



State of Wisconsin  
1999 - 2000 LEGISLATURE

LRB-4105/P1

JEO:kmg:ch

by 2/11

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~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

repeal

1 AN ACT *to repeal* 51.30 (4) (b) 10m., 980.02 (2) (ag), 980.05 (1m) and 980.07 (3);  
2 *to renumber* 980.01 (1); *to renumber and amend* 938.396 (2) (e), 939.623 (1),  
3 939.624 (1), 980.015 (4), 980.03 (4), 980.03 (5) and 980.04 (2); *to amend* 48.396  
4 (1), 48.396 (5) (a) (intro.), 48.78 (1), 51.20 (13) (ct) 1m., 51.30 (3) (a), 51.30 (4)  
5 (b) 8m., 146.82 (2) (c), 756.06 (2) (b), 801.52, 808.04 (3), 808.04 (4), 809.10 (1) (a),  
6 809.30 (1) (a), 809.30 (1) (b), 809.40 (1), 905.04 (4) (a), 911.01 (4) (c), 938.34  
7 (15m) (am), 938.396 (1), 938.396 (5) (a) (intro.), 938.78 (2) (e), 946.42 (1) (a),  
8 971.17 (1m) (b) 1m., 972.15 (4), 973.048 (1m), 978.045 (1r) (intro.), 980.01 (2),  
9 980.01 (5), 980.01 (6) (a), 980.01 (6) (b), 980.01 (6) (c), 980.01 (7), 980.015 (2)  
10 (intro.), 980.015 (2) (a), 980.015 (2) (b), 980.015 (2) (c), 980.02 (1) (a), 980.02 (4)  
11 (intro.), 980.03 (2) (intro.), 980.04 (1), 980.04 (3), 980.05 (1), 980.05 (3) (a),  
12 980.05 (3) (b), 980.07 (1), 980.08 (3), 980.08 (4), 980.09 (1) (b), 980.09 (2) (a),  
13 980.09 (2) (b) and 980.12 (1); and *to create* 48.396 (6), 48.78 (2) (e), 48.981 (7)  
14 (a) 8s., 51.30 (3) (bm), 51.30 (4) (b) 8s., 146.82 (2) (cm), 756.06 (2) (cm), 814.61  
15 (1) (c) 6., 938.35 (1) (e), 939.623 (1) (b), 939.624 (1) (b), 946.42 (3m), 972.15 (6),

requiring persons who commit certain offenses to register as a sex offender.

1 980.01 (1g), 980.01 (6) (am), 980.01 (6) (bm), 980.01 (6) (d), 980.015 (2) (d),  
2 980.02 (1) (b) 3., 980.02 (1m), 980.02 (6), 980.031 (title), 980.031 (1) and (2),  
3 980.034, 980.035, 980.036, 980.038, 980.04 (2) (b), 980.05 (2m), 980.14 (title)  
4 and 980.14 (1) of the statutes; relating to: sexually violent person  
5 commitments, sentencing of persons who have prior convictions for certain  
6 crimes and providing penalties.

proceedings, escape from custody by a person

who is subject to a sexually violent person commitment proceeding

ANALYSIS INSERT

**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:**

7 SECTION 1. 48.396 (1) of the statutes is amended to read:  
8 48.396 (1) Law enforcement officers' records of children shall be kept separate  
9 from records of adults. Law enforcement officers' records of the adult expectant  
10 mothers of unborn children shall be kept separate from records of other adults. Law  
11 enforcement officers' records of children and the adult expectant mothers of unborn  
12 children shall not be open to inspection or their contents disclosed except under sub.  
13 (1b), (1d) or (5) or (6) or s. 48.293 or by order of the court. This subsection does not  
14 apply to the representatives of newspapers or other reporters of news who wish to  
15 obtain information for the purpose of reporting news without revealing the identity  
16 of the child involved, to the confidential exchange of information between the police  
17 and officials of the school attended by the child or other law enforcement or social  
18 welfare agencies or to children 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. 938.396 (1). A social welfare agency that  
8 obtains information under this subsection shall keep the information confidential as  
9 required under ss. 48.78 and 938.78.

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

11 48.396 (5) (a) (intro.) Any person who is denied access to a record under sub.  
12 (1), (1b) ~~or~~, (1d) or (6) may petition the court to order the disclosure of the records  
13 governed by the applicable subsection. The petition shall be in writing and shall  
14 describe as specifically as possible all of the following:

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

16 48.396 (6) Records of law enforcement officers and of the court assigned to  
17 exercise jurisdiction under this chapter and ch. 938 shall be open for inspection by  
18 authorized representatives of the department of corrections, the department of  
19 health and family services, the department of justice or a district attorney for use in  
20 the evaluation or prosecution of <sup>of any</sup> a proceeding under ch. 980, if the records <sup>involve or relate to</sup> ~~concern~~  
21 ~~a person~~ who is the subject of or who is being evaluated for a proceeding under ch. <sup>an indi-</sup>  
22 980. The court in which the proceeding under ch. 980 is pending may issue any <sup>vidual</sup>  
23 protective orders that it determines are appropriate concerning information made  
24 available or disclosed under this ~~paragraph~~ <sup>subsection</sup>.

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

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and pro-  
duction to

involve or relate to  
an indi-  
vidual

subsection

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

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

6           48.78 (2) (e) <sup>Notwithstanding par. 1</sup> Paragraph (a) does not prohibit an agency <sup>shall, upon request, disclose information</sup> from making a record  
 7 ~~available for inspection or disclosing the contents of a record~~ to authorized  
 8 representatives of the department of corrections, the department of health and  
 9 family services, the department of justice or a district attorney for use in the  
 10 evaluation or prosecution of <sup>any</sup> a proceeding under ch. 980, if the <sup>information involves an</sup> record ~~concerns a~~ <sup>relates to an</sup>  
 11 ~~person~~ who is the subject of or who is being evaluated for a proceeding under ch. 980.  
 12 The court in which the proceeding under ch. 980 is pending may issue any protective  
 13 orders that it determines are appropriate concerning information made available or  
 14 disclosed under this paragraph.

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

16           48.981 (7) (a) 8s. Authorized representatives of the department of corrections,  
 17 the department of health and family services, the department of justice or a district  
 18 attorney for use in the evaluation or prosecution of <sup>any</sup> a proceeding under ch. 980, if the  
 19 reports or records <sup>involve or relate to an individual</sup> ~~concern a person~~ who is the subject of or who is being evaluated  
 20 for a proceeding under ch. 980. The court in which the proceeding under ch. 980 is  
 21 pending may issue any protective orders that it determines are appropriate  
 22 concerning information made available or disclosed under this ~~paragraph.~~ <sup>subdivision.</sup>

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

24           51.20 (13) (ct) 1m. Except as provided in subd. 2m., if the subject individual is  
 25 before the court on a petition filed under a court order under s. 938.30 (5) (c) 1. and

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

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

8 51.30 (3) (a) Except as provided in pars. (b) ~~and~~, (bm), (c) ~~and~~ (d), the files and  
9 records of the court proceedings under this chapter shall be closed but shall be  
10 accessible to any individual who is the subject of a petition filed under this chapter.

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

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

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

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

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

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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 <sup>any</sup> a proceeding under ch. 980, if the treatment records  
 5 ~~concern~~ <sup>involve or relate to</sup> an individual who is the subject of or who is being evaluated for a proceeding

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 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.

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 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.

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 <sup>any</sup> a proceeding under ch. 980, if the treatment records

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 22 ~~concern~~ <sup>involve or relate to</sup> 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  
 24 information confidential except as necessary for the conduct of an evaluation,  
 25 examination or proceeding under ch. 980 for which the information was obtained.

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

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

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

6           756.06 (2) (cm) A jury in a trial under s. 980.05 shall consist of the number of  
7 persons specified in s. 980.05 (2) unless a lesser number has been stipulated to and  
8 approved under s. 980.05 (2m) (c).

9           **SECTION 17.** 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 18.** 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.

18           **SECTION 19.** 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.

22           **SECTION 20.** 809.10 (1) (a) of the statutes is amended to read:

23           809.10 (1) (a) *Filing.* A person shall initiate an appeal by filing a notice of  
24 appeal with the clerk of the trial court in which the judgment or order appealed from  
25 was entered and shall specify in the notice of appeal the judgment or order appealed

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1 from, whether the appeal is in one of the types of cases specified in s. 752.31 (2), and  
2 whether the appeal is one of those to be given preference in the circuit court or court  
3 of appeals pursuant to statute. The person at the same time shall notify the court  
4 of appeals of the filing of the appeal by sending a copy of the notice of appeal to the  
5 clerk of the court. The person shall also send the court of appeals an original and one  
6 copy of a completed docketing statement on a form prescribed by the court of appeals.  
7 The statement shall accompany the court of appeals' copy of the notice of appeal. The  
8 person shall also send a copy of the completed docketing statement to opposing  
9 counsel. Docketing statements need not be filed in criminal cases, in cases under ch.  
10 980 or in cases in which a party appears pro se.

