

Tues 1/18
by end of the day

r.m.r.

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

persons detained during a sexually violent person commitment proceeding and person committed for treatment after being found to be a

regenerate

1 AN ACT to amend 51.61 (1) (intro.) and 51.62 (3) (a) (intro.); and to create 51.30
2 (4) (b) 25., 51.62 (3g), 227.01 (13) (sp), 801.02 (8), 905.04 (4) (j) and 980.066 of
3 the statutes; relating to: policies concerning treatment and conduct of
4 sexually violent persons. ← period stays

Analysis by the Legislative Reference Bureau

ANALYSIS INSERT

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

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

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

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1-5

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

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

detained under
s. 980.04 (1) or

1 SECTION 2. 51.61 (1) (intro.) of the statutes is amended to read:

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

18 SECTION 3. 51.62 (3) (a) (intro.) of the statutes is amended to read:
19 ~~51.62 (3) (a) (intro.) The Except as provided in sub. (3g), the protection and~~
20 ~~advocacy agency may:~~
21 SECTION 4. 51.62 (3g) of the statutes is created to read:
22 51.62 (3g) SEXUALLY VIOLENT PERSONS EXCLUDED. The protection and advocacy
23 agency may not engage in any of the activities specified in sub. (3) (a) with respect
24 to a person who has been committed to institutional care under s. 980.06.

****NOTE: In accordance with language in the information provided with the drafting request, this subsection provides that the protection and advocacy agency under s. 51.62 doesn't have any authority with respect to ch. 980 patients. Given the broad definition of "individual with mental illness" in 42 USC 10802 (4), this subsection may conflict with (and thus may be preempted by) the federal law requirements concerning the protection and advocacy system. Compare *Oklahoma Disability Law Center v. Dillon Family and Youth Services*, 879 F. Supp. 1110 (N.D. Okla. 1995) (a case dealing with state law restrictions on access to records concerning mentally ill individuals).

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

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

****NOTE: This paragraph exempts the treatment and conduct policies and the grievance system from rule-making requirements.

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

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

****NOTE: This subsection requires exhaustion of administrative remedies before a suit may be filed concerning the treatment and conduct policies.

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

12 905.04 (4) (j) *Investigation of crimes; sexually violent persons.* There is no
 13 privilege under this section as to a communication made by or information
 14 concerning a person committed under s. 980.066 *if the communication or information*
 15 is relevant to the investigation of a criminal offense by a law enforcement agency, as
 16 defined in s. 165.83 (1) (b), and is contained in a record released under s. 51.30 (4)

17 (b) 25.

18 SECTION 8. 980.066 of the statutes is created to read:

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3-17

detained and committed

1 **980.066 Policies concerning treatment and conduct of persons**

2 ~~committed to institutional care~~ (1) DEFINITION. In this section, "institution
3 privileges" include liberty to move around a facility or a unit within a facility,
4 visitation privileges, access to and use of personal property, including clothing,
5 money, bank accounts and televisions, radios and other entertainment devices,
6 access to reading material, receipt and sending of mail, receipt and making of
7 telephone calls, access to religious worship or other religious activities,
8 activities.

***NOTE: Should this definition include something about the extent of a committed person's personal privacy?

9 (2) POLICIES RELATING TO TREATMENT AND CONDUCT. Subject to sub. (3), the

10 department shall establish and implement policies relating to treatment for and
11 detained under s. 980.04 (1) or and placed in institutional care
conduct of persons who have been committed under s. 980.06. The policies may

12 provide for distinct management levels that are based on a person's treatment needs,
13 on the person's management and
14 participation in treatment and conduct, on the security needs of the facility at which
a person is detained or placed and on other relevant factors, as determined by the department.

15 The management levels may differ from each other as to the responsibilities required
16 of, and the institution privileges allowed to, a person assigned to the management
17 level. The policies may also provide for all of the following:

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

22 (b) That a person may be assigned to a management level that limits or denies
23 institution privileges if the person violates any policy relating to conduct or fails or

1 refuses to participate in or complete prescribed treatment or any part or phase of
2 prescribed treatment.

3 (c) The use of physical restraint and isolation for purposes relating to a person's
4 treatment or ~~to prevent~~ ^{for purposes of preventing} a person from physically harming others or ~~protect~~ ^{protecting} a person
5 from being physically harmed by others.

