

1999 DRAFTING REQUEST

Bill

Received: 12/20/1999

Received By: **olsenje**

Wanted: As time permits

Identical to LRB:

For: **Charles Chvala (608) 266-9170**

By/Representing: **Doug**

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

Drafter: **olsenje**

May Contact:

Alt. Drafters:

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

Extra Copies: **DAK
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>
/?	olsenje 01/19/2000	gilfokm 01/20/2000		_____			S&L
/P1			jfrantze 01/21/2000 haugeca 01/21/2000	_____	lrb_docadmin 01/21/2000		S&L
/1	olsenje 02/07/2000 olsenje 02/09/2000	gilfokm 02/09/2000	kfollet 02/09/2000	_____		lrb_docadmin 02/09/2000	

FE Sent For:

<END>

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/?	olsenje 01/19/2000	gilfokm 01/20/2000		_____			S&L
/P1		<i>1-2-7-2000 kmj</i>	jfrantze 01/21/2000 haugca 01/21/2000	_____	lrb_docadmin 01/21/2000		
FE Sent For:			<i>Kjt 2/9</i>	<i>Kjf/jf 2/9</i>			

Jacket "1" for Senate

JEO

<END>

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1?	olsenje	<i>Draft has *** refs.</i>	<i>CH 1-21</i>	<i>CH 1/21</i>			

FE Sent For:

<END>



State Senator
Chuck Chvala
SENATE MAJORITY LEADER

4105

FAX COVER SHEET

TO: Bob Nelson

FROM: Doug Burnett

RE: _____

PAGES: 9 (Including Cover)

DATE: 12-9

NOTES

Bob - Attached are sex predator modifications from DOJ. Please draft for Sen. Chvala, & you may talk w/ DOJ staff on the instructions. See 97-4610 following



4610

facsimile transmittal

To: Jefren Olsen

Fax: 4-8522

From: Doug Burnett, Sen. Chvala

Date: December 18, 1997

Re: Sex predator language

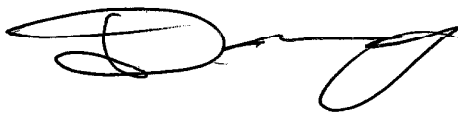
Pages: 10

CC:

Urgent For Review Please Comment Please Reply Please Recycle

Notes: These are the drafting instructions for sex predator modifications I talked to you about today. This is a high priority drafting request: we'd like to get it introduced in January if at all possible. The instructions are from DOJ via Andy Cohn, who you are authorized to discuss this request with. Andy can also authorize a DOJ lawyer to discuss this with you, however, any drafts (P- or introducible) should only be released to Sen. Chvala's office. Thanks, and feel free to give me a call at 6-9170 if you have questions.

Jefren - I changed my mind and decided to have a page bring this over. Thanks,



rec'd
12/19

STATUTORY MODIFICATIONS TO CH. 980

I. FLOW OF INFORMATION, PRIVILEGE AND CONFIDENTIALITY.

~~A.~~ Amend § 51.30(4)(b)8m as follows:

To appropriate examiners and facilities in accordance with secs. 971.17(2) (e) (4) (c) and (7) (c), 980.015(3b), 980.03(4) or 980.08(3). The recipient of any information from the record shall keep the information confidential except as necessary to comply with sec. 971.17 or ch. 980;

~~B.~~ Amend § 905.04(4)-~~Exceptions~~ (a) to read:

There is no privilege under this rule as to communications and information relevant to an issue in proceedings to hospitalize the patient for mental illness, for the control, care and treatment of sexually violent persons under ch. 980, to appoint a guardian under 880.33 . . .

~~C.~~ Create a new section § 972.15 (6) to read:

The presentence investigation report and the information contained therein may be used by the department of corrections, the department of health and family services, the parties and their experts, the fact-finder and the court in any evaluation, referral, hearing, trial or postcommitment proceeding under chapter 980.

II. SECTION 980.01 DEFINITIONS

~~A.~~ Amend 980.01 (5) to read: *NB - x-refs*

"Sexually motivated" means that one of the purposes for an act is for the actor's sexual arousal or gratification- or the sexual humiliation or degradation of the victim.

~~B.~~ Amend §§ 980.01 (6)(a), (b) & (c) to include this additional language at the end of each:

and their predecessors.

~~C.~~ Amend § 980.01 (6)(a) to include: § 940.22 (sexual exploitation by therapist).

~~D.~~ Amend § 6 (b) to include these additional crimes in the sexually motivated category:

§§ 940.03 (felony murder) 941.32 (administer stupifying or dangerous drug), 941.38 (criminal gang solicitation),

943.02 (arson), 943.32 (robbery) and 948.03 (physical abuse of a child)

E. Amend 980.01 (7) to read:

.... suffers from a mental disorder that makes it likely that the person will engage in one or more acts of sexual violence. "Likely" means that it is more probable than not that the person will engage in such acts.

III SECTION 980.015 NOTICE

A. Amend 980.015 (2) (c) to read:

cl (2) (d)

The termination or discharge of a person who has been found not guilty of a sexually violent offense by reason of mental disease or defect under s.971.17 or committed under ch. 975.

This would clarify that the law applies to persons committed under ch. 975, i.e. codify Post & Oldakowski.

B. Amend § 980.015 (4) to read:

Any agency or officer, employe or agent of any agency is immune from criminal or civil liability for any acts or omissions as the result of a good faith effort to comply with this section chapter.

IV. SECTION 980.02 PETITION, CONTENTS, FILING:

A. Section 980.02(1) (b) should be amended as follows:

Leave (1) (b) 1 and 2 as is and add 3 which would read:

The county in which the person is in custody under a sentence, a placement to a secured correctional facility, as defined in sec. 48.02(15) (m), or a commitment order.

B. Section 980.02 (2) (a), leave 1, 2 and 3 as is and subsec. (2g) should be renumbered 4 without parentheticals and read as follows:

The person is within 90 days of discharge or release on parole or otherwise, from a sentence that was imposed for a conviction for a sexually violent offense, from a continuous term of incarceration any part of which was imposed for a sexually violent offense, from a secured correctional facility, as defined in s.938.02 (15m), or a secured child caring institution, as defined in s. 938.01 (15g), if the person was placed in the facility

for being adjudicated delinquent under s. 938.34 on the basis of a sexually violent offense or from a commitment order that was entered as a result of a sexually violent offense.

This idea is from corrections, the language is ours. Strevler advises it is getting more and more difficult to determine what sentence is being served at any given time and which is done or yet to begin.

Section 980.02 (2) (b) should be renumbered to simply be § 980.02 (2) (5) and (c) should be § 980.02 (2) (6).

Create § 980.02 (2) ~~7~~ to read: 980.02 (6)

Any motions challenging the jurisdiction of the court or the timeliness of the petition must be filed within 10 days of the probable cause finding or be waived.

Section 980.02(4) should read:

A petition under this section shall be filed in any one of the following:

Subsections should be relettered (a), (b) and (c) as opposed to (am) and (b). For example: (a) County of conviction, (b) County of intended release, (c) County of custody.

Create § 980.02 (4) (d) to read:

In proceedings under this chapter circuit courts, not juvenile courts, have jurisdiction over juveniles.

Create § 980.02 (5) ~~to read:~~ ^{and a Act 27}

The respondent does not have to be personally served with a verified petition and summons, or order for detention and probable cause hearing for a court to exercise personal jurisdiction.

V. SECTION 980.03 RIGHTS OF PERSON:

A. Amend (3) by deleting the third sentence which reads:

~~Notwithstanding sec. 980.05(2), if the person, the person's attorney, the Department of Justice or the district attorney does not request a jury trial, the court may, on its own motion, require that the trial be to a jury of twelve.~~

Not correct numbering

980.045

Why needed?
48.14
2938, subch III

2 places

B. Subsection (4) should be amended to start with the following language:

check other places in 980

If the respondent has entered a denial to the facts of the petition, the court may appoint at least one physician, psychologist or other professional person to examine the respondent and testify at trial. Compensation for the court-appointed expert shall be in accordance with sec. 980.12. The state may retain a physician, psychologist or other professional person to examine the respondent and testify at trial.

K-ref not needed

The current first sentence of sec. 980.03(4) would become the fourth sentence. The second sentence would become the fifth and should be amended to read:

If a party retains or the court appoints a qualified expert or professional person to conduct an evaluation, the examiner shall have reasonable access to the person for the purpose of evaluation, as well as to the person's past and present correctional records, including presentence investigations, treatment records, as defined in sec. 51.30(1)(b), and patient health care records as provided under sec. 146.82(2)(c).

The current last sentence of (4) would follow and should be amended to read:

An expert or professional person retained by either party or appointed by the court may not be subject to any order by the court for the sequestration of witnesses at any proceeding under this chapter.

It would be followed by this new language:

No expert retained by a party or appointed by the court will be permitted to give testimony unless a written report of his or her evaluation of the respondent has been submitted to the court and both parties at least ten days before trial.

VI. DETENTION AND PROBABLE CAUSE PROCEDURES.

~~A.~~ Amend § 980.04 (1) second sentence to read:

The person shall be detained only if there is probable cause to believe that the person is eligible for commitment under sec. 980.05(5).

~~B.~~ Amend § 980.04 (2) to read:

Whenever a petition is filed under s. 980.02, the court shall hold a hearing to determine whether there is probable cause to believe that the person named in the petition is a sexually violent person. If the person named in the petition is in custody, ~~the court shall hold the probable cause hearing within 72 hours after the petition is filed, excluding Saturdays, Sundays and legal holidays~~ the probable cause hearing may be held at any time after the filing of a petition. However, if the probable cause hearing is to be held after the release or discharge date of the subject of the petition, the hearing shall commence within 72 hours after the filing of the petition, excluding Saturdays, Sundays or legal holidays. However, the court may extend the time for the probable cause hearing for good cause shown upon its own motion, the motion of any party or the stipulation of the parties. If the person is not in custody, the court shall hold the probable cause hearing within a reasonable time after the filing of the petition.

Call it out for definition (p. 7)

Comment: This amendment somewhat follows the procedures set forth in sec. 51.20 (7) (a), Stats. It permits the parties and the court ~~more~~ flexibility in the scheduling of a probable cause hearing, especially if the petition is filed early enough such that a probable cause hearing is scheduled to occur before the anticipated release or discharge date, since the subject would not be entitled to release prior to the release or discharge date.

~~C.~~ Section 980.04 (3) should be amended to read as follows:

If the court determines after a hearing that there is probable cause to believe that the person named in the petition is a sexually violent person, the court shall order that the person be taken into custody if he or she is not in custody and shall order the person to be transferred within a reasonable time to an appropriate facility as determined by the department and undergo an evaluation to be conducted by the department as to whether the person is a sexually violent person. If the court determines that probable cause does

not exist to believe that the person is a sexually violent person, the court shall dismiss the petition.

COMMENT: This change clarifies the role of the department at this stage of the proceeding.

VII. CREATE § 980.045 ENTITLED: Procedures:

*Add
time for
challenge
juror 15. 3
P. letter D*

*A. ✓
B. ✓
C. ✓
D. ✓
E. ✓*

A. Competency determinations

Should occur as provided in section 971.14 ??

B. Substitution of Judge

Should occur as provided in section 971.20

C. Change of Venue

Should occur as provided in section 971.22

D. Discovery

Discovery in these proceedings shall occur as provided in secs. 971.23, .24 and .25 as amended by 1995 Wisconsin Act 387.

NB. Recall of 980.05 (1m)

E. Evidence

(1) At any hearing under this chapter, the state may elicit evidence or comment on evidence that the subject of a petition filed under this chapter or the person committed under this chapter elected not to participate in an interview or testing with any appointed or retained examiner.

(2) Examiners may indicate in their written reports filed or prepared in connection with proceedings under this chapter that the subject of the petition or the person committed under this chapter elected not to participate in an interview or testing with the examiner.

(3) Eliciting evidence, commenting on evidence or including in written reports the information described in subs. (a) and (b) does not violate the right to remain silent conferred in s. 980.03 (2).

