

**2001 DRAFTING REQUEST****Assembly Amendment (AA-ASA1-SB55)**

Received: 06/22/2001

Received By: rryan

Wanted: Soon

Identical to LRB:

For: Assembly Republican Caucus 7-4887

By/Representing: Hughes

This file may be shown to any legislator: NO

Drafter: rryan

May Contact:

Addl. Drafters:

Subject: Mental Health - detent/commit

Extra Copies: MGD

Submit via email: NO

Requester's email:

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**Pre Topic:**

ARC:.....Hughes -

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**Topic:**

Patient's rights of sexually violent persons; operation of Sand Ridge treatment center

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**Instructions:**

See Attached

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**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>
/1	rryan 06/23/2001	wjackson 06/25/2001	haugeca 06/26/2001	_____	lrb_docadmin 06/26/2001		
/2	rryan 06/27/2001	wjackson 06/27/2001	rschluet 06/27/2001	_____	lrb_docadmin 06/27/2001		

FE Sent For:

&lt;END&gt;

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/1	rryan 06/23/2001	wjackson 06/25/2001	haugeca 06/26/2001	_____	lrb_docadmin 06/26/2001		

FE Sent For:

*1/2 Wlj 6/27*

*cust  
/1  
6/27*

<END>

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**Assembly Amendment (AA-ASA1-SB55)**

Received: **06/22/2001**

Received By: **rryan**

Wanted: **Soon**

Identical to LRB:

For: **Assembly Republican Caucus 7-4887**

By/Representing: **Carolyn Hughes**

This file may be shown to any legislator: **NO**

Drafter: **rryan**

May Contact:

Addl. Drafters:

Subject: **Mental Health - detent/commit**

Extra Copies: **MGD**

Submit via email: **NO**

Requester's email:

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**Pre Topic:**

No specific pre topic given

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**Topic:**

Patient's rights of sexually violent persons; operation of Sand Ridge treatment center

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**Instructions:**

See Attached

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/1	rryan	1 WJ 6/25	CH 6-26	CH 6-26 <del>PS</del>			

FE Sent For:

<END>

HEALTH AND FAMILY SERVICES

Care and Treatment Facilities  
(Sand Ridge Treatment Center)

Move to adopt the provision of LRB draft to create patients rights specific to Chapter 980 patients.

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Note:

Sexually Violent Persons' Patient Rights

- Currently, Sexually Violent Persons (SVPs, Chapter 980's) are governed by s.51.61, which provides for general patient rights under the mental health code. SVPs do not fall under the criminal code which allows restriction of certain rights.
- The current 51.61 patient rights were created for the protection of vulnerable patients who suffer from major mental illness.
- SVPs, however, are significantly different in diagnosis and behavior from traditional patients in psychiatric hospitals. As opposed to patients in DHFS hospitals, less than 6% of SVPs are diagnosed with a major mental illness but 98% have anti-social personality/victim dependent disorders.
- DHFS has gathered data that indicates SVP patients abuse s. 51.61 rights and continue to victimize people in the community even while they are in secure inpatient treatment, by, for example, inappropriate use of their phone or mail rights.
- DHFS proposes to amend s.51.61 to make the rights of SVP patients more consistent with their treatment.

## Ryan, Robin

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**From:** Pederson, Russell  
**Sent:** June 15, 2001 10:17 AM  
**To:** Southworth, Scott  
**Cc:** Gilbert, Melissa; Ryan, Robin  
**Subject:** Re: FW: LRB-3427 and drafter's note attached



980 pt rts legn  
nightlock.doc

Scott,

The statutory language changes:

Revise 3427/P1 by inserting the underlined text:

- ✓ pg. 4, line 1: If the mail appears to be from legal counsel,...
- pg. 4, line 16: (after the last sentence), The procedures set forth in sub. (2) apply to a director's or designee's determination under this subdivision.
- ✓ pg. 6, line 8 - 12 (replace the sentence "Patients detained..." with one of the alternatives in the attached file - please see attachment).

Note:

The draft language on night lock is not consistent with a WCA agreement DHFS has worked on for several months. We need to relate the number of patients allowed out of the room to the number of toilets on the unit. We agreed to minimize locking of the units.

- ✓ pg. 9, line 7 .....Mental Health Institute or at a privately operated residential facility under contract with the department.
- ✓ pg. 9, line 23: A person remains placed in institutional care under s. 980.065....

Thanks for the review. Regards,

Russ

**To replace sentence and insert at pg. 6, line 8 – 12:**

Patients detained or committed under ch. 980 and placed in a facility specified under s. 980.065 may be locked in their rooms during the night shift only if they reside in maximum or medium security units where each room is equipped with a toilet and sink, or if they do not have toilets in their rooms and the number of patients in the unit who are out of their rooms equals the number of toilets in the unit except that every patient shall be given an opportunity to use a toilet at least once every hour, or more frequently if medically indicated.