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***NOTE: Paragraph (c) is based on some of the language found in s. 51.61 (1) (i) 1., stats. (CS) DETAINED AND and conduct

6 (3) RIGHTS OF COMMITTED PERSONS. The policies relating to treatment that are
7 established and implemented under sub. (2) shall provide the following rights to a
8 person committed under s. 980.06: to whom the policies apply

9 (a) The right not to be subjected, without the person's informed written consent,
10 to drastic treatment procedures, such as psychosurgery or electroconvulsive therapy.

***NOTE: Like s. 51.61 (1) (k), stats, paragraph (a) refers to electroconvulsive therapy. OK??

11 (b) ~~The right not to be subjected, without the person's informed written consent,~~
12 ^(3G) DT to experimental treatment or research that involves the use of any drug, ingested
13 substance, surgical procedure, ~~aversive conditioning~~ or other drastic or extreme
14 behavior modification techniques.

no change - just a stray mark

***NOTE: Paragraph (b) follows language contained in the information provided with the drafting request. Could denial or loss of institution privileges be considered "aversive" conditioning?

15 (c) (e) The right to be informed of any experimental treatment or research that will
16 be used, or that is being considered for use, to treat the person.

17 (d) The right to refuse psychotropic medication except in an emergency
18 situation or as ordered under sub. (5).

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5-18

***NOTE: Paragraph (d) is based on language contained in the information provided with the drafting request and is similar to some of the language in s. 51.61 (1) (i) 1., stats. I assume that you intended not to follow the language of s. 51.61 (1) (g) 1., stats. (medication or treatment may be refused except "in a situation in which the medication or treatment is necessary to prevent serious physical harm to the patient or to others").

1 (4) COMPETENCY GENERALLY. (a) No person is deemed incompetent to manage
 2 his or her affairs, to contract, to hold professional, occupational or motor vehicle
 3 operator's licenses, to marry or to obtain a divorce, to vote, to make a will or to
 4 exercise any other civil right solely by reason of his or her commitment under s.
 5 980.06.

detention under s. 980.04 (1) or

and conduct

and placed in institutional care

6 (b) Notwithstanding par. (a), the policies relating to treatment that are
 7 established and implemented under sub. (2) may limit the exercise of a civil right by
 8 a person who has been committed under s. 980.06 or may require the person to obtain
 9 the department's approval before exercise of a civil right, if the limitation or the
 10 requirement for the department's approval is reasonably related to the person's
 11 treatment needs, to the security of the facility or unit in which the person has been
 12 placed or to the safety of others.

detained under s. 980.04 (1) or

or management needs

detained or

****NOTE: Paragraph (a) is based on s. 51.59 (1), stats. Given that the treatment and conduct policies being considered will in some cases impose limits on the exercise of some of these rights, it is probably appropriate that the draft make it clear that, while a ch. 980 commitment doesn't carry a finding of incompetency, persons committed under ch. 980 may have these rights limited for the specified purposes. Okay?

detained under s. 980.04 (1) or

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

1 medication and that the person is not competent to refuse psychotropic medication,
2 based on an examination of the person by a licensed physician.

3 (b) Within 10 days after a motion is filed under par. (a), the court, without a jury,
4 shall determine the person's competency to refuse psychotropic medication. At the
5 request of the person or the person's counsel, the hearing may be postponed, but in
6 no case may the postponed hearing be held more than 20 days after a motion is filed
7 under this subsection. If the person and the person's counsel waive the opportunity
8 to present other evidence on the issue, the court shall determine the person's
9 competency to refuse psychotropic medication on the basis of the report
10 accompanying the motion. In the absence of these waivers, the court shall hold an
11 evidentiary hearing on the issue. Upon consent of all parties and approval by the
12 court for good cause shown, testimony may be received into the record of the hearing
13 by telephone or live audiovisual means.

14 (c) If, at a hearing under par. (b), the department proves by evidence that is
15 clear and convincing that the person is not competent to refuse psychotropic
16 medication under the standard specified in s. 51.61 (1) (g) 4, the court shall make
17 a determination and issue as part of the commitment order under s. 980.06 an order
18 that the person ~~defendant~~ is not competent to refuse psychotropic medication and that
19 whoever administers the medication to the person ~~defendant~~ shall observe appropriate
20 medical standards.