F. ✓

F. Post Commitment Proceedings

(1) An appeal may be taken to the court of appeals within the time period specified in s. 808.04 (3)

in accordance with s. 809.40 by the subject of the petition or by the state.

Comment: This language tracks that found in § 51.20 (15).

(2) Amend 808.04 (3) to read:

Except as provided in sub. (7m), an appeal in a criminal case or a case under ch. 48, 51, 55, 938 or 980 shall be initiated within the time period specified in s. 809.30.

(3) Amend 809.40 (1) to read:

An appeal to the court of appeals from a judgment or order in a misdemeanor case or a ch. 48, 51, 55, 938 or 980 case, or a motion for postconviction relief in a misdemeanor case, or a motion for postcommitment relief in ch. 980 case must be initiated within the time periods specified in s. 808.04 and is governed by the procedures specified in s. 808.30 to 809.32.

VIII TRIAL

Delete § 980.05 (1m); it currently reads:

~~At the trial to determine whether the person who is the subject of a petition under s. 980.02 is a sexually violent person, all rules of evidence in criminal actions apply. All constitutional rights available to a defendant in a criminal proceeding are available to the person.~~

IX. PERIODIC REEXAMINATION

Delete § 980.07 (3); it currently reads:

~~Notwithstanding sub. (1), the court that committed a person under s. 980.06 may order a reexamination of the person at any time during the period in which the person is subject to the commitment order.~~

X. SUPERVISED RELEASE § 980.08

A. Amend, subsec. (3) by inserting two sentences, after the first sentence and before the second sentence, which would read:

At a hearing under this section, the petitioner and the district attorney or the Department of Justice,

shall have the right to have the petitioner examined by an expert or professional person of his or her choice. The examiner shall file the reports with the court within forty-five days of the appointment.

X B. Amend subsec. (4), first sentence as follows:

The court, without a jury, shall the hear the petition within thirty days after all examiners' report are filed with the court unless the time limit is waived by the parties or for cause shown by the court.

XI DISCHARGE PROCEEDINGS §980.09

A Amend 980.09 (1)(b) to read

~~The hearing shall be before the court without a jury. The person who is the subject of the discharge petition, the person's attorney, the department of justice or the district attorney may request that a hearing under this section be to a jury of 6.~~

B. Amend § 980.09 (2)(a), beginning with the third sentence, to read as follows:

~~The notice shall contain a waiver of rights. The secretary shall forward a copy of the notice and waiver form to the court with the report of the department's examination under s. 980.07. The department shall file proof with the court that the person received the notice. If the person does not affirmatively waive the right to a petition, petitions for discharge without the secretary's approval, the court shall set a probable show cause hearing to determine whether facts exist that warrant a hearing on whether the person is still a sexually violent person. The committed person has a right to to have an attorney represent him or her at the probable show cause hearing, but the person is not entitled to be present at the probable show cause hearing.~~

C. Amend § 980.09 (2)(b), fourth sentence, to read as follows:

~~The hearing under this paragraph shall be to the court. Insert the very same language used above to amend § 980.09 (1)(b).~~

These changes in §§ 980.09 (1)(b) and (2)(b) codify the Post & Oldakowski holdings. The language utilized mirrors that

which appears in § 980.05 (2). The change to § 980.09 (2) (a) puts the burden on the respondents to request a hearing rather than get one by default. The change also reflects the Paulick decision as well.

XII. THESE CHANGES EFFECT ALL CASES FILED ON OR AFTER THE DAY OF PUBLICATION.

Sections Affected Post-Drafting-Check For 97-4610/P1

Friday, January 9, 1998 11:45 am

Current Wisconsin Statutes updated through 1997 Act 60

SECTION (Sub)(Par)	TREATMENT	AFFECTED BY
✓ 46.10(2)	am.	Act 0027
46.48(15)(a)1.	(aff. 1997 WisAct 27) r. effec. 1-1-98	Act 0027
46.48(15)(a)2.	(aff. 1997 WisAct 27) r. effec. 1-1-98	Act 0027
46.48(15)(a)3.	(aff. 1997 WisAct 27) r. effec. 1-1-98	Act 0027
46.48(16)(a)	(aff. 1997 WisAct 27) r. effec. 1-1-98	Act 0027
46.48(15)(a)1.	am.	Act 0027
46.48(15)(a)2.	am.	Act 0027
46.48(15)(a)3.	am.	Act 0027
46.48(16)(a)	am.	Act 0027
46.48(15)(a)(intro.)	r. effec. 1-1-98	Act 0027
46.48(15)(b)	r. effec. 1-1-98	Act 0027
46.48(15)(title)	r. effec. 1-1-98	Act 0027
46.48(16)(b)	r. effec. 1-1-98	Act 0027
46.48(16)(title)	r. effec. 1-1-98	Act 0027
✓ 51.20(1)(am)	(aff. 1995 WisAct 292) r.cr. effec. 12-1-2001 WisAct 292 1995	
✓ 51.437(4rm)(a)	am.	Act 0027
✓ 51.437(4rm)(a)	(aff. 1995 WisAct 27, ss. 3266m, 9126 (19), 1995 WisAct 77)	
am.	Act 0035	
✓ 980.08(4)	am.	Act 0027

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-4610/P1dn

JEO:;)....

A handwritten signature in black ink, appearing to be "JEO", written over the typed name "JEO:;)....".

This is a preliminary draft for your review. It includes some 4-star notes (****NOTE) raising questions that you may want to consider when reviewing the draft.

Please let me know if you have any questions or redrafting instructions. To help expedite completion of the draft, I would be happy to meet with you or DOJ to go over the draft and any redrafting instructions.

Jeffren E. Olsen
Legislative Attorney
266-8906



State of Wisconsin
1997 - 1998 LEGISLATURE

LRB-4610/P1

JEO:.....

*Jri: Pass.
1/16
as possible*

D-Note

King

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 **AN ACT** *Sen
Act.*; relating to: sexually violent person commitments.

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.** 46.10 (2) of the statutes, as affected by 1997 Wisconsin Act 27, is
3 amended to read:

4 46.10 (2) Except as provided in subs. (2m) and (14) (b) and (c), any person,
5 including but not limited to a person admitted, committed or placed under s. 975.01,
6 1977 stats., s. 975.02, 1977 stats., and s. 975.17, 1977 stats., and ss. 48.366, 51.10,
7 51.13, 51.15, 51.20, 51.35 (3), 51.37 (5), 51.45 (10), (11), (12) and (13), 55.05, 55.06,
8 938.183, 938.34 (4h) or (4m), 938.357 (4) and (5) (e), 971.14 (2) and (5), 971.17 (1),

1 975.06, 980.033 (2) and (5) and 980.06, receiving care, maintenance, services and
2 supplies provided by any institution in this state including University of Wisconsin
3 Hospitals and Clinics, in which the state is chargeable with all or part of the person's
4 care, maintenance, services and supplies, any person receiving care and services
5 from a county department established under s. 51.42 or 51.437 or from a facility
6 established under s. 49.73, and any person receiving treatment and services from a
7 public or private agency under s. 971.17 (3) (d) or (4) (e), 980.06 (2) (c) or 980.08 (5)
8 and the person's property and estate, including the homestead, and the spouse of the
9 person, and the spouse's property and estate, including the homestead, and, in the
10 case of a minor child, the parents of the person, and their property and estates,
11 including their homestead, and, in the case of a foreign child described in s. 48.839
12 (1) who became dependent on public funds for his or her primary support before an
13 order granting his or her adoption, the resident of this state appointed guardian of
14 the child by a foreign court who brought the child into this state for the purpose of
15 adoption, and his or her property and estate, including his or her homestead, shall
16 be liable for the cost of the care, maintenance, services and supplies in accordance
17 with the fee schedule established by the department under s. 46.03 (18). If a spouse,
18 widow or minor, or an incapacitated person may be lawfully dependent upon the
19 property for their support, the court shall release all or such part of the property and
20 estate from the charges that may be necessary to provide for those persons. The
21 department shall make every reasonable effort to notify the liable persons as soon
22 as possible after the beginning of the maintenance, but the notice or the receipt
23 thereof is not a condition of liability.

History: 1971 c. 125; 1971 c. 213 s. 5; 1973 c. 90 ss. 223, 223m, 560 (3); 1973 c. 198, 333; 1975 c. 39 ss. 347 to 350, 734; 1975 c. 41, 94; 1975 c. 189 s. 99 (2); 1975 c. 198, 199, 224; 1975 c. 413 s. 18; 1975 c. 428; 1975 c. 430 ss. 6, 80; 1977 c. 29, 203; 1977 c. 418 ss. 294 to 295, 924 (50), 929 (18); 1977 c. 428; 1977 c. 447 s. 206; 1977 c. 449 ss. 75, 497; 1979 c. 34; 1979 c. 102 ss. 236 (4), 237; 1979 c. 117, 221, 331; 1981 c. 20 ss. 755 to 758, 2202 (20) (i), (n); 1981 c. 81; 1983 a. 27 ss. 955m, 2202 (20); 1985 a. 29, 176, 281, 332; 1987 a. 307; 1989 a. 31, 56, 96, 212; 1991 a. 39, 221, 315, 316; 1993 a. 16, 27, 385, 437, 446, 479, 481; 1995 a. 27 ss. 2054, 2055, 9130 (4); 1995 a. 77, 224, 404; 1997 a. 3, 27.

1 **SECTION 2.** 46.48 (10) of the statutes is amended to read:

2 **46.48 (10) COMPETENCY EXAMINATIONS.** The department shall provide not more
3 than \$484,300 in each fiscal year to a county with a population of 500,000 or more
4 to fund examinations under s. 971.14 (2) or 980.033 (2) in that county.

History: History: 1989 a. 31 ss. 1085, 1090, 1092 to 1094, 1099; 1989 a. 122, 336, 359; 1991 a. 39, 269; 1993 a. 16, 98, 446; 1995 a. 27 ss. 2301m to 2304, 2600, 2601; 1997 a. 27.

5 **SECTION 3.** 51.05 (2) of the statutes is amended to read:

6 **51.05 (2)** The department may not accept for admission to a mental health
7 institute any resident person, except in an emergency, unless the county department
8 under s. 51.42 in the county where the person has legal residency authorizes the care,
9 as provided in s. 51.42 (3) (as). Patients who are committed to the department under
10 s. 975.01, 1977 stats., or s. 975.02, 1977 stats., or s. 971.14, 971.17, 975.06, 980.033
11 or 980.06, admitted by the department under s. 975.17, 1977 stats., or are
12 transferred from a juvenile correctional facility or a secured child caring institution,
13 as defined in s. 938.02 (15g), to a state treatment facility under s. 51.35 (3) or from
14 a jail or prison to a state treatment facility under s. 51.37 (5) are not subject to this
15 section.

History: History: 1975 c. 430; 1977 c. 428; 1979 c. 117; 1983 a. 293; 1985 a. 29 s. 3200 (56); 1985 a. 176; 1987 a. 27; 1989 a. 31, 359; 1991 a. 315; 1993 a. 437 ss. 103 and 266; 1993 a. 479; 1995 a. 27 ss. 9126 (19), 9145 (1); 1995 a. 77, 216; 1997 a. 27.

