2 51.30 (4) (b) 11. To the subject individual's counsel or guardian ad litem,
3 without modification, at any time in order to prepare for involuntary commitment
4 or recommitment proceedings, reexaminations, appeals or other actions relating to
5 detention, admission, commitment or patients' rights under this chapter or ch. 48,
6 971 ~~or~~, 975 or 980.✓

History: 1975 c. 430; 1977 c. 26 s. 75; 1977 c. 61, 428; 1979 c. 110 s. 60 (1); 1983 a. 27, 292, 398, 538; 1985 a. 29, 176; 1985 a. 292 s. 3; 1985 a. 332 ss. 97, 98, 251 (1); 1987 a. 352, 355, 362, 367, 399, 403; 1989 a. 31, 334, 336; 1991 a. 39, 189; 1993 a. 196, 445, 479; 1995 a. 169, 440; 1997 a. 35, 231, 237, 283, 292; s. 13.93 (2) (c).

7 **SECTION 8.** 51.375 (1) (a) of the statutes is amended to read:

8 51.375 (1) (a) "Community placement" means conditional transfer into the
9 community under s. 51.35 (1), conditional release under s. 971.17, parole from a
10 commitment for specialized treatment under ch. 975 or conditional ~~conditional~~ [✓]supervised
11 release under ch. 980.

History: 1995 a. 440.

12 **SECTION 9.** 146.82 (2) (c) of the statutes is amended to read:

13 146.82 (2) (c) Notwithstanding sub. (1), patient health care records shall be
14 released to appropriate examiners and facilities in accordance with ~~ss. s.~~ [✓]s. 971.17 (2)
15 (e), (4) (c) and (7) (c), ~~980.03 (4) and 980.08 (3).~~ [✓] The recipient of any information from
16 the records shall keep the information confidential except as necessary to comply
17 with s. 971.17 ~~or ch. 980.~~

History: 1979 c. 221; 1983 a. 398; 1985 a. 29, 241, 332, 340; 1987 a. 40, 70, 127, 215, 233, 380, 399; 1989 a. 31, 102, 334, 336; 1991 a. 39; 1993 a. 16, 27, 445, 479; 1995 a. 98, 169, 417; 1997 a. 35, 114, 231, 272, 292, 305; s. 13.93 (1) (b).

18 **SECTION 10.** 146.82 (2) (cm) of the statutes is created to read:

19 146.82 (2) (cm) Notwithstanding sub. (1), [✓]patient health care records shall be
20 released to appropriate persons in accordance with ss. 980.015 [✓](3) (b), (3m) or (3x),
21 980.031 [✓](3) and 980.08 [✓](3). Information obtained under this paragraph [✓]shall be kept
22 confidential except to the extent that redisclosure of the information is necessary for

1 the conduct of an evaluation, examination or proceeding under ch. 980 for which the
2 information was obtained.

3 SECTION 11. 165.255 of the statutes is amended to read:

4 **165.255 Representation in sexually violent person commitment**
5 **proceedings.** The department of justice may, [✓]at the request of an agency under s.
6 ~~980.02 (1)~~, represent the state in sexually violent person commitment proceedings
7 under ch. 980 if it files the petition to initiate the proceedings as provided under s.
8 980.02 (1) (a). [✓]

9 History: 1993 a. 479.

9 SECTION 12. 301.355 of the statutes is created to read:

10 **301.355** [✓] **Access to records for sexually violent person commitment**
11 **proceedings.** (1) The department [✓]shall allow the following persons to have access
12 to a departmental record relating to an individual who has been convicted of a
13 sexually violent offense, as defined in s. [✓]980.01 (6):

14 (a) The department of health and family services. [✓]

15 (b) The department of justice. [✓]

16 (c) A district attorney specified in s. 980.02 (1) (b) [✓]or an agent or employe of the
17 district attorney.

18 (d) The person who is the subject of the departmental record, his or her attorney
19 or an agent or employe of the attorney.

20 (e) An expert or professional person who has been retained or appointed under
21 ch. 980 [✓]to evaluate or examine the subject of the departmental record.

22 (2) Information obtained from a departmental record under sub. (1) [✓]may be
23 used in an evaluation, examination, trial or other proceeding under ch. 980 by any
24 person specified in sub. (1). [✓]

1 **SECTION 13.** 301.45 (3) (a) 3r. of the statutes, as affected by 1999 Wisconsin Act
2 9, is amended to read:

3 301.45 (3) (a) 3r. If the person has been committed under ch. 980, he or she is
4 subject to this subsection upon being placed on supervised release under s. 980.06
5 (2), 1997 stats., or s. 980.08 or, if he or she was not placed on supervised release,
6 before being discharged under s. 980.09 or ~~980.10~~.

7 History: 1999 a. 9.

8 **SECTION 14.** 808.075 (4) (h) of the statutes is amended to read:

9 808.075 (4) (h) Commitment, supervised release, recommitment and discharge
10 under ss. 980.06, 980.08, and 980.09 and 980.10 of a person found to be a sexually
11 violent person under ch. 980.

12 History: Sup. Ct. Order, 146 Wis. 2d xiii (1988); 1989 a. 86; 1993 a. 16, 446, 479, 481; 1995 a. 38, 73, 77, 275; 1997 a. 35, 191, 292, 296, 334.

13 **SECTION 15.** 904.04 (2) of the statutes is amended to read:

14 904.04 (2) OTHER CRIMES, WRONGS, OR ACTS. Evidence of other crimes, wrongs,
15 or acts is not admissible to prove the character of a person in order to show that the
16 person acted in conformity therewith. This subsection does not exclude the evidence
17 when it is offered for other purposes, such as proof of motive, opportunity, intent,
18 preparation, plan, knowledge, identity, or absence of mistake or accident, or when it
19 is offered at a trial or other proceeding under ch. 980 for the purpose of proving the
20 diagnosis of a person or showing the basis of an opinion concerning the probability
21 that a person will engage in acts of sexual violence.

22 History: Sup. Ct. Order, 59 Wis. 2d R1, R75 (1973); 1975 c. 184; 1991 a. 32.

23 **SECTION 16.** 905.04 (4) (a) of the statutes is amended to read:

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

26 There is no privilege under this rule as to communications and information relevant
27 to an issue in proceedings to hospitalize the patient for mental illness, to appoint a

1 guardian under s. 880.33, [✓]for control, care and treatment of a sexually violent person
2 under ch. 980, for court-ordered protective services or protective placement or for
3 review of guardianship, protective services or protective placement orders, if the
4 physician, registered nurse, chiropractor, psychologist, social worker, marriage and
5 family therapist or professional counselor in the course of diagnosis or treatment has
6 determined that the patient is in need of hospitalization, [✓]control, care and treatment
7 as a sexually violent person, guardianship, protective services or protective
8 placement.

