

Notes from
1/30 mtg

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

w/ Fuller
Burke
Cohen | bjt

1 **AN ACT** *to repeal* 980.05 (1m) and 980.07 (3); *to renumber and amend* 980.015
2 (4), 980.02 (2) (ag), 980.03 (4) and 980.03 (5); *to amend* 46.10 (2), 46.48 (10),
3 51.05 (2), 51.20 (1) (am), 51.30 (4) (b) 8m., 51.30 (4) (b) 12m., 51.37 (1), 51.37 (4),
4 51.37 (9), 51.42 (3) (as) 1., 51.437 (4rm) (a), 51.87 (3), 146.82 (2) (c), 808.04 (3),
5 809.40 (1), 905.04 (4) (a), 911.01 (4) (c), 967.08 (2) (b), 972.15 (4), 980.01 (5),
6 980.01 (6) (a), 980.01 (6) (b), 980.01 (6) (c), 980.01 (7), 980.015 (2) (a), 980.02 (3),
7 980.02 (4) (intro.), 980.03 (2) (intro.), 980.03 (3), 980.04 (1), 980.04 (2), 980.04
8 (3), 980.05 (3) (b), 980.08 (3), 980.08 (4), 980.09 (1) (b), 980.09 (2) (a) and 980.09
9 (2) (b); *to repeal and recreate* 51.20 (1) (am); and *to create* 972.15 (6), 980.01
10 (6) (am), 980.01 (6) (bm), 980.015 (2) (d), 980.02 (1) (b) 3., 980.031 (title), 980.031
11 (1), 980.031 (3), 980.032, 980.033, 980.034, 980.035, 980.036, 980.038, 980.14

1 (title) and 980.14 (1) of the statutes; **relating to:** sexually violent person
2 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:

3 **SECTION 1.** 46.10 (2) of the statutes, as affected by 1997 Wisconsin Act 27, is
4 amended to read:

5 46.10 (2) Except as provided in subs. (2m) and (14) (b) and (c), any person,
6 including but not limited to a person admitted, committed or placed under s. 975.01,
7 1977 stats., s. 975.02, 1977 stats., and s. 975.17, 1977 stats., and ss. 48.366, 51.10,
8 51.13, 51.15, 51.20, 51.35 (3), 51.37 (5), 51.45 (10), (11), (12) and (13), 55.05, 55.06,
9 938.183, 938.34 (4h) or (4m), 938.357 (4) and (5) (e), 971.14 (2) and (5), 971.17 (1),
10 975.06, 980.033 (2) and (5) and 980.06, receiving care, maintenance, services and
11 supplies provided by any institution in this state including University of Wisconsin
12 Hospitals and Clinics, in which the state is chargeable with all or part of the person's
13 care, maintenance, services and supplies, any person receiving care and services
14 from a county department established under s. 51.42 or 51.437 or from a facility
15 established under s. 49.73, and any person receiving treatment and services from a
16 public or private agency under s. 971.17 (3) (d) or (4) (e), 980.06 (2) (c) or 980.08 (5)
17 and the person's property and estate, including the homestead, and the spouse of the
18 person, and the spouse's property and estate, including the homestead, and, in the

1 case of a minor child, the parents of the person, and their property and estates,
2 including their homestead, and, in the case of a foreign child described in s. 48.839
3 (1) who became dependent on public funds for his or her primary support before an
4 order granting his or her adoption, the resident of this state appointed guardian of
5 the child by a foreign court who brought the child into this state for the purpose of
6 adoption, and his or her property and estate, including his or her homestead, shall
7 be liable for the cost of the care, maintenance, services and supplies in accordance
8 with the fee schedule established by the department under s. 46.03 (18). If a spouse,
9 widow or minor, or an incapacitated person may be lawfully dependent upon the
10 property for their support, the court shall release all or such part of the property and
11 estate from the charges that may be necessary to provide for those persons. The
12 department shall make every reasonable effort to notify the liable persons as soon
13 as possible after the beginning of the maintenance, but the notice or the receipt
14 thereof is not a condition of liability.

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

16 46.48 (10) COMPETENCY EXAMINATIONS. The department shall provide not more
17 than \$484,300 in each fiscal year to a county with a population of 500,000 or more
18 to fund examinations under s. 971.14 (2) or 980.033 (2) in that county.

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

20 51.05 (2) The department may not accept for admission to a mental health
21 institute any resident person, except in an emergency, unless the county department
22 under s. 51.42 in the county where the person has legal residency authorizes the care,
23 as provided in s. 51.42 (3) (as). Patients who are committed to the department under
24 s. 975.01, 1977 stats., or s. 975.02, 1977 stats., or s. 971.14, 971.17, 975.06, 980.033
25 or 980.06, admitted by the department under s. 975.17, 1977 stats., or are

1 transferred from a juvenile correctional facility or a secured child caring institution,
2 as defined in s. 938.02 (15g), to a state treatment facility under s. 51.35 (3) or from
3 a jail or prison to a state treatment facility under s. 51.37 (5) are not subject to this
4 section.

