



State of Wisconsin
1997 - 1998 LEGISLATURE

LRB-4610/PZ
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PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

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AN ACT *to repeal* 980.05 (1m), 980.05 (6) and 980.07 (3); *to renumber and amend* 814.61 (1) (c), 939.623 (1), 939.624 (1), 939.626 (1), 980.015 (4), 980.02 (2) (ag), 980.03 (4), 980.03 (5) and 980.04 (2); *to amend* 46.10 (2), 46.48 (10), 51.05 (2), 51.20 (1) (am), 51.30 (4) (b) 8m., 51.30 (4) (b) 12m., 51.37 (1), 51.37 (4), 51.37 (9), 51.42 (3) (as) 1., 51.437 (4rm) (a), 51.87 (3), 146.82 (2) (c), 808.04 (3), 808.04 (4), 809.30 (1) (a), 809.30 (1) (b), 809.40 (1), 905.04 (4) (a), 911.01 (4) (c), 967.08 (2) (b), 972.15 (4), 980.01 (5), 980.01 (6) (a), 980.01 (6) (b), 980.01 (6) (c), 980.01 (7), 980.015 (2) (a), 980.02 (3), 980.02 (4) (intro.), 980.03 (2) (intro.), 980.03 (3), 980.04 (1), 980.04 (3), 980.05 (3) (b), 980.07 (1), 980.08 (3), 980.08 (4), 980.09 (1) (b), 980.09 (2) (a) and 980.09 (2) (b); *to repeal and recreate* 51.20 (1) (am); and *to create* 814.61 (1) (c) 3., 939.623 (1) (b), 939.624 (1) (b), 939.626 (1) (b), 972.15 (6), 980.01 (6) (am), 980.01 (6) (bm), 980.015 (2) (d), 980.02 (1) (b) 3., 980.02 (6), 980.031 (title), 980.031 (1) and (2), 980.032, 980.033, 980.034, 980.035, 980.036, 980.038, 980.04 (2) (b), 980.14 (title) and 980.14 (1) of the

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statutes; **relating to:** sexually violent person commitments, sentencing of persons who have prior convictions for certain crimes and providing penalties.

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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:

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

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

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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 arc

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)^X of the statutes, as affected by 1995 Wisconsin Act^g
6 292 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)

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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~~ ^{or} 980.031 (4) ~~or 980.08 (2)~~ [✓] 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)^X 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~~ ^{and} 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.

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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.** 808.04 (4) of the statutes is amended to read:

5 808.04 (4) Except as provided in sub. (7m), an appeal by the state in either a
6 criminal case under s. 974.05 or a case under ch. 48 ~~or~~ 938 or 980 shall be initiated
7 within 45 days of entry of the judgment or order appealed from.

8 **SECTION 17.** 809.30 (1) (a) of the statutes is amended to read:

9 809.30 (1) (a) "Postconviction relief" means, in a felony or misdemeanor case,
10 an appeal or a motion for postconviction relief other than a motion under s. 973.19
11 or 974.06. In a ch. 48, 51, 55 or 938 case, other than a termination of parental rights
12 case under s. 48.43, it means an appeal or a motion for reconsideration by the trial
13 court of its final judgment or order; in such cases a notice of intent to pursue such
14 relief or a motion for such relief need not be styled as seeking "postconviction" relief.
15 In a ch. 980 case, it means an appeal or a motion for postcommitment relief under

16 s. 980.038 (4) ~~in which case a notice of intent to pursue such relief or a motion for~~
17 ~~such relief need not be styled as seeking "postconviction" relief.~~ ← stays

18 **SECTION 18.** 809.30 (1) (b) of the statutes is amended to read:

19 809.30 (1) (b) "Sentencing" means, in a felony or misdemeanor case, the
20 imposition of a sentence, fine or probation. In a ch. 48, 51, 55 ^{stat} ~~or~~ 938 ^{or} ~~or~~ 980 ^{stat} case, other
21 than a termination of parental rights case under s. 48.43, it means the entry of the
22 trial court's final judgment or order.

23 **SECTION 19.** 809.40 (1) of the statutes is amended to read:

24 809.40 (1) An appeal to the court of appeals from a judgment or order in a
25 misdemeanor case or a ch. 48, 51, 55 ~~or~~ 938 or 980 case, or a motion for postconviction

In a ch. 980 case, it means the entry
of an order under s. 980.06 (2) (b).

1 relief in a misdemeanor case or a motion for postcommitment relief under s. 980.038
2 (4) must be initiated within the time periods specified in s. 808.04 and is governed
3 by the procedures specified in ss. 809.30 to 809.32.

4 **SECTION 20.** 814.61 (1) (c) of the statutes is renumbered 814.61 (1) (c) (intro.)
5 and amended to read:

6 814.61 (1) (c) (intro.) Paragraphs (a) and (b) do not apply to any of the following:

7 1. An action to determine paternity brought by the state or its delegate under
8 s. 767.45 (1) (g) or (h) or commenced on behalf of the child by an attorney appointed
9 under s. 767.045 (1) (c) ~~or to an~~.

10 2. An action under ch. 769.

11 **SECTION 21.** 814.61 (1) (c) 3. of the statutes is created to read:

12 814.61 (1) (c) 3. A proceeding under ch. 980.

13 **SECTION 22.** 905.04 (4) (a) of the statutes is amended to read:

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

1 **SECTION 23.** 911.01 (4) (c) of the statutes is amended to read:

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

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8 **SECTION 24.** 939.623 (1) of the statutes is renumbered 939.623 (1) (intro.) and
9 amended to read:

10 939.623 (1) (intro.) In this section, “serious sex crime” means a any of the
11 following:

12 (a) A violation of s. 940.225 (1) or (2), 948.02 (1) or (2) or 948.025.

13 **SECTION 25.** 939.623 (1) (b) of the statutes is created to read:

14 939.623 (1) (b) A crime at any time under federal law or the law of any other
15 state or, prior to the effective date of this paragraph [revisor inserts date], under
16 the law of this state that is comparable to a crime specified in par. (a).

17 **SECTION 26.** 939.624 (1) of the statutes is renumbered 939.624 (1) (intro.) and
18 amended to read:

19 939.624 (1) (intro.) In this section, “serious violent crime” means a any of the
20 following:

21 (a) A violation of s. 940.03 or 940.05.

22 **SECTION 27.** 939.624 (1) (b) of the statutes is created to read:

23 939.624 (1) (b) A crime at any time under federal law or the law of any other
24 state or, prior to the effective date of this paragraph [revisor inserts date], under
25 the law of this state that is comparable to a crime specified in par. (a).

1 SECTION 28. 939.626 (1) of the statutes is renumbered 939.626 (1) (intro.) and
2 amended to read:

3 939.626 (1) (intro.) In this section, "child sex crime" means a any of the
4 following:

5 (a) A violation of s. 948.02, 948.025, 948.05, 948.06, 948.07, 948.08 or 948.095.

6 SECTION 29. 939.626 (1) (b) of the statutes is created to read:

7 939.626 (1) (b) A crime at any time under federal law or the law of any other
8 state or, prior to the effective date of this paragraph [revisor inserts date], under
9 the law of this state that is comparable to a crime specified in par. (a).

→ ~~****NOTE: Proposed ss. 939.623 (1) (b), 939.624 (1) (b) and 939.626 (1) (b) use
language from s. 939.62 (2m)(a) 4~~

10 SECTION 30. 967.08 (2) (b) of the statutes is amended to read:

✓
11 967.08 (2) (b) Waiver of preliminary examination under s. 970.03, competency
12 hearing under s. 971.14 (4) or 980.033 (4) or jury trial under s. 972.02 (1).

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13 SECTION 31. 972.15 (4) of the statutes is amended to read:

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

18 SECTION 32. 972.15 (6) of the statutes is created to read:

19 972.15 (6) The presentence investigation report and any information contained
20 in it may be used by any of the following persons in any evaluation, examination,
21 referral, hearing, trial or other proceeding under ch. 980:

- 22 (a) The department of corrections.
- 23 (b) The department of health and family services.

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

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

4 (e) A licensed physician, licensed psychologist or other mental health
5 professional who is examining the subject of the presentence investigation report.

