

1999-2000 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-4105/Plins
JEO:.....

1 **INSERT 11-9:**

2 SECTION 1. 48.396 (1) of the statutes is amended to read:

3 48.396 (1) Law enforcement officers' records of children shall be kept separate
4 from records of adults. Law enforcement officers' records of the adult expectant
5 mothers of unborn children shall be kept separate from records of other adults. Law
6 enforcement officers' records of children and the adult expectant mothers of unborn
7 children shall not be open to inspection or their contents disclosed except under sub.
8 (1b), (1d) ~~or~~, (5) or (6) or s. 48.293 or by order of the court. This subsection does not
9 apply to the representatives of newspapers or other reporters of news who wish to
10 obtain information for the purpose of reporting news without revealing the identity
11 of the child involved, to the confidential exchange of information between the police
12 and officials of the school attended by the child or other law enforcement or social
13 welfare agencies or to children 10 years of age or older who are subject to the
14 jurisdiction of the court of criminal jurisdiction. A public school official who obtains
15 information under this subsection shall keep the information confidential as
16 required under s. 118.125 and a private school official who obtains information under
17 this subsection shall keep the information confidential in the same manner as is
18 required of a public school official under s. 118.125. A law enforcement agency that
19 obtains information under this subsection shall keep the information confidential as
20 required under this subsection and s. 938.396 (1). A social welfare agency that
21 obtains information under this subsection shall keep the information confidential as
22 required under ss. 48.78 and 938.78.

NOTE: NOTE: The bracketed language was inserted before "child" by 1997 Wis. Act 292. It is shown here in its correct location. Corrective legislation is pending. NOTE.

History: 1971 c. 278; 1977 c. 354 s. 47; 1977 c. 449; Stats. 1977 s. 48.396; 1979 c. 300; 1979 c. 333 s. 5; 1983 a. 74 s. 32; 1983 a. 487, 538; 1985 a. 311, 332; 1987 a. 27, 180, 403; 1989 a. 31, 107, 145; 1991 a. 39, 263; 1993 a. 98, 195, 228, 334, 479, 491; 1995 a. 27 ss. 2479 to 2480m, 9126 (19); 1995 a. 77, 173, 275, 352, 440, 448; 1997 a. 35, 80, 191, 205, 252, 292.

1 **SECTION 2.** 48.396 (5) (a) (intro.) of the statutes is amended to read:

2 48.396 (5) (a) (intro.) Any person who is denied access to a record under sub.
3 (1), (1b) ~~or~~, (1d) or (6) may petition the court to order the disclosure of the records
4 governed by the applicable subsection. The petition shall be in writing and shall
5 describe as specifically as possible all of the following:

History: 1971 c. 278; 1977 c. 354 s. 47; 1977 c. 449; Stats. 1977 s. 48.396; 1979 c. 300; 1979 c. 333 s. 5; 1983 a. 74 s. 32; 1983 a. 487, 538; 1985 a. 311, 332; 1987 a. 27, 180, 403; 1989 a. 31, 107, 145; 1991 a. 39, 263; 1993 a. 98, 195, 228, 334, 479, 491; 1995 a. 27 ss. 2479 to 2480m, 9126 (19); 1995 a. 77, 173, 275, 352, 440, 448; 1997 a. 35, 80, 101, 205, 252, 292

6 **SECTION 3.** 48.396 (6) of the statutes is created to read:

7 48.396 (6) Records of law enforcement officers and of the court assigned to
8 exercise jurisdiction under this chapter and ch. 938 shall be open for inspection by
9 authorized representatives of the department of corrections, the department of
10 health and family services, the department of justice or a district attorney for use in
11 the evaluation or prosecution of a proceeding under ch. 980, if the records concern
12 a person who is the subject of or who is being evaluated for a proceeding under ch.
13 980. The court in which the proceeding under ch. 980 is pending may issue any
14 protective orders that it determines are appropriate concerning information made
15 available or disclosed under this paragraph.

16 **SECTION 4.** 48.78 (1) of the statutes is amended to read:

17 48.78 (1) In this section, unless otherwise qualified, "agency" means the
18 department, a county department, a licensed child welfare agency, a licensed day
19 care center ~~or~~, a licensed maternity hospital or any public or private institution in
20 which a child has been placed pursuant to a court order under this chapter.

History: 1979 c. 34; 1981 c. 359; 1983 a. 471 s. 7; 1985 a. 29 s. 3202 (23); 1985 a. 176, 292, 332; 1987 a. 332; 1989 a. 31, 107, 336; 1991 a. 17, 39; 1993 a. 16, 92, 95, 218, 227, 377, 385, 395, 479, 491; 1995 a. 27 ss. 2610 to 2614p, 9126 (19); 1995 a. 77, 230, 352; 1997 a. 205, 207, 283, 292.

21 **SECTION 5.** 48.78 (2) (e) of the statutes is created to read:

22 48.78 (2) (e) Paragraph (a) does not prohibit an agency from making a record
23 available for inspection or disclosing the contents of a record to authorized

1 representatives of the department of corrections, the department of health and
2 family services, the department of justice or a district attorney for use in the
3 evaluation or prosecution of a proceeding under ch. 980, if the record concerns a
4 person who is the subject of or who is being evaluated for a proceeding under ch. 980.
5 The court in which the proceeding under ch. 980 is pending may issue any protective
6 orders that it determines are appropriate concerning information made available or
7 disclosed under this paragraph.

8 **SECTION 6.** 48.981 (7) (a) 8s. of the statutes is created to read:

9 48.981 (7) (a) 8s. Authorized representatives of the department of corrections,
10 the department of health and family services, the department of justice or a district
11 attorney for use in the evaluation or prosecution of a proceeding under ch. 980, if the
12 reports or records concern a person who is the subject of or who is being evaluated
13 for a proceeding under ch. 980. The court in which the proceeding under ch. 980 is
14 pending may issue any protective orders that it determines are appropriate
15 concerning information made available or disclosed under this paragraph.

16 **SECTION 7.** 51.20 (13) (ct) 1m. of the statutes is amended to read:

17 51.20 (13) (ct) 1m. Except as provided in subd. 2m., if the subject individual is
18 before the court on a petition filed under a court order under s. 938.30 (5) (c) 1. and
19 is found to have committed any violation, or to have solicited, conspired or attempted
20 to commit any violation, of ch. 940, 944 or 948 or ss. 941.32, 941.38 or 943.01 to
21 943.15, the court may require the subject individual to comply with the reporting
22 requirements under s. 301.45 if the court determines that the underlying conduct

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 subject individual report under s. 301.45.

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 Wis. 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 Wis. 2d xiii (1987); 1987 a. 366, 394, 403; 1989 a. 31, 334; 1993 a. 98, 196, 227, 316, 451, 474; 1995 a. 77, 201, 268, 292, 440; Sup. Ct. Order No. 96-08, 207 Wis. 2d xv (1997); 1997 a. 35, 130, 237, 283.

3 **SECTION 8. 51.30 (3) (a) of the statutes is amended to read:**

4 51.30 (3) (a) Except as provided in pars. (b) and, (bm), (c) and (d), the files and
5 records of the court proceedings under this chapter shall be closed but shall be
6 accessible to any individual who is the subject of a petition filed under this chapter.