16 **SECTION 4.** 51.20 (1) (am) of the statutes is amended to read:

17 **51.20 (1) (am)** If the individual has been the subject of inpatient treatment for
18 mental illness, developmental disability or drug dependency immediately prior to
19 commencement of the proceedings as a result of a voluntary admission or a
20 commitment or placement ordered by a court under this section or s. 55.06 or 971.17
21 or ch. 975, or if the individual has been the subject of outpatient treatment for mental
22 illness, developmental disability or drug dependency immediately prior to
23 commencement of the proceedings as a result of a commitment ordered by a court

1 under this section or s. 971.17 or ch. 975, the requirements of a recent overt act,
 2 attempt or threat to act under par. (a) 2. a. or b., a pattern of recent acts or omissions
 3 under par. (a) 2. c. or e. or recent behavior under par. (a) 2. d. may be satisfied by a
 4 showing that there is a substantial likelihood, based on the subject individual's
 5 treatment record, that the individual would be a proper subject for commitment if
 6 treatment were withdrawn. If the individual has been admitted voluntarily to an
 7 inpatient treatment facility for not more than 30 days prior to the commencement
 8 of the proceedings and remains under voluntary admission at the time of
 9 commencement, the requirements of a specific recent overt act, attempt or threat to
 10 act or pattern of recent acts or omissions may be satisfied by a showing of an act,
 11 attempt or threat to act or a pattern of acts or omissions which took place
 12 immediately previous to the voluntary admission. If the individual is committed
 13 under s. 971.14 (2) or (5) or 980.033 (2) or (5) at the time proceedings are commenced,
 14 or has been discharged from the commitment immediately prior to the
 15 commencement of proceedings, acts, attempts, threats, omissions or behavior of the
 16 subject individual during or subsequent to the time of the offense shall be deemed
 17 recent for purposes of par. (a) 2.

History: History: 1975 c. 430; 1977 c. 26, 29; 1977 c. 187 ss. 42, 43, 134, 135; 1977 c. 428 ss. 29 to 65, 115; 1977 c. 447, 449; Sup. Ct. Order, 83 W (2d) xiii; 1979 c. 32, 89; Sup. Ct. Order, eff. 1-1-80; 1979 c. 110 s. 60 (1); 1979 c. 175 s. 53; 1979 c. 300, 336, 356; 1981 c. 20, 367; 1981 c. 390 s. 252; 1983 a. 27, 219; 1983 a. 474 ss. 2 to 9m, 14; 1985 a. 29 ss. 1067 to 1071, 3200 (56), 3202 (56); 1985 a. 139, 176, 321, 332; 1987 a. 27; Sup. Ct. Order, 141 W (2d) xiii (1987); 1987 a. 366, 394, 403; 1989 a. 31, 334; 1993 a. 98, 196, 227, 316, 451, 474; 1995 a. 77, 201, 268, 292, 440; Sup. Ct. Order No. 96-08, filed 1-16-97, eff. 7-1-97; s. 13.93 (1) (b), (2) (c).

NOTE: NOTE: Par. (am) is repealed and recreated eff. 12-1-01 by 1995 Wis. Act 292 to read:

18 **SECTION 5. 51.20 (1) (am)** of the statutes, as affected by 1995 Wisconsin Act 292
 19 and 1997 Wisconsin Act (this act), is repealed and recreated to read:

20 51.20 (1) (am) If the individual has been the subject of inpatient treatment for
 21 mental illness, developmental disability or drug dependency immediately prior to
 22 commencement of the proceedings as a result of a voluntary admission or a
 23 commitment or placement ordered by a court under this section or s. 55.06 or 971.17

1 or ch. 975, or if the individual has been the subject of outpatient treatment for mental
 2 illness, developmental disability or drug dependency immediately prior to
 3 commencement of the proceedings as a result of a commitment ordered by a court
 4 under this section or s. 971.17 or ch. 975, the requirements of a recent overt act,
 5 attempt or threat to act under par. (a) 2. a. or b., a pattern of recent acts or omissions
 6 under par. (a) 2. c. or recent behavior under par. (a) 2. d. may be satisfied by a showing
 7 that there is a substantial likelihood, based on the subject individual's treatment
 8 record, that the individual would be a proper subject for commitment if treatment
 9 were withdrawn. If the individual has been admitted voluntarily to an inpatient
 10 treatment facility for not more than 30 days prior to the commencement of the
 11 proceedings and remains under voluntary admission at the time of commencement,
 12 the requirements of a specific recent overt act, attempt or threat to act or pattern of
 13 recent acts or omissions may be satisfied by a showing of an act, attempt or threat
 14 to act or a pattern of acts or omissions which took place immediately previous to the
 15 voluntary admission. If the individual is committed under s. 971.14 (2) or (5) or
 16 980.033 (2) or (5) at the time proceedings are commenced, or has been discharged
 17 from the commitment immediately prior to the commencement of proceedings, acts,
 18 attempts, threats, omissions or behavior of the subject individual during or
 19 subsequent to the time of the offense shall be deemed recent for purposes of par. (a)
 20 2.

21 **SECTION 6.** 51.30 (4) (b) 8m. of the statutes is amended to read:

22 51.30 (4) (b) 8m. To appropriate examiners and facilities in accordance with s.
 23 971.17 (2) (e), (4) (c) and (7) (c), ~~980.03(4)~~^{980.031} or 980.08 (3) and to district attorneys or
 24 the department of justice in accordance with s. 980.015 (3) (b). ✓ The recipient of any

1 information from the records shall keep the information confidential except as
2 necessary to comply with s. 971.17 or ch. 980.

History: 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; s. 13.93 (1) (b).

→ ~~****NOTE: Change ref to 980.03 (4)???~~

3 **SECTION 7.** 51.30 (4) (b) 12m. of the statutes is amended to read:

4 51.30 (4) (b) 12m. To any person if the patient was admitted under s. 971.14,
5 971.17, 980.033 or 980.06 or ch. 975 or transferred under s. 51.35 (3) or 51.37 and is
6 on unauthorized absence from a treatment facility. Information released under this
7 subdivision is limited to information that would assist in the apprehension of the
8 patient.

History: 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; s. 13.93 (1) (b).

9 **SECTION 8.** 51.37 (1) of the statutes is amended to read:

10 51.37 (1) All commitments under s. 975.01, 1977 stats., and s. 975.02, 1977
11 stats., and under ss. 971.14 (5), 971.17 and, 975.06 and 980.033 (5) shall be to the
12 department.

History: History: 1975 c. 430; 1977 c. 418 ss. 360 to 362, 929 (55); 1977 c. 428 ss. 80, 81, 115; 1977 c. 447; 1977 c. 449 s. 497; 1979 c. 32, 117, 175, 221; 1983 a. 27, 359, 474; 1985 a. 29 ss. 1075 to 1077, 3200 (56), 3202 (23); 1985 a. 176; 1987 a. 307, 394; 1989 a. 31, 359; 1991 a. 39, 269; 1995 a. 27 s. 9126 (19); 1995 a. 292.

13 **SECTION 9.** 51.37 (4) of the statutes is amended to read:

14 51.37 (4) The department may, with the approval of the committing court and
15 the county department under s. 51.42 or 51.437, and subject to s. 51.35, transfer to
16 the care and custody of a county department under s. 51.42 or 51.437 any person in
17 an institution of the department committed under s. 971.14 or, 971.17 or 980.033, if
18 in its opinion, the mental condition of the person is such that further care is required
19 and can be properly provided under the direction of the county department under s.
20 51.42 or 51.437.

History: History: 1975 c. 430; 1977 c. 418 ss. 360 to 362, 929 (55); 1977 c. 428 ss. 80, 81, 115; 1977 c. 447; 1977 c. 449 s. 497; 1979 c. 32, 117, 175, 221; 1983 a. 27, 359, 474; 1985 a. 29 ss. 1075 to 1077, 3200 (56), 3202 (23); 1985 a. 176; 1987 a. 307, 394; 1989 a. 31, 359; 1991 a. 39, 269; 1995 a. 27 s. 9126 (19); 1995 a. 292.

21 **SECTION 10.** 51.37 (9) of the statutes is amended to read:

1 51.37 (9) If in the judgment of the director of Mendota mental health institute,
2 Winnebago mental health institute or the Milwaukee county mental health complex,
3 any person who is committed under s. 971.14 or 971.17 or 980.033 is not in such
4 condition as warrants his or her return to the court but is in a condition to receive
5 a conditional transfer or discharge under supervision, the director shall report his
6 or her reasons for the judgment to the department of health and family services, the
7 committing court and the district attorney of the county in which the court is located
8 ~~his or her reasons for the judgment or, for a person committed under s. 980.033, the~~
9 department of justice, if it filed the petition under s. 980.02. If the court does not file
10 objection to the conditional transfer or discharge within 60 days of the date of the
11 report, the director may, with the approval of the department of health and family
12 services, conditionally transfer any person to a legal guardian or other person,
13 subject to the rules of the department of health and family services. Before a person
14 is conditionally transferred or discharged under supervision under this subsection,
15 the department of health and family services shall so notify the municipal police
16 department and county sheriff for the area where the person will be residing. The
17 notification requirement does not apply if a municipal department or county sheriff
18 submits to the department of health and family services a written statement waiving
19 the right to be notified. The department of health and family services may contract
20 with the department of corrections for the supervision of persons who are transferred
21 or discharged under this subsection.

History: History: 1975 c. 430; 1977 c. 418 ss. 360 to 362, 929 (55); 1977 c. 428 ss. 80, 81, 115; 1977 c. 447; 1977 c. 449 s. 497; 1979 c. 32, 117, 175, 221; 1983 a. 27, 359, 474; 1985 a. 29 ss. 1075 to 1077, 3200 (56), 3202 (23); 1985 a. 176; 1987 a. 307, 394; 1989 a. 31, 359; 1991 a. 39, 269; 1995 a. 27 s. 9126 (19); 1995 a. 292.

22 **SECTION 11. 51.42 (3) (as) 1. of the statutes is amended to read:**

23 51.42 (3) (as) 1. A county department of community programs shall authorize
24 all care of any patient in a state, local or private facility under a contractual

1 agreement between the county department of community programs and the facility,
2 unless the county department of community programs governs the facility. The need
3 for inpatient care shall be determined by the program director or designee in
4 consultation with and upon the recommendation of a licensed physician trained in
5 psychiatry and employed by the county department of community programs or its
6 contract agency. In cases of emergency, a facility under contract with any county
7 department of community programs shall charge the county department of
8 community programs having jurisdiction in the county where the patient is found.
9 The county department of community programs shall reimburse the facility for the
10 actual cost of all authorized care and services less applicable collections under s.
11 46.036, unless the department of health and family services determines that a
12 charge is administratively infeasible, or unless the department of health and family
13 services, after individual review, determines that the charge is not attributable to the
14 cost of basic care and services. A county department of community programs may
15 not reimburse any state institution or receive credit for collections for care received
16 therein by nonresidents of this state, interstate compact clients, transfers under s.
17 51.35 (3), and transfers from Wisconsin state prisons under s. 51.37 (5) (a),
18 commitments under s. 975.01, 1977 stats., or s. 975.02, 1977 stats., or s. 971.14,
19 971.17 ~~or~~, 975.06 or 980.033 or admissions under s. 975.17, 1977 stats., or children
20 placed in the guardianship of the department of health and family services under s.
21 48.427 or 48.43 or under the supervision of the department of corrections under s.
22 938.183 or 938.355. The exclusionary provisions of s. 46.03 (18) do not apply to direct
23 and indirect costs which are attributable to care and treatment of the client.

History: History: 1971 c. 125; 1973 c. 90, 198, 333, 336; 1975 c. 39, 198, 199, 224, 422; 1975 c. 428 s. 16; 1975 c. 430 ss. 24 to 31, 80; 1977 c. 26 ss. 37, 38, 75; 1977 c. 29 ss. 612 to 623p, 1656 (18); 1977 c. 193; 1977 c. 203 s. 106; 1977 c. 272; 1977 c. 354 s. 101; 1977 c. 418, 428, 447; 1979 c. 34, 117, 177, 221, 330, 355; 1981 c. 20 ss. 923 to 942, 2202 (20) (d), (n), (q); 1981 c. 93 ss. 105 to 122, 186; 1981 c. 329; 1983 a. 27 ss. 1106 to 1112, 2202 (20); 1983 a. 189 ss. 44, 329 (5); 1983 a. 192, 239, 365, 373, 524; 1985 a. 29, 120, 176; 1987 a. 3, 27, 199, 339, 366; 1989 a. 31, 122; 1991 a. 39, 274, 315; 1993 a. 16, 437, 445; 1995 a. 27 ss. 3260 to 3262, 9126 (19), 9145 (1); 1995 a. 64, 77, 92, 201, 224, 276, 352, 417; 1997 a. 27.