History: Sup. Ct. Order, 59 Wis. 2d R121; 1975 c. 393; 1977 c. 61, 418; 1979 c. 32 s. 92 (1); 1979 c. 221, 352; 1983 a. 400, 535; 1987 a. 233, 264; Sup. Ct. Order, 151 Wis. 2d xxi (1989); 1991 a. 32, 39, 160; 1993 a. 98; 1995 a. 77, 275, 436; 1997 a. 292.

9 **SECTION 17.** 938.35 (1) (e) of the statutes is created to read:

10 938.35 (1) (e) In a hearing, trial or other proceeding under ch. 980[✓] relating to
11 a juvenile.

12 **SECTION 18.** 938.396 (1) of the statutes is amended to read:

13 938.396 (1) Law enforcement officers' records of juveniles shall be kept
14 separate from records of adults. Law enforcement officers' records of juveniles shall
15 not be open to inspection or their contents disclosed except under sub. (1b), (1d), (1g),
16 (1k)[✓], (1m), (1r), (1t) or (1x) or (5) or s. 938.293 or by order of the court. This subsection
17 does not apply to representatives of the news media who wish to obtain information
18 for the purpose of reporting news without revealing the identity of the juvenile
19 involved, to the confidential exchange of information between the police and officials
20 of the school attended by the juvenile or other law enforcement or social welfare
21 agencies or to juveniles 10 years of age or older who are subject to the jurisdiction of
22 the court of criminal jurisdiction. A public school official who obtains information
23 under this subsection shall keep the information confidential as required under s.
24 118.125 and a private school official who obtains information under this subsection

1 shall keep the information confidential in the same manner as is required of a public
2 school official under s. 118.125. A law enforcement agency that obtains information
3 under this subsection shall keep the information confidential as required under this
4 subsection and s. 48.396 (1). A social welfare agency that obtains information under
5 this subsection shall keep the information confidential as required under ss. 48.78
6 and 938.78.

NOTE: NOTE: Sub. (1) is shown as affected by two acts of the 1997 legislature and as merged by the revisor under s. 13.93 (2) (c). NOTE:

History: 1995 a. 27 s. 9126 (19); 1995 a. 77, 352, 440, 448; 1997 a. 27, 35, 80, 95, 181, 205, 252, 258, 281; s. 13.93 (1) (b), (2) (c).

7 **SECTION 19. 938.396 (1k) of the statutes is created to read:**

8 **938.396 (1k)** If the department of justice or a district attorney requests access
9 to a law enforcement agency's records under s. 980.015 (3r),[✓] the law enforcement
10 agency shall open for inspection by authorized representatives of the department of
11 justice or a district attorney the records of the law enforcement agency relating to any
12 juvenile who has been adjudicated delinquent for a sexually violent offense, as
13 defined in s. 980.01 (6).[✓] Information obtained from a law enforcement agency's
14 records under this subsection[✓] shall be kept confidential except to the extent that
15 redisclosure of that information is necessary for the conduct of an evaluation or
16 proceeding under ch. 980 for which the information was obtained.

****NOTE: Does anyone else need access to these court records?

17 **SECTION 20. 938.396 (2) (e) of the statutes is amended to read:**

18 **938.396 (2) (e)** Upon request of the department of corrections, the department
19 of health and family services,[✓] the department of justice or a district attorney to
20 review court records for the purpose of ~~providing, under s. 980.015 (3) (a), the~~
21 ~~department of justice or a district attorney with a person's offense history~~ conducting
22 an evaluation, examination or proceeding under ch. 980,[✓] the court shall open for
23 inspection by authorized representatives of the department of corrections, the

1 department of health and family services, the department of justice or a district
 2 attorney the records of the court relating to any juvenile who has been adjudicated
 3 delinquent for a sexually violent offense, as defined in s. 980.01 (6). Information
 4 obtained from court records under this paragraph ✓ shall be kept confidential except
 5 as necessary for the conduct of an evaluation, examination or proceeding under ch.
 6 980 for which the information was obtained.

7 History: 1995 a. 27 s. 9126 (19); 1995 a. 77, 352, 440, 448; 1997 a. 27, 35, 80, 95, 181, 205, 252, 258, 281; s. 13.93 (1) (b), (2) (c).

7 **SECTION 21.** 938.396 (5) (a) (intro.) of the statutes is amended to read:

8 938.396 (5) (a) (intro.) Any person who is denied access to a record under sub.
 9 (1), (1b), (1d), (1g), (1k), ✓ (1m), (1r) or (1t) may petition the court to order the disclosure
 10 of the records governed by the applicable subsection. The petition shall be in writing
 11 and shall describe as specifically as possible all of the following:

12 History: 1995 a. 27 s. 9126 (19); 1995 a. 77, 352, 440, 448; 1997 a. 27, 35, 80, 95, 181, 205, 252, 258, 281; s. 13.93 (1) (b), (2) (c).

12 **SECTION 22.** 938.78 (2) (e) of the statutes is amended to read:

13 938.78 (2) (e) Paragraph (a) does not prohibit the department from disclosing
 14 information about an individual adjudged delinquent under s. 938.183 or 938.34 for
 15 a sexually violent offense, as defined in s. 980.01 (6), to the department of justice, or
 16 a district attorney or a judge acting under ch. 980, to an expert or professional person
 17 conducting an evaluation or examination of a person under ch. 980 or to an attorney
 18 who represents a person subject to a petition under ch. 980. ~~The court in which the~~
 19 ~~petition under s. 980.02 is filed may issue any protective orders that it determines~~
 20 ~~are appropriate concerning information disclosed under this paragraph.~~
 21 Information obtained from the department ✓ under this paragraph shall be kept
 22 confidential except as necessary for the conduct of an evaluation, examination or
 23 proceeding under ch. 980 for which the information was obtained. plain

History: 1995 a. 27 s. 9126 (19); 1995 a. 77, 230, 352; 1997 a. 205, 207, 283.

1 **SECTION 23.** 950.04 (1v) (xm) [✓] of the statutes, as affected by 1999 Wisconsin Act
2 9, is amended to read:

3 950.04 (1v) (xm) To have the department of health and family services make
4 a reasonable attempt to notify the victim under s. 980.11 regarding supervised
5 release under s. 980.08 and discharge under s. 980.09 [✓] or ~~980.10~~.

6 History: 1999 a. 9.

6 **SECTION 24.** 972.15 (4) of the statutes is amended to read:

7 972.15 (4) After sentencing, unless otherwise authorized under ~~sub.~~ subs. (5)
8 and (6) [✓] or ordered by the court, the presentence investigation report shall be
9 confidential and shall not be made available to any person except upon specific
10 authorization of the court.