History: 1975 c. 430; 1977 c. 26 s. 75; 1977 c. 61, 428; 1979 c. 110 s. 60 (1); 1983 a. 27, 292, 398, 538; 1985 a. 29, 176; 1985 a. 292 s. 3; 1985 a. 332 ss. 97, 98, 251 (1); 1987 a. 352, 355, 362, 367, 399, 403; 1989 a. 31, 334, 336; 1991 a. 39, 189; 1993 a. 196, 445, 479; 1995 a. 169, 440; 1997 a. 35, 231, 237, 283, 292; s. 13.93 (2) (c).

7 **SECTION 9. 51.30 (3) (bm) of the statutes is created to read:**

8 51.30 (3) (bm) The files and records of court proceedings under this chapter
9 shall be released to authorized representatives of the department of corrections, the
10 department of health and family services, the department of justice or a district
11 attorney for use in the evaluation or prosecution of a proceeding under ch. 980, if the
12 files or records concern a person who is the subject of or who is being evaluated for
13 a proceeding under ch. 980. The court in which the proceeding under ch. 980 is
14 pending may issue any protective orders that it determines are appropriate
15 concerning information made available or disclosed under this paragraph.

16 **SECTION 10. 51.30 (4) (b) 8m. of the statutes is amended to read:**

17 51.30 (4) (b) 8m. To appropriate examiners and facilities in accordance with s.
18 971.17 (2) (e), (4) (c) and (7) (c), ~~980.03 (4) or 980.08 (3)~~. The recipient of any
19 information from the records shall keep the information confidential except as
20 necessary to comply with s. 971.17 ~~or ch. 980~~.

History: 1975 c. 430; 1977 c. 26 s. 75; 1977 c. 61, 428; 1979 c. 110 s. 60 (1); 1983 a. 27, 292, 398, 538; 1985 a. 29, 176; 1985 a. 292 s. 3; 1985 a. 332 ss. 97, 98, 251 (1); 1987 a. 352, 355, 362, 367, 399, 403; 1989 a. 31, 334, 336; 1991 a. 39, 189; 1993 a. 196, 445, 479; 1995 a. 169, 440; 1997 a. 35, 231, 237, 283, 292; s. 13.93 (2) (c).

21 **SECTION 11. 51.30 (4) (b) 8s. of the statutes is created to read:**

1 51.30 (4) (b) 8s. To appropriate persons in accordance with s. 980.031 (4) and
 2 to authorized representatives of the department of corrections, the department of
 3 health and family services, the department of justice or a district attorney for use in
 4 the evaluation or prosecution of a proceeding under ch. 980, if the treatment records
 5 concern an individual who is the subject of or who is being evaluated for a proceeding
 6 under ch. 980. The recipient of any information from the records shall keep the
 7 information confidential except as necessary for the conduct of an evaluation,
 8 examination or proceeding under ch. 980 for which the information was obtained.

9 **SECTION 12.** 51.30 (4) (b) 10m. of the statutes is repealed.

10 **SECTION 13.** 146.82 (2) (c) of the statutes is amended to read:

11 146.82 (2) (c) Notwithstanding sub. (1), patient health care records shall be
 12 released to appropriate examiners and facilities in accordance with ss. s. 971.17 (2)
 13 (e), (4) (c) and (7) (c), ~~980.03 (4) and 980.08 (3)~~. The recipient of any information from
 14 the records shall keep the information confidential except as necessary to comply
 15 with s. 971.17 or ch. 980.

History: 1979 c. 221; 1983 a. 398; 1985 a. 29, 241, 332, 340; 1987 a. 40, 70, 127, 215, 233, 380, 399; 1989 a. 31, 102, 334, 336; 1991 a. 39; 1993 a. 16, 27, 445, 479; 1995 a. 98, 169, 417; 1997 a. 35, 114, 231, 272, 292, 305; s. 13.93 (1) (b).

16 **SECTION 14.** 146.82 (2) (cm) of the statutes is created to read:

17 146.82 (2) (cm) Notwithstanding sub. (1), patient health care records shall be
 18 released to appropriate persons in accordance with s. 980.031 (4) and to authorized
 19 representatives of the department of corrections, the department of health and
 20 family services, the department of justice or a district attorney for use in the
 21 evaluation or prosecution of a proceeding under ch. 980, if the treatment records
 22 concern an individual who is the subject of or who is being evaluated for a proceeding
 23 under ch. 980. The recipient of any information from the records shall keep the

1 information confidential except as necessary for the conduct of an evaluation,
2 examination or proceeding under ch. 980 for which the information was obtained.

3 **SECTION 15.** 756.06 (2) (b) of the statutes is amended to read:

4 756.06 (2) (b) Except as provided in ~~par.~~ par. (c) [✓] and (cm), a jury in a civil case
5 shall consist of 6 persons unless a party requests a greater number, not to exceed 12.
6 The court, on its own motion, may require a greater number, not to exceed 12.

7 History: 1977 c. 187 s. 95; Stats. 1977 s. 756.06; Sup. Ct. Order No. 96-08, 207 W (2d) xv (1997).

7 **SECTION 16.** 756.06 (2) (cm) of the statutes is created to read:

8 756.06 (2) (cm) A jury in a trial under s. 980.05 [✓] shall consist of the number of
9 persons specified in s. 980.05 (2) unless a lesser number has been stipulated to and
10 approved under s. 980.05 (2m) (c) [✓].

11 [END of INSERT 11-9]

12 **INSERT 11-21:** [✓]

13 **SECTION 17.** 809.10 (1) (a) of the statutes is amended to read:

14 809.10 (1) (a) *Filing.* A person shall initiate an appeal by filing a notice of
15 appeal with the clerk of the trial court in which the judgment or order appealed from
16 was entered and shall specify in the notice of appeal the judgment or order appealed
17 from, whether the appeal is in one of the types of cases specified in s. 752.31 (2), and
18 whether the appeal is one of those to be given preference in the circuit court or court
19 of appeals pursuant to statute. The person at the same time shall notify the court
20 of appeals of the filing of the appeal by sending a copy of the notice of appeal to the
21 clerk of the court. The person shall also send the court of appeals an original and one
22 copy of a completed docketing statement on a form prescribed by the court of appeals.
23 The statement shall accompany the court of appeals' copy of the notice of appeal. The
24 person shall also send a copy of the completed docketing statement to opposing

1 counsel. Docketing statements need not be filed in criminal cases, in cases under ch.
2 980 or in cases in which a party appears pro se.

History: Sup. Ct. Order, 83 Wis. 2d xiii (1978); Sup. Ct. Order, 104 Wis. 2d xi (1981); 1981 c. 390 s. 252; Sup. Ct. Order, 123 Wis. 2d xix (1985); Sup. Ct. Order, 131 Wis. 2d xv (1986); 1987 a. 403; Sup. Ct. Order, 161 Wis. 2d xiii (1991); Sup. Ct. Order No. 93-19, 179 Wis. 2d xxiii.