11 SECTION 21. 809.30 (1) (a) of the statutes is amended to read:

12 809.30 (1) (a) "Postconviction relief" means, in a felony or misdemeanor case,  
13 an appeal or a motion for postconviction relief other than a motion under s. 973.19  
14 or 974.06. In a ch. 48, 51, 55 or 938 case, other than a termination of parental rights  
15 case under s. 48.43, it means an appeal or a motion for reconsideration by the trial  
16 court of its final judgment or order; in such cases a notice of intent to pursue such  
17 relief or a motion for such relief need not be styled as seeking "postconviction" relief.  
18 In a ch. 980 case, it means an appeal or a motion for postcommitment relief under  
19 s. 980.038 (4).

20 SECTION 22. 809.30 (1) (b) of the statutes is amended to read:

21 809.30 (1) (b) "Sentencing" means, in a felony or misdemeanor case, the  
22 imposition of a sentence, fine or probation. In a ch. 48, 51, 55 or 938 case, other than  
23 a termination of parental rights case under s. 48.43, it means the entry of the trial  
24 court's final judgment or order. In a ch. 980 case, it means the entry of an order under  
25 s. 980.06 (2) (b).



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

2           809.40 (1) An appeal to the court of appeals from a judgment or order in a  
3 misdemeanor case or a ch. 48, 51, 55 ~~or~~ 938 or 980 case, or a motion for postconviction  
4 relief in a misdemeanor case or a motion for postcommitment relief under s. 980.038  
5 (4) must be initiated within the time periods specified in s. 808.04 and is governed  
6 by the procedures specified in ss. 809.30 to 809.32.

7           **SECTION 24.** 814.61 (1) (c) 6. of the statutes is created to read:

8           814.61 (1) (c) 6. An action for civil commitment under ch. 51, 55 or 980.

9           **SECTION 25.** 905.04 (4) (a) of the statutes is amended to read:

10           905.04 (4) (a) *Proceedings for hospitalization, control, care and treatment of a*  
11 *sexually violent person, guardianship, protective services or protective placement.*

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

22           **SECTION 26.** 911.01 (4) (c) of the statutes is amended to read:

23           911.01 (4) (c) *Miscellaneous proceedings.* Proceedings for extradition or  
24 rendition; sentencing, or granting or revoking probation, issuance of arrest  
25 warrants, criminal summonses and search warrants; hearings under s. 980.08 or

1 980.09; proceedings under s. 971.14 (1) (c); proceedings with respect to pretrial  
2 release under ch. 969 except where habeas corpus is utilized with respect to release  
3 on bail or as otherwise provided in ch. 969.

→ ~~\*\*\*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!~~ ✓

4 **SECTION 27.** 938.34 (15m) (am) of the statutes is amended to read:

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

12 **SECTION 28.** 938.35 (1) (e) of the statutes is created to read:

13 938.35 (1) (e) In a hearing, trial or other proceeding under ch. 980 relating to  
14 a juvenile.

15 **SECTION 29.** 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

1 welfare agencies or to juveniles 10 years of age or older who are subject to the  
2 jurisdiction of the court of criminal jurisdiction. A public school official who obtains  
3 information under this subsection shall keep the information confidential as  
4 required under s. 118.125 and a private school official who obtains information under  
5 this subsection shall keep the information confidential in the same manner as is  
6 required of a public school official under s. 118.125. A law enforcement agency that  
7 obtains information under this subsection shall keep the information confidential as  
8 required under this subsection and s. 48.396 (1). A social welfare agency that obtains  
9 information under this subsection shall keep the information confidential as  
10 required under ss. 48.78 and 938.78.

11 **SECTION 30.** 938.396 (2) (e) of the statutes is renumbered 938.396 (10) and  
12 amended to read:

13 938.396 (10) ~~Upon request of the department of corrections to review court~~ A  
14 law enforcement agency's records and records for the purpose of providing, under s.  
15 980.015 (2) (a), of the court assigned to exercise jurisdiction under this chapter and  
16 ch. 48 shall be open for inspection by authorized representatives of the department  
17 of corrections, the department of health and family services, the department of  
18 justice or a district attorney with a person's offense history, the court shall open for  
19 inspection by authorized representatives of the department of corrections the  
20 records of the court relating to any juvenile who has been adjudicated delinquent for  
21 a sexually violent offense, as defined in s. 980.01 (6) for use in the evaluation or  
22 prosecution of <sup>any</sup> a proceeding under ch. 980, if the records ~~involve or relate to an~~ <sup>involve or relate to an</sup> ~~individual~~ <sup>individual</sup>  
23 subject of or who is being evaluated for a proceeding under ch. 980. The court in  
24 which the proceeding under ch. 980 is pending may issue any protective orders that

shall, upon request, disclose

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1 it determines are appropriate concerning information made available or disclosed  
2 under this paragraph ← plain period stays

3 SECTION 31. 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:

8 SECTION 32. 938.78 (2) (e) of the statutes is amended to read:

9 938.78 (2) (e) Paragraph (a) does not prohibit <sup>Notwithstanding para (a)</sup> 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 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 <sup>any</sup> ~~concerns~~ <sup>involves or relates to</sup> 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 is filed ch. 980 is pending may  
18 issue any protective orders that it determines are appropriate concerning  
19 information disclosed under this paragraph.

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20 SECTION 33. 939.623 (1) of the statutes is renumbered 939.623 (1) (intro.) and  
21 amended to read:

22 939.623 (1) (intro.) In this section, "serious sex crime" means a any of the  
23 following:

24 (a) A violation of s. 940.225 (1) ~~or~~ (2) <sup>or (3)</sup>

25 SECTION 34. 939.623 (1) (b) of the statutes is created to read:

1           939.623 (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 35.** 939.624 (1) of the statutes is renumbered 939.624 (1) (intro.) and  
5 amended to read:

6           939.624 (1) (intro.) In this section, "serious violent crime" means a any of the  
7 following:

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

9           **SECTION 36.** 939.624 (1) (b) of the statutes is created to read:

10           939.624 (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 37.** 946.42 (1) (a) of the statutes, as affected by 1999 Wisconsin Act 9,  
14 is amended to read:

15           946.42 (1) (a) "Custody" includes without limitation actual custody of an  
16 institution, including a secured correctional facility, as defined in s. 938.02 (15m), a  
17 secured child caring institution, as defined in s. 938.02 (15g), a secured group home,  
18 as defined in s. 938.02 (15p), a secure detention facility, as defined in s. 938.02 (16),  
19 a Type 2 child caring institution, as defined in s. 938.02 (19r), a facility used for the  
20 detention of persons detained under s. 980.04 (1), a facility specified in s. 980.065 or  
21 a juvenile portion of a county jail, or actual custody of a peace officer or institution  
22 guard. "Custody" also includes without limitation the constructive custody of  
23 persons placed on supervised release under a commitment order issued under <sup>ch. 980</sup>  
24 ~~980.06~~ and constructive custody of prisoners and juveniles subject to an order under  
25 s. 48.366, 938.183, 938.34 (4d), (4h) or (4m) or 938.357 (4) or (5) (e) temporarily

1 outside the institution whether for the purpose of work, school, medical care, a leave  
2 granted under s. 303.068, a temporary leave or furlough granted to a juvenile or  
3 otherwise. Under s. 303.08 (6) it means, without limitation, that of the sheriff of the  
4 county to which the prisoner was transferred after conviction. It does not include the  
5 custody of a probationer, parolee or person on extended supervision by the  
6 department of corrections or a probation, extended supervision or parole officer or  
7 the custody of a person who has been released to aftercare supervision under ch. 938  
8 unless the person is in actual custody or is subject to a confinement order under s.  
9 973.09 (4).

→ *\*\*\*\*NOTE: This definition of "custody" is also used in ss. 946.44 (2) (a) and 946.44 (2) (b). Okay? ✓*

10 SECTION 38. 946.42 (3m) of the statutes is created to read:

11 946.42 (3m) A person in custody under any of the following circumstances who  
12 intentionally escapes from that custody is guilty of a Class B felony:

*or a custody order under s. 980.04 (3) ✓*

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

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

17 SECTION 39. 971.17 (1m) (b) 1m. of the statutes is amended to read:

18 971.17 (1m) (b) 1m. Except as provided in subd. 2m., if the defendant under  
19 sub. (1) is found not guilty by reason of mental disease or defect for any violation, or  
20 for the solicitation, conspiracy or attempt to commit any violation, of ch. 940, 944 or  
21 948 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

1 it would be in the interest of public protection to have the defendant report under s.  
2 301.45.