-or-

Patients detained or committed under ch. 980 and placed in a facility specified under s. 980.065 may be locked in their rooms during the night shift only if they reside in maximum or medium security units where each room is equipped with a toilet and sink, or if they reside in units where each room is not equipped with a toilet and sink and the number of patients in the unit who are out of their rooms equals the number of toilets in the unit except that every patient shall be given an opportunity to use a toilet at least once every hour, or more frequently if medically indicated.

-or-

Patients detained or committed under ch. 980 and placed in a facility specified under s. 980.065 who reside in maximum or medium security units where each room is equipped with a toilet and sink may be locked in their rooms during the night shift; patients detained or committed under ch. 980 and placed in a facility specified under s. 980.065 who reside in units where each room is not equipped with a toilet and sink may be locked in their rooms during the night shift only when the number of patients in the unit who are out of their rooms equals the number of toilets in the unit, except that every patient shall be given an opportunity to use a toilet at least once every hour, or more frequently if medically indicated.

Ryan, Robin

---

**From:** Pederson, Russell  
**Sent:** June 20, 2001 8:09 AM  
**To:** Ryan, Robin  
**Cc:** Southworth, Scott  
**Subject:** Re: FW: LRB-3427 and drafter's note attached



LRB - 980 pt rts legn  
addns.do...

Robin,

I have attached a final suggestion forwarded by DHFS legal counsel for the Ch. 980 re-draft. Please let me know if you have questions. Thanks,

Russ

Section 19.35(1)(am)2.c. of the Statutes is amended to read:

19.35(1)(am)2.c. Endanger the security, including the security of the population or staff, of any state prison under s. 302.01, jail, as defined in s. 165.85 (2) (bg), secured correctional facility, as defined in s. 938.02 (15m), secured child caring institution, as defined in s. 938.02 (15g), secured group home, as defined in s. 938.02 (15p), mental health institute, as defined in s. 51.01 (12), facility for institutional care of sexually violent persons under s. 980.065 or center for the developmentally disabled, as defined in s. 51.01 (3).

Section 19.32(1d)(b) of the Statutes is repealed.

Section 19.32(1d)(c) of the Statutes is amended to read:

19.32(1d)(c) A ~~secure mental health unit or facility~~ for institutional care for sexually violent persons established under s. 980.065 (2).



2001

Date (time) needed \_\_\_\_\_

LRB b 1574 / 1

**ARC CAUCUS BUDGET AMENDMENT  
[ONLY FOR CAUCUS]**

RJR : Wlj : \_\_\_\_\_

See form **AMENDMENTS — COMPONENTS & ITEMS.**

**CAUCUS AMENDMENT  
TO ASSEMBLY SUBSTITUTE AMENDMENT 1  
TO 2001 SENATE BILL 55**

>>FOR CAUCUS SUPERAMENDMENT — NOT FOR INTRODUCTION<<

At the locations indicated, amend the substitute amendment as follows:

#. Page . . . . , line . . . . :

#. Page . . . . , line . . . . :

#. Page . . . . , line . . . . :

#. Page . . . . , line . . . . :

#. Page . . . . , line . . . . :

#. Page . . . . , line . . . . :

61524/1

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

D-Note

1 ~~AN ACT to renumber 51.375 (2); to renumber and amend 51.61 (1) (c); to~~  
 2 ~~amend 51.61 (1) (i) 1., 51.61 (1) (i) 2., 51.61 (1) (o), 942.06 (2m) (b), 942.06 (2q)~~  
 3 ~~(b) (intro.) and 942.06 (2q) (b) 1.; and to create 6.10 (7m), 51.375 (2) (b), 51.61~~  
 4 ~~(1) (cm) (intro.), 51.61 (1) (cm) 2., 940.20 (1d), 946.42 (3) (h), 980.065 (1r) and~~  
 5 ~~980.067 of the statutes; relating to: the rights of certain patients who are~~  
 6 ~~institutionalized under a commitment order or who are detained, and providing~~  
 7 ~~a penalty.~~

*Analysis by the Legislative Reference Bureau*

This is a preliminary draft. An analysis will be provided in a later version.

~~The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:~~

#. Page 2, line 25 after that line insert

SECTION 6.10 (7m) of the statutes is created to read:

6.10 (7m) (a) The residence of a person who is detained, or committed and institutionalized, under s. 51.20, 971.14, or 971.17 or ch. 980 shall be determined by

1 applying the standards under sub. (1) to whichever of the following dates is  
2 applicable to the circumstances of the person:

3 1. For a person detained or committed under s. 51.20, the date that the person  
4 was detained under s. 51.20 (2) or, if the person was not detained under s. 51.20 (2),  
5 the date that the person was committed under s. 51.20 (13).

6 2. For a person committed under s. 971.14 or 971.17, the date of the offense or  
7 alleged offense that resulted in the person's commitment.

8 3. For a person detained or committed under ch. 980, the date that the person  
9 committed the sexually violent offense that resulted in the sentence, placement, or  
10 commitment that was in effect when the state filed a petition under s. 980.02 against  
11 the person.