3 [END of INSERT 11-21]

4 **INSERT 14-5:** ✓

5 SECTION 18. 938.34 (15m) (am) of the statutes is amended to read:

6 938.34 (15m) (am) Except as provided in par. (bm), if the juvenile is adjudicated
7 delinquent on the basis of any violation, or the solicitation, conspiracy or attempt to
8 commit any violation, under ch. 940, 944 or 948 or ss. 941.32, 941.38 or 943.01 to
9 943.15, the court may require the juvenile to comply with the reporting requirements
10 under s. 301.45 if the court determines that the underlying conduct was sexually
11 motivated, as defined in s. 980.01 (5), and that it would be in the interest of public
12 protection to have the juvenile report under s. 301.45.

History: 1995 a. 77, 352, 440, 448; 1997 a. 27, 35, 36, 84, 130, 164, 183, 205; s. 13.93 (2) (c).

13 [END of INSERT 14-5]

14 **INSERT 14-8:** ✓

15 SECTION 19. 938.396 (1) of the statutes is amended to read:

16 938.396 (1) Law enforcement officers' records of juveniles shall be kept
17 separate from records of adults. Law enforcement officers' records of juveniles shall
18 not be open to inspection or their contents disclosed except under sub. (1b), (1d), (1g),
19 (1m), (1r), (1t) ~~or~~, (1x) ~~or~~, (5) or (10) or s. 938.293 or by order of the court. This
20 subsection does not apply to representatives of the news media who wish to obtain
21 information for the purpose of reporting news without revealing the identity of the
22 juvenile involved, to the confidential exchange of information between the police and
23 officials of the school attended by the juvenile or other law enforcement or social
24 welfare agencies or to juveniles 10 years of age or older who are subject to the

1 jurisdiction of the court of criminal jurisdiction. A public school official who obtains
 2 information under this subsection shall keep the information confidential as
 3 required under s. 118.125 and a private school official who obtains information under
 4 this subsection shall keep the information confidential in the same manner as is
 5 required of a public school official under s. 118.125. A law enforcement agency that
 6 obtains information under this subsection shall keep the information confidential as
 7 required under this subsection and s. 48.396 (1). A social welfare agency that obtains
 8 information under this subsection shall keep the information confidential as
 9 required under ss. 48.78 and 938.78.

~~NOTE: NOTE: Sub. (1) is shown as affected by two acts of the 1997 legislature and as merged by the revisor under s. 13.93 (2) (b). NOTE:~~

History: 1995 a. 27 s. 9126 (19); 1995 a. 77, 352, 440, 448; 1997 a. 27, 35, 80, 95, 181, 205, 252, 258, 281; s. 13.93 (1) (b), (2) (c).

10 **SECTION 20.** 938.396 (2) (e) of the statutes is renumbered 938.396 (10) and

11 amended to read:

12 938.396 (10) ~~Upon request of the department of corrections to review court A~~
 13 ~~law enforcement agency's records and records for the purpose of providing, under s.~~
 14 ~~980.015 (3) (a), of the court assigned to exercise jurisdiction under this chapter and~~
 15 ~~ch. 48 shall be open for inspection by authorized representatives of the department~~
 16 ~~of corrections, the department of health and family services, the department of~~
 17 ~~justice or a district attorney with a person's offense history, the court shall open for~~
 18 ~~inspection by authorized representatives of the department of corrections the~~
 19 ~~records of the court relating to any juvenile who has been adjudicated delinquent for~~
 20 ~~a sexually violent offense, as defined in s. 980.01 (6) for use in the evaluation or~~
 21 ~~prosecution of a proceeding under ch. 980, if the records concern a person who is the~~
 22 ~~subject of or who is being evaluated for a proceeding under ch. 980. The court in~~
 23 ~~which the proceeding under ch. 980 is pending may issue any protective orders that~~

1 it determines are appropriate concerning information made available or disclosed
2 under this paragraph.

History: 1995 a. 27 s. 9126 (19); 1995 a. 77, 352, 440, 448; 1997 a. 27, 35, 80, 95, 181, 205, 252, 258, 281; s. 13.93 (1) (b), (2) (c).

3 **SECTION 21.** 938.396 (5) (a) (intro.) of the statutes is amended to read:

4 938.396 (5) (a) (intro.) Any person who is denied access to a record under sub.
5 (1), (1b), (1d), (1g), (1m), (1r) ~~or~~, (1t) or (10) may petition the court to order the
6 disclosure of the records governed by the applicable subsection. The petition shall
7 be in writing and shall describe as specifically as possible all of the following:

History: 1995 a. 27 s. 9126 (19); 1995 a. 77, 352, 440, 448; 1997 a. 27, 35, 80, 95, 181, 205, 252, 258, 281; s. 13.93 (1) (b), (2) (c).

8 **SECTION 22.** 938.78 (2) (e) of the statutes is amended to read:

9 938.78 (2) (e) Paragraph (a) does not prohibit the department from disclosing
10 information about ~~an individual adjudged delinquent under s. 938.183 or 938.34 for~~
11 ~~a sexually violent offense, as defined in s. 980.01 (6), to~~ ^{plain} authorized representatives
12 of the department of corrections, the department of health and family services, the
13 department of justice, or a district attorney or a judge acting under ch. 980 or to an
14 attorney who represents a person subject to a petition for use in the evaluation or
15 prosecution of a proceeding under ch. 980, if the information concerns an individual
16 who is the subject of or who is being evaluated for a proceeding under ch. 980. The
17 court in which the ~~petition proceeding~~ ~~under s. 980.02~~ ch. 980 ^{is} is filed/pending may
18 issue any protective orders that it determines are appropriate concerning
19 information disclosed under this paragraph.

History: 1995 a. 27 s. 9126 (19); 1995 a. 77, 230, 352; 1997 a. 205, 207, 283.

20 [END of INSERT 14-8]

21 **INSERT 15-4:** ✓

22 **SECTION 23.** 946.42 (1) (a) of the statutes, as affected by 1999 Wisconsin Act 9,
23 is amended to read:

1 946.42 (1) (a) "Custody" includes without limitation actual custody of an
 2 institution, including a secured correctional facility, as defined in s. 938.02 (15m), a
 3 secured child caring institution, as defined in s. 938.02 (15g), a secured group home,
 4 as defined in s. 938.02 (15p), a secure detention facility, as defined in s. 938.02 (16),
 5 a Type 2 child caring institution, as defined in s. 938.02 (19r), a facility used for the
 6 detention of persons detained under s. 980.04 (1), a facility specified in s. 980.065 or
 7 a juvenile portion of a county jail, or actual custody of a peace officer or institution
 8 guard. "Custody" also includes without limitation the constructive custody of
 9 persons placed on supervised release under a commitment order issued under s.
 10 980.06 and constructive custody of prisoners and juveniles subject to an order under
 11 s. 48.366, 938.183, 938.34 (4d), (4h) or (4m) or 938.357 (4) or (5) (e) temporarily
 12 outside the institution whether for the purpose of work, school, medical care, a leave
 13 granted under s. 303.068, a temporary leave or furlough granted to a juvenile or
 14 otherwise. Under s. 303.08 (6) it means, without limitation, that of the sheriff of the
 15 county to which the prisoner was transferred after conviction. It does not include the
 16 custody of a probationer, parolee or person on extended supervision by the
 17 department of corrections or a probation, extended supervision or parole officer or
 18 the custody of a person who has been released to aftercare supervision under ch. 938
 19 unless the person is in actual custody or is subject to a confinement order under s.
 20 973.09 (4).

