



State of Wisconsin
1997 - 1998 LEGISLATURE

LRB 4610/P3

JEO: ~~lll~~ kmg:lp

Friday 1/21
by end of day

3-Not

4/05/PI

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

regenerate

1 AN ACT *to repeal* 980.05 (1m), 980.05 (6) and 980.07 (3); *to renumber* 980.01 (1);
2 *to renumber and amend* 814.61 (1) (c), 939.623 (1), 939.624 (1), 939.626 (1),
3 980.015 (4), 980.02 (2) (ag), 980.03 (4), 980.03 (5) and 980.04 (2); *to amend*
4 46.10 (2), 46.48 (10), 51.05 (2), 51.20 (1) (am), 51.20 (13) (ct) 2., 51.30 (4) (b) 8m.,
5 51.30 (4) (b) 12m., 51.37 (1), 51.37 (4), 51.37 (9), 51.42 (3) (as) 1., 51.437 (4rm)
6 (a), 51.87 (3), 146.82 (2) (c), 801.52, 808.04 (3), 808.04 (4), 809.30 (1) (a), 809.30
7 (1) (b), 809.40 (1), 905.04 (4) (a), 911.01 (4) (c), 938.34 (15m) (b), 967.08 (2) (b),
8 971.17 (1m) (b) 2., 972.15 (4), 973.048 (2), 980.01 (2), 980.01 (5), 980.01 (6) (a),
9 980.01 (6) (b), 980.01 (6) (c), 980.01 (7), 980.015 (2) (a), 980.02 (4) (intro.), 980.03
10 (2) (intro.), 980.04 (1), 980.04 (3), 980.05 (1), 980.05 (3) (b), 980.07 (1), 980.08
11 (3), 980.08 (4), 980.09 (1) (b), 980.09 (2) (a) and 980.09 (2) (b); *to repeal and*
12 *recreate* 51.20 (1) (am); and *to create* 814.61 (1) (c) 3., 938.35 (1) (e), 939.623
13 (1) (b), 939.624 (1) (b), 939.626 (1) (b), 972.15 (6), 980.01 (1g), 980.01 (6) (am),
14 980.01 (6) (bm), 980.015 (2) (d), 980.02 (1) (b) 3., 980.02 (6), 980.031 (title),
15 980.031 (1) and (2), 980.032, 980.033, 980.034, 980.035, 980.036, 980.038,

1 980.04 (2) (b), 980.14 (title) and 980.14 (1) of the statutes; **relating to:** sexually
2 violent person commitments, sentencing of persons who have prior convictions
3 for certain crimes and providing penalties.

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:

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

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

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

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

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

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

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

1 or 980.06, admitted by the department under s. 975.17, 1977 stats., or are
2 transferred from a juvenile correctional facility or a secured child caring institution,
3 as defined in s. 938.02 (15g), to a state treatment facility under s. 51.35 (3) or from
4 a jail or prison to a state treatment facility under s. 51.37 (5) are not subject to this
5 section.

6 **SECTION 4.** 51.20 (1) (am) of the statutes is amended 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 e. or recent behavior under par. (a) 2. d. may be satisfied by a
17 showing that there is a substantial likelihood, based on the subject individual's
18 treatment record, that the individual would be a proper subject for commitment if
19 treatment were withdrawn. If the individual has been admitted voluntarily to an
20 inpatient treatment facility for not more than 30 days prior to the commencement
21 of the proceedings and remains under voluntary admission at the time of
22 commencement, the requirements of a specific recent overt act, attempt or threat to
23 act or pattern of recent acts or omissions may be satisfied by a showing of an act,
24 attempt or threat to act or a pattern of acts or omissions which took place
25 immediately previous to the voluntary admission. If the individual is committed

1 under s. 971.14 (2) or (5) or 980.033 (2) or (5) at the time proceedings are commenced,
2 or has been discharged from the commitment immediately prior to the
3 commencement of proceedings, acts, attempts, threats, omissions or behavior of the
4 subject individual during or subsequent to the time of the offense shall be deemed
5 recent for purposes of par. (a) 2.

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

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

1 voluntary admission. If the individual is committed under s. 971.14 (2) or (5) or
2 980.033 (2) or (5) at the time proceedings are commenced, or has been discharged
3 from the commitment immediately prior to the commencement of proceedings, acts,
4 attempts, threats, omissions or behavior of the subject individual during or
5 subsequent to the time of the offense shall be deemed recent for purposes of par. (a)

6 2.

7 **SECTION 6.** 51.20 (13) (ct) 2. of the statutes, as created by 1995 Wisconsin Act
8 440, is amended to read:

9 51.20 (13) (ct) 2. Except as provided in subd. 1., if the subject individual is
10 before the court on a petition filed under a court order under s. 938.30 (5) (c) 1. and
11 is found to have committed any violation, or to have solicited, conspired or attempted
12 to commit any violation, of ch. 940, 944 or 948 or ss. 941.32, 941.38 or 943.01 to
13 943.15, the court may require the subject individual to comply with the reporting
14 requirements under s. 301.45 if the court determines that the underlying conduct
15 was sexually motivated, as defined in s. 980.01 (5), and that it would be in the interest
16 of public protection to have the subject individual report under s. 301.45.

17 **SECTION 7.** 51.30 (4) (b) 8m. of the statutes is amended to read:

18 51.30 (4) (b) 8m. To appropriate examiners and facilities in accordance with s.
19 971.17 (2) (e), (4) (c) and (7) (c), ~~980.03 or 980.031 (4) or 980.08 (3)~~ and to district
20 attorneys or the department of justice in accordance with s. 980.015 (3) (b). The
21 recipient of any information from the records shall keep the information confidential
22 except as necessary to comply with s. 971.17 or ch. 980.

