

2001 Jr2 DRAFTING REQUEST

Assembly Amendment (AA-AA1-ASA1-AB1)

Received: 03/14/2002

Received By: rryan

Wanted: As time permits

Identical to LRB:

For: Leon Young (608) 266-3786

By/Representing: Greg

This file may be shown to any legislator: NO

Drafter: rryan

May Contact:

Addl. Drafters:

Subject: **Criminal Law - miscellaneous
Mental Health - detent/commit**

Extra Copies:

Submit via email: YES

Requester's email: **Rep.Youngl@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Placement of sexually violent persons on supervised release

Instructions:

LRB 01-4606/2

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	rryan 03/14/2002	hhagen 03/14/2002		_____			
/1			jfrantze 03/14/2002	_____	lrb_docadmin 03/14/2002	lrb_docadmin 03/14/2002	

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LRBb2657

FE Sent For:

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/?	rryan	11 hmk 3/14	6 3/14	RS cmh 3/14			

FE Sent For:

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2001

Date (time) needed Today

LRB b 2657, 1

BUDGET AMENDMENT

RLR : hnh :

NOT FOR COMPILE

See form AMENDMENTS — COMPONENTS & ITEMS.

January 2002 SPECIAL SESSION AMENDMENT
TO AA1 to ASA 1
TO 2001 ASSEMBLY BILL 1

At the locations indicated, amend the amendment as follows:

✓
#. Page 88, line 23: after that line insert:

#. Page , line :

#. Page , line :

#. Page , line :

#. Page , line :

#. Page , line :

2001 BILL

1 **AN ACT** *to repeal* 980.105 (title) and 980.105 (1) and (2); *to renumber* 980.01
2 (1); *to renumber and amend* 980.015 (1), 980.08 (5) and 980.105 (intro.); *to*
3 *amend* 51.30 (4) (b) 10m., 938.78 (2) (e), 980.015 (2) (intro.), 980.02 (1) (a),
4 980.02 (1) (b) (intro.), 980.03 (1), 980.05 (5), 980.07 (2), 980.08 (2) and 980.08
5 (3); and *to create* 980.01 (1g), 980.01 (1m), 980.02 (1) (am), 980.02 (4) (c), 980.02
6 (6), 980.08 (3m), 980.08 (5) (b) (intro.) and 5., 980.08 (5) (c) and 980.08 (5) (d)
7 of the statutes; **relating to:** jurisdiction to file a sexually violent person petition
8 and responsibility for preparing a supervised release plan for a sexually violent
9 person.

Analysis by the Legislative Reference Bureau

Under current law, a person who commits a sexually violent offense may be committed to the department of health and family services (DHFS) after serving a sentence or disposition for the offense if the person is found to have a mental disorder that creates a substantial probability that the person will engage in future acts of sexual violence. A petition to commit a person to DHFS as a sexually violent person may be filed by the department of justice (DOJ) or, if DOJ does not file a petition, by the district attorney for either of the following counties: 1) the county in which the

BILL

person was found to have committed the sexually violent offense; or 2) the county in which the person will reside upon release from the confinement that was imposed for the sexually violent offense.

Persons committed to DHFS as sexually violent persons are initially placed in institutional care. After 18 months, a sexually violent person may petition the court for supervised release. The court must authorize supervised release unless it finds that it is still substantially probable that the person will engage in future acts of sexual violence if institutionalized care is not continued. If a court determines that supervised release is appropriate, the court must order DHFS and the county that is the person's county of residence (generally the county where the person lived prior to committing the sexually violent offense) to prepare a plan for treating and monitoring the person while on supervised release. The court is responsible for determining which county is the person's county of residence. DHFS must make reasonable efforts to place the person in his or her county of residence and must consider the proximity of residences of other sex offenders when choosing a living arrangement for the person. If the person's county of residence declines to prepare a plan for supervised release, DHFS may arrange for another county to prepare a plan, and if no county agrees to prepare a plan, the court must order a county to prepare a plan.