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

6 51.20 (1) (am) If the individual has been the subject of inpatient treatment for
7 mental illness, developmental disability or drug dependency immediately prior to
8 commencement of the proceedings as a result of a voluntary admission or a
9 commitment or placement ordered by a court under this section or s. 55.06 or 971.17
10 or ch. 975, or if the individual has been the subject of outpatient treatment for mental
11 illness, developmental disability or drug dependency immediately prior to
12 commencement of the proceedings as a result of a commitment ordered by a court
13 under this section or s. 971.17 or ch. 975, the requirements of a recent overt act,
14 attempt or threat to act under par. (a) 2. a. or b., a pattern of recent acts or omissions
15 under par. (a) 2. c. or e. or recent behavior under par. (a) 2. d. may be satisfied by a
16 showing that there is a substantial likelihood, based on the subject individual's
17 treatment record, that the individual would be a proper subject for commitment if
18 treatment were withdrawn. If the individual has been admitted voluntarily to an
19 inpatient treatment facility for not more than 30 days prior to the commencement
20 of the proceedings and remains under voluntary admission at the time of
21 commencement, the requirements of a specific recent overt act, attempt or threat to
22 act or pattern of recent acts or omissions may be satisfied by a showing of an act,
23 attempt or threat to act or a pattern of acts or omissions which took place
24 immediately previous to the voluntary admission. If the individual is committed
25 under s. 971.14 (2) or (5) or 980.033 (2) or (5) at the time proceedings are commenced,

1 or has been discharged from the commitment immediately prior to the
2 commencement of proceedings, acts, attempts, threats, omissions or behavior of the
3 subject individual during or subsequent to the time of the offense shall be deemed
4 recent for purposes of par. (a) 2.

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

7 51.20 (1) (am) If the individual has been the subject of inpatient treatment for
8 mental illness, developmental disability or drug dependency immediately prior to
9 commencement of the proceedings as a result of a voluntary admission or a
10 commitment or placement ordered by a court under this section or s. 55.06 or 971.17
11 or ch. 975, or if the individual has been the subject of outpatient treatment for mental
12 illness, developmental disability or drug dependency immediately prior to
13 commencement of the proceedings as a result of a commitment ordered by a court
14 under this section or s. 971.17 or ch. 975, the requirements of a recent overt act,
15 attempt or threat to act under par. (a) 2. a. or b., a pattern of recent acts or omissions
16 under par. (a) 2. c. or recent behavior under par. (a) 2. d. may be satisfied by a showing
17 that there is a substantial likelihood, based on the subject individual's treatment
18 record, that the individual would be a proper subject for commitment if treatment
19 were withdrawn. If the individual has been admitted voluntarily to an inpatient
20 treatment facility for not more than 30 days prior to the commencement of the
21 proceedings and remains under voluntary admission at the time of commencement,
22 the requirements of a specific recent overt act, attempt or threat to act or pattern of
23 recent acts or omissions may be satisfied by a showing of an act, attempt or threat
24 to act or a pattern of acts or omissions which took place immediately previous to the
25 voluntary admission. If the individual is committed under s. 971.14 (2) or (5) or

1 980.033 (2) or (5) at the time proceedings are commenced, or has been discharged
2 from the commitment immediately prior to the commencement of proceedings, acts,
3 attempts, threats, omissions or behavior of the subject individual during or
4 subsequent to the time of the offense shall be deemed recent for purposes of par. (a)
5 2.

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

7 51.30 (4) (b) 8m. To appropriate examiners and facilities in accordance with s.
8 971.17 (2) (e), (4) (c) and (7) (c), ~~980.03~~ 980.031 (4) or 980.08 (3) and to district
9 attorneys or the department of justice in accordance with s. 980.015 (3) (b). The
10 recipient of any information from the records shall keep the information confidential
11 except as necessary to comply with s. 971.17 or ch. 980.

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

13 51.30 (4) (b) 12m. To any person if the patient was admitted under s. 971.14,
14 971.17, 980.033 or 980.06 or ch. 975 or transferred under s. 51.35 (3) or 51.37 and is
15 on unauthorized absence from a treatment facility. Information released under this
16 subdivision is limited to information that would assist in the apprehension of the
17 patient.

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

19 51.37 (1) All commitments under s. 975.01, 1977 stats., and s. 975.02, 1977
20 stats., and under ss. 971.14 (5), 971.17 ~~and~~, 975.06 and 980.033 (5) shall be to the
21 department.

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

23 51.37 (4) The department may, with the approval of the committing court and
24 the county department under s. 51.42 or 51.437, and subject to s. 51.35, transfer to
25 the care and custody of a county department under s. 51.42 or 51.437 any person in

1 an institution of the department committed under s. 971.14 ~~or~~, 971.17 or 980.033, if
2 in its opinion, the mental condition of the person is such that further care is required
3 and can be properly provided under the direction of the county department under s.
4 51.42 or 51.437.

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

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

1 with the department of corrections for the supervision of persons who are transferred
2 or discharged under this subsection.