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

24 51.30 (4) (b) 12m. To any person if the patient was admitted under s. 971.14,
25 971.17, ~~980.033 or 980.06~~ or ch. 975 or transferred under s. 51.35 (3) or 51.37 and is

1 on unauthorized absence from a treatment facility. Information released under this
2 subdivision is limited to information that would assist in the apprehension of the
3 patient.

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

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

8 **SECTION 10.** 51.37 (4) of the statutes is amended to read:

9 51.37 (4) The department may, with the approval of the committing court and
10 the county department under s. 51.42 or 51.437, and subject to s. 51.35, transfer to
11 the care and custody of a county department under s. 51.42 or 51.437 any person in
12 an institution of the department committed under s. 971.14 or, 971.17 or 980.033, if
13 in its opinion, the mental condition of the person is such that further care is required
14 and can be properly provided under the direction of the county department under s.
15 51.42 or 51.437.

16 **SECTION 11.** 51.37 (9) of the statutes is amended to read:

17 51.37 (9) If in the judgment of the director of Mendota mental health institute,
18 Winnebago mental health institute or the Milwaukee county mental health complex,
19 any person who is committed under s. 971.14 or, 971.17 or 980.033 is not in such
20 condition as warrants his or her return to the court but is in a condition to receive
21 a conditional transfer or discharge under supervision, the director shall report his
22 or her reasons for the judgment to the department of health and family services, the
23 committing court and the district attorney of the county in which the court is located
24 his or her reasons for the judgment or, for a person committed under s. 980.033, the
25 department of justice, if it filed the petition under s. 980.02. If the court does not file

1 objection to the conditional transfer or discharge within 60 days of the date of the
2 report, the director may, with the approval of the department of health and family
3 services, conditionally transfer any person to a legal guardian or other person,
4 subject to the rules of the department of health and family services. Before a person
5 is conditionally transferred or discharged under supervision under this subsection,
6 the department of health and family services shall so notify the municipal police
7 department and county sheriff for the area where the person will be residing. The
8 notification requirement does not apply if a municipal department or county sheriff
9 submits to the department of health and family services a written statement waiving
10 the right to be notified. The department of health and family services may contract
11 with the department of corrections for the supervision of persons who are transferred
12 or discharged under this subsection.

13 **SECTION 12.** 51.42 (3) (as) 1. of the statutes is amended to read:

14 51.42 (3) (as) 1. A county department of community programs shall authorize
15 all care of any patient in a state, local or private facility under a contractual
16 agreement between the county department of community programs and the facility,
17 unless the county department of community programs governs the facility. The need
18 for inpatient care shall be determined by the program director or designee in
19 consultation with and upon the recommendation of a licensed physician trained in
20 psychiatry and employed by the county department of community programs or its
21 contract agency. In cases of emergency, a facility under contract with any county
22 department of community programs shall charge the county department of
23 community programs having jurisdiction in the county where the patient is found.
24 The county department of community programs shall reimburse the facility for the
25 actual cost of all authorized care and services less applicable collections under s.

1 46.036, unless the department of health and family services determines that a
2 charge is administratively infeasible, or unless the department of health and family
3 services, after individual review, determines that the charge is not attributable to the
4 cost of basic care and services. A county department of community programs may
5 not reimburse any state institution or receive credit for collections for care received
6 therein by nonresidents of this state, interstate compact clients, transfers under s.
7 51.35 (3), and transfers from Wisconsin state prisons under s. 51.37 (5) (a),
8 commitments under s. 975.01, 1977 stats., or s. 975.02, 1977 stats., or s. 971.14,
9 971.17 or 975.06 or 980.033 or admissions under s. 975.17, 1977 stats., or children
10 placed in the guardianship of the department of health and family services under s.
11 48.427 or 48.43 or under the supervision of the department of corrections under s.
12 938.183 or 938.355. The exclusionary provisions of s. 46.03 (18) do not apply to direct
13 and indirect costs which are attributable to care and treatment of the client.

14 **SECTION 13.** 51.437 (4rm) (a) of the statutes, as affected by 1997 Wisconsin Acts
15 27 and 35, is amended to read:

16 51.437 (4rm) (a) A county department of developmental disabilities services
17 shall authorize all care of any patient in a state, local or private facility under a
18 contractual agreement between the county department of developmental disabilities
19 services and the facility, unless the county department of developmental disabilities
20 services governs the facility. The need for inpatient care shall be determined by the
21 program director or designee in consultation with and upon the recommendation of
22 a licensed physician trained in psychiatry and employed by the county department
23 of developmental disabilities services or its contract agency prior to the admission
24 of a patient to the facility except in the case of emergency services. In cases of
25 emergency, a facility under contract with any county department of developmental

1 disabilities services shall charge the county department of developmental
2 disabilities services having jurisdiction in the county where the individual receiving
3 care is found. The county department of developmental disabilities services shall
4 reimburse the facility, except as provided under par. (c), for the actual cost of all
5 authorized care and services less applicable collections under s. 46.036, unless the
6 department of health and family services determines that a charge is
7 administratively infeasible, or unless the department of health and family services,
8 after individual review, determines that the charge is not attributable to the cost of
9 basic care and services. The exclusionary provisions of s. 46.03 (18) do not apply to
10 direct and indirect costs which are attributable to care and treatment of the client.
11 County departments of developmental disabilities services may not reimburse any
12 state institution or receive credit for collections for care received therein by
13 nonresidents of this state, interstate compact clients, transfers under s. 51.35 (3) (a),
14 commitments under s. 975.01, 1977 stats., or s. 975.02, 1977 stats., or s. 971.14,
15 971.17 or 975.06 or 980.033, admissions under s. 975.17, 1977 stats., children placed
16 in the guardianship of the department of health and family services under s. 48.427
17 or 48.43 or juveniles under the supervision of the department of corrections under
18 s. 938.183 or 938.355.