This bill grants the district attorney for a person's county of residence jurisdiction to file a sexually violent person petition against the person, if DOJ does not file a petition, and grants the district attorney for the person's county of residence priority over other district attorneys in filing the petition. The bill also provides that, upon request of the district attorney for the person's county of residence, a sexually violent person action that was initiated in another county must be transferred to the person's county of residence. Under the bill, the agency that has custody of the person before a sexually violent person petition is filed is responsible for determining the person's county of residence.

The bill also provides that, if a sexually violent person petitions a court for supervised release and a court-appointed mental health examiner recommends supervised release, the person's county of residence must identify a residence where the person may live and must provide a written description of that residence to the court before the court holds a hearing on the petition. DHFS must approve the residence identified by the county and must consider the proximity of the residence to residences of other sex offenders before granting approval. The bill eliminates the requirement that DHFS make best efforts to place a person on supervised release in his or her county of residence, but also eliminates the authority of the county of residence to decline to prepare a supervised release plan for the person. Finally, the bill requires that, if a community organization or county resident requests to be notified whenever a county is required to prepare a plan for supervised release, the county must provide such notification within five days after the court notifies the county that the sexually violent person is appropriate for supervised release.

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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:

"110n. Page 48, line 5: after that line insert:

1 "SECTION ~~5~~ ^{1149r.} 51.30 (4) (b) 10m. of the statutes is amended to read:

2 51.30 (4) (b) 10m. To the department of justice or a district attorney under s.
3 980.015 (3) (b), if the treatment records are maintained by an agency with
4 jurisdiction, as defined in s. 980.015-~~(1)~~ 980.01 (1d), that has control or custody over
5 a person who may meet the criteria for commitment as a sexually violent person

6 *#* under ch. 980. " " *#* *"263n. Page 227 line 4: after that line insert:*

7 ~~SECTION 5~~ ^{533v.} 938.78 (2) (e) of the statutes is amended to read:

8 938.78 (2) (e) Paragraph (a) does not prohibit the department from disclosing
9 information about an individual adjudged delinquent under s. 938.183 or 938.34 for
10 a sexually violent offense, as defined in s. 980.01 (6), to the department of justice, or
11 a district attorney or a judge acting under ch. 980 or to an attorney who represents
12 a person subject to a petition under ch. 980. The court in which the petition under
13 s. 980.02 is filed, or, if an action filed under s. 980.02 is transferred to another court
14 under s. 980.02 (6), the court to which the action is transferred, may issue any
15 protective orders that it determines are appropriate concerning information
16 disclosed under this paragraph. " "

Page 290, line 17: after that line insert: # "274n. Page 345 line 19: after that line insert:

17 ~~SECTION 5~~ ^{1151tc.} 980.01 (1) of the statutes is renumbered 980.01 (1r).

18 ~~SECTION 5~~ 980.01 (1g) of the statutes is created to read:

19 980.01 (1g) "County department" means a county department of community
20 programs created in accordance with s. 51.42 (3) (a).

21 SECTION ~~5~~ 980.01 (1m) of the statutes is created to read:

1151tc.
1151tc.

BILL

1 980.01 (1m) "County of residence" means the county in which a person is
2 considered to reside for purposes of this chapter as determined under s. 980.015 by
3 the agency with jurisdiction.

1151te

4 ~~SECTION 6.~~ 980.015 (1) of the statutes is renumbered 980.01 (1d) and amended
5 to read:

6 980.01 (1d) ~~In this section,~~ "agency Agency with jurisdiction" means the
7 agency with the authority or duty to release or discharge ~~the a~~ person.