11 History: 1983 a. 102; 1987 a. 27, 227; 1991 a. 39; 1993 a. 213; 1997 a. 73, 181, 205, 283; s. 13.93 (2) (c).

11 **SECTION 25.** 972.15 (6) of the statutes is created to read:

12 972.15 (6) The presentence investigation report and any information contained
13 in it may be used by any of the following persons in an evaluation, examination,
14 hearing, trial or other proceeding under ch. [✓]980:

15 (a) The department of corrections.

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

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

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

20 (e) An expert or professional person who has been retained or appointed to
21 evaluate or examine the subject of the presentence investigation report.

22 **SECTION 26.** 980.015 (title) of the statutes is amended to read:

1 **980.015** (title) **Notice** [✓]**Evaluations of persons who may meet**
2 **commitment criteria; notice to the department of justice and district**
3 **attorney.**

History: 1993 a. 479; 1995 a. 77; 1997 a. 205, 283.

4 **SECTION 27.** 980.015 (1) of the statutes is renumbered 980.015 (1) (intro.) and
5 amended to read:

6 980.015 (1) ^(intro.) In this section, "agency and s. 980.02:

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

History: 1993 a. 479; 1995 a. 77; 1997 a. 205, 283.

9 **SECTION 28.** 980.015 (1) (b) [✓](intro.) of the statutes is created to read:

10 980.015 (1) (b) ^(intro.) "Anticipated release date" means whichever of the following is
11 applicable:

12 **SECTION 29.** 980.015 (2) [✓](intro.) of the statutes is renumbered 980.015 (2) (am)
13 and amended to read:

14 980.015 (2) (am) [✓]If an agency with jurisdiction has control or custody over a
15 person who meets any of the criteria specified in s. 980.02 (2) (a), the agency with
16 jurisdiction shall, no later than 180 days before the anticipated release date of the
17 person, evaluate whether the person may meet the criteria for commitment as a
18 sexually violent person or whether the person does not meet the criteria for
19 commitment as a sexually violent person. No later than 15 days after the completion
20 of its evaluation, the agency with jurisdiction shall inform each appropriate district
21 attorney specified under s. 980.02 (1) (b) and the department of justice regarding the
22 person as soon as possible beginning 3 months prior to the applicable date of the
23 following: whether the agency with jurisdiction has determined whether the person

1 may meet the criteria for commitment or whether the person does not meet the
2 criteria for commitment.

3 History: 1993 a. 479; 1995 a. 77; 1997 a. 205, 283.

3 **SECTION 30.** 980.015 (2) (a) of the statutes is renumbered 980.015 (1) (b) 1. and
4 amended to read:

5 980.015 (1) (b) 1. The anticipated [✓]date of discharge from a sentence, anticipated
6 date of release on parole or extended supervision or anticipated date of release from
7 imprisonment of a person who has been convicted of a sexually violent offense.

8 History: 1993 a. 479; 1995 a. 77; 1997 a. 205, 283.

8 **SECTION 31.** 980.015 (2) (b) [✓] of the statutes, as affected by 1999 Wisconsin Act
9 [✓] 9, is renumbered 980.015 (1) (b) 2. and amended to read:

10 980.015 (1) (b) 2. The anticipated [✓]date of release from a secured correctional
11 facility, as defined in s. 938.02 (15m), or a secured child caring institution, as defined
12 in s. 938.02 (15g), or a secured group home, as defined in s. 938.02 (15p), of a person
13 adjudicated delinquent under s. 938.183 or 938.34 on the basis of a sexually violent
14 offense.

15 History: 1999 a. 9.

15 **SECTION 32.** 980.015 (2) (bm) of the statutes is created to read:

16 980.015 (2) (bm) If an agency with jurisdiction determines in an evaluation
17 under par. (am) [✓] that the person may meet the criteria for commitment as a sexually
18 violent person, the agency with jurisdiction shall obtain a special purpose evaluation
19 of the person by a qualified expert or professional person, who shall make a
20 recommendation as to whether a commitment proceeding under this chapter should
21 be initiated. A qualified expert or professional person who conducts a special purpose
22 evaluation under this paragraph [✓] shall make a written report of his or her evaluation
23 to the agency with jurisdiction no later than 120 days before the anticipated release
24 date of the person. The report shall specify the recommendation of the qualified

1 expert or professional person and the bases for the recommendation. The agency
2 with jurisdiction shall, no later than 5 days after it receives the report, provide each
3 district attorney specified under s. 980.02 (1) (b) ✓ and the department of justice ✓ with
4 a copy of the report of the qualified expert or professional person who conducted the
5 special purpose evaluation.

6 SECTION 33. 980.015 (2) (c) of the statutes is renumbered ✓ 980.015 (1) (b) 3. and
7 amended to read:

8 980.015 (1) (b) 3. The anticipated date of ✓ termination or discharge of the
9 commitment of a person who has been found not guilty of a sexually violent offense
10 by reason of mental disease or defect under s. 971.17.

11 History: 1993 a. 479; 1995 a. 77; 1997 a. 205, 283.

12 SECTION 34. 980.015 (3) (intro.) of the statutes is amended to read:

13 980.015 (3) (intro.) The When informing a district attorney and the department
14 of justice of its evaluation under sub. (2) (am) ✓ and, if applicable, when providing a
15 copy of the report of a special purpose evaluation conducted under sub. (2) (bm), the
16 agency with jurisdiction shall provide the district attorney and department of justice
with all of the following:

17 History: 1993 a. 479; 1995 a. 77; 1997 a. 205, 283.

18 SECTION 35. 980.015 (3) (b) of the statutes is amended to read:

19 980.015 (3) (b) If applicable, Copies of or access to documentation of in the
20 possession of the agency with jurisdiction relating to the person, including any
21 treatment records, as defined in s. 51.30 (1) (b), ✓ health care records, as defined in s.
22 146.82 (2) (c), ✓ and records concerning the person's adjustment to and conduct in any
institutional placement.

23 History: 1993 a. 479; 1995 a. 77; 1997 a. 205, 283.

SECTION 36. 980.015 (3m) of the statutes is created to read:

1 980.015 (3m) (a) A qualified expert[✓] or professional person who conducts a
2 special purpose evaluation under sub. (2) (bm)[✓] shall have reasonable access to the
3 person for the purpose of the evaluation. The expert or professional person shall also
4 have access to the person's past and present treatment records, as defined in s. 51.30
5 (1) (b),[✓] past and present patient health care records, as provided under s. 146.82 (2)
6 (c),[✓] and past and present correctional records, as provided under ss.[✓] 301.355 and
7 938.78 (2) (e),[✓] and to the records of a court assigned to exercise jurisdiction under ch.
8 938, as provided under s. 938.396 (2) (e),[✓] and presentence investigation reports, as
9 provided under s. 972.15 (6).[✓]

10 (b) A qualified expert or professional person who conducts a special purpose
11 evaluation under sub. (2) (bm) shall, when requested to do so, provide a district
12 attorney who receives a copy of the report of the special purpose evaluation and the
13 department of justice with copies of or access to any documentation used by the
14 expert or professional person in preparing the report, including any treatment
15 records, as defined in s. 51.30 (1) (b),[✓] health care records, as defined in s. 146.82 (2)
16 (c), correctional records, records of a court assigned to exercise jurisdiction under ch.
17 938 and presentence investigation reports.