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

4 51.42 (3) (as) 1. A county department of community programs shall authorize
5 all care of any patient in a state, local or private facility under a contractual
6 agreement between the county department of community programs and the facility,
7 unless the county department of community programs governs the facility. The need
8 for inpatient care shall be determined by the program director or designee in
9 consultation with and upon the recommendation of a licensed physician trained in
10 psychiatry and employed by the county department of community programs or its
11 contract agency. In cases of emergency, a facility under contract with any county
12 department of community programs shall charge the county department of
13 community programs having jurisdiction in the county where the patient is found.
14 The county department of community programs shall reimburse the facility for the
15 actual cost of all authorized care and services less applicable collections under s.
16 46.036, unless the department of health and family services determines that a
17 charge is administratively infeasible, or unless the department of health and family
18 services, after individual review, determines that the charge is not attributable to the
19 cost of basic care and services. A county department of community programs may
20 not reimburse any state institution or receive credit for collections for care received
21 therein by nonresidents of this state, interstate compact clients, transfers under s.
22 51.35 (3), and transfers from Wisconsin state prisons under s. 51.37 (5) (a),
23 commitments under s. 975.01, 1977 stats., or s. 975.02, 1977 stats., or s. 971.14,
24 971.17 ~~or~~, 975.06 or 980.033 or admissions under s. 975.17, 1977 stats., or children
25 placed in the guardianship of the department of health and family services under s.

1 48.427 or 48.43 or under the supervision of the department of corrections under s.
2 938.183 or 938.355. The exclusionary provisions of s. 46.03 (18) do not apply to direct
3 and indirect costs which are attributable to care and treatment of the client.

4 **SECTION 12.** 51.437 (4rm) (a) of the statutes, as affected by 1997 Wisconsin Acts
5 27 and 35, is amended to read:

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

1 County departments of developmental disabilities services may not reimburse any
2 state institution or receive credit for collections for care received therein by
3 nonresidents of this state, interstate compact clients, transfers under s. 51.35 (3) (a),
4 commitments under s. 975.01, 1977 stats., or s. 975.02, 1977 stats., or s. 971.14,
5 971.17 ~~or~~, 975.06 or 980.033, admissions under s. 975.17, 1977 stats., children placed
6 in the guardianship of the department of health and family services under s. 48.427
7 or 48.43 or juveniles under the supervision of the department of corrections under
8 s. 938.183 or 938.355.

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

10 51.87 (3) PURCHASE OF SERVICES. A county department under s. 46.23, 51.42 or
11 51.437 may contract as provided under this section with public or private agencies
12 in states bordering on Wisconsin to secure services under this chapter for persons
13 who receive services through the county department, except that services may not
14 be secured for persons committed under s. 971.14 ~~or~~, 971.17 or 980.033. Section
15 46.036 (1) to (6) applies to contracts entered into under this section by county
16 departments under s. 46.23, 51.42 or 51.437.

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

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

23 **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.

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.

***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”.

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

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

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

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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.

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).

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.

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.

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

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

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

3 980.01 (5) "Sexually motivated" means that one of the purposes for an act is
4 for the actor's sexual arousal or gratification or for the sexual humiliation or
5 degradation of the victim.

****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? *Yes de*

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

7 980.01 (6) (a) Any crime specified in s. 940.22 (2), 940.225 (1) or (2), 948.02 (1)
8 or (2), 948.025, 948.06 or 948.07.

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

10 980.01 (6) (am) An offense that, prior to the effective date of this paragraph
11 [revisor inserts date], was a crime under the law of this state and that is comparable
12 to any crime specified in par. (a).

*codify
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****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?
A

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

14 980.01 (6) (b) Any crime specified in s. 940.01, 940.02, 940.03, 940.05, 940.06,
15 940.19 (4) or (5), 940.30, 940.305, 940.31 ~~or~~, 941.32, 941.38, 943.02, 943.10, 943.32
16 or 948.03 that is determined, in a proceeding under s. 980.05 (3) (b), to have been
17 sexually motivated.

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

1 980.01 (6) (bm) An offense that, prior to the effective date of this paragraph
2 [revisor inserts date], was a crime under the law of this state, that is comparable to
3 any crime specified in par. (b) and that is determined, in a proceeding under s. 980.05
4 (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?

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

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

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

9 980.01 (7) "Sexually violent person" means a person who has been convicted
10 of a sexually violent offense, has been adjudicated delinquent for a sexually violent
11 offense, or has been found not guilty of or not responsible for a sexually violent
12 offense by reason of insanity or mental disease, defect or illness, and who is
13 dangerous because he or she suffers from a mental disorder that makes it
14 substantially probable more probable than not that the person will engage in one or
15 more acts of sexual violence.

 ***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? *Will get back to me*

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

17 980.015 (2) (a) The anticipated discharge from a sentence, anticipated release
18 on parole or anticipated release from imprisonment of a person who ~~has been~~
19 ~~convicted of~~ is serving a continuous term of incarceration, any part of which was
20 imposed for a sexually violent offense.

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

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

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

6 980.14 (2) Any agency or officer, employe or agent of an agency is immune from
7 criminal or civil liability for any acts or omissions as the result of a good faith effort
8 to comply with any provision of this section chapter.

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

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

10 980.02 (1) (b) 3. The county in which the person is in custody under a sentence,
11 a placement to a secured correctional facility, as defined in s. 938.02 (15m), or a
12 secured child caring institution, as defined in s. 938.02 (15g), 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? *Ok*

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

15 980.02 (2) (ag) (intro.) The person is within 90 days of discharge or release, on
16 parole or otherwise, from a sentence that any of the following:

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

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

1 3. A commitment order that was entered as a result of a sexually violent
2 offense.