12 (b) That the person's habitation was fixed at the place established under par.  
13 (a) before he or she was detained or committed shall be considered prima facie  
14 evidence that the person intends to return to that place. The prima facie evidence  
15 of intent to return to the place determined under par. (a) may be rebutted by  
16 presenting information that indicates that the person is not likely to return to that  
17 place if the person's detention or commitment is terminated. )

Insert  
2-17-18

SECTION 51.375 (2) of the statutes is renumbered 51.375 (2) (a).  
⑤ 1967n

19 SECTION 51.375 (2) (b) of the statutes is created to read:  
⑤ 1967P

20 51.375 (2) (b) The department may administer a lie detector test to a sex  
21 offender as part of the sex offender's programming, care, or treatment. A patient's  
22 refusal to submit to a lie detector test under this paragraph does not constitute a  
23 general refusal to participate in treatment. A person administering a lie detector test  
24 under this paragraph may not ask the subject of the test any question that can  
25 reasonably be anticipated to elicit information as to whether the subject committed

1 an offense for which the subject has not been convicted, found not guilty by reason  
2 of mental disease or defect, or adjudicated delinquent. The results of a lie detector  
3 test under this paragraph may be used only in the care, treatment, or assessment of  
4 the subject or in programming for the subject. The results of a test may be disclosed  
5 only to the committing court, the patient's attorney, the attorney representing the  
6 state in a proceeding under ch. 980, or to persons employed at the facility at which  
the subject is placed.

# ⑦ Page 66 on line 5. after that line insert  
⑥ SECTION 51.61 (1) (c) of the statutes is renumbered 51.61 (1) (cm) 1. and  
⑥ 1993d  
9 amended to read:

10 51.61 (1) (cm) 1. ~~Have~~ Patients have an unrestricted right to send sealed mail  
11 and receive sealed mail to or from legal counsel, the courts, ~~governmental~~  
12 government officials, private physicians, and licensed psychologists, and have  
13 reasonable access to letter writing materials including postage stamps. A patient  
14 shall also have a right to send sealed mail and receive sealed mail to or from other  
15 persons, subject to physical examination in the patient's presence if there is reason  
16 to believe that such communication contains contraband materials or objects which  
17 that threaten the security of patients, prisoners, or staff. Such reasons shall be  
18 written in the individual's treatment record. The officers and staff of a facility may  
19 not read any mail covered by this paragraph subdivision.

20 SECTION 51.61 (1) (cm) (intro.) of the statutes is created to read:

21 51.61 (1) (cm) Have the rights specified under subd. 1. to send and receive  
22 sealed mail, subject to the limitations specified under subd. 2.

23 SECTION 51.61 (1) (cm) 2. of the statutes is created to read:

24 51.61 (1) (cm) 2. The rights of a patient detained or committed under ch. 980  
25 to send and receive sealed mail are subject to the following limitations:

*appears to be*

1 a. If the mail ~~is from~~ from legal counsel, a court, a government official, or a  
 2 private physician or licensed psychologist, an officer or staff member of the facility  
 3 at which the patient is placed may delay delivery of the mail to the patient for a  
 4 reasonable period of time to verify whether the person named as the sender actually  
 5 sent the mail; may open the mail in the presence of the patient and inspect it for  
 6 contraband; or may, if the officer or staff member cannot determine whether the mail  
 7 contains contraband, return the mail to the sender along with notice of the facility  
 8 mail policy.

9 b. If the mail is to or from a person other than a person specified in subd. 2. a.,  
 10 an officer or staff member of the facility at which the patient is placed may open the  
 11 mail outside the presence of the patient and inspect it for contraband or other objects  
 12 that pose a threat to security at the facility, ~~or the director of the facility or his or her~~  
 13 ~~designee may authorize a member of the facility treatment staff to read the mail, if~~  
 14 ~~the director or his or her designee has reason to believe that the mail could pose a~~  
 15 ~~threat to security at the facility or seriously interfere with the treatment, rights, or~~

16 safety of others.

*Insert 4-14 ->*

*1993g*

17 SECTION 51.61 (1) (i) 1. of the statutes is amended to read:

18 51.61 (1) (i) 1. Except as provided in subd. 2., have a right to be free from  
 19 physical restraint and isolation except for emergency situations or when isolation or  
 20 restraint is a part of a treatment program. Isolation or restraint may be used only  
 21 when less restrictive measures are ineffective or not feasible and shall be used for  
 22 the shortest time possible. When a patient is placed in isolation or restraint, his or  
 23 her status shall be reviewed once every 30 minutes. Each facility shall have a written  
 24 policy covering the use of restraint or isolation ~~which~~ that ensures that the dignity  
 25 of the individual is protected, that the safety of the individual is ensured, and that