3 **SECTION 40.** 972.15 (4) of the statutes is amended to read:

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

8 **SECTION 41.** 972.15 (6) of the statutes is created to read:

9 972.15 (6) The presentence investigation report and any information contained  
10 in it or upon which it is based may be used by any of the following persons in any evaluation, examination,  
11 referral, hearing, trial, postcommitment relief proceeding, appeal or other  
12 proceeding under ch. 980:

13 (a) The department of corrections.

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

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

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

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

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

21 **SECTION 42.** 973.048 (1m) of the statutes is amended to read:

22 973.048 (1m) Except as provided in sub. (2m), if a court imposes a sentence or  
23 places a person on probation for any violation, or for the solicitation, conspiracy or  
24 attempt to commit any violation, under ch. 940, 944 or 948 or ss. 941.32, 941.38 or  
25 943.01 to 943.15, the court may require the person to comply with the reporting

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

4 **SECTION 43.** 978.045 (1r) (intro.) of the statutes is amended to read:

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

14 **SECTION 44.** 980.01 (1) of the statutes is renumbered 980.01 (1r).

15 **SECTION 45.** 980.01 (1g) of the statutes is created to read:

16 980.01 (1g) “Act of sexual violence” means conduct that constitutes the  
17 commission of a sexually violent offense.

18 **SECTION 46.** 980.01 (2) of the statutes is amended to read:

19 980.01 (2) “Mental disorder” means a congenital or acquired condition affecting  
20 the emotional, cognitive or volitional capacity that predisposes a person to engage  
21 in acts of sexual violence.

22 **SECTION 47.** 980.01 (5) of the statutes is amended to read:

23 980.01 (5) “Sexually motivated” means that one of the purposes for an act is  
24 for the actor’s sexual arousal or gratification or for the sexual humiliation or  
25 degradation of the victim.



1           **SECTION 48.** 980.01 (6) (a) of the statutes is amended to read:

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

4           **SECTION 49.** 980.01 (6) (am) of the statutes is created to read:

5           980.01 (6) (am) An offense that, prior to June 2, 1994, was a crime under the  
6           law of this state and that is comparable to any crime specified in par. (a).

7           **SECTION 50.** 980.01 (6) (b) of the statutes is amended to read:

8           980.01 (6) (b) Any crime specified in s. 940.01, 940.02, 940.03, 940.05, 940.06,  
9           940.19 (4) or (5), 940.195 (4) or (5), 940.30, 940.305, 940.31 or 941.32, 941.38, 943.02,  
10          943.10, 943.32 or 948.03 that is determined, in a proceeding under s. 980.05 (3) (b),  
11          to have been sexually motivated.

12          **SECTION 51.** 980.01 (6) (bm) of the statutes is created to read:

13          980.01 (6) (bm) An offense that, prior to June 2, 1994, was a crime under the  
14          law of this state, that is comparable to any crime specified in par. (b) and that is  
15          determined, in a proceeding under s. 980.05 (3) (b), to have been sexually motivated.

16          **SECTION 52.** 980.01 (6) (c) of the statutes is amended to read:

17          980.01 (6) (c) Any solicitation, conspiracy or attempt to commit a crime under  
18          par. (a) or (am), (b) or (bm).

19          **SECTION 53.** 980.01 (6) (d) of the statutes is created to read:

20          980.01 (6) (d) An escape punishable under s. 946.42 (3m).

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 that 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)?

21          **SECTION 54.** 980.01 (7) of the statutes is amended to read:

1           980.01 (7) "Sexually violent person" means a person who has been convicted  
2 of a sexually violent offense, has been adjudicated delinquent for a sexually violent  
3 offense, or has been found not guilty of or not responsible for a sexually violent  
4 offense by reason of insanity or mental disease, defect or illness, and who is  
5 dangerous because he or she suffers from a mental disorder that makes it  
6 substantially probable that the person will engage in one or more acts of sexual  
7 violence.

8           **SECTION 55.** 980.015 (2) (intro.) of the statutes is amended to read:

9           980.015 (2) (intro.) If an agency with jurisdiction has control or custody over  
10 a person who may meet the criteria for commitment as a sexually violent person, the  
11 agency with jurisdiction shall inform each appropriate district attorney and the  
12 department of justice regarding the person as soon as possible beginning ~~3 months~~  
13 90 days prior to the applicable date of the following:

14           **SECTION 56.** 980.015 (2) (a) of the statutes is amended to read:

15           980.015 (2) (a) The anticipated discharge ~~from a sentence, anticipated or~~  
16 ~~release, on parole or, extended supervision or anticipated release otherwise, from a~~  
17 sentence of imprisonment of a person who has been convicted of that was imposed  
18 for a conviction for a sexually violent offense, from a continuous term of  
19 incarceration, any part of which was imposed for a sexually violent offense, or from  
20 a placement in a Type 1 prison under s. 301.048 (3) (a) 1., any part of which was  
21 imposed for a sexually violent offense.

→ **\*\*\*NOTE:** I'm not sure that I understood the language suggested in DOJ's memo.  
Do the above changes achieve the goal? ✓

22           **SECTION 57.** 980.015 (2) (b) of the statutes, as affected by 1999 Wisconsin Act  
23 9, is amended to read:

1 980.015 (2) (b) The anticipated release from a secured correctional facility, as  
2 defined in s. 938.02 (15m), or a secured child caring institution, as defined in s. 938.02  
3 (15g), or a secured group home, as defined in s. 938.02 (15p), ~~of a~~ if the person was  
4 placed in the facility for being adjudicated delinquent under s. 938.183 or 938.34 on  
5 the basis of a sexually violent offense.

INS  
19-6  
6 SECTION 58. 980.015 (2) (c) of the statutes is amended to read:

7 980.015 (2) (c) ~~The termination anticipated release or discharge from a~~  
8 ~~commitment order under s. 971.17 of a person who has been found not guilty of a~~  
9 ~~sexually violent offense by reason of mental disease or defect under s. 971.17.~~

\*\*\*\*NOTE: Is "release" meant to get at people being released on conditional release,  
or only those whose commitment order is being terminated under s. 971.17 (5), or both?  
Compare proposed s. 980.015 (2) (d).

10 SECTION 59. 980.015 (2) (d) of the statutes is created to read:

11 980.015 (2) (d) The anticipated release on parole or discharge of a person  
12 committed under ch. 975 for a sexually violent offense.

13 SECTION 60. 980.015 (4) of the statutes is renumbered 980.14 (2) and amended  
14 to read:

15 980.14 (2) Any agency or officer, employe or agent of an agency is immune from  
16 criminal or civil liability for any acts or omissions as the result of a good faith effort  
17 to comply with any provision of this section chapter.

18 SECTION 61. 980.02 (1) (a) of the statutes is amended to read:

19 980.02 (1) (a) The department of justice at the request of the agency with  
20 jurisdiction, as defined in s. 980.015 (1), over the person. ~~If the department of justice~~  
21 ~~decides to file a petition under this paragraph, it shall file the petition before the date~~  
22 ~~of the release or discharge of the person.~~

23 SECTION 62. 980.02 (1) (b) 3. of the statutes is created to read:

or a secured group home, as defined in s. 938.02 (15p),

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

4 SECTION 63. 980.02 (1m) of the statutes is created to read:

5 980.02 (1m) A petition filed under this section shall be filed ~~on or~~ before the  
6 day that the person is ~~to~~ released or discharged.

7 SECTION 64. 980.02 (2) (ag) of the statutes, as affected by 1999 Wisconsin Act  
8 9, is repealed.

9 SECTION 65. 980.02 (4) (intro.) of the statutes is amended to read:

10 980.02 (4) (intro.) A petition under this section shall be filed in any one of the  
11 following:

12 SECTION 66. 980.02 (6) of the statutes is created to read:

13 980.02 (6) A court assigned to exercise jurisdiction under chs. 48 and 938 does  
14 not have jurisdiction over a petition filed under this section alleging that a child is  
15 a sexually violent person.

