



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-0284/4

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DOA:.....Jablonsky - Supervised release of sexually violent persons

FOR 1999-01 BUDGET - NOT READY FOR INTRODUCTION

do not generate

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AN ACT...; relating to: supervised release of persons committed for treatment

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as a sexually violent person.

Analysis by the Legislative Reference Bureau

HEALTH AND HUMAN SERVICES

MENTAL ILLNESS AND DEVELOPMENTAL DISABILITIES

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 been convicted of 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.

When a person is found by a judge or jury to be a sexually violent person, the person must be committed to the custody of DHFS. The court that commits the person must specify whether the person is to be placed in institutional care or on supervised release in the community, and DHFS must arrange for control, care and treatment of the person in the least restrictive manner consistent with the requirements of the person and in accordance with the court's commitment order.

If the court decides to place the person on supervised release, DHFS and the county social services department (county department) of the person's county of residence must prepare a plan for the treatment and services that the person will receive while on supervised release. If the county department of the person's county

of residence declines to prepare a plan, DHFS must try to find another county department to prepare the plan and arrange for placement of the person in that county. If DHFS is unable to find another county department to prepare the plan, the court must choose a county department to prepare the plan, order that county department to prepare the plan and place the person on supervised release in that county. However, the court may not choose the county department of a county where there is a facility for the detention, evaluation or institutional placement of sexually violent persons unless that county is also the county of residence of the person being placed on supervised release. The court of appeals has held that once a court has ordered a person placed on supervised release, the person must be released and DHFS and the county responsible for preparing the plan must provide or contract for appropriate treatment and services or, if such treatment and services are not available, create them. *State v. Sprosty*, Wis. 2d. (Ct. App. 1998).

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This bill makes the following changes relating to supervised release of sexually violent persons:

ANALYSIS
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1. The bill establishes new guidelines for a court's decision concerning whether to place a person on supervised release. Under the bill, a court may not order a person to be placed on supervised release if the court finds both of the following: a) that it is substantially probable that the person will engage in acts of sexual violence unless the person resides in a facility with a level of security comparable to that of a secure mental health unit or facility; and b) that the daily cost of creating or contracting for the necessary programs and facilities for control, care and treatment of the person on supervised release would exceed the daily cost of control, care and treatment of the person at a secure mental health unit or facility.
2. The bill makes changes in how a court designates a county department to prepare a plan for supervised release of a person. Under the bill, as under current law, if the person's county of residence declines to prepare a plan DHFS may arrange for another county to prepare the plan. However, if DHFS is unable to find another county to prepare the plan, the court must order the county department of the person's county of residence to prepare the plan instead of choosing the county department of almost any other county, as under current law.
3. The bill creates a new procedure which a court must use to approve or disapprove a supervised release plan. Under the bill, the court must hold a hearing on a proposed supervised release plan within 30 days after the plan is presented to the court. Based on evidence provided at the hearing, the court must approve the plan if it determines that the plan provides adequate treatment and services to the person and adequate protection to the community. Likewise, the court must disapprove the plan if it determines that the plan does not provide adequate treatment and services to the person and adequate protection to the community. If the court approves the plan the court must also order the person placed on supervised release in the county that prepared the plan. Finally, the bill requires DHFS and the county department that prepared the plan to implement the plan and allows DHFS to ask the court for any orders that are necessary to ensure implementation of the plan.

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:

1 **SECTION 1.** 20.435 (2) (bj) of the statutes is amended to read:

2 20.435 (2) (bj) *Conditional and supervised release treatment and services.*
3 Biennially, the amounts in the schedule for payment by the department of costs for
4 treatment and services for persons released under s. 971.17 (3) (d) or (4) (e), 980.06
5 (2) (~~e~~) (cr) or 980.08 (5) (d), for which the department has contracted with county
6 departments under s. 51.42 (3) (aw) 1. d., with other public agencies or with private
7 agencies to provide the treatment and services.

8 **SECTION 2.** 46.10 (2) of the statutes is amended to read:

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

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

15 **SECTION 3.** 51.42 (3) (aw) 1. d. of the statutes is amended to read:
 16 51.42 (3) (aw) 1. d. Provide treatment and services that are specified in a
 17 conditional release plan approved by a court for a person who is a county resident and
 18 is conditionally released under s. 971.17 (3) or (4) or that are specified in a supervised
 19 release plan approved by a court under s. 980.06 (2) ~~(e)~~ (cr) or 980.08 (5) (d). If the
 20 county department provides treatment and services under this subdivision, the
 21 department of health and family services shall, from the appropriation under s.
 22 20.435 (2) (bj), pay the county department for the costs of the treatment and services.

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23 **SECTION 4.** 980.06 (2) (b) of the statutes is ~~amended to read:~~

24 ~~amended~~ amended to read:

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① 980.06 (2) (b) ~~Any~~ An order for commitment under this section shall specify
 ② either institutional care or supervised release. ~~The~~ ^{Except as provided in par. (b), the} court shall order institutional
 ③ care if it finds ~~all of the following~~

4 (bm) In determining under par. (b) whether commitment shall be for
 5 institutional care or for supervised release, the court may consider, without
 6 limitation because of enumeration, the nature and circumstances of the behavior
 7 that was the basis of the allegation in the petition under s. 980.02 (2) (a), the person's
 8 mental history and present mental condition, where the person will live, how the
 9 person will support himself or herself, and what arrangements are available to
 10 ensure that the person has access to and will participate in necessary treatment,
 11 including pharmacological treatment using an antiandrogen or the chemical
 12 equivalent of an antiandrogen if the person is a serious child sex offender. In deciding
 13 whether to order supervised release of person who is a serious child sex offender, the
 14 court may not consider, as a factor in making its decision, that the person is a proper
 15 subject for pharmacological treatment using an antiandrogen or the chemical
 16 equivalent of an antiandrogen or that the person is willing to participate in
 17 pharmacological treatment using an antiandrogen or the chemical equivalent of an
 18 antiandrogen. ~~The department shall arrange for control, care and treatment of the~~
 19 ~~person in the least restrictive manner consistent with the requirements of the person~~
 20 ~~and in accordance with the court's commitment order.~~

②① SECTION 5. ~~980.06 (2) (b) 1. and 2. of the statutes are created to read.~~

②② ~~980.06 (2) (b) 1.~~ ^{no 71} That it is substantially probable that the person will engage
 23 in acts of sexual violence unless the person resides in a facility with a level of security
 24 comparable to that of a secure mental health unit or facility ^{specified in} ~~under~~ s. 980.065.

→ score text

or if the court orders preparation of a supervised release plan under par. (b) ✓

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1 2. That the daily cost of creating or contracting for the necessary programs and
2 facilities for control, care and treatment of the person on supervised release would
3 exceed the daily cost of control, care and treatment of the person at a secure mental
4 health unit or facility under s. 980.065.

5 SECTION 6. 980.06 (2) (c) of the statutes is amended to read:

under par. (b)

6 980.06 (2) (c) If the court finds that the person is appropriate for supervised
7 release, the court shall notify the department. The department and the county
8 department under s. 51.42 in the county of residence of the person, as determined
9 under s. 980.105, shall prepare a plan that identifies the treatment and services, if
10 any, that the person will receive in the community. If the county department of the
11 person's county of residence declines to prepare a plan, the department may arrange
12 for another county to prepare the plan if that county agrees to prepare the plan and
13 if the person will be living in that county. If the department is unable to arrange for
14 another county to prepare a plan, the court shall order the county department of the
15 person's county of residence to prepare the plan.

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16 (cg) The plan prepared under par. (c) shall address the person's need, if any, for
17 supervision, counseling, medication, community support services, residential
18 services, vocational services, and alcohol or other drug abuse treatment. If the
19 person is a serious child sex offender, the plan shall address the person's need for
20 pharmacological treatment using an antiandrogen or the chemical equivalent of an
21 antiandrogen. ~~The department may contract with a county department, under s.~~
22 ~~51.42 (3) (aw) 1. d., with another public agency or with a private agency to provide~~
23 ~~the treatment and services identified in the plan.~~ The plan shall specify who will be
24 responsible for providing the treatment and services identified in the plan. ✓

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1 (cm) 2. The plan prepared under par. (c) shall be presented to the court for its
2 approval within 21 days after the court [↓] ~~finding~~ ^{finds} (that the person is appropriate for
~~under par. (b) or order's preparation of the plan under par. (bt)~~ [✓]
3 ^③ supervised release, unless the department, county department and person to be
4 released request additional time to develop the plan. ~~If the county department of the~~
5 ~~person's county of residence declines to prepare a plan, the department may arrange~~
6 ~~for another county to prepare the plan if that county agrees to prepare the plan and~~
7 ~~if the person will be living in that county. If the department is unable to arrange for~~
8 ~~another county to prepare a plan, the court shall designate a county department to~~
9 ~~prepare the plan, order the county department to prepare the plan and place the~~
10 ~~person on supervised release in that county, except that the court may not so~~
11 ~~designate the county department in any county where there is a facility in which~~
12 ~~persons are detained or evaluated under s. 980.04 or in which persons committed to~~
13 ~~institutional care under this chapter are placed, unless that county is also the~~
14 ~~person's county of residence. The court shall hold a hearing on the plan within 30~~
15 ~~days after the plan is presented to the court, unless the department, county~~
16 ~~department and person to be released agree to a later hearing date. At least 10 days~~
17 ~~before the hearing under this subdivision, the court shall give written notice of the~~
18 ~~hearing to the person to be released, the district attorney or department of justice,~~
19 ~~whichever is applicable, the department, the county department that prepared the~~
20 ~~plan, the chief executive officer of the county in which the person would reside under~~
21 ~~the plan and the chief executive officer of the city, village or town in which the person~~
22 ~~would reside under the plan. The person, the district attorney or the attorney~~
23 ~~general, whichever is applicable, and any chief executive officer who receives notice~~
24 ~~of the hearing, or the chief executive officer's designee, may present evidence at the~~

and upon request of the court shall,

1 hearing. The county department that prepared the plan and the department may
2 present evidence at the hearing if requested to do so by the court. ^{period} ~~stays~~

3 SECTION 7. 980.06 (2) (cm) 1. of the statutes is created to read:

4 980.06 (2) (cm) 1. In this paragraph, "chief executive officer" means a mayor,
5 city manager, village president, town chairperson, county executive or chairperson
6 of the county board of supervisors. ^{es} ^{cu}
, (cs), (ct), (cu)

7 SECTION 8. 980.06 (2) (cr) ^{and (cv)} of the statutes are created to read:

8 980.06 (2) (cr) Based on the provisions of the plan and on the evidence
9 presented at the hearing under par. (cm) 2., the court shall determine whether the
10 plan provides adequate treatment and services to the person and adequate
11 protection to the community. If the court finds that the plan does not provide

12 either adequate treatment and services to the person ^{or} adequate protection to the
13 community, the court shall issue a written order disapproving the plan. and shall proceed under
par. (cs)

14 finds that the plan provides adequate treatment and services to the person and
15 , except as provided in par. (ct), decision and
adequate protection to the community, the court shall issue a written order

16 approving the plan and placing the person on supervised release in the county that
17 prepared the plan.

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18 (cv) The county department that prepared the plan and the department shall
19 implement a plan approved by the court under par. (cr). In implementing the plan,
20 the department may contract with a county department, under s. 51.42 (3) (aw) 1.
21 d., with another public agency or with a private agency to provide the treatment and
22 services identified in the plan. The department may request the court to make such
23 orders as are necessary to ensure implementation of the plan.

24 SECTION 9. 980.06 (2) (d) of the statutes is amended to read:

~~and, except as provided in par. (ct), shall order the~~
~~department and county department to revise the plan~~
~~and present it to the court within a specified time.~~
~~The court shall hold a hearing on the revised plan as~~

1 980.06 (2) (d) An order for supervised release places the person in the custody
2 and control of the department. The department shall arrange for control, care and
3 treatment of the person in the least restrictive manner consistent with the
4 requirements of the person and in accordance with the plan for supervised release
5 approved by the court under par. (cr) or s. 980.08 (5) (d), whichever is applicable. A
6 person on supervised release is subject to the conditions set by the court and to the
7 rules of the department. Before a person is placed on supervised release by the court
8 under this section, the court shall so notify the municipal police department and
9 county sheriff for the municipality and county in which the person will be residing.
10 The notification requirement under this paragraph does not apply if a municipal
11 police department or county sheriff submits to the court a written statement waiving
12 the right to be notified. If the department alleges that a released person has violated
13 any condition or rule, or that the safety of others requires that supervised release be
14 revoked, he or she may be taken into custody under the rules of the department. The
15 department shall submit a statement showing probable cause of the detention and
16 a petition to revoke the order for supervised release to the committing court and the
17 regional office of the state public defender responsible for handling cases in the
18 county where the committing court is located within 48 hours after the detention.
19 The court shall hear the petition within 30 days, unless the hearing or time deadline
20 is waived by the detained person. Pending the revocation hearing, the department
21 may detain the person in a jail or in a hospital, center or facility specified by s. 51.15
22 (2). The state has the burden of proving by clear and convincing evidence that any
23 rule or condition of release has been violated, or that the safety of others requires that
24 supervised release be revoked. If the court determines after hearing that any rule
25 or condition of release has been violated, or that the safety of others requires that

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1 supervised release be revoked, it may revoke the order for supervised release and
2 order that the released person be placed in an appropriate institution until the
3 person is discharged from the commitment under s. 980.09 or until again placed on
4 supervised release under s. 980.08.

5 **SECTION 10.** 980.07 (1) of the statutes is amended to read:

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

16 **SECTION 11.** 980.08 (3) of the statutes is amended to read:

17 980.08 (3) Within 20 days after receipt of the petition, the court shall appoint
18 one or more examiners having the specialized knowledge determined by the court to
19 be appropriate, who shall examine the person and furnish a written report of the
20 examination to the court within 30 days after appointment. The examiners shall
21 have reasonable access to the person for purposes of examination and to the person's
22 past and present treatment records, as defined in s. 51.30 (1) (b), and patient health
23 care records, as provided under s. 146.82 (2) (c). If any such examiner believes that
24 the person is appropriate for supervised release under the ^{criteria} specified in sub.