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

4 **980.02 (3)** A petition filed under this section shall state with particularity
5 essential facts to establish probable cause to believe the person is a sexually violent
6 person. If the petition alleges that a sexually violent offense or act that is a basis for
7 the allegation under sub. (2) (a) was an act that was sexually motivated as provided
8 under s. 980.01 (6) (b) or (bm), the petition shall state the grounds on which the
9 offense or act is alleged to be sexually motivated.

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

11 **980.02 (4) (intro.)** A petition under this section shall be filed in any one of the
12 following:

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

14 **980.03 (2) (intro.)** Except as provided in ss. 980.038 (2), 980.09 (2) (a) and
15 980.10 and without limitation by enumeration, at any hearing under this chapter,
16 the person who is the subject of the petition has the right to:

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

18 **980.03 (3)** The person who is the subject of the petition, the person's attorney,
19 the department of justice or the district attorney may request that a trial under s.
20 980.05 be to a jury of 12. A request for a jury trial shall be made as provided under
21 s. 980.05. ~~Notwithstanding s. 980.05 (2), if the person, the person's attorney, the~~
22 ~~department of justice or the district attorney does not request a jury trial, the court~~
23 ~~may on its own motion require that the trial be to a jury of 12.~~ A verdict of a jury
24 under this chapter is not valid unless it is unanimous.

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

3 980.031 (2) Whenever the person who is the subject of ~~the a~~ a petition filed under
4 s. 980.02 is required to submit to an examination of his or her mental condition under
5 this chapter, he or she may retain experts or professional persons to perform an
6 examination. If the person is indigent, the court shall, upon the person's request,
7 appoint a qualified and available expert or professional person to perform an
8 examination of the person's mental condition and participate in a trial or other
9 proceeding on the person's behalf. *where fed. auth*

****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?

10 **(4)** ~~If the person a party retains or the court appoints~~ a qualified expert or
11 professional person ~~of his or her own choice~~ to conduct an examination under this
12 chapter of a person's mental condition, the examiner shall have reasonable access to
13 the person for the purpose of the examination, as well as to the person's past and
14 present correctional records, including presentence investigation reports, past and
15 present treatment records, as defined in s. 51.30 (1) (b), and past and present patient
16 health care records as provided under s. 146.82 (2) (c). ~~If the person is indigent, the~~
17 ~~court shall, upon the person's request, appoint a qualified and available expert or~~
18 ~~professional person to perform an examination and participate in the trial on the~~
19 ~~person's behalf. Upon the order of the circuit court, the county shall pay, as part of~~
20 ~~the costs of the action, the costs of a court-appointed expert or professional person~~
21 ~~to perform an examination and participate in the trial on behalf of an indigent~~
22 person.

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

****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. 980.04 (3), 980.07 (1) 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.

8 **SECTION 39.** 980.03 (5) of the statutes is renumbered 980.038 (3) and amended
 9 to read:

10 **980.038 (3) (title)** TESTIMONY BY TELEPHONE OR LIVE AUDIO-VISUAL MEANS. Upon
 11 a showing by the proponent of good cause under s. 807.13 (2) (c), testimony may be
 12 received into the record of a hearing under this ~~section~~ chapter by telephone or live
 13 audio-visual means. *Except out jury trial/discharge*

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

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

15 **980.031(title) Examinations.**

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

1 980.031 (1) If a person who is the subject of a petition filed under s. 980.02
2 denies the facts alleged in the petition, the court may appoint at least one qualified
3 expert or professional person to conduct an examination of the person's mental
4 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?

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

6 980.031 (3) The state may retain an expert or other professional person to
7 examine the mental condition of a person who is the subject of a petition under s.
8 980.02 and to testify at trial.

only to any proceeding where testimony authorized

****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?

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

10 **980.032 Competency.** (1) No person who lacks substantial mental capacity
11 to understand the proceedings under this chapter or assist in his or her own defense
12 against a petition filed under s. 980.02 may be subject to proceedings under this
13 chapter so long as the incapacity endures.

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

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

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

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

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

16 (c) If reason to doubt competency arises after the court has found under s.
17 980.04 (2) that there is probable cause to believe that the person is a sexually violent
18 person or after a finding of the court or a jury under s. 980.05 that the person is a
19 sexually violent person, a probable cause determination is not required and the court
20 shall proceed under sub. (2).

21 **(2) EXAMINATION.** (a) The court shall appoint one or more examiners having the
22 specialized knowledge determined by the court to be appropriate to examine and
23 report upon the condition of the person. If an inpatient examination is determined
24 by the court to be necessary and the person is not already detained or in custody, the
25 person may be committed to a suitable mental health facility for the examination

1 period specified in par. (c). If the examination is to be conducted by the department,
2 the court shall order the person to the facility designated by the department.