1 **SECTION 12.** 51.437 (4rm) (a) of the statutes, as affected by 1997 Wisconsin Acts
2 27 and 35, is amended to read:

3 51.437 (4rm) (a) A county department of developmental disabilities services
4 shall authorize all care of any patient in a state, local or private facility under a
5 contractual agreement between the county department of developmental disabilities
6 services and the facility, unless the county department of developmental disabilities
7 services governs the facility. The need for inpatient care shall be determined by the
8 program director or designee in consultation with and upon the recommendation of
9 a licensed physician trained in psychiatry and employed by the county department
10 of developmental disabilities services or its contract agency prior to the admission
11 of a patient to the facility except in the case of emergency services. In cases of
12 emergency, a facility under contract with any county department of developmental
13 disabilities services shall charge the county department of developmental
14 disabilities services having jurisdiction in the county where the individual receiving
15 care is found. The county department of developmental disabilities services shall
16 reimburse the facility, except as provided under par. (c), for the actual cost of all
17 authorized care and services less applicable collections under s. 46.036, unless the
18 department of health and family services determines that a charge is
19 administratively infeasible, or unless the department of health and family services,
20 after individual review, determines that the charge is not attributable to the cost of
21 basic care and services. The exclusionary provisions of s. 46.03 (18) do not apply to
22 direct and indirect costs which are attributable to care and treatment of the client.
23 County departments of developmental disabilities services may not reimburse any
24 state institution or receive credit for collections for care received therein by
25 nonresidents of this state, interstate compact clients, transfers under s. 51.35 (3) (a),

1 commitments under s. 975.01, 1977 stats., or s. 975.02, 1977 stats., or s. 971.14,
 2 971.17 ~~or~~, 975.06 or 980.033, admissions under s. 975.17, 1977 stats., ✓ children placed
 3 in the guardianship of the department of health and family services under s. 48.427
 4 or 48.43 or juveniles under the supervision of the department of corrections under
 5 s. 938.183 or 938.355.

History: History: 1971 c. 307, 322; 1973 c. 90, 333; 1975 c. 39, 199, 430; 1977 c. 26 ss. 39, 75; 1977 c. 29; 1977 c. 354 s. 101; 1977 c. 418; 1977 c. 428 s. 85, 86, 115; 1979 c. 32, 117, 221, 330, 355; 1981 c. 20, 93, 329; 1983 a. 27, 365, 375, 524; 1985 a. 29 ss. 1094 to 1105m, 3200 (56) (a); 1985 a. 120, 176, 307, 332; 1987 a. 27; 1989 a. 31, 56, 107, 262; 1991 a. 39, 274, 315; 1993 a. 16, 83; 1995 a. 27 ss. 3266m, 9116 (5), 9126 (19), 9145 (1); 1995 a. 64, 77, 92, 201, 225, 352, 417; 1997 a. 27; s. 13.93 (2) (c).

6 **SECTION 13.** 51.87 (3) of the statutes is amended to read:

7 51.87 (3) PURCHASE OF SERVICES. A county department under s. 46.23, 51.42 or
 8 51.437 may contract as provided under this section with public or private agencies
 9 in states bordering on Wisconsin to secure services under this chapter for persons
 10 who receive services through the county department, except that services may not
 11 be secured for persons committed under s. 971.14 ~~or~~, 971.17 or 980.033. Section
 12 46.036 (1) to (6) applies to contracts entered into under this section by county
 13 departments under s. 46.23, 51.42 or 51.437.

History: History: 1983 a. 365; 1985 a. 176, 332.

14 **SECTION 14.** 146.82 (2) (c) of the statutes is amended to read:

15 146.82 (2) (c) Notwithstanding sub. (1), patient health care records shall be
 16 released to appropriate examiners and facilities in accordance with ss. 971.17 (2) (e),
 17 (4) (c) and (7) (c), ~~980.03~~ 980.031 (4) and 980.08 (3). The recipient of any information
 18 from the records shall keep the information confidential except as necessary to
 19 comply with s. 971.17 or ch. 980.

History: 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.

20 **SECTION 15.** 808.04 (3) of the statutes is amended to read:

1 808.04 (3) Except as provided in subs. (4) and (7), an appeal in a criminal case
2 or a case under ch. 48, 51, 55 ~~or~~ 938 or 980 shall be initiated within the time period
3 specified in s. 809.30.

History: History: 1977 c. 187; 1979 c. 32 s. 92 (9), (14); 1979 c. 89, 221; 1981 c. 152; 1981 c. 314 ss. 130, 146; 1983 a. 183, 219; 1983 a. 491 s. 23; 1985 a. 182 s. 57; Sup. Ct. Order, 130 W (2d) xi, xix (1986); Sup. Ct. Order, 136 W (2d) xxv (1987); 1989 a. 56 s. 259; 1989 a. 192; 1991 a. 39; Sup. Ct. Order, 168 W (2d) xix (1992); 1993 a. 395; 1995 a. 77, 275.

4 **SECTION 16.** 809.40 (1) of the statutes is amended to read:

5 809.40 (1) An appeal to the court of appeals from a judgment or order in a
6 misdemeanor case or a ch. 48, 51, 55 ~~or~~ 938 or 980 case, or a motion for postconviction
7 relief in a misdemeanor case must be initiated within the time periods specified in
8 s. 808.04 and is governed by the procedures specified in ss. 809.30 to 809.32.

History: History: Sup. Ct. Order, 83 W (2d) xliii (1978); 1979 c. 32 s. 92 (16); Sup. Ct. Order, 92 W (2d) xliii (1979); 1979 c. 175 s. 53; 1979 c. 355; 1981 c. 390 s. 252, Sup. Ct. Order, 130 W (2d) xi xix (1986); Sup. Ct. Order, 131 W (2d) xv (1986); Sup. Ct. Order, 136 W (2d) v, xxv (1987); 1991 a. 263; 1993 a. 395; 1995 a. 77.

****NOTE: It does not appear necessary or appropriate to add language referring to
“a motion for postcommitment relief in a ch. 980 case” because: a) appeals from orders
relating to commitment, supervised release and discharge are covered under the current
language of s. 809.40 (1); and b) ch. 980 does not specifically provide for anything called
a “motion for postcommitment relief”.

Ⓢ

Commitment
as a sexually
violent person

9 **SECTION 17.** 905.04 (4) (a) of the statutes is amended to read:

10 905.04 (4) (a) ^(title) ~~Proceedings for hospitalization,~~ guardianship, protective services
11 or protective placement. There is no privilege under this rule as to communications
12 and information relevant to an issue in proceedings to hospitalize the patient for
13 mental illness, to commit the patient as a sexually violent person under ch. 980, to
14 appoint a guardian under s. 880.33, for court-ordered protective services or
15 protective placement or for review of guardianship, protective services or protective
16 placement orders, if the physician, registered nurse, chiropractor, psychologist,
17 social worker, marriage and family therapist or professional counselor in the course
18 of diagnosis or treatment has determined that the patient is in need of
19 hospitalization, guardianship, protective services or protective placement.

History: History: Sup. Ct. Order, 59 W (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 W (2d) xxi (1989); 1991 a. 32, 39, 160; 1993 a. 98; 1995 a. 77, 275, 436.

20 **SECTION 18.** 911.01 (4) (c) of the statutes is amended to read:

Commitment as a sexually
violent person

1 911.01 (4) (c) *Miscellaneous proceedings*. Proceedings for extradition or
2 rendition; sentencing, or granting or revoking probation, issuance of arrest
3 warrants, criminal summonses and search warrants; proceedings under s. 971.14 (1)
4 (c) or 980.033 (1)(b); proceedings with respect to pretrial release under ch. 969 except
5 where habeas corpus is utilized with respect to release on bail or as otherwise
6 provided in ch. 969.

History: History: Sup. Ct. Order, 59 W (2d) R1, R366 (1973); 1977 c. 305 s. 64; 1977 c. 345; 1979 c. 32 s. 92 (16); 1981 c. 183, 367, 390, 391; 1987 a. 208, 398; 1991 a. 40, 269.

7 **SECTION 19.** 967.08 (2) (b) of the statutes is amended to read:

8 967.08 (2) (b) Waiver of preliminary examination under s. 970.03, competency
9 hearing under s. 971.14 (4) or 980.033 (4) or jury trial under s. 972.02 (1).

History: History: Sup. Ct. Order, 141 W (2d) xii (1987); 1987 a. 403; Sup. Ct. Order, 158 W (2d) xvii (1990); 1995 a. 27, 387.

10 **SECTION 20.** 972.15 (4) of the statutes is amended to read:

11 972.15 (4) After sentencing, unless otherwise authorized under sub. (5) or (6)
12 or ordered by the court, the presentence investigation report shall be confidential
13 and shall not be made available to any person except upon specific authorization of
14 the court.

History: History: 1983 a. 102; 1987 a. 27, 227; 1991 a. 39; 1993 a. 213.

15 **SECTION 21.** 972.15 (6) of the statutes is created to read:

16 972.15 (6) The presentence investigation report and any information contained
17 in it may be used by any of the following persons in any evaluation, examination,
18 referral, hearing, trial or other proceeding under ch. 980:

19 (a) The department of corrections.

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

21 (c) The person who is the subject of the presentence investigation report or his
22 or her attorney.

23 (d) The attorney representing the state.

1 (e) An expert or professional person who is examining the subject of the
2 presentence investigation report.

3 (f) The court and, if applicable, the jury hearing the case.

4 SECTION 22. 980.01 (5) of the statutes is amended to read:

5 980.01 (5) “Sexually motivated” means that one of the purposes for an act is
6 for the actor’s sexual arousal or gratification or for the sexual humiliation or
7 degradation of the victim.

History: History: 1993 a. 479; 1995 a. 27 s. 9126 (19).

****NOTE: This definition of “sexually motivated” is also used under ss. 51.20 (13)
(ct) 2., 938.34 (15m) (b), 971.17 (1m) (b) 2. and 973.048 (2) for determining whether to
order a person to register as a sex offender if he or she has been convicted of an offense
other than one listed in s. 301.45 (1). Thus, expanding the definition here will also expand
it under ss. 51.20 (13) (ct) 2., 938.34 (15m) (b), 971.17 (1m) (b) 2. and 973.048 (2). Is that
your intent?

8 SECTION 23. 980.01 (6) (a) of the statutes is amended to read:

9 980.01 (6) (a) Any crime specified in s. 940.22 (2), 940.225 (1) or (2), 948.02 (1)
10 or (2), 948.025, 948.06 or 948.07.

History: History: 1993 a. 479; 1995 a. 27 s. 9126 (19).

11 SECTION 24. 980.01 (6) (am) of the statutes is created to read:

12 980.01 (6) (am) An offense that, prior to the effective date of this paragraph
13 [revisor inserts date], was a crime under the law of this state and that is comparable
14 to any crime specified in par. (a).

****NOTE: I wasn’t sure what the drafting instructions meant by “predecessor”
statutes. This language follows current law dealing with comparable prior statutes. See,
for example, ss. 301.45 (1) (bm) and 939.62 (2m) (a) 4. Is this your intent? If so, do you
want to use the effective date of this draft or June 2, 1994, the effective date of the act that
created ch. 980?

15 SECTION 25. 980.01 (6) (b) of the statutes is amended to read:

16 980.01 (6) (b) Any crime specified in s. 940.01, 940.02, 940.03, 940.05, 940.06,
17 940.19 (4) or (5), 940.30, 940.305, 940.31 ~~or~~, 941.32, 941.38, 943.02, 943.10, 943.32

1 or 948.03 that is determined, in a proceeding under s. 980.05 (3) (b), to have been
2 sexually motivated.