1 (4) (a) ~~the~~, the examiner shall report on the type of treatment and services that
2 the person may need while in the community on supervised release.

3 SECTION 12. 980.08 (4) of the statutes is renumbered 980.08 (4) (a) ~~(a)~~ and
4 amended to read:

5 980.08 (4) (a) ~~(a)~~ The court, without a jury, shall hear the petition within
6 30 days after the report of the court-appointed examiner is filed with the court,
7 unless the petitioner waives this time limit. Expenses of proceedings under this
8 subsection shall be paid as provided under s. 51.20 (18). The court shall grant the
9 petition unless the state proves ~~all of the following~~ by clear and convincing evidence

10 ^{plain} that
11 ^{no 9} ~~the~~ the person is still a sexually violent person ^{plain} and that
12 ^{no 9} ~~it is~~ it is still substantially probable that the person will engage in acts of
13 sexual violence if the person is not continued in institutional care does not reside in
14 a facility with a level of security comparable to a secure mental health unit or facility
15 under s. 980.065.

16 (b) In making a decision under ~~this subsection~~ par. (a), the court may consider,
17 without limitation because of enumeration, the nature and circumstances of the
18 behavior that was the basis of the allegation in the petition under s. 980.02 (2) (a),
19 the person's mental history and present mental condition, where the person will live,
20 how the person will support himself or herself and what arrangements are available
21 to ensure that the person has access to and will participate in necessary treatment,
22 including pharmacological treatment using an antiandrogen or the chemical
23 equivalent of an antiandrogen if the person is a serious child sex offender. A decision
24 under this ~~subsection~~ paragraph on a petition filed by a person who is a serious child
25 sex offender may not be made based on the fact that the person is a proper subject

or orders preparation of a supervised release plan under sub. (4)(c)

1 for pharmacological treatment using an antiandrogen or the chemical equivalent of
2 an antiandrogen or on the fact that the person is willing to participate in
3 pharmacological treatment using an antiandrogen or the chemical equivalent of an
4 antiandrogen.

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5 SECTION 13. 980.08 (4) (a) 3. of the statutes is created to read:

6 980.08 (4) (a) 3. That the daily cost of creating or contracting for the necessary
7 programs and facilities for control, care and treatment of the person on supervised
8 release would exceed the daily cost of control, care and treatment of the person at a
9 secure mental health unit or facility under s. 980.065.

10 SECTION 14. 980.08 (5) of the statutes is renumbered 980.08 (5) (a) and
11 amended to read:

under sub. (4)(a)

12 980.08 (5) (a) If the court finds that the person is appropriate for supervised
13 release, the court shall notify the department. The department and the county
14 department under s. 51.42 in the county of residence of the person, as determined
15 under s. 980.105, shall prepare a plan that identifies the treatment and services, if
16 any, that the person will receive in the community. If the county department of the
17 person's county of residence declines to prepare a plan, the department may arrange
18 for another county to prepare the plan if that county agrees to prepare the plan and
19 if the person will be living in that county. If the department is unable to arrange for
20 another county to prepare a plan, the court shall

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21 ~~order the person's county of residence to prepare the plan~~

22 (b) The plan prepared under par. (a) shall address the person's need, if any, for
23 supervision, counseling, medication, community support services, residential
24 services, vocational services, and alcohol or other drug abuse treatment. If the
25 person is a serious child sex offender, the plan shall address the person's need for

1 pharmacological treatment using an antiandrogen or the chemical equivalent of an
 2 antiandrogen. ~~The department may contract with a county department, under s.~~
 3 ~~51.42 (3) (aw) 1. d., with another public agency or with a private agency to provide~~
 4 ~~the treatment and services identified in the plan. The plan shall specify who will be~~
 5 ~~responsible for providing the treatment and services identified in the plan.~~

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6 (c) 2. The plan prepared under par. (a) shall be presented to the court for its

7 approval within 60 days after the court finding [↓] [↓] ^{links} that the person is appropriate for ^c
~~under sub. (4)(a) or orders preparation of the plan under sub. (4)(c)~~

8 supervised release, unless the department, county department and person to be
 9 released request additional time to develop the plan. If the county department of the
 10 person's county of residence declines to prepare a plan, the department may arrange
 11 for another county to prepare the plan if that county agrees to prepare the plan and
 12 if the person will be living in that county. If the department is unable to arrange for
 13 another county to prepare a plan, the court shall designate a county department to
 14 prepare the plan, order the county department to prepare the plan and place the
 15 person on supervised release in that county, except that the court may not so
 16 designate the county department in any county where there is a facility in which
 17 persons committed to institutional care under this chapter are placed unless that
 18 county is also the person's county of residence. The court shall hold a hearing on the
 19 plan within 30 days after the plan is presented to the court, unless the department,
 20 county department and person to be released agree to a later hearing date. At least
 21 10 days before the hearing under this subdivision, the court shall give written notice
 22 of the hearing to the person to be released, the district attorney or department of
 23 justice, whichever is applicable, the department, the county department that
 24 prepared the plan, the chief executive officer of the county in which the person would
 25 reside under the plan and the chief executive officer of the city, village or town in

1 which the person would reside under the plan. The person, the district attorney or
 2 the attorney general, whichever is applicable, and any chief executive officer who
 3 receives notice of the hearing, or the chief executive officer's designee, may present
 4 evidence at the hearing. The county department that prepared the plan and the
 5 department may present evidence at the hearing ~~if requested to do so by the court~~ *period stays*

6 SECTION 15. 980.08 (5) (c) 1. of the statutes is created to read:

7 980.08 (5) (c) 1. In this paragraph, "chief executive officer" means a mayor, city
 8 manager, village president, town chairperson, county executive or chairperson of the
 9 county board of supervisors. , (de), (dm), (ds)

10 SECTION 16. 980.08 (5) (d) and (e) of the statutes are created to read:

11 980.08 (5) (d) Based on the provisions of the plan and on the evidence presented
 12 at the hearing under par. (c) 2., the court shall determine whether the plan provides
 13 adequate treatment and services to the person and adequate protection to the
 14 community. If the court finds that the plan does not provide either adequate treatment and
 15 services to the person or adequate protection to the community, the court shall *→ de*
 16 issue a written decision and and shall proceed under par. (de) order disapproving the plan. If the court finds that the plan provides
 17 adequate treatment and services to the person and adequate protection to the
 18 community, the court shall , except as provided in par (dm), issue a written decision and order approving the plan and placing the
 19 person on supervised release in the county that prepared the plan.

20 (e) The county department that prepared the plan and the department shall
 21 implement a plan approved by the court under par. (d). In implementing the plan,
 22 the department may contract with a county department, under s. 51.42 (3) (aw) 1.
 23 d., with another public agency or with a private agency to provide the treatment and
 24 services identified in the plan. The department may request the court to make such
 25 orders as are necessary to ensure implementation of the plan.

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LEGISLATIVE REFERENCE BUREAU

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ANALYSIS INSERT:

1. The bill establishes new guidelines for a court's decision concerning whether to place a person on supervised release. Under the bill, a court may not order a person to be placed on supervised release if the court finds that it is substantially probable that the person will engage in acts of sexual violence unless the person resides in a facility with a level of security comparable to that of a secure mental health unit or facility.

However, even if it makes this finding, the court may withhold its decision concerning placement in institutional care or on supervised released and order DHFS and the appropriate county department to prepare a plan for supervised release for the person. The court may withhold its decision and order a plan prepared only if the person first establishes that it is likely that the daily cost of providing the necessary programs and facilities for control, care and treatment of the person on supervised release would not exceed the daily cost of control, care and treatment of the person at a secure mental health unit or facility.

If the court withholds its decision and orders preparation of a supervised release plan, the court then proceeds to consider whether to approve or disapprove the plan under the new procedure created by the bill (see item 2 below), except that, in addition to the criteria for approving the plan under the new procedure, the court may approve the plan only if the daily cost of supervised release does not exceed the daily cost of institutional care at a secure mental health unit or facility. If the daily cost of supervised release exceeds the daily cost of institutional care at a secure mental health unit or facility, the court may not place the person on supervised release.

2. The bill creates a new procedure that a court must use to approve or disapprove a supervised release plan. Under the bill, the court must hold a hearing on a proposed supervised release plan within 30 days after the plan is presented to the court. Based on evidence provided at the hearing, the court must approve the plan if it determines that the plan provides adequate treatment and services to the person and adequate protection to the community. Likewise, the court must disapprove the plan if it determines that the plan does not provide adequate treatment and services to the person and adequate protection to the community. If the court disapproves the plan, DHFS and the county department must revise the plan and present it to the court again. If the court approves the plan the court must also order the person placed on supervised release in the county that prepared the plan. Finally, the bill requires DHFS and the county department that prepared the plan to implement the plan and allows DHFS to ask the court for any orders that are necessary to ensure implementation of the plan.

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SECTION 1. 20.435 (2) (bm) of the statutes is amended to read:

1 20.435 (2) (bm) *Secure mental health units or facilities.* The amounts in the
2 schedule for the general program operations of secure mental health units or
3 facilities under s. 980.065 for persons committed to institutional care under s. 980.06
4 (2) (b) or (ct) and placed in a secure mental health unit or facility.

History: 1971 c. 125 ss. 138 to 155, 522 (1); 1971 c. 211, 215, 302, 307, 322; 1973 c. 90, 198, 243; 1973 c. 284 s. 32; 1973 c. 308, 321, 322, 333, 336; 1975 c. 39 ss. 153 to 173, 732 (1), (2); 1975 c. 41 s. 52; 1975 c. 82, 224, 292; 1975 c. 413 s. 18; 1975 c. 422, 423; 1975 c. 430 ss. 1, 2, 80; 1977 c. 29 ss. 236 to 273, 1657 (18); 1977 c. 112; 1977 c. 203 s. 106; 1977 c. 213, 233, 327; 1977 c. 354 s. 101; 1977 c. 359; 1977 c. 418 ss. 129 to 137, 924 (18) (d), 929 (55); 1977 c. 428 s. 115; 1977 c. 447; 1979 c. 32 s. 92 (11); 1979 c. 34, 48; 1979 c. 102 s. 237; 1979 c. 111, 175, 177; 1979 c. 221 ss. 118g to 133, 2202 (20); 1979 c. 238, 300, 331, 361; 1981 c. 20 ss. 301 to 356b, 2202 (20) (b), (d), (g); 1981 c. 93 ss. 3 to 8, 186; 1981 c. 298, 314, 317, 359, 390; 1983 a. 27 ss. 318 to 410, 2202 (20); 1983 a. 192, 199, 245; 1983 a. 333 s. 6; 1983 a. 363, 398, 410, 427; 1983 a. 435 ss. 2, 3, 7; 1983 a. 538; 1985 a. 24, 29, 56, 73, 120, 154, 176, 255, 281, 285, 332; 1987 a. 27, 339, 368, 398, 399, 402; 1987 a. 403 ss. 25, 256; 1987 a. 413; 1989 a. 31, 53; 1989 a. 56 ss. 13, 259; 1989 a. 102; 1989 a. 107 ss. 11, 13, 17 to 37; 1989 a. 120, 122, 173, 199, 202, 318, 336, 359; 1991 a. 6, 39, 189, 269, 275, 290, 315, 322; 1993 a. 16, 27, 76, 98, 99, 168, 183, 377, 437, 445, 446, 450, 469, 479, 490, 491; 1995 a. 27 ss. 806 to 961r, 9126 (19); 1995 a. 77, 98; 1995 a. 216 ss. 26, 27; 1995 a. 266, 276, 289, 303, 404, 417, 440, 448, 464, 468; 1997 a. 27 ss. 211, 214, 216, 217, 527 to 609; 1997 a. 35, 105, 231, 237, 280, 293.

5 **SECTION 2.** 46.03 (1) of the statutes is amended to read:

6 46.03 (1) INSTITUTIONS GOVERNED. Maintain and govern the Mendota and the
7 Winnebago mental health institutes; the secure mental health facility established
8 under s. 46.055; and the centers for the developmentally disabled.

History: 1971 c. 270 s. 104; 1973 c. 90; 1973 c. 284 ss. 2, 32; 1973 c. 333; 1975 c. 39, 82; 1975 c. 189 s. 99 (1), (2); 1975 c. 224, 377, 413, 422; 1977 c. 29, 193; 1977 c. 196 s. 131; 1977 c. 203, 205, 271, 354; 1977 c. 418 ss. 287 to 289m, 924 (18) (d); 1977 c. 447, 449; 1979 c. 32 s. 92 (1); 1979 c. 34; 1979 c. 175 s. 46; 1979 c. 221, 331, 352; 1981 c. 20, 81; 1981 c. 314 s. 144; 1981 c. 390; 1983 a. 27, 193; 1983 a. 435 s. 7; 1983 a. 447, 474; 1983 a. 532 s. 36; 1985 a. 19, 29, 120, 176, 234, 285, 328, 331; 1985 a. 332 s. 251 (3); 1987 a. 3, 5, 27, 161, 186, 307, 339, 385, 399, 403, 413; 1989 a. 31 ss. 938m to 951, 2909g, 2909i; 1989 a. 56, 105, 107, 122; 1991 a. 39, 277; 1993 a. 16 ss. 851 to 859, 3077a; 1993 a. 98, 377, 385, 446, 481; 1995 a. 27 ss. 2026m to 2038b, 9126 (19); 1995 a. 77, 201, 225, 352, 370, 404, 448; 1997 a. 3, 27, 111, 283, 292.

9 **SECTION 3.** 46.055 of the statutes is created to read:

10 **46.055 Secure mental health facility for sexually violent persons.** The
11 department shall establish and operate a secure mental health facility for the
12 detention, evaluation and institutional care of persons under ch. 980.

INSERT 4-22:

14 **SECTION 4.** 980.01 (1) of the statutes is renumbered 980.01 (1s).

15 **SECTION 5.** 980.01 (1L) and (1m) of the statutes are created to read:

16 980.01 (1L) "Daily cost of institutional care" means the daily cost of providing
17 for all necessary programs and facilities for the control, care and treatment of a
18 person on supervised release under this chapter.