1 there is regular, frequent monitoring by trained staff to care for bodily needs as may  
2 be required. Isolation or restraint may be used for emergency situations only when  
3 it is likely that the patient may physically harm himself or herself or others. The  
4 treatment director shall specifically designate physicians who are authorized to  
5 order isolation or restraint, and shall specifically designate licensed psychologists  
6 who are authorized to order isolation. ~~In the instance where~~ If the treatment director  
7 is not a physician, the medical director shall make the designation. In the case of a  
8 center for the developmentally disabled, use shall be authorized by the director of the  
9 center. The authorization for emergency use of isolation or restraint shall be in  
10 writing, except that isolation or restraint may be authorized in emergencies for not  
11 more than one hour, after which time an appropriate order in writing shall be  
12 obtained from the physician or licensed psychologist designated by the director, in  
13 the case of isolation, or the physician so designated in the case of restraint.  
14 Emergency isolation or restraint may not be continued for more than 24 hours  
15 without a new written order. Isolation may be used as part of a treatment program  
16 if it is part of a written treatment plan, and the rights specified in this subsection are  
17 provided to the patient. The use of isolation as a part of a treatment plan shall be  
18 explained to the patient and to his or her guardian, if any, by the person who  
19 ~~undertakes such~~ provides the treatment. ~~Such~~ A treatment plan that incorporates  
20 isolation shall be evaluated at least once every 2 weeks. Patients who have a recent  
21 history of physical aggression may be restrained during transport to or from the  
22 facility. Persons who are committed or transferred under s. 51.35 (3) or 51.37 or  
23 under ch. 971 or 975, or who are detained or committed under ch. 980, and who, while  
24 under this status, are transferred to a hospital, as defined in s. 50.33 (2), for medical  
25 care may be isolated for security reasons within locked facilities in the hospital.

1 Patients who are committed or transferred under s. 51.35 (3) or 51.37 or under ch.  
2 971 or 975, or who are detained or committed under ch. 980, may be restrained for  
3 security reasons during transport to or from the facility.

4 <sup>§ 1993h</sup>  
SECTION 8. 51.61 (1) (i) 2. of the statutes is amended to read:

5 51.61 (1) (i) 2. Patients in the maximum security facility at the Mendota Mental  
6 Health Institute may be locked in their rooms during the night shift and for a period  
7 of no longer than one hour and 30 minutes during each change of shift by staff to  
8 permit staff review of patient needs. Patients detained or committed under ch. 980  
9 and placed in a facility specified under s. 980.065 may be locked in their rooms during  
10 the night shift, except that patients who do not have toilets in their rooms must be  
11 given an opportunity to use a toilet at least once every hour, or more frequently if  
12 medically indicated. Patients in the maximum security facility at the Mendota  
13 Mental Health Institute, or patients detained or committed under ch. 980 and placed  
14 in a facility specified under s. 980.065, may also be locked in their rooms on a  
15 unit-wide or facility-wide basis as an emergency measure as needed for security  
16 purposes to deal with an escape or attempted escape, the discovery of a dangerous  
17 weapon in the unit or facility or the receipt of reliable information that a dangerous  
18 weapon is in the unit or facility, or to prevent or control a riot or the taking of a  
19 hostage. A unit wide or facility-wide emergency isolation order may only be  
20 authorized by the director of the unit or ~~maximum security facility~~ where the order  
21 is applicable or his or her designee ~~and shall.~~ A unit-wide or facility-wide emergency  
22 isolation order affecting the Mendota Mental Health Institute must be approved  
23 within one hour after it is authorized by the director of the Mendota ~~mental health~~  
24 facility Mental Health Institute or the director's designee. An emergency order for  
25 unit-wide or facility-wide isolation may only be in effect for the period of time needed

Insert  
6-12

1 to preserve order while dealing with the situation and may not be used as a substitute  
2 for adequate staffing. During a period of unit-wide or facility-wide isolation, the  
3 status of each patient shall be reviewed every 30 minutes to ensure the safety and  
4 comfort of the patient, and each patient who is locked in a room without a toilet shall  
5 be given an opportunity to use a toilet at least once every hour, or more frequently  
6 if medically indicated. Each unit in the maximum security facility at the Mendota  
7 Mental Health Institute and each unit in a facility specified under s. 980.065 shall  
8 have a written policy covering the use of isolation ~~which~~ that ensures that the dignity  
9 of the individual is protected, that the safety of the individual is secured, and that  
10 there is regular, frequent monitoring by trained staff to care for bodily needs as may  
11 be required. ~~Each policy~~ The isolation policies shall be reviewed and approved by the  
12 director of the Mendota Mental Health Institute or the director's designee, or by the  
13 director of the facility specified under s. 980.065 or his or her designee, whichever is  
14 applicable. ① 1993'

15 SECTION 51.61 (1) (o) of the statutes is amended to read:

16 51.61 (1) (o) Except as otherwise provided, have a right not to be filmed or  
17 taped, unless the patient signs an informed and voluntary consent ~~which~~ that  
18 specifically authorizes a named individual or group to film or tape the patient for a  
19 particular purpose or project during a specified time period. The patient may specify  
20 in such consent periods during which, or situations in which, the patient may not be  
21 filmed or taped. If a patient is legally incompetent, such consent shall be granted on  
22 behalf of the patient by the patient's guardian. A patient in Goodland Hall at the  
23 Mendota Mental Health Institute, or a patient detained or committed under ch. 980  
24 and placed in a facility specified under s. 980.065, may be filmed or taped for security