→ ***NOTE- Subsection (5) is based on 975.06(7), stats. In accordance with language in the information provided with the drafting request, it is limited to refusal to take psychotropic medication. Is that your intent?

21 (6) GRIEVANCE SYSTEM. The department shall establish a system by which a
22 person and placed in institutional care file committed under s. 980.06 may ~~make~~ a grievance concerning a policy
23 established under sub. (2) or an action taken toward the person under those policies.

detained under s. 980.04 (1) or

1 The grievance system shall have written policies and procedures regarding the uses
2 and operation of the grievance system and may provide for an informal process for
3 resolving grievances, a formal process for resolving grievances in cases in which the
4 informal process fails to resolve grievances, and a process to appeal to the director
5 of the unit or facility a decision made as part of any formal process for resolving
6 grievances.

****NOTE: Subsection (6) uses some of the language found in s. 51.61 (5) (a) and (b) stats.

detained under s. 980.04 (1) or

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(7) NOTICE OF POLICIES AND GRIEVANCE SYSTEM. A person committed under s. 980.06 *and placed in institutional care* shall, upon admission to the facility at which he or she is placed, be informed *detained or*

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orally and in writing of the policies established under sub. (2) and the grievance system established under sub. (6). Copies of the policies relating to conduct shall be

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posted conspicuously in areas of the facility to which persons committed under s. 980.06 *and placed in institutional care* regularly have access *that are regularly accessible*

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(8) APPLICABILITY. A person committed to institutional care *and placed in institutional care* under s. 980.06 is subject to the policies established under sub. (2) and is not subject to s. 51.61, 1997

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stats., regardless of whether the commitment order *detention order or* was issued before, on or after the effective date of this subsection [revisor inserts date].

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8-16

SECTION 9. Nonstatutory provisions.

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(1) DETERMINATION OF MANAGEMENT LEVEL FOR PERSONS COMMITTED UNDER CHAPTER 980. If the policies established under section 980.066 (2) of the statutes, as created by this act, relating to treatment for and conduct of persons committed to institutional care *detained or* under chapter 980 of the statutes create distinct management levels for those persons, the department of health and family services shall, no later than the first day of the 4th month beginning after the date on which the policies take

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*Detained under
Section 980.04
(1) of the statutes or*

- 1 effect, conduct an assessment of each person in its custody who has been placed in
- 2 institutional care pursuant to a commitment order issued under section 980.06 of the
- 3 statutes, regardless of the date on which the detention order or commitment
- 4 management level at which the person is to be placed.

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(END)

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ANALYSIS INSERT:

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

Current law

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

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

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

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

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

shift by staff and when needed for security purposes during certain emergencies, such an escape or attempted escape.

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

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

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

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

7) A right to present grievances under a grievance procedure that DHFS must establish to assure that these rights are protected and enforced (except that certain institutions, such as Mendota Mental Health Institute, establish their own grievance procedures).

*WFO
check
spacing*

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

What this bill does

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

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

The bill specifies that the policies established and implemented by DHFS may provide for a person to be assigned to a management level that allows additional institution privileges if the person complies with the policies relating to conduct and participates in and completes proscribed treatment or any part or phase of proscribed

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

also

The policies established under the bill must also provide certain rights to persons detained or committed to institutional care under the sexually violent person law, including the right to refuse psychotropic medication except in an emergency situation or when a court has determined, under the same standard provided under current law (see item 1 under *Current law*, above), that a person is not competent to refuse psychotropic medication, and the right not to be subjected, without the person's informed written consent, to drastic treatment procedures, such as psychosurgery or electroconvulsive therapy, or to experimental treatment or research that involves the use of any drug, ingested substance, surgical procedure or other drastic or extreme behavior modification techniques.

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

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

sexually violent offense that was the basis for the petition that initiated the sexually violent person commitment proceeding, unless the person presents sufficient reliable information that, if the person is released from detention or institutional care, he or she is likely to reside in some other place because the person has property in the other place, has family members residing in the other place or has other significant ties to the other place.