3 History: History: 1993 a. 479; 1995 a. 27 s. 9126 (19).

3 **SECTION 26.** 980.01 (6) (bm) of the statutes is created to read:

4 980.01 (6) (bm) An offense that, prior to the effective date of this paragraph
5 [revisor inserts date], was a crime under the law of this state, that is comparable to
6 any crime specified in par. (b) and that is determined, in a proceeding under s. 980.05
7 (3) (b), to have been sexually motivated.

****NOTE: I wasn't sure what the drafting instructions meant by "predecessor"
statutes. This language follows, for example, ss. 301.45 (1) (bm) and 939.62 (2m) (a) 4.
Is this your intent? Also, do you want to use the effective date of this draft or June 2, 1994,
the effective date of the act that created ch. 980?

8 **SECTION 27.** 980.01 (6) (c) of the statutes is amended to read:

9 980.01 (6) (c) Any solicitation, conspiracy or attempt to commit a crime under
10 par. (a) ~~or~~, (am), (b) ~~or~~, (bm).

11 History: History: 1993 a. 479; 1995 a. 27 s. 9126 (19).

11 **SECTION 28.** 980.01 (7) of the statutes is amended to read:

12 980.01 (7) "Sexually violent person" means a person who has been convicted
13 of a sexually violent offense, has been adjudicated delinquent for a sexually violent
14 offense, or has been found not guilty of or not responsible for a sexually violent
15 offense by reason of insanity or mental disease, defect or illness, and who is
16 dangerous because he or she suffers from a mental disorder that makes it
17 ~~substantially probable~~ more probable than not that the person will engage in one or
18 more acts of sexual violence.

History: History: 1993 a. 479; 1995 a. 27 s. 9126 (19).

****NOTE: This and other provisions of current law refer to "acts of sexual violence",
which is not defined for purposes of the entire chapter (though it is defined in s. 980.11
(1)(a)). Cf. Wis. JI-Criminal 2502, n. 6 (1994). Should the phrase be defined for purposes
of the entire chapter?

19 **SECTION 29.** 980.015 (2) (a) of the statutes is amended to read:

1 980.015 (2) (a) The anticipated discharge from a sentence, anticipated release
2 on parole or anticipated release from imprisonment of a person who ~~has been~~
3 ~~convicted of~~ is serving a continuous term of incarceration, any part of which was
4 imposed for a sexually violent offense.

5 History: History: 1993 a. 479; 1995 a. 77.

5 ✓ **SECTION 30.** 980.015 (2) (d) of the statutes is created to read:

6 980.015 (2) (d) The anticipated release on parole or discharge of a person
7 committed under ch. 975 for a sexually violent offense.

8 **SECTION 31.** 980.015 (4) of the statutes is renumbered 980.14 (2) and amended
9 to read:

10 980.14 (2) Any agency or officer, employe or agent of an agency is immune from
11 criminal or civil liability for any acts or omissions as the result of a good faith effort
12 to comply with any provision of this section chapter.

History: History: 1993 a. 479; 1995 a. 77.

****NOTE: See the ****NOTE following the treatment of s. 980.14 (1).

13 **SECTION 32.** 980.02 (1) (b) 3. of the statutes is created to read:

14 980.02 (1) (b) 3. The county in which the person is in custody under a sentence,
15 a placement to a secured correctional facility, as defined in s. 938.02 (15^m), or a
16 secured child caring institution, as defined in s. 938.02 (15^g), or a commitment order.

****NOTE: This provision includes a reference to secured child caring institutions.
Compare s. 980.02 (1) (b) 2. Is that your intent?

17 **SECTION 33.** 980.02 (2) (ag) of the statutes is renumbered 980.02 (2) (ag) (intro.)
18 and amended to read:

19 980.02 (2) (ag) (intro.) The person is within 90 days of discharge or release, on
20 parole or otherwise, from ~~a sentence that~~ any of the following:

21 1. A continuous term of incarceration, any part of which was imposed for a
22 ~~conviction for~~ a sexually violent offense, ~~from a~~

1 2. A secured correctional facility, as defined in s. 938.02 (15m), or a secured
2 child caring institution, as defined in s. 938.02 (15g), if the person was placed in the
3 facility for being adjudicated delinquent under s. 938.34 on the basis of a sexually
4 violent offense ~~or from a~~

5 3. A commitment order that was entered as a result of a sexually violent
6 offense.

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

SECTION 34. 980.02 (3) of the statutes is amended to read:

8 980.02 (3) A petition filed under this section shall state with particularity
9 essential facts to establish probable cause to believe the person is a sexually violent
10 person. If the petition alleges that a sexually violent offense or act that is a basis for
11 the allegation under sub. (2) (a) was an act that was sexually motivated as provided
12 under s. 980.01 (6) (b) [✓]or (bm), the petition shall state the grounds on which the
13 offense or act is alleged to be sexually motivated.

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

SECTION 35. 980.02 (4) (intro.) of the statutes is amended to read:

15 980.02 (4) (intro.) A petition under this section shall be filed in any one of the
16 following:

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

SECTION 36. 980.03 (2) (intro.) of the statutes is amended to read:

18 980.03 (2) (intro.) Except as provided in ss. 980.038 (2),[×] 980.09 (2) (a) and
19 980.10 and without limitation by enumeration, at any hearing under this chapter,
20 the person who is the subject of the petition has the right to:

21 History: History: 1993 a. 479.

SECTION 37. 980.03 (3) of the statutes is amended to read:


22 980.03 (3) The person who is the subject of the petition, the person's attorney,
23 the department of justice or the district attorney may request that a trial under s.

1 980.05 be to a jury of 12. A request for a jury trial shall be made as provided under
2 s. 980.05. ~~Notwithstanding s. 980.05 (2), if the person, the person's attorney, the~~
3 ~~department of justice or the district attorney does not request a jury trial, the court~~
4 ~~may on its own motion require that the trial be to a jury of 12.~~ A verdict of a jury
5 under this chapter is not valid unless it is unanimous.

6 History: History: 1993 a. 479.

6 **SECTION 38.** 980.03 (4) of the statutes is renumbered 980.031 (2) and amended
7 to read:

8 980.031 (2) Whenever the person who is the subject of ~~the~~ a petition filed under
9 s. 980.02 is required to submit to an examination of his or her mental condition under
10 this chapter, he or she may retain experts or professional persons to perform an
11 examination. If the person is indigent, the court shall, upon the person's request,
12 appoint a qualified and available expert or professional person to perform an
13 examination of the person's mental condition and participate in a trial or other
14 proceeding on the person's behalf.

****NOTE: The 2nd sentence follows the 3rd sentence in current s. 980.03 (4) though
instead of referring only to trials it includes a reference to other proceedings under ch.
980 to clarify that it covers examinations for purposes of hearings on petitions for
supervised release or discharge. The draft also specifies (here and in other relevant
places) that the examination relates to the person's mental condition. Compare s. 980.07
(1). Do these changes effect your intent? 

15 **(4)** ~~If the person a party~~ retains or the court appoints a qualified expert or
16 professional person of ~~his or her own choice~~ to conduct an examination under this
17 chapter of a person's mental condition, the examiner shall have reasonable access to
18 the person for the purpose of the examination, as well as to the person's past and
19 present correctional records, including presentence investigation reports, past and
20 present treatment records, as defined in s. 51.30 (1) (b), and past and present patient
21 health care records as provided under s. 146.82 (2) (c). ~~If the person is indigent, the~~

1 court shall, upon the person's request, appoint a qualified and available expert or
2 professional person to perform an examination and participate in the trial on the
3 person's behalf. Upon the order of the circuit court, the county shall pay, as part of
4 the costs of the action, the costs of a court-appointed expert or professional person
5 to perform an examination and participate in the trial on behalf of an indigent
6 person.

7 (5) An expert or professional person retained by either party or appointed to
8 assist an indigent person who is subject to a petition by the court may not be subject
9 to any order by the court for the sequestration of witnesses at any proceeding under
10 this chapter. No expert retained by a party or appointed by the court may be
11 permitted to testify at any proceeding under this chapter unless a written report of
12 his or her examination has been submitted to the court and to both parties at least
13 10 days before the proceeding.

History: History: 1993 a. 479.

****NOTE: The drafting instructions suggested adding language to s. 980.03 (4), which provides that a person who is the subject of a petition under ch. 980 has the right to his or her own experts whenever he or she is subject to an examination under ch. 980. The language added changed the focus of the statute so much (from the right of the person subject to the petition to a general statute concerning examinations by experts) that this draft renumbers s. 980.03 (4) to be part of a new statute governing examinations (proposed s. 980.031) and puts the new language suggested in the drafting instructions into the same new statute. You should review proposed s. 980.031 and its interaction (if any) with other examination provisions in ss. ~~980.07 (1), 980.04 (3)~~ and 980.09 (1) (b) and (2) (b) and in proposed s. 980.033 (2) to make sure all of the examination provisions effect your intent. It may be better to eliminate the examination language in some or all of these provisions, expand the language of s. 980.031 and then simply cross-reference proposed s. 980.031, if that would effect your intent.

14 SECTION 39. 980.03 (5) of the statutes is renumbered 980.038 (3) and amended
15 to read:

16 980.038 (3) (title) TESTIMONY BY TELEPHONE OR LIVE AUDIO-VISUAL MEANS. Upon
17 a showing by the proponent of good cause under s. 807.13 (2) (c), testimony may be

1 received into the record of a hearing under this ~~section~~ chapter by telephone or live
2 audio-visual means.

History: History: 1993 a. 479.

****NOTE: It seems to make more sense to place this provision under the new miscellaneous procedures section. Is that okay?

3 **SECTION 40.** 980.031 (title) of the statutes is created to read:

4 **980.031(title) Examinations.**

5 **SECTION 41.** 980.031 (1) of the statutes is created to read:

6 980.031 (1) If a person who is the subject of a petition filed under s. 980.02
7 denies the facts alleged in the petition, the court may appoint at least one qualified
8 expert or professional person to conduct an examination of the person's mental
9 condition and testify at trial.

****NOTE: The drafting instructions suggested referring to "a physician, psychologist or other professional person", but that language is not consistent with the language in ss 980.03 (4) (as affected by this draft), 980.07 (1) and 980.09 (1) (b) and (2) (b). If you want to refer to "a physician, psychologist or other professional person" then shouldn't that language be used in other statutes referring to examinations of the person?

10 **SECTION 42.** 980.031 (3) of the statutes is created to read:

11 980.031 (3) The state may retain an expert or other professional person to
12 examine the mental condition of a person who is the subject of a petition under s.
13 980.02 and to testify at trial.

****NOTE: The drafting instructions suggested referring to "a physician, psychologist or other professional person", but that language is not consistent with the language in ss 980.03 (4) (as affected by this draft), 980.07 (1) and 980.09 (1) (b) and (2) (b). If you want to refer to "a physician, psychologist or other professional person" then shouldn't that language be used in other statutes referring to examinations of the person?

14 **SECTION 43.** 980.032 of the statutes is created to read:

15 **980.032 Competency.** (1) No person who lacks substantial mental capacity
16 to understand the proceedings under this chapter or assist in his or her own defense
17 against a petition filed under s. 980.02 may be subject to proceedings under this
18 chapter so long as the incapacity endures.

1 (2) A person shall not be determined incompetent to proceed solely because
2 medication has been or is being administered to restore or maintain competency.

3 (3) The fact that a person is not competent to proceed does not preclude any
4 legal objection to the proceeding under this chapter which is susceptible of fair
5 determination prior to trial under s. 980.05 and without the personal participation
6 of the person.

7 **SECTION 44.** 980.033 of the statutes is created to read:

8 **980.033 Competency proceedings.** (1) PROCEEDINGS. (a) The court shall
9 proceed under this section whenever there is reason to doubt the competency to
10 proceed of a person who is the subject of a petition filed under s. 980.02.