19 **SECTION 14.** 51.87 (3) of the statutes is amended to read:

20 **51.87 (3) PURCHASE OF SERVICES.** A county department under s. 46.23, 51.42 or
21 51.437 may contract as provided under this section with public or private agencies
22 in states bordering on Wisconsin to secure services under this chapter for persons
23 who receive services through the county department, except that services may not
24 be secured for persons committed under s. 971.14 or 971.17 or 980.033. Section

1 ~~46.036 (1) to (6) applies to contracts entered into under this section by county~~
2 ~~departments under s. 46.23, 51.42 or 51.437.~~

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

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9 SECTION 16. 801.52 of the statutes is amended to read:

10 **801.52 Discretionary change of venue.** The court may at any time, upon
11 its own motion, the motion of a party or the stipulation of the parties, change the
12 venue to any county in the interest of justice or for the convenience of the parties or
13 witnesses. This section does not apply to proceedings under ch. 980.

14 SECTION 17. 808.04 (3) of the statutes is amended to read:

15 808.04 (3) Except as provided in subs. (4) and (7), an appeal in a criminal case
16 or a case under ch. 48, 51, 55 or 938 or 980 shall be initiated within the time period
17 specified in s. 809.30.

Proof
w/ notes

18 SECTION 18. 808.04 (4) of the statutes is amended to read:

19 808.04 (4) Except as provided in sub. (7m), an appeal by the state in either a
20 criminal case under s. 974.05 or a case under ch. 48 or 938 or 980 shall be initiated
21 within 45 days of entry of the judgment or order appealed from.

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22 SECTION 19. 809.30 (1) (a) of the statutes is amended to read:

23 809.30 (1) (a) "Postconviction relief" means, in a felony or misdemeanor case,
24 an appeal or a motion for postconviction relief other than a motion under s. 973.19
25 or 974.06. In a ch. 48, 51, 55 or 938 case, other than a termination of parental rights

1 case under s. 48.43, it means an appeal or a motion for reconsideration by the trial
 2 court of its final judgment or order; in such cases a notice of intent to pursue such
 3 relief or a motion for such relief need not be styled as seeking "postconviction" relief.
 4 In a ch. 980 case, it means an appeal or a motion for postcommitment relief under
 5 s. 980.038 (4).

6 SECTION 20. 809.30 (1) (b) of the statutes is amended to read:

7 809.30 (1) (b) "Sentencing" means, in a felony or misdemeanor case, the
 8 imposition of a sentence, fine or probation. In a ch. 48, 51, 55 or 938 case, other than
 9 a termination of parental rights case under s. 48.43, it means the entry of the trial
 10 court's final judgment or order. In a ch. 980 case, it means the entry of an order under
 11 s. 980.06 (2) (b).

12 SECTION 21. 809.40 (1) of the statutes is amended to read:

13 809.40 (1) An appeal to the court of appeals from a judgment or order in a
 14 misdemeanor case or a ch. 48, 51, 55 or 938 or 980 case, or a motion for postconviction
 15 relief in a misdemeanor case or a motion for postcommitment relief under s. 980.038
 16 (4) must be initiated within the time periods specified in s. 808.04 and is governed
 17 by the procedures specified in ss. 809.30 to 809.32.

18 ~~SECTION 22. 814.61 (1) (c) of the statutes is renumbered 814.61 (1) (c) (intro.)~~
 19 ~~and amended to read:~~

20 ~~814.61 (1) (c) (intro.) Paragraphs (a) and (b) do not apply to any of the following:~~

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

24 ~~2. An action under ch. 769.~~

25 SECTION 23. 814.61 (1) (c) ⁶ of the statutes is created to read:

An action for civil commitment

1 814.61 (1) (c) ~~3. A proceeding~~ under ch. 980. 51, 55 or

2 SECTION 24. 905.04 (4) (a) of the statutes is amended to read:

3 905.04 (4) (a) ~~Proceedings~~ Proceedings for hospitalization, control, care and treatment
4 of a sexually violent person, guardianship, protective services or protective placement.

5 There is no privilege under this rule as to communications and information relevant
6 to an issue in proceedings to hospitalize the patient for mental illness, to appoint a
7 guardian under s. 880.33, for control, care and treatment of a sexually violent person
8 under ch. 980, for court-ordered protective services or protective placement or for
9 review of guardianship, protective services or protective placement orders, if the
10 physician, registered nurse, chiropractor, psychologist, social worker, marriage and
11 family therapist or professional counselor in the course of diagnosis or treatment has
12 determined that the patient is in need of hospitalization, control, care and treatment
13 as a sexually violent person, guardianship, protective services or protective
14 placement.

hearings under s. 980.08
or 980.09;

15 SECTION 25. 911.01 (4) (c) of the statutes is amended to read:

16 911.01 (4) (c) *Miscellaneous proceedings.* Proceedings for extradition or
17 rendition; sentencing, or granting or revoking probation, issuance of arrest
18 warrants, criminal summonses and search warrants; proceedings under s. 971.14 (1)
19 (c) ~~980.33~~ ^{stays} proceedings with respect to pretrial release under ch. 969 except
20 where habeas corpus is utilized with respect to release on bail or as otherwise
21 provided in ch. 969.

22 SECTION 26. ~~938.34 (15m) (b) of the statutes, as created by 1995 Wisconsin Act~~
23 ~~440, is amended to read:~~

24 ~~938.34 (15m) (b) Except as provided in par. (a), if the child is adjudicated~~
25 ~~delinquent on the basis of any violation, or the solicitation, conspiracy or attempt to~~

*** NOTE: 1999 Wisconsin Act 9 effectively eliminated
dispositional hearings under s. 980.06, so this
language refers only to hearings under ss. 980.08 and 980.09. Okay?

Proof w/ statute.

1 commit any violation, under ch. 940, 944 or 948 or ss. 941.32, 941.38 or 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.