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

1 **INSERT 1-5:**

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

3 6.10 (7m) (a) Except as provided in par. (b), the residence of a person who is
4 detained under s. 980.04 (1) or committed under s. 980.06 and placed in institutional
5 care shall be determined by applying the standard specified in sub. (1) to the facts
6 that existed on the date that the person committed the sexually violent offense that
7 resulted in the sentence, placement or commitment that was in effect when the
8 petition against the person was filed under s. 980.02 and by considering the person's
9 physical presence on the date of that sexually violent offense to be prima facie
10 evidence of intent to remain.

11 (b) A person who is detained under s. 980.04 (1) or committed under s. 980.06
12 and placed in institutional care may present information that, if the person is
13 released from detention or institutional care, he or she is likely to reside, under the
14 standard specified in sub. (1), in a place other than the place of residence determined
15 under par. (a) because the person has property in the other place, has family
16 members residing in the other place or has other significant ties to the other place.
17 If there is sufficient reliable information that the person will likely reside in a place
18 other than the place of residence determined under par. (a) if the person is released
19 from detention or institutional care, then the place where the person will likely
20 reside is the person's residence.



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

2 6.30 (4) BY MAIL. Any eligible elector who is located not more than 50 miles from
3 his or her legal voting residence or any person who is detained under s. 980.04 (1) or
4 committed under s. 980.06 and placed in institutional care may register by mail on
5 a form prescribed by the board and provided by each municipality. The form shall
6 be designed to obtain the information required in ss. 6.33 (1) and 6.40 (1) (a) and (b).
7 The form shall contain a certification by the elector that all statements are true and
8 correct. The form shall be prepostpaid for return when mailed at any point within
9 the United States, and. The form shall be signed by a special registration deputy, or
10 shall be signed and substantiated by one other elector residing in the same
11 municipality in which the registering elector resides or, in the case of a person
12 detained under s. 980.04 (1) or committed under s. 980.06 and placed in institutional
13 care, by a designated employe of the department of health and family services,
14 corroborating all material statements therein. The form shall be available in the
15 municipal clerk's office and may be distributed by any elector of the municipality.
16 The clerk shall mail a registration form to any elector upon written or oral request.

History: 1971 c. 249; 1973 c. 85 ss. 12, 65; 1973 c. 199, 200, 275, 422; 1977 c. 283, 394; 1983 a. 484; 1989 a. 192.

INSERT 3-17:

17
18 SECTION 3. 980.065 (1m) of the statutes, as affected by 1999 Wisconsin Act 9,
19 is amended to read:

20 980.065 (1m) ~~The department shall place~~ If a person is committed under s.
21 980.06 and placed in institutional care, the department shall place the person at the
22 secure mental health facility established under s. 46.055, the Wisconsin resource



1 center established under s. 46.056 or a secure mental health unit or facility provided
2 by the department of corrections under sub. (2).

History: 1999 a. 9.

3 SECTION 4. 980.065 (2) of the statutes, as affected by 1999 Wisconsin Act 9, is
4 amended to read:

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

History: 1999 a. 9.

INSERT 5-5:

12
13 (d) That all persons in a facility or in a unit of a facility may be locked in their
14 rooms during the night shift, for a specified period during each change of shift by staff
15 or as an emergency measure as needed for security purposes. If the policies provide
16 for periods of unit-wide or facility-wide isolation, the policies shall require staff to
17 periodically review the status of each person to ensure the health and safety of the
18 person.

19 (e) The use of physical restraint for security reasons during transport to or from
20 the facility in which the person has been detained ^{or} placed.

INSERT 5-18:

21
22 (d) The right to reasonable privacy in toileting and bathing, subject to
23 reasonable measures, including video and audio monitoring, that are related to the

1 protection of the person from harm, to the protection of other persons from harm or
2 to other security or management needs of the facility or unit.

3 **INSERT 8-16:**

4 SECTION 5. 980.08 (1) of the statutes, as affected by 1999 Wisconsin Act 9, is
5 amended to read:

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

History: 1999 a. 9.