16 SECTION 67. 980.03 (2) (intro.) of the statutes is amended to read:

17 980.03 (2) (intro.) Except as provided in ss. 980.038 (2), 980.09 (2) (a) and  
18 980.10 and without limitation by enumeration, at any hearing under this chapter,  
19 the person who is the subject of the petition has the right to:

INS  
20-19

20 SECTION 68. 980.03 (4) of the statutes, as affected by 1999 Wisconsin Act 9, is  
21 renumbered 980.031 (3) and amended to read:

22 980.031 (3) Whenever a person who is the subject of a petition filed under s.  
23 980.02 or who has been committed under s. 980.06 is required to submit to an  
24 examination of his or her mental condition under this chapter, he or she may retain  
25 experts or a licensed physician, licensed psychologist or other mental health

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

INS  
21-5

6 (4) If the person a party retains a qualified expert or the court appoints a  
 7 licensed physician, licensed psychologist or other mental health professional person  
 8 of his or her own choice to conduct an examination under this chapter of the person's  
 9 mental condition, the examiner shall have reasonable access to the person for the  
 10 purpose of the examination, as well as to the person's past and present treatment  
 11 records, as defined in s. 51.30 (1) (b), and patient health care records as provided  
 12 under s. 146.82 (2) (e). If the person is indigent, the court shall, upon the person's  
 13 request, appoint a qualified and available expert or professional person to perform  
 14 an examination and participate in the trial or other proceeding on the person's  
 15 behalf. Upon the order of the circuit court, the county shall pay, as part of the costs  
 16 of the action, the costs of an expert or professional person appointed by a court under  
 17 this subsection to perform an examination and participate in the trial or other  
 18 proceeding on behalf of an indigent person. An expert (cm), <sup>the person's</sup> and past and present  
 19 correctional records, including presentence investigation reports, <sup>under s. 972.15(6)</sup>

INS  
21-18

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

who is expected to be called as a witness by  
one of the parties or

1 this chapter unless a written report of his or her examination has been submitted to  
2 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. 538.78? Also, do you need a provision requiring DOC to provide access to its records? ✓~~

3 **SECTION 69.** 980.03 (5) of the statutes is renumbered 980.038 (3) (a) and  
4 amended to read:

5 980.038 (3) (a) ~~Upon~~ Except as provided in par. (b), upon a showing by the  
6 proponent of good cause under s. 807.13 (2) (c), testimony may be received into the  
7 record of a hearing under this ~~section~~ chapter by telephone or live audiovisual  
8 means.

→ ~~\*\*\*\*NOTE: This provision (from 1997 LRB-4010/P3) is in lieu of referring to s. 980.04 (2) in s. 967.08 (2) (b). Okay? ✓~~

9 **SECTION 70.** 980.031 (title) of the statutes is created to read:

10 **980.031 (title) Examinations.**

11 **SECTION 71.** 980.031 (1) and (2) of the statutes are created to read:

12 980.031 (1) If a person who is the subject of a petition filed under s. 980.02  
13 denies the facts alleged in the petition, the court may appoint at least one qualified  
14 licensed physician, licensed psychologist or other mental health professional to  
15 conduct an examination of the person's mental condition and testify at trial.

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

21 **SECTION 72.** 980.034 of the statutes is created to read:

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

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

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

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

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

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

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

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

6 **SECTION 73.** 980.035 of the statutes is created to read:

7 **980.035 Substitution of judge.** (1) ONE SUBSTITUTION. Any party to a  
8 proceeding under this chapter may file a written request with the clerk of courts for  
9 a substitution of a new judge for the judge assigned to the case. Except as provided  
10 in sub. (5), no party may file more than one such written request in any one action,  
11 nor may any single such request name more than one judge.

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

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

20 (4) SUBSTITUTION OF TRIAL JUDGE SUBSEQUENTLY ASSIGNED. If a new judge is  
21 assigned to the trial under s. 980.05 and the party has not exercised the right to  
22 substitute an assigned judge, a written request for the substitution of the new judge  
23 may be filed with the clerk within 10 days of the clerk's giving actual notice or  
24 sending notice of the assignment to the parties. If the notification occurs within 20  
25 days of the date set for trial, the request shall be filed within 48 hours of the clerk's



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

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

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

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

21 SECTION 74. 980.036 of the statutes is created to read:

22 **980.036 Discovery and inspection.** (1) DEFINITIONS. In this section:

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

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

3 (2) WHAT A PROSECUTING ATTORNEY MUST DISCLOSE TO A PERSON SUBJECT TO THIS  
4 CHAPTER. Upon demand, a prosecuting attorney shall, within a reasonable time  
5 before a trial or other proceeding under ~~this chapter~~, disclose to a person subject to

6 this chapter or the person's attorney and permit the person or the person's attorney  
7 to inspect and copy or photograph all of the following materials and information, if  
8 the material or information is within the possession, custody or control of the state:

9 (a) Any written or recorded statement made by the person concerning the  
10 allegations in the petition filed under s. 980.02 or concerning other matters at issue  
11 in the <sup>(trial or)</sup> proceeding and the names of witnesses to the person's written statements.

12 (b) A written summary of all oral statements of the person which the  
13 prosecuting attorney plans to use in the course of the trial or ~~any~~ proceeding ~~under~~  
14 ~~this chapter~~ and the names of witnesses to the person's oral statements.

15 (c) Evidence obtained in the manner described under s. 968.31 (2) (b), if the  
16 prosecuting attorney intends to use the evidence at the trial or ~~any~~ proceeding  
17 ~~under this chapter.~~ <sup>period stays</sup>

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

19 (e) A list of all witnesses, and their addresses, whom the prosecuting attorney  
20 intends to call at the trial or ~~any~~ proceeding ~~under this chapter.~~ <sup>period stays</sup> This paragraph  
21 does not apply to rebuttal witnesses or those called for impeachment only.

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

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

*prepared in accordance with s. 980.031 (5).*

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

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

8 (g) The results of any physical or mental examination, <sup>or any</sup> scientific or  
9 psychological test, experiment or comparison that the prosecuting attorney intends  
10 to offer in evidence at the trial or ~~other~~ proceeding <sup>comma stays</sup> under this chapter, and any ~~test~~  
11 ~~results, facts and~~ <sup>raw</sup> data that were collected ~~during and evaluated as part of an~~  
12 ~~examination under this chapter or conducted before the petition under s. 980.02 was~~  
13 ~~filed for the purpose of evaluating whether to file a petition and that the prosecuting~~  
14 ~~attorney intends to offer in evidence at the trial or other proceeding under this~~  
15 ~~chapter~~ <sup>, used. or considered in any manner as part of</sup>  
<sup>the examination, test, experiment or comparison</sup>

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

18 (i) Any physical <sup>or documentary</sup> evidence that the prosecuting attorney intends to offer in  
19 evidence at a trial or ~~other~~ proceeding <sup>period stays</sup> under this chapter.

20 (j) Any exculpatory evidence.

21 (3) WHAT A PERSON SUBJECT TO THIS CHAPTER MUST DISCLOSE TO THE PROSECUTING  
22 ATTORNEY. Upon demand, a person who is subject to this chapter or the person's  
23 attorney shall, within a reasonable time before a trial or other proceeding under ~~this~~  
24 ~~chapter~~, disclose to the prosecuting attorney and permit the prosecuting attorney to

*s. 980.05, 980.08 or 980.09*

1 inspect and copy or photograph all of the following materials and information, if the  
2 material or information is within the possession, custody or control of the person:

3 (a) A list of all witnesses, other than the person, whom the person intends to  
4 call at the trial or ~~any~~ proceeding <sup>comma stays</sup> ~~under this chapter~~ together with their addresses.  
5 This paragraph does not apply to rebuttal witnesses or those called for impeachment  
6 only.

7 (b) Any relevant written or recorded statements of a witness named on a list  
8 under par. (a), including any reports ~~or statements made in connection with the case~~  
9 ~~by a witness who conducted an examination under s. 980.031~~ <sup>Prepared in accordance with</sup> ~~or if the witness does~~  
10 ~~not prepare a report or statement, a written summary of the findings of the witness~~ <sup>(5).</sup>  
11 ~~or the subject matter of his or her testimony~~

12 (c) The results of any physical or mental examination, <sup>or any</sup> scientific or  
13 psychological test, experiment or comparison that the person intends to offer in  
14 evidence at the trial or ~~any~~ proceeding <sup>comma stays</sup> ~~under this chapter~~ and any ~~test results~~  
15 <sup>raw</sup> facts and data that were collected <sup>used or considered in any manner</sup> during and evaluated <sup>at the</sup> as part of an examination  
16 under s. 980.031 and that form the basis for an opinion contained in a report,  
17 ~~statement or written summary disclosed under par. (b).~~ <sup>test, experiment or comparison</sup>

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

20 (e) Any physical <sup>or documentary</sup> evidence that the person intends to offer in evidence at the trial  
21 or ~~any~~ proceeding <sup>period stays</sup> ~~under this chapter~~

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

1 (5) TESTING OR ANALYSIS OF EVIDENCE. On motion of a party, the court may order  
2 the production of any item of evidence or <sup>raw</sup> data which is intended to be introduced at  
3 the trial for testing or analysis under such terms and conditions as the court  
4 prescribes.

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

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

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

23 (9) SANCTIONS FOR FAILURE TO COMPLY. (a) The court shall exclude any witness  
24 not listed or evidence not presented for inspection or copying required by this section,

1 unless good cause is shown for failure to comply. The court may in appropriate cases  
2 grant the opposing party a recess or a continuance.