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14-
5

hearing, trial
or other

6 SECTION 27. 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 relating to a whether the juvenile is a sexually violent person, stays

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14-8

9 SECTION 28. 939.623 (1) of the statutes is renumbered 939.623 (1) (intro.) and
 10 amended to read:

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

13 (a) A violation of s. 940.225 (1) or (2) ~~943.02 (1) or (2) or 944.025~~

delete

period
stays

14 SECTION 29. 939.623 (1) (b) of the statutes is created to read:

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

18 SECTION 30. 939.624 (1) of the statutes is renumbered 939.624 (1) (intro.) and
 19 amended to read:

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

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

23 SECTION 31. 939.624 (1) (b) of the statutes is created to read:

proof
w/ stats.
97
Act
326

proof
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Act
326

✓
FWS
15-4

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

4 ~~SECTION 32. 939.626 (1) of the statutes is renumbered 939.626 (1) (intro.) and
5 amended to read:~~

6 ~~939.626 (1) (intro.) In this section, "child sex crime" means a any of the
7 following:~~

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

9 ~~SECTION 33. 939.626 (1) (b) of the statutes is created to read:~~

10 ~~939.626 (1) (b) A crime at any time under federal law or the law of any other
11 state or, prior to the effective date of this paragraph [revisor inserts date], under
12 the law of this state that is comparable to a crime specified in par. (a).~~

13 ~~SECTION 34. 967.08 (2) (b) of the statutes is amended to read.~~

14 ~~967.08 (2) (b) Waiver of preliminary examination under s. 970.03, competency
15 hearing under s. 971.14 (4) or 980.033 (4) or jury trial under s. 972.02 (1).~~

16 ~~SECTION 35. 971.17 (1m) (b) 2. of the statutes, as created by 1995 Wisconsin Act
17 440, is amended to read:~~

18 ~~971.17 (1m) (b) 2. Except as provided in subd. 1., if the defendant under sub.
19 (1) is found not guilty by reason of mental disease or defect for any violation, or for
20 the solicitation, conspiracy or attempt to commit any violation, of ch. 940, 944 or 948
21 or ss. 941.32, 941.38 or 943.01 to 943.15, the court may require the defendant to
22 comply with the reporting requirements under s. 301.45 if the court determines that
23 the underlying conduct was sexually motivated, as defined in s. 980.01 (5), and that
24 it would be in the interest of public protection to have the defendant report under s.
25 301.45.~~

*From
w/ statute*

1 SECTION 36. 972.15 (4) of the statutes is amended to read:

2 972.15 (4) After sentencing, unless otherwise authorized under sub. (5) or (6)
3 or ordered by the court, the presentence investigation report shall be confidential
4 and shall not be made available to any person except upon specific authorization of
5 the court.

6 SECTION 37. 972.15 (6) of the statutes is created to read:

7 972.15 (6) The presentence investigation report and any information contained
8 in it may be used by any of the following persons in any evaluation, examination,
9 referral, hearing, trial or other proceeding under ch. 980:

*postcommitment
relief proceeding,
appeal*

- 10 (a) The department of corrections.
- 11 (b) The department of health and family services.
- 12 (c) The person who is the subject of the presentence investigation report, his
13 or her attorney or an agent or employe of the attorney.
- 14 (d) The attorney representing the state or an agent or employe of the attorney.
- 15 (e) A licensed physician, licensed psychologist or other mental health
16 professional who is examining the subject of the presentence investigation report.
- 17 (f) The court and, if applicable, the jury hearing the case.

18 SECTION 38. 973.048 (2) of the statutes, as created by 1995 Wisconsin Act 440,
19 is amended to read:
20 973.048 (2) Except as provided in sub. (1), if a court imposes a sentence or
21 places a person on probation for any violation, or for the solicitation, conspiracy or
22 attempt to commit any violation, under ch. 940, 944 or 948 or ss. 941.32, 941.38 or
23 943.01 to 943.15, the court may require the person to comply with the reporting
24 requirements under s. 301.45 if the court determines that the underlying conduct

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17-2

1 was sexually motivated, as defined in s. 980.01 (5), and that it would be in the interest
2 of public protection to have the person report under s. 301.45.

3 SECTION 39. 980.01 (1) of the statutes is renumbered 980.01 (1r).

4 SECTION 40. 980.01 (1g) of the statutes is created to read:

5 980.01 (1g) "Act of sexual violence" means conduct that constitutes the
6 commission of a sexually violent offense.

7 SECTION 41. 980.01 (2) of the statutes is amended to read:

8 980.01 (2) "Mental disorder" means a congenital or acquired condition affecting
9 the emotional, cognitive or volitional capacity that predisposes a person to engage
10 in acts of sexual violence.

11 SECTION 42. 980.01 (5) of the statutes is amended to read:

12 980.01 (5) "Sexually motivated" means that one of the purposes for an act is
13 for the actor's sexual arousal or gratification or for the sexual humiliation or
14 degradation of the victim.

15 SECTION 43. 980.01 (6) (a) of the statutes is amended to read:

16 980.01 (6) (a) Any crime specified in s. 940.22 (2), 940.225 (1) ~~or~~, (2) or (3),
17 948.02 (1) or (2), 948.025, 948.06 or 948.07.

18 SECTION 44. 980.01 (6) (am) of the statutes is created to read:

19 980.01 (6) (am) An offense that, prior to June 2, 1994, was a crime under the
20 law of this state and that is comparable to any crime specified in par. (a).

21 SECTION 45. 980.01 (6) (b) of the statutes is amended to read:

22 980.01 (6) (b) Any crime specified in s. 940.01, 940.02, 940.03, 940.05, 940.06,
23 940.19 (4) or (5), 940.30, 940.305, 940.31 ~~or~~, 941.32, 941.38, 943.02, 943.10, 943.32
24 or 948.03 that is determined, in a proceeding under s. 980.05 (3) (b), to have been
25 sexually motivated.