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

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7 **SECTION 33.** 980.01 (5) of the statutes is amended to read:

8 980.01 (5) "Sexually motivated" means that one of the purposes for an act is
9 for the actor's sexual arousal or gratification or for the sexual humiliation or
10 degradation of the victim.

11 **SECTION 34.** 980.01 (6) (a) of the statutes is amended to read:

12 980.01 (6) (a) Any crime specified in s. 940.22 (2), 940.225 (1) ~~or (2)~~, 948.02 (1)
13 or (2), 948.025, 948.06 or 948.07.

or (3)

14 **SECTION 35.** 980.01 (6) (am) of the statutes is created to read:

15 980.01 (6) (am) An offense that, prior to June 2, 1994, was a crime under the
16 law of this state and that is comparable to any crime specified in par. (a).

17 **SECTION 36.** 980.01 (6) (b) of the statutes is amended to read:

18 980.01 (6) (b) Any crime specified in s. 940.01, 940.02, 940.03, 940.05, 940.06,
19 940.19 (4) or (5), 940.30, 940.305, 940.31 or, 941.32, 941.38, 943.02, 943.10, 943.32
20 or 948.03 that is determined, in a proceeding under s. 980.05 (3) (b), to have been
21 sexually motivated.

22 **SECTION 37.** 980.01 (6) (bm) of the statutes is created to read:

23 980.01 (6) (bm) An offense that, prior to June 2, 1994, was a crime under the
24 law of this state, that is comparable to any crime specified in par. (b) and that is
25 determined, in a proceeding under s. 980.05 (3) (b), to have been sexually motivated.

1 **SECTION 38.** 980.01 (6) (c) of the statutes is amended to read:

2 980.01 (6) (c) Any solicitation, conspiracy or attempt to commit a crime under
3 par. (a) ~~or~~, (am), (b) or (bm).

4 **SECTION 39.** 980.01 (7) of the statutes is amended to read:

5 980.01 (7) "Sexually violent person" means a person who has been convicted
6 of a sexually violent offense, has been adjudicated delinquent for a sexually violent
7 offense, or has been found not guilty of or not responsible for a sexually violent
8 offense by reason of insanity or mental disease, defect or illness, and who is
9 dangerous because he or she suffers from a mental disorder that makes it
10 ~~substantially probable~~ ^{likely} ~~more probable than not~~ that the person will engage in one or
11 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. JJ-Criminal 2502, n. 6 (1994). Should the phrase be defined for purposes of the entire chapter?

12 **SECTION 40.** 980.015 (2) (a) of the statutes is amended to read:

13 980.015 (2) (a) The anticipated discharge from a sentence, anticipated release
14 on parole or anticipated release from imprisonment of a person who ~~has been~~
15 convicted of is serving a continuous term of incarceration, any part of which was
16 imposed for a sexually violent offense.

17 **SECTION 41.** 980.015 (2) (d) of the statutes is created to read:

18 980.015 (2) (d) The anticipated release on parole or discharge of a person
19 committed under ch. 975 for a sexually violent offense.

20 **SECTION 42.** 980.015 (4) of the statutes is renumbered 980.14 (2) and amended
21 to read:

1 980.14 (2) Any agency or officer, employe or agent of an agency is immune from
2 criminal or civil liability for any acts or omissions as the result of a good faith effort
3 to comply with any provision of this section chapter.

4 **SECTION 43.** 980.02 (1) (b) 3. of the statutes is created to read:

5 980.02 (1) (b) 3. The county in which the person is in custody under a sentence,
6 a placement to a secured correctional facility, as defined in s. 938.02 (15m), or a
7 secured child caring institution, as defined in s. 938.02 (15g), or a commitment order.

8 **SECTION 44.** 980.02 (2) (ag) of the statutes is renumbered 980.02 (2) (ag) (intro.)
9 and amended to read:

10 980.02 (2) (ag) (intro.) The person is within 90 days of discharge or release, on
11 parole or otherwise, from a sentence that any of the following:

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

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

18 3. A commitment order that was entered as a result of a sexually violent
19 offense.

20 **SECTION 45.** 980.02 (3) of the statutes is amended to read:

21 980.02 (3) A petition filed under this section shall state with particularity
22 essential facts to establish probable cause to believe the person is a sexually violent
23 person. If the petition alleges that a sexually violent offense or act that is a basis for
24 the allegation under sub. (2) (a) was an act that was sexually motivated as provided

1 under s. 980.01 (6) (b) or (bm), the petition shall state the grounds on which the
2 offense or act is alleged to be sexually motivated.

3 **SECTION 46.** 980.02 (4) (intro.) of the statutes is amended to read:

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

6 **SECTION 47.** 980.02 (6) of the statutes is created to read:

7 980.02 (6) A court assigned to exercise jurisdiction under ch. 48 and 938 does
8 not have jurisdiction over a petition filed under this section alleging that a child is
9 a sexually violent person.

10 **SECTION 48.** 980.03 (2) (intro.) of the statutes is amended to read:

11 980.03 (2) (intro.) Except as provided in ss. 980.038 (2), 980.09 (2) (a) and
12 980.10 and without limitation by enumeration, at any hearing under this chapter,
13 the person who is the subject of the petition has the right to:

14 ~~**SECTION 49.** 980.03 (3) of the statutes is amended to read.~~

15 ~~980.03 (3) The person who is the subject of the petition, the person's attorney,
16 the department of justice or the district attorney may request that a trial under s.
17 980.05 be to a jury of 12. A request for a jury trial shall be made as provided under
18 s. 980.05. Notwithstanding s. 980.05 (2), if the person, the person's attorney, the
19 department of justice or the district attorney does not request a jury trial, the court
20 may on its own motion require that the trial be to a jury of 12. A verdict of a jury
21 under this chapter is not valid unless it is unanimous.~~

22 **SECTION 50.** 980.03 (4) of the statutes is renumbered 980.031 (3) and amended

23 to read:

24 980.031 (3) Whenever the person who is the subject of ~~the a~~ petition filed under
25 s. 980.02 or who has been committed under s. 980.06 is required to submit to an

1 examination of his or her mental condition under this chapter, he or she may retain
2 ~~experts or a licensed physician, licensed psychologist or other mental health~~
3 ~~professional persons~~ to perform an examination. If the person is indigent, the court
4 shall, upon the person's request, appoint a qualified and available licensed
5 physician, licensed psychologist or other mental health professional to perform an
6 examination of the person's mental condition and participate on the person's behalf
7 in a trial or other proceeding under this chapter at which testimony is authorized.

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

22 (5) A licensed physician, licensed psychologist or other mental health
23 professional person retained by either party or appointed to assist an indigent person
24 who is subject to a petition by the court may not be subject to any order by the court
25 for the sequestration of witnesses at any proceeding under this chapter. No licensed

1 physician, licensed psychologist or other mental health professional retained by a
2 party or appointed by the court may be permitted to testify at any proceeding under
3 this chapter unless a written report of his or her examination has been submitted to
4 the court and to both parties at least 10 days before the proceeding.

5 **SECTION 51.** 980.03 (5) of the statutes is renumbered 980.038 (3) (a) and
6 amended to read:

7 980.038 (3) (a) ~~Upon~~ Except as provided in par. (b), upon a showing by the
8 proponent of good cause under s. 807.13 (2) (c), testimony may be received into the
9 record of a hearing under this ~~section~~ chapter by telephone or live audio-visual
10 means.

11 **SECTION 52.** 980.031 (title) of the statutes is created to read:

12 **980.031(title) Examinations.**

13 **SECTION 53.** 980.031 (1) and (2) of the statutes are created to read:

14 980.031 (1) If a person who is the subject of a petition filed under s. 980.02
15 denies the facts alleged in the petition, the court may appoint at least one qualified
16 licensed physician, licensed psychologist or other mental health professional to
17 conduct an examination of the person's mental condition and testify at trial.

18 (2) The state may retain a licensed physician, licensed psychologist or other
19 mental health professional to examine the mental condition of a person who is the
20 subject of a petition under s. 980.02 or who has been committed under s. 980.06 and
21 to testify at trial or at any other proceeding under this chapter at which testimony
22 is authorized.

23 **SECTION 54.** 980.032 of the statutes is created to read:

24 **980.032 Competency.** (1) No person who lacks substantial mental capacity
25 to understand the proceedings under this chapter or assist in his or her own defense

1 against a petition filed under s. 980.02 may be subject to proceedings under this
2 chapter so long as the incapacity endures.