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

7 **(10) PAYMENT OF PHOTOCOPY COSTS IN CASES INVOLVING INDIGENT RESPONDENTS.**

8 When the state public defender or a private attorney appointed under s. 977.08  
9 requests photocopies of any item that is discoverable under this section, the state  
10 public defender shall pay any fee charged for the photocopies from the appropriation  
11 under s. 20.550(1)(a). If the person providing photocopies under this section charges  
12 the state public defender a fee for the photocopies, the fee may not exceed the actual,  
13 necessary and direct cost of photocopying.

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

17 **SECTION 75.** 980.038 of the statutes is created to read:

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

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

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

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

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

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

20 (4) MOTIONS FOR POSTCOMMITMENT RELIEF; APPEAL. (a) A motion for  
21 postcommitment relief by a person committed under s. 980.06 shall be made in the  
22 time and manner provided in ss. 809.30 and 809.40. An appeal by a person who has  
23 been committed under ch. 980 from a final order under s. 980.06 <sup>✓ comma stays</sup> 980.08 or  
24 980.09 or from an order denying a motion for postcommitment relief or from both  
25 shall be taken in the time and manner provided in ss. 808.04 (3), 809.30 and 809.40.





1 correctional facility, as defined in s. 938.02 (15m), a secured child caring institution,  
2 as defined in s. 938.02 (15g), or a secured group home, as defined in s. 938.02 (15p),  
3 or is committed to institutional care, and the court orders detention under this  
4 subsection, the court shall order that the person be transferred to a detention facility  
5 approved by the department. A detention order under this subsection remains in  
6 effect until the ~~person is discharged~~ petition is dismissed after a hearing under sub.  
7 (3) or after a trial under s. 980.05 (5) or until the effective date of a commitment order  
8 under s. 980.06, whichever is applicable.

9 **SECTION 77.** 980.04 (2) of the statutes is renumbered 980.04 (2) (a) and  
10 amended to read:

11 980.04 (2) (a) Whenever a petition is filed under s. 980.02, the court shall hold  
12 a hearing to determine whether there is probable cause to believe that the person  
13 named in the petition is a sexually violent person. ~~If the person named in the petition~~  
14 ~~is in custody, the court shall hold the probable cause hearing within 72 hours after~~  
15 ~~the petition is filed, excluding Saturdays, Sundays and legal holidays. If the person~~  
16 ~~named in the petition is not in custody, the~~ Except as provided in par. (b), the court  
17 shall hold the probable cause hearing within a reasonable time 30 days, excluding  
18 Saturdays, Sundays and legal holidays, after the filing of the petition, unless that  
19 time is extended by the court for good cause shown upon its own motion, the motion  
20 of any party or the stipulation of the parties.

21 **SECTION 78.** 980.04 (2) (b) of the statutes is created to read:

22 980.04 (2) (b) If the person named in the petition is in custody under a sentence,  
23 dispositional order or commitment and the probable cause hearing will be held after  
24 the date on which the person is scheduled to be released or discharged from the  
25 sentence, dispositional order or commitment, the probable cause hearing under par.

1 (a) shall be held no later than 10 days after the person's scheduled release or  
2 discharge date, excluding Saturdays, Sundays and legal holidays, unless that time  
3 is extended by the court for good cause shown upon its own motion, the motion of any  
4 party or the stipulation of the parties.

5 **SECTION 79.** 980.04 (3) of the statutes is amended to read:

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

14 **SECTION 80.** 980.05 (1) of the statutes is amended to read:

15 980.05 (1) A trial to determine whether the person who is the subject of a  
16 petition under s. 980.02 is a sexually violent person shall commence no later than 45  
17 90 days after the date of the probable cause hearing under s. 980.04. The court may  
18 grant a ~~continuance~~ <sup>↓ one or more continuances</sup> of the trial date for good cause upon its own motion, the motion  
19 of any party or the stipulation of the parties.

20 **SECTION 81.** 980.05 (1m) of the statutes is repealed.

21 **SECTION 82.** 980.05 (2m) of the statutes is created to read:

22 980.05 (2m) (a) At a jury trial under this section, the summoning of jurors, the  
23 selection and qualifications of the jury, the challenge of jurors for cause and the duty  
24 of the court in charging the jury and giving instructions and discharging the jury  
25 when unable to agree shall be the same ~~in a trial under this section~~ as in civil actions,

in jury trials

1 except that, notwithstanding s. 805.08 (3), each party shall be entitled to 4  
2 peremptory challenges or, if the court orders additional jurors to be selected under  
3 s. 805.08 (2), to 5 peremptory challenges. A party may waive in advance any or all  
4 of its peremptory challenges and the number of jurors called under par. (b) shall be  
5 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.~~

6 (b) The number of jurors selected shall be the number prescribed in sub. (2),  
7 unless a lesser number has been stipulated to and approved under par. (c) or the court  
8 orders that additional jurors be selected. That number, plus the number of  
9 peremptory challenges available to all of the parties, shall be called initially and  
10 maintained in the jury box by calling others to replace jurors excused for cause until  
11 all jurors have been examined. The parties shall thereupon exercise in their order,  
12 the state beginning, the peremptory challenges available to them, and if any party  
13 declines to challenge, the challenge shall be made by the clerk by lot.

14 (c) At any time before the verdict in a jury trial under this section, the parties  
15 may stipulate in writing or by statement in open court, on the record, with the  
16 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?~~

17 SECTION 83. 980.05 (3) (a) of the statutes is amended to read:

the number prescribed in sub. (2)

1           980.05 (3) (a) At a trial on a petition under this chapter, the petitioner has the  
2 burden of proving ~~the allegations in the petition~~ beyond a reasonable doubt that the  
3 person who is the subject of the petition is a sexually violent person.

4           **SECTION 84.** 980.05 (3) (b) of the statutes is amended to read:

5           980.05 (3) (b) If the state alleges that the sexually violent offense or act that  
6 forms the basis for the petition was an act that was sexually motivated as provided  
7 in s. 980.01 (6) (b) or (bm), the state is required to prove beyond a reasonable doubt  
8 that the alleged sexually violent act was sexually motivated.

9           **SECTION 85.** 980.07 (1) of the statutes, as affected by 1999 Wisconsin Act 9, is  
10 amended to read:

11           980.07 (1) If a person has been committed under s. 980.06 and has not been  
12 discharged under s. 980.09, the department shall conduct an examination of his or  
13 her mental condition within 6 18 months after an the date of the initial commitment  
14 order under s. 980.06 and again thereafter at least once each 12 months for the  
15 purpose of determining whether the person has made sufficient progress for the  
16 court to consider whether the person should be placed on supervised release or  
17 discharged. At the time of a reexamination under this section, the person who has  
18 been committed may retain or seek to have the court appoint an examiner as  
19 provided under s. ~~980.03 (4)~~ 980.031 (3).

20           **SECTION 86.** 980.07 (3) of the statutes is repealed.

21           **SECTION 87.** 980.08 (3) of the statutes, as affected by 1999 Wisconsin Act 9, is  
22 amended to read:

23           980.08 (3) Within 20 days after receipt of the petition, the court shall appoint  
24 one or more examiners having the specialized knowledge determined by the court to  
25 be appropriate, who shall examine the mental condition of the person and furnish

1 a written report of the examination to the court within 30 days after appointment.  
2 The district attorney or the department of justice, whichever filed the original  
3 petition, may have the petitioner examined as provided under s. 980.031 (2). An  
4 examiner retained by the district attorney or department of justice under s. 980.031  
5 (2) or retained by or appointed for the petitioner under s. 980.031 (3) shall file a  
6 written report of his or her examination with the court within 45 days of being  
7 retained or appointed. All of the examiners acting under this subsection shall have  
8 reasonable access to the person ~~for purposes of examination~~ and to the person's past  
9 and present treatment records, as defined in s. 51.30 (1) (b), and patient health care  
10 records, as provided under s. ~~146.82 (2) (e)~~ 980.031 (4). If any such examiner believes  
11 that the person is appropriate for supervised release under the criterion specified in  
12 sub. (4), the examiner shall report on the type of treatment and services that the  
13 person may need while in the community on supervised release. The county shall  
14 pay the costs of an examiner appointed under this subsection as provided under s.  
15 51.20 (18) (a).

16 **SECTION 88.** 980.08 (4) of the statutes, as affected by 1999 Wisconsin Act 9, is  
17 amended to read:

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

1 decision under this subsection, the court may consider, without limitation because  
2 of enumeration, the nature and circumstances of the behavior that was the basis of  
3 the allegation in the petition under s. 980.02 (2) (a), the person's mental history and  
4 present mental condition, where the person will live, how the person will support  
5 himself or herself and what arrangements are available to ensure that the person  
6 has access to and will participate in necessary treatment, including pharmacological  
7 treatment using an antiandrogen or the chemical equivalent of an antiandrogen if  
8 the person is a serious child sex offender. A decision under this subsection on a  
9 petition filed by a person who is a serious child sex offender may not be made based  
10 on the fact that the person is a proper subject for pharmacological treatment using  
11 an antiandrogen or the chemical equivalent of an antiandrogen or on the fact that  
12 the person is willing to participate in pharmacological treatment using an  
13 antiandrogen or the chemical equivalent of an antiandrogen.