19 (1m) "Daily cost of supervised release" means the daily cost of programs and
20 facilities for the control, care and treatment of a person placed at a secure mental
21 health unit or facility specified in s. 980.065.

1 **SECTION 6.** 980.06 (2) (a) of the statutes is amended to read:

2 980.06 (2) (a) The court shall enter an initial commitment order under this
3 section pursuant to a hearing held as soon as practicable after the judgment that the
4 person who is the subject of a petition under s. 980.02 is a sexually violent person is
5 entered. If the court lacks sufficient information to make the determination required
6 by par. (b) immediately after trial, it may adjourn the hearing and order the
7 department to ~~conduct~~ submit a written report as to whether the criterion under par.
8 (b) for institutional care is met. For purposes of preparing the report the department
9 shall conduct a predisposition investigation using the procedure in s. 972.15 or a
10 supplementary mental examination, ~~or both, to assist the court in framing the~~
11 ~~commitment order. A supplementary mental examination under this paragraph~~
12 ~~shall be conducted~~ in accordance with s. 971.17 (2) (b) to (f), or both, and may conduct
13 any other investigation or inquiry that it considers appropriate to make the
14 determinations required in the report. The report shall be based on the results of any
15 predisposition investigation, supplementary mental examination and other
16 investigation or inquiry conducted by the department.

History: 1993 a. 479; 1995 a. 270, 497 a. 27, 275, 284; s. 13.93 (2) (c).

17 **INSERT 6-4:**

18 **SECTION 7.** 980.06 (2) (bt) of the statutes is created to read:

19 980.06 (2) (bt) If a court determines under par. (b) that it is substantially
20 probable that the person will engage in acts of sexual violence unless he or she
21 resides in a facility with a level of security comparable to that of a secure mental
22 health unit or facility specified in s. 980.065, but the person [✓] establishes that it is
23 likely that the daily cost of supervised release under a plan providing for the person
24 to reside in a secure facility would not exceed the daily cost of institutional care for

1 the person, then the court may withhold final determination of the commitment
2 order and order the department to prepare a supervised release plan under par. (c).
3 After preparation of a supervised release plan ordered under this paragraph, the
4 proceedings shall continue as provided under pars. (cm), (cr), (cs) and (ct), as
5 appropriate.

6 **INSERT 6-14:**

7 designate a county department to prepare the plan, order the county department to
8 prepare the plan and place the person on supervised release in that county, except
9 that the court may not so designate the county department in any county where there
10 is a facility in which persons committed to institutional care under this chapter are
11 placed, unless that county is also the person's county of residence.

12 **INSERT 6-24:**

13 If the plan was ordered to be prepared under par. (bt), the plan shall include
14 information concerning the daily cost of supervised release under the plan and the
15 daily cost of institutional care for the person.

16 **INSERT 8-17:**

17 (c) If the court disapproves a supervised release plan under par. (cr), it shall
18 order the department and the county department that prepared the plan to revise
19 the plan and present it to the court by a date specified by the court. The court shall
20 hold a hearing on the revised plan and make a determination as to whether to
21 approve or disapprove the plan as provided under pars. (cm) 2. and (cr).

22 (ct) If a supervised release plan that satisfies the criteria under par. (cr) was
23 ordered to be prepared under par. (bt), the court may ~~approve~~ approve the plan and order
24 the person placed on supervised release under par. (cr) only if, based on the
25 provisions of the plan and on the evidence presented at the hearing under par. (cm)

1 2., the court determines that the daily cost of supervised release would not exceed
2 the daily cost of institutional care. If the daily cost of supervised release would
3 exceed the daily cost of institutional care, the court shall disapprove the supervised
4 release plan and order the person to be placed in institutional care. The court may
5 not order a supervised released plan disapproved under this paragraph to be revised
6 under par. (cs).

7 (cu) If the court approves a supervised release plan under par. (cr), the court
8 shall send a copy of its decision and order approving the plan to the chief executive
9 officers who received notice of the hearing on the plan under par. (cm) 2.

10 **INSERT 10-4.** ✓

11 **SECTION 8.** 980.065 (1m) of the statutes is amended to read:

12 980.065 (1m) The department ~~may~~ shall place a person committed to
13 institutional care under s. 980.06 (2) (b) or (ct) at ~~a mental health unit or facility,~~
14 ~~including a~~ the secure mental health ~~unit or facility at~~ established under s. 46.055,
15 the Wisconsin resource center established under s. 46.056 or a secure mental health
16 unit or facility provided by the department of corrections under sub. (2).

17 History: 1993 a. 479; 1997 a. 27.

17 **SECTION 9.** 980.065 (2) of the statutes is amended to read:

18 980.065 (2) The department may contract with the department of corrections
19 for the provision of a secure mental health unit or facility for persons committed to
20 institutional care under s. 980.06 (2) (b) or (ct). The department shall operate a
21 secure mental health unit or facility provided by the department of corrections under
22 this subsection and shall promulgate rules governing the custody and discipline of

1 persons placed by the department in the secure mental health unit or facility
2 provided by the department of corrections under this subsection.

3 History: 1993 s. 479, 1997 a. 27.

INSERT 12-05: ✓

4 SECTION 10. 980.08 (4) (c) of the statutes is created to read:

5 980.08 (4) (c) If a court determines under par. (a) that the person is still a
6 sexually violent person and that it is substantially probable that the person will
7 engage in acts of sexual violence unless he or she resides in a facility with a level of
8 security comparable to that of a secure mental health unit or facility specified in s.
9 980.065, but the person establishes that it is likely that the daily cost of supervised
10 release under a plan providing for the person to reside in a secure facility would not
11 exceed the daily cost of institutional care for the person, then the court may withhold
12 final determination of the person's petition and order the department to prepare a
13 supervised release plan under sub. (5) (a). After preparation of a supervised release
14 plan ordered under this paragraph, the proceedings shall continue as provided under
15 sub. (5) (c), (d), (de) and (dm), as appropriate. ✓ ✓ ✓ ✓

16 **INSERT 12-19:** ✓

17 designate a county department to prepare the plan, order the county department to
18 prepare the plan and place the person on supervised release in that county, except
19 that the court may not so designate the county department in any county where there
20 is a facility in which persons committed to institutional care under this chapter are
21 placed, unless that county is also the person's county of residence.

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INSERT 13-5: ✓

If the plan was ordered to be prepared under sub. (4) (c), the plan shall include information concerning the daily cost of supervised release under the plan and the daily cost of institutional care for the person.

INSERT 14-19: ✓

(de) If the court disapproves a supervised release plan under par. (d), it shall order the department and the county department that prepared the plan to revise the plan and present it to the court by a date specified by the court. The court shall hold a hearing on the revised plan and make a determination as to whether to approve or disapprove the plan as provided under pars. (c) 2. ✓ and (d). ✓

(dm) If a supervised release plan that satisfies the criteria under par. (d) was ordered to be prepared under sub. (4) (c), the court may ~~may~~ ✓ approve the plan and order the person placed on supervised release under par. (d) only if, based on the provisions of the plan and on the evidence presented at the hearing under par. (c) 2., the court determines that the daily cost of supervised release would not exceed the daily cost of institutional care. If the daily cost of supervised release would exceed the daily cost of institutional care, the court shall disapprove the supervised release plan and deny the person's petition for supervised release. The court may not order a supervised released plan disapproved under this paragraph to be revised under par. (de).

(ds) If the court approves a supervised release plan under par. (d), the court shall send a copy of its decision and order approving the plan to the chief executive officers who received notice of the hearing on the plan under par. (c) 2.



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-0284/Z

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DOA:.....Jablonsky - Supervised release of sexually violent persons

FOR 1999-01 BUDGET - NOT READY FOR INTRODUCTION

payment for certain examinations
of persons who are subject to
sexually violent person commit-
ment proceedings and

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AN ACT; relating to supervised release of persons committed for treatment
as a sexually violent person.

2

Analysis by the Legislative Reference Bureau

HEALTH AND HUMAN SERVICES

MENTAL ILLNESS AND DEVELOPMENTAL DISABILITIES

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 been convicted of 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.

ANALYSIS
INSERT

When a person is found by a judge or jury to be a sexually violent person, the person must be committed to the custody of DHFS. The court that commits the person must specify whether the person is to be placed in institutional care or on supervised release in the community, and DHFS must arrange for control, care and treatment of the person in the least restrictive manner consistent with the requirements of the person and in accordance with the court's commitment order.

If the court decides to place the person on supervised release, DHFS and the county social services department (county department) of the person's county of residence must prepare a plan for the treatment and services that the person will receive while on supervised release. If the county department of the person's county

under current law

of residence declines to prepare a plan, DHFS must try to find another county department to prepare the plan and arrange for placement of the person in that county. If DHFS is unable to find another county department to prepare the plan, the court must choose a county department to prepare the plan, order that county department to prepare the plan and place the person on supervised release in that county. However, the court may not choose the county department of a county where there is a facility for the detention, evaluation or institutional placement of sexually violent persons unless that county is also the county of residence of the person being placed on supervised release. The court of appeals has held that once a court has ordered a person placed on supervised release, the person must be released and DHFS and the county responsible for preparing the plan must provide or contract for appropriate treatment and services or, if such treatment and services are not available, create them. *State v. Sprosty*, 221 Wis. 2d. 401 (Ct. App. 1998).

This bill makes the following changes relating to supervised release of sexually violent persons:

1. The bill establishes new guidelines for a court's decision concerning whether to place a person on supervised release. Under the bill, a court may not order a person to be placed on supervised release if the court finds that it is substantially probable that the person will engage in acts of sexual violence unless the person resides in a facility with a level of security comparable to that of a secure mental health unit or facility.

However, even if it makes this finding, the court may withhold its decision concerning placement in institutional care or on supervised released and order DHFS and the appropriate county department to prepare a plan for supervised release for the person. The court may withhold its decision and order a plan prepared only if the person first establishes that it is likely that the daily cost of providing the necessary programs and facilities for control, care and treatment of the person on supervised release would not exceed the daily cost of control, care and treatment of the person at a secure mental health unit or facility.

If the court withholds its decision and orders preparation of a supervised release plan, the court then proceeds to consider whether to approve or disapprove the plan under the new procedure created by the bill (see item 2., below), except that, in addition to the criteria for approving the plan under the new procedure, the court may approve the plan only if the daily cost of supervised release does not exceed the daily cost of institutional care at a secure mental health unit or facility. If the daily cost of supervised release exceeds the daily cost of institutional care at a secure mental health unit or facility, the court may not place the person on supervised release.

2. The bill creates a new procedure that a court must use to approve or disapprove a supervised release plan. Under the bill, the court must hold a hearing on a proposed supervised release plan within 30 days after the plan is presented to the court. Based on evidence provided at the hearing, the court must approve the plan if it determines that the plan provides adequate treatment and services to the person and adequate protection to the community. Likewise, the court must disapprove the plan if it determines that the plan does not provide adequate

treatment and services to the person and adequate protection to the community. If the court disapproves the plan, DHFS and the county department must revise the plan and present it to the court again. If the court approves the plan the court must also order the person placed on supervised release in the county that prepared the plan. Finally, the bill requires DHFS and the county department that prepared the plan to implement the plan and allows DHFS to ask the court for any orders that are necessary to ensure implementation of the plan.

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:

1 **SECTION 1.** 20.435 (2) (bj) of the statutes is amended to read:

2 20.435 (2) (bj) *Conditional and supervised release treatment and services.*
3 Biennially, the amounts in the schedule for payment by the department of costs for
4 treatment and services for persons released under s. 971.17 (3) (d) or (4) (e), 980.06
5 (2) (e) (~~cr~~) or 980.08 (5) (d), for which the department has contracted with county
6 departments under s. 51.42 (3) (aw) 1. d., with other public agencies or with private
7 agencies to provide the treatment and services.

8 **SECTION 2.** 20.435 (2) (bm) of the statutes is amended to read:

9 20.435 (2) (bm) *Secure mental health units or facilities.* The amounts in the
10 schedule for the general program operations of secure mental health units or
11 facilities under s. 980.065 for persons committed to institutional care under s. 980.06
12 (2) (b) ~~or (ct)~~ and placed in a secure mental health unit or facility.

13 **SECTION 3.** 46.03 (1) of the statutes is amended to read:

14 46.03 (1) INSTITUTIONS GOVERNED. Maintain and govern the Mendota and the
15 Winnebago mental health institutes; the secure mental health facility established
16 under s. 46.055; and the centers for the developmentally disabled.

17 **SECTION 4.** 46.055 of the statutes is created to read:

1 **46.055 Secure mental health facility for sexually violent persons.** The
2 department shall establish and operate a secure mental health facility for the
3 detention, evaluation and institutional care of persons under ch. 980.

4 **SECTION 5.** 46.10 (2) of the statutes is amended to read:

5 **46.10 (2)** Except as provided in subs. (2m) and (14) (b) and (c), any person,
6 including but not limited to a person admitted, committed or placed under s. 975.01,
7 1977 stats., s. 975.02, 1977 stats., and s. 975.17, 1977 stats., and ss. 51.10, 51.13,
8 51.15, 51.20, 51.35 (3), 51.37 (5), 51.45 (10), (11), (12) and (13), 55.05, 55.06, 971.14
9 (2) and (5), 971.17 (1), 975.06 and 980.06, receiving care, maintenance, services and
10 supplies provided by any institution in this state including University of Wisconsin
11 Hospitals and Clinics, in which the state is chargeable with all or part of the person's
12 care, maintenance, services and supplies, any person receiving care and services
13 from a county department established under s. 51.42 or 51.437 or from a facility
14 established under s. 49.73, and any person receiving treatment and services from a
15 public or private agency under s. 971.17 (3) (d) or (4) (e), 980.06 (2) (e) (cv) or 980.08
16 (5) (e) and the person's property and estate, including the homestead, and the spouse
17 of the person, and the spouse's property and estate, including the homestead, and,
18 in the case of a minor child, the parents of the person, and their property and estates,
19 including their homestead, and, in the case of a foreign child described in s. 48.839
20 (1) who became dependent on public funds for his or her primary support before an
21 order granting his or her adoption, the resident of this state appointed guardian of
22 the child by a foreign court who brought the child into this state for the purpose of
23 adoption, and his or her property and estate, including his or her homestead, shall
24 be liable for the cost of the care, maintenance, services and supplies in accordance
25 with the fee schedule established by the department under s. 46.03 (18). If a spouse,

1 widow or minor, or an incapacitated person may be lawfully dependent upon the
2 property for their support, the court shall release all or such part of the property and
3 estate from the charges that may be necessary to provide for those persons. The
4 department shall make every reasonable effort to notify the liable persons as soon
5 as possible after the beginning of the maintenance, but the notice or the receipt
6 thereof is not a condition of liability.