1 purposes without the patient's consent, except that such a patient may not be filmed  
2 in patient bedrooms or bathrooms for any purpose without the patient's consent. ✓

② #. Page 1234, line 24: after that line insert

3 SECTION 10. 940.20 (1d) of the statutes is created to read:

③ 3937u

4 940.20 (1d) BATTERY BY CERTAIN DETAINED OR COMMITTED PERSONS. Any person  
5 committed to the custody of the department of health and family services under s.  
6 971.17 and placed in a mental health institute under s. 51.05 or any person detained  
7 or committed to the department of health and family services under ch. 980 and  
8 placed in a facility specified under s. 980.065 who intentionally causes bodily harm  
9 to an officer, employee, visitor, or another patient of the institute or facility, without

⑩ #. Page 1236, line 12: after that line insert:

11 SECTION 11. 942.06 (2m) (b) of the statutes is amended to read:

④ 3938r

12 942.06 (2m) (b) An employee or agent of the department of health and family  
13 services who conducts a lie detector test of a person under the rules promulgated  
14 under s. 51.375

⑤ 3938s

15 SECTION 12. 942.06 (2q) (b) (intro.) of the statutes is amended to read:

16 942.06 (2q) (b) (intro.) An employee or agent of the department of health and  
17 family services who discloses, to any of the following, the fact that a person has had  
18 a lie detector test under ~~the rules promulgated under~~ s. 51.375 or the results of such  
19 a lie detector test:

⑥ 3938t

20 SECTION 13. 942.06 (2q) (b) 1. of the statutes is amended to read:

21 942.06 (2q) (b) 1. Another employee or agent of the department of health and  
22 family services or another person to whom disclosure is permitted under s. 51.375

⑬ #. Page 1245, line 21: after that line insert

24 SECTION 14. 946.42 (3) (h) of the statutes is created to read:

⑦ 3966qi

⑧

*, or a privately operated residential facility under contract with the department of health and family services*

1 946.42 (3) (h) Detained under s. 980.04 or committed to the department of  
2 health and family services under s. 980.06 and placed in institutional care under s.

#, <sup>3</sup>Page 1280, line 9 after that line insert:  
4 SECTION 17. 980.065 (1r) of the statutes is created to read:

5 980.065 (1r) Notwithstanding sub. (1m), the department may place a female  
6 person committed under s. 980.06 at Mendota Mental Health Institute, or Winnebago  
7 Mental Health Institute.

8 SECTION 17. 980.067 of the statutes is created to read:

9 980.067 Activities off grounds. (1) The superintendent of the facility at  
10 which a person is placed under s. 980.065 may allow the person to leave the grounds  
11 of the facility under escort for any of the following purposes if the superintendent  
12 determines that the escorted leave is in the best therapeutic interests of the person  
13 and that it does not present a substantial risk of harm to the community:

- 14 a. To visit a relative as defined under s. 48.02 (15) who is seriously ill.
- 15 b. To attend the funeral of a relative as defined under s. 48.02 (15).
- 16 c. To obtain medical services that are not provided at the facility.
- 17 d. To engage in pre-placement activities, if the court has granted the person's
- 18 petition for supervised release under s. 980.08 (4).

19 (2) The suprcintendent shall establish the maximum length of any leave  
20 granted under this section and may impose conditions on the leave that are  
21 appropriate to the safety of the community, the security of the facility, and the  
22 person's treatment.

*placed in institutional care*

23 (3) A person remains ~~in placement~~ under s. 980.065 for purposes of s. 946.42  
24 (3) (h) while on a leave granted under this section.

25 SECTION 17. Initial applicability

#. Page 1416, line 16: after that line insert

1 <sup>(2)</sup> The treatment of sections 940.20 (1d) and 946.42 (3) (h) of the statutes first  
2 applies to offenses committed on the effective date of this subsection. <sup>(1)</sup>

3 (END)

(13K) (NEW) <sup>(C)</sup> CRIMES OF ESCAPE OR BATTERY BY A SEXUALLY VIOLENT PERSON

2001-2002 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRBb1544/lins  
RLR:.....

1           **Insert 2-17:**

2           ~~1~~ 1. Page 93, line 3: after that line insert:

3           “SECTION 382wd. 19.32 (1b)<sup>↓</sup> of the statutes is repealed.