18 **SECTION 37.** 980.015 (3r)[✓] of the statutes is created to read:

19 980.015 (3r) For purposes of evaluating a case to decide whether to initiate
20 commitment proceedings under this chapter or for the purpose of conducting a
21 commitment proceeding under this chapter, a district attorney specified under s.
22 980.02 (1) (b),[✓] or the department of justice may request copies of or access to all of the
23 following concerning a person who is the subject of an evaluation by an agency with
24 jurisdiction under sub. (2) (am):[✓]

1 (a) Files and records of court proceedings under ch. 51, as provided under s.
2 51.30 (3) (bm).[✓]

3 (b) If the person has been adjudicated delinquent for a sexually violent offense,
4 law enforcement agency records, as provided under s. 938.396 (1k),[✓] records of a court
5 assigned to exercise jurisdiction under ch. 938, as provided under s. 938.396 (2) (e),[✓]
6 and records of the department of corrections, as provided under s. 938.78 (2) (e).[✓]

7 (c) Correctional records, as provided under s. 301.355.[✓]

8 (d) A presentence investigation report, as provided under s. 972.15 (6).[✓]

9 SECTION 38. 980.015 (3x) of the statutes is created to read:

10 980.015 (3x) A district attorney specified under s. 980.02 (1) (b) or the
11 department of justice may, at any time after it receives notification of the evaluation
12 of an agency with jurisdiction under sub. (2) (am),[✓] retain a qualified expert or
13 professional person to evaluate the person who is the subject of the agency's
14 evaluation. If a district attorney or the department of justice retains a qualified
15 expert or professional person to conduct an evaluation of a person under this
16 subsection, the examiner shall have reasonable access to the person for the purpose
17 of the evaluation. The expert or professional person shall also have access to the
18 person's past and present treatment records, as defined in s. 51.30 (1) (b),[✓] past and
19 present patient health care records, as provided under s. 146.82 (2) (c),[✓] and past and
20 present correctional records, as provided under ss. 301.355 and 938.78 (2) (e),[✓] and
21 to the records of a court assigned to exercise jurisdiction under ch. 938, as provided
22 under s. 938.396 (2) (e),[✓] and presentence investigation reports, as provided under s.
23 972.15 (6).[✓]

24 SECTION 39. 980.015 (4)[✓] of the statutes is renumbered 980.14 (2)[✓] and amended
25 to read:

1 980.14 (2) Any agency ~~or~~, officer, employe or agent of an agency or[✓]qualified
2 expert or professional person retained or appointed to evaluate or examine a person
3 under this chapter is immune from criminal or civil liability for any acts or omissions
4 as the result of a good faith effort to comply with any provision of this section[✓] chapter.

History: 1993 a. 479; 1995 a. 77; 1997 a. 205, 283.

****NOTE: Kendall Kelley asked for a more explicit immunity provision for experts who give an opinion under ch. 980. The new language in this subsection is meant to do that. Note, however, that if the concern is about opinions rendered only by experts retained or used by the state, then the current language would seem to cover them because they would be acting as employes or agents of one of the covered agencies. I think that the new language in this subsection would also provide immunity for defense experts. Is that your intent?

5 **SECTION 40.** 980.02 (1) (intro.) of the statutes is amended to read:

6 980.02 (1) (intro.) A petition alleging that a person is a sexually violent person
7 may be filed by one of the following in accordance with the specified procedure[✓]:

History: 1993 a. 479; 1995 a. 77, 225; 1997 a. 27, 205, 283.

8 **SECTION 41.** 980.02 (1) (a) of the statutes is amended to read:

9 980.02 (1) (a) The department of justice ~~at the request of.~~ If the agency with
10 jurisdiction, as defined in s. 980.015 (1), over the person determined in an evaluation
11 under s. 980.015 (2) (am)[✓] that the person does not meet the criteria for commitment,
12 the department of justice shall decide whether to file a petition under this[✓] paragraph,
13 and shall inform the district attorneys specified under par. (b)[✓] of its decision, no later
14 than 45 days after it receives notice of the agency's evaluation. If the agency with
15 jurisdiction over the person obtained a special purpose evaluation of the person
16 under s. 980.015 (2) (bm)[✓], the department of justice shall decide whether to file a
17 petition under this paragraph, and shall inform the district attorneys specified
18 under par. (b) of its decision, no later than 30 days after it receives a copy of the report
19 of the special purpose evaluation. If the department of justice decides to file a

1 petition under this paragraph, it shall file the petition before the date of the release
2 or discharge of the person.

History: 1993 a. 479; 1995 a. 77, 225; 1997 a. 27, 205, 283.

****NOTE: It didn't seem to make sense to provide that DOJ would get to file only if requested to do so by an agency with jurisdiction while allowing a DA to file regardless of whether an agency made a request for a petition. Thus, this draft gives DOJ the first chance to file a petition, even if the agency with jurisdiction's evaluation is that the person is not a candidate for a ch. 980 petition or if a special purpose evaluation does not result in a recommendation for a petition. DOJ is given 45 days to decide in the first case (on the theory that they'll need more time to review a case in which there has been no special purpose evaluation) and 30 days to decide in the case in which there has been a special purpose evaluation, regardless of the recommendation of that evaluation. DOJ must also inform the DAs of its decision within that time frame. Given that both DAs and DOJ will be the ultimate decision-makers as to the filing of a petition, there doesn't appear to be any reason to refer to a "request" for a petition being made by the agency with jurisdiction, so this draft eliminates that language. Is that okay?

3 SECTION 42. 980.02 (1) (b) (intro.) of the statutes is amended to read:

4 980.02 (1) (b) (intro.) If the department of justice ~~does~~ [✓] decides not to file a
5 petition under par. (a), the district attorney for one of the following:

History: 1993 a. 479; 1995 a. 77, 225; 1997 a. 27, 205, 283.

6 SECTION 43. 980.03 (2) (intro.) of the statutes is amended to read:

7 980.03 (2) (intro.) ~~Except as provided in ss. 980.09 (2) (a) and 980.10 and~~ [✓]
8 ~~without~~ Without limitation by enumeration, at any hearing under this chapter, the
9 person who is the subject of the petition has the right to:

History: 1993 a. 479; 1997 a. 252.