7 **SECTION 6.** 51.42 (3) (aw) 1. d. of the statutes is amended to read:

8 51.42 (3) (aw) 1. d. Provide treatment and services that are specified in a
9 conditional release plan approved by a court for a person who is a county resident and
10 is conditionally released under s. 971.17 (3) or (4) or that are specified in a supervised
11 release plan approved by a court under s. 980.06 (2) ~~(e)~~ (cr) or 980.08 (5) (d). If the
12 county department provides treatment and services under this subdivision, the
13 department of health and family services shall, from the appropriation under s.
14 20.435 (2) (bj), pay the county department for the costs of the treatment and services.

15 **SECTION 7.** 980.01 (1) of the statutes is renumbered 980.01 (1s).

16 **SECTION 8.** 980.01 (1L) and (1m) of the statutes are created to read:

17 980.01 (1L) "Daily cost of institutional care" means the daily cost of programs
18 and facilities for the control, care and treatment of a person placed at a secure mental
19 health unit or facility specified in s. 980.065.

20 (1m) "Daily cost of supervised release" means the daily cost of providing for all
21 necessary programs and facilities for the control, care and treatment of a person on
22 supervised release under this chapter.

INS
5-22

23 **SECTION 9.** 980.06 (2) (a) of the statutes is amended to read:

24 980.06 (2) (a) The court shall enter an initial commitment order under this
25 section pursuant to a hearing held as soon as practicable after the judgment that the

1 person who is the subject of a petition under s. 980.02 is a sexually violent person is
2 entered. If the court lacks sufficient information to make the determination required
3 by par. (b) immediately after trial, it may adjourn the hearing and order the
4 department to ~~conduct~~ submit a written report as to whether the criterion under par.
5 (b) for institutional care is met. For purposes of preparing the report the department
6 shall conduct a predisposition investigation using the procedure in s. 972.15 or a
7 supplementary mental examination, ~~or both, to assist the court in framing the~~
8 ~~commitment order. A supplementary mental examination under this paragraph~~
9 ~~shall be conducted~~ in accordance with s. 971.17 (2) (b) to (f), ~~or both, and may conduct~~
10 any other investigation or inquiry that it considers appropriate to make the
11 determinations required in the report. The report shall be based on the results of any
12 predisposition investigation, supplementary mental examination and other
13 investigation or inquiry conducted by the department.

14 **SECTION 10.** 980.06 (2) (b) of the statutes is amended to read:

15 980.06 (2) (b) An order for commitment under this section shall specify either
16 institutional care or supervised release. Except as provided in par. (bt), the court
17 shall order institutional care if it finds that it is substantially probable that the
18 person will engage in acts of sexual violence unless the person resides in a facility
19 with a level of security comparable to that of a secure mental health unit or facility
20 specified in s. 980.065.

21 (bm) In determining under par. (b) whether commitment shall be for
22 institutional care or for supervised release, the court may consider, without
23 limitation because of enumeration, the nature and circumstances of the behavior
24 that was the basis of the allegation in the petition under s. 980.02 (2) (a), the person's
25 mental history and present mental condition, where the person will live, how the

1 person will support himself or herself, and what arrangements are available to
2 ensure that the person has access to and will participate in necessary treatment,
3 including pharmacological treatment using an antiandrogen or the chemical
4 equivalent of an antiandrogen if the person is a serious child sex offender. In deciding
5 whether to order supervised release of person who is a serious child sex offender, the
6 court may not consider, as a factor in making its decision, that the person is a proper
7 subject for pharmacological treatment using an antiandrogen or the chemical
8 equivalent of an antiandrogen or that the person is willing to participate in
9 pharmacological treatment using an antiandrogen or the chemical equivalent of an
10 antiandrogen. ~~The department shall arrange for control, care and treatment of the
11 person in the least restrictive manner consistent with the requirements of the person
12 and in accordance with the court's commitment order.~~

13 **SECTION 11.** 980.06 (2) (bt) of the statutes is created to read:

14 980.06 (2) (bt) If a court determines under par. (b) that it is substantially
15 probable that the person will engage in acts of sexual violence unless he or she
16 resides in a facility with a level of security comparable to that of a secure mental
17 health unit or facility specified in s. 980.065, but the person establishes that it is
18 likely that the daily cost of supervised release under a plan providing for the person
19 to reside in a secure facility would not exceed the daily cost of institutional care for
20 the person, then the court may withhold final determination of the commitment
21 order and order the department to prepare a supervised release plan under par. (c).
22 After preparation of a supervised release plan ordered under this paragraph, the
23 proceedings shall continue as provided under pars. (cm), (cr), (cs) and (ct), as
24 appropriate.

25 **SECTION 12.** 980.06 (2) (c) of the statutes is amended to read:

1 980.06 (2) (c) If the court finds under par. (b) that the person is appropriate for
2 supervised release or orders preparation of a supervised release plan under par. (bt),
3 the court shall notify the department. The department and the county department
4 under s. 51.42 in the county of residence of the person, as determined under s.
5 980.105, shall prepare a plan that identifies the treatment and services, if any, that
6 the person will receive in the community. If the county department of the person's
7 county of residence declines to prepare a plan, the department may arrange for
8 another county to prepare the plan if that county agrees to prepare the plan and if
9 the person will be living in that county. If the department is unable to arrange for
10 another county to prepare a plan, the court shall designate a county department to
11 prepare the plan, order the county department to prepare the plan and place the
12 person on supervised release in that county, except that the court may not so
13 designate the county department in any county where there is a facility in which
14 persons committed to institutional care under this chapter are placed, unless that
15 county is also the person's county of residence.

16 ~~(cg) The plan prepared under par. (c) shall address the person's need, if any, for~~
17 ~~supervision, counseling, medication, community support services, residential~~
18 ~~services, vocational services, and alcohol or other drug abuse treatment. If the~~
19 ~~person is a serious child sex offender, the plan shall address the person's need for~~
20 ~~pharmacological treatment using an antiandrogen or the chemical equivalent of an~~
21 ~~antiandrogen. The department may contract with a county department, under s.~~
22 ~~51.42 (3) (aw) 1. d., with another public agency or with a private agency to provide~~
23 ~~the treatment and services identified in the plan. The plan shall specify who will be~~
24 ~~responsible for providing the treatment and services identified in the plan. If the~~
25 ~~plan was ordered to be prepared under par. (bt), the plan shall include information~~

1 concerning the daily cost of supervised release under the plan and the daily cost of
2 institutional care for the person.

3 (cm) 2. The plan prepared under par. (c) shall be presented to the court for its
4 approval within 21 days after the court finding finds that the person is appropriate
5 for supervised release under par. (b) or orders preparation of the plan under par. (bt),
6 unless the department, county department and person to be released request
7 additional time to develop the plan. If the county department of the person's county
8 of residence declines to prepare a plan, the department may arrange for another
9 county to prepare the plan if that county agrees to prepare the plan and if the person
10 will be living in that county. If the department is unable to arrange for another
11 county to prepare a plan, the court shall designate a county department to prepare
12 the plan, order the county department to prepare the plan and place the person on
13 supervised release in that county, except that the court may not so designate the
14 county department in any county where there is a facility in which persons are
15 detained or evaluated under s. 980.04 or in which persons committed to institutional
16 care under this chapter are placed, unless that county is also the person's county of
17 residence. The court shall hold a hearing on the plan within 30 days after the plan
18 is presented to the court, unless the department, county department and person to
19 be released agree to a later hearing date. At least 10 days before the hearing under
20 this subdivision, the court shall give written notice of the hearing to the person to be
21 released, the district attorney or department of justice, whichever is applicable, the
22 department, the county department that prepared the plan, the chief executive
23 officer of the county in which the person would reside under the plan and the chief
24 executive officer of the city, village or town in which the person would reside under
25 the plan. The person, the district attorney or the attorney general, whichever is

1 applicable, and any chief executive officer who receives notice of the hearing, or the
2 chief executive officer's designee, may present evidence at the hearing. The county
3 department that prepared the plan and the department may, and upon request of the
4 court shall, present evidence at the hearing.

5 **SECTION 13.** 980.06 (2) (cm) 1. of the statutes is created to read:

6 980.06 (2) (cm) 1. In this paragraph, "chief executive officer" means a mayor,
7 city manager, village president, town chairperson, county executive or chairperson
8 of the county board of supervisors.

9 **SECTION 14.** 980.06 (2) (cr), (cs), (ct), (cu) and (cv) of the statutes are created to
10 read:

11 980.06 (2) (cr) Based on the provisions of the plan and on the evidence
12 presented at the hearing under par. (cm) 2., the court shall determine whether the
13 plan provides adequate treatment and services to the person and adequate
14 protection to the community. If the court finds that the plan does not provide
15 adequate treatment and services to the person or adequate protection to the
16 community, the court shall issue a written decision and order disapproving the plan
17 and shall proceed under par. (cs). If the court finds that the plan provides either
18 adequate treatment and services to the person or adequate protection to the
19 community, the court shall, except as provided in par. (ct), issue a written decision
20 and order approving the plan and placing the person on supervised release in the
21 county that prepared the plan.

22 (cs) If the court disapproves a supervised release plan under par. (cr), it shall
23 order the department and the county department that prepared the plan to revise
24 the plan and present it to the court by a date specified by the court. The court shall

1 hold a hearing on the revised plan and make a determination as to whether to
2 approve or disapprove the plan as provided under pars. (cm) 2. and (cr).

3 (ct) If a supervised release plan that satisfies the criteria under par. (cr) was
4 ordered to be prepared under par. (bt), the court may approve the plan and order the
5 person placed on supervised release under par. (cr) only if, based on the provisions
6 of the plan and on the evidence presented at the hearing under par. (cm) 2., the court
7 determines that the daily cost of supervised release would not exceed the daily cost
8 of institutional care. If the daily cost of supervised release would exceed the daily
9 cost of institutional care, the court shall disapprove the supervised release plan and
10 order the person to be placed in institutional care. The court may not order a
11 supervised released plan disapproved under this paragraph to be revised under par.
12 (cs).

13 (cu) If the court approves a supervised release plan under par. (cr), the court
14 shall send a copy of its decision and order approving the plan to the chief executive
15 officers who received notice of the hearing on the plan under par. (cm) 2.

16 (cv) The county department that prepared the plan and the department shall
17 implement a plan approved by the court under par. (cr). In implementing the plan,
18 the department may contract with a county department, under s. 51.42 (3) (aw) 1.
19 d., with another public agency or with a private agency to provide the treatment and
20 services identified in the plan. The department may request the court to make such
21 orders as are necessary to ensure implementation of the plan.

22 **SECTION 15.** 980.06 (2) (d) of the statutes is amended to read:

23 980.06 (2) (d) An order for supervised release places the person in the custody
24 and control of the department. The department shall arrange for control, care and
25 treatment of the person in the least restrictive manner consistent with the

1 requirements of the person and in accordance with the plan for supervised release
2 approved by the court under par. (cr) or s. 980.08 (5) (d), whichever is applicable. A
3 person on supervised release is subject to the conditions set by the court and to the
4 rules of the department. Before a person is placed on supervised release by the court
5 under this section, the court shall so notify the municipal police department and
6 county sheriff for the municipality and county in which the person will be residing.
7 The notification requirement under this paragraph does not apply if a municipal
8 police department or county sheriff submits to the court a written statement waiving
9 the right to be notified. If the department alleges that a released person has violated
10 any condition or rule, or that the safety of others requires that supervised release be
11 revoked, he or she may be taken into custody under the rules of the department. The
12 department shall submit a statement showing probable cause of the detention and
13 a petition to revoke the order for supervised release to the committing court and the
14 regional office of the state public defender responsible for handling cases in the
15 county where the committing court is located within 48 hours after the detention.
16 The court shall hear the petition within 30 days, unless the hearing or time deadline
17 is waived by the detained person. Pending the revocation hearing, the department
18 may detain the person in a jail or in a hospital, center or facility specified by s. 51.15
19 (2). The state has the burden of proving by clear and convincing evidence that any
20 rule or condition of release has been violated, or that the safety of others requires that
21 supervised release be revoked. If the court determines after hearing that any rule
22 or condition of release has been violated, or that the safety of others requires that
23 supervised release be revoked, it may revoke the order for supervised release and
24 order that the released person be placed in an appropriate institution until the

1 person is discharged from the commitment under s. 980.09 or until again placed on
2 supervised release under s. 980.08.

3 SECTION 16. 980.065 (1m) of the statutes is amended to read:

4 980.065 (1m) The department ~~may~~ shall place a person committed to
5 institutional care under s. 980.06 (2) (b) or (ct) at ~~a mental health unit or facility,~~
6 ~~including a~~ the secure mental health unit or facility at established under s. 46.055,
7 the Wisconsin resource center established under s. 46.056 or a secure mental health
8 unit or facility provided by the department of corrections under sub. (2).

9 SECTION 17. 980.065 (2) of the statutes is amended to read:

10 980.065 (2) The department may contract with the department of corrections
11 for the provision of a secure mental health unit or facility for persons committed to
12 institutional care under s. 980.06 (2) (b) or (ct). The department shall operate a
13 secure mental health unit or facility provided by the department of corrections under
14 this subsection and shall promulgate rules governing the custody and discipline of
15 persons placed by the department in the secure mental health unit or facility
16 provided by the department of corrections under this subsection.