1151te

8 ~~SECTION 7.~~ 980.015 (2) (intro.) of the statutes is amended to read:

9 980.015 (2) (intro.) If an agency with jurisdiction has control or custody over
10 a person who may meet the criteria for commitment as a sexually violent person,
11 after determining the person's county of residence as provided under sub. (5), the
12 agency with jurisdiction shall inform each appropriate district attorney and the
13 department of justice regarding the person as soon as possible beginning 3 months
14 prior to the applicable date of the following:

1151te

15 ~~SECTION 8.~~ 980.02 (1) (a) of the statutes is amended to read:

16 980.02 (1) (a) The department of justice at the request of the agency with
17 jurisdiction, ~~as defined in s. 980.015 (1),~~ over the person. If the department of justice
18 decides to file a petition under this paragraph, it shall file the petition before the date
19 of the release or discharge of the person.

1151th

20 ~~SECTION 9.~~ 980.02 (1) (am) of the statutes is created to read:

21 980.02 (1) (am) If the department of justice does not file a petition under par.
22 (a), the district attorney for the person's county of residence.

1151ti

23 ~~SECTION 10.~~ 980.02 (1) (b) (intro.) of the statutes is amended to read:

BILL

1 980.02 (1) (b) (intro.) If the department of justice does not file a petition under
2 par. (a), and the district attorney for the person's county of residence does not file a
3 petition under par. (am), the district attorney for one of the following:

1151EJ

4 SECTION ~~17~~ 980.02 (4) (c) of the statutes is created to read:

5 980.02 (4) (c) The circuit court for the person's county of residence.

1151EK

6 SECTION ~~18~~ 980.02 (6) of the statutes is created to read:

7 980.02 (6) Upon request from the district attorney for the person's county of
8 residence, an action commenced by filing a petition under this section in a circuit
9 court for a county other than the person's county of residence shall be transferred to
10 the circuit court for the person's county of residence.

1151EL

11 SECTION ~~19~~ 980.03 (1) of the statutes is amended to read:

12 980.03 (1) The circuit court in which a petition under s. 980.02 is filed, or, if an
13 action is transferred under s. 980.02 (6), the circuit court to which the action was
14 transferred, shall conduct all hearings under this chapter. The court shall give the
15 person who is the subject of the petition reasonable notice of the time and place of
16 each such hearing. The court may designate additional persons to receive these
17 notices.

1151EM

18 SECTION ~~20~~ 980.05 (5) of the statutes is amended to read:

19 980.05 (5) If the court or jury determines that the person who is the subject of
20 a petition under s. 980.02 is a sexually violent person, the court shall enter a
21 judgment on that finding, shall notify the county department for the person's county
22 of residence of that finding, and shall commit the person as provided under s. 980.06.
23 If the court or jury is not satisfied beyond a reasonable doubt that the person is a
24 sexually violent person, the court shall dismiss the petition and direct that the
25 person be released unless he or she is under some other lawful restriction.

BILL

1151tn

1 SECTION ~~17~~ 980.07 (2) of the statutes is amended to read:

2 980.07 (2) Any examiner conducting an examination under this section shall
3 prepare a written report of the examination no later than 30 days after the date of
4 the examination. The examiner shall place a copy of the report in the person's
5 medical records and shall provide a copy of the report to the court that committed the
6 person under s. 980.06 and to the county department for the person's county of
7 residence.

1151td

8 SECTION ~~18~~ 980.08 (2) of the statutes is amended to read:

9 980.08 (2) If the person files a timely petition without counsel, the court shall
10 serve a copy of the petition on the district attorney or department of justice,
11 whichever is applicable, and on the county department for the person's county of
12 residence and, subject to s. 980.03 (2) (a), refer the matter to the authority for
13 indigency determinations under s. 977.07 (1) and appointment of counsel under s.
14 977.05 (4) (j). If the person petitions through counsel, his or her attorney shall serve
15 the district attorney or department of justice, whichever is applicable, and the county
16 department for the person's county of residence.

1151tp

17 SECTION ~~17~~ 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 appointed
25 under this subsection believes that the person is appropriate for supervised release

BILL

1 under the criterion specified in sub. (4), the examiner shall report on the type of
2 treatment and services that the person may need while in the community on
3 supervised release and shall furnish a copy of the written report of the examination
4 to the county department for the person's county of residence at the time that the
5 examiner furnishes the report to the court. The county shall pay the costs of an
6 examiner appointed under this subsection as provided under s. 51.20 (18) (a).