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

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

9 **SECTION 55.** 980.033 of the statutes is created to read:

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

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

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

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

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

17 (c) Inpatient examinations shall be completed and the report of examination
18 filed within 15 days after the examination is ordered unless, for good cause, the
19 facility or examiner appointed by the court cannot complete the examination within
20 this period and requests an extension. In that case, the court may allow one 15-day
21 extension of the examination period. Outpatient examinations shall be completed
22 and the report of examination filed within 30 days after the examination is ordered.

23 (d) If the court orders that the examination be conducted on an inpatient basis,
24 it shall arrange for the transportation of any person who is detained or in custody to
25 the examining facility within a reasonable time after the examination is ordered and,

1 if the person was detained or in custody in a different facility, the court shall arrange
2 for the person to be returned to the facility in which he or she was detained or in
3 custody within a reasonable time after receiving notice from the examining facility
4 that the examination has been completed.

5 (e) The examiner shall personally observe and examine the person and shall
6 have access to his or her past and present treatment records, as defined in s. 51.30
7 (1) (b), past and present patient health care records, as provided under s. 146.82 (2)
8 (c), and past and present correctional records, including presentence investigation
9 reports.

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

14 (g) The person may be examined for competency purposes at any stage of the
15 competency proceedings by licensed physicians, licensed psychologists or other
16 mental health professionals chosen by the person or by the department of justice or
17 district attorney, whichever filed the petition. Licensed physicians, licensed
18 psychologists and other mental health professionals chosen to examine the person
19 under this paragraph shall be permitted reasonable access to the person for purposes
20 of the examination.

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

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

1 (b) The clinical findings of the examiner.

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

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

8 (dm) If sufficient information is available to the examiner to reach an opinion,
9 the examiner's opinion on whether the person needs medication or treatment and
10 whether the person is not competent to refuse medication or treatment. The person
11 is not competent to refuse medication or treatment if, because of mental illness,
12 developmental disability, alcoholism or drug dependence, and after the advantages
13 and disadvantages of and alternatives to accepting the particular medication or
14 treatment have been explained to the person, one of the following is true:

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

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

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

23 (4) HEARING. (a) The court shall cause copies of the report to be delivered
24 forthwith to the district attorney or the department of justice, whichever filed the
25 petition, and to the attorney representing the person or to the person personally if

1 he or she is not represented by counsel. The report shall not be otherwise disclosed
2 prior to the hearing under this subsection.

3 (b) If the district attorney or the department of justice, whichever filed the
4 petition, the person and the person's attorney waive their respective opportunities
5 to present other evidence on the issue, the court shall promptly determine the
6 person's competency and, if at issue, competency to refuse medication or treatment
7 for the person's mental condition on the basis of the report filed under sub. (3) or (5).
8 In the absence of these waivers, the court shall hold an evidentiary hearing on the
9 issue. At the commencement of the hearing, the judge shall ask the person whether
10 he or she claims to be competent or incompetent. If the person stands mute or claims
11 to be incompetent, the person shall be found incompetent unless the state proves by
12 the greater weight of the credible evidence that the person is competent. If the
13 person claims to be competent, the person shall be found competent unless the state
14 proves by evidence that is clear and convincing that the person is incompetent. If the
15 person is found incompetent and if the state proves by evidence that is clear and
16 convincing that the person is not competent to refuse medication or treatment, under
17 the standard specified in sub. (3) (dm), the court shall make a determination without
18 a jury and issue an order that the person is not competent to refuse medication or
19 treatment for the person's mental condition and that whoever administers the
20 medication or treatment to the person shall observe appropriate medical standards.

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

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

1 (5) COMMITMENT. (a) If the court determines that the person is not competent
2 but is likely to become competent within the period specified in this paragraph if
3 provided with appropriate treatment, the court shall suspend the proceedings and
4 commit the person to the custody of the department in an appropriate institution for
5 a period of time not to exceed 6 months, subject to extension under par. (c).

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

24 (b) The person shall be periodically reexamined by the treatment facility.
25 Written reports of examination shall be furnished to the court 3 months after

1 commitment and within 30 days prior to the expiration of the initial period of
2 commitment under par. (a). If the person's commitment period is extended under par.
3 (c), written reports shall be furnished to the court 3 months after extension of the
4 commitment, 6 months after extension of the commitment, 9 months after extension
5 of the commitment and within 30 days prior to the expiration of the extended period
6 of commitment. Each report under this paragraph shall indicate that the person has
7 become competent, that the person remains incompetent but that attainment of
8 competency is likely within the remaining commitment period, or that the person has
9 not made such progress that attainment of competency is likely within the remaining
10 commitment period. Any report indicating such a lack of sufficient progress shall
11 include the examiner's opinion regarding whether the person is mentally ill,
12 alcoholic, drug dependent, developmentally disabled or infirm because of aging or
13 other like incapacities.

14 (c) Upon receiving a report under par. (b), the court shall proceed under sub.
15 (4). If the court determines that the person has become competent, the person shall
16 be discharged from commitment and the proceedings on the petition shall be
17 resumed. If the court determines that the person is making sufficient progress
18 toward becoming competent, the court shall continue the commitment or, if the
19 initial commitment period under par. (a) is expiring, the court may extend the
20 commitment period for not more than 12 months.

21 (d) If the person is receiving medication the court may make appropriate orders
22 for the continued administration of the medication in order to maintain the
23 competence of the person for the duration of the proceedings on the petition. If a
24 person who has been restored to competency thereafter again becomes incompetent,
25 the maximum initial commitment period under par. (a) shall be 21 months minus the

1 days spent in previous commitments under this subsection, or 6 months, whichever
2 is less.

→ ~~****NOTE: Please review proposed s. 980.033 (5) carefully to make sure that it does
what you want it to do.~~

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

8 (b) When the court discharges a person from commitment under par. (a), it may
9 order that the person be taken immediately into custody by a law enforcement official
10 and promptly delivered to a facility specified in s. 51.15 (2), an approved public
11 treatment facility under s. 51.45 (2) (c) or an appropriate medical or protective
12 placement facility. Thereafter, detention of the person shall be governed by s. 51.15,
13 51.45 (11) or 55.06 (11), as appropriate. The district attorney or corporation counsel
14 may prepare a statement meeting the requirements of s. 51.15 (4) or (5), 51.45 (13)
15 (a) or 55.06 (11) based on the allegations of the petition filed under s. 980.02 and the
16 evidence in the case. This statement shall be given to the director of the facility to
17 which the person is delivered and filed with the circuit court where it shall suffice,
18 without corroboration by other petitioners, as a petition for commitment under s.
19 51.20, 51.45 (13) or 55.06 (2). This section does not restrict the power of the branch
20 of circuit court in which the petition is filed to transfer the matter to the branch of
21 circuit court assigned to exercise jurisdiction under ch. 51 in the county.

22 (c) If a person is committed under s. 51.20 pursuant to a petition under par. (b),
23 the county department under s. 51.42 or 51.437 to whose care and custody the person

1 is committed shall notify the court which discharged the person under par. (a), the
2 district attorney or the department of justice, whichever filed the petition, and the
3 person's attorney of record in the proceeding under this chapter at least 14 days prior
4 to transferring or discharging the person from an inpatient treatment facility and
5 at least 14 days prior to the expiration of the order of commitment or any subsequent
6 consecutive order, unless the department or county department has applied for an
7 extension.

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

18 SECTION 56. 980.034 of the statutes is created to read:

19 980.034 Change of place of trial or jury from another county. (1)

20 ~~Notwithstanding s. 801.52,~~ the person who is the subject of a petition filed under s.
21 980.02 or who has been committed under this chapter may move for a change of the
22 place of a jury trial under s. 980.05 ~~on the ground that an~~ on the ground that an
23 impartial trial cannot be had in the county in which the trial is set to be held. The
24 motion shall be made ~~at~~ the completion or waiver of the probable cause hearing under s. 980.04 (2), ~~within~~

within 20 days after ✓

1 hearing under s. 980.09 (2) (a) or with the petition filed under s. 980.09 (1) (a),
2 whichever is applicable, except that it may be made after that time for cause.

→ ****NOTE: Under this provision, a change of venue is available for persons who are
to be tried by a jury under s. 980.09 (1) (b) or (2) (b). Is that your intent?