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

15 980.08 (6m) An order for supervised release places the person in the custody
16 and control of the department. The department shall arrange for control, care and
17 treatment of the person in the least restrictive manner consistent with the
18 requirements of the person and in accordance with the plan for supervised release
19 approved by the court under sub. (5). A person on supervised release is subject to the
20 conditions set by the court and to the rules of the department. Before a person is
21 placed on supervised release by the court under this section, the court shall so notify
22 the municipal police department and county sheriff for the municipality and county
23 in which the person will be residing. The notification requirement under this
24 subsection does not apply if a municipal police department or county sheriff submits



1 to the court a written statement waiving the right to be notified. If the department
 2 alleges that a released person has violated any condition or rule, or that the safety
 3 of others requires that supervised release be revoked, he or she may be taken into
 4 custody under the rules of the department. The department shall submit a
 5 statement showing probable cause of the detention and a petition to revoke the order
 6 for supervised release to the committing court and the regional office of the state
 7 public defender responsible for handling cases in the county where the committing
 8 court is located within 72 hours after the detention, excluding Saturdays, Sundays
 9 and legal holidays. The court shall hear the petition within 30 days, unless the
 10 hearing or time deadline is waived by the detained person. Pending the revocation
 11 hearing, the department may detain the person in a jail or in a hospital, center or
 12 facility specified by s. 51.15 (2). The state has the burden of proving by clear and
 13 convincing evidence that any rule or condition of release has been violated, or that
 14 the safety of others requires that supervised release be revoked. If the court
 15 determines after hearing that any rule or condition of release has been violated, or
 16 that the safety of others requires that supervised release be revoked, it may revoke
 17 the order for supervised release and order that the released person be placed again
 18 ~~in an appropriate institution~~ institutional care until the person is discharged from
 19 the commitment under s. 980.09 or until again placed on supervised release under
 20 this section.

History: 1999 a. 9.

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

23 980.09 (1) (c) If the court is satisfied that the state has not met its burden of
 24 proof under par. (b), the petitioner shall be discharged from the custody or



1 supervision of the department. If the court is satisfied that the state has met its
2 burden of proof under par. (b), the court may proceed to determine, using the criterion
3 specified in s. 980.08 (4), whether to modify the petitioner's existing commitment
4 order by authorizing placement on supervised release.

History: 1999 a. 9.

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

7 980.09 (2) (c) If the court is satisfied that the state has not met its burden of
8 proof under par. (b), the person shall be discharged from the custody or supervision
9 of the department. If the court is satisfied that the state has met its burden of proof
10 under par. (b), the court may proceed to determine, using the criterion specified in
11 s. 980.08 (4), whether to modify the person's existing commitment order by
12 authorizing placement on supervised release.

History: 1999 a. 9.

INSERT 9-4:

14 **SECTION 9. Effective date.**

15 (1) This act takes effect on the first day of the 7th month beginning after ~~the~~
16 effective date of this subsection.

publication
(END OF INSERTS)

Olsen, Jefren

From: Olsen, Jefren
Sent: Tuesday, January 18, 2000 3:07 PM
To: Stier, Daniel; Flood, Laura; Alt, Thomas; Kiesow, John; Lewis, Kevin
Subject: Ch. 980 patient rights

Attached is the next redraft of the ch. 980 draft. As I mentioned to Dan this morning, it is not a "/1" because the election law expert here is still reviewing the changes to s. 6.10, stats. He thinks that there may have to be some provision for allowing a person to vote in the municipality in which the facility is located if the person intends not to return to the place the offense was committed but also has no real intent to go anywhere else either (as an example, the person who was drifting through the state when he committed the offense). A similar issue came up some years ago when some university towns wanted to keep students from voting in local elections on the theory that the students "resided" where their parents lived. Ultimately those towns had to accept student voters if the students had no intent to return to where their parents lived, even if it was also true that they did not intend to settle down in the university town.

Also, proposed s. 980.066 now refers to persons detained under s. 980.04 (1). However, can the policies for those persons be based on their treatment needs? They haven't been committed yet, so the state's power to force or attempt to force treatment on them is likely more limited compared to the state's power with respect to persons found to be sexually violent persons. Thus, the draft may need to provide a separate grant of authority to create policies for detainees that are based mostly on their conduct.

Once you have had a chance to review the draft, one of you can give me a call and we can discuss how to proceed. Note that the draft has an analysis and can be quickly converted to an introducible "/1" version if you have few or no changes.