History: 1999 a. 9.

****NOTE: This definition of "custody" is also used in ss. 946.44 (2) (a) and 946.45 (2)

✓ (a). Okay?

21 **SECTION 24.** 946.42 (3m) of the statutes is created to read:

22 946.42 (3m) A person in custody under any of the following circumstances who
 23 intentionally escapes from that custody is guilty of a Class B felony:

1 (a) While subject to a detention order under s. 980.04 (1). ✓

2 (b) While subject to an order issued under s. 980.06 committing the person to ✓
3 custody of the department of health and family services, regardless of whether the ✓
4 person is placed in institutional care or on supervised release.

5 SECTION 25. 971.17 (1m) (b) 1m. of the statutes is amended to read:

6 971.17 (1m) (b) 1m. Except as provided in subd. 2m., if the defendant under sub. ^(A)
7 (1) is found not guilty by reason of mental disease or defect for any violation, or for
8 the solicitation, conspiracy or attempt to commit any violation, of ch. 940, 944 or 948
9 or ss. 941.32, 941.38 or 943.01 to 943.15, the court may require the defendant to
10 comply with the reporting requirements under s. 301.45 if the court determines that
11 the underlying conduct was sexually motivated, as defined in s. 980.01 (5), and that
12 it would be in the interest of public protection to have the defendant report under s.
13 301.45.

History: 1975 c. 430; 1977 c. 353; 1977 c. 428 s. 115; 1983 a. 359; Sup. Ct. Order, 141 Wis. 2d xiii (1987); 1987 a. 394; 1989 a. 31, 142, 334, 359; Sup. Ct. Order, 158 Wis. 2d xvii (1990); 1991 a. 39, 189, 269; 1993 a. 16, 98, 227; 1995 a. 27 s. 9126 (19); 1995 a. 417, 425, 440, 448; 1997 a. 35, 130, 181, 252, 275.

[END of INSERT 15-4]

15 **INSERT 17-2:** ✓

16 SECTION 26. 973.048 (1m) of the statutes is amended to read:

17 973.048 (1m) Except as provided in sub. (2m), if a court imposes a sentence or
18 places a person on probation for any violation, or for the solicitation, conspiracy or
19 attempt to commit any violation, under ch. 940, 944 or 948 or ss. 941.32, 941.38 or ✓
20 943.01 to 943.15, the court may require the person to comply with the reporting
21 requirements under s. 301.45 if the court determines that the underlying conduct
22 was sexually motivated, as defined in s. 980.01 (5), and that it would be in the interest
23 of public protection to have the person report under s. 301.45.

History: 1995 a. 440; 1997 a. 130.

24 SECTION 27. 978.045 (1r) (intro.) of the statutes is amended to read:

1 978.045 (1r) (intro.) Any judge of a court of record, by an order entered in the
 2 record stating the cause therefor, may appoint an attorney as a special prosecutor to
 3 perform, for the time being, or for the trial of the accused person, the duties of the
 4 district attorney. An attorney appointed under this subsection shall have all of the
 5 powers of the district attorney. The judge may appoint an attorney as a special
 6 prosecutor at the request of a district attorney to assist the district attorney in the
 7 prosecution of persons charged with a crime, in grand jury or John Doe proceedings,
 8 in proceedings under ch. 980 or in investigations. The judge may appoint an attorney
 9 as a special prosecutor if any of the following conditions exists:

History: 1989 a. 117; 1991 a. 39, 188; 1993 a. 16; 1995 a. 27; 1997 a. 27.

✓
[END of INSERT 17-2]

11 **INSERT 18-7:** ✓

12 **SECTION 28.** 980.01 (6) (d) of the statutes is created to read:

13 980.01 (6) (d) An escape punishable under s. 946.42 (3m). ✓

that

****NOTE: Isn't it a bit odd to say that an escape by itself is a "sexually violent offense"? Is the intent of this to allow a new petition against the person once the person has finished the sentence for the escape? If so, maybe there is a better way to do that (in the event it is needed; won't the ch. 980 commitment continue while the person is in prison, given that it is indefinite?). If we include escape in the definition, should we also include the inchoate escapes by referring to this paragraph in s. 980.01 (6) (c)?

[END of INSERT 18-7]

15 **INSERT 18-16:** ✓

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

17 980.015 (2) (intro.) If an agency with jurisdiction has control or custody over
 18 a person who may meet the criteria for commitment as a sexually violent person, the
 19 agency with jurisdiction shall inform each appropriate district attorney and the
 20 department of justice regarding the person as soon as possible beginning ~~3 months~~
 21 90 days prior to the applicable date of the following:

History: 1993 a. 479; 1995 a. 77; 1997 a. 205, 283.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

INSERT 19-3: ✓

SECTION 33. 980.02 (1) (a) of the statutes is amended to read:

980.02 (1) (a) The department of justice at the request of the agency with jurisdiction, as defined in s. 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 the release or discharge of the person.~~

History: 1993 a. 479; 1995 a. 77, 225; 1997 a. 27, 205, 283.

✓
[END of INSERT 19-3]

INSERT 19-7: ✓

SECTION 34. 980.02 (1m) of the statutes is created to read:

980.02 (1m) A petition filed under this section shall be filed on or before the day that the person is to be released or discharged.

[END of INSERT 19-7]

INSERT 20-8: ✓

SECTION 35. 980.03 (4) of the statutes, as affected by 1999 Wisconsin Act 9, is renumbered 980.031 (3) and amended to read:

980.031 (3) Whenever a person who is the subject of 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.

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

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

****NOTE: Should subsection (4) refer to any other records, or be more specific about
correctional records by, for instance, referring to s. 938.78? Also, do you need a provision
requiring DOC to provide access to its records?

History: 1999 a. 9.

1 **INSERT 40-11:** ✓

2 (5) FAILURE TO COMPLY WITH TIME LIMITS, EFFECT. Failure to comply with any time
3 limit specified in this chapter does not deprive the court of personal or subject matter
4 jurisdiction or of competency to exercise that jurisdiction. Failure to comply with any
5 time limit specified in this chapter is not grounds for an appeal or grounds to vacate
6 any order, judgment or commitment issued or entered under this chapter. Failure
7 to object to a period of delay or a continuance waives the time limit that is the subject
8 of the period of delay or continuance.

9 (6) ERRORS AND DEFECTS NOT AFFECTING SUBSTANTIAL RIGHTS. The court shall, in
10 every stage of a proceeding under this chapter, disregard any error or defect in the
11 pleadings or proceedings that does not affect the substantial rights of either party.

12 SECTION 36. 980.04 (1) of the statutes, as affected by 1999 Wisconsin Act 9, is
13 amended to read:

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

1 (3) or after a trial under s. 980.05 (5) or until the effective date of a commitment order
2 under s. 980.06, whichever is applicable.

History: 1999 a. 9.