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

✓ to ch. 980? ******NOTE: Do you want DOC to be doing competency evaluations for persons subject**
→ No

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

21 (c) Inpatient examinations shall be completed and the report of examination
22 filed within 15 days after the examination is ordered or as specified in par. (am),
23 whichever is applicable, unless, for good cause, the facility or examiner appointed by

1 the court cannot complete the examination within this period and requests an
2 extension. In that case, the court may allow one 15-day extension of the examination
3 period. Outpatient examinations shall be completed and the report of examination
4 filed within 30 days after the examination is ordered.

5 (d) If the court orders that the examination be conducted on an inpatient basis,
6 it shall arrange for the transportation of any person who is detained or in custody to
7 the examining facility within a reasonable time after the examination is ordered and,
8 if the person was detained or in custody in a different facility, the court shall arrange
9 for the person to be returned to the facility in which he or she was detained or in
10 custody within a reasonable time after receiving notice from the examining facility
11 that the examination has been completed.

12 (e) The examiner shall personally observe and examine the person and shall
13 have access to his or her past or present treatment records, as defined in s. 51.30 (1)

14 (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)).

} Yes

15 (f) A person ordered to undergo examination under this section may receive
16 voluntary treatment appropriate to his or her medical needs. The person may refuse
17 medication and treatment except in a situation where the medication or treatment
18 is necessary to prevent physical harm to the person or others.

19 (g) The person may be examined for competency purposes at any stage of the
20 competency proceedings by experts or other professional persons chosen by the
21 person or by the department of justice or district attorney, whichever filed the
22 petition. Experts or other professional persons chosen to examine the person under

1 this paragraph shall be permitted reasonable access to the person for purposes of the
2 examination.

lic. phys / lic psych / m.h. prof

****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?

No

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

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

8 (b) The clinical findings of the examiner.

9 (c) The examiner's opinion regarding the person's present mental capacity to
10 understand the proceedings under this chapter and to assist in his or her defense
11 against the petition.

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

15 (dm) If sufficient information is available to the examiner to reach an opinion,
16 the examiner's opinion on whether the person needs medication or treatment and
17 whether the person is not competent to refuse medication or treatment. The person
18 is not competent to refuse medication or treatment if, because of mental illness,
19 developmental disability, alcoholism or drug dependence, and after the advantages
20 and disadvantages of and alternatives to accepting the particular medication or
21 treatment have been explained to the person, one of the following is true:

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

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

 ****NOTE: This paragraph refers to "mental illness". Is that your intent? Yes

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

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

14 (b) If the district attorney or the department of justice, whichever filed the
15 petition, the person and the person's attorney waive their respective opportunities
16 to present other evidence on the issue, the court shall promptly determine the
17 person's competency and, if at issue, competency to refuse medication or treatment
18 for the person's mental condition on the basis of the report filed under sub. (3) or (5).
19 In the absence of these waivers, the court shall hold an evidentiary hearing on the
20 issue. At the commencement of the hearing, the judge shall ask the person whether
21 he or she claims to be competent or incompetent. If the person stands mute or claims
22 to be incompetent, the person shall be found incompetent unless the state proves by
23 the greater weight of the credible evidence that the person is competent. If the
24 person claims to be competent, the person shall be found competent unless the state

1 proves by evidence that is clear and convincing that the person is incompetent. If the
2 person is found incompetent and if the state proves by evidence that is clear and
3 convincing that the person is not competent to refuse medication or treatment, under
4 the standard specified in sub. (3) (dm), the court shall make a determination without
5 a jury and issue an order that the person is not competent to refuse medication or
6 treatment for the person's mental condition and that whoever administers the
7 medication or treatment to the person shall observe appropriate medical standards.

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

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

13 (5) COMMITMENT. (a) If the court determines that the person is not competent
14 but is likely to become competent within the period specified in this paragraph if
15 provided with appropriate treatment, the court shall suspend the proceedings and
16 commit the person to the custody of the department in an appropriate institution for
17 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?

18 (am) If the person is not subject to a court order determining the person to be
19 not competent to refuse medication or treatment for the person's mental condition
20 and if the treatment facility determines that the person should be subject to such a
21 court order, the treatment facility may file with the court with notice to the attorney
22 for the person, the person and the district attorney or department of justice,
23 whichever filed the petition, a motion for a hearing, under the standard specified in

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

13 (b) The person shall be periodically reexamined by the treatment facility.
14 Written reports of examination shall be furnished to the court 3 months after
15 commitment, ~~6 months after commitment, 9 months after commitment~~ and within
16 30 days prior to the expiration of commitment. Each report shall indicate that the
17 person has become competent, that the person remains incompetent but that
18 attainment of competency is likely within the remaining commitment period, or that
19 the person has not made such progress that attainment of competency is likely
20 within the remaining commitment period. Any report indicating such a lack of
21 sufficient progress shall include the examiner's opinion regarding whether the
22 person is mentally ill, alcoholic, drug dependent, developmentally disabled or infirm
23 because of aging or other like incapacities.

24 (c) Upon receiving a report under par. (b), the court shall proceed under sub.
25 (4). If the court determines that the person has become competent, the person shall

1 be discharged from commitment and the proceedings on the petition shall be
2 resumed. If the court determines that the person is making sufficient progress
3 toward becoming competent, the commitment shall continue.