10 SECTION 44. 980.03 (4) [✓] of the statutes, as affected by 1999 Wisconsin Act 9, is
11 renumbered 980.031 (1) and amended to read:

12 980.031 (1) [✓] Whenever a person who is the subject of a petition filed under s.
13 980.02 or who has been committed under s. 980.06 is required to submit to an
14 examination or reexamination under this chapter, he or she may retain experts or
15 professional persons to perform an examination. If the person is indigent, the court
16 shall, upon the person's request, appoint a qualified [✓] and available expert or
17 professional person to perform an examination and participate on the person's behalf
18 in a trial or other proceeding under this chapter.

****NOTE: Because this subsection refers to a person subject to a petition or someone already committed, the person will have no right to his or her own examiner if he or she is subject to an evaluation under proposed s. 980.015 (3x) (created by this draft). Is that your intent?

1 (3) ~~If the person a party retains or the court appoints~~ a qualified expert or
2 professional person of ~~his or her own choice~~ to conduct an examination of a person
3 who is the subject of a petition filed under s. 980.02 or who has been committed under
4 s. 980.06,[✓] the ~~examiner~~ expert or professional person shall have reasonable access
5 to the person for the purpose of the examination, ~~as well as.~~ The expert or
6 professional person shall also have access to the person's past and present treatment
7 records, as defined in s. 51.30 (1) (b), ~~and past and present~~ patient health care records
8 as provided under s. 146.82 (2) (c). ~~If the person is indigent, the court shall, upon the~~
9 ~~person's request, appoint a qualified and available expert or professional person to~~
10 ~~perform an examination and participate in the trial or other proceeding on the~~
11 ~~person's behalf, and past and present correctional records, as provided under ss.~~
12 301.355 and 938.78 (2) (e), and to the records of a court assigned to exercise
13 jurisdiction under ch. 938, as provided under s. 938.396 (2) (e),[✓] and presentence
14 investigation reports, as provided under s. 972.15 (6).[✓]

15 (4) Upon the order of the circuit court, the county shall pay, as part of the costs
16 of the action, the costs of an expert or professional person appointed by a court under
17 ~~this subsection~~ sub. (1)[✓] to perform an examination and participate in the trial or
18 other proceeding on behalf of an indigent person.

19 (5) An expert or professional person retained by either party or appointed to
20 assist an indigent person who is subject to a petition by the court under sub. (1)[✓] may
21 not be subject to any order by the court for the sequestration of witnesses at any
22 proceeding under this chapter.

1 **SECTION 45.** 980.03 (5) of the statutes is renumbered 980.038 (1) and amended
2 to read:

3 980.038 (1) TESTIMONY BY TELEPHONE OR LIVE AUDIOVISUAL MEANS. Upon a
4 showing by the proponent of good cause under s. 807.13 (2) (c), testimony may be
5 received into the record of a hearing under this ~~section~~ chapter by telephone or live
6 audiovisual means.

7 History: 1993 a. 479; 1997 a. 252.

7 **SECTION 46.** 980.031 (title) of the statutes is created to read:

8 **980.031 (title) Examinations.**

9 **SECTION 47.** 980.031 (2) of the statutes is created to read:

10 980.031 (2) The department of justice or a district attorney, whichever is
11 applicable, may retain ~~an~~ expert or professional person to examine a person who is
12 the subject of a petition ^{plain} under s. 980.02 or who has been committed under s. 980.06
13 and to testify at trial or at any other proceeding under this chapter.

14 **SECTION 48.** 980.036 of the statutes is created to read:

15 **980.036 Discovery and inspection.** (1) **DEFINITIONS.** In this section:

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

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

20 (2) **WHAT A PROSECUTING ATTORNEY MUST DISCLOSE TO A PERSON SUBJECT TO THIS**
21 **CHAPTER.** Upon demand, a prosecuting attorney shall, within a reasonable time
22 before a trial or other proceeding under this chapter, disclose to a person subject to
23 this chapter or the person's attorney and permit the person or the person's attorney

1 to inspect and copy or photograph all of the following materials and information, if
2 the material or information is within the possession, custody or control of the state:

3 (a) Any written or recorded statement made by the person concerning the
4 allegations in the petition filed under s. 980.02[✓] or concerning other matters at issue
5 in the proceeding and the names of witnesses to the person's written statements.

6 (b) A written summary of all oral statements of the person ^{that} ~~which~~ the
7 prosecuting attorney plans to use in the course of the trial or other proceeding and
8 the names of witnesses to the person's oral statements.

9 (c) Any information obtained by the prosecutor under s. 980.015 (3) (b), (3m)
10 (b), (3r) or (3x).[✓]

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

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

14 (f) A list of all witnesses, and their addresses, whom the prosecuting attorney
15 intends to call at the trial. This paragraph[✓] does not apply to rebuttal witnesses or
16 those called for impeachment only.

17 (g) Any relevant written or recorded statements of a witness named on a list
18 under par. (f),[✓] including all of the following:

19 1. Any videotaped oral statement of a child under s. 908.08.[✓]

20 2. Any reports or statements made in connection with the case by a person who
21 conducts an evaluation or examination under this chapter.

22 3. If a person specified in subd. 2.[✓] does not prepare a report or statement, a
23 written summary of the person's findings or the subject matter of his or her
24 testimony.

1 (h) The results of any physical or mental examination, scientific test,
2 experiment or comparison that the prosecuting attorney intends to offer in evidence
3 at trial, and any test results, facts and data that were collected during and considered
4 as part of any evaluation or examination under this chapter and that the prosecuting
5 attorney intends to offer in evidence at a trial or other proceeding under this chapter.

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

8 (j) Any physical evidence that the prosecuting attorney intends to offer in
9 evidence at a trial or other proceeding under this chapter.

10 (k) Any exculpatory evidence.

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

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

21 (b) Any relevant written or recorded statements of a witness named on a list
22 under par. (a), including any reports or statements made in connection with the case
23 by a witness who conducted an examination under s. 980.031 [✓] or, if the witness does
24 not prepare a report or statement, a written summary of the findings of the witness
25 or the subject matter of his or her testimony.

1 (c) The results of any physical or mental examination, scientific test,
2 experiment or comparison that the person intends to offer in evidence at trial or other
3 proceeding under this chapter, and any test results, facts and data that were
4 collected during and evaluated as part of an examination under s. 980.031 and that
5 form the basis for an opinion contained in a report, statement or written summary
6 disclosed under par. (b).[✓]

7 (d) The criminal record of a witness named on a list under par. (a) ^{that} ~~which~~ is
8 known to the person's attorney.

9 (e) Any physical evidence that the person intends to offer in evidence at the trial
10 or other proceeding under this chapter.

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

15 (5)[✓] TESTING OR ANALYSIS OF EVIDENCE. On motion of a party, the court may order
16 the production of any item of evidence or data ^{that} ~~which~~ is intended to be introduced at
17 the trial for testing or analysis under such terms and conditions as the court
18 prescribes.