115769
7 ~~SECTION 14~~ SECTION 980.08 (3m) of the statutes is created to read:

8 980.08 (3m) If an examiner appointed under sub. (3) finds that a person is
9 appropriate for supervised release and furnishes a copy of the examination report to
10 the county department for the person's county of residence, the county department
11 shall identify a residence in which the person may live if the court grants the person's
12 petition under this section for supervised release. The identification of a residence
13 by the county department is subject to approval by the department. The department
14 shall consider the proximity of the residence identified by the county department to
15 the residence of any other person who is the subject of a sex offender notification
16 bulletin issued under s. 301.46 (2m) (a) or (am) before approving the residence
17 identified by the county department. The county department shall provide the court
18 a written description of the residence before the hearing under sub. (4).

115769
19 ~~SECTION 14~~ SECTION 980.08 (5) of the statutes, as affected by 2001 Wisconsin Act 16,
20 is renumbered 980.08 (5) (a) and amended to read:

21 980.08 (5) (a) If the court finds that the person is appropriate for supervised
22 release, the court shall notify the department. ~~The department shall make its best~~
23 ~~effort to arrange for placement of the person in a residential facility or dwelling that~~
24 ~~is in the person's county of residence, as determined by the department under s.~~
25 980.105 and the county department for the person's county of residence. The

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1 department and the county department ~~under s. 51.42 in the county of residence of~~
2 ~~the person shall prepare a plan that identifies~~ for supervised release as provided
3 under par. (b). If any community organization or county resident has submitted a
4 written request to the county department to be notified whenever the county
5 department is required to prepare a plan under par. (b), the county department shall
6 notify that community organization or county resident within 5 days after the court
7 notifies the county of the person's approval for supervised release.

8 (b) 1. Identifies the treatment and services, if any, that the person will receive
9 in the community. ~~The plan shall address~~

10 2. Addresses the person's need, if any, for supervision, counseling, medication,
11 community support services, residential services, vocational services, and alcohol or
12 other drug abuse treatment. ~~In developing a plan for where the person may reside~~
13 ~~while on supervised release, the department shall consider the proximity of any~~
14 ~~potential placement to the residence of other persons on supervised release and to~~
15 ~~the residence of persons who are in the custody of the department of corrections and~~
16 ~~regarding whom a sex offender notification bulletin has been issued to law~~
17 ~~enforcement agencies under s. 301.46 (2m) (a) or (am). If the person is a serious child~~
18 ~~sex offender, the plan shall address~~

19 3. Addresses the person's need for pharmacological treatment using an
20 antiandrogen or the chemical equivalent of an antiandrogen. ~~The department may~~
21 ~~contract with a county department, under s. 51.42 (3) (aw) 1. d., with another public~~
22 ~~agency or with a private agency to provide the treatment and services identified in~~
23 ~~the plan. The plan shall specify~~ if the person is a serious child sex offender.

24 4. Specifies who will be responsible for providing the treatment and services
25 identified in the plan. ~~The plan shall be presented~~

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1 (e) The county and the county department shall present the plan prepared
 2 under par. (b) to the court for its approval within 60 days after the court finding that
 3 the person is appropriate for supervised release, unless the department, county
 4 department, and person to be released request additional time to develop the plan.
 5 ~~If the~~

6 (f) The county department of for the person's county of residence declines to
 7 prepare a plan, the department may arrange for another county to prepare the plan
 8 if that in cooperation with the department if the other county agrees to prepare the
 9 plan and if the person will be living in that county. If the department is unable to
 10 arrange for another county to prepare a plan, the court shall designate a county
 11 department to prepare the plan, order the county department to prepare the plan
 12 and place the person on supervised release in that county, except that the court may
 13 not so designate the county department in any county where there is a facility in
 14 which persons committed to institutional care under this chapter are placed unless
 15 that county is also the person's county of residence.