17 SECTION 18. 980.07 (1) of the statutes is amended to read:

18 980.07 (1) If a person has been committed under s. 980.06 and has not been
19 discharged under s. 980.09, the department shall conduct an examination of his or
20 her mental condition within 6 months after an initial commitment under s. 980.06
21 and again thereafter at least once each 12 months for the purpose of determining
22 whether the person has made sufficient progress ~~to be entitled to transfer to a less~~
23 ~~restrictive facility, to~~ for the court to consider whether the person should be placed ✓
24 on supervised release or to discharge discharged. At the time of a reexamination
under this section, the person who has been committed may retain or, [↓]if he or she is [↓]

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1 indigent and so requests, ^{seek to have} the court may appoint a qualified expert or a professional
2 person to examine him or her. an examiner as provided under
s. 980.03 (4)

✓

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

4 980.08 (3) Within 20 days after receipt of the petition, the court shall appoint
5 one or more examiners having the specialized knowledge determined by the court to
6 be appropriate, who shall examine the person and furnish a written report of the
7 examination to the court within 30 days after appointment. The examiners shall
8 have reasonable access to the person for purposes of examination and to the person's
9 past and present treatment records, as defined in s. 51.30 (1) (b), and patient health
10 care records, as provided under s. 146.82 (2) (c). If any such examiner believes that
11 the person is appropriate for supervised release under the criterion specified in sub.

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12 (4) (a), the examiner shall report on the type of treatment and services that the
13 person may need while in the community on supervised release.

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14 SECTION 20. 980.08 (4) of the statutes is renumbered 980.08 (4) (a) and
15 amended to read:

16 980.08 (4) (a) The court, without a jury, shall hear the petition within 30 days
17 after the report of the court-appointed examiner is filed with the court, unless the
18 petitioner waives this time limit. Expenses of proceedings under this subsection
19 shall be paid as provided under s. 51.20 (18) ^{(b), (c) and (d)}. The court shall grant the petition unless
20 the state proves by clear and convincing evidence that the person is still a sexually
21 violent persons and that it is still substantially probable that the person will engage
22 in acts of sexual violence if the person is ~~not continued in institutional care~~ does not
23 reside in a facility with a level of security comparable to a secure mental health unit
24 or facility under s. 980.065.

✓

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

15 **SECTION 21.** 980.08 (4) (c) of the statutes is created to read:

16 980.08 (4) (c) If a court determines under par. (a) that the person is still a
17 sexually violent person and that it is substantially probable that the person will
18 engage in acts of sexual violence unless he or she resides in a facility with a level of
19 security comparable to that of a secure mental health unit or facility specified in s.
20 980.065, but the person establishes that it is likely that the daily cost of supervised
21 release under a plan providing for the person to reside in a secure facility would not
22 exceed the daily cost of institutional care for the person, then the court may withhold
23 final determination of the person's petition and order the department to prepare a
24 supervised release plan under sub. (5) (a). After preparation of a supervised release

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1 plan ordered under this paragraph, the proceedings shall continue as provided under
2 sub. (5) (c), (d), (de) and (dm), as appropriate.

3 **SECTION 22.** 980.08 (5) of the statutes is renumbered 980.08 (5) (a) and
4 amended to read:

5 980.08 (5) (a) If the court finds under sub. (4)(a) that the person is appropriate
6 for supervised release or orders preparation of a supervised release plan under sub.
7 (4) (c), the court shall notify the department. The department and the county
8 department under s. 51.42 in the county of residence of the person, as determined
9 under s. 980.105, shall prepare a plan that identifies the treatment and services, if
10 any, that the person will receive in the community. If the county department of the
11 person's county of residence declines to prepare a plan, the department may arrange
12 for another county to prepare the plan if that county agrees to prepare the plan and
13 if the person will be living in that county. If the department is unable to arrange for
14 another county to prepare a plan, the court shall designate a county department to
15 prepare the plan, order the county department to prepare the plan and place the
16 person on supervised release in that county, except that the court may not so
17 designate the county department in any county where there is a facility in which
18 persons committed to institutional care under this chapter are placed, unless that
19 county is also the person's county of residence.

20 (b) The plan prepared under par. (a) shall address the person's need, if any, for
21 supervision, counseling, medication, community support services, residential
22 services, vocational services, and alcohol or other drug abuse treatment. If the
23 person is a serious child sex offender, the plan shall address the person's need for
24 pharmacological treatment using an antiandrogen or the chemical equivalent of an
25 antiandrogen. ~~The department may contract with a county department, under s.~~

1 ~~51.42 (3) (aw) 1. d., with another public agency or with a private agency to provide~~
2 ~~the treatment and services identified in the plan. The plan shall specify who will be~~
3 ~~responsible for providing the treatment and services identified in the plan. If the~~
4 ~~plan was ordered to be prepared under sub. (4) (c), the plan shall include information~~
5 ~~concerning the daily cost of supervised release under the plan and the daily cost of~~
6 ~~institutional care for the person.~~

7 (c) 2. The plan prepared under par. (a) shall be presented to the court for its
8 ~~approval~~ within 60 days after the court finding finds that the person is appropriate
9 for supervised release under sub. (4) (a) or orders preparation of the plan under sub.
10 ~~(4) (c), unless the department, county department and person to be released request~~
11 ~~additional time to develop the plan. If the county department of the person's county~~
12 ~~of residence declines to prepare a plan, the department may arrange for another~~
13 ~~county to prepare the plan if that county agrees to prepare the plan and if the person~~
14 ~~will be living in that county. If the department is unable to arrange for another~~
15 ~~county to prepare a plan, the court shall designate a county department to prepare~~
16 ~~the plan, order the county department to prepare the plan and place the person on~~
17 ~~supervised release in that county, except that the court may not so designate the~~
18 ~~county department in any county where there is a facility in which persons~~
19 ~~committed to institutional care under this chapter are placed unless that county is~~
20 ~~also the person's county of residence. The court shall hold a hearing on the plan~~
21 ~~within 30 days after the plan is presented to the court, unless the department, county~~
22 ~~department and person to be released agree to a later hearing date. At least 10 days~~
23 ~~before the hearing under this subdivision, the court shall give written notice of the~~
24 ~~hearing to the person to be released, the district attorney or department of justice,~~
25 ~~whichever is applicable, the department, the county department that prepared the~~

1 plan, the chief executive officer of the county in which the person would reside under
2 the plan and the chief executive officer of the city, village or town in which the person
3 would reside under the plan. The person, the district attorney or the attorney
4 general, whichever is applicable, and any chief executive officer who receives notice
5 of the hearing, or the chief executive officer's designee, may present evidence at the
6 hearing. The county department that prepared the plan and the department may,
7 and upon request of the court shall, present evidence at the hearing.

8 **SECTION 23.** 980.08 (5) (c) 1. of the statutes is created to read:

9 980.08 (5) (c) 1. In this paragraph, "chief executive officer" means a mayor, city
10 manager, village president, town chairperson, county executive or chairperson of the
11 county board of supervisors.

12 **SECTION 24.** 980.08 (5) (d), (de), (dm), (ds) and (e) of the statutes are created
13 to read:

14 980.08 (5) (d) Based on the provisions of the plan and on the evidence presented
15 at the hearing under par. (c) 2., the court shall determine whether the plan provides
16 adequate treatment and services to the person and adequate protection to the
17 community. If the court finds that the plan does not provide either adequate
18 treatment and services to the person or adequate protection to the community, the
19 court shall issue a written decision and order disapproving the plan and shall
20 proceed under par. (de). If the court finds that the plan provides adequate treatment
21 and services to the person and adequate protection to the community, the court shall,
22 except as provided in par. (dm), issue a written decision and order approving the plan
23 and placing the person on supervised release in the county that prepared the plan.

24 (de) If the court disapproves a supervised release plan under par. (d), it shall
25 order the department and the county department that prepared the plan to revise

1 the plan and present it to the court by a date specified by the court. The court shall
2 hold a hearing on the revised plan and make a determination as to whether to
3 approve or disapprove the plan as provided under pars. (c) 2. and (d).

4 (dm) If a supervised release plan that satisfies the criteria under par. (d) was
5 ordered to be prepared under sub. (4) (c), the court may approve the plan and order
6 the person placed on supervised release under par. (d) only if, based on the provisions
7 of the plan and on the evidence presented at the hearing under par. (c) 2., the court
8 determines that the daily cost of supervised release would not exceed the daily cost
9 of institutional care. If the daily cost of supervised release would exceed the daily
10 cost of institutional care, the court shall disapprove the supervised release plan and
11 deny the person's petition for supervised release. The court may not order a
12 supervised released plan disapproved under this paragraph to be revised under par.
13 (de).

14 (ds) If the court approves a supervised release plan under par. (d), the court
15 shall send a copy of its decision and order approving the plan to the chief executive
16 officers who received notice of the hearing on the plan under par. (c) 2.

17 (e) The county department that prepared the plan and the department shall
18 implement a plan approved by the court under par. (d). In implementing the plan,
19 the department may contract with a county department, under s. 51.42 (3) (aw) 1.
20 d., with another public agency or with a private agency to provide the treatment and
21 services identified in the plan. The department may request the court to make such
22 orders as are necessary to ensure implementation of the plan.

23 **SECTION 9323. Initial applicability; health and family services.**

24 (1) SUPERVISED RELEASE AND PERIODIC REEXAMINATION OF SEXUALLY VIOLENT
25 PERSONS.

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1 (a) *Initial commitment orders.* The amendment of sections 980.06 (2) (a), (b),
2 (c) and (d) and 980.065 (1m) of the statutes and the creation of section 980.06 (2) (bt),
3 (cm) 1., (cr), (cs), (ct), (cu) and (cv) of the statutes first apply to initial commitment
4 orders in cases in which judgment is entered under section 980.05 (5) of the statutes
5 on the effective date of this paragraph.

6 (b) *Periodic reexamination.* The treatment of section 980.07 (1) of the statutes
7 first applies to examinations of a sexually violent person that occur on the effective
8 date of this paragraph.

9 (c) *Petitions for supervised release.* The renumbering and amendment of
10 section 980.08 (4) and (5) of the statutes, the amendment of section 980.08 (3) of the
11 statutes and the creation of section 980.08 (4) (c) and (5) (c) 1., (d), (de), (dm), (ds) and
12 (e) of the statutes first apply to petitions for supervised release filed on the effective
13 date of this paragraph.

14 (END)

(with respect to the requirements for an examiner's report)

(with respect to the determination to be made at the time of reexamination)

(with respect to the standard for granting or denying a petition for supervised release)

LRB-0113/1
JEO:kmg:km

DOA:.....Jablonsky - Reexaminations of sexually violent persons
FOR 1999-01 BUDGET - NOT READY FOR INTRODUCTION

ANALYSIS INSERT, p. 1 of 2

1 AN ACT ...; relating to: payment for certain examinations of persons who are
2 subject to sexually violent person commitment proceedings.

Analysis by the Legislative Reference Bureau

HEALTH AND HUMAN SERVICES

MENTAL ILLNESS AND DEVELOPMENTAL DISABILITIES

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 been convicted of 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.

During a sexually violent person commitment proceeding, the person who is the subject of the proceeding may be required to undergo an examination of his or her mental condition. The person may also retain an expert of his or her own choosing to conduct an examination or, if the person is indigent, he or she may request the court to appoint an expert to work on behalf of the person. The county in which the proceeding is taking place pays for an expert appointed by the court for the person.

Once a person has been committed to DHFS as a sexually violent person, he or she must periodically undergo a reexamination of his or her mental condition. In addition, if a person who has been committed to DHFS as a sexually violent person files a petition seeking supervised release into the community, the court must

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ANALYSIS INSERT, p. 2 of 2 ✓

appoint an expert to conduct an examination of the person's mental condition. Whenever a person is required to undergo an examination for purposes of a periodic reexamination or as part of a proceeding in which the person is seeking supervised release into the community, the person may retain an expert of his or her own choosing to conduct an examination or, if he or she is indigent, may request the court to appoint an expert. It is not clear under current law whether DHFS or the applicable county pays for an expert appointed for purposes of a periodic reexamination or a proceeding for supervised release into the community.

This bill clarifies that whenever a court appoints an expert for a sexually violent person as part of a periodic reexamination of the person, the county in which that court sits must pay for the costs of the appointed expert. The bill also clarifies that whenever a court appoints an expert for a sexually violent person as part of a proceeding for supervised release into the community, the county in which that court sits must pay for the costs of the appointed expert.

~~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:

SECTION 1. 980.03 (4) of the statutes is amended to read:

980.03 (4) Whenever ~~the~~ a person who is the subject of ~~the~~ a petition filed under s. 980.02 or who has been committed under s. 980.06 is required to submit to an examination under this chapter, he or she may retain experts or professional persons to perform an examination. If the person retains a qualified expert or professional person of his or her own choice to conduct an examination, the examiner shall have reasonable access to the person for the purpose of the examination, as well as to the person's past and present treatment records, as defined in s. 51.30 (1) (b), and patient health care records as provided under s. 146.82 (2) (c). If the person is indigent, the court shall, upon the person's request, appoint a qualified and available expert or professional person to perform an examination and participate in the trial or other proceeding on the person's behalf. Upon the order of the circuit court, the county shall pay, as part of the costs of the action, the costs of a court-appointed an expert

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appoint an expert to conduct an examination of the person's mental condition. Whenever a person is required to undergo an examination for purposes of a periodic reexamination or as part of a proceeding in which the person is seeking supervised release into the community, the person may retain an expert of his or her own choosing to conduct an examination or, if he or she is indigent, may request the court to appoint an expert. It is not clear under current law whether DHFS or the applicable county pays for an expert appointed for purposes of a periodic reexamination or a proceeding for supervised release into the community.

This bill clarifies that whenever a court appoints an expert for a sexually violent person as part of a periodic reexamination of the person, the county in which that court sits must pay for the costs of the appointed expert. The bill also clarifies that whenever a court appoints an expert for a sexually violent person as part of a proceeding for supervised release into the community, the county in which that court sits must pay for the costs of the appointed expert.