11 (b) Except as provided in par. (c), the court shall not proceed under sub. (2) until
12 it has found that there is probable cause to believe that the person is a sexually
13 violent person. The finding may be based upon the petition or, if the person submits
14 an affidavit stating with particularity that the allegations of the petition are
15 materially false, upon the petition and the evidence presented at a hearing ordered
16 by the court. The person may call and cross-examine witnesses at a hearing under
17 this paragraph but the court shall limit the issues and witnesses to those required
18 for determining probable cause. If the court finds that there is no probable cause to
19 believe that the person is a sexually violent person, it shall dismiss the petition and
20 order that the person be released, except that if the court dismisses the petition based
21 on a defect in the petition the court may order that the person be held in custody for
22 not more than 72 hours pending the filing of a new petition.

23 (c) If reason to doubt competency arises after the court has found under s.
24 980.04 (2) that there is probable cause to believe that the person is a sexually violent
25 person or after a finding of the court or a jury under s. 980.05 that the person is a

1 sexually violent person, a probable cause determination is not required and the court
2 shall proceed under sub. (2).

3 (2) EXAMINATION. (a) The court shall appoint one or more examiners having the
4 specialized knowledge determined by the court to be appropriate to examine and
5 report upon the condition of the person. If an inpatient examination is determined
6 by the court to be necessary and the person is not already detained or in custody, the
7 person may be committed to a suitable mental health facility for the examination
8 period specified in par. (c). If the examination is to be conducted by the department,
9 the court shall order the person to the facility designated by the department.

10 (am) Notwithstanding par. (a), if the court orders the person to be examined by
11 the department of corrections or a department of corrections facility, the department
12 of corrections shall determine where the examination will be conducted, who will
13 conduct the examination and whether the examination will be conducted on an
14 inpatient or outpatient basis. Any outpatient examination under this paragraph
15 shall be conducted in a jail or a locked unit of a facility. In any case under this
16 paragraph in which the department of corrections determines that an inpatient
17 examination is necessary, the 15-day period under par. (c) begins upon the arrival
18 of the person at the inpatient facility. If an outpatient examination is begun by or
19 through the department of corrections and the department of corrections later
20 determines that an inpatient examination is necessary, the sheriff shall transport
21 the person to the inpatient facility designated by the department of corrections
22 unless the person has not been detained or otherwise placed in custody under s.
23 980.04 or 980.06.

****NOTE: Do you want DOC to be doing competency evaluations for persons subject
to ch. 980?

1 (b) If the person has not been detained under s. 980.04 or otherwise placed in
2 custody, the court may not order an involuntary inpatient examination unless the
3 person fails to cooperate in the examination or the examiner informs the court that
4 inpatient observation is necessary for an adequate examination.

5 (c) Inpatient examinations shall be completed and the report of examination
6 filed within 15 days after the examination is ordered or as specified in par. (am),
7 whichever is applicable, unless, for good cause, the facility or examiner appointed by
8 the court cannot complete the examination within this period and requests an
9 extension. In that case, the court may allow one 15-day extension of the examination
10 period. Outpatient examinations shall be completed and the report of examination
11 filed within 30 days after the examination is ordered.

12 (d) If the court orders that the examination be conducted on an inpatient basis,
13 it shall arrange for the transportation of any person who is detained or in custody to
14 the examining facility within a reasonable time after the examination is ordered and,
15 if the person was detained or in custody in a different facility, the court shall arrange
16 for the person to be returned to the facility in which he or she was detained or in
17 custody within a reasonable time after receiving notice from the examining facility
18 that the examination has been completed.

19 (e) The examiner shall personally observe and examine the person and shall
20 have access to his or her past or present treatment records, as defined ~~under~~ⁱⁿ s. 51.30

21 (1) (b).

****NOTE: Do you want to allow the examiner to have access to other records, such
as health care records under s. 146.82 and correctional records (including PSIs)?
Compare proposed s. 980.031 (4) (which is created from s. 980.03 (4)).

22 (f) A person ordered to undergo examination under this section may receive
23 voluntary treatment appropriate to his or her medical needs. The person may refuse

1 medication and treatment except in a situation where the medication or treatment
2 is necessary to prevent physical harm to the person or others.

3 (g) The person may be examined for competency purposes at any stage of the
4 competency proceedings by experts or other professional persons chosen by the
5 person or by the department of justice or district attorney, whichever filed the
6 petition. Experts or other professional persons chosen to examine the person under
7 this paragraph shall be permitted reasonable access to the person for purposes of the
8 examination.

****NOTE: Unlike s. 971.14 (2) (g), this paragraph refers to “experts or other professional persons” for consistency with other provisions of ch. 980. If that language is changed, should this paragraph be changed as well? Also, can this examination be done in concert with others required under ch. 980 (for instance, one required under s. 980.04 (3))? If so, should that be specified here?

9 (3) REPORT. The examiner shall submit to the court a written report which shall
10 include all of the following:

11 (a) A description of the nature of the examination and an identification of the
12 persons interviewed, the specific records reviewed and any tests administered to the
13 person.

14 (b) The clinical findings of the examiner.

15 (c) The examiner’s opinion regarding the person’s present mental capacity to
16 understand the proceedings under this chapter and to ^{assist} in his or her defense against
17 the petition.

18 (d) If the examiner reports that the person lacks competency, the examiner’s
19 opinion regarding the likelihood that the person, if provided treatment, may be
20 restored to competency within the time period permitted under sub. (5) (a).

21 (dm) If sufficient information is available to the examiner to reach an opinion,
22 the examiner’s opinion on whether the person needs medication or treatment and

1 whether the person is not competent to refuse medication or treatment. The person
2 is not competent to refuse medication or treatment if, because of mental illness,
3 developmental disability, alcoholism or drug dependence, and after the advantages
4 and disadvantages of and alternatives to accepting the particular medication or
5 treatment have been explained to the person, one of the following is true:

6 1. The person is incapable of expressing an understanding of the advantages
7 and disadvantages of accepting medication or treatment and the alternatives.

8 2. The person is substantially incapable of applying an understanding of the
9 advantages, disadvantages and alternatives to his or her mental illness,
10 developmental disability, alcoholism or drug dependence in order to make an
11 informed choice as to whether to accept or refuse medication or treatment.

****NOTE: This paragraph refers to “mental illness”. Is that your intent?

12 (e) The facts and reasoning, in reasonable detail, upon which the findings and
13 opinions under pars. (b) to (dm) are based.

14 (4) HEARING. (a) The court shall cause copies of the report to be delivered
15 forthwith to the district attorney or the department of justice, whichever filed the
16 petition, and to the attorney representing the person or to the person personally if
17 he or she is not represented by counsel. The report shall not be otherwise disclosed
18 prior to the hearing under this subsection.

19 (b) If the district attorney or the department of justice, whichever filed the
20 petition, the person and the person’s attorney waive their respective opportunities
21 to present other evidence on the issue, the court shall promptly determine the
22 person’s competency and, if at issue, competency to refuse medication or treatment
23 for the person’s mental condition on the basis of the report filed under sub. (3) or (5).
24 In the absence of these waivers, the court shall hold an evidentiary hearing on the

1 issue. At the commencement of the hearing, the judge shall ask the person whether
2 he or she claims to be competent or incompetent. If the person stands mute or claims
3 to be incompetent, the person shall be found incompetent unless the state proves by
4 the greater weight of the credible evidence that the person is competent. If the
5 person claims to be competent, the person shall be found competent unless the state
6 proves by evidence that is clear and convincing that the person is incompetent. If the
7 person is found incompetent and if the state proves by evidence that is clear and
8 convincing that the person is not competent to refuse medication or treatment, under
9 the standard specified in sub. (3) (dm), the court shall make a determination without
10 a jury and issue an order that the person is not competent to refuse medication or
11 treatment for the person's mental condition and that whoever administers the
12 medication or treatment to the person shall observe appropriate medical standards.

13 (c) If the court determines that the person is competent, the proceedings on the
14 petition shall be resumed.

15 (d) If the court determines that the person is not competent and not likely to
16 become competent within the time period provided in sub. (5) (a), the proceedings
17 shall be suspended and the person released, except as provided in sub. (6) (b).

18 (5) COMMITMENT. (a) If the court determines that the person is not competent
19 but is likely to become competent within the period specified in this paragraph if
20 provided with appropriate treatment, the court shall suspend the proceedings and
21 commit the person to the custody of the department in an appropriate institution for
22 a period of time not to exceed 12 months.

***NOTE: Do you want to specify a different period of time for commitment of a
person who is found not competent to proceed under ch. 980?

1 (am) If the person is not subject to a court order determining the person to be
2 not competent to refuse medication or treatment for the person's mental condition
3 and if the treatment facility determines that the person should be subject to such a
4 court order, the treatment facility may file with the court with notice to the attorney
5 for the person, the person and the district attorney or department of justice,
6 whichever filed the petition, a motion for a hearing, under the standard specified in
7 sub. (3) (dm), on whether the person is [✓]not competent to refuse medication or
8 treatment. A report on which the motion is based shall accompany the motion and
9 notice of motion and shall include a statement signed by a licensed physician that
10 asserts that the person needs medication or treatment and that the person is not
11 competent to refuse medication or treatment, based on an examination of the person
12 by a licensed physician. Within 10 days after a motion is filed under this paragraph,
13 the court shall, under the procedures and standards specified in sub. (4) (b),
14 determine the person's competency to refuse medication or treatment for the person's
15 mental condition. At the request of the district attorney or department of justice,
16 whichever filed the petition, the person or the person's counsel, the hearing may be
17 postponed, but in no case may the postponed hearing be held more than 20 days after
18 a motion is filed under this paragraph.

19 (b) The person shall be periodically reexamined by the treatment facility.
20 Written reports of examination shall be furnished to the court [✓]3 months after
21 commitment, 6 months after commitment, 9 months after commitment and within
22 30 days prior to the expiration of commitment. Each report shall indicate that the
23 person has become competent, that the person remains incompetent but that
24 attainment of competency is likely within the remaining commitment period, or that
25 the person has not made such progress that attainment of competency is likely

1 within the remaining commitment period. Any report indicating such a lack of
2 sufficient progress shall include the examiner's opinion regarding whether the
3 person is mentally ill, alcoholic, drug dependent, developmentally disabled or infirm
4 because of aging or other like incapacities.

5 (c) Upon receiving a report under par. (b), the court shall proceed under sub.
6 (4). If the court determines that the person has become competent, the person shall
7 be discharged from commitment and the proceedings on the petition shall be
8 resumed. If the court determines that the person is making sufficient progress
9 toward becoming competent, the commitment shall continue.

10 (d) If the person is receiving medication the court may make appropriate orders
11 for the continued administration of the medication in order to maintain the
12 competence of the person for the duration of the proceedings on the petition. If a
13 person who has been restored to competency thereafter again becomes incompetent,
14 the maximum commitment period under par. (a) shall be 18 months minus the days
15 spent in previous commitments under this subsection, or 12 months, whichever is
16 less.

17 **(6) DISCHARGE; CIVIL PROCEEDINGS.** (a) If the court determines that it is unlikely
18 that the person will become competent within the remaining commitment period, it
19 shall discharge the person from the commitment and release him or her, except as
20 provided in par. (b). The court may order the person to appear in court at specified
21 intervals for redetermination of his or her competency to proceed.

22 (b) When the court discharges a person from commitment under par. (a), it may
23 order that the person be taken immediately into custody by a law enforcement official
24 and promptly delivered to a facility specified in s. 51.15 (2), an approved public
25 treatment facility under s. 51.45 (2) (c) or an appropriate medical or protective

1 placement facility. Thereafter, detention of the person shall be governed by s. 51.15,
2 51.45 (11) or 55.06 (11), as appropriate. The district attorney or corporation counsel
3 may prepare a statement meeting the requirements of s. 51.15 (4) or (5), 51.45 (13)
4 (a) or 55.06 (11) based on the allegations of the petition filed under s. 980.02 and the
5 evidence in the case. This statement shall be given to the director of the facility to
6 which the person is delivered and filed with the circuit court where it shall suffice,
7 without corroboration by other petitioners, as a petition for commitment under s.
8 51.20, 51.45 (13) or 55.06 (2). This section does not restrict the power of the branch
9 of circuit court in which the petition is filed to transfer the matter to the branch of
10 circuit court assigned to exercise jurisdiction under ch. 51 in the county.