4           SECTION 382we. 19.32 (1d)<sup>↓</sup> of the statutes is repealed.

5           SECTION 382wf. 19.35 (1) (am) 2. c.<sup>↓</sup> of the statutes is amended to read:

6           19.35 (1) (am) 2. c. Endanger the security, including the security of the  
7           population or staff, of any state prison under s. 302.01, jail, as defined in s. 165.85  
8           (2) (bg), secured correctional facility, as defined in s. 938.02 (15m), secured child  
9           caring institution, as defined in s. 938.02 (15g), secured group home, as defined in  
10          s. 938.02 (15p), mental health institute, as defined in s. 51.01 (12), ~~or~~ center for the  
11          developmentally disabled, as defined in s. 51.01 (3), or facility, specified under s.  
12          980.065, for the institutional care of sexually violent persons.”.

History: 1981 c. 335, 391; 1991 a. 39, 1991 a. 269 ss. 34am, 40am; 1993 a. 93; 1995 a. 77, 158; 1997 a. 94, 133; 1999 a. 9.

13          ~~2~~ 2. Page 656, line 10: after that line insert:

14  
15           **Insert 4-16:**

16           c. If the mail ~~is to or~~<sup>appears to be</sup> from a person other than a person specified in subd. 2. a.,  
17           the director of the facility or his or her designee may, in accordance with the  
18           standards and the procedure under sub. (2) for denying a right for cause, authorize  
19           a member of the facility treatment staff to read the mail, if the director or his or her  
20           designee has reason to believe that the mail could pose a threat to security at the  
21           facility or seriously interfere with the treatment, rights, or safety of others.

22

23

1  
2  
3  
4  
5

Woff

**Insert 6-10:**

if they reside in a maximum or medium security unit in which each room is equipped with a toilet and sink, or if they reside in a unit in which each room is not equipped with a toilet and sink and the number of patients outside their rooms equals or exceeds the number of toilets in the unit.

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

LRBb1544/1dn

RLR/.....

WY

1. Several provisions in this bill may violate the right to equal protection of a person committed under ch. 980. In *State v. Post*, 197 Wis. 2d 279 (1995), the Wisconsin Supreme Court concluded that persons committed under ch. 980 are similarly situated to persons committed under ch. 51 for purposes of an equal protection comparison. The provisions in this bill regarding sealed mail, isolation in hospitals, use of restraints during transportation, locking patients in their rooms, filming and taping patients, and escape all treat persons committed under ch. 980 differently from those committed under ch. 51. The Supreme Court has not determined what level of scrutiny applies to these differences in treatment, but at minimum the state must be able to show a rational basis for the differences. As an alternative to imposing a separate set of restrictions on the rights of persons committed under ch. 980 as opposed to other provisions, you could ~~instead~~ allow the facilities where persons committed under ch. 980 are placed to restrict an individual patient's rights as a consequence of his or her behavior.

2. To fulfill DHFS' intent, I largely retained the language suggested by DHFS with respect to lie detector tests. However, you may wish to consider making the following changes to s. 51.375 (2) (b), as created by the bill:

a. Preface 51.375 (2) (b) by stating that use of lie detector tests for treatment is subject to s. 51.61 (1) (g), so that it is clear that a patient may refuse to take a test.

b. Clarify to whom test results can or must be disclosed. Should the patient be given the results? The DHFS draft limited disclosure of results only with respect to persons "outside the facility." Presumably test results should not be disclosed to other patients just because they are in the same facility. Please look at s. 51.375 (2) (b) in the bill, and let me know if the limit on disclosure should be changed.

c. The bill grants DHFS authority to administer a lie detector test to any sex offender who is committed to DHFS regardless of under what statutory section the person is committed, not just those committed under ch. 980. Is that what DHFS intends?

d. Under the bill, DHFS is directed to promulgate rules only for testing of persons residing in the community. Should the bill direct DHFS to promulgate rules for tests under s. 51.375 (2) (b) as well?

Robin Ryan  
Legislative Attorney  
Phone: (608) 261-6927  
E-mail: robin.ryan@legis.state.wi.us

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

LRBb1544/1dn  
RLR:wlj:ch

June 26, 2001

1. Several provisions in this bill may violate the right to equal protection of a person committed under ch. 980. In *State v. Post*, 197 Wis. 2d 279 (1995), the Wisconsin Supreme Court concluded that persons committed under ch. 980 are similarly situated to persons committed under ch. 51 for purposes of an equal protection comparison. The provisions in this bill regarding sealed mail, isolation in hospitals, use of restraints during transportation, locking patients in their rooms, filming and taping patients, and escape all treat persons committed under ch. 980 differently from those committed under ch. 51. The Supreme Court has not determined what level of scrutiny applies to these differences in treatment, but at minimum the state must be able to show a rational basis for the differences. As an alternative to imposing a separate set of restrictions on the rights of persons committed under ch. 980 as opposed to other provisions, you could allow the facilities where persons committed under ch. 980 are placed to restrict an individual patient's rights as a consequence of his or her behavior.
2. To fulfill DHFS' intent, I largely retained the language suggested by DHFS with respect to lie detector tests. However, you may wish to consider making the following changes to s. 51.375 (2) (b), as created by the bill:
  - a. Preface 51.375 (2) (b) by stating that use of lie detector tests for treatment is subject to s. 51.61 (1) (g), so that it is clear that a patient may refuse to take a test.
  - b. Clarify to whom test results can or must be disclosed. Should the patient be given the results? The DHFS draft limited disclosure of results only with respect to persons "outside the facility." Presumably test results should not be disclosed to other patients just because they are in the same facility. Please look at s. 51.375 (2) (b) in the bill, and let me know if the limit on disclosure should be changed.
  - c. The bill grants DHFS authority to administer a lie detector test to any sex offender who is committed to DHFS regardless of under what statutory section the person is committed, not just those committed under ch. 980. Is that what DHFS intends?
  - d. Under the bill, DHFS is directed to promulgate rules only for testing of persons residing in the community. Should the bill direct DHFS to promulgate rules for tests under s. 51.375 (2) (b) as well?

