

SENATE HEARING SLIP

(Please Print Plainly)

DATE: 3/7/2000

BILL NO. SB 404

OR
SUBJECT _____

Sally L. Wellman
(NAME)

133rd Chestnut
(Street Address or Route Number)

Madison WI 53705
(City and Zip Code)

Attorney General
(Representing)

Speaking in Favor:

Speaking Against:

Registering in Favor:
but not speaking:

Registering Against:
but not speaking:

Speaking for information
only; Neither for nor against:

Please return this slip to a messenger PROMPTLY.

Senate Sergeant-At-Arms
State Capitol - B35 South
P.O.Box 7882
Madison, WI 53707-7882

SENATE HEARING SLIP

(Please Print Plainly)

DATE: _____

BILL NO. SB 404

OR
SUBJECT _____

Senator Alice Cross
(NAME)

(Street Address or Route Number)

(City and Zip Code)

(Representing)

Speaking in Favor:

Speaking Against:

Registering in Favor:
but not speaking:

Registering Against:
but not speaking:

Speaking for information
only; Neither for nor against:

Please return this slip to a messenger PROMPTLY.

Senate Sergeant-At-Arms
State Capitol - B35 South
P.O.Box 7882
Madison, WI 53707-7882

Vote Record

Senate Committee on Judiciary and Consumer Affairs

Date: 3/2/2000
 Moved by: Clausing Seconded by: Risser
 AB: _____ Clearinghouse Rule: _____
 AB: _____ Appointment: _____
 AJR: _____ Other: _____
 A: _____ SR: _____

A/S Amdt: _____
 A/S Amdt: _____ to A/S Amdt: _____
 A/S Sub Amdt: _____
 A/S Amdt: _____ to A/S Sub Amdt: _____
 A/S Amdt: _____ to A/S Amdt: _____ to A/S Sub Amdt: _____

Be recommended for:

- Passage
- Introduction
- Adoption
- Rejection

- Indefinite Postponement
- Tabling
- Concurrence
- Nonconcurrence
- Confirmation

Committee Member

Sen. Gary George, Chair
 Sen. Fred Risser
 Sen. Alice Clausing
 Sen. Joanne Huelsman
 Sen. Alberta Darling

Aye	No	Absent	Not Voting
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Totals: 5 0 _____ _____

Motion Carried

Motion Failed

Bills on Today's Hearing Agenda That Could Probably Be Voted Out of Committee**Assembly Bill 610**

Relating to: including relatives by adoption on the same basis as relatives by blood in certain definitions and references in the statutes.

By Representatives Hundertmark, Ward, Plale, Kestell, Musser, Rhoades, Ryba, Nass, Pettis, Albers, F. Lasee, Ainsworth, Owens, Ladwig, Goetsch, Olsen, Kelso, Balow, Sykora, Jeskewitz, Underheim and Waukau; cosponsored by Senators Grobschmidt, Wirsch, Plache, Huelsman, Lazich, Rosenzweig and Darling.

Senate Bill 380

Relating to: eliminating emergency detention under the fifth standard of dangerousness, eliminating termination of involuntary civil commitments under the fifth standard of dangerousness, permitting only petitions approved by the attorney general to be filed for involuntary civil commitment under the fifth standard of dangerousness and providing access by the counsel for the interests of the public to court records and treatment records of persons receiving services for mental illness, developmental disabilities, alcoholism or drug dependence.

By Senators Rosenzweig, Grobschmidt, Panzer, George, Rude, Jauch, Roessler, Schultz, Darling, Huelsman and Farrow; cosponsored by Representatives Rhoades, Bock, Stone, Huber, Ladwig, Urban, Kelso, La Fave, M. Lehman, Pettis, Musser, Handrick, Berceau, Spillner, Albers, Hahn, Ainsworth and Brandemuehl.

Assembly Bill 328

Relating to: admitting certain police identification reports at preliminary examinations.

By Representatives Riley, Stone, Klusman, Grothman, Albers, Goetsch and Powers; cosponsored by Senators Burke, Roessler, Huelsman and Panzer.

Senate Bill 404

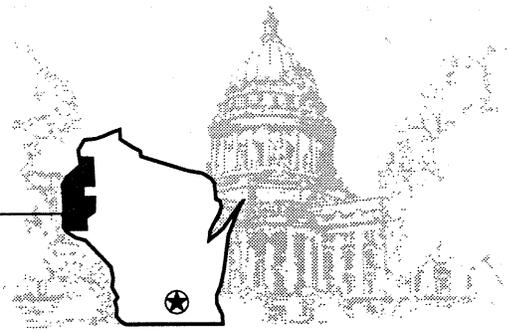
Relating to: sexually violent person commitment proceedings, escape from custody by a person who is subject to a sexually violent person commitment proceeding, sentencing of persons who have prior convictions for certain crimes, requiring persons who commit certain offenses to register as a sex offender and providing penalties.