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

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

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

- 15 1. The court has decided to sequester the jurors after the commencement of the
- 16 trial.
- 17 2. There are grounds for changing the place of trial under sub. (1).
- 18 3. The estimated costs to the county appear to be less using the procedure under
- 19 this subsection than using the procedure for holding the trial in another county.

20 (b) If the court decides to proceed under this subsection it shall follow the
21 procedure under sub. (3) until the jury is chosen in the 2nd county. At that time, the
22 proceedings shall return to the original county using the jurors selected in the 2nd

1 county. The original county shall reimburse the 2nd county for all applicable costs
2 under s. 814.22.

3 SECTION 57. 980.035 of the statutes is created to read:

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4 **980.035 Substitution of judge. (1) ONE SUBSTITUTION.** A person who is
5 subject to this chapter has a right to only one substitution of a judge, except under
6 sub. (5). The right of substitution shall be exercised as provided in this section.

7 (2) ~~ANY~~ SUBSTITUTION OF JUDGE ASSIGNED TO PROBABLE CAUSE HEARING. A person

8 ~~may not~~ ^{written} request ^{for} the substitution of a different judge for the judge assigned to preside

9 at the probable cause hearing under s. 980.04 (2). may be filed a reasonable time before the date of the probable cause hearing

10 (3) 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 under

12 s. 980.05 may be filed with the clerk within 10 days of the clerk's giving actual notice

13 or sending notice of the assignment to the ~~person or the person's attorney~~ parties

14 (4) SUBSTITUTION OF TRIAL JUDGE SUBSEQUENTLY ASSIGNED. If a new judge is

15 assigned to the trial under s. 980.05 and the ~~person~~ party has not exercised the right to

16 substitute an assigned judge, a written request for the substitution of the new judge

17 may be filed with the clerk within 10 days of the clerk's giving actual notice or

18 sending notice of the assignment to the ~~person or the person's attorney~~ parties. If the

19 notification occurs within 20 days of the date set for trial, the request shall be filed

20 within 48 hours of the clerk's giving actual notice or sending notice of the assignment.

21 If the notification occurs within 48 hours of the trial or if there has been no

22 notification, the ~~person~~ party may make an oral or written request for substitution prior

23 to the commencement of the proceedings.

24 (5) SUBSTITUTION OF JUDGE FOLLOWING APPEAL. If an appellate court orders a new

25 trial, a new commitment hearing or a new hearing on a petition for supervised

1 release or discharge, a request under this section may be filed within 20 days after
2 the filing of the remittitur by the appellate court, whether or not a request for
3 substitution was made prior to the time that the appeal was taken.

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

11 ~~(7) JUDGE'S AUTHORITY TO ACT. Upon the filing of a request for substitution in
12 proper form and within the proper time, the judge whose substitution has been
13 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. Do you want to keep this provision in the draft?~~

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

18 SECTION 58. 980.036 of the statutes is created to read:

19 980.036 Discovery and inspection. (1) DEFINITIONS. In this section:

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

22 (b) "Prosecuting attorney" means a ^{city} district attorney on the department of
23 justice, ~~which have filed the original petition under s. 980.02.~~

representing the
state in a pro-
ceeding under
this chapter

1 (2) WHAT A PROSECUTING ATTORNEY MUST DISCLOSE TO A PERSON SUBJECT TO THIS
2 CHAPTER. Upon demand, a prosecuting attorney shall, within a reasonable time
3 before a trial or other proceeding under this chapter, disclose to a person subject to
4 this chapter or the person's attorney and permit the person or the person's attorney
5 to inspect and copy or photograph all of the following materials and information, if
6 the material or information is within the possession, custody or control of the state:

7 (a) Any written or recorded statement made by the person concerning the
8 allegations in the petition filed under s. 980.02 or concerning other matters at issue
9 in the proceeding and the names of witnesses to the person's written statements.

→ ~~NOTE: Because these discovery provisions cover more than just trials under s. 980.05, this paragraph refers to statements "concerning other matters at issue in the proceeding". Is that language okay?~~

10 (b) A written summary of all oral statements of the person which the
11 prosecuting attorney plans to use in the course of the trial or other proceeding and
12 the names of witnesses to the person's oral statements.

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

→ ~~NOTE: Will evidence from intercepted wire, electronic or oral communications ever be used under ch. 980?~~

15 (d) A copy of the person's criminal record.

→ ~~NOTE: Should copies of other records also be provided (e.g., treatment records)?~~

16 (e) A list of all witnesses, and their addresses, whom the prosecuting attorney
17 intends to call at the trial. This paragraph does not apply to rebuttal witnesses or
18 those called for impeachment only.

19 (f) Any relevant written or recorded statements of a witness named on a list
20 under par. (e), including all of the following:

21 1. Any videotaped oral statement of a child under s. 908.08.

INS
34-2

1 2. Any reports or statements made in connection with the case by a person who
2 conducts an examination under ~~s. 1880.091~~ ^{9 3. If a} person ^{does not prepare a report}
3 or statement, a written summary of the person's findings or the subject matter of his ^{specified in subd. 2.}
4 or her testimony.

5 (g) The results of any physical or mental examination, scientific test,
6 experiment or comparison that the prosecuting attorney intends to offer in evidence
7 at trial, and any test results, facts and data that were collected during and evaluated

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8 as part of an examination under ~~s. 1880.091~~ and that ~~form the basis for an opinion~~
9 ~~contained in a report, statement or written summary disclosed under par. (f) 2.~~

10 (h) The criminal record of a witness for the state which is known to the
11 prosecuting attorney.

12 (i) Any physical evidence that the prosecuting attorney intends to offer in
13 evidence at ^a ~~trial~~ ^{or other proceeding} ^{under this chapter}

14 (j) Any exculpatory evidence.

The prosecuting attorney intends to offer in evidence at a trial or other proceeding under this chapter

NOTE: Is this an appropriate phrase for a civil proceeding? Or should this provision instead say something like "evidence tending to show that the person is not a sexually violent person?"

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

21 (a) A list of all witnesses, other than the person, whom the person intends to
22 call at trial, together with their addresses. This paragraph does not apply to rebuttal
23 witnesses or those called for impeachment only.

1 (b) Any relevant written or recorded statements of a witness named on a list
2 under par. (a), including any reports or statements made in connection with the case
3 by a witness who conducted an examination under s. 980.031 or, if the witness does
4 not prepare a report or statement, a written summary of the findings of the witness
5 or the subject matter of his or her testimony.

6 (c) The results of any physical or mental examination, scientific test,
7 experiment or comparison that the person intends to offer in evidence at trial, and
8 any test results, facts and data that were collected during and evaluated as part of
9 an examination under s. 980.031 and that form the basis for an opinion contained
10 in a report, statement or written summary disclosed under par. (b).

11 (d) The criminal record of a witness named on a list under par. (a) which is
12 known to the person's attorney.

13 (e) Any physical evidence that the person intends to offer in evidence at the
14 trial.

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35-14

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

LS
OR ANALYSIS OF
EVIDENCE

19 (5) ~~SCIENTIFIC~~ TESTING. On motion of a party, the court may order the production
20 of any item of ~~physical~~ ^{or data} evidence which is intended to be introduced at the trial for
21 ~~scientific~~ ^{testing or} analysis under such terms and conditions as the court prescribes.

22 (6) PROTECTIVE ORDER. Upon motion of a party, the court may at any time order
23 that discovery, inspection or the listing of witnesses required under this section be
24 denied, restricted or deferred, or make other appropriate orders. If the prosecuting
25 attorney or the attorney for a person subject to this chapter certifies that to list a

1 witness may subject the witness or others to physical or economic harm or coercion,
2 the court may order that the deposition of the witness be taken pursuant to s. 967.04
3 (2) to (6). The name of the witness need not be divulged prior to the taking of such
4 deposition. If the witness becomes unavailable or changes his or her testimony, the
5 deposition shall be admissible at trial as substantive evidence.