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1 SECTION 46. 980.01 (6) (bm) of the statutes is created to read:

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

5 SECTION 47. 980.01 (6) (c) of the statutes is amended to read:

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

8 SECTION 48. 980.01 (7) of the statutes is amended to read:

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

16 SECTION 49. 980.015 (2) (a) of the statutes is amended to read:

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

21 SECTION 50. 980.015 (2) (d) of the statutes is created to read:

22 980.015 (2) (d) The anticipated release on parole or discharge of a person
23 committed under ch. 975 for a sexually violent offense.

24 SECTION 51. 980.015 (4) of the statutes is renumbered 980.14 (2) and amended

25 to read:

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Prop w/notes
INS 18-6

✓ proof
INS 19-3
w/ statutes
③

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

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4 SECTION 52. 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.

INS 19-7

8 SECTION 53. 980.02 (2) (ag) of the statutes is renumbered 980.02 (2) (ag) (intro.)

WFO: change com. pment
⑨

9 and amended to read as affected by Wisconsin Act 9, repealed.

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 54. 980.02 (4) (intro.) of the statutes is amended to read:

21 980.02 (4) (intro.) A petition under this section shall be filed in any one of the
22 following:

proof w/ statute

23 SECTION 55. 980.02 (6) of the statutes is created to read:

chs.

1 980.02 (6) A court assigned to exercise jurisdiction under ~~ch.~~^{chs.} 48 and 938 does
2 not have jurisdiction over a petition filed under this section alleging that a child is
3 a sexually violent person.

4 SECTION 56. 980.03 (2) (intro.) of the statutes is amended to read:

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

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SECTION 57. 980.03 (4) of the statutes is renumbered 980.031 (3) and amended
to read:

980.031 (3) Whenever the person who is the subject of the a petition filed under
s. 980.02 or who has been committed under s. 980.06 is required to submit to an
examination of his or her mental condition under this chapter, he or she may retain
experts or a licensed physician, licensed psychologist or other mental health
professional persons to perform an examination. If the person is indigent, the court
shall, upon the person's request, appoint a qualified and available licensed
physician, licensed psychologist or other mental health professional to perform an
examination of the person's mental condition and participate on the person's behalf
in a trial or other proceeding under this chapter at which testimony is authorized.

(4) If the person a party retains a qualified expert or the court appoints a
licensed physician, licensed psychologist or other mental health professional person
of his or her own choice to conduct an examination under this chapter of a person's
mental condition, the examiner shall have reasonable access to the person for the
purpose of the examination, as well as to the person's past and present treatment
records, as defined in s. 51.30 (1) (b), and past and present patient health care
records, as provided under s. 146.82 (2) ^{↓↓}(e). If the person is indigent, the court shall,

25

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

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

16 SECTION 58. 980.03 (5) of the statutes is renumbered 980.038 (3) (a) and
 17 amended to read:

18 980.038 (3) (a) Upon Except as provided in par. (b), upon a showing by the
 19 proponent of good cause under s. 807.13 (2) (c), testimony may be received into the
 20 record of a hearing under this section chapter by telephone or live audio visual
 21 means.

22 SECTION 59. 980.031 (title) of the statutes is created to read:

23 980.031(title) **Examinations.**

24 SECTION 60. 980.031 (1) and (2) of the statutes are created to read:

**** NOTE: This provision (from 1997 LRB-4610/P3) is in lieu of referring to s. 980.04(2) in s. 967.08(2)(b). only in criminal cases? okay?

Proof w/ stats. 97 R.L. 252

delete hyphen

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

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

10 **SECTION 61.** 980.032 of the statutes is created to read:

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

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

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

21 **SECTION 62.** 980.033 of the statutes is created to read:

22 **980.033 Competency proceedings.** (1) PROCEEDINGS. (a) The court shall
23 proceed under this section whenever there is reason to doubt the competency to
24 proceed of a person who is the subject of a petition filed under s. 980.02.

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

13 (c) If reason to doubt competency arises after the court has found under s.
14 980.04 (2) that there is probable cause to believe that the person is a sexually violent
15 person or after a finding of the court or a jury under s. 980.05 that the person is a
16 sexually violent person, a probable cause determination is not required and the court
17 shall proceed under sub. (2).

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

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

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

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

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

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

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

3 (g) The person may be examined for competency purposes at any stage of the
4 competency proceedings by licensed physicians, licensed psychologists or other
5 mental health professionals chosen by the person or by the department of justice or
6 district attorney, whichever filed the petition. Licensed physicians, licensed
7 psychologists and other mental health professionals chosen to examine the person
8 under this paragraph shall be permitted reasonable access to the person for purposes
9 of the examination.

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

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

15 (b) The clinical findings of the examiner.

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

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

22 (dm) If sufficient information is available to the examiner to reach an opinion,
23 the examiner's opinion on whether the person needs medication or treatment and
24 whether the person is not competent to refuse medication or treatment. The person
25 is not competent to refuse medication or treatment if, because of mental illness,

1 developmental disability, alcoholism or drug dependence, and after the advantages
2 and disadvantages of and alternatives to accepting the particular medication or
3 treatment have been explained to the person, one of the following is true:

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

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

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

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

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

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

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

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

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

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

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

13 (b) The person shall be periodically reexamined by the treatment facility.
14 Written reports of examination shall be furnished to the court 3 months after
15 commitment and within 30 days prior to the expiration of the initial period of
16 commitment under par. (a). If the person's commitment period is extended under par.
17 (c), written reports shall be furnished to the court 3 months after extension of the
18 commitment, 6 months after extension of the commitment, 9 months after extension
19 of the commitment and within 30 days prior to the expiration of the extended period
20 of commitment. Each report under this paragraph shall indicate that the person has
21 become competent, that the person remains incompetent but that attainment of
22 competency is likely within the remaining commitment period, or that the person has
23 not made such progress that attainment of competency is likely within the remaining
24 commitment period. Any report indicating such a lack of sufficient progress shall
25 include the examiner's opinion regarding whether the person is mentally ill,

1 alcoholic, drug dependent, developmentally disabled or infirm because of aging or
2 other like incapacities.