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:

1 SECTION 1. 980.03 (4) of the statutes is amended to read:
2 980.03 (4) Whenever the a person who is the subject of the a petition filed under
3 s. 980.02 or who has been committed under s. 980.06 is required to submit to an
4 examination under this chapter, he or she may retain experts or professional persons
5 to perform an examination. If the person retains a qualified expert or professional
6 person of his or her own choice to conduct an examination, the examiner shall have
7 reasonable access to the person for the purpose of the examination, as well as to the
8 person's past and present treatment records, as defined in s. 51.30 (1) (b), and patient
9 health care records as provided under s. 146.82 (2) (c). If the person is indigent, the
10 court shall, upon the person's request, appoint a qualified and available expert or
11 professional person to perform an examination and participate in the trial or other
12 proceeding on the person's behalf. Upon the order of the circuit court, the county
13 shall pay, as part of the costs of the action, the costs of a court-appointed an expert

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1 or professional person appointed by a court under this subsection to perform an
2 examination and participate in the trial or other proceeding on behalf of an indigent
3 person. An expert or professional person appointed to assist an indigent person who
4 is subject to a petition may not be subject to any order by the court for the
5 sequestration of witnesses at any proceeding under this chapter.

6 **SECTION 2.** 980.07 (1) ~~of the statutes is amended to read:~~

7 980.07 (1) If a person has been committed under s. 980.06 and has not been
8 discharged under s. 980.09, the department shall conduct an examination of his or
9 her mental condition within 6 months after an initial commitment under s. 980.06
10 and again thereafter at least once each 12 months for the purpose of determining
11 whether the person has made sufficient progress to be entitled to transfer to a less
12 restrictive facility, to supervised release or to discharge. At the time of a
13 reexamination under this section, the person who has been committed may retain
14 or, ~~if he or she is indigent and so requests,~~ seek to have the court may appoint a
15 ~~qualified expert or a professional person to examine him or her~~ an examiner as
16 provided under s. 980.03 (4).

17 **SECTION 3.** 980.08 (3) ~~of the statutes is amended to read:~~

18 980.08 (3) Within 20 days after receipt of the petition, the court shall appoint
19 one or more examiners having the specialized knowledge determined by the court to
20 be appropriate, who shall examine the person and furnish a written report of the
21 examination to the court within 30 days after appointment. The examiners shall
22 have reasonable access to the person for purposes of examination and to the person's
23 past and present treatment records, as defined in s. 51.30 (1) (b), and patient health
24 care records, as provided under s. 146.82 (2) (c). If any such examiner believes that
25 the person is appropriate for supervised release, the examiner shall report on the

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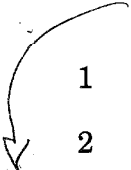
*** NOTE: This is reconciled

S 980.07 (1) ✓ This SECTION has been

affected by drafts with the following

LRB numbers: 0113/1 ✓ and 0284/2 ✓

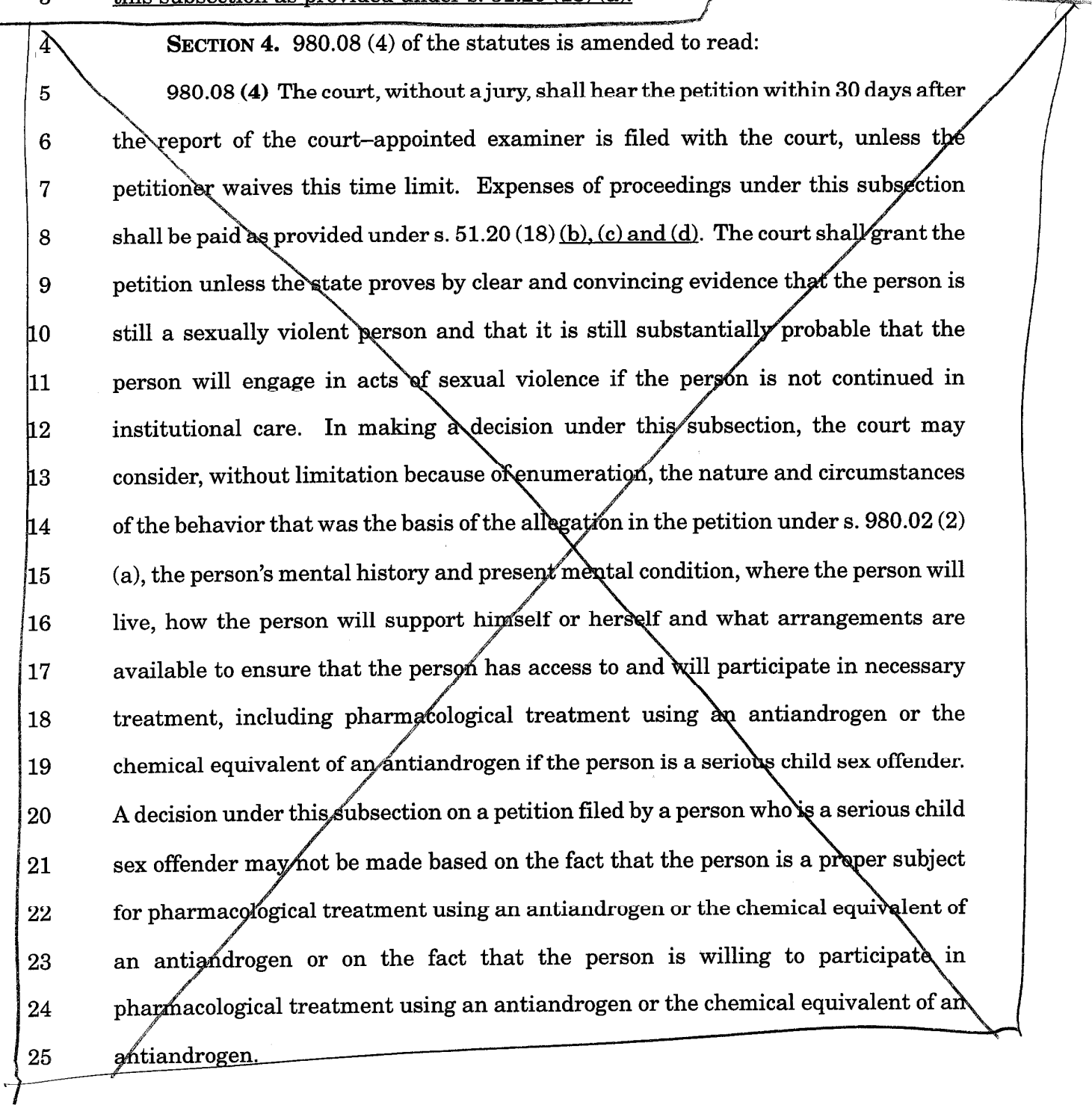
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1 type of treatment and services that the person may need while in the community on
2 supervised release. The county shall pay the costs of an examiner appointed under
3 this subsection as provided under s. 51.20 (18) (a).

4 SECTION 4. 980.08 (4) of the statutes is amended to read:

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



INS 14-14 ✓

*** NOTE: This is reconciled

s. 980.08 (3). ✓ This SECTION has been

affected by drafts with the following

LRB numbers: 0113/1 and 0284/2.

INS 15-14 ✓

*** NOTE: This is reconciled
S. 980.08 (4). This Section has been
affected by drafts with the following
LRB numbers: 0113/1 and 0284/2.

INS 19-22

1 SECTION 5. 980.12 (1) of the statutes is amended to read:

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

6

~~END~~

LRB-0284/3^{on}
JED:Kmg:

D. Note

This draft reconciles LRB-0113/1 and
LRB-0284/2. It replaces LRB-0113/1 in
the compiled bill.

JED

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0284/3dn
JEO:kmg:jf

February 3, 1999

This draft reconciles LRB-0113/1 and LRB-0284/2. It replaces LRB-0113/1 in the compiled bill.

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State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-0284/3
JEO:kmg:jf

DOA:.....Jablonsky – Supervised release of sexually violent persons
FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

1 **AN ACT ...; relating to:** payment for certain examinations of persons who are
2 subject to sexually violent person commitment proceedings and supervised
3 release of persons committed for treatment as a sexually violent person.

Analysis by the Legislative Reference Bureau

HEALTH AND HUMAN SERVICES

MENTAL ILLNESS AND DEVELOPMENTAL DISABILITIES

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 been convicted of 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.

During a sexually violent person commitment proceeding, the person who is the subject of the proceeding may be required to undergo an examination of his or her mental condition. The person may also retain an expert of his or her own choosing to conduct an examination or, if the person is indigent, he or she may request the court to appoint an expert to work on behalf of the person. The county in which the proceeding is taking place pays for an expert appointed by the court for the person.

Once a person has been committed to DHFS as a sexually violent person, he or she must periodically undergo a reexamination of his or her mental condition. In

addition, if a person who has been committed to DHFS as a sexually violent person files a petition seeking supervised release into the community, the court must appoint an expert to conduct an examination of the person's mental condition. Whenever a person is required to undergo an examination for purposes of a periodic reexamination or as part of a proceeding in which the person is seeking supervised release into the community, the person may retain an expert of his or her own choosing to conduct an examination or, if he or she is indigent, may request the court to appoint an expert. It is not clear under current law whether DHFS or the applicable county pays for an expert appointed for purposes of a periodic reexamination or a proceeding for supervised release into the community.

This bill clarifies that whenever a court appoints an expert for a sexually violent person as part of a periodic reexamination of the person, the county in which that court sits must pay for the costs of the appointed expert. The bill also clarifies that whenever a court appoints an expert for a sexually violent person as part of a proceeding for supervised release into the community, the county in which that court sits must pay for the costs of the appointed expert.

When a person is found by a judge or jury to be a sexually violent person under current law, the person must be committed to the custody of DHFS. The court that commits the person must specify whether the person is to be placed in institutional care or on supervised release in the community, and DHFS must arrange for control, care and treatment of the person in the least restrictive manner consistent with the requirements of the person and in accordance with the court's commitment order.

If the court decides to place the person on supervised release, DHFS and the county social services department (county department) of the person's county of residence must prepare a plan for the treatment and services that the person will receive while on supervised release. If the county department of the person's county of residence declines to prepare a plan, DHFS must try to find another county department to prepare the plan and arrange for placement of the person in that county. If DHFS is unable to find another county department to prepare the plan, the court must choose a county department to prepare the plan, order that county department to prepare the plan and place the person on supervised release in that county. However, the court may not choose the county department of a county where there is a facility for the detention, evaluation or institutional placement of sexually violent persons unless that county is also the county of residence of the person being placed on supervised release. The court of appeals has held that once a court has ordered a person placed on supervised release, the person must be released and DHFS and the county responsible for preparing the plan must provide or contract for appropriate treatment and services or, if such treatment and services are not available, create them. *State v. Sprosty*, 221 Wis. 2d. 401 (Ct. App. 1998).

This bill makes the following changes relating to supervised release of sexually violent persons:

1. The bill establishes new guidelines for a court's decision concerning whether to place a person on supervised release. Under the bill, a court may not order a person to be placed on supervised release if the court finds that it is substantially probable that the person will engage in acts of sexual violence unless the person resides in a

facility with a level of security comparable to that of a secure mental health unit or facility.

However, even if it makes this finding, the court may withhold its decision concerning placement in institutional care or on supervised release and order DHFS and the appropriate county department to prepare a plan for supervised release for the person. The court may withhold its decision and order a plan prepared only if the person first establishes that it is likely that the daily cost of providing the necessary programs and facilities for control, care and treatment of the person on supervised release would not exceed the daily cost of control, care and treatment of the person at a secure mental health unit or facility.

If the court withholds its decision and orders preparation of a supervised release plan, the court then proceeds to consider whether to approve or disapprove the plan under the new procedure created by the bill (see item 2., below), except that, in addition to the criteria for approving the plan under the new procedure, the court may approve the plan only if the daily cost of supervised release does not exceed the daily cost of institutional care at a secure mental health unit or facility. If the daily cost of supervised release exceeds the daily cost of institutional care at a secure mental health unit or facility, the court may not place the person on supervised release.

2. The bill creates a new procedure that a court must use to approve or disapprove a supervised release plan. Under the bill, the court must hold a hearing on a proposed supervised release plan within 30 days after the plan is presented to the court. Based on evidence provided at the hearing, the court must approve the plan if it determines that the plan provides adequate treatment and services to the person and adequate protection to the community. Likewise, the court must disapprove the plan if it determines that the plan does not provide adequate treatment and services to the person and adequate protection to the community. If the court disapproves the plan, DHFS and the county department must revise the plan and present it to the court again. If the court approves the plan the court must also order the person placed on supervised release in the county that prepared the plan. Finally, the bill requires DHFS and the county department that prepared the plan to implement the plan and allows DHFS to ask the court for any orders that are necessary to ensure implementation of the plan.

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:

- 1 **SECTION 1.** 20.435 (2) (bj) of the statutes is amended to read:
- 2 20.435 (2) (bj) *Conditional and supervised release treatment and services.*
- 3 Biennially, the amounts in the schedule for payment by the department of costs for

1 treatment and services for persons released under s. 971.17 (3) (d) or (4) (e), 980.06
2 (2) ~~(e)~~ (cr) or 980.08 (5) (d), for which the department has contracted with county
3 departments under s. 51.42 (3) (aw) 1. d., with other public agencies or with private
4 agencies to provide the treatment and services.

5 **SECTION 2.** 20.435 (2) (bm) of the statutes is amended to read:

6 20.435 (2) (bm) *Secure mental health units or facilities.* The amounts in the
7 schedule for the general program operations of secure mental health units or
8 facilities under s. 980.065 for persons committed to institutional care under s. 980.06
9 (2) (b) or (ct) and placed in a secure mental health unit or facility.

10 **SECTION 3.** 46.03 (1) of the statutes is amended to read:

11 46.03 (1) INSTITUTIONS GOVERNED. Maintain and govern the Mendota and the
12 Winnebago mental health institutes; the secure mental health facility established
13 under s. 46.055; and the centers for the developmentally disabled.

14 **SECTION 4.** 46.055 of the statutes is created to read:

15 **46.055 Secure mental health facility for sexually violent persons.** The
16 department shall establish and operate a secure mental health facility for the
17 detention, evaluation and institutional care of persons under ch. 980.