By Senators Clausing, Burke and Roessler; cosponsored by Representatives Huber, Pohan and Seratti.



Alice Clausing

WISCONSIN STATE SENATOR



TESTIMONY OF SENATOR ALICE CLAUSING SENATE BILL 404 MARCH 7, 2000

Thank you, Mr. Chairman, for the opportunity to testify and for your prompt action on this important piece of legislation. The Attorney General and Department of Justice are to be commended for continuing their work in this evolving area of law. Our sexual predator law has been called a national and even international model. The changes within Senate Bill 404 demonstrate continued leadership in this sensitive area.

Senate Bill 404 is a compilation of the lessons learned from our experience with Chapter 980, the sexual predator law. The test of time and experience exposed some gaps in the current law; SB 404 closes those gaps. It also provides the professionals preparing petitions and evaluating offenders with records that have not been made available to them in the original bill.

Senate Bill 404 expands the definition of a sexual predator and the registration requirements to include a variety of crimes - burglary, kidnapping and homicide as examples - if they are sexually motivated. Other inappropriate activities omitted from the original legislation are added such as third degree sexual assault, sexual exploitation by a therapist, and child enticement. The bill also adds the crime of escape, allowing Wisconsin to extradite individuals from other states if they are committed under Chapter 980.

Second, the bill expands the range of information available to professionals in the Department of Justice, the Department of Corrections, the Department of Health and Family Services and the local District Attorney. This wider range of personal records would assist in both preparing the petitions and evaluating offenders.

As a former school guidance counselor, I understand the importance of having access to all the relevant information possible in order to make a meaningful decision. I believe the activities and behavior of individuals outside of the court system are valuable tools in evaluating an individual before a finding is made under Chapter 980. This bill permits professionals to examine records of child abuse or neglect, civil commitment proceedings, and pupil records in the preparation of a petition or the evaluation of an offender.

For example, if a pupil exhibited serious emotional difficulties as a student, those records are not currently available. If an individual has a history of abuse or neglect, as either perpetrator or victim of child abuse or neglect, those records cannot currently be used as part of the petition and evaluation procedure. A change to allow use of school, law enforcement and commitment records provides critical information that should be available to those involved in these proceedings.



Further, making these records available provides an alternative to the current practice of having third parties testify about events that occurred years before. Reopening a victim's emotional wound, years after the original incident, would no longer be the only alternative for court officials documenting past offenses.

In addition to a wider range of information, SB 404 gives these professionals the time needed to conduct a thorough, thoughtful evaluation. Current law requires probable cause hearings within 72 hours and a trial within 45 days of filing a petition. This bill takes those time limits to 30 days for a probable cause hearing and 90 days for the commencement of a trial. These are difficult, complex evaluations. For the safety of both the individual and the community, the professional charged with making the evaluations should be given enough time to get the job done.

Third, the bill makes numerous procedural changes that clarify conflicts discovered in the implementation of the original law. It also codifies Appellate and State Supreme Court decisions in this area. The Department of Justice is far more qualified than I am to outline these changes for you.

I would like to note that care has been taken to protect an individual's rights during a petition proceeding. Although the bill deletes the blanket grant of all the rights of a criminal defendant, an individual's right to counsel and their constitutional right against self-incrimination remain. The requirement that a petition be proven beyond a reasonable doubt remains.

Upon request, the court must appoint an expert to conduct an independent examination on behalf of an individual named in a petition. Senate Bill 404 represents a continuing commitment to the balance between the rights of an individual and the protection of the community. I urge your support.

CORRESPONDENCE/MEMORANDUM

DEPARTMENT OF JUSTICE

Date: March 3, 2000

To: JoAnna Richard
Legislative Liason

From: Sally L. Wellman *SLW*
Assistant Attorney General

Subject: Chapter 980 Technical Revisions in 1999 SB 404

This bill, drafted at the request of DOJ, makes numerous technical changes in the Sexually Violent Person Commitments Law (Chapter 980) which will clarify the law and better implement the legislature's purposes in enacting Chapter 980. The recommended changes fall into three general categories, described below.

Technical changes designed to clarify procedures to be used in Chapter 980.

We recommend a number of changes that are needed to clarify current law. The lack of clarity in the current statute has resulted in needless litigation. Chapter 980 permits the state to obtain an involuntary mental commitment of a sexually violent person: this is a civil, non-punitive law. However, because the law can involve a significant deprivation of liberty, the legislature wisely added some trial right protections that are ordinarily provided in criminal trials, such as the right to counsel, jury trial of 12 persons, unanimous jury verdict, etc.