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

10 (d) If the person is receiving medication the court may make appropriate orders
11 for the continued administration of the medication in order to maintain the
12 competence of the person for the duration of the proceedings on the petition. If a
13 person who has been restored to competency thereafter again becomes incompetent,
14 the maximum initial commitment period under par. (a) shall be 21 months minus the
15 days spent in previous commitments under this subsection, or 6 months, whichever
16 is less.

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

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

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

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

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

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

5 SECTION 63. 980.034 of the statutes is created to read:

6 **980.034 Change of place of trial or jury from another county.** (1) The
 7 person who is the subject of a petition filed under s. 980.02 or who has been
 8 committed under this chapter may move for a change of the place of a jury trial under
 9 s. 980.05 on the ground that an impartial trial cannot be had in the county in which
 10 the trial is set to be held. The motion shall be made within 20 days after the
 11 completion or waiver of the probable cause hearing under s. 980.04 (2), whichever is
 12 applicable, except that it may be made after that time for cause.

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

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

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

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

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

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

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

11 **SECTION 64.** 980.035 of the statutes is created to read:

12 **980.035 Substitution of judge.** (1) ONE SUBSTITUTION. Any party to a
13 proceeding under this chapter may file a written request with the clerk of courts for
14 a substitution of a new judge for the judge assigned to the case. Except as provided
15 in sub. (5), no party may file more than one such written request in any one action,
16 nor may any single such request name more than one judge.

17 (2) SUBSTITUTION OF JUDGE ASSIGNED TO PROBABLE CAUSE HEARING. A written
18 request for the substitution of a different judge for the judge assigned to preside at
19 the probable cause hearing under s. 980.04 (2) may be filed a reasonable time before
20 the date of the probable cause hearing.

21 (3) SUBSTITUTION OF TRIAL JUDGE ORIGINALLY ASSIGNED. A written request for the
22 substitution of a different judge for the judge originally assigned to the trial under
23 s. 980.05 may be filed with the clerk within 10 days of the clerk's giving actual notice
24 or sending notice of the assignment to the parties.

1 (4) SUBSTITUTION OF TRIAL JUDGE SUBSEQUENTLY ASSIGNED. If a new judge is
2 assigned to the trial under s. 980.05 and the party has not exercised the right to
3 substitute an assigned judge, a written request for the substitution of the new judge
4 may be filed with the clerk within 10 days of the clerk's giving actual notice or
5 sending notice of the assignment to the parties. If the notification occurs within 20
6 days of the date set for trial, the request shall be filed within 48 hours of the clerk's
7 giving actual notice or sending notice of the assignment. If the notification occurs
8 within 48 hours of the trial or if there has been no notification, the party may make
9 an oral or written request for substitution prior to the commencement of the
10 proceedings.

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

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

23 ✓ (8) RETURN OF ACTION TO SUBSTITUTED JUDGE. Upon the filing of an agreement
24 signed by the person and the person's attorney and by the prosecuting attorney, the

1 substituted judge and the substituting judge, the action and all pertinent records
2 shall be transferred back to the substituted judge.

3 SECTION 65. 980.036 of the statutes is created to read:

4 980.036 Discovery and inspection. (1) DEFINITIONS. In this section:

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

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

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

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

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

21 (c) Evidence obtained in the manner described under s. 968.31 (2) (b), if the
22 prosecuting attorney intends to use the evidence at trial or other proceeding under this chapter

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

1 (e) A list of all witnesses, and their addresses, whom the prosecuting attorney
 2 intends to call at the trial. or other proceeding under this chapter
 3 those called for impeachment only.

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

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

7 2. Any reports or statements made in connection with the case by a person who
 8 conducts an examination under this chapter or by a person who conducts an
 9 examination before the petition under s. 980.02 was filed for the purpose of
 10 evaluating whether to file a petition.

11 3. If a person specified in subd. 2. does not prepare a report or statement, a
 12 written summary of the person's findings or the subject matter of his or her
 13 testimony.

14 (g) The results of any physical or mental examination, scientific or psychological test,
 15 experiment or comparison that the prosecuting attorney intends to offer in evidence
 16 at trial or other proceeding under this chapter and any test results, facts and data that were collected during and evaluated
 17 as part of an examination under this chapter or conducted before the petition under
 18 s. 980.02 was filed for the purpose of evaluating whether to file a petition and that
 19 the prosecuting attorney intends to offer in evidence at a trial or other proceeding
 20 under this chapter.

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

23 (i) Any physical evidence that the prosecuting attorney intends to offer in
 24 evidence at a trial or other proceeding under this chapter.

25 (j) Any exculpatory evidence.

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

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

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

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

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

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

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

a or other proceeding under this chapter

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1 (4) COMMENT OR INSTRUCTION ON FAILURE TO CALL WITNESS. No comment or
2 instruction regarding the failure to call a witness at the trial shall be made or given
3 if the sole basis for such comment or instruction is the fact^{use} the name of the witness
4 appears upon a list furnished pursuant to this section. ^{that}

5 (5) TESTING OR ANALYSIS OF EVIDENCE. On motion of a party, the court may order
6 the production of any item of evidence or data which is intended to be introduced at
7 the trial for testing or analysis under such terms and conditions as the court
8 prescribes.

9 (6) PROTECTIVE ORDER. Upon motion of a party, the court may at any time order
10 that discovery, inspection or the listing of witnesses required under this section be
11 denied, restricted or deferred, or make other appropriate orders. If the prosecuting
12 attorney or the attorney for a person subject to this chapter certifies that to list a
13 witness may subject the witness or others to physical or economic harm or coercion,
14 the court may order that the deposition of the witness be taken pursuant to s. 967.04
15 (2) to (6).[✓] The name of the witness need not be divulged prior to the taking of such
16 deposition. If the witness becomes unavailable or changes his or her testimony, the
17 deposition shall be admissible at trial as substantive evidence.