[END of INSERT 40-11]

4 **INSERT 42-12:**

5 SECTION 37. 980.05 (2m) of the statutes is created to read:

6 980.05 (2m) (a) At a jury trial under this section, the summoning of jurors, the
7 selection and qualifications of the jury, the challenge of jurors for cause and the duty
8 of the court in charging the jury and giving instructions and discharging the jury
9 when unable to agree shall be the same in a trial under ~~s. 980.05~~ ^{this section} as in civil actions,
10 except that, notwithstanding s. 805.08 (3), each party shall be entitled to 4
11 peremptory challenges or, if the court orders additional jurors to be selected under
12 s. 805.08 (2), to 5 peremptory challenges. A party may waive in advance any or all
13 of its peremptory challenges and the number of jurors called under par. (b) shall be
14 reduced by this number.

****NOTE: This language follows the current peremptory statutes (ss. 805.08 (3) and 972.03, stats.) in providing one additional peremptory, no matter how many additional jurors are selected. Okay? Or do you intend to follow the old rule that there was one additional peremptory for each "alternate" juror (the old term for additional jurors). If so, note that, at least in criminal cases, the old rule allowed no more than 2 "alternate" jurors. See 972.05, 1981 stats.

15 (b) The number of jurors selected shall be the number prescribed in sub. (2),
16 unless a lesser number has been stipulated to and approved under par. (c) or the court
17 orders that additional jurors be selected. That number, plus the number of
18 peremptory challenges available to all ^{of} the parties, shall be called initially and
19 maintained in the jury box by calling others to replace jurors excused for cause until
20 all jurors have been examined. The parties shall thereupon exercise in their order,

1 the state beginning, the peremptory challenges available to them, and if any party
2 declines to challenge, the challenge shall be made by the clerk by lot.

3 (c) At any time before the verdict in a jury trial under this section, the parties
4 may stipulate in writing or by statement in open court, on the record, with the
5 approval of the court, that the jury shall consist of any number less than 12.

****NOTE: I put the jury selection language in s. 980.05 because the language that
you suggested seemed to apply only to jury trials of 12 under that section. However, the
draft is also codifying the *Post* requirement for a jury of 6 under s. 980.09 (1) (b) and (2)
(b). Should this language be modified to cover juries of 6 (and moved out of s. 980.05)?
If so, do you want to provide a different number of peremptories for juries of 6?

6 SECTION 38. 980.05 (3) (a) of the statutes is amended to read:

7 980.05 (3) (a) At a trial on a petition under this chapter, the petitioner has the
8 burden of proving the allegations in the petition beyond a reasonable doubt that the
9 person who is the subject of the petition is a sexually violent person.

History: 1993 a. 479.

10 [END of INSERT 42-12] ✓

11 **INSERT 42-19:** ✓

12 SECTION 39. 980.07 (1) of the statutes, as affected by 1999 Wisconsin Act 9, is ✓
13 amended to read:

14 980.07 (1) If a person has been committed under s. 980.06 and has not been
15 discharged under s. 980.09, the department shall conduct an examination of his or
16 her mental condition within € 18 months after an the date of the initial commitment
17 order under s. 980.06 and again thereafter at least once each 12 months for the
18 purpose of determining whether the person has made sufficient progress for the
19 court to consider whether the person should be placed on supervised release or
20 discharged. At the time of a reexamination under this section, the person who has

1 been committed may retain or seek to have the court appoint an examiner as
2 provided under s. ~~980.03 (4)~~ 980.031 (3).

3 History: 1999 a. 9.

[END of INSERT 42-19]

4 **INSERT 43-6:**

5 SECTION 40. 980.08 (3) of the statutes, as affected by 1999 Wisconsin Act 9, is
6 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 under the criterion specified in
21 sub. (4), the examiner shall report on the type of treatment and services that the
22 person may need while in the community on supervised release. The county shall

1 pay the costs of an examiner appointed under this subsection as provided under s.
2 51.20 (18) (a).

3 History: 1999 a. 9.

3 **SECTION 41.** 980.08 (4) of the statutes, as affected by 1999 Wisconsin Act 9, is
4 amended to read:

5 980.08 (4) The court, without a jury, shall hear the petition within 30 days after
6 the ~~report~~ reports of the court appointed examiner is ^{of} all persons who examined the
7 petitioner under sub. (3) are filed with the court, unless the petitioner waives this
8 time limit. Expenses of proceedings under this subsection shall be paid as provided
9 under s. 51.20 (18) (b), (c) and (d). The court shall grant the petition unless the state
10 proves by clear and convincing evidence that the person is still a sexually violent
11 person and that it is still substantially probable that the person will engage in acts
12 of sexual violence if the person is not continued in institutional care. In making a
13 decision under this subsection, the court may consider, without limitation because
14 of enumeration, the nature and circumstances of the behavior that was the basis of
15 the allegation in the petition under s. 980.02 (2) (a), the person's mental history and
16 present mental condition, where the person will live, how the person will support
17 himself or herself and what arrangements are available to ensure that the person
18 has access to and will participate in necessary treatment, including pharmacological
19 treatment using an antiandrogen or the chemical equivalent of an antiandrogen if
20 the person is a serious child sex offender. A decision under this subsection on a
21 petition filed by a person who is a serious child sex offender may not be made based
22 on the fact that the person is a proper subject for pharmacological treatment using
23 an antiandrogen or the chemical equivalent of an antiandrogen or on the fact that

1 the person is willing to participate in pharmacological treatment using an
2 antiandrogen or the chemical equivalent of an antiandrogen.

3 History: 1999 a. 9.

[END of INSERT 43-6]

4 **INSERT 46-7:**

5 SECTION 42. 980.12 (1) of the statutes, as affected by 1999 Wisconsin Act 9, is
6 amended to read:

7 980.12 (1) Except as provided in ~~ss. 980.03 (4)~~ and s. 980.08 (3), the department
8 shall pay from the appropriations under s. 20.435 (2) (a) and (bm) for all costs relating
9 to the evaluation, treatment and care of persons evaluated or committed under this
10 chapter.

History: 1999 a. 9.

✓ ****NOTE: This draft strikes from s. 980.03 (4) (renumbered by the draft to be
980.031 (3), (4) and (5)) the language requiring a county to pay for appointed experts. Do
you want to retain that language?

11 [END of INSERT 46-7]

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

LRB-4105/P1dn

JEO: jfi...
KMG

Doug Burnett:

In order to get this draft to you more quickly, I have omitted the analysis. Once DOJ has reviewed the draft and all final changes are made, I will add the analysis (which I am still working on).

There are a few four-star notes in the draft that DOJ should review. Also, they should review the records confidentiality provisions carefully. I tried to make them as consistent with each other as possible. Also, the DOJ memo referred to records under ch. 46, but I assume that they meant ch. 146. Is that assumption correct?

Jefren E. Olsen
Legislative Attorney
Phone: (608) 266-8906
E-mail: Jefren.Olsen@legis.state.wi.us

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

LRB-4105/P1dn
JEO:kmg:ch

January 21, 2000

Doug Burnett:

In order to get this draft to you more quickly, I have omitted the analysis. Once DOJ has reviewed the draft and all final changes are made, I will add the analysis (which I am still working on).