→ ~~****NOTE: Like its counterpart in s. 971.23(6), this provision refers to depositions
under s. 967.04. Do you want depositions authorized by this provision to be taken under
s. 967.04 or under ch. 804?~~

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

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

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

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

CS
RESPONDENTS

1 (10) PAYMENT OF PHOTOCOPY COSTS IN CASES INVOLVING INDIGENT DEFENDANTS
 2 When the state public defender or a private attorney appointed under s. 977.08
 3 requests photocopies of any item that is discoverable under this section, the state
 4 public defender shall pay any fee charged for the photocopies from the appropriation
 5 under s. 20.550 (1)(a). If the person providing photocopies under this section charges
 6 the state public defender a fee for the photocopies, the fee may not exceed the actual,
 7 necessary and direct cost of photocopying.

8 (11) EXCLUSIVE METHOD OF DISCOVERY. Chapter 804 does not apply to
 9 proceedings under this chapter. This section provides the only methods of obtaining
 10 discovery and inspection in proceedings under this chapter.

~~*** Note: These provisions are based on s. 971.23. Proposed Sub. (11) is new. Does it refer to s. 971.23? ***~~

11 SECTION 59. 980.038 of the statutes is created to read:

12 **980.038 Miscellaneous procedural provisions. (1) MOTIONS CHALLENGING**
 13 **JURISDICTION OF COURT OR TIMELINESS OF PETITION; GROUNDS FOR CHALLENGING**
 14 **JURISDICTION. (a)** A motion challenging the jurisdiction of the court or the timeliness
 15 of a petition filed under s. 980.02 shall be filed within 10 days after the court holds
 16 the probable cause hearing under s. 980.04 (2). Failure to file a motion within the
 17 time specified in this paragraph waives the right to challenge the jurisdiction of the
 18 court or the timeliness of a petition.

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

1 (2) EVIDENCE OF REFUSAL TO PARTICIPATE IN EXAMINATION. (a) At any hearing
 2 under this chapter, the state may present evidence or comment on evidence that a
 3 person who is the subject of a petition filed under s. 980.02 or a person who has been
 4 committed under this chapter refused to participate in an examination of his or her
 5 mental condition that was being conducted as provided under s. 980.02 or that was
 6 conducted before the petition under s. 980.02 was filed for the purpose of evaluating
 7 whether to file a petition.

8 (b) A licensed physician, licensed psychologist or other mental health
 9 professional may indicate in any written report that he or she prepares in connection
 10 with a proceeding under this chapter that the person whom he or she examined
 11 refused to participate in the examination.

12 (3) TESTIMONY BY TELEPHONE OR LIVE AUDIO-VISUAL MEANS.

13 (b) Testimony may not be received by telephone or live audio-visual means at
 14 a trial under s. 980.05 or a hearing under s. 980.09 (1) (b) or (2) (b).

15 (4) MOTIONS FOR POSTCOMMITMENT RELIEF; APPEAL. (a) A motion for
 16 postcommitment relief by a person committed under s. 980.06 shall be made in the
 17 time and manner provided in ss. 809.30 and 809.40. An appeal by a person who has
 18 been committed under ch. 980 from a final ~~independent~~ order under s. 980.06 ~~or~~
 19 980.08 or 980.09 or from an order denying a motion for postcommitment relief or from
 20 both shall be taken in the time and manner provided in ss. 808.04 (3), 809.30 and
 21 809.40. If a person is seeking relief from an order of commitment under s. 980.06 ~~or~~,
 22 the person shall file a motion for postcommitment relief in the trial court prior to an
 23 appeal unless the grounds for seeking relief are sufficiency of the evidence or issues
 24 previously raised.

✓ under this chapter

letter

(2) (b)

1 (b) An appeal by the state from a final judgment or order under this chapter
2 may be taken to the court of appeals within the time specified in s. 808.04 (4) and in
3 the manner provided for civil appeals under chs. 808 and 809.

****NOTE: Please review these new appeal provisions *very carefully*. They are based
on ss. 974.02 (1) and (2) and 974.05 (1) (intro.). See also the changes to ss. 808.04 (3) and
(4), 809.30 (1) (a) and (b) and 809.40 (1). Do they do what you want them to do?

4 **SECTION 60.** 980.04 (1) of the statutes is amended to read:

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

18 **SECTION 61.** 980.04 (2) of the statutes is renumbered 980.04 (2) (a) and
19 amended to read:

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

1 the petition is filed, ~~excluding Saturdays, Sundays and legal holidays.~~ If the person
 2 named in the petition is not in custody, the Except as provided in par. (b), the court
 3 shall hold the probable cause hearing within a reasonable time after the filing of the
 4 petition.

*20 days, excluding Saturdays,
Sundays and legal holidays.*

5 **SECTION 62.** 980.04 (2) (b) of the statutes is created to read:

6 980.04 (2) (b) If the person named in the petition is in custody under a sentence,
 7 dispositional order or commitment and the probable cause hearing will be held after
 8 the date on which the person is scheduled to be released or discharged from the
 9 sentence, dispositional order or commitment, the probable cause hearing under par.
 10 (a) shall be held no later than 3 days after the person's scheduled release or discharge
 11 date, excluding Saturdays, Sundays and legal holidays, unless that time is extended
 12 by the court for good cause shown upon its own motion, the motion of any party or
 13 the stipulation of the parties.

14 **SECTION 63.** 980.04 (3) of the statutes is amended to read:

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

23 **SECTION 64.** 980.05 (1m) of the statutes is repealed.

24 **SECTION 65.** 980.05 (3) (b) of the statutes is amended to read:

IRIS
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22

1 980.05 (3) (b) If the state alleges that the sexually violent offense or act that
2 forms the basis for the petition was an act that was sexually motivated as provided
3 in s. 980.01 (6) (b) or (bm), the state is required to prove beyond a reasonable doubt
4 that the alleged sexually violent act was sexually motivated.

5 **SECTION 66.** 980.05 (6) of the statutes is repealed.

6 **SECTION 67.** 980.07 (1) of the statutes is amended to read:

7 980.07 (1) If a person has been committed under s. 980.06 and has not been
8 discharged under s. 980.09, the department shall conduct an examination of his or
9 her mental condition within 6 months after ^{the date of the} ~~an~~ initial commitment under s. 980.06 ^{(2) (b) ✓}
10 and again thereafter at least once each 12 months for the purpose of determining
11 whether the person has made sufficient progress to be entitled to transfer to a less
12 restrictive facility, to supervised release or to discharge. At the time of a
13 reexamination under this section, the person who has been committed may retain
14 or, ~~if he or she is indigent and so requests,~~ seek to have the court ~~may~~ appoint a
15 ~~qualified expert or a professional person to examine him or her~~ an examiner as
16 provided under s. 980.031 (3).

17 **SECTION 68.** 980.07 (3) of the statutes is repealed.

18 **SECTION 69.** 980.08 (3) of the statutes is amended to read:

19 980.08 (3) Within 20 days after receipt of the petition, the court shall appoint
20 one or more examiners having the specialized knowledge determined by the court to
21 be appropriate, who shall examine the mental condition of the person and furnish
22 a written report of the examination to the court within 30 days after appointment.
23 The district attorney or the department of justice, whichever filed the original
24 petition, may have the petitioner examined as provided under s. 980.031 (2). An
25 examiner retained by the district attorney or department of justice under s. 980.031

1 (2) or retained by or appointed for the petitioner under s. 980.031 (3) shall file a
2 written report of his or her examination with the court within 45 days of being
3 retained or appointed. All of the examiners acting under this subsection shall have
4 reasonable access to the person for purposes of examination and to the person's past
5 and present treatment records, as defined in s. 51.30 (1) (b), and patient health care
6 records, as provided under s. 146.82 (2) (e) 980.031 (4). If any such examiner believes
7 that the person is appropriate for supervised release, the examiner shall report on
8 the type of treatment and services that the person may need while in the community
9 on supervised release.

10 **SECTION 70.** 980.08 (4) ^X of the statutes, as affected by 1997 Wisconsin Act 27,
11 is amended to read:

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

1 **SECTION 71.** 980.09 (1) (b) of the statutes is amended to read:

2 980.09 (1) (b) ~~At a hearing under this subsection, the district attorney or the~~
3 ~~department of justice, whichever filed the original petition, shall represent the state~~
4 ~~and shall have the right to~~ may have the petitioner examined ~~by an expert or~~
5 ~~professional person of his, her or its choice. The hearing shall be before the court~~
6 ~~without a jury~~ as provided under s. 980.031 (2). The district attorney or the
7 department of justice, whichever filed the original petition, or the petitioner or his
8 or her attorney may request that the hearing under this subsection be to a jury of 6.
9 At the hearing under this subsection, the state has the burden of proving by clear and
10 convincing evidence that the petitioner is still a sexually violent person.