18 **SECTION 5.** 46.10 (2) of the statutes is amended to read:

19 46.10 (2) Except as provided in subs. (2m) and (14) (b) and (c), any person,
20 including but not limited to a person admitted, committed or placed under s. 975.01,
21 1977 stats., s. 975.02, 1977 stats., and s. 975.17, 1977 stats., and ss. 51.10, 51.13,
22 51.15, 51.20, 51.35 (3), 51.37 (5), 51.45 (10), (11), (12) and (13), 55.05, 55.06, 971.14
23 (2) and (5), 971.17 (1), 975.06 and 980.06, receiving care, maintenance, services and
24 supplies provided by any institution in this state including University of Wisconsin
25 Hospitals and Clinics, in which the state is chargeable with all or part of the person's

1 care, maintenance, services and supplies, any person receiving care and services
2 from a county department established under s. 51.42 or 51.437 or from a facility
3 established under s. 49.73, and any person receiving treatment and services from a
4 public or private agency under s. 971.17 (3) (d) or (4) (e), 980.06 (2) (e) (cy) or 980.08
5 (5) (e) and the person's property and estate, including the homestead, and the spouse
6 of the person, and the spouse's property and estate, including the homestead, and,
7 in the case of a minor child, the parents of the person, and their property and estates,
8 including their homestead, and, in the case of a foreign child described in s. 48.839
9 (1) who became dependent on public funds for his or her primary support before an
10 order granting his or her adoption, the resident of this state appointed guardian of
11 the child by a foreign court who brought the child into this state for the purpose of
12 adoption, and his or her property and estate, including his or her homestead, shall
13 be liable for the cost of the care, maintenance, services and supplies in accordance
14 with the fee schedule established by the department under s. 46.03 (18). If a spouse,
15 widow or minor, or an incapacitated person may be lawfully dependent upon the
16 property for their support, the court shall release all or such part of the property and
17 estate from the charges that may be necessary to provide for those persons. The
18 department shall make every reasonable effort to notify the liable persons as soon
19 as possible after the beginning of the maintenance, but the notice or the receipt
20 thereof is not a condition of liability.

21 **SECTION 6.** 51.42 (3) (aw) 1. d. of the statutes is amended to read:

22 51.42 (3) (aw) 1. d. Provide treatment and services that are specified in a
23 conditional release plan approved by a court for a person who is a county resident and
24 is conditionally released under s. 971.17 (3) or (4) or that are specified in a supervised
25 release plan approved by a court under s. 980.06 (2) (e) (cr) or 980.08 (5) (d). If the

1 county department provides treatment and services under this subdivision, the
2 department of health and family services shall, from the appropriation under s.
3 20.435 (2) (bj), pay the county department for the costs of the treatment and services.

4 **SECTION 7.** 980.01 (1) of the statutes is renumbered 980.01 (1s).

5 **SECTION 8.** 980.01 (1L) and (1m) of the statutes are created to read:

6 980.01 (1L) “Daily cost of institutional care” means the daily cost of programs
7 and facilities for the control, care and treatment of a person placed at a secure mental
8 health unit or facility specified in s. 980.065.

9 (1m) “Daily cost of supervised release” means the daily cost of providing for all
10 necessary programs and facilities for the control, care and treatment of a person on
11 supervised release under this chapter.

12 **SECTION 9.** 980.03 (4) of the statutes is amended to read:

13 980.03 (4) Whenever ~~the a~~ person who is the subject of ~~the a~~ petition filed under
14 s. 980.02 or who has been committed under s. 980.06 is required to submit to an
15 examination under this chapter, he or she may retain experts or professional persons
16 to perform an examination. If the person retains a qualified expert or professional
17 person of his or her own choice to conduct an examination, the examiner shall have
18 reasonable access to the person for the purpose of the examination, as well as to the
19 person’s past and present treatment records, as defined in s. 51.30 (1) (b), and patient
20 health care records as provided under s. 146.82 (2) (c). If the person is indigent, the
21 court shall, upon the person’s request, appoint a qualified and available expert or
22 professional person to perform an examination and participate in the trial or other
23 proceeding on the person’s behalf. Upon the order of the circuit court, the county
24 shall pay, as part of the costs of the action, the costs of ~~a court-appointed an~~ an expert
25 or professional person appointed by a court under this subsection to perform an

1 examination and participate in the trial or other proceeding on behalf of an indigent
2 person. An expert or professional person appointed to assist an indigent person who
3 is subject to a petition may not be subject to any order by the court for the
4 sequestration of witnesses at any proceeding under this chapter.

5 **SECTION 10.** 980.06 (2) (a) of the statutes is amended to read:

6 980.06 (2) (a) The court shall enter an initial commitment order under this
7 section pursuant to a hearing held as soon as practicable after the judgment that the
8 person who is the subject of a petition under s. 980.02 is a sexually violent person is
9 entered. If the court lacks sufficient information to make the determination required
10 by par. (b) immediately after trial, it may adjourn the hearing and order the
11 department to ~~conduct~~ submit a written report as to whether the criterion under par.
12 (b) for institutional care is met. For purposes of preparing the report the department
13 shall conduct a predisposition investigation using the procedure in s. 972.15 or a
14 supplementary mental examination, ~~or both, to assist the court in framing the~~
15 ~~commitment order. A supplementary mental examination under this paragraph~~
16 ~~shall be conducted~~ in accordance with s. 971.17 (2) (b) to (f), ~~or both, and may conduct~~
17 any other investigation or inquiry that it considers appropriate to make the
18 determinations required in the report. The report shall be based on the results of any
19 predisposition investigation, supplementary mental examination and other
20 investigation or inquiry conducted by the department.

21 **SECTION 11.** 980.06 (2) (b) of the statutes is amended to read:

22 980.06 (2) (b) An order for commitment under this section shall specify either
23 institutional care or supervised release. Except as provided in par. (bt), the court
24 shall order institutional care if it finds that it is substantially probable that the
25 person will engage in acts of sexual violence unless the person resides in a facility

1 with a level of security comparable to that of a secure mental health unit or facility
2 specified in s. 980.065.

3 (bm) In determining under par. (b) whether commitment shall be for
4 institutional care or for supervised release, the court may consider, without
5 limitation because of enumeration, the nature and circumstances of the behavior
6 that was the basis of the allegation in the petition under s. 980.02 (2) (a), the person's
7 mental history and present mental condition, where the person will live, how the
8 person will support himself or herself, and what arrangements are available to
9 ensure that the person has access to and will participate in necessary treatment,
10 including pharmacological treatment using an antiandrogen or the chemical
11 equivalent of an antiandrogen if the person is a serious child sex offender. In deciding
12 whether to order supervised release of person who is a serious child sex offender, the
13 court may not consider, as a factor in making its decision, that the person is a proper
14 subject for pharmacological treatment using an antiandrogen or the chemical
15 equivalent of an antiandrogen or that the person is willing to participate in
16 pharmacological treatment using an antiandrogen or the chemical equivalent of an
17 antiandrogen. ~~The department shall arrange for control, care and treatment of the~~
18 ~~person in the least restrictive manner consistent with the requirements of the person~~
19 ~~and in accordance with the court's commitment order.~~

20 **SECTION 12.** 980.06 (2) (bt) of the statutes is created to read:

21 980.06 (2) (bt) If a court determines under par. (b) that it is substantially
22 probable that the person will engage in acts of sexual violence unless he or she
23 resides in a facility with a level of security comparable to that of a secure mental
24 health unit or facility specified in s. 980.065, but the person establishes that it is
25 likely that the daily cost of supervised release under a plan providing for the person

1 to reside in a secure facility would not exceed the daily cost of institutional care for
2 the person, then the court may withhold final determination of the commitment
3 order and order the department to prepare a supervised release plan under par. (c).
4 After preparation of a supervised release plan ordered under this paragraph, the
5 proceedings shall continue as provided under pars. (cm), (cr), (cs) and (ct), as
6 appropriate.

7 **SECTION 13.** 980.06 (2) (c) of the statutes is amended to read:

8 980.06 (2) (c) If the court finds under par. (b) that the person is appropriate for
9 supervised release or orders preparation of a supervised release plan under par. (bt),
10 the court shall notify the department. The department and the county department
11 under s. 51.42 in the county of residence of the person, as determined under s.
12 980.105, shall prepare a plan that identifies the treatment and services, if any, that
13 the person will receive in the community. If the county department of the person's
14 county of residence declines to prepare a plan, the department may arrange for
15 another county to prepare the plan if that county agrees to prepare the plan and if
16 the person will be living in that county. If the department is unable to arrange for
17 another county to prepare a plan, the court shall designate a county department to
18 prepare the plan, order the county department to prepare the plan and place the
19 person on supervised release in that county, except that the court may not so
20 designate the county department in any county where there is a facility in which
21 persons committed to institutional care under this chapter are placed, unless that
22 county is also the person's county of residence.

23 (cg) The plan prepared under par. (c) shall address the person's need, if any, for
24 supervision, counseling, medication, community support services, residential
25 services, vocational services, and alcohol or other drug abuse treatment. If the

1 person is a serious child sex offender, the plan shall address the person's need for
2 pharmacological treatment using an antiandrogen or the chemical equivalent of an
3 antiandrogen. ~~The department may contract with a county department, under s.~~
4 ~~51.42 (3) (aw) 1. d., with another public agency or with a private agency to provide~~
5 ~~the treatment and services identified in the plan.~~ The plan shall specify who will be
6 responsible for providing the treatment and services identified in the plan. If the
7 plan was ordered to be prepared under par. (bt), the plan shall include information
8 concerning the daily cost of supervised release under the plan and the daily cost of
9 institutional care for the person.

10 (cm) 2. The plan prepared under par. (c) shall be presented to the court for its
11 approval within 21 days after the court finding finds that the person is appropriate
12 for supervised release under par. (b) or orders preparation of the plan under par. (bt),
13 unless the department, county department and person to be released request
14 additional time to develop the plan. If the county department of the person's county
15 of residence declines to prepare a plan, the department may arrange for another
16 county to prepare the plan if that county agrees to prepare the plan and if the person
17 will be living in that county. If the department is unable to arrange for another
18 county to prepare a plan, the court shall designate a county department to prepare
19 the plan, order the county department to prepare the plan and place the person on
20 supervised release in that county, except that the court may not so designate the
21 county department in any county where there is a facility in which persons are
22 detained or evaluated under s. 980.04 or in which persons committed to institutional
23 care under this chapter are placed, unless that county is also the person's county of
24 residence. The court shall hold a hearing on the plan within 30 days after the plan
25 is presented to the court, unless the department, county department and person to

1 be released agree to a later hearing date. At least 10 days before the hearing under
2 this subdivision, the court shall give written notice of the hearing to the person to be
3 released, the district attorney or department of justice, whichever is applicable, the
4 department, the county department that prepared the plan, the chief executive
5 officer of the county in which the person would reside under the plan and the chief
6 executive officer of the city, village or town in which the person would reside under
7 the plan. The person, the district attorney or the attorney general, whichever is
8 applicable, and any chief executive officer who receives notice of the hearing, or the
9 chief executive officer's designee, may present evidence at the hearing. The county
10 department that prepared the plan and the department may, and upon request of the
11 court shall, present evidence at the hearing.

12 **SECTION 14.** 980.06 (2) (cm) 1. of the statutes is created to read:

13 980.06 (2) (cm) 1. In this paragraph, "chief executive officer" means a mayor,
14 city manager, village president, town chairperson, county executive or chairperson
15 of the county board of supervisors.

16 **SECTION 15.** 980.06 (2) (cr), (cs), (ct), (cu) and (cv) of the statutes are created to
17 read:

18 980.06 (2) (cr) Based on the provisions of the plan and on the evidence
19 presented at the hearing under par. (cm) 2., the court shall determine whether the
20 plan provides adequate treatment and services to the person and adequate
21 protection to the community. If the court finds that the plan does not provide
22 adequate treatment and services to the person or adequate protection to the
23 community, the court shall issue a written decision and order disapproving the plan
24 and shall proceed under par. (cs). If the court finds that the plan provides either
25 adequate treatment and services to the person or adequate protection to the

1 community, the court shall, except as provided in par. (ct), issue a written decision
2 and order approving the plan and placing the person on supervised release in the
3 county that prepared the plan.

4 (cs) If the court disapproves a supervised release plan under par. (cr), it shall
5 order the department and the county department that prepared the plan to revise
6 the plan and present it to the court by a date specified by the court. The court shall
7 hold a hearing on the revised plan and make a determination as to whether to
8 approve or disapprove the plan as provided under pars. (cm) 2. and (cr).

9 (ct) If a supervised release plan that satisfies the criteria under par. (cr) was
10 ordered to be prepared under par. (bt), the court may approve the plan and order the
11 person placed on supervised release under par. (cr) only if, based on the provisions
12 of the plan and on the evidence presented at the hearing under par. (cm) 2., the court
13 determines that the daily cost of supervised release would not exceed the daily cost
14 of institutional care. If the daily cost of supervised release would exceed the daily
15 cost of institutional care, the court shall disapprove the supervised release plan and
16 order the person to be placed in institutional care. The court may not order a
17 supervised released plan disapproved under this paragraph to be revised under par.
18 (cs).

19 (cu) If the court approves a supervised release plan under par. (cr), the court
20 shall send a copy of its decision and order approving the plan to the chief executive
21 officers who received notice of the hearing on the plan under par. (cm) 2.

22 (cv) The county department that prepared the plan and the department shall
23 implement a plan approved by the court under par. (cr). In implementing the plan,
24 the department may contract with a county department, under s. 51.42 (3) (aw) 1.
25 d., with another public agency or with a private agency to provide the treatment and

1 services identified in the plan. The department may request the court to make such
2 orders as are necessary to ensure implementation of the plan.