Robin Ryan  
Legislative Attorney  
Phone: (608) 261-6927  
E-mail: robin.ryan@legis.state.wi.us

## Ryan, Robin

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**From:** Moore, Kevin  
**Sent:** June 27, 2001 7:41 AM  
**To:** Ryan, Robin  
**Subject:** FW: FW: LRB Draft: 01b1544/1 Patient's rights of sexually violent persons; operation of Sand Ridge

Here is some additional information on the Sand Ridge Treatment center stuff...

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

**From:** Gebhart, Neil  
**Sent:** Tuesday, June 26, 2001 4:24 PM  
**To:** Moore, Kevin; Pederson, Russell  
**Subject:** Re: FW: LRB Draft: 01b1544/1 Patient's rights of sexually violent persons; operation of Sand Ridge

LRBb1544/1, on p. 2. lines 13-15 currently reads as follows:

"2. Page 93, line 3: after that line insert:  
SECTION 382wd. 19.32 (1b) of the statutes is repealed.  
SECTION 382we. 19.32 (1d) of the statutes is repealed."

The 2 repealed provisions should be retained. They currently provide as follows:

19.32(1b) "Committed person" means a person who is committed under ch. 51, 971, 975 or 980 and who is placed in an inpatient treatment facility, during the period that the person's placement in the inpatient treatment facility continues.

19.32(1d) "Inpatient treatment facility" means any of the following:

- (a) A mental health institute, as defined in s. 51.01 (12).
- (b) The Wisconsin Resource Center established under s. 46.056.
- (c) A secure mental health unit or facility established under s. 980.065 (2).
- (d) The Milwaukee County mental health complex established under s. 51.08.

The term "inpatient treatment facility" as defined in (1d) is used in the definition of "committed person" in (1b). The term "committed person" is used in turn in s. 19.32(3), which provides:

\* "Requester" means any person who requests inspection or copies of a record, except a committed or incarcerated person, unless the person requests inspection or copies of a record that contains specific references to that person or his or her minor children for whom he or she has not been denied physical placement under ch. 767, and the record is otherwise accessible to the person by law.

The intent of the proposed change is to make sure that the exception for "committed persons" includes persons placed at SRSTC as well as persons placed at WRC. We therefore ask that the provisions of the draft quoted above be deleted and replaced with the following:

Section 19.32(1d)(b) of the Statutes is repealed.

Section 19.32(1d)(c) of the Statutes is amended to read:  
19.32(1d)(c) A secure mental health unit or facility for institutional care for sexually violent persons established under s. 980.065 (2).



Please let me know if you have any questions.

>>> Moore, Kevin 06/26/01 01:55PM >>>

Please let me know ASAP if this is what you wanted.

Thanks,

Kevin

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

From: Hughes, Carolyn

Sent: Tuesday, June 26, 2001 1:53 PM

To: Moore, Kevin

Subject: FW: LRB Draft: 01b1544/1 Patient's rights of sexually violent persons; operation of Sand Ridge treatment center

Check out the drafter's note.

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

From: Haugen, Caroline

Sent: Tuesday, June 26, 2001 10:37 AM

To: Hughes, Carolyn

Cc: Legislative Fiscal Bureau; Hanaman, Cathlene; Haugen, Caroline

Subject: LRB Draft: 01b1544/1 Patient's rights of sexually violent persons; operation of Sand Ridge treatment center

Following is the PDF version of draft 01b1544/1.

## Ryan, Robin

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**From:** Moore, Kevin  
**Sent:** June 27, 2001 7:37 AM  
**To:** Ryan, Robin  
**Cc:** Pederson, Russell; Hughes, Carolyn  
**Subject:** FW: FW: LRB Draft: 01b1544/1 Patient's rights of sexually violent persons; operation of Sand Ridge



980 pt rts legn drftr  
nt.doc

Robin,

The attached document is from the DHFS attorney on recommended changes to this motion. Please let me know if you have any questions or concerns.