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

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

16 (b) When the court discharges a person from commitment under par. (a), it may
17 order that the person be taken immediately into custody by a law enforcement official
18 and promptly delivered to a facility specified in s. 51.15 (2), an approved public
19 treatment facility under s. 51.45 (2) (c) or an appropriate medical or protective
20 placement facility. Thereafter, detention of the person shall be governed by s. 51.15,
21 51.45 (11) or 55.06 (11), as appropriate. The district attorney or corporation counsel
22 may prepare a statement meeting the requirements of s. 51.15 (4) or (5), 51.45 (13)
23 (a) or 55.06 (11) based on the allegations of the petition filed under s. 980.02 and the
24 evidence in the case. This statement shall be given to the director of the facility to
25 which the person is delivered and filed with the circuit court where it shall suffice,

1 without corroboration by other petitioners, as a petition for commitment under s.
2 51.20, 51.45 (13) or 55.06 (2). This section does not restrict the power of the branch
3 of circuit court in which the petition is filed to transfer the matter to the branch of
4 circuit court assigned to exercise jurisdiction under ch. 51 in the county.

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

14 (d) Counsel who have received notice under par. (c) or who otherwise obtain
15 information that a person discharged under par. (a) may have become competent
16 may move the court to order that the person undergo a competency examination
17 under sub. (2). If the court so orders, a report shall be filed under sub. (3) and a
18 hearing held under sub. (4). If the court determines that the person is competent,
19 the proceedings on the petition shall be resumed. If the court determines that the
20 person is not competent, it shall release him or her but may impose such reasonable
21 nonmonetary conditions as will protect the public and enable the court and the
22 department of justice or the district attorney, whichever filed the petition, to discover
23 whether the person subsequently becomes competent.

****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?

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

2 **980.034 Change of place of trial or jury from another county.** (1) ~~The~~
3 person who is the subject of a petition filed under s. 980.02 may move for a change
4 of the place of trial on the ground that an impartial trial cannot be had in the county
5 in which the trial is set to be held. The motion shall be made at the probable cause
6 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)?

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

11 (3) If the court determines that there exists in the county where the action is
12 pending such prejudice that a fair trial cannot be had, it shall, except as provided in
13 sub. (4), order that the trial be held in any county where an impartial trial can be had.
14 Only one change may be granted under this subsection. The judge who orders the
15 change in the place of trial shall preside at the trial. Preliminary matters prior to
16 trial may be conducted in either county at the discretion of the court. ~~The judge shall~~

Nathan Holaday
8/21/52

Yes

1 determine where the person, if he or she is in custody, shall be held and where the
2 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)? *Delete it*

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

5 1. The court has decided to sequester the jurors after the commencement of the
6 trial.

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

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

10 (b) If the court decides to proceed under this subsection it shall follow the
11 procedure under sub. (3) until the jury is chosen in the 2nd county. At that time, the
12 proceedings shall return to the original county using the jurors selected in the 2nd
13 county. The original county shall reimburse the 2nd county for all applicable costs
14 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 ensure a fair trial will no longer apply to a person under ch. 980. Is that
your intent?

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

16 980.035 Substitution of judge. (1) DEFINITION. In this section, "action"
17 means all proceedings before a court from the filing of a petition under s. 980.02 to
18 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?

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

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

10 (4) SUBSTITUTION OF TRIAL JUDGE ORIGINALLY ASSIGNED. A written request for the
11 substitution of a different judge for the judge originally assigned to the trial of the
12 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)?

13 (5) SUBSTITUTION OF TRIAL JUDGE SUBSEQUENTLY ASSIGNED. If a new judge is
14 assigned to the trial of an action and the person has not exercised the right to
15 substitute an assigned judge, a written request for the substitution of the new judge
16 may be filed with the clerk within 15 days of the clerk’s giving actual notice or
17 sending notice of the assignment to the person or the person’s attorney. If the
18 notification occurs within 20 days of the date set for trial, the request shall be filed
19 within 48 hours of the clerk’s giving actual notice or sending notice of the assignment.

1 If the notification occurs within 48 hours of the trial or if there has been no
2 notification, the person may make an oral or written request for substitution prior
3 to the commencement of the proceedings.

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

keep.

9 (7) PROCEDURES FOR CLERK. Upon receiving a request for substitution, the clerk
10 shall immediately contact the judge whose substitution has been requested for a
11 determination of whether the request was made timely and in proper form. If no
12 determination is made within 7 days, the clerk shall refer the matter to the chief
13 judge for the determination and reassignment of the action as necessary. If the
14 request is determined to be proper, the clerk shall request the assignment of another
15 judge under s. 751.03.

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

hoff
****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. *civil law?*

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

21 STATE OF WISCONSIN

22 CIRCUIT COURT

23 County

1 State of Wisconsin
 2 vs.
 3 ...(Person subject to the petition)
 4 Pursuant to s. 980.035 ... (the person subject to the petition) requests a
 5 substitution for the Hon. as judge in the above entitled action.
 6 Dated, 19...
 7(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")?

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

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

13 980.036 Discovery. [****Substantive provisions to be added in the next
 14 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 adapt them to ch. 980 in proposed s. 980.036.