There are a few four-star notes in the draft that DOJ should review. Also, they should review the records-confidentiality provisions carefully. I tried to make them as consistent with each other as possible. Also, the DOJ memo referred to records under ch. 46, but I assume that they meant ch. 146. Is that assumption correct?

Jefren E. Olsen
Legislative Attorney
Phone: (608) 266-8906
E-mail: Jefren.Olsen@legis.state.wi.us

Olsen, Jefren

From: Richard, JoAnna M.
Sent: Friday, January 28, 2000 4:57 PM
To: Olsen, Jefren
Cc: Burnett, Douglas

Jeffren,

Attached is a memo from Tom Fallon and Sally Wellman relating to changes to the 980 draft. Please let me know if you need any additional information. Thank you for all your hard work on this draft.



Sex Predator Statute
Revisions...

JoAnna Richard
Legislative Liaison
Office of the Attorney General
267-1932

CORRESPONDENCE/MEMORANDUM

DEPARTMENT OF JUSTICE

Date: January 27, 2000

To: Steven E. Tinker
Director, Criminal Litigation, Antitrust & Consumer Protection Unit

Mary E. Burke
Director, Criminal Appeals Unit

From: Thomas J. Fallon
Assistant Attorney General

Sally L. Wellman
Assistant Attorney General

Subject: Revisions to Sex Predator Statute Draft (LRB 4105/P1dn) Dated 01/21/00

AAGs Fallon and Wellman met on January 26 and January 27 to review the latest draft. Below you will find our recommended modifications to the draft.

✓ 1. Page 3, line 17: After the phrase "shall be open for inspection by," please add "and production to" authorized representatives of the department of corrections

✓ Line 20: Replace the word "concern" with the phrase "involve or relate to."

✓ Line 24: Add this sentence: "Any representative of the district attorney, department of justice, department of corrections or department of health and family services may disclose information obtained under this section for any purpose consistent with any ch. 980 proceeding.

✓ 2. ✓ Page 4, line 6: ~~Paragraph (a) does not prohibit an~~ The agency from making a record available for inspection shall disclose information upon request to authorized representatives of the department of corrections, the department of health and family services, the department of justice or a district attorney for use in the evaluation or prosecution of any proceeding under ch. 980, if the ~~record concerns a person~~ information involves or relates to an individual who is the subject of or who is being evaluated for a proceeding under ch. 980.

✓ Line 14: Add this sentence: "Any representative of the district attorney, department of justice, department of corrections or department of health and family services may disclose information obtained under this section for any purpose consistent with any ch. 980 proceeding.

Steve Tinker, Mary Burke

January 27, 2000

Page 2

3. Page 4, line 19: Remove the word "concern" and replace it with "involve or relate to."
4. Page 6, between lines 8 and 9: Include a section creating an exception for the release of student records in Wis. Stat. ch. 118. The language should mirror the language in s. 48.78(2)(e), as modified above and add this sentence: "Any representative of the district attorney, department of justice, department of corrections or department of health and family services may disclose information obtained under this section for any purpose consistent with any ch. 980 proceeding."
5. Page 8, line 25: Delete (2)(b), as changed by Wisconsin Act 9, the Budget Bill.
6. Page 10: The answer to the drafter's question as noted between lines 3 and 4 is yes.
7. Page 12, line 9: Modify 939.78(2)(e) to read: "The department shall disclose information upon request to authorized representatives of the department of corrections, department of health and family services, the department of justice, or a district attorney for use in the evaluation or prosecution of any proceeding under ch. 980 if the information involves or relates to an individual who is the subject of, etc.

Page 12, line 19: Add this sentence: "Any representative of the district attorney, department of justice, department of corrections or department of health and family services may disclose information obtained under this section for any purpose consistent with any ch. 980 proceeding."
8. Page 12, line 24: Should read, "A violation of s. 940.225(1), (2), or (3)."
9. Page 13, lines 23 and 24: Remove reference to s. 980.06 and replace it with ch. 980.
10. Page 14: We would answer the drafter's question yes.
11. Page 15, line 10: After the words "in it," please add the phrase "or upon which it is based."
12. Page 17: We answer the drafter's question in his note as follows: We decided to leave escape as a possible sexually violent offense to cover the circumstance in which someone does in fact escape from a ch. 980 custody order and has been sentenced to a minimal period of consecutive incarceration. Arguably speaking, someone could escape; receive a 2-, 3-, or 4-year sentence; and then never be subject to a ch. 980 proceeding. Consequently an offender could thwart the very purpose of the statute by choosing to escape and receive correctional time rather than treatment pursuant to ch. 980. If, however, the offender receives a very lengthy sentence as a result of his

escape, then there is no need to pursue a ch. 980 commitment. This option leaves the matter in the hands of the prosecutor.

13. Page 18, line 17: After the word "imprisonment," add the phrase "or term of confinement." This would make the provision consistent with Act 283 and the subsequent Truth in Sentencing legislation.

We answer the drafter's question in the note as **yes**.

14. Page 19: We answer the drafter's question as **both**.

15. Page 20, line 3: We need to add the phrase "secured group home" following the comma after secured child caring institution. This would be in keeping with the recent budgetary changes from last fall.

16. Page 20, lines 5 and 6: They should now read: "A petition filed under this section shall be filed before the person is actually released or discharged." (**Note to Mary and Sally**: If, after further review and discussion of the arguments to be offered in the *Thiel* case, you decide to change this language, please let us know.)

17. Page 21: Take the stricken sentence which occupies lines 15 through 18 and add it as the closing sentence to section three, at line 5 on page 21.

18. Page 21, line 19: Change the period to a comma and add the following: "juvenile records and any records of treatment provided under s. 971.17, et seq., and ch. 975."

19. Page 21, line 21: Cross out "~~person retained by either party or appointed to assist an indigent person who is the subject to a petition by~~" and add in after professional "expected to be called as a witness by one of the parties or the court."

20. Page 22: We answer the questions of the drafter as follows: The first sentence is answered **yes**, see suggested language above. As to the second question in the first note, we answer that **no**.

21. Page 22, lines 5, 6, 7 and 8: This reference to s. 980.038(3)(a) permitting telephone testimony seems to be out of sequence. We have no objection to telephone testimony in any of the preliminary or motion proceedings. We do not, however, want to authorize telephone testimony in a trial under s. 980.05 or any discharge hearing under s. 980.09. Please harmonize s. 980.038(3)(a) on page 22 with what appears on page 31.