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

22 (8) CONTINUING DUTY TO DISCLOSE. If, subsequent to compliance with a
23 requirement of this section, and prior to or during trial, a party discovers additional
24 material or the names of additional witnesses requested which are subject to

1 discovery, inspection or production under this section, the party shall promptly notify
2 the other party of the existence of the additional material or names.

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

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

11 (10) PAYMENT OF PHOTOCOPY COSTS IN CASES INVOLVING INDIGENT RESPONDENTS.
12 When the state public defender or a private attorney appointed under s. 977.08
13 requests photocopies of any item that is discoverable under this section, the state
14 public defender shall pay any fee charged for the photocopies from the appropriation
15 under s. 20.550 (1) (a). If the person providing photocopies under this section charges
16 the state public defender a fee for the photocopies, the fee may not exceed the actual,
17 necessary and direct cost of photocopying.

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

21 **SECTION 66.** 980.038 of the statutes is created to read:

22 **980.038 Miscellaneous procedural provisions. (1) MOTIONS CHALLENGING**
23 **JURISDICTION OF COURT OR TIMELINESS OF PETITION; GROUNDS FOR CHALLENGING**
24 **JURISDICTION.** (a) A motion challenging the jurisdiction of the court or the timeliness
25 of a petition filed under s. 980.02 shall be filed within 10 days after the court holds

1 the probable cause hearing under s. 980.04 (2). Failure to file a motion within the
2 time specified in this paragraph waives the right to challenge the jurisdiction of the
3 court or the timeliness of a petition.

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

9 (2) EVIDENCE OF REFUSAL TO PARTICIPATE IN EXAMINATION. (a) At any hearing
10 under this chapter, the state may present evidence or comment on evidence that a
11 person who is the subject of a petition filed under s. 980.02 or a person who has been
12 committed under this chapter refused to participate in an examination of his or her
13 mental condition that was being conducted under this chapter or that was conducted
14 before the petition under s. 980.02 was filed for the purpose of evaluating whether
15 to file a petition.

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

20 (3) TESTIMONY BY TELEPHONE OR LIVE AUDIOVISUAL MEANS.

21 (b) Testimony may not be received by telephone or live audiovisual means at
22 a trial under s. 980.05 or a hearing under s. 980.09 (1) (b) or (2) (b).

23 (4) MOTIONS FOR POSTCOMMITMENT RELIEF; APPEAL. (a) A motion for
24 postcommitment relief by a person committed under s. 980.06 shall be made in the
25 time and manner provided in ss. 809.30 and 809.40. An appeal by a person who has

1 been committed under ch. 980 from a final order under s. 980.06 (2) (b), 980.08 or
 2 980.09 or from an order denying a motion for postcommitment relief or from both
 3 shall be taken in the time and manner provided in ss. 808.04 (3), 809.30 and 809.40.
 4 If a person is seeking relief from an order of commitment under s. 980.06 (2) (b), the
 5 person shall file a motion for postcommitment relief in the trial court prior to an
 6 appeal unless the grounds for seeking relief are sufficiency of the evidence or issues
 7 previously raised.

8 (b) An appeal by the state from a final judgment or order under this chapter
 9 may be taken to the court of appeals within the time specified in s. 808.04 (4) and in
 10 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?

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SECTION 67. 980.04 (1) of the statutes is amended to read:

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

1 after a trial under s. 980.05 or until the effective date of a commitment order under
2 s. 980.06, whichever is applicable.

3 SECTION 68. 980.04 (2) of the statutes is renumbered 980.04 (2) (a) and
4 amended to read:

5 980.04 (2) (a) Whenever a petition is filed under s. 980.02, the court shall hold
6 a hearing to determine whether there is probable cause to believe that the person
7 named in the petition is a sexually violent person. ~~If the person named in the petition~~
8 ~~is in custody, the court shall hold the probable cause hearing within 72 hours after~~
9 ~~the petition is filed, excluding Saturdays, Sundays and legal holidays. If the person~~
10 ~~named in the petition is not in custody, the~~ Except as provided in par. (b), the court
11 shall hold the probable cause hearing within a reasonable time ~~20~~³⁰ days, excluding
12 Saturdays, Sundays and legal holidays, after the filing of the petition.

*Proof
of
statute.*

13 SECTION 69. 980.04 (2) (b) of the statutes is created to read:

14 980.04 (2) (b) If the person named in the petition is in custody under a sentence,
15 dispositional order or commitment and the probable cause hearing will be held after
16 the date on which the person is scheduled to be released or discharged from the
17 sentence, dispositional order or commitment, the probable cause hearing under par.
18 (a) shall be held no later than ~~7~~ ¹⁰ days after the person's scheduled release or discharge
19 date, excluding Saturdays, Sundays and legal holidays, unless that time is extended
20 by the court for good cause shown upon its own motion, the motion of any party or
21 the stipulation of the parties.

22 SECTION 70. 980.04 (3) of the statutes is amended to read:

23 980.04 (3) If the court determines after a hearing that there is probable cause
24 to believe that the person named in the petition is a sexually violent person, the court
25 shall order that the person be taken into custody if he or she is not in custody and

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

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shall order the person to be transferred within a reasonable time to an appropriate facility specified by the department for an evaluation by the department as to whether the person is a sexually violent person. If the court determines that probable cause does not exist to believe that the person is a sexually violent person, the court shall dismiss the petition.

SECTION 71. 980.05 (1) of the statutes is amended to read:

980.05 (1) A trial to determine whether the person who is the subject of a petition under s. 980.02 is a sexually violent person shall commence no later than 45 ⁹⁰ days after the date of the probable cause hearing under s. 980.04. The court may grant a continuance of the trial date for good cause upon its own motion, the motion of any party or the stipulation of the parties.