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

16 980.038 Miscellaneous procedural provisions. (1) MOTIONS CHALLENGING
 17 JURISDICTION OF COURT OR TIMELINESS OF PETITION; GROUNDS FOR CHALLENGING
 18 JURISDICTION. (a) A motion challenging the jurisdiction of the court or the timeliness
 19 of a petition filed under s. 980.02 shall be filed within 10 days after the court holds
 20 the probable cause hearing under s. 980.04 (2). Failure to file a motion within the
 21 time specified in this paragraph waives the right to challenge the jurisdiction of the
 22 court or the timeliness of a petition.

Keith

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

Is this a problem arising from current rights of Del?

****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?

6 (2) EVIDENCE OF REFUSAL TO PARTICIPATE IN EXAMINATION. (a) At any hearing
 7 under this chapter, the state may present evidence or comment on evidence that a
 8 person who is the subject of a petition filed under s. 980.02 or a person committed
 9 under this chapter refused to participate in an examination of his or her mental
 10 condition that was being conducted by an expert or other professional person
 11 retained or appointed under this chapter.

12 (b) An expert or other professional person may indicate in any written report
 13 that he or she prepares in connection with a proceeding under this chapter that the
 14 person whom he or she examined refused to participate in the examination.

15 (4) APPEAL. An appeal from a judgment or order under this chapter may be
 16 taken to the court of appeals within the time period specified in s. 808.04 (3) in
 17 accordance with s. 809.40 by the subject of the petition filed under s. 980.02 or by the
 18 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.

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

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

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

15 980.04 (2) Whenever a petition is filed under s. 980.02, the court shall hold a
16 hearing to determine whether there is probable cause to believe that the person
17 named in the petition is a sexually violent person. ~~If the person named in the petition~~
18 ~~is in custody, the court shall hold the probable cause hearing within 72 hours after~~
19 ~~the petition is filed, excluding Saturdays, Sundays and legal holidays. If the person~~
20 ~~named in the petition is not in custody, the~~ The court shall hold the probable cause
21 hearing within a reasonable time after the filing of the petition, except that if the
22 person named in the petition is in custody under a sentence, dispositional order or
23 commitment, the court shall hold the probable cause hearing no later than 3 days,
24 excluding Saturdays, Sundays and legal holidays, after the date of the person's
25 release or discharge from the sentence, dispositional order or commitment, unless

Scheduled

1 that time is extended by the court for good cause shown upon its own motion, the
2 motion of any party or the stipulation of the parties.

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

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

4 980.04 (3) If the court determines after a hearing that there is probable cause
5 to believe that the person named in the petition is a sexually violent person, the court
6 shall order that the person be taken into custody if he or she is not in custody and
7 shall order the person to be transferred within a reasonable time to an appropriate
8 facility specified by the department for an evaluation by the department as to
9 whether the person is a sexually violent person. If the court determines that
10 probable cause does not exist to believe that the person is a sexually violent person,
11 the court shall dismiss the petition.

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

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

14 980.05 (3) (b) If the state alleges that the sexually violent offense or act that
15 forms the basis for the petition was an act that was sexually motivated as provided
16 in s. 980.01 (6) (b) or (bm), the state is required to prove beyond a reasonable doubt
17 that the alleged sexually violent act was sexually motivated.

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

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

20 980.08 (3) Within 20 days after receipt of the petition, the court shall appoint
21 one or more examiners having the specialized knowledge determined by the court to
22 be appropriate, who shall examine the mental condition of the person and furnish
23 a written report of the examination to the court within 30 days after appointment.

1 The district attorney or the department of justice, whichever filed the original
2 petition, shall have the right to have the petitioner examined by an expert or
3 professional person of his, her or its choice. An examiner retained by the district
4 attorney or department of justice under this subsection or retained by or appointed
5 for the petitioner under s. 980.031 (2) shall file a written report of his or her
6 examination with the court within 45 days of being retained or appointed. All of the
7 examiners acting under this subsection shall have reasonable access to the person
8 for purposes of examination and to the person's past and present treatment records,
9 as defined in s. 51.30 (1) (b), and patient health care records, as provided under s.
10 146.82 (2) (c). If any such examiner believes that the person is appropriate for
11 supervised release, the examiner shall report on the type of treatment and services
12 that the person may need while in the community on supervised release.

X-ref
980.031

****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)).

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

15 980.08 (4) The court, without a jury, shall hear the petition within 30 days after
16 the ~~report~~ reports of the ~~court-appointed examiner~~ is all experts or other
17 professional persons who examined the petitioner under sub. (3) are filed with the
18 court, unless the petitioner waives this time limit. Expenses of proceedings under
19 this subsection shall be paid as provided under s. 51.20 (18). The court shall grant
20 the petition unless the state proves by clear and convincing evidence that the person
21 is still a sexually violent person and that it is still substantially probable that the
22 person will engage in acts of sexual violence if the person is not continued in
23 institutional care. In making a decision under this subsection, the court may

1 consider, without limitation because of enumeration, the nature and circumstances
2 of the behavior that was the basis of the allegation in the petition under s. 980.02 (2)
3 (a), the person's mental history and present mental condition, where the person will
4 live, how the person will support himself or herself and what arrangements are
5 available to ensure that the person has access to and will participate in necessary
6 treatment.