Revised
ok; changes
made

Steve Tinker, Mary Burke
January 27, 2000
Page 4

22. Page 27, line 9: After the words "psychological test," add the phrase "or underlying raw data.".
23. Page 27, line 18: After the phrase "physical," add "or documentary."
24. Page 28, line 13: After the phrase "psychological test," add "raw data.".
25. Page 28, line 20: After the word "physical" and before the word "evidence," add "or documentary."
26. Page 29, line 2: Insert the word "raw" after the word "or" and before the word "data."
27. Page 31, lines 17, 18 and 19: Please harmonize the testimony by telephone provisions previously referred to on page 22 of the draft.
28. Page 31, line 23: Delete (2)(b) after s. 980.06. (Please note 980.06(2)(b) was repealed in the budget bill; only 980.06 remains.)
29. Page 32, line 9: Insert the word "circuit" after the word "the" and before the word "court."
30. Page 34, line 18: Change "a continuance" to the plural form "continuances."
31. Page 35: As to the question in the note between lines 5 and 6, we request application of the current rules which permit one additional peremptory strike regardless of the number of alternates.
32. Page 35: With respect to the question in the second drafter's note on this page, we recommend that the section providing for a jury of twelve in s. 980.05 be a separate provision from the one authorizing a jury of six for s. 980.09 proceedings. The same approach with respect to the alternates, whatever the current law is.
33. Page 36, line 3: At the end of the sentence, add the phrase "as defined in s. 980.01(7)."

TJF:jjn

Steve Tinker, Mary Burke
January 27, 2000
Page 5

\\dls01\users\fallontj\legislat\sex predator statute revisions.doc

Olsen, Jefren

To: Richard, JoAnna M.
Subject: RE: changes to LRB-4105/P1 (ch. 980 draft)

JoAnna:

In the interest of trying to expedite a final version of this draft, here are nine questions for Sally Wellman and Tom Fallon:

1. Should proposed s. 48.981 (7) (a) 8s. (p. 4, lines 16 to 22) include a sentence at the end allowing authorized representatives of the various agencies to redisclose the information? Compare the language that you wanted added on pp. 3 and 4 of the draft (see your 1/27/00 memo items 1 and 2).
2. Same question as posed in number 1, but with respect to s. 51.30 (3) (bm) (p. 5, lines 12 to 19).
3. Same question as posed in number 1, but with respect to s. 51.30 (4) (b) 8s. (p. 6, lines 1 to 8).
4. Same question as posed in number 1, but with respect to s. 146.82 (2) (cm) (p. 6, lines 17 to 25).
5. Same question as posed in number 1, but with respect to s. 938.396 (10) (p. 11, line 13 to page 12, line 2).
6. On the assumption that you want all of the record release language to be consistent, I made the same wording changes ("involve or relate to an individual" instead of "concern a person"; "any" proceeding under ch. 980 instead of "a proceeding") in ss. 51.30 (3) (bm), 51.30 (4) (b) 8s., 146.82 (2) (cm) and 938.396 (10). Okay?
7. With respect to s. 980.015 (2) (c) (see p. 19, lines 7 to 9 of the draft), I am not sure that the language in the draft covers both situations mentioned in the Note following line 9; what do you think of this: "The anticipated release on conditional release under s. 971.17 or the anticipated termination of or discharge from a commitment order under s. 971.17, if the person has been found not guilty of a sexually violent offense by reason of mental disease or defect."
8. On page 3, item 18 of your 1/27/00 memo, you refer to "records of treatment" under s. 971.17 and ch. 975. Aren't these already included by reference to "treatment records, as defined in s. 51.30 (1) (b)" earlier on in the statute? Are you trying to get at *other* records DHFS may have of persons committed under s. 971.17 or ch. 975?
9. On page 4, item 22 of your 1/27/00 memo, you say to insert the words "or underlying raw data" after "psychological test" on page 27, line 9 of the draft. However, I don't think that works grammatically because the subject of the sentence is "the results", and it doesn't seem to make sense to say "the results of . . . underlying raw data." Is the following something like what you are trying to get at: "The results of, or the raw data underlying, any physical or mental examination or any scientific or psychological test, experiment or comparison that the prosecuting attorney intends etc." (Maybe it doesn't make sense to speak of raw data underlying a physical or mental examination, though.) Also, should it be the results or the raw data, or the results *and* the raw data? Finally, item 24 says to make the same change on page 28, line 13 of the draft, but refers only to "raw data", not "*or underlying raw data*". Is that difference intended, or should page 28, line 13 of the draft read the same way that page 27, line 9 of the draft reads?

I will be trying to finish up the LRB analysis for the draft on Monday, barring interruptions to draft things for the floor period happening during the week. I will wait to put the redraft into editing and retyping until I hear from you (or someone else from DOJ). That way the next version that you get should be ready for introduction.

Thanks for your help!

Jefren Olsen

Jefren E. Olsen
Wisconsin Legislative Reference Bureau
P.O. Box 2037
Madison, WI 53701-2037
Tel: (608) 266-8906
Fax: (608) 264-8522
Email: jefren.olsen@legis.state.wi.us

-----Original Message-----

From: Richard, JoAnna M.
Sent: Friday, January 28, 2000 4:57 PM
To: Olsen, Jefren
Cc: Burnett, Douglas
Subject:

Jeffren,

Attached is a memo from Tom Fallon and Sally Wellman relating to changes to the 980 draft. Please let me

know if you need any additional information. Thank you for all your hard work on this draft.
<< File: Sex Predator Statute Revisions.doc >>

JoAnna Richard
Legislative Liaison
Office of the Attorney General
267-1932

Olsen, Jefren

From: Fallon, Thomas J.
Sent: Monday, January 31, 2000 9:35 AM
To: Olsen, Jefren
Cc: Frank, Matt J.; Richard, JoAnna M.; Burke, Mary E.; Wellman, Sally L.; Tinker, Steve E.
Subject: RE: changes to LRB-4105/P1 (ch. 980 draft)

Jefren: Sally is on vacation so I am responding on behalf of the department:

Questions 1-6 should be answered **YES**. We want to be as consistent as the statutes or statutory schemes allow on the release of information reforms. Secondly, we wanted to make sure that the prosecutors can comfortably release any of the information they obtain during their investigation to the evaluators, the respondent and the courts as is necessary to carry out the legislative and ethical responsibilities associated with prosecuting one of these cases.

Question 7: Your suggested language is fine.

Question 8: Our concern stems from a review of 51.30 (1)(b). That section mentions only mental illness, developmental disabilities, alcoholism, or drug dependence . . . Consequently, to insure there is no question as to the appropriateness of obtaining or releasing records of a Tx in a 971.17 or 975 commitment we mentioned them specifically. If we can reword it to say tx records as opposed to records of tx, that might be better. Whatever is grammatically more correct and clear. Your choice.

Question 9: The use of the word "underlying" may very well be superfluous. I suggest deleting it. That may simplify things and make the statutes consistent.

If you have any other questions just send them here. I will be here until 3pm. Any policy questions should be directed to JoAnna. Thanks for your help!

-----Original Message-----

From: Burke, Mary E.
Sent: Monday, January 31, 2000 8:56 AM
To: Richard, JoAnna M.; Wellman, Sally L.; Fallon, Thomas J.
Cc: Tinker, Steve E.; Frank, Matt J.
Subject: RE: changes to LRB-4105/P1 (ch. 980 draft)

Sally is gone on vacation for the next two weeks, but I just talked with Tom and he is working on a response. Tom, would you copy all recipients of this message on your response to Jeffren--thanks.