11 **SECTION 72.** 980.09 (2) (a) of the statutes is amended to read:

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

1 warrant a hearing on whether the person is still a sexually violent person, the court
2 shall consider only the examination report filed under s. 980.07 (2) and relevant
3 arguments and supporting documentation provided by the person or the state.

→ ****NOTE: This goes somewhat beyond *in re Paolick* by referring to "supporting documentation". Does that language effect your intent?

4 **SECTION 73.** 980.09 (2) (b) of the statutes is amended to read:

5 980.09 (2) (b) If the court determines at the probable cause hearing under par.
6 (a) that ~~probable cause exists to believe that the committed person is no longer facts~~
7 exist that warrant a hearing on whether the person is still a sexually violent person,
8 then the court shall set a hearing on the issue. At a hearing under this paragraph,
9 the committed person is entitled to be present and to the benefit of the protections
10 afforded to the person under s. 980.03. The district attorney or the department of
11 justice, whichever filed the original petition, shall represent the state at a hearing
12 under this paragraph. ~~The hearing under this paragraph shall be to the court. The~~
13 district attorney or the department of justice, whichever filed the original petition,
14 or the petitioner or his or her attorney may request that the hearing under this
15 subsection be to a jury of 6. The state ~~has the right to~~ may have the committed person
16 evaluated by experts chosen by the state examined as provided under s. 980.031 (2).
17 At the hearing, the state has the burden of proving by clear and convincing evidence
18 that the committed person is still a sexually violent person.

19 **SECTION 74.** 980.14 (title) of the statutes is created to read:

20 **980.14 (title) Immunity.**

21 **SECTION 75.** 980.14 (1) of the statutes is created to read:

1 980.14 (1) In this section, "agency" means the department of corrections, the
2 department of health and family services, the department of justice or a district
3 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?

4 **SECTION 76. Initial applicability.**

5 (1) SEXUALLY VIOLENT PERSON COMMITMENT PROCEEDINGS. The treatment of
6 sections [****citations to be provided in ^{the final} ~~another~~ version of the draft] of the statutes
7 first applies to proceedings under chapter 980 of the statutes that are initiated by a
8 pctition filed under section 980.02 of the statutes on the effective date of this
9 subsection.

INCREASED PENALTY FOR

10 (2) ~~SENTENCING OF~~ PERSONS WITH PRIOR CONVICTIONS FOR CERTAIN CRIMES. The
11 renumbering and amendment of sections 939.623 (1), 939.624 (1) and 939.626 (1) of
12 the statutes and the creation of sections 939.623 (1) (b), 939.624 (1) (b) and 939.626
13 (1) (b) of the statutes first apply to offenses committed on the effective date of this
14 subsection, but do not preclude the counting of other offenses as prior serious sex
15 crimes, prior serious violent crimes or prior child sex crimes for purposes of
16 sentencing a person under section 939.623, 939.624 or 939.626 of the statutes, as
17 affected by this act.

18 **SECTION 77. Effective dates.** This act takes effect on the day after publication,
19 except as follows:

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

1997-1998 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-4610/P3ins
JEO:.....

1 **INSERT 6-5:**

2 **SECTION 1.** 51.20 (13) (ct) 2. of the statutes, as created by 1995 Wisconsin Act
3 440, is amended to read:

4 51.20 (13) (ct) 2. Except as provided in subd. 1., if the subject individual is
5 before the court on a petition filed under a court order under s. 938.30 (5) (c) 1. and
6 is found to have committed any violation, or to have solicited, conspired or attempted
7 to commit any violation, of ch. 940, 944 or 948, s. 941.32¹ or ss. 941.38² or ss. 943.01^{or} to
8 943.15, the court may require the subject individual to comply with the reporting
9 requirements under s. 301.45 if the court determines that the underlying conduct
10 was sexually motivated, as defined in s. 980.01 (5), and that it would be in the interest
11 of public protection to have the subject individual report under s. 301.45.

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; 1995 a. 98, 196, 227, 310, 431, 474; 1995 a. 77, 201, 208, 292, 440; Sup. Ct. Order No. 96-08, filed 1-16-97, eff. 7-1-97; 1997 a. 35.

12 **INSERT 10-22:**

13 **SECTION 2.** 801.52 of the statutes is amended to read:

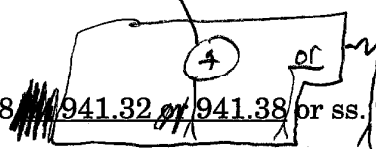
14 **801.52 Discretionary change of venue.** The court may at any time, upon
15 its own motion, the motion of a party or the stipulation of the parties, change the
16 venue to any county in the interest of justice or for the convenience of the parties or
17 witnesses. This section does not apply to proceedings under ch. 980.

History: History: 1983 a. 225.

18 **INSERT 13-7:**

19 **SECTION 3.** 938.34 (15m) (b) of the statutes, as created by 1995 Wisconsin Act
20 440, is amended to read:

21 938.34 (15m) (b) Except as provided in par. (a), if the child is adjudicated
22 delinquent on the basis of any violation, or the solicitation, conspiracy or attempt to



1 commit any violation, under ch. 940, 944 or 948 ~~941.32 or 941.38~~ or ss. 943.01 to
2 943.15, the court may require the child to comply with the reporting requirements
3 under s. 301.45 if the court determines that the underlying conduct was sexually
4 motivated, as defined in s. 980.01 (5), and that it would be in the interest of public
5 protection to have the child report under s. 301.45.

6 History: History: 1995 a. 77, 352, 440, 448; 1997 a. 27, 35, 36.

6 SECTION 4. 938.35 (1) (e) of the statutes is created to read:

7 938.35 (1) (e) In a proceeding under ch. 980[✓] for purposes of determining
8 whether the juvenile is a sexually violent person.

9 **INSERT 14-12:**

10 SECTION 5. 971.17 (1m) (b) 2.[✓] of the statutes, as created by 1995 Wisconsin Act
11 440, is amended to read:

12 971.17 (1m) (b) 2. Except as provided in subd. 1., if the defendant under sub.
13 (1) is found not guilty by reason of mental disease or defect for any violation, or for
14 the solicitation, conspiracy or attempt to commit any violation, of ch. 940, 944 or 948^e

15 ~~941.32 or 941.38~~ or ss. 943.01 to 943.15, the court may require the defendant to
16 comply with the reporting requirements under s. 301.45 if the court determines that
17 the underlying conduct was sexually motivated, as defined in s. 980.01 (5), and that
18 it would be in the interest of public protection to have the defendant report under s.
19 301.45.

20 History: History: 1975 c. 430, 1977 c. 353; 1977 c. 428 s. 115; 1983 a. 359; Sup. Ct. Order, 141 W (2d) xiii (1987); 1987 a. 394; 1989 a. 31, 142, 334, 359; Sup. Ct. Order, 158 W (2d) xviii (1990); 1991 a. 29, 180, 260; 1992 a. 16, 98, 227; 1995 a. 27 s. 9126 (19); 1995 a. 417, 425, 440, 448; 1997 a. 35.

20 **INSERT 15-6:**

21 SECTION 6. 973.048 (2) of the statutes, as created by 1995 Wisconsin Act 440,[✓]
22 is amended to read:

23 973.048 (2) Except as provided in sub. (1), if a court imposes a sentence or
24 places a person on probation for any violation, or for the solicitation, conspiracy or

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3
3f

1 attempt to commit any violation, under ch. 940, 944 or 948 ~~941.32~~ ~~941.33~~ or ss.
2 943.01 to 943.15, the court may require the person to comply with the reporting
3 requirements under s. 301.45 if the court determines that the underlying conduct
4 was sexually motivated, as defined in s. 980.01 (5), and that it would be in the interest
5 of public protection to have the person report under s. 301.45.

History: History: 1995 a. 440.

6 **SECTION 7.** 980.01 (1) of the statutes is renumbered 980.01 (1r). ✓

7 **SECTION 8.** 980.01 (1g) ✓ of the statutes is created to read:

8 980.01 (1g) "Act of sexual violence" means conduct that constitutes the
9 commission of a sexually violent offense.