99-3970/P2

Attorney Jefren E. Olsen
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Olsen, Jefren

From: Olson, Jefren
Sent: Tuesday, January 18, 2000 4:23 PM
To: Stier, Daniel; Flood, Laura; Alt, Thomas; Kiesow, John; Lewis, Kevin
Subject: Voting by ch. 980 patients

The election law drafter believes that the language I created as proposed s. 6.10 (7m) raises both practical and legal problems and suggests that it be redrafted to read as follows: "The residence of a person who is detained under s. 980.04 (1) or committed under s. 980.06 and placed in institutional care shall be determined by applying the standard specified in sub. (1) to the facts that existed on the date that the person committed the sexually violent offense that resulted in the sentence, placement or commitment that was in effect when the petition against the person was filed under s. 980.02 and by considering the person's residence at the place where the person resided on the date of that sexually violent offense to be prima facie evidence of intent to return to that place. The prima facie evidence of intent to return to a place may be rebutted by presenting information that indicates that the person would not be likely to return to that place if the person is released from detention or institutional care."

Let me know your thoughts or comments.

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Olsen, Jefren

From: Oleon, Jefren
Sent: Tuesday, January 18, 2000 5:50 PM
To: Stier, Daniel
Subject: RE: Voting by ch. 980 patients

I'll go ahead and make that change to s. 6.10 (7m). Let me know if you have any other changes; I'll be here till about 9:00 p.m. If I can make the changes tonight I can have the draft run to "/1" first thing tomorrow morning.

Attorney Jefren E. Olsen
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-----Original Message-----

From: Stier, Daniel
Sent: Tuesday, January 18, 2000 5:41 PM
To: Kiesow, John; Lewis, Kevin; Alt, Thomas; Flood, Laura; Olsen, Jefren
Subject: Re: Voting by ch. 980 patients

This language should protect Mauston. If the guy wants to claim that the county of his offense is not his residence for voting purposes, he has to introduce evidence that he plans to go elsewhere upon release. "Elsewhere" won't be Mauston, so I think we're covered.

>>> Olsen, Jefren 1/18/00 4:23:28 PM >>>

The election law drafter believes that the language I created as proposed s. 6.10 (7m) raises both practical and legal problems and suggests that it be redrafted to read as follows: "The residence of a person who is detained under s. 980.04 (1) or committed under s. 980.06 and placed in institutional care shall be determined by applying the standard specified in sub. (1) to the facts that existed on the date that the person committed the sexually violent offense that resulted in the sentence, placement or commitment that was in effect when the petition against the person was filed under s. 980.02 and by considering the person's residence at the place where the person resided on the date of that sexually violent offense to be prima facie evidence of intent to return to that place. The prima facie evidence of intent to return to a place may be rebutted by presenting information that indicates that the person would not be likely to return to that place if the person is released from detention or institutional care."

Let me know your thoughts or comments.

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State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-3970/P2
JEO:cmh:hmh

This a.m.

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1

r.m.v.

*regen
cost*

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

Analysis by the Legislative Reference Bureau

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

Current law

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

A procedure for the involuntary commitment of a sexually violent person is begun by the filing of a petition that alleges that the person is a sexually violent person. The petition must be filed shortly before the person is going to be released

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

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

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

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

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

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

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

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

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

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

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

What this bill does

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

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

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

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

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

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

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

ANALYSIS
INSERT

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

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

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

2

6.10 (7m) ~~(a) Except as provided in par. (b),~~ the residence of a person who is
3 detained under s. 980.04 (1) or committed under s. 980.06 and placed in institutional

1 care shall be determined by applying the standard specified in sub. (1) to the facts
2 that existed on the date that the person committed the sexually violent offense that
3 resulted in the sentence, placement or commitment that was in effect when the
4 petition against the person was filed under s. 980.02 and by considering the person's
5 ~~physical presence~~ *residence at the place where the person resided* on the date of that sexually violent offense to be prima facie

6 evidence of intent to ~~remain~~ *return to that place* *presenting information which indicates*

INS
5-6

7 ~~(b) A person who is detained under s. 980.04 (1) or committed under s. 980.06
8 and placed in institutional care may present information that, if the person is
9 released from detention or institutional care, he or she is likely to reside, under the
10 standard specified in sub. (1), in a place other than the place of residence determined
11 under par. (a) because the person has property in the other place, has family
12 members residing in the other place or has other significant ties to the other place.
13 If there is sufficient reliable information that the person will likely reside in a place
14 other than the place of residence determined under par. (a) if the person is released
15 from detention or institutional care, then the place where the person will likely
16 reside is the person's residence.~~