14 **SECTION 89.** 980.09 (1) (b) of the statutes is amended to read:

15 980.09 (1) (b) At a hearing under this subsection, the district attorney or the  
16 department of justice, whichever filed the original petition, shall represent the state  
17 and ~~shall have the right to~~ may have the petitioner examined ~~by an expert or~~  
18 ~~professional person of his, her or its choice. The hearing shall be before the court~~  
19 ~~without a jury as provided under s. 980.031 (2).~~ The district attorney or the  
20 department of justice, whichever filed the original petition, or the petitioner or his  
21 or her attorney may request that the hearing under this subsection be to a jury of 6.  
22 At the hearing under this subsection, the state has the burden of proving by clear and  
23 convincing evidence that the petitioner is still a sexually violent person.

24 **SECTION 90.** 980.09 (2) (a) of the statutes is amended to read:

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 91.** 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

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.

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8 **SECTION 92.** 980.12 (1) of the statutes, as affected by 1999 Wisconsin Act 9, is  
 9 amended to read:

plain 980.031 (3) ✓ plain text

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

\*\*\*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? ✓

14 **SECTION 93.** 980.14 (title) of the statutes is created to read:

15 **980.14 (title) Immunity.**

16 **SECTION 94.** 980.14 (1) of the statutes is created to read:

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

20 **SECTION 95. Initial applicability.**

CS  
GENERALLY

21 (1) **SEXUALLY VIOLENT PERSON COMMITMENT PROCEEDINGS.** The treatment of  
 22 sections ~~\*\*\*\*[to be provided in the final version of the draft]\*\*\*\*~~ of the  
 23 statutes first ~~apply~~ to proceedings under chapter 980 of the statutes that are

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apply



as affected  
by this  
act,

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

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

4 The renumbering and amendment of sections 939.623 (1) and 939.624 (1) of the  
5 statutes and the creation of sections 939.623 (1) (b) and 939.624 (1) (b) of the statutes  
6 first apply to offenses committed on the effective date of this subsection, but do not  
7 preclude the counting of other offenses as prior serious sex crimes, prior serious  
8 violent crimes or prior child sex crimes for purposes of sentencing a person under  
9 section 939.623 or 939.624 of the statutes, as affected by this act.

10

(END)

**ANALYSIS INSERT:**

***Sexually violent person commitment proceedings***

Current law provides a procedure for involuntarily committing sexually violent persons to the department of health and family services (DHFS) for control, care and treatment. A sexually violent person is a person who has committed certain sexually violent offenses and who is dangerous because he or she suffers from a mental disorder that makes it substantially probable that the person will engage in acts of sexual violence.

A proceeding for the involuntary commitment of a sexually violent person is begun by the filing of a petition that alleges that the person is a sexually violent person. The petition may be filed by the department of justice (DOJ) or, if DOJ does not file a petition, by a district attorney. The petition must be filed before the person is going to be released from confinement that resulted from the commission of a sexually violent offense. The court in which the petition is filed must review the petition and decide whether to hold the person in custody pending a trial on the petition. The court must also hold a hearing to determine whether there is probable cause to believe that the person is a sexually violent person. If the court finds that there is probable cause to believe that the person is a sexually violent person, the court must schedule a trial on the petition and order the person to be sent to an appropriate facility for an evaluation.

If, after the trial on a sexually violent person petition, the person is found by a judge or jury to be a sexually violent person, the person must be committed to the custody of DHFS and placed in institutional care. A person who is committed as a sexually violent person and placed in institutional care may petition the committing court to modify its order by authorizing supervised release in the community if at least 18 months have elapsed since the initial commitment order was entered or at least six months have elapsed since the most recent release petition was denied or the most recent order for supervised release was revoked. In addition, current law provides for periodic reexaminations of a person committed as a sexually violent person and provides a method by which the person may petition the court for discharge from the commitment on the grounds that he or she is no longer a sexually violent person.

This bill makes numerous changes to the current sexually violent person commitment procedure. Among the changes made by the bill are the following:

1. *Definition of sexually violent offenses.* A person may be subject to a proceeding for commitment as a sexually violent person only if the person has committed certain sexually violent offenses. This bill adds additional offenses to the current list of sexually violent offenses that may serve as a basis for a petition. Currently, the list includes such offenses as first and second degree sexual assault, first and second degree sexual assault of a child, incest with a child and child enticement. This bill adds sexual exploitation by a therapist and third degree sexual assault to the list.

The current list of sexually violent offenses also includes offenses such as homicide, certain battery offenses, kidnapping and burglary, if the offense is found to have been sexually motivated. Under the bill, the following crimes are considered to be sexually violent crimes if they are found to have been sexually motivated: felony murder; administering a dangerous or stupefying drug with the intent to facilitate the commission of a crime; soliciting a child to participate in criminal gang activity; arson to a building; robbery; and physical abuse of a child.

b)

d)

c)

f)

AA a)

In addition, the bill provides that an offense that was a crime under an earlier law of this state that is comparable to any of the sexually violent offenses included in the list is also considered to be a sexually violent offense.

Finally, the bill includes in the list of sexually violent offenses the offense of escape, if the escape was from any type of custody that is related to a sexually violent person commitment proceeding (see *Escape*, below). *who are*

2. *Expert examinations of persons subject to sexually violent person petitions.* Under current law, if a person who is the subject of a sexually violent person petition or who has been committed as a sexually violent person is required to submit to an examination, he or she may retain experts or professional persons to perform an examination. If the person is indigent, the court must, upon the person's request, appoint a qualified and available expert or professional person to perform an examination of the person on the person's behalf.

*who is*

5 This bill maintains the current provision concerning retention of an expert by a person subject to a petition or appointment of an expert for the person. The bill also provides that, if a person who is subject to a sexually violent person petition denies the facts alleged in the petition, the court may appoint at least one expert to conduct an examination of the person and testify at the trial on the petition. The bill also provides that the state may retain an expert to examine a person subject to a sexually violent person petition and testify at the trial on the petition or at other proceedings. Finally, the bill provides that an expert retained or appointed under any of these provisions must be a licensed physician, licensed psychologist or other mental health professional. *who is*

3. *Access to confidential records.* Under current law, with certain exceptions, a person's medical records (including mental health treatment records) are confidential. Also, if a juvenile has been subject to a delinquency proceeding or a proceeding to determine whether he or she is in need of protection or services, the records concerning the court proceeding and any placement or treatment resulting from the proceeding are generally confidential. Among the exceptions to the confidentiality requirements that apply to medical and juvenile records are exceptions allowing access to certain persons for use in connection with proceedings to commit a person as a sexually violent person. Specifically, current law allows access to these records by an expert who is examining a person for purposes of providing an opinion as to whether the person may meet the criteria for commitment as a sexually violent person. Current law also provides access to the records by DOJ or a district attorney for purposes of prosecuting a sexually violent person commitment proceeding.

This bill modifies the current exceptions to medical and juvenile records confidentiality by broadening the provisions concerning who may have access to the records and by clarifying how those persons may use information obtained from the records. Under the bill, the records must be released to authorized representatives of DHFS, DOJ, the department of corrections (DOC) or a district attorney for use in the evaluation or prosecution of a sexually violent person proceeding if the records involve or relate to an individual who is the subject of or who is being evaluated for the proceeding. The bill also provides that the court in which the proceeding is pending may issue any protective orders that it determines are appropriate concerning the records and that any representative of DHFS, DOJ or DOC or a district attorney may disclose information obtained from the records for any purpose consistent with any sexually violent person proceeding.

*W* In addition, the bill allows for access to other confidential records and reports which, under current law, are not generally available for use in connection with a sexually violent person commitment proceeding. Specifically, the bill allows access to law enforcement records concerning juveniles, records concerning required reports of abused or neglected children, court records of other civil commitment proceedings, pupil records maintained by a school and presentence investigation reports prepared by DOC in connection with the sentencing of a person convicted of a crime. As with the exception for medical and juvenile records, the bill provides that these records and reports must be released to authorized representatives of DHFS, DOJ, DOC or a district attorney for use in the evaluation or prosecution of a sexually violent person proceeding if the records involve or relate to an individual who is the subject of or who is being evaluated for the proceeding. The bill also provides that the court in which the proceeding is pending may issue any protective orders that it determines are appropriate concerning the records and that any representative of DHFS, DOJ or DOC or a district attorney may disclose information obtained from the records for any purpose consistent with any sexually violent person proceeding.