However, in many areas the current statute does not spell out whether the "civil" or "criminal" procedures apply. Therefore, the parties have had to litigate these questions in each individual case (at trial and on appeal), which is time-consuming and unnecessary. Currently, there is an awkward hybrid of procedure in which sometimes the criminal rules are used and sometimes the civil rules are used. Various procedures could work adequately; the key is that courts and litigators need to know which one applies in each relevant area. To resolve these ambiguities, DOJ recommends that the statute specifically spell out which procedural rules should be applied in the areas of discovery, change of venue, substitution of judge, appellate time limits, etc.

Technical changes designed to clarify the legislature's intent and overrule inconsistent case decisions.

In order to provide the persons subjected to Chapter 980 commitment proceedings with adequate procedural safeguards, the current statute provides that at trial all constitutional rights

JoAnna Richard

March 3, 2000

Page 2

available to a defendant in a criminal proceeding are available. This language is too broad and has been misconstrued by the courts. DOJ believes the legislature intended to give Chapter 980 the protections necessary to ensure fair proceedings and reliable results, but that the legislature did not intend to engraft onto this law features of the criminal law that are illogical and inapplicable. For example, in a criminal case, a criminal suspect has a right not to talk to the police during an interrogation and the jury can not be told that the criminal exercised that right. In a Chapter 980 case, the person can not be forced to talk to the mental health professional who is doing the mental examination. However, it is important for the jury to know that the person chose not to talk to the examiner. The fact that the person refused to participate in the evaluation will explain why the examiner does not have certain information that could only be provided by the individual, or why the examiner was not able to verify with the individual whether certain file information is correct. This knowledge is critical, particularly if the individual presents testimony by his own defense expert, who has interviewed the individual. In order for the jury to evaluate the credibility of both evaluators, it needs to know that the evaluators did not have full access to the same information. Unfortunately, case law has held that since a suspect has a right not to talk to police and the jury cannot be told he exercised that choice, then the person who is the subject of a Chapter 980 proceeding has a right not to talk to the evaluator and the jury cannot be told he exercised that right.

To solve these problems, DOJ recommends that Chapter 980 be re-written to spell out specifically which criminal trial rights apply in these proceedings and that specific language be drafted "overruling" these illogical decisions.

Technical changes designed to fix "glitches" in the current law in order to better implement the purposes of the law.

DOJ and prosecutors throughout the state have now had six years of trial experience with Chapter 980 and that experience has helped to identify several unforeseen "glitches" in the law that interfere with effective implementation of the purposes of the law, which are to protect the public from sexually violent persons by providing such persons with control, care and treatment. The focus of a Chapter 980 trial and commitment is whether the person currently suffers a type of mental disorder that makes him dangerous to the public because of the risk that if he is not confined and treated he will engage in further sexually violent acts.

In order to evaluate and prove a mental disorder and to assess dangerousness, evaluators and fact-finders need as much information about the individual as possible. The person's past criminal and social history, information about the person's childhood and adolescence, and information about past medical or psychological treatment are critical to accurate diagnosis and risk assessment. Many of the records pertaining to these areas are confidential under provisions of various laws (e.g. presentence reports, child abuse and neglect records, social

JoAnna Richard

March 3, 2000

Page 3

service records, juvenile court records). Current law requires that the prosecutor and evaluators cannot obtain many of these records without a specific court order. This process is cumbersome and sometimes judges are reluctant to release information. Evaluations and decisions based on less than complete and accurate information do not serve the interest of the individual or the public.

In order to solve these problems, DOJ recommends that Chapter 980 be amended to enable information and records that would otherwise be confidential to be provided to evaluators and counsel for the purpose of preparing and litigating Chapter 980 petitions. The trial court would have authority to issue protective orders so that information could not be used for other, improper purposes.

Experience with this statute has revealed that provisions regarding the timing of filing and process for initiating a petition are awkwardly phrased, which has caused unnecessary litigation. Therefore, DOJ recommends changes in language that will eliminate these problems.

Experience with this statute also has revealed that the statute does not encompass some sexually violent persons who may be at high risk to reoffend, simply because the list of predicate offenses does not include some offenses which should be included. For example, currently person who is convicted of non-consensual sexual intercourse and a person convicted of felony murder (where the felony is a crime of sexual violence) are not covered by the law. DOJ recommends amending the statute to include persons convicted of these crimes.

This memo briefly explains the types of technical changes contained in this bill. Please do not hesitate to contact me if you want further information, examples or explanation.

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JoAnna Richard
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JoAnna Richard
March 3, 2000
Page 3

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