19 (6)[✓] PROTECTIVE ORDER. Upon motion of a party, the court may at any time order
20 that discovery, inspection or the listing of witnesses required under this[✓] section be
21 denied, restricted or deferred, or make other appropriate orders. If the prosecuting
22 attorney or the attorney for a person subject to this chapter certifies that to list a
23 witness may subject the witness or others to physical or economic harm or[✓] coercion,
24 the court may order that the deposition of the witness be taken pursuant to s. 967.04
25 (2) to (6).[✓] The name of the witness need not be divulged prior to the taking of such

1 deposition. If the witness becomes unavailable or changes his or her testimony, the
2 deposition shall be admissible at trial as substantive evidence.

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

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

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

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

21 (10) PAYMENT OF PHOTOCOPY COSTS IN CASES INVOLVING INDIGENT RESPONDENTS.
22 When the state public defender or a private attorney appointed under s. 977.08
23 requests photocopies of any item that is discoverable under this section, the state
24 public defender shall pay any fee charged for the photocopies from the appropriation
25 under s. 20.550 (1) (a). If the person providing photocopies under this section charges

1 the state public defender a fee for the photocopies, the fee may not exceed the actual,
2 necessary and direct cost of photocopying.

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

****NOTE: Proposed s. 980.036 is based on s. 971.23, stats. I have made a few
changes to conform it to the different procedures used under ch. 980. Also, note that
proposed s. 980.036 (2) (c) and (11)[✓] are unlike any provision in s. 971.23, stats. Please
review all of proposed s. 980.036 to make sure that it does what you want it to do.

6 SECTION 49. 980.038 (title) of the statutes is created to read:

7 980.038 (title) Miscellaneous procedural provisions.[✓]

8 SECTION 50. 980.038 (2) of the statutes is created to read:

9 980.038 (2) PROTECTIVE ORDERS.[✓] In addition to any protective order that may
10 be issued under s. 980.036 (6),[✓] the court in which a proceeding under this chapter is
11 pending may deny, defer or restrict, or issue any other appropriate protective order
12 concerning, the disclosure or redisclosure of information obtained under s. 980.015
13 (3) (b), (3m), (3r) or (3x),[✓] 980.031 (3) or 980.08 (3).

14 SECTION 51. 980.038 (3) of the statutes is created to read:

15 980.038 (3) PROCEEDINGS RELATING TO THE COMMITMENT OF JUVENILES.[✓] (a) If a
16 person is subject to a petition that, with respect to the criteria under s.[✓] 980.02 (2) (a),
17 alleges only that the person has been found delinquent for a sexually violent offense,
18 the general public shall be excluded from any trial or or other hearing under this
19 chapter unless any of the following applies:

20 1. There was one or more public hearings under s. 938.299 (1)[✓] in the proceeding
21 in which the ~~the~~ person was found delinquent.

22 2. The person, through his or her counsel, requests a public trial or hearing,
23 except that the court shall refuse to grant the request for a public ~~public~~ hearing if

1 the victim of any of the person's sexually violent offenses objects or, in the case of a
2 person who has not attained the age of 17,[✓] if a parent or guardian objects.

3 (b) If a public hearing is not held in a trial or other hearing under this chapter,
4 only the following persons may be present:

5 1. The person and his or her attorney.

6 2. In the case of a person who has not attained the age of 17, a parent or
7 guardian.

8 3. The attorney representing the state in the proceeding.

9 4. A victim of any of the person's sexually violent offenses, a member of the
10 victim's family and, at the request of the victim, a representative of an organization
11 providing support services to the victim.

12 5. Witnesses who are testifying or expected to testify at the trial or other
13 hearing.

14 6. A representative of the news media who wishes to attend the trial or other
15 hearing for the purpose of reporting news without revealing the identity of the
16 person involved.

17 7. Other persons requested by a party and approved by the court.

18 8. Any other person the court finds to have a proper interest in the case or in
19 the work of the court, including a member of the bar.

20 (c) Notwithstanding par. (b),[✓] if a public hearing is not held the court may
21 exclude any person specified in par. (b) 5. to 8.[✓] from any portion of the hearing if that
22 portion of the hearing deals with sensitive personal information of the person or the
23 person's family or if the court determines that excluding the person would be in the
24 best interests of the person. In addition, a judge may exclude any person specified
25 in par. (b) 4.[✓] from any portion of a hearing ^{that} ~~which~~ deals with sensitive personal

1 matters of the person or the person's family and ^{that} which does not directly relate to the
2 act or alleged act committed against the victim.

3 (d) If a public hearing is held, the court may, in its discretion, exclude the
4 general public from any portion of a trial or hearing ^{that} which deals with sensitive
5 personal matters of the person or the person's family and ^{that} which does not relate to the
6 acts of sexual violence committed by the person. If the court excludes the general
7 public from a trial or hearing under this subsection, only those persons who are
8 permitted under par. (b) [✓] to attend a hearing from which the general public is
9 excluded may attend.

10 (e) If a public hearing is not held under par. (a) or (d) [✓], any person who divulges
11 any information ^{that} which would identify the person or the family involved in any
12 proceeding under this chapter is subject to ch. 785 [✓].

****NOTE: This new language is based loosely on s. 938.299 (1) (a) to (b), stats.
Please review it carefully to make sure that it does what you want it to do. It provides
for closed proceedings in any case involving a person who is subject to a ch. 980 petition
because of a juvenile delinquency adjudication. However, it lets the person request an
open hearing (subject to the objections of a victim) and requires an open hearing if the
underlying delinquency proceeding was open under s. 938.299 (1), stats., on the theory
that there is no further need for closed hearings because the cat is already out of the bag.
Does the list of persons who can attend a closed hearing make sense? The list is adapted
from s. 938.299 (1) (a), (ag) and (am), stats.

13 **SECTION 52.** 980.07 (1) [✓] of the statutes, as affected by 1999 Wisconsin Act 9, is
14 amended to read:

15 980.07 (1) If Except as provided in sub. (1g), [✓] if a person has been committed
16 under s. 980.06 and has not been discharged under s. 980.09, the department shall
17 conduct an examination of ~~his or her mental condition~~ the person within 6 months
18 after an initial commitment under s. 980.06 and again thereafter at least once each
19 12 months for the purpose of determining whether the person has made sufficient

1 progress for the court to consider whether the person should be placed on supervised
2 release or discharged.