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

18 6.30 (4) BY MAIL. Any eligible elector who is located not more than 50 miles from
19 his or her legal voting residence or any person who is detained under s. 980.04 (1) or
20 committed under s. 980.06 and placed in institutional care may register by mail on
21 a form prescribed by the board and provided by each municipality. The form shall
22 be designed to obtain the information required in ss. 6.33 (1) and 6.40 (1) (a) and (b).
23 The form shall contain a certification by the elector that all statements are true and
24 correct. The form shall be prepostpaid for return when mailed at any point within
25 the United States, ~~and~~. The form shall be signed by a special registration deputy, or

1 shall be signed and substantiated by one other elector residing in the same
2 municipality in which the registering elector resides or, in the case of a person
3 detained under s. 980.04 (1) or committed under s. 980.06 and placed in institutional
4 care, by a designated employe of the department of health and family services,
5 corroborating all material statements therein. The form shall be available in the
6 municipal clerk's office and may be distributed by any elector of the municipality.
7 The clerk shall mail a registration form to any elector upon written or oral request.

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

9 51.30 (4) (b) 25. To a law enforcement agency, as defined in s. 165.83 (1) (b), for
10 the purpose of investigating a criminal offense. Records released under this
11 subdivision are limited to records concerning a person detained under s. 980.04 (1)
12 or committed under s. 980.06 and placed in institutional care that are relevant to the
13 investigation of the offense.

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

15 51.61 (1) (intro.) In this section, "patient" means any individual who is
16 receiving services for mental illness, developmental disabilities, alcoholism or drug
17 dependency, including any individual who is admitted to a treatment facility in
18 accordance with this chapter or ch. 48 or 55 or who is detained, committed or placed
19 under this chapter or ch. 48, 55, 971, or 975 or 980, or who is transferred to a
20 treatment facility under s. 51.35 (3) or 51.37 or who is receiving care or treatment
21 for those conditions through the department or a county department under s. 51.42
22 or 51.437 or in a private treatment facility. "Patient" does not include persons
23 committed under ch. 975 who are transferred to or residing in any state prison listed
24 under s. 302.01 or persons detained under s. 980.04 (1) or committed under s. 980.06
25 and placed in institutional care. In private hospitals and in public general hospitals,

1 “patient” includes any individual who is admitted for the primary purpose of
2 treatment of mental illness, developmental disability, alcoholism or drug abuse but
3 does not include an individual who receives treatment in a hospital emergency room
4 nor an individual who receives treatment on an outpatient basis at those hospitals,
5 unless the individual is otherwise covered under this subsection. Except as provided
6 in sub. (2), each patient shall:

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

8 227.01 (13) (sp) Establishes policies under s. 980.066 (2) relating to treatment
9 for and conduct of persons who have been detained under s. 980.04 (1) or committed
10 under s. 980.06 and placed in institutional care, or establishes a grievance system
11 under s. 980.066 (6).

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

13 801.02 (8) No person detained under s. 980.04 (1) or committed under s. 980.06
14 and placed in institutional care may commence a civil action or special proceeding,
15 including a petition for a writ of certiorari, with respect to a policy established under
16 s. 980.066 (2) or an action taken to implement those policies until the person has
17 exhausted all available administrative remedies provided by the grievance system
18 established under s. 980.066 (6).

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

20 905.04 (4) (j) *Investigation of crimes; sexually violent persons.* There is no
21 privilege under this section as to a communication made by or information
22 concerning a person detained under s. 980.04 (1) or committed under s. 980.06 and
23 placed in institutional care if the communication or information is relevant to the
24 investigation of a criminal offense by a law enforcement agency, as defined in s.
25 165.83 (1) (b), and is contained in a record released under s. 51.30 (4) (b) 25.

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

3 980.065 (1m) ~~The department shall place~~ If a person is committed under s.
4 980.06 and placed in institutional care, the department shall place the person at the
5 secure mental health facility established under s. 46.055, the Wisconsin resource
6 center established under s. 46.056 or a secure mental health unit or facility provided
7 by the department of corrections under sub. (2).