-----Original Message-----

From: Richard, JoAnna M.
Sent: Monday, January 31, 2000 8:00 AM
To: Wellman, Sally L.; Fallon, Thomas J.; Burke, Mary E.
Subject: FW: changes to LRB-4105/P1 (ch. 980 draft)

Mary,

Can you coordinate a quick response to Jeffren? Thanks.

jo

-----Original Message-----

From: Olsen, Jefren
Sent: Saturday, January 29, 2000 4:43 PM
To: Richard, JoAnna M.
Cc: Burnett, Douglas
Subject: RE: changes to LRB-4105/P1 (ch. 980 draft)

JoAnna:

In the interest of trying to expedite a final version of this draft, here are nine questions for Sally Wellman and Tom Fallon:

1. Should proposed s. 48.981 (7) (a) 8s. (p. 4, lines 16 to 22) include a sentence at the end allowing authorized representatives of the various agencies to redisclose the information? Compare the language that you wanted added on pp. 3 and 4 of the draft (see your 1/27/00 memo items 1 and 2).
2. Same question as posed in number 1, but with respect to s. 51.30 (3) (bm) (p. 5, lines 12 to 19).
3. Same question as posed in number 1, but with respect to s. 51.30 (4) (b) 8s. (p. 6, lines 1 to 8).
4. Same question as posed in number 1, but with respect to s. 146.82 (2) (cm) (p. 6, lines 17 to 25).
5. Same question as posed in number 1, but with respect to s. 938.396 (10) (p. 11, line 13 to page 12, line 2).
6. On the assumption that you want all of the record release language to be consistent, I made the same wording changes ("involve or relate to an individual" instead of "concern a person"; "any" proceeding under ch. 980 instead of "a" proceeding) in ss. 51.30 (3) (bm), 51.30 (4) (b) 8s., 146.82 (2) (cm) and 938.396 (10). Okay?
7. With respect to s. 980.015 (2) (c) (see p. 19, lines 7 to 9 of the draft), I am not sure that the language in the draft covers both situations mentioned in the Note following line 9; what do you think of this: "The anticipated release on conditional release under s. 971.17 or the anticipated termination of or discharge from a commitment order under s. 971.17, if the person has been found not guilty of a sexually violent offense by reason of mental disease or defect."
8. On page 3, item 18 of your 1/27/00 memo, you refer to "records of treatment" under s. 971.17 and ch. 975. Aren't these already included by reference to "treatment records, as defined in s. 51.30 (1) (b)" earlier on in the statute? Are you trying to get at *other* records DHFS may have of persons committed under s. 971.17 or ch. 975?
9. On page 4, item 22 of your 1/27/00 memo, you say to insert the words "or underlying raw data" after "psychological test" on page 27, line 9 of the draft. However, I don't think that works grammatically because the subject of the sentence is "the results", and it doesn't seem to make sense to say "the results of . . . underlying raw data." Is the following something like what you are trying to get at: "The results of, or the raw data underlying, any physical or mental examination or any scientific or psychological test, experiment or comparison that the prosecuting attorney intends etc." (Maybe it doesn't make sense to speak of raw data underlying a physical or mental examination, though.) Also, should it be the results *or* the raw data, or the results *and* the raw data? Finally, item 24 says to make the same change on page 28, line 13 of the draft, but refers only to "raw data", not "*or underlying* raw data". Is that difference intended, or should page 28, line 13 of the draft read the same way that page 27, line 9 of the draft reads?

I will be trying to finish up the LRB analysis for the draft on Monday, barring interruptions to draft things for the floor period happening during the week. I will wait to put the redraft into editing and retyping until I hear from you (or someone else from DOJ). That way the next version that you get should be ready for introduction.

Thanks for your help!

Jefren Olsen

Jefren E. Olsen
Wisconsin Legislative Reference Bureau
P.O. Box 2037
Madison, WI 53701-2037
Tel: (608) 266-8906
Fax: (608) 264-8522
Email: jefren.olsen@legis.state.wi.us

-----Original Message-----

From: Richard, JoAnna M.
Sent: Friday, January 28, 2000 4:57 PM
To: Olsen, Jefren
Cc: Burnett, Douglas
Subject:

Jeffren,

Attached is a memo from Tom Fallon and Sally Wellman relating to changes to the 980 draft. Please let me know if you need any additional information. Thank you for all your hard work on this draft.
<< File: Sex Predator Statute Revisions.doc >>

JoAnna Richard
Legislative Liaison
Office of the Attorney General
267-1932

Olsen, Jefren

From: Fallon, Thomas J.
Sent: Monday, January 31, 2000 3:18 PM
To: Olsen, Jefren
Cc: Frank, Matt J.; Richard, JoAnna M.; Burke, Mary E.; Wellman, Sally L.; Tinker, Steve E.
Subject: Upon further review....last minute 980 edits

Jefren: Sorry, but a few last minute suggestions on the Discovery stuff after more feedback from predator prosecutors:

✓ Page 21 line 24 beginning with ..."retained by..." That language should be consistent with the language above it to wit "expected to be called as a witness by one of the parties or the court" may be permitted to testifyunless a written report of his or her examination or opinion has been etc. etc.

✓ Page 25-29 Discovery: The phrase or ".....other proceeding in this chapter".... should be defined as a 980.08 or .09 proceeding. If it is left undefined we are open to discovery before the probable cause hearing as it would be argued the PC hearing is an other proceeding under this chapter.

✓ Page 27 line 1: Should read: Any reports prepared in accordance with section 980.031(5). Delete the rest.

✓ Page 27 lines 5-7: Delete them. The above corrections make this section unnecessary.

✓ Page 28 line 8. After the word reports insert this language prepared in accordance with 980.031 (5). Delete the rest of par (b).

Thats it Thanks,

Olsen, Jefren

From: Fallon, Thomas J.
Sent: Monday, January 31, 2000 3:38 PM
To: Olsen, Jefren
Cc: Frank, Matt J.; Richard, JoAnna M.; Burke, Mary E.; Wellman, Sally L.; Tinker, Steve E.
Subject: RE: Ch. 980 draft

Jefren I would go with just (g) below with the following correction. PS: Don't forget the same for the defense obligations!

-----Original Message-----

From: Olsen, Jefren
Sent: Monday, January 31, 2000 2:46 PM
To: Fallon, Thomas J.
Subject: Ch. 980 draft

Tom:

Just one clarification re: the reference to "raw data" in the discovery provisions. What do you think of breaking par. (g) (on page 27, lines 8 to 15 of the draft) into the following two parts:

(g) The results of any physical or mental examination or any scientific or psychological test, experiment or comparison that the prosecuting attorney intends to offer in evidence at the trial or other proceeding under this chapter, and any raw data that were collected, used or considered ~~evaluated~~ in any manner as part of the examination, test, experiment or comparison.

~~(h) Any test results, facts and [raw?] data that were collected during and evaluated as part of an examination under this chapter or conducted before the petition under s. 980.02 was filed for the purpose of evaluating whether to file a petition and that the prosecuting attorney intends to offer in evidence at trial or other proceeding under this chapter.~~

Jefren Olsen

Attorney Jefren E. Olsen
Wisconsin Legislative Reference Bureau
P.O. Box 2037
Madison, WI 53701-2037
Tel: (608) 266-8906
Fax: (608) 264-8522
Email: jefren.olsen@legis.state.wi.us