11 (c) If a person is committed under s. 51.20 pursuant to a petition under par. (b),
12 the county department under s. 51.42 or 51.437 to whose care and custody the person
13 is committed shall notify the court which discharged the person under par. (a), the
14 district attorney or the department of justice, whichever filed the petition, and the
15 person's attorney of record in the proceeding under this chapter at least 14 days prior
16 to transferring or discharging the person from an inpatient treatment facility and
17 at least 14 days prior to the expiration of the order of commitment or any subsequent
18 consecutive order, unless the department or county department has applied for an
19 extension.

20 (d) Counsel who have received notice under par. (c) or who otherwise obtain
21 information that a person discharged under par. (a) may have become competent
22 may move the court to order that the person undergo a competency examination
23 under sub. (2). If the court so orders, a report shall be filed under sub. (3) and a
24 hearing held under sub. (4). If the court determines that the person is competent,
25 the proceedings on the petition shall be resumed. If the court determines that the

1 person is not competent, it shall release him or her but may impose such reasonable
2 nonmonetary conditions as will protect the public and enable the court and the
3 department of justice or the district attorney, whichever filed the petition, to discover
4 whether the person subsequently becomes competent.

History: **History:** 1981 c. 367; 1985 a. 29, 176; Sup. Ct. Order, 141 W (2d) xiii (1987); 1987 a. 85, 403; 1989 a. 31, 107; Sup. Ct. Order, 158 W (2d) xvii (1990); 1991 a. 32; 1995 a. 27 s. 9126 (19); 1995 a. 268.

****NOTE: Proposed ss. 980.032 and 980.033 are based on ss. 971.13 and 971.14. The differences between criminal proceedings and terminology and ch. 980 proceedings and terminology meant that a simple cross-reference to s. 971.14 would not suffice. Assuming the question of competency arises before the probable cause finding, should there be a separate examination focusing only on competency, with a later examination concerning the sexually violent person issues only after the person is competent? Or could both examinations be done at the same time? Should the standard for competency be the same as under s. 971.13 (which is copied in this draft) or is some other standard more appropriate for ch. 980? If the person is found to be incompetent to proceed, should he or she be treated like (and with) persons committed under s. 971.14 (which is what this draft does) or should he or she be treated differently (given the nature of the ch. 980 proceedings)? Should the length of a commitment for incompetency to proceed under ch. 980 be different from one under s. 971.14, since a person under ch. 980 has no constitutional right to a speedy disposition? Finally, I assume that you want to specify that competency determinations should be made of persons subject to ch. 980 because, given the repeal of s. 980.05 (1m) by this draft, the right of a criminal defendant not to be tried unless competent will no longer apply to a person subject to a petition under ch. 980. Is that your intent? to

5 **SECTION 45.** 980.034 of the statutes is created to read:

6 **980.034 Change of place of trial or jury from another county.** (1) The
7 person who is the subject of a petition filed under s. 980.02 may move for a change
8 of the place of trial on the ground that an impartial trial cannot be had in the county
9 in which the trial is set to be held. The motion shall be made at the probable cause
10 hearing under s. 980.04 (2), except that it may be made after that time for cause.

****NOTE: Though implied in this provision and others in proposed s. 980.034, do you want to explicitly say that a change of venue is only available for persons who are to be tried by a jury under s. 980.05 or 980.09 (1) (b) or (2) (b) (as affected by this draft)?

11 (2) The motion shall be in writing and supported by affidavit which shall state
12 evidentiary facts showing the nature of the prejudice alleged. The department of
13 justice or the district attorney, whichever filed the petition under s. 980.02, may file
14 counter affidavits.

1 (3) If the court determines that there exists in the county where the action is
 2 pending such prejudice that a fair trial cannot be had, it shall, except as provided in
 3 sub. (4), order that the trial be held in any county where an impartial trial can be had.
 4 Only one change may be granted under this subsection. The judge who orders the
 5 change in the place of trial shall preside at the trial. Preliminary matters prior to
 6 trial may be conducted in either county at the discretion of the court. The judge shall
 7 determine where the person, if he or she is in custody, shall be held and where the
 8 record shall be kept.

****NOTE: The last sentence of this provision appears to conflict with the provisions
 of s. 980.04 (3), as affected by this draft. Should this provision override s. 980.04 (3)?

9 (4) (a) In lieu of changing the place of trial under sub. (3), the court may require
 10 the selection of a jury under par. (b) if all of the following apply:

11 1. The court has decided to sequester the jurors after the commencement of the
 12 trial.

13

2. There are grounds for changing the place of trial under sub. (1). *Stet.*

14 3. The estimated costs to the county appear to be less using the procedure under
 15 this subsection than using the procedure for holding the trial in another county.

16 (b) If the court decides to proceed under this subsection it shall follow the
 17 procedure under sub. (3) until the jury is chosen in the 2nd county. At that time, the
 18 proceedings shall return to the original county using the jurors selected in the 2nd
 19 county. The original county shall reimburse the 2nd county for all applicable costs
 20 under s. 814.22.

****NOTE: I assumed that you want a provision similar to s. 971.225 (jury from
 another county) in lieu of changing venue. Is that correct? Also, I assume that you want
 to specify a procedure for change of venue that differs from that under s. 801.52 because,
 given the repeal of s. 980.05 (1m) by this draft, the right of a criminal defendant to a
 change venue to assure a fair trial will no longer apply to a person under ch. 980. Is that
 your intent?

Concur

1 **SECTION 46.** 980.035 of the statutes is created to read:

2 **980.035 Substitution of judge.** (1) DEFINITION. In this section, “action”
3 means all proceedings before a court from the filing of a petition under s. 980.02 to
4 final disposition at the trial level.

 ****NOTE: Following s. 971.20 (1), this provision refers to “final disposition at the trial level”. This phrase might be a bit unclear under ch. 980. For instance, are petitions for supervised release or discharge part of the “action” or do they occur *after* “final disposition at the trial level”? Should this provision instead specify that the “action” ends at the time of commitment under s. 980.06? What is your intent on this point?

5 (2) ONE SUBSTITUTION. In any action under this chapter, a person who subject
6 to a petition filed under s. 980.02 has a right to only one substitution of a judge, except
7 under sub. (6). The right of substitution shall be exercised as provided in this section.

8 (3) SUBSTITUTION OF JUDGE ASSIGNED TO PROBABLE CAUSE HEARING. A written
9 request for the substitution of a different judge for the judge assigned to preside at
10 the probable cause hearing under s. 980.04 (2) may be filed with the clerk at least 5
11 days before the hearing unless the court otherwise permits. Substitution of a judge
12 assigned to a probable cause hearing under this subsection exhausts the right to
13 substitution for the duration of the action, except under sub. (6).

 ****NOTE: Following s. 971.20 (3) (b), this provision requires that the motion be filed 5 days before the probable cause hearing unless the court otherwise permits. Though it may be rare, in some cases a person may have to be given a hearing within 3 days under s. 980.04 (2) (as affected by this draft). Do you want different time limits in such cases? Also, unlike s. 971.20 (3) (a), this provision does not define “judge” to include court commissioners, who are not empowered to do hearings under s. 980.04 (2). Do you want to give that power to court commissioners?

14 (4) SUBSTITUTION OF TRIAL JUDGE ORIGINALLY ASSIGNED. A written request for the
15 substitution of a different judge for the judge originally assigned to the trial of the
16 action may be filed with the clerk before making any motions to the trial court.

 ****NOTE: This provision follows s. 971.20 (4), except that it omits reference to arraignment, which doesn’t apply to ch. 980 proceedings. At the same time, ch. 980 does not establish time limits for motions before trial (compare s. 971.31). Do you want instead to provide that the substitution must be filed within a specific number of days from (for example) the determination of probable cause (or some other event)?

1 (5) SUBSTITUTION OF TRIAL JUDGE SUBSEQUENTLY ASSIGNED. If a new judge is
2 assigned to the trial of an action and the person has not exercised the right to
3 substitute an assigned judge, a written request for the substitution of the new judge
4 may be filed with the clerk within 15 days of the clerk's giving actual notice or
5 sending notice of the assignment to the person or the person's attorney. If the
6 notification occurs within 20 days of the date set for trial, the request shall be filed
7 within 48 hours of the clerk's giving actual notice or sending notice of the assignment.
8 If the notification occurs within 48 hours of the trial or if there has been no
9 notification, the person may make an oral or written request for substitution prior
10 to the commencement of the proceedings.

11 (6) SUBSTITUTION OF JUDGE FOLLOWING APPEAL. If an appellate court orders a new
12 trial, a new commitment hearing or a new hearing on a petition for supervised
13 release or discharge, a request under this section may be filed within 20 days after
14 the filing of the remittitur by the appellate court, whether or not a request for
15 substitution was made prior to the time ^{that} the appeal was taken.

16 (7) PROCEDURES FOR CLERK. Upon receiving a request for substitution, the clerk
17 shall immediately contact the judge whose substitution has been requested for a
18 determination of whether the request was made timely and in proper form. If no
19 determination is made within 7 days, the clerk shall refer the matter to the chief
20 judge for the determination and reassignment of the action as necessary. If the
21 request is determined to be proper, the clerk shall request the assignment of another
22 judge under s. 751.03.

23 (8) JUDGE'S AUTHORITY TO ACT. Upon the filing of a request for substitution in
24 proper form and within the proper time, the judge whose substitution has been
25 requested has no authority to act further in the action.

****NOTE: This follows s. 971.20 (9), except that it does not include reference to conducting the initial appearance, accepting pleas and setting bail because these actions are not part of ch. 980 proceedings.

1 (9) FORM OF REQUEST. A request for substitution of a judge may be made in the
2 following form:

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STATE OF WISCONSIN
CIRCUIT COURT
.... County
State of Wisconsin

vs.

....(Person subject to the petition)

Pursuant to s. 980.035 (the person subject to the petition) requests a substitution for the Hon. as judge in the above entitled action.

Dated, 19...

....(Signature of person or person's attorney)

****NOTE: Is this case caption in the correct form, or should it be in some other form (e.g., "In re: the commitment of")?

(10) RETURN OF ACTION TO SUBSTITUTED JUDGE. Upon the filing of an agreement signed by the person and the person's attorney and by the prosecuting attorney, the substituted judge and the substituting judge, the action and all pertinent records shall be transferred back to the substituted judge.

SECTION 47. 980.036 of the statutes is created to read:

980.036 Discovery. [****Substantive provisions to be added in the next version of the draft.]

****NOTE: Not all of the provisions of s. 971.23 seem applicable to ch. 980. Please let me know what provisions you want to apply and then we can adopt them to ch. 980 in proposed s. 980.036.

SECTION 48. 980.038 of the statutes is created to read:

ra

1 **980.038 Miscellaneous procedural provisions. (1) MOTIONS CHALLENGING**
2 JURISDICTION OF COURT OR TIMELINESS OF PETITION; GROUNDS FOR CHALLENGING
3 JURISDICTION. (a) A motion challenging the jurisdiction of the court or the timeliness
4 of a petition filed under s. 980.02 shall be filed within 10 days after the court holds
5 the probable cause hearing under s. 980.04 (2). Failure to file a motion within the
6 time specified in this paragraph waives the right to challenge the jurisdiction of the
7 court or the timeliness of a petition.

8 (b) Notwithstanding s. 801.11, a court may exercise personal jurisdiction over
9 a person who is the subject of a petition filed under s. 980.02 even though the person
10 is not served as provided under s. ~~980~~⁸⁰¹.11 (1) or (2) with a verified petition and
11 summons or with an order for detention under s. 980.04 (1) and probable cause
12 hearing under s. 980.04 (2).

****NOTE: What is the intent of this provision? If it is to say that personal service
is not necessary for personal jurisdiction, isn't the provision unnecessary given that
personal jurisdiction can be obtained in other ways under s. 801.11?