4. *Timing of probable cause hearing.* Under current law, the court in which a sexually violent person petition has been filed must conduct a probable cause hearing on the petition within a reasonable period of time after the filing of the petition, except that the probable cause hearing must be held within 72 hours after the petition is filed (excluding Saturdays, Sundays and legal holidays) if the person is being held in custody pending trial on the petition. *after*

*who is* This bill provides that the probable cause hearing generally must be held within 30 days *of* the filing of the petition, excluding Saturdays, Sundays and legal holidays, unless that time limit is extended by the court for good cause. However, if the person *subject* to the petition is in custody under a criminal sentence, a juvenile dispositional order or a commitment order that is based on the person's commission of a sexually violent offense and the probable cause hearing is scheduled to be held after the date on which the person is scheduled to be released or discharged from the sentence, dispositional order or commitment order, then the probable cause hearing must be held no later than ten days after the person's scheduled date of release or discharge, excluding Saturdays, Sundays and legal holidays, unless that time limit is extended by the court for good cause.

5. *Timing of the trial on a sexually violent person petition.* Under current law, a trial to determine whether the person who is the subject of a petition is a sexually violent person must commence no later than 45 days after the date of the probable cause hearing, unless the court grants a continuance of the trial date for good cause. The bill provides that the trial must begin no later than 90 days after the date of the probable cause hearing, except that the court may grant one or more continuances for good cause.

6. *Rights of a person <sup>who is</sup> subject to a petition.* Under current law, the rules of evidence applicable at a criminal trial apply to a trial on a sexually violent person petition and a person who is subject to a sexually violent person petition generally has the same constitutional rights available to a defendant in a criminal proceeding. Current law also specifically provides that the person has the right to counsel, the right to remain silent, the right to present and cross-examine witnesses and the right to have the allegations in the petition proven beyond a reasonable doubt.

This bill eliminates the requirement that the rules of evidence applicable at a criminal trial also apply at a trial on a petition. In addition, the bill eliminates the general provision affording a person <sup>who is</sup> subject to a petition ~~the~~ the same constitutional rights available to a defendant in a criminal proceeding. The bill does not eliminate the person's specified rights to counsel, to present and cross-examine witnesses and to have the petition proven beyond a reasonable doubt. Likewise, the bill does not eliminate the person's specified right to remain silent; however, the bill does provide that the state may present evidence that a person who is the subject of a petition refused to participate in an examination that was conducted for the purpose of evaluating whether to file a petition against the person or for the purpose of evaluating the person after a petition ~~had~~ been filed. ~~was~~

7. *Reexaminations of persons found to be sexually violent persons.* Under current law, a person who has been committed as a sexually violent person must be examined by DHFS within six months after the initial commitment and again thereafter at least once each 12 months for the purpose of determining whether the person has made sufficient progress for the court to consider whether the person should be placed on supervised release or discharged from the commitment. This bill provides that DHFS is not required to examine the person until 18 months after the person's initial commitment. The bill does not change the requirement that DHFS conduct further evaluations at least once each 12 months thereafter.

In addition, under current law the court that committed the person may order a reexamination of the person at any time. The bill eliminates the ability of the court to order a reexamination of the person at any time.

8. *Miscellaneous procedural provisions.* Current law does not explicitly address various procedural issues relating to sexually violent person commitment proceedings. This bill creates new procedural provisions addressing a number of these issues. Among the issues addressed by new procedural provisions are the following:

- a. Substitution of judge.
- b. Making motions to challenge the jurisdiction of the court or the timeliness of the filing of a petition.

c~~f~~. Methods by which one party may discover and inspect material in the possession of the other party.

d~~f~~. Changing the place where the trial on the petition is held.

e~~f~~. Jury selection.

f~~f~~. Filing motions for relief from a commitment order that is entered after a person has been found to be a sexually violent person.

The bill also provides that the rules applicable to appeals in criminal, juvenile and other civil commitment cases will generally apply in an appeal from an order committing a person as a sexually violent person.

9. *Codification of certain case law interpretations.* The bill codifies certain Wisconsin appellate court decisions relating to the sexually violent person commitment procedure, including the following:

a~~f~~. The bill provides that a person may be subject to a sexually violent person commitment proceeding at the time that he or she is being paroled under or discharged from a commitment under a previous sex crimes commitment law that was repealed in 1980. This codifies a holding of *State v. Post*, 197 Wis. 2d 279 (1995).

b~~f~~. The bill provides that, for purposes of determining the proper time to file a petition, confinement under a sentence of imprisonment that was imposed for a sexually violent offense includes confinement that was imposed consecutively to any sentence for a sexually violent offense. This codifies a holding of *State v. Keith*, 216 Wis. 2d 61 (Ct. App. 1997).

c~~f~~. The bill provides that a person committed as a sexually violent person must be afforded the right to request a jury for a hearing on his or her petition for a discharge from the commitment. This codifies a holding of *State v. Post*, 197 Wis. 2d 279 (1995).

d~~f~~. The bill provides that, when reviewing a person's petition for discharge from a commitment as a sexually violent person, the court does not hold an evidentiary hearing but instead considers only reports concerning reexaminations of the person and any relevant documentation submitted by the parties. This codifies the holding of *State v. Paulick*, 213 Wis. 2d 432 (Ct. App. 1997).

### ***Escape***

Current law provides penalties for escaping from certain types of custody, including actual physical custody in a jail, state prison or juvenile correctional institution, actual physical custody of a law enforcement officer or institution guard and constructive custody of prisoners and juveniles temporarily outside an institution for the purpose of work, school, medical care or other authorized temporary leave. A person who is convicted of escape is subject to fines or imprisonment or both. The maximum term of imprisonment that may be imposed depends on the type of custody from which the person escapes. For instance, a person who escapes after being arrested for, charged with or sentenced for a crime may be imprisoned for not more than ten years or fined not more than \$10,000 or both, while a person who escapes after being arrested for, charged with or convicted of a violation of a law that is penalized with a forfeiture (a civil monetary penalty) may be imprisoned for not more than nine months or fined not more than \$10,000 or both.

This bill provides that a person may be imprisoned for not more than 60 years if he or she escapes while he or she is in custody in connection with a sexually violent person commitment proceeding or while he or she is in institutional care or on supervised release after having been found to be a sexually violent person.

***Sentence enhancement for repeat serious sex crimes and repeat violent crimes***

Under current law, a person must be sentenced to not less than five years of imprisonment if he or she commits a serious sex crime after having previously been convicted of a serious sex crime. The serious sex crimes covered by this requirement are first and second degree sexual assault, which generally involves sexual intercourse or sexual contact with another without the other person's consent under certain aggravating circumstances (such as the use or the threat of use of a weapon, force or violence). This bill adds third degree sexual assault (sexual intercourse or sexual contact with another without the other person's consent) to the list of serious sex crimes covered by this minimum sentence requirement. In addition, the bill provides that a person is covered by this minimum sentence requirement if any of the following ~~apply~~ <sup>apply</sup>: 1) the person was previously convicted of a crime under an earlier law of this state that is comparable to first, second or third degree sexual assault; or 2) the person has previously been convicted of a crime under federal law or the law of another state and that federal or state law is comparable to first, second or third degree sexual assault.

*applies*

Current law also provides that a person must be sentenced to not less than five years of imprisonment if he or she commits a serious violent crime after having previously been convicted of a serious violent crime. The serious violent crimes covered by this requirement are felony murder (causing the death of another during the commission of certain felonies) and second degree intentional homicide. This bill provides that a person is covered by this minimum sentence requirement if he or she has previously been convicted of a crime under federal law or the law of another state and that federal or state law is comparable to felony murder or second degree intentional homicide.

***Sex offender registration requirements***

Under current law, with certain exceptions, a person must register as a sex offender if he or she has committed certain sex offenses, such as sexual assault, sexual assault of a child, incest, sexual exploitation of a child or child enticement. In addition, current law allows a court to order a person to register as a sex offender if the person has committed certain serious felony offenses that are not sex offenses, such as homicide, battery or burglary, but that the court finds were sexually motivated. This bill provides that a court may order a person to register as a sex offender if the person has committed the offense of administering a dangerous or stupefying drug with the intent to facilitate the commission of a crime or the offense of soliciting a child to participate in criminal gang activity if the court finds that the offense was sexually motivated.

1           **INSERT 3-24:** ✓

2           Any representative of the department of corrections, the department of health and  
3           family services, the department of justice or a district attorney may disclose  
4           information obtained under this subsection for any purpose consistent with any  
5           proceeding under ch. 980.

6           **INSERT 4-14:** ✓

7           Any representative of the department of corrections, the department of health and  
8           family services, the department of justice or a district attorney may disclose  
9           information obtained under this paragraph for any purpose consistent with any  
10          proceeding under ch. 980.