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

10 980.065 (2) The department may contract with the department of corrections
11 for the provision of a secure mental health unit or facility for persons committed
12 under s. 980.06 and placed in institutional care. The department shall operate a
13 secure mental health unit or facility provided by the department of corrections under
14 this subsection and shall promulgate rules governing the custody and discipline of
15 persons placed by the department in the secure mental health unit or facility
16 provided by the department of corrections under this subsection.

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

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

1 (2) POLICIES RELATING TO TREATMENT AND CONDUCT. Subject to sub. (3), the
2 department shall establish and implement policies relating to treatment for and
3 conduct of persons who have been detained under s. 980.04 (1) or committed under
4 s. 980.06 and placed in institutional care. The policies may provide for distinct
5 management levels that are based on a person's treatment needs, on the person's
6 participation in treatment and conduct, on the management and security needs of
7 the facility at which a person is detained or placed and on other relevant factors, as
8 determined by the department. The management levels may differ from each other
9 as to the responsibilities required of, and the institution privileges allowed to, a
10 person assigned to the management level. The policies may also provide for all of the
11 following:

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

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

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

23 (d) That all persons in a facility or in a unit of a facility may be locked in their
24 rooms during the night shift, for a specified period during each change of shift by staff
25 or as an emergency measure as needed for security purposes. If the policies provide

1 for periods of unit-wide or facility-wide isolation, the policies shall require staff to
2 periodically review the status of each person to ensure the health and safety of the
3 person.

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

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

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

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

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

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

22 (4) COMPETENCY GENERALLY. (a) No person is deemed incompetent to manage
23 his or her affairs, to contract, to hold professional, occupational or motor vehicle
24 operator's licenses, to marry or to obtain a divorce, to vote, to make a will or to

1 exercise any other civil right solely by reason of his or her detention under s. 980.04
2 (1) or commitment under s. 980.06.

3 (b) Notwithstanding par. (a), the policies relating to treatment and conduct
4 that are established and implemented under sub. (2) may limit the exercise of a civil
5 right by a person who has been detained under s. 980.04 (1) or committed under s.
6 980.06 and placed in institutional care or may require the person to obtain the
7 department's approval before exercise of a civil right, if the limitation or the
8 requirement for the department's approval is reasonably related to the person's
9 treatment needs, to the security or management needs of the facility or unit in which
10 the person has been detained or placed or to the safety of others.

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

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

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

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

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

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

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

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

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

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

24 980.08 (6m) An order for supervised release places the person in the custody
25 and control of the department. The department shall arrange for control, care and

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

1 in ~~an appropriate institution~~ institutional care until the person is discharged from
2 the commitment under s. 980.09 or until again placed on supervised release under
3 this section.

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

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

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

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

20 **SECTION 15. Nonstatutory provisions.**

21 (1) DETERMINATION OF MANAGEMENT LEVEL FOR PERSONS COMMITTED UNDER
22 CHAPTER 980. If the policies established under section 980.066 (2) of the statutes, as
23 created by this act, relating to treatment for and conduct of persons detained or
24 committed under chapter 980 of the statutes create distinct management levels for
25 those persons, the department of health and family services shall, no later than the

1 first day of the 7th month beginning after the date on which the policies take effect,
2 conduct an assessment of each person in its custody who has been detained under
3 section 980.04 (1) of the statutes or placed in institutional care pursuant to a
4 commitment order issued under section 980.06 of the statutes, regardless of the date
5 on which the detention order or commitment order was issued, to determine the
6 management level at which the person is to be placed.

7 **SECTION 16. Effective date.**

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

10 (END)

1999-2000 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3970/lins
JEO:.....

1

ANALYSIS INSERT:

(29)

Under the bill, the person is presumed to intend to return to the place he or she resided at the time of the commission of the sexually violent offense unless he or she presents information that indicates that he or she would not be likely to return to that place if released from detention or institutional care.

where

2

INSERT 5-6:

3

(29)

The prima facie evidence of intent to return to a place may be rebutted by presenting

4

information that indicates that the person would not be likely to return to that place

5

if the person is released from detention or institutional care.

(END
OF
INSERT)