10 **SECTION 9.** 980.01 (2) of the statutes is amended to read:

11 980.01 (2) "Mental disorder" means a congenital or acquired condition affecting
12 the emotional, cognitive ✓ or volitional capacity that predisposes a person to engage
13 in acts of sexual violence.

History: History: 1993 a. 479; 1995 a. 27 s. 9126 (1r).

14 **INSERT 31-4:**

15 ~~NO~~ Any party to a proceeding under this chapter may file a written request with the clerk
16 of courts for a substitution of a new judge for the judge assigned to the case. Except
17 as provided in sub. (5) ✓, no party may file more than one such written request in any
18 one action, nor may any single such request name more than one judge.

19 **INSERT 34-2:**

20 ~~NO~~ this chapter or by a person who conducts an examination before the petition under
21 s. 980.02 ✓ was filed for the purpose of evaluating whether to file a petition.

22 **INSERT 34-8:**

23 ~~NO~~ this chapter or conducted before the petition under s. 980.02 was filed for the purpose
24 of evaluating whether to file a petition

1

INSERT 35-14:

*****NOTE: Should proposed s. 980.036 (3) refer to trial "or other proceeding under this chapter"? Compare proposed s. 980.036 (2).

2

INSERT 40-22:

3

SECTION 10. 980.05 (1) of the statutes is amended to read:

4

980.05 (1) A trial to determine whether the person who is the subject of a

5

petition under s. 980.02 is a sexually violent person shall commence no later than 45

6

75 days after the date of the probable cause hearing under s. 980.04. The court may

7

grant a continuance of the trial date for good cause upon its own motion, the motion

8

of any party or the stipulation of the parties.

History: History: 1993 a. 479.

CORRESPONDENCE/MEMORANDUM

DEPARTMENT OF JUSTICE

Date: September 15, 1999

To: AAG's Steve Tinker and Mary Burke

From: Tom Fallon and Sally Wellman
Assistant Attorneys General

Subject: Revisions to Sex Predator Statute (I.RB-4610/P3)

Below you will find the final version of our technical changes pursuant to our discussions of this date.

1) Add these sections concerning confidentiality and flow of information:

(a) Section 48.396, (6) is created to read:

"All records under this section shall be open for inspection and use by authorized representatives of the department of corrections, department of health and family services, district attorneys and the Attorney General for use in the evaluation or prosecution of a Chapter 980 proceeding."

(b) Section 48.78(1) is amended to read:

In this section...~~or~~, a licensed maternity hospital, or any private or public institution where a child has been placed pursuant to a court order under this chapter.

(c) Note to drafter: Section 48.78 (2)(a) needs to be amended to create a link to Chapter 980 and vice versa; i.e. a section would need to be created in say 980.015 to cross reference 48.78(2)(a), unless we rewrite (2)(a) entirely.

(d) The same probably needs to be done for §§ 938.78(1) and (2)(a).

(e) Section 48.78, (2)(e) is created to read:

"Paragraph (a) does not prohibit the Department from disclosing information ~~about an individual adjudged delinquent under Section 938.183 or 938.34 for a sexually violent offense, as defined in section 980.01(6), to the Department of Justice, or a district attorney, or a judge acting under Chapter 980 or to an attorney who represents a person subject to a petition under Chapter 980 for use in the evaluation or prosecution of a Chapter 980 proceeding or for use in~~

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any Chapter 980 proceeding. The court in which the petition under section 980.02 is filed may issue any protective orders it determines are appropriate concerning information disclosed under this paragraph."

1) (c) Section 48.981(7)(a) 8(m) is created to read: "Authorized representatives of the department of corrections, health and family services, district attorneys or Attorney General for use in the evaluation or prosecution of a Chapter 980 proceeding."

1) (g) **Note to drafter:** It is our intent that nothing be confidential or privileged in Chapters ^{46, 48, 51} or 938 for purposes of pursuing a Chapter 980 case. If you know better language to make this happen do it! We have no objection to provisions that preclude further use of the info. Please amend §§ 51.30 (4) (b) 8m and 10m to include **all** Chapter 980 proceedings.

2) Amend § 809.10 (1)(a) to eliminate the need for a docketing statement in Chapter 980 Appeals.

3) § 814.61 (1)(c) is amended to add 4 section to eliminate the filing fee requirements for civil commitment cases. It would read:

4. Civil Commitment Actions filed pursuant to Chapters 51, 55 and 980.

4) Page 13 section 25:

Amend section 911.01(4c) entitled "Miscellaneous Proceedings" to include a statutory reference to § 980.06 regarding hearings for disposition in Chapter 980. *No more Dispo here!*

5) Page 14: Section 27 lines 7-8.

938.35(1) (e) is created to read:

In any proceeding under Chapter 980.

6) Section 938.396(2)(e) is repealed and recreated as section 938.396(10) to read:

"All records under this section relating to any person who is being evaluated for a Chapter 980 proceeding or who is the subject of a Chapter 980 proceeding shall be open for inspection and use by authorized representatives of the department of corrections, health and family services, district attorneys or Attorney General.

7) Section 938.78(2)(e) is amended to read:

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Paragraph (a) "~~does not prohibit the department from disclosing information about an individual adjudged delinquent under § 938.183 or 938.34 for a sexually violent offense, as defined in § 980.01(6), to the Department of Justice, or a district attorney or a judge acting under Ch. 980 or to an attorney who represents a person subject to a petition under Ch. 980,~~ to authorized representatives of the department of corrections, health and family services, the district attorney or the Attorney General for use in any Chapter 980 proceeding. The court in which the petition under which § 980.02 is filed may issue any protective orders that it determines are appropriate concerning information disclosed under this paragraph.

8) Page 15: Add a section to deal with escapes and attempted escapes from predator world. Amend section 946.42(1)(a) to include commitments and detention orders in Chapter 980 cases e.g. those serving a commitment at the WRC, those serving a commitment on supervised release and those who are simply detained awaiting outcome of their 980 case.

9) Amend 946.42 (3a) to make it a "B" felony to escape from a Chapter 980 secure facility, supervised release program or detention order.

10) Page 15-line 15:

980.03 (5) - RN & Expanded

Amend section 967.08(2) (b) to x-ref. 980.04(2) to permit probable cause hearings to be done telephonically.

Didn't do
11)

Note to drafter: Please amend § 980.04 to x-ref. with 967.08 as well!

12) Page 16-section 37: Add to line 9

Including any post commitment motion, hearing or appeal

13) Amend § 978.045 to cover appointments in Chapter 980 cases. Drafters choice for best language.

14) Page-18, add this provision.

Amend § 980.01 (6) to create sub (d) to read:

Any escape from custody pursuant to a detention order, supervised release order or other commitment order under Chapter 980.

15)
Not needed

Note to drafter: In an effort to make Chapter 980 compatible with the terminology of the soon to be implemented Truth In Sentencing Law we suggest that the phrase "Term of Confinement" be inserted throughout the statute after the word "sentence" where it is appropriate to the

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context. It is our intent that those completing their Term of Confinement be eligible for 980 while those granted "Extended Supervision," like those granted parole, would not be eligible for 980 consideration.

(6) ✓ Page 18 Section 48

Delete proposed change in § 980.07 changing the Standard of Commitment from "substantial probability" to "likely".

(7) ✓ Page-18 add this provision

Amend 980.015 (2) to read

If an agency with jurisdiction has control or custody over a person who may meet the criteria for commitment as a sexually violent person, the agency with jurisdiction shall inform each appropriate district attorney and the department of justice regarding the person as soon as possible beginning ~~3 months~~ 90 days prior to the applicable date of the following:

lots of changes in here

(a) The anticipated discharge from a sentence, anticipated release on parole or extended supervision or anticipated ~~release~~ from imprisonment of a person who has been convicted of a sexually violent offense. Imprisonment of a person who has been convicted of a sexually violent offense includes a continuous term of incarceration any part of which was imposed for a sexually violent offense or from a placement in a Type 1 prison under § 301.01 (5) as part of a sentence imposed under § 301.48 any part of which was imposed for a sexually violent offense.