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SECTION 72. 980.05 (1^m) of the statutes is repealed.

INS
42-12

SECTION 73. 980.05 (3) (b) of the statutes is amended to read:

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

INS
42-19

~~**SECTION 74.** 980.05 (6) of the statutes is repealed.~~

SECTION 75. 980.07 (1) of the statutes is amended to read:

980.07 (1) If a person has been committed under s. 980.06 and has not been discharged under s. 980.09, the department shall conduct an examination of his or her mental condition within 6 months after ~~an the date of the initial commitment~~ under s. 980.06 (2) (b) and again thereafter at least once each 12 months for the purpose of determining whether the person has made sufficient progress to be entitled to transfer to a less restrictive facility, to supervised release or to discharge.

1 ~~At the time of a reexamination under this section, the person who has been~~
2 ~~committed may retain or, if he or she is indigent and so requests, seek to have the~~
3 ~~court may appoint a qualified expert or a professional person to examine him or her~~
4 ~~an examiner as provided under s. 980.031 (3).~~

5 SECTION 76. 980.07 (3) of the statutes is repealed. ← STAYS!

INS
43-6

6 SECTION 77. 980.08 (3) of the statutes is amended to read:

7 980.08 (3) Within 20 days after receipt of the petition, the court shall appoint
8 one or more examiners having the specialized knowledge determined by the court to
9 be appropriate, who shall examine the mental condition of the person and furnish
10 a written report of the examination to the court within 30 days after appointment.
11 The district attorney or the department of justice, whichever filed the original
12 petition, may have the petitioner examined as provided under s. 980.031 (2). An
13 examiner retained by the district attorney or department of justice under s. 980.031
14 (2) or retained by or appointed for the petitioner under s. 980.031 (3) shall file a
15 written report of his or her examination with the court within 45 days of being
16 retained or appointed. All of the examiners acting under this subsection shall have
17 reasonable access to the person ~~for purposes of examination~~ and to the person's past
18 and present treatment records, as defined in s. 51.30 (1) (b), and patient health care
19 records, as provided under s. 146.82 (2) (e) 980.031 (4). If any such examiner believes
20 that the person is appropriate for supervised release, the examiner shall report on
21 the type of treatment and services that the person may need while in the community
22 on supervised release.

23 SECTION 78. 980.08 (4) of the statutes, as affected by 1997 Wisconsin Act 27,
24 is amended to read:

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

15 SECTION 79. 980.09 (1) (b) of the statutes is amended to read:

16 980.09 (1) (b) At a hearing under this subsection, the district attorney or the
 17 department of justice, whichever filed the original petition, shall represent the state
 18 and shall have the right to may have the petitioner examined by an expert or
 19 professional person of his, her or its choice. The hearing shall be before the court
 20 without a jury as provided under s. 980.031 (2). The district attorney or the
 21 department of justice, whichever filed the original petition, or the petitioner or his
 22 or her attorney may request that the hearing under this subsection be to a jury of 6.
 23 At the hearing under this subsection, the state has the burden of proving by clear and
 24 convincing evidence that the petitioner is still a sexually violent person.

25 SECTION 80. 980.09 (2) (a) of the statutes is amended to read:

*Proposed
changes*

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

18 SECTION 81. 980.09 (2) (b) of the statutes is amended to read:

19 980.09 (2) (b) If the court determines at the ~~probable cause~~ hearing under par.
 20 (a) that ~~probable cause exists to believe that the committed person is no longer~~ facts
 21 exist that warrant a hearing on whether the person is still a sexually violent person,
 22 then the court shall set a hearing on the issue. At a hearing under this paragraph,
 23 the committed person is entitled to be present and to the benefit of the protections
 24 afforded to the person under s. 980.03. The district attorney or the department of
 25 justice, whichever filed the original petition, shall represent the state at a hearing

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1 under this paragraph. ~~The hearing under this paragraph shall be to the court. The~~
2 ~~district attorney or the department of justice, whichever filed the original petition,~~
3 ~~or the petitioner or his or her attorney may request that the hearing under this~~
4 ~~subsection be to a jury of 6. The state has the right to~~ may have the committed person
5 ~~evaluated by experts chosen by the state examined as provided under s. 980.031 (2).~~
6 At the hearing, the state has the burden of proving by clear and convincing evidence
7 that the committed person is still a sexually violent person.

8 SECTION 82. 980.14 (title) of the statutes is created to read:

9 980.14 (title) **Immunity.**

10 SECTION 83. 980.14 (1) of the statutes is created to read:

11 980.14 (1) In this section, "agency" means the department of corrections, the
12 department of health and family services, the department of justice or a district
13 attorney.

14 SECTION 84. **Initial applicability.**

15 (1) SEXUALLY VIOLENT PERSON COMMITMENT PROCEEDINGS. The treatment of
16 sections [****citations to be provided in the final version of the draft] of the statutes
17 first applies to proceedings under chapter 980 of the statutes that are initiated by a
18 petition filed under section 980.02 of the statutes on the effective date of this
19 subsection.

20 (2) INCREASED PENALTY FOR PERSONS WITH PRIOR CONVICTIONS FOR CERTAIN CRIMES.

21 The renumbering and amendment of sections 939.623 (1), ^{and} 939.624 (1) ~~and 939.625~~
22 ~~of the statutes and the creation of sections 939.623 (1) (b), 939.624 (1) (b)~~
23 ~~939.625 (1) (b)~~ of the statutes first apply to offenses committed on the effective date
24 of this subsection, but do not preclude the counting of other offenses as prior serious
25 sex crimes, prior serious violent crimes or prior child sex crimes for purposes of

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1 sentencing a person under section 939.623, 939.624 or ~~939.626~~ of the statutes, as
2 affected by this act.

3 **SECTION 85. Effective dates.** This act takes effect on the day after publication,
4 except as follows:

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

7

(END)