3 (1m) At the time of a reexamination under this section, the person who has
4 been committed may retain or seek to have the court appoint an ~~examiner~~ expert or
5 professional person to conduct an examination as provided under s. ~~980.03~~ (4)
6 980.031 (1).[✓]

7 ^{History: 1999 a. 9.}

SECTION 53. 980.07 (1g) of the statutes is created to read:

8 980.07 (1g) If a person who has been committed under s. 980.06[✓] has not been
9 discharged under s. 980.09[✓] and the person is incarcerated in a county jail or a state
10 correctional institution or is placed in a treatment facility or a secured correctional
11 facility, as defined in s. 938.02 (15m),[✓] a secured child caring institution, as defined
12 in s. 938.01 (15g),[✓] or a secured group home, as defined in s. 938.02 (15p),[✓] for an offense
13 that the person committed or is alleged to have committed since being committed
14 under s. 980.06, the department[✓] need not conduct an examination of the person as
15 provided under sub. (1)[✓] but shall conduct an examination of the person upon the
16 person's release from the county jail, state correctional institution, treatment
17 facility, secured correctional facility, secured child caring institution or secured
18 group home.[✓]

****NOTE: Should DHFS still have to provide periodic notice (under s. 980.09 (2) (a))[✓]
of the person's right to petition for a discharge even though there is no regular
reexamination?

19 **SECTION 54.** 980.07 (2) of the statutes is amended to read:

20 980.07 (2) Any ~~examiner~~ expert or professional person[✓] conducting an
21 examination under this section shall prepare a written report of the examination no
22 later than 30 days after the date of the examination. The ~~examiner~~ expert or
23 professional person shall place a copy of the report in the person's medical records

1 and shall provide a copy of the report to the court that committed the person under
2 s. 980.06.

3 History: 1993 a. 479.

3 SECTION 55. 980.07 (3) of the statutes is amended to read:

4 980.07 (3) Notwithstanding ~~sub. subs.~~ (1) and (1g),[✓] the court that committed
5 a person under s. 980.06 may order a reexamination of the person at any time during
6 the period in which the person is subject to the commitment order.

7 History: 1993 a. 479.

7 SECTION 56. 980.08 (3)[✓] of the statutes, as affected by 1999 Wisconsin Act 9, is
8 amended to read:

9 980.08 (3) Within 20 days after receipt of the petition, the court shall appoint
10 one or more examiners qualified experts or professional persons[✓] having the
11 specialized knowledge determined by the court to be appropriate, who shall examine
12 the person and furnish a written report of the examination to the court within 30
13 days after appointment. The examiners experts or professional persons shall have
14 reasonable access to the person for purposes of examination ~~and~~. The experts or
15 professional persons shall also have access to the person's past and present
16 treatment records, as defined in s. 51.30 (1) (b), ~~and~~ patient health care records, as
17 provided under s. 146.82 (2) (c), and correctional records, as provided under ss.
18 301.355[✓] and ~~978.79~~^{938.78} (2) (e), and to the records of a court assigned to exercise
19 jurisdiction under ch. 938, as provided under s. 938.396 (2) (e),[✓] and presentence
20 investigation reports, as provided under s. 972.15 (6).[✓] If any such examiner expert
21 or professional person believes that the person is appropriate for supervised release
22 under the criterion specified in sub. (4), the examiner expert or professional person
23 shall report on the type of treatment and services that the person may need while in
24 the community on supervised release. The county shall pay the costs of an examiner

1 expert or professional person[✓] appointed under this subsection as provided under s.
2 51.20 (18) (a).

3 History: 1999 a. 9.

3 **SECTION 57.** 980.08 (4)[✓] of the statutes, as affected by 1999 Wisconsin Act 9, is
4 amended to read:

5 980.08 (4) The court, without a jury, shall hear the petition within 30 days after
6 the report of the court-appointed ~~examiner~~ expert or professional person[✓] is filed with
7 the court, unless the petitioner waives this time limit. Expenses of proceedings
8 under this subsection shall be paid as provided under s. 51.20 (18) (b), (c) and (d).
9 The court shall grant the petition unless the state proves by clear and convincing
10 evidence that the person is still a sexually violent person and that it is still
11 substantially probable that the person will engage in acts of sexual violence if the
12 person is not continued in institutional care. In making a decision under this
13 subsection, the court may consider, without limitation because of enumeration, the
14 nature and circumstances of the behavior that was the basis of the allegation in the
15 petition under s. 980.02 (2) (a), the person's mental history and present mental
16 condition, where the person will live, how the person will support himself or herself
17 and what arrangements are available to ensure that the person has access to and will
18 participate in necessary treatment, including pharmacological treatment using an
19 antiandrogen or the chemical equivalent of an antiandrogen if the person is a serious
20 child sex offender. A decision under this subsection on a petition filed by a person
21 who is a serious child sex offender may not be made based on the fact that the person
22 is a proper subject for pharmacological treatment using an antiandrogen or the
23 chemical equivalent of an antiandrogen or on the fact that the person is willing to

1 participate in pharmacological treatment using an antiandrogen or the chemical
2 equivalent of an antiandrogen.

3 History: 1999 a. 9.

SECTION 58. 980.09 (1) (b) of the statutes is amended to read:

4 980.09 (1) (b) At a hearing under this subsection, the district attorney or the
5 department of justice, whichever filed the original petition, shall represent the state
6 and shall ~~have the right to~~ may have the petitioner examined by an expert or
7 professional person of his, her or its choice. ~~The hearing shall be before the court~~
8 ~~without a jury.~~ The district attorney or the department of justice, whichever filed the
9 original petition, or the petitioner or his or her attorney may request that the hearing
10 under this subsection ✓ be to a jury of 6 persons. At a hearing under this ✓ subsection,
11 the state has the burden of proving by clear and convincing evidence that the
12 petitioner is still a sexually violent person.

History: 1993 a. 479.

****NOTE: The new language allowing for a jury of 6 codifies the supreme court's decision in *State v. Post*, 197 Wis. 2d 279, 328-29 (1995).

13 **SECTION 59.** 980.09 (2) (a) ✓ of the statutes is amended to read:

14 980.09 (2) (a) A person may petition the committing court for discharge from
15 custody or supervision without the secretary's approval, as provided under par. ✓ (am).
16 At the time of an examination under s. 980.07 (1) or (1g) ✓, the secretary shall provide
17 the committed person with a written notice of the person's right to petition the court
18 for discharge over the secretary's objection. ~~The notice shall contain a waiver of~~
19 rights under par. (am). ✓ The secretary shall forward a copy of the notice and waiver
20 form to the court with the report of the department's examination under s. 980.07.
21 If the
22 (am) A person ~~does not affirmatively waive the right to petition~~ may petition
23 for discharge from custody or supervision without the ✓ secretary's approval if at least

1 18 months have elapsed since the initial commitment order was entered or at least
2 6 months have elapsed since the most recent petition for discharge under this
3 paragraph[✓] or under sub. (1) (a)[✓] was denied. If a person petitions for discharge under
4 this paragraph, the court shall set a probable cause hearing review the petition, the
5 most recent examination report filed under s. 980.07 (2)[✓] and any relevant written
6 arguments or supporting documentation provided by the person, the person's
7 attorney or the state to determine whether facts exist that warrant a hearing on
8 whether there is probable cause to believe that the person is still no longer a sexually
9 violent person. The committed person has a right to have an attorney represent him
10 or her at the probable cause hearing, but the person is not entitled to be present at
11 the probable cause hearing file a petition, written arguments and supporting
12 documentation on the person's behalf.