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

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

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

18 980.09 (2) (a) A person may petition the committing court for discharge from
19 custody or supervision without the secretary's approval. At the time of an
20 examination under s. 980.07 (1), the secretary shall provide the committed person
21 with a written notice of the person's right to petition the court for discharge over the
22 secretary's objection. ~~The notice shall contain a waiver of rights.~~ The secretary shall
23 forward a copy of the notice and waiver form to the court with the report of the
24 department's examination under s. 980.07 and shall file with the court proof that the
25 person received the notice. ~~If the person does not affirmatively waive the right to~~

1 ~~petition petitions for discharge from custody or supervision without the secretary's~~
 2 ~~approval~~, the court shall set a probable cause hearing to determine whether facts
 3 exist that warrant a hearing on whether the person is still a sexually violent person.
 4 The committed person has a right to have an attorney represent him or her at the
 5 ~~probable cause~~ hearing, but the person is not entitled to be present at the ~~probable~~
 6 ~~cause~~ hearing.

****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 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).

adopt supporting doc. relevant to question

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

8 980.09 (2) (b) If the court determines at the ~~probable cause~~ hearing under par.
 9 (a) that ~~probable cause exists to believe that the committed person is no longer facts~~
 10 exist that warrant a hearing on whether the person is still a sexually violent person,
 11 then the court shall set a hearing on the issue. At a hearing under this paragraph,
 12 the committed person is entitled to be present and to the benefit of the protections
 13 afforded to the person under s. 980.03. The district attorney or the department of
 14 justice, whichever filed the original petition, shall represent the state at a hearing
 15 under this paragraph. ~~The hearing under this paragraph shall be to the court. The~~
 16 district attorney or the department of justice, whichever filed the original petition,
 17 or the petitioner or his or her attorney may request that the hearing under this
 18 subsection be to a jury of 6. The state has the right to have the committed person
 19 evaluated by experts chosen by the state. At the hearing, the state has the burden
 20 of proving by clear and convincing evidence that the committed person is still a
 21 sexually violent person.

1/30 DOJ
mtg notes

1 Post-commitment motion for relief

- in 980.06 (?)
- follow crim p.c. motion procedure
- R.P. 980.05 (6)

2 Do change on 905.04 (4) (a)

3 P. 12, ll 22/23 : cover cas (agents of attep

This
state
only
3/2/21

4 Add Comp. crimes under 939.623, - 624 & 626

5 lic phys, lic psych or other mental health
prof. → cf. 51.20

6 Page 18, l. 13 → except ^{try} a trial under
980.05 or 980.09

7 P. 21, note after 16

8 P. 22, note after 14

9 P. 17, new sub. (4) - reorganize to
make sure corr. records
doesn't modify other
records

⑩ Competency commit
Start w/ 6 mos.

1 extension of 12

P. 26 #5 - change

⑪ Explicitly say jury p. 29/§ 3-6

⑫ Delete ll 1/2 on p. 30

⑬ Substitution
→ one substitution after p.c.
by trial
except for sub (6)

w/in 10 days after p.c. or assignment
of new judge

⑭ Exempt from filing fees

⑮ Incl. experts test results etc. (eg MMPF)
in disco.

⑯ Clarify juve ct. juris.

⑦ ✓ p. 35, ll 22:

Gov't rule

Break up sentence

- reasonable time

- if incarcerated etc.,

etc. 3 days sched. release

Except good cause

4610 changes / ??s

✓ ① 905.04 (4)(a) → commit too narrow

② Rebo 980.03 (2) (intro.) / 980.03 (2) ?

ok?

right to remain silent ltd....?

→ If sp. 980.05 (1m), why not sp. 980.03 (2)(b) ...?

✓ ③ 980.031 (3) refer to other proceedings, not just trial?

expert etc.

12 / 24 ✓

17 / 5, 7, 10 ✓ ✓ ✓

18 / 1, 4 ✓ ✓

19 / 3, 6 ✓ ✓

22 / 20, 22 ✓ ✓

34 / 10, 12 ✓

37 / 2, 16 ✓ ✓

38 / 10 ✓

39 / 18 ✓

For Mary Burke - t.c. 2/3/99

P. 34, ll 10-11

cover

pre-petition

evals

~~also~~

also

Sections Affected Post-Drafting-Check For 97-4610/P3ins

Friday, March 27, 1998 3:28 pm

Current Wisconsin Statutes updated through 1997 Act 62

SECTION (Sub)(Par)	TREATMENT	AFFECTED BY
51.20(13)(ct)	cr. effec. 6-1-97 WisAct 440 of	1995
938.34(15m)	cr. effec. 6-1-97 WisAct 440 of	1995
971.17(1m)(b)	cr. effec. 6-1-97 WisAct 440 of	1995
971.17(1m)	am.m. 971.17 (1m) (a) effec. 6-1-97	WisAct 440 of
1995		
973.048	cr. effec. 6-1-97 WisAct 440 of	1995

Sections Affected Post-Drafting-Check For 97-4610/P2exp

Friday, March 27, 1998 12:53 pm

Current Wisconsin Statutes updated through 1997 Act 62

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