13 [✓](2) EVIDENCE OF REFUSAL TO PARTICIPATE IN EXAMINATION. (a) At any hearing
14 under this chapter, the state may present evidence or comment on evidence that a
15 person who is the subject of a petition filed under s. 980.02 or a person committed
16 under this chapter refused to participate in an examination of his or her mental
17 condition that was being conducted by an expert or other professional person
18 retained or appointed under this chapter.

19 (b) An expert or other professional person may indicate in any written report
20 that he or she prepares in connection with a proceeding under this chapter that the
21 person ^{whom} he or she examined refused to participate in the examination.

22 (4) APPEAL. An appeal from a judgment or order under this chapter may be
23 taken to the court of appeals within the time period specified in s. 808.04 (3) in

1 accordance with s. 809.40 by the subject of the petition filed under s. 980.02 or by the
2 state.

****NOTE: The drafting instructions requested language stating that adult courts, not juvenile courts, have jurisdiction over juveniles subject to ch. 980. Such language appears to be unnecessary because the provisions of chs. 48 and 938 that spell out the jurisdiction of the juvenile court do not give juvenile courts any jurisdiction over juveniles subject to ch. 980. Please advise.

3 **SECTION 49.** 980.04 (1) of the statutes is amended to read:

4 980.04 (1) Upon the filing of a petition under s. 980.02, the court shall review
5 the petition to determine whether to issue an order for detention of the person who
6 is the subject of the petition. The person shall be detained only if there is probable
7 cause to believe that the person is eligible for commitment under s. 980.05 (5). A
8 person detained under this subsection shall be held in a facility approved by the
9 department. If the person is serving a sentence of imprisonment, is in a secured
10 correctional facility, as defined in s. 938.02 (15m), or a secured child caring
11 institution, as defined in s. 938.02 (15g), or is committed to institutional care, and
12 the court orders detention under this subsection, the court shall order that the
13 person be transferred to a detention facility approved by the department. A
14 detention order under this subsection remains in effect until the person is discharged
15 after a trial under s. 980.05 or until the effective date of a commitment order under
16 s. 980.06, whichever is applicable.

History: History: 1993 a. 479; 1995 a. 77.

17 **SECTION 50.** 980.04 (2) of the statutes is amended to read:

18 980.04 (2) Whenever a petition is filed under s. 980.02, the court shall hold a
19 hearing to determine whether there is probable cause to believe that the person
20 named in the petition is a sexually violent person. ~~If the person named in the petition~~
21 ~~is in custody, the court shall hold the probable cause hearing within 72 hours after~~
22 ~~the petition is filed, excluding Saturdays, Sundays and legal holidays. If the person~~

1 ~~named in the petition is not in custody, the~~ The court shall hold the probable cause
2 hearing within a reasonable time after the filing of the petition, except that [✓]
3 person named in the petition is in custody under a sentence, dispositional order or
4 commitment, [✓] the court shall hold the probable cause hearing no later than 3 days,
5 excluding Saturdays, Sundays and legal holidays, after the date of the person's
6 release or discharge from the sentence, dispositional order or commitment, unless
7 that time is extended by the court for good cause shown upon its own motion, the
8 motion of any party or the stipulation of the parties.

History: History: 1993 a. 479; 1995 a. 77.

****NOTE: Does this language effect your intent? I revised and compressed the language suggested in the drafting instructions to avoid some repetition.

9 **SECTION 51.** 980.04 (3) of the statutes is amended to read:

10 980.04 (3) If the court determines after a hearing that there is probable cause
11 to believe that the person named in the petition is a sexually violent person, the court
12 shall order that the person be taken into custody if he or she is not in custody and
13 shall order the person to be transferred within a reasonable time to an appropriate
14 facility specified by the department for an evaluation by the department as to
15 whether the person is a sexually violent person. If the court determines that
16 probable cause does not exist to believe that the person is a sexually violent person,
17 the court shall dismiss the petition.

History: History: 1993 a. 479; 1995 a. 77.

18 **SECTION 52.** 980.05 (1m) of the statutes is repealed.

19 **SECTION 53.** 980.05 (3) (b) of the statutes is amended to read:

20 980.05 (3) (b) If the state alleges that the sexually violent offense or act that
21 forms the basis for the petition was an act that was sexually motivated as provided

1 in s. 980.01 (6) (b) or (bm), the state is required to prove beyond a reasonable doubt
2 that the alleged sexually violent act was sexually motivated.

History: History: 1993 a. 479.

3 SECTION 54. 980.07 (3) of the statutes is repealed.

4 SECTION 55. 980.08 (3) of the statutes is amended to read:

5 980.08 (3) Within 20 days after receipt of the petition, the court shall appoint
6 one or more examiners having the specialized knowledge determined by the court to
7 be appropriate, who shall examine the mental condition of the person and furnish
8 a written report of the examination to the court within 30 days after appointment.
9 The district attorney or the department of justice, whichever filed the original
10 petition, shall have the right to have the petitioner examined by an expert or
11 professional person of his, her or its choice. An examiner retained by the district
12 attorney or department of justice under this subsection or retained by or appointed
13 for the petitioner under s. 980.031 (2) shall file a written report of his or her
14 examination ^{with} the court within 45 days of being retained or appointed. All of the
15 examiners acting under this subsection shall have reasonable access to the person
16 for purposes of examination and to the person's past and present treatment records,
17 as defined in s. 51.30 (1) (b), and patient health care records, as provided under s.
18 146.82 (2) (c). If any such examiner believes that the person is appropriate for
19 supervised release, the examiner shall report on the type of treatment and services
20 that the person may need while in the community on supervised release.

History: History: 1993 a. 479; 1995 a. 276; 1997 a. 27.

****NOTE: Do you want to allow an examiner under this provision to have access to other records, such as health care records under s. 146.82 and correctional records (including PSIs)? Compare proposed s. 980.031 (4) (which is created from s. 980.03 (4)).

21 SECTION 56. 980.08 (4) of the statutes, as affected by 1997 Wisconsin Act 27,
22 is amended to read:

1 980.08 (4) The court, without a jury, shall hear the petition within 30 days after
2 ~~the report reports of the court appointed examiner is~~ all experts or other
3 ~~professional persons who examined the petitioner under sub. (3) are~~ filed with the
4 court, unless the petitioner waives this time limit. Expenses of proceedings under
5 this subsection shall be paid as provided under s. 51.20 (18). The court shall grant
6 the petition unless the state proves by clear and convincing evidence that the person
7 is still a sexually violent person and that it is still substantially probable that the
8 person will engage in acts of sexual violence if the person is not continued in
9 institutional care. In making a decision under this subsection, the court may
10 consider, without limitation because of enumeration, the nature and circumstances
11 of the behavior that was the basis of the allegation in the petition under s. 980.02 (2)
12 (a), the person's mental history and present mental condition, where the person will
13 live, how the person will support himself or herself and what arrangements are
14 available to ensure that the person has access to and will participate in necessary
15 treatment.

History: History: 1993 a. 479; 1995 a. 276; 1997 a. 27.

16 **SECTION 57.** 980.09 (1) (b) of the statutes is amended to read:

17 980.09 (1) (b) At a hearing under this subsection, the district attorney or the
18 department of justice, whichever filed the original petition, shall represent the state
19 and shall have the right to have the petitioner examined by an expert or professional
20 person of his, her or its choice. ~~The hearing shall be before the court without a jury.~~
21 The district attorney or the department of justice, whichever filed the original
22 petition, or the petitioner or his or her attorney may request that the hearing under
23 this subsection be to a jury of 6. At the hearing under this subsection, the state has

1 the burden of proving by clear and convincing evidence that the petitioner is still a
2 sexually violent person.

3 History: History: 1993 a. 479.

3 **SECTION 58.** 980.09 (2) (a) of the statutes is amended to read:

4 980.09 (2) (a) A person may petition the committing court for discharge from
5 custody or supervision without the secretary's approval. At the time of an
6 examination under s. 980.07 (1), the secretary shall provide the committed person
7 with a written notice of the person's right to petition the court for discharge over the
8 secretary's objection. ~~The notice shall contain a waiver of rights.~~ The secretary shall
9 forward a copy of the notice and waiver form to the court with the report of the
10 department's examination under s. 980.07 and shall file with the court proof that the
11 person received the notice. If the person ~~does not affirmatively waive the right to~~
12 ~~petition~~ petitions for discharge from custody or supervision without the secretary's
13 approval, the court shall set a ~~probable cause~~ hearing to determine whether facts
14 exist that warrant a hearing on whether the person is still a sexually violent person.
15 The committed person has a right to have an attorney represent him or her at the
16 ~~probable cause~~ hearing, but the person is not entitled to be present at the ~~probable~~
17 ~~cause~~ hearing.

History: History: 1993 a. 479.

****NOTE: This provision does not refer to a "show cause hearing" because that does not make it completely clear who is showing cause about what. Do you mean to say that the petitioner has the burden of showing that facts exist that warrant a hearing on ~~the~~ whether the person is still a sexually violent person? If so, the provision can be amended to say so. Or is it your intent to codify the "paper review" holding in *In re Paulick*, 213 Wis. 2d 432 (Ct. App. 1997)? If so, perhaps the provision should include language limiting the hearing to a review of the petition and the petitioner's reexamination report (and other treatment records, if appropriate).

18 **SECTION 59.** 980.09 (2) (b) of the statutes is amended to read:

19 980.09 (2) (b) If the court determines at the ~~probable cause~~ hearing under par.
20 (a) that ~~probable cause exists to believe that the committed person is no longer~~ facts

1 exist that warrant a hearing on whether the person is still a sexually violent person,
2 then the court shall set a hearing on the issue. At a hearing under this paragraph,
3 the committed person is entitled to be present and to the benefit of the protections
4 afforded to the person under s. 980.03. The district attorney or the department of
5 justice, whichever filed the original petition, shall represent the state at a hearing
6 under this paragraph. The hearing under this paragraph shall be to the court. The
7 district attorney or the department of justice, whichever filed the original petition,
8 or the petitioner or his or her attorney may request that the hearing under this
9 subsection be to a jury of 6. The state has the right to have the committed person
10 evaluated by experts chosen by the state. At the hearing, the state has the burden
11 of proving by clear and convincing evidence that the committed person is still a
12 sexually violent person.

History: History: 1993 a. 479.

****NOTE: This draft amends the first sentence of this provision for consistency with
s. 980.09 (2) (a).

13 **SECTION 60.** 980.14 (title) of the statutes is created to read:

14 **980.14 (title) Immunity.**

15 **SECTION 61.** 980.14 (1) of the statutes is created to read:

16 **980.14 (1)** In this section, “agency” means the department of corrections, the
17 department of health and family services, the department of justice or a district
18 attorney.

****NOTE: Leaving the immunity provision in s. 980.015 would have limited its
applicability to agencies with jurisdiction, as defined in s. 980.015 (1). However, given
the request to expand s. 980.015 (4) to cover the whole chapter, I assumed that you wanted
to cover other actors under ch. 980 as well. Is that your intent? If so, does this definition
cover everyone that you want to cover?

19 **SECTION 62. Initial applicability.**

20 (1) The treatment of sections [****citations to be provided in a later version of
21 the draft] of the statutes first applies to proceedings under chapter 980 of the statutes

1 that are initiated by a petition filed under section 980.02 of the statutes on the
2 effective date of this subsection.

***NOTE: Are there any changes made by the draft that you want to apply to
pending cases?

3 **SECTION 63. Effective dates.** This act takes effect on the day after
4 publication, except as follows:

5 (1) The repeal and recreation of section 51.20 (1) (am) of the statutes takes
6 effect on December 1, 2001.

7 (END)

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-4610/P1dn
JEO:kmg:jf

Friday, January 16, 1998

This is a preliminary draft for your review. It includes some 4-star notes (****NOTE) raising questions that you may want to consider when reviewing the draft.

Please let me know if you have any questions or redrafting instructions. To help expedite completion of the draft, I would be happy to meet with you or DOJ to go over the draft and any redrafting instructions.

Jefren E. Olsen
Legislative Attorney
266-8906