1157ts

16 ~~SECTION 20.~~ 980.08 (5) (b) (intro.) and 5. of the statutes are created to read:
 17 980.08 (5) (b) (intro.) The department and the county department for the
 18 person's county of residence shall prepare a plan for supervised release that does all
 19 of the following:

1157tt

20 5. Identifies a residence where the person shall live.

21 ~~SECTION 24.~~ 980.08 (5) (c) of the statutes is created to read:
 22 980.08 (5) (c) When designating a residence under par. (b) 5., the department
 23 and the county department shall consider the proximity of the designated residence
 24 to the residence of any other person who is the subject of a sex offender bulletin issued
 25 under s. 301.46 (2m) (a) or (am).

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1 ^{1157tu} SECTION ~~22~~ 980.08 (5) (d) of the statutes is created to read:

2 980.08 (5) (d) The department may contract with a county department, another
3 public agency, or a private agency to provide the treatment and services identified
4 in the plan under par. (b).

5 ^{1151EV} SECTION ~~23~~ 980.105 (title) of the statutes is repealed.

6 ^{1151EW} SECTION ~~24~~ 980.105 (intro.) of the statutes, as affected by 2001 Wisconsin Act
7 16, is renumbered 980.015 (5) and amended to read:

8 980.015 (5) The ~~court~~ agency with jurisdiction shall determine a person's
9 county of residence for the purposes of this chapter ~~by doing all of the following: in~~
10 accordance with the criteria set forth in this subsection. A person's county of
11 residence is the county in which a person's habitation was voluntarily fixed and in
12 which the person voluntarily intended to remain on the date on which the person
13 committed the sexually violent offense that resulted in the sentence, placement, or
14 commitment that is in effect when the determination under this subsection is made.

15 A person's physical presence at a place shall be considered prima facie evidence of
16 the person's intent to remain at that place.

17 ^{1151EX} SECTION ~~25~~ 980.105 (1) and (2) of the statutes, as affected by 2001 Wisconsin

18 Act 16, are repealed. " "
19 # Page 347, line 11: after that line insert: (1) (2)
~~SECTION 26, Initial applicability.~~

20 # ^{11(a)} The treatment of sections 980.015 (2) (intro.) and 980.105 (intro.), (1) and
21 (2) of the statutes and the repeal of section 980.105 (title) of the statutes first apply
22 to notices of persons who may meet the criteria for commitment as sexually violent
23 persons given on the effective date of this ~~subsection~~ ^{paragraph}.

^{ab} 23 ^{ab} # 451n. Page 444, line 11: after that line insert:
“(8f) PLACEMENT OF SEXUALLY VIOLENT PERSONS ON SUPERVISED RELEASE.”

BILL

- 1 ~~(b)~~ The treatment of sections 938.78 (2) (e), 980.02 (1) (am) and (b) (intro.), (4)
2 (c), and (6), and 980.03 (1) of the statutes first applies to sexually violent persons
3 petitions filed on the effective date of this ~~subsection~~ *paragraph*
- 4 ~~(c)~~ The treatment of section 980.05 (5) of the statutes first applies to sexually
5 violent person trials initiated on the effective date of this ~~subsection~~ *paragraph*
- 6 ~~(d)~~ The treatment of section 980.07 (2) of the statutes first applies to
7 reexaminations conducted on the effective date of this ~~subsection~~ *paragraph*
- 8 ~~(e)~~ The treatment of section 980.08 (2), (3), and (3m) of the statutes, the
9 renumbering and amendment of section 980.08 (5) of the statutes, and the creation
10 of section 980.08 (5) (b) (intro.) 5., (c), and (d) of the statutes first apply to petitions
11 for supervised release filed on the effective date of this ~~subsection~~ *paragraph*

12

(END)

Beam, Laura

From: Beam, Laura
Sent: Thursday, March 14, 2002 6:39 PM
To: Rep.Young
Subject: LRBb2657 attached (sorry for delay)



01b2657/1