3 **SECTION 16.** 980.06 (2) (d) of the statutes is amended to read:

4 980.06 (2) (d) An order for supervised release places the person in the custody
5 and control of the department. The department shall arrange for control, care and
6 treatment of the person in the least restrictive manner consistent with the
7 requirements of the person and in accordance with the plan for supervised release
8 approved by the court under par. (cr) or s. 980.08 (5) (d), whichever is applicable. A
9 person on supervised release is subject to the conditions set by the court and to the
10 rules of the department. Before a person is placed on supervised release by the court
11 under this section, the court shall so notify the municipal police department and
12 county sheriff for the municipality and county in which the person will be residing.
13 The notification requirement under this paragraph does not apply if a municipal
14 police department or county sheriff submits to the court a written statement waiving
15 the right to be notified. If the department alleges that a released person has violated
16 any condition or rule, or that the safety of others requires that supervised release be
17 revoked, he or she may be taken into custody under the rules of the department. The
18 department shall submit a statement showing probable cause of the detention and
19 a petition to revoke the order for supervised release to the committing court and the
20 regional office of the state public defender responsible for handling cases in the
21 county where the committing court is located within 48 hours after the detention.
22 The court shall hear the petition within 30 days, unless the hearing or time deadline
23 is waived by the detained person. Pending the revocation hearing, the department
24 may detain the person in a jail or in a hospital, center or facility specified by s. 51.15
25 (2). The state has the burden of proving by clear and convincing evidence that any

1 rule or condition of release has been violated, or that the safety of others requires that
2 supervised release be revoked. If the court determines after hearing that any rule
3 or condition of release has been violated, or that the safety of others requires that
4 supervised release be revoked, it may revoke the order for supervised release and
5 order that the released person be placed in an appropriate institution until the
6 person is discharged from the commitment under s. 980.09 or until again placed on
7 supervised release under s. 980.08.

8 **SECTION 17.** 980.065 (1m) of the statutes is amended to read:

9 980.065 (1m) The department ~~may~~ shall place a person committed to
10 institutional care under s. 980.06 (2) (b) or (ct) at ~~a mental health unit or facility,~~
11 ~~including a~~ the secure mental health unit or facility at established under s. 46.055,
12 the Wisconsin resource center established under s. 46.056 or a secure mental health
13 unit or facility provided by the department of corrections under sub. (2).

14 **SECTION 18.** 980.065 (2) of the statutes is amended to read:

15 980.065 (2) The department may contract with the department of corrections
16 for the provision of a secure mental health unit or facility for persons committed to
17 institutional care under s. 980.06 (2) (b) or (ct). The department shall operate a
18 secure mental health unit or facility provided by the department of corrections under
19 this subsection and shall promulgate rules governing the custody and discipline of
20 persons placed by the department in the secure mental health unit or facility
21 provided by the department of corrections under this subsection.

22 **SECTION 19.** 980.07 (1) of the statutes is amended to read:

23 980.07 (1) If a person has been committed under s. 980.06 and has not been
24 discharged under s. 980.09, the department shall conduct an examination of his or
25 her mental condition within 6 months after an initial commitment under s. 980.06

1 and again thereafter at least once each 12 months for the purpose of determining
2 whether the person has made sufficient progress ~~to be entitled to transfer to a less~~
3 ~~restrictive facility, to~~ for the court to consider whether the person should be placed
4 on supervised release or to discharge discharged. At the time of a reexamination
5 under this section, the person who has been committed may retain or, ~~if he or she is~~
6 ~~indigent and so requests,~~ seek to have the court may appoint a ~~qualified expert or a~~
7 ~~professional person to examine him or her~~ an examiner as provided under s. 980.03
8 (4).

****NOTE: This is reconciled s. 980.07 (1). This SECTION has been affected by drafts
with the following LRB numbers: LRB-0113/1 and LRB-0284/2.

9 **SECTION 20.** 980.08 (3) of the statutes is amended to read:

10 980.08 (3) Within 20 days after receipt of the petition, the court shall appoint
11 one or more examiners having the specialized knowledge determined by the court to
12 be appropriate, who shall examine the person and furnish a written report of the
13 examination to the court within 30 days after appointment. The examiners shall
14 have reasonable access to the person for purposes of examination and to the person's
15 past and present treatment records, as defined in s. 51.30 (1) (b), and patient health
16 care records, as provided under s. 146.82 (2) (c). If any such examiner believes that
17 the person is appropriate for supervised release under the criterion specified in sub.
18 (4) (a), the examiner shall report on the type of treatment and services that the
19 person may need while in the community on supervised release. The county shall
20 pay the costs of an examiner appointed under this subsection as provided under s.
21 51.20 (18) (a).

****NOTE: This is reconciled s. 980.08 (3). This SECTION has been affected by drafts
with the following LRB numbers: LRB-0113/1 and LRB-0284/2.

1 **SECTION 21.** 980.08 (4) of the statutes is renumbered 980.08 (4) (a) and
2 amended to read:

3 980.08 (4) (a) The court, without a jury, shall hear the petition within 30 days
4 after the report of the court-appointed examiner is filed with the court, unless the
5 petitioner waives this time limit. Expenses of proceedings under this subsection
6 shall be paid as provided under s. 51.20 (18) (b), (c) and (d). The court shall grant the
7 petition unless the state proves by clear and convincing evidence that the person is
8 still a sexually violent persons and that it is still substantially probable that the
9 person will engage in acts of sexual violence if the person ~~is not continued in~~
10 institutional care does not reside in a facility with a level of security comparable to
11 a secure mental health unit or facility under s. 980.065.

12 (b) In making a decision under ~~this subsection~~ par. (a), the court may consider,
13 without limitation because of enumeration, the nature and circumstances of the
14 behavior that was the basis of the allegation in the petition under s. 980.02 (2) (a),
15 the person's mental history and present mental condition, where the person will live,
16 how the person will support himself or herself and what arrangements are available
17 to ensure that the person has access to and will participate in necessary treatment,
18 including pharmacological treatment using an antiandrogen or the chemical
19 equivalent of an antiandrogen if the person is a serious child sex offender. A decision
20 under this ~~subsection~~ paragraph on a petition filed by a person who is a serious child
21 sex offender may not be made based on the fact that the person is a proper subject
22 for pharmacological treatment using an antiandrogen or the chemical equivalent of
23 an antiandrogen or on the fact that the person is willing to participate in
24 pharmacological treatment using an antiandrogen or the chemical equivalent of an
25 antiandrogen.

***NOTE: This is reconciled s. 980.08 (4). This SECTION has been affected by drafts with the following LRB numbers: LRB-0113/1 and LRB-0284/2.

1 **SECTION 22.** 980.08 (4) (c) of the statutes is created to read:

2 980.08 (4) (c) If a court determines under par. (a) that the person is still a
3 sexually violent person and that it is substantially probable that the person will
4 engage in acts of sexual violence unless he or she resides in a facility with a level of
5 security comparable to that of a secure mental health unit or facility specified in s.
6 980.065, but the person establishes that it is likely that the daily cost of supervised
7 release under a plan providing for the person to reside in a secure facility would not
8 exceed the daily cost of institutional care for the person, then the court may withhold
9 final determination of the person's petition and order the department to prepare a
10 supervised release plan under sub. (5) (a). After preparation of a supervised release
11 plan ordered under this paragraph, the proceedings shall continue as provided under
12 sub. (5) (c), (d), (de) and (dm), as appropriate.

13 **SECTION 23.** 980.08 (5) of the statutes is renumbered 980.08 (5) (a) and
14 amended to read:

15 980.08 (5) (a) If the court finds under sub. (4) (a) that the person is appropriate
16 for supervised release or orders preparation of a supervised release plan under sub.
17 (4) (c), the court shall notify the department. The department and the county
18 department under s. 51.42 in the county of residence of the person, as determined
19 under s. 980.105, shall prepare a plan that identifies the treatment and services, if
20 any, that the person will receive in the community. If the county department of the
21 person's county of residence declines to prepare a plan, the department may arrange
22 for another county to prepare the plan if that county agrees to prepare the plan and
23 if the person will be living in that county. If the department is unable to arrange for

1 another county to prepare a plan, the court shall designate a county department to
2 prepare the plan, order the county department to prepare the plan and place the
3 person on supervised release in that county, except that the court may not so
4 designate the county department in any county where there is a facility in which
5 persons committed to institutional care under this chapter are placed, unless that
6 county is also the person's county of residence.

7 (b) The plan prepared under par. (a) shall address the person's need, if any, for
8 supervision, counseling, medication, community support services, residential
9 services, vocational services, and alcohol or other drug abuse treatment. If the
10 person is a serious child sex offender, the plan shall address the person's need for
11 pharmacological treatment using an antiandrogen or the chemical equivalent of an
12 antiandrogen. ~~The department may contract with a county department, under s.~~
13 ~~51.42 (3) (aw) 1. d., with another public agency or with a private agency to provide~~
14 ~~the treatment and services identified in the plan.~~ The plan shall specify who will be
15 responsible for providing the treatment and services identified in the plan. If the
16 plan was ordered to be prepared under sub. (4) (c), the plan shall include information
17 concerning the daily cost of supervised release under the plan and the daily cost of
18 institutional care for the person.

19 (c) 2. The plan prepared under par. (a) shall be presented to the court for its
20 approval within 60 days after the court finding finds that the person is appropriate
21 for supervised release under sub. (4) (a) or orders preparation of the plan under sub.
22 (4) (c), unless the department, county department and person to be released request
23 additional time to develop the plan. If the county department of the person's county
24 of residence declines to prepare a plan, the department may arrange for another
25 county to prepare the plan if that county agrees to prepare the plan and if the person

1 will be living in that county. ~~If the department is unable to arrange for another~~
2 ~~county to prepare a plan, the court shall designate a county department to prepare~~
3 ~~the plan, order the county department to prepare the plan and place the person on~~
4 ~~supervised release in that county, except that the court may not so designate the~~
5 ~~county department in any county where there is a facility in which persons~~
6 ~~committed to institutional care under this chapter are placed unless that county is~~
7 ~~also the person's county of residence. The court shall hold a hearing on the plan~~
8 ~~within 30 days after the plan is presented to the court, unless the department, county~~
9 ~~department and person to be released agree to a later hearing date. At least 10 days~~
10 ~~before the hearing under this subdivision, the court shall give written notice of the~~
11 ~~hearing to the person to be released, the district attorney or department of justice,~~
12 ~~whichever is applicable, the department, the county department that prepared the~~
13 ~~plan, the chief executive officer of the county in which the person would reside under~~
14 ~~the plan and the chief executive officer of the city, village or town in which the person~~
15 ~~would reside under the plan. The person, the district attorney or the attorney~~
16 ~~general, whichever is applicable, and any chief executive officer who receives notice~~
17 ~~of the hearing, or the chief executive officer's designee, may present evidence at the~~
18 ~~hearing. The county department that prepared the plan and the department may,~~
19 ~~and upon request of the court shall, present evidence at the hearing.~~

20 **SECTION 24.** 980.08 (5) (c) 1. of the statutes is created to read:

21 980.08 (5) (c) 1. In this paragraph, "chief executive officer" means a mayor, city
22 manager, village president, town chairperson, county executive or chairperson of the
23 county board of supervisors.

24 **SECTION 25.** 980.08 (5) (d), (de), (dm), (ds) and (e) of the statutes are created
25 to read:

1 980.08 (5) (d) Based on the provisions of the plan and on the evidence presented
2 at the hearing under par. (c) 2., the court shall determine whether the plan provides
3 adequate treatment and services to the person and adequate protection to the
4 community. If the court finds that the plan does not provide either adequate
5 treatment and services to the person or adequate protection to the community, the
6 court shall issue a written decision and order disapproving the plan and shall
7 proceed under par. (de). If the court finds that the plan provides adequate treatment
8 and services to the person and adequate protection to the community, the court shall,
9 except as provided in par. (dm), issue a written decision and order approving the plan
10 and placing the person on supervised release in the county that prepared the plan.

11 (de) If the court disapproves a supervised release plan under par. (d), it shall
12 order the department and the county department that prepared the plan to revise
13 the plan and present it to the court by a date specified by the court. The court shall
14 hold a hearing on the revised plan and make a determination as to whether to
15 approve or disapprove the plan as provided under pars. (c) 2. and (d).

16 (dm) If a supervised release plan that satisfies the criteria under par. (d) was
17 ordered to be prepared under sub. (4) (c), the court may approve the plan and order
18 the person placed on supervised release under par. (d) only if, based on the provisions
19 of the plan and on the evidence presented at the hearing under par. (c) 2., the court
20 determines that the daily cost of supervised release would not exceed the daily cost
21 of institutional care. If the daily cost of supervised release would exceed the daily
22 cost of institutional care, the court shall disapprove the supervised release plan and
23 deny the person's petition for supervised release. The court may not order a
24 supervised released plan disapproved under this paragraph to be revised under par.
25 (de).

1 (ds) If the court approves a supervised release plan under par. (d), the court
2 shall send a copy of its decision and order approving the plan to the chief executive
3 officers who received notice of the hearing on the plan under par. (c) 2.

4 (e) The county department that prepared the plan and the department shall
5 implement a plan approved by the court under par. (d). In implementing the plan,
6 the department may contract with a county department, under s. 51.42 (3) (aw) 1.
7 d., with another public agency or with a private agency to provide the treatment and
8 services identified in the plan. The department may request the court to make such
9 orders as are necessary to ensure implementation of the plan.

10 **SECTION 26.** 980.12 (1) of the statutes is amended to read:

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

15 **SECTION 9323. Initial applicability; health and family services.**

16 (1) SUPERVISED RELEASE AND PERIODIC REEXAMINATION OF SEXUALLY VIOLENT
17 PERSONS.

18 (a) *Initial commitment orders.* The amendment of sections 980.06 (2) (a), (b),
19 (c) and (d) and 980.065 (1m) of the statutes and the creation of section 980.06 (2) (bt),
20 (cm) 1., (cr), (cs), (ct), (cu) and (cv) of the statutes first apply to initial commitment
21 orders in cases in which judgment is entered under section 980.05 (5) of the statutes
22 on the effective date of this paragraph.

23 (b) *Periodic reexamination.* The treatment of section 980.07 (1) of the statutes
24 (with respect to the determination to be made at the time of reexamination) first

1 applies to examinations of a sexually violent person that occur on the effective date
2 of this paragraph.

3 (c) *Petitions for supervised release.* The renumbering and amendment of
4 section 980.08 (4) (with respect to the standard for granting or denying a petition for
5 supervised release) and (5) of the statutes, the amendment of section 980.08 (3) of the
6 statutes (with respect to the requirements for an examiner's report) and the creation
7 of section 980.08 (4) (c) and (5) (c) 1., (d), (de), (dm), (ds) and (e) of the statutes first
8 apply to petitions for supervised release filed on the effective date of this paragraph.

9 (END)