(b) The anticipated release or discharge from a secured correctional facility, as defined in § 938.02 (15m), or a secured child caring institution, as defined in § 938.02 (15g), if the person was placed in the facility for being adjudicated delinquent under §§ 938.183, 938.34 or 938.538 on the basis of a sexually violent offense.

de? ✓

(c) The anticipated ~~release~~ or discharge from any commitment order that was entered as a result of a sexually violent offense.

Note: "It is our hope that this will alleviate some of the problems encountered in working with Division of Intensive Sanctions (DIS) cases! E.g.: Davidson case.

(8) ✓ Page19-before section 52 a section revising 980.02(1) (a)

Section 980.02 (1) (a) is amended to read:

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The department of justice at the request of the agency with jurisdiction, as defined in § 980.015 (1), over the person. ~~If the department of justice decides to file a petition under this paragraph, it shall file the petition before the date of release or discharge of the person.~~

(19) ✓ Section 980.02 (1)(c) is created to read: ^(1m)

A petition shall be filed on or before the day the person is released or discharged.

20) ✓ Delete section 980.02(2)(ag) — *Repeal*

21) ✓ Competency: Delete §§ 61 and 62 and all references to it.

22) ✓ Discovery and inspection, page 38:

Amend section (β) (g) by adding the words or psychological after the word scientific and before test on line 14.

Page 36:

23) ✓ Accept the drafter's note and include the language or other proceeding under this chapter so that the defense obligations are identical to the prosecutions.

24) ✓ Similarly, amend (3)(c) on line 15 to add the words or psychological after the word "scientific" and before the word "test."

25) ✓ Page 40, in the Miscellaneous procedural provision section add these provisions.

(a) ✓ Create (5) to read:

Failure to comply with any time limit specified in this chapter does not deprive the court of personal or subject matter jurisdiction or of competency to exercise that jurisdiction or provide grounds for an appeal or grounds to vacate any Chapter 980 order, judgment or commitment. Failure to object to a period of delay or of continuance waives the time limit that is the subject of the period of delay or continuance.

(b) ✓ Create (6) to read:

The court shall, in every stage of an action, disregard any error or defect in the pleadings or proceedings that does not prejudice the substantial rights of either party.

26) ✓ Page 40 line 22:

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After the word "until" and before the word "the," add the phrase "the case is dismissed or"?

27) ✓ Page 41 line 11 change 20 days to 30 days.

28) ✓ Page 41 line 12 add the language from lines 19-21 ". . . unless that time is extended . . . etc."

29) ✓ Page 41: Probable cause hearings line 18:

Change "3" days to "10" days.

30) ✓ Page 42, create new section 980.045 to read: Jury Selection:

§ 980.045 (1) Jury; civil rules applicable. Repeat §972.01 in its entirety.

§ 980.045 (2) Jury trial and number of jurors. At any time before the verdict in a Chapter 980 case the parties may stipulate in writing or in open court, on the record, with approval of the court, that the jury may consist of any number less than 12.

§ 980.045 (3) Peremptory challenges. Each side is entitled to only 4 peremptory challenges unless alternate jurors are selected. If the court orders alternate jurors the parties shall receive one additional peremptory challenge for each alternate juror selected.

§ 980.045 (4) Restate § 972.04 but delete reference to § 756.06 (2) (am) only.

§ 980.045 (4) (a) Restate § 972.04 (2).

31) ✓ Page 42 line 9:

Change ~~75~~ to 90 days.

32) ✓ Page 42 at line 13, insert new section, § 980.05(3)(a) is amended to read:

At a trial on a petition under this chapter, the petitioner has the burden of proving that the respondent is a sexually violent person as set forth in § 980.01(7) ~~the allegations in the petition~~ beyond a reasonable doubt.

23) ✓ Page 42, at line 20.

Amend § 980.07 (1) to read:

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If a person has been committed under § 980.06 and has not been discharged under § 980.09, the department shall conduct an examination of his or her mental condition within *[Whatever the Budget Bill says 18months? We previously wanted a change from 6-to at least 12 months; 18 is better still!]* after ~~an initial commitment~~ the disposition order placing the person at a secure mental health facility under § 980.06 (2) (b) and again, etc.

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Sections Affected Post-Drafting-Check For 97-4610/P3

Tuesday, January 18, 2000 3:34 pm

Current Wisconsin Statutes updated through 1999 Act 25

SECTION (Sub)(Par)	TREATMENT	AFFECTED BY
46.10(2)	am.	Act 0009
51.05(2)	am. effec. 1-1-2000	Act 0009
51.20(1)(am)	(aff. 1995 WisAct 292) r.cr. effec. 12-1-2001 WisAct 292 1995	
814.61(1)(c)4.	cr.	Act 0009
814.61(1)(c)5.	cr.	Act 0009
980.02(2)(ag)	am. effec. 1-1-2000	Act 0009
980.02(4)(am)	am. effec. 1-1-2000	Act 0009
980.02(4)(b)	am. effec. 1-1-2000	Act 0009
→ 980.03(4)	am.	Act 0009
980.04(1)	am. effec. 1-1-2000	Act 0009
980.05(6)	r.	Act 0009
980.07(1)	am.	Act 0009
980.08(3)	am.	Act 0009
980.08(4)	am.	Act 0009

Sections Affected Post-Drafting-Check For 97-4610/P3

Tuesday, January 18, 2000 11:02 am

Current Wisconsin Statutes updated through 1997 Act 338

SECTION (Sub)(Par)	TREATMENT	AFFECTED BY
46.10(2)	am.	Act 0027
46.10(2)	(aff. 1997 WisAct 27) am.	Act 0237
51.20(1)(am)	(aff. 1995 WisAct 292) r.cr. effec. 12-1-2001 WisAct 292 1995	
51.20(13)(ct)2.	(cr. 1995 WisAct 440) am.rn. 51.20 (13) (ct) 1m.	
Act 0130		
51.20(13)(ct)	cr. effec. 6-1-97 WisAct 440 of	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	
51.437(4rm)(a)	[see s. 82 of]	Act 0252
814.61(1)(e)(intro.)	am.rn.fr. 814.61 (1) (c)	Act 0285
814.61(1)(e)3.	cr.	Act 0285
814.61(1)(e)	am.rn. 814.61 (1) (c) (intro.)	Act 0285
938.34(15m)(b)	(cr. 1995 WisAct 440) am.rn. <u>938.34 (15m) (am)</u>	
Act 0130		
938.34(15m)	cr. effec. 6-1-97 WisAct 440 of	1995
939.623(1)	am.	Act 0326
939.626	r.	Act 0326
971.17(1m)(b)2.	(cr. 1995 WisAct 440) am.rn. 971.17 (1m) (b) 1m.	
Act 0130		
971.17(1m)(b)	cr. effec. 6-1-97 WisAct 440 of	1995
971.17(1m)	am.rn. 971.17 (1m) (a) effec. 6-1-97 WisAct 440 of	
1995		
973.048(2)	(cr. 1995 WisAct 440) am.rn. 973.048 (1m)	
Act 0130		
973.048	cr. effec. 6-1-97 WisAct 440 of	1995
440.93440. to 440.93440.	cr. effec. 2-1-99	Act 0156
980.01(6)(b)	am.	Act 0295
980.015(2)(a)	am.	Act 0283
980.02(2)(ag)	am.	Act 0205
980.02(2)(ag)	(aff. 1997 WisAct 205) am.	Act 0283
980.02(4)(ama)	am.	Act 0283
980.03(5)	am.	Act 0252
980.08(4)	am.	Act 0027
980.08(4)	am. effec. 1-1-99	Act 0284
77.99577. to 77.99577.	cr. effec. 4-1-98	Act 0027

~~440.93440 to 440.93440.~~

~~cr. effec. 11-1-98~~

Act 0081

Sections Affected Post-Drafting-Check For 99-4105/P1ins

Tuesday, January 18, 2000 11:36 pm

Current Wisconsin Statutes updated through 1999 Act 25

SECTION (Sub)(Par)	TREATMENT	AFFECTED BY
48.981(7)(a)8m.	cr.	Act 0020
946.42(1)(a)	am. effec. 1-1-2000	Act 0009
980.015(2)(b)	am. effec. 1-1-2000	Act 0009
980.03(4)	am.	Act 0009
980.04(1)	am. effec. 1-1-2000	Act 0009
980.07(1)	am.	Act 0009
980.08(3)	am.	Act 0009
980.08(4)	am.	Act 0009