History: 1993 a. 479.

****NOTE: These changes place limitations on the filing of a petition for discharge that are consistent with the limits on the filing of a petition for supervised release under s. 980.08 (1), as affected by 1999 Wisconsin Act 9. The changes also revamp the procedure by which a court reviews a petition for discharge filed without the approval of DHFS. Please review the changes carefully to make sure that they do what you want them to do.

13 **SECTION 60.** 980.09 (2) (b) of the statutes is amended to read:

14 980.09 (2) (b) If the court determines at the probable cause hearing after a
15 review of a petition filed under par. (a) (am)[✓] that there is probable cause exists to
16 believe that the committed person is no longer a sexually violent person, then the
17 court shall set a hearing on the issue. At a hearing under this paragraph, the
18 committed person is entitled to be present and to the benefit of the protections
19 afforded to the person under s. 980.03. The district attorney or the department of
20 justice, whichever filed the original petition, shall represent the state at a hearing
21 under this paragraph. ~~The hearing under this paragraph shall be to the court. The~~
22 district attorney or the department of justice, whichever filed the original petition,

1 or the committed person or his or her attorney may request that the hearing under
2 this subsection be to a jury of 6[✓] persons. The state ~~has the right to~~ may have the
3 committed person evaluated examined by experts or professional persons chosen by
4 the state. At the hearing, the state has the burden of proving by clear and convincing
5 evidence that the committed person is still a sexually violent person.

History: 1993 a. 479.

****NOTE: The jury of 6 requirement codifies the supreme court's decision in *State v. Post*, 197 Wis. 2d 279, 328 29 (1995).

6 SECTION 61. 980.10[✓] of the statutes is repealed.

****NOTE: Section 980.10, stats., is repealed because it conflicted with the time restrictions on petitions for discharge that are imposed by the changes made in s. 980.09 (2), stats. Okay?

7 SECTION 62. 980.11 (2) (intro.)[✓] of the statutes, as affected by 1999 Wisconsin
8 Act 9, is amended to read:

9 980.11 (2) (intro.) If the court places a person on supervised release under s.
10 980.08 or discharges a person under s. 980.09 ~~or 980.10[✓]~~, the department shall do all
11 of the following:

History: 1999 a. 9.

12 SECTION 63. 980.12 (1)[✓] of the statutes, as affected by 1999 Wisconsin Act 9,
13 section 3239, is amended to read:

14 980.12 (1) Except as provided in ss. ~~980.03[✓]~~ 980.031 (4) and 980.08 (3), the
15 department shall pay from the appropriations under s. 20.435 (2) (a) and (bm) for all
16 costs relating to the evaluation, treatment and care of persons evaluated, examined
17 or committed under this chapter.

History: 1999 a. 9.

18 SECTION 64. 980.14 (title) of the statutes is created to read:

19 980.14 (title) **Immunity.**[✓]

20 SECTION 65. 980.14 (1) of the statutes is created to read:

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3694/P1dn

JEO: ^....

Jg

This is a preliminary draft for your review. Please review the entire draft carefully. It includes some four-star notes (****NOTE) that point out what the draft is doing in certain sections. Some of the notes also raise questions that you might want to consider when reviewing the draft.

Adding the existing DOC pre-petition evaluation procedure to s. 980.015, stats., proved to be more complicated than I had anticipated. You should review the changes to ss. 980.015 and 980.02 (1), stats., carefully to make sure they do what you want. Also, the various provisions dealing with access to otherwise confidential records can get rather complex, so please review the provisions to make sure that the draft covers all of the records that you want to cover and that the right persons are getting access to the records at the appropriate time in the ch. 980 process.

Note that the draft does not give DAs or DOJ blanket access to school records of a juvenile who has been adjudicated delinquent for a sexually violent offense because it appears that federal law does not allow release of school records for such a purpose. See 34 CFR sections 99.31 (a)(5)(i)(B) and 99.38. However, those records could be released pursuant to a court order or subpoena under 34 CFR section 99.31 (a)(9)(i).

Please let me know when you have questions or redrafting instructions.

Jefren E. Olsen
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**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-3694/P1dn
JEO;jlg:km

December 14, 1999

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Adding the existing DOC pre-petition evaluation procedure to s. 980.015, stats., proved to be more complicated than I had anticipated. You should review the changes to ss. 980.015 and 980.02 (1), stats., carefully to make sure they do what you want. Also, the various provisions dealing with access to otherwise confidential records can get rather complex, so please review the provisions to make sure that the draft covers all of the records that you want to cover and that the right persons are getting access to the records at the appropriate time in the ch. 980 process.

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Jefren E. Olsen
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**SUBMITTAL
FORM**

**LEGISLATIVE REFERENCE BUREAU
Legal Section Telephone: 266-3561
5th Floor, 100 N. Hamilton Street**

The attached draft is submitted for your inspection. Please check each part carefully, proofread each word, and sign on the appropriate line(s) below.

Date: 12/15/1999

To: Senator Drzewiecki

Relating to LRB drafting number: LRB-3694

Topic

Sexually violent person commitments

Subject(s)

Criminal Law - miscellaneous, Mental Health - detent/commit

1. **JACKET** the draft for introduction Mary F. Drzewiecki

in the Senate or the Assembly (check only one). Only the requester under whose name the drafting request is entered in the LRB's drafting records may authorize the draft to be submitted. Please allow one day for the preparation of the required copies.

2. **REDRAFT.** See the changes indicated or attached _____.

A revised draft will be submitted for your approval with changes incorporated.

3. Obtain **FISCAL ESTIMATE NOW**, prior to introduction _____.

If the analysis indicates that a fiscal estimate is required because the proposal makes an appropriation or increases or decreases existing appropriations or state or general local government fiscal liability or revenues, you have the option to request the fiscal estimate prior to introduction. If you choose to introduce the proposal without the fiscal estimate, the fiscal estimate will be requested automatically upon introduction. It takes about 10 days to obtain a fiscal estimate. Requesting the fiscal estimate prior to introduction retains your flexibility for possible redrafting of the proposal.

If you have any questions regarding the above procedures, please call 266-3561. If you have any questions relating to the attached draft, please feel free to call me.

Jefren E. Olsen, Senior Attorney
Telephone: (608) 266-8906

Do analysis
of jacket for Seate