11          **INSERT 4-22:** ✓

12          Any representative of the department of corrections, the department of health and  
13          family services, the department of justice or a district attorney may disclose  
14          information obtained under this ~~paragraph~~ for any purpose consistent with any  
15          proceeding under ch. 980.                      subdivision

16          **INSERT 5-19:** ✓

17          Any representative of the department of corrections, the department of health and  
18          family services, the department of justice or a district attorney may disclose  
19          information obtained under this ~~paragraph~~ for any purpose consistent with any  
20          proceeding under ch. 980.

21          **INSERT 6-6:** ✓

22          The court in which the proceeding under ch. 980 is pending may issue any protective  
23          orders that it determines are appropriate concerning information made available or  
24          disclosed under this subdivision. Any representative of the department of  
25          corrections, the department of health and family services, the department of justice



1 or a district attorney may disclose information obtained under this subdivision for  
2 any purpose consistent with any proceeding under ch. 980.

3 **INSERT 6-9:** ✓

4 **SECTION 1.** 118.125 (2) (ck) of the statutes is created to read:

5 118.125 (2) (ck) The school <sup>district</sup> clerk or his or her designee shall make pupil records  
6 available for inspection or disclose the contents of pupil records to authorized  
7 representatives of the department of corrections, the department of health and  
8 family services, the department of justice or a district attorney for use in the  
9 evaluation or prosecution of any proceeding under ch. 980, if the pupil records involve  
10 or relate to an individual who is the subject of or who is being evaluated for a  
11 proceeding under ch. 980. The court in which the proceeding under ch. 980 is pending  
12 may issue any protective orders that it determines are appropriate concerning pupil  
13 records made available or disclosed under this paragraph. Any representative of the  
14 department of corrections, the department of health and family services, the  
15 department of justice or a district attorney may disclose information obtained under  
16 this paragraph for any purpose consistent with any proceeding under ch. 980.

17 **INSERT 6-23:** ✓

18 The court in which the proceeding under ch. 980 is pending may issue any protective  
19 orders that it determines are appropriate concerning ~~any~~ records made available  
20 or disclosed under this paragraph. Any representative of the department of  
21 corrections, the department of health and family services, the department of justice  
22 or a district attorney may disclose information obtained under this paragraph for any  
23 purpose consistent with any proceeding under ch. 980.

24  
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1           **INSERT 7-8:** ✓

2           A jury in a hearing under s. 980.09 (1) (b) or (2) (b) shall consist of the number of  
3           persons specified in s. 980.09 (1) (b) or (2) (b), whichever is applicable, unless a lesser  
4           number has been stipulated to and approved under s. 980.09 (3) (c).

5           **INSERT 12-2:** ✓

6           subsection. Any representative of the department of corrections, the department of  
7           health and family services, the department of justice or a district attorney may  
8           disclose information obtained under this subsection for any purpose consistent with  
9           any proceeding under ch. 980

10          **INSERT 12-19:** ✓

11          Any representative of the department of corrections, the department of health and  
12          family services, the department of justice or a district attorney may disclose  
13          information obtained under this paragraph for any purpose consistent with any  
14          proceeding under ch. 980.

15          **INSERT 19-6:** ✓

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

17                980.015 (2) (c) The anticipated release on conditional release under s. 971.17  
18                or the anticipated termination of or discharge of a from a commitment order under  
19                s. 971.17, if the person who has been found not guilty of a sexually violent offense by  
20                reason of mental disease or defect under s. 971.17.

21          History: 1993 a. 479; 1995 a. 77; 1997 a. 205, 283; 1999 a. 9.

21          **INSERT 20-19:** ✓

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

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

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

History: 1993 a. 479; 1997 a. 252; 1999 a. 9.

7 **INSERT 21-5:** ✓

8 Upon the order of the circuit court, the county shall pay, as part of the costs of the  
 9 action, the costs of a licensed physician, licensed psychologist or other mental health  
 10 professional appointed by a court under this subsection to perform an examination  
 11 and participate in the trial or other proceeding on behalf of an indigent person.

12 **INSERT 21-18:** ✓

13 past and present juvenile records, as provided under ss. 48.396 (6), 48.78 (2) (e),  
 14 938.396 (10) and 938.78 (2) (e).

15 **INSERT 40-7:** ✓

16 SECTION 4. 980.09 (3) of the statutes is created to read:

17 (17) 980.09 (3) JURY SELECTION. <sup>(a)</sup> At a hearing to a jury under sub. (1) (b) or (2) (b),  
 18 the summoning of jurors, the selection and qualifications of the jury, the challenge  
 19 of jurors for cause and the duty of the court in charging the jury and giving  
 20 instructions and discharging the jury when unable to agree shall be the same as in  
 21 jury trials in civil actions. A party may waive in advance any or all of its peremptory  
 22 challenges and the number of jurors called under par. (b) shall be reduced by this  
 23 number.

1 (b) The number of jurors selected shall be the number prescribed in sub. (1) (b) ✓  
 2 or (2) (b), ✓ whichever is applicable, unless a lesser number has been stipulated to and  
 3 approved under par. (c) or the court orders that additional jurors be selected. That  
 4 number, plus the number of peremptory challenges available to all of the parties,  
 5 shall be called initially and maintained in the jury box by calling others to replace  
 6 jurors excused for cause until all jurors have been examined. The parties shall  
 7 thereupon exercise in their order, the state beginning, the peremptory challenges  
 8 available to them, and if any party declines to challenge, the challenge shall be made  
 9 by the clerk by lot.

10 ✓ (c) At any time before the verdict in a hearing to a jury under sub. (1) (b) or (2) ✓  
 11 (b), the parties may stipulate in writing or by statement in open court, on the record,  
 12 with the approval of the court, that the jury shall consist of any number less than the  
 13 number prescribed in sub. (1) (b) or (2) (b), whichever is applicable.

14 **INSERT 40-22:** ✓

15 48.396 (6), 48.78 (2) (e), 48.981 (7) (a) 8s., 51.30 (3) (bm) and (4) (b) 8m., 8s. and 10m., ✓  
 16 118.125 (2) (ck), 146.82 (2) (c) and (cm), 801.52, 808.04 (3) and (4), 809.10 (1) (a), ✓  
 17 809.30 (1) (a) and (b), 809.40 (1), 814.61 (1) (c) 6., 905.04 (4) (a), 911.01 (4) (c), 938.35 ✓  
 18 (1) (e), 938.396 (2) (e), 938.78 (2) (e), 972.15 (6), 980.01 (2), (5) and (6) (a), (am), (b), ✓  
 19 (bm), (c) and (d), 980.015 (2) (c), 980.03 (2) (intro.), (3), (4) and (5), 980.031 (title), (1) ✓  
 20 and (2), 980.034, 980.035, 980.036, 980.038, 980.04 (1) and (3), 980.05 (1), (1m), (2m) ✓  
 21 and (3) (a) and (b), 980.07 (1) and (3), 980.08 (3) and (4) and 980.09 (1) (b), (2) (a) and ✓  
 22 (b) and (3) of the statutes, the renumbering and amendment of section 980.04 (2) of ✓  
 23 the statutes and the creation of section 980.04 (2) (b) ✓

24  
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5  
6  
7

**INSERT 41-2:**

<sup>#</sup>(0) SEXUALLY VIOLENT PERSON COMMITMENT PETITIONS. The treatment of section 980.02 (1) (a) and (b) 3., (1m), (2) (ag) and (4) (intro.) of the statutes first applies to petitions filed on the effective date of this subsection.

<sup>#</sup>(1) IMMUNITY PROVISIONS. The treatment of sections 980.015 (4) and 980.14 (title) and (1) of the statutes first applies to acts or omissions occurring on the effective date of this subsection.

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

LRB-4105/1dn

JEO: *king*

Please review the initial applicability provisions carefully to make sure that they do what you want them to do. Note that there is a specific provision dealing with the new petition requirements.

Proposed s. 118.125 (2) (ck) may conflict with federal law concerning the release of school records. See 34 CFR ~~99.31(a)(5)(i)(B)~~ and 99.38. Federal law does permit school records to be released pursuant to a court order or subpoena. See 34 CFR ~~99.31(a)(9)(i)~~.  
                  <sup>^</sup> <sup>^</sup> <sup>^</sup>

I think that the definition of "treatment records" under s. 51.30 (1) (b), stats., is very broad, given the definition of "mental illness" under s. 51.01 (13) (a), stats., and "treatment facility" under s. 51.01 (19), stats. Thus, this draft leaves intact the reference to "treatment records" in proposed s. 980.031 (4) (which is derived from current s. 980.03 (4), stats.).

Under the proposed change to s. 911.01 (4) (c), stats., the rules of evidence will not apply in hearings to a jury under s. 980.09, stats. Is that your intent?

Let me know if you have any questions or changes.

Jefren E. Olsen  
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**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-4105/1dn  
JEO:kmg:kjf

February 9, 2000

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