Sincerely,  
Kevin Moore  
Office of Rep. Kitty Rhoades

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

**From:** Haugen, Caroline  
**Sent:** Tuesday, June 26, 2001 10:37 AM  
**To:** Hughes, Carolyn  
**Cc:** Legislative Fiscal Bureau: Hanaman, Cathlene; Haugen, Caroline  
**Subject:** LRB Draft: 01b1544/1 Patient's rights of sexually violent persons; operation of Sand Ridge treatment center

Following is the PDF version of draft 01b1544/1.

## DHFS Responses to Drafter's Note LRB-3427/P1dn

1. Several provisions in this bill may violate the right to equal protection of a person committed under ch. 980. In *State v. Post*, 197 Wis. 2d 279 (1995), the Wisconsin Supreme Court concluded that persons committed under ch. 980 are similarly situated to persons committed under ch. 51 for purposes of an equal protection comparison. The provisions in this bill regarding sealed mail, isolation in hospitals, use of restraints during transportation, locking patients in their rooms, filming and taping patients, and escape all treat persons committed under ch. 980 differently from those committed under ch. 51. The Supreme Court has not determined what level of scrutiny applies to these differences in treatment, but at minimum the state must be able to show a rational basis for the differences. As an alternative to imposing a separate set of restrictions on the rights of persons committed under ch. 980 as opposed to other provisions, you could instead allow the facilities where persons committed under ch. 980 are placed to restrict an individual patient's rights as a consequence of his or her behavior.

**The Wisconsin and US Supreme Courts have upheld sex predator commitment laws as civil commitment laws similar in nature to laws that authorize involuntary commitment for treatment of persons who are mentally ill and dangerous. The decisions found that sex predator laws do not violate double jeopardy because they provide for treatment rather than punishment. Part of the grounds for that finding is that sex predator laws afford certain patient rights that are similar to those enjoyed by civilly committed patients, and result in living conditions for sex predators that are considerably less restrictive than living conditions in prison. Nothing in the court decisions, however, suggested that conditions of confinement of sex predators must be identical to those of patients committed under traditional mental health involuntary commitment laws. Existing case law does not establish that committed sex predators and involuntary mental patients are to be considered similarly situated for purposes of equal protection analysis. Moreover, even if a court were to consider involuntary mental patients a valid comparison group to sex predators in an equal protection challenge, the State should be able to easily establish a "rational basis" for the minimal differences in rights enjoyed by the two groups. Sex predators as a group have mental disorders that dictate treatment modalities and conditions of confinement that are different than those designed for patients with major mental illnesses.**

2. To fulfill DHFS' intent, I largely retained the language suggested by DHFS with respect to lie detector tests. However, you may wish to consider making the following changes to s. 51.375(2)(b), as created by the bill:

a. Preface 51.375(2)(b) by stating that use of lie detector tests for treatment is subject to s. 51.61(1)(g), so that it is clear that a patient may refuse to take a test.

**As currently drafted, s. 51.375(2)(b) would provide in part:**

The department may administer a lie detector test to a sex offender as part of the sex offender's programming, care, or treatment. A patient's refusal to submit to a lie detector test under this paragraph does not constitute a general refusal to participate in treatment. ...

We think this language would make it clear that a patient may refuse to take a lie detector test. If this language is not sufficiently clear on this point, we suggest revising it to read something like the following:

*Add*  
The department may administer a lie detector test to a sex offender as part of the sex offender's programming, care, or treatment. A patient may refuse to submit to a lie detector test under this paragraph, and a patient's refusal to submit to a lie detector test does not constitute a general refusal to participate in treatment. ...

We recommend against a cross-reference to s. 51.61(1)(g).

b. Clarify to whom test results can or must be disclosed. Should the patient be given the results? The DHFS draft limited disclosure of results only with respect to persons "outside the facility." Presumably test results should not be disclosed to other patients just because they are in the same facility. Please look at s. 51.375(2)(b) in the bill, and let me know if the limit on disclosure should be changed.

We think the draft does a good job of limiting disclosure of the lie detector results. If there is a need to further limit who within the facility may receive the results, we would suggest language like the following:

*Add* [ The results of a lie detector test under this paragraph may be used only in the care, treatment, or assessment of the subject or in programming for the subject. The results of a test may be disclosed only to the committing court, the patient's attorney, the attorney representing the state in a proceeding under ch. 980, or persons employed at the facility at which the subject is placed who have a need to know the results in connection with the patient's care, treatment or assessment.

c. The bill grants DHFS authority to administer a lie detector test to any sex offender who is committed to DHFS regardless of under what statutory section the person is committed, not just those committed under ch. 980. Is that what DHFS intends?

Yes.

d. Under the bill, DHFS is directed to promulgate rules only for testing of persons residing in the community. Should the bill direct DHFS to promulgate rules for tests under s. 51.375(2)(b) as well?

No.

3. I created the provision regarding escorted leaves in ch. 980 since it is more related to the scope or level of commitment than to the operations of a facility. Also, the analogous provision regarding leave for person committed under s. 51.20 is located in s. 51.37 (8) rather than in ch. 46. Instead of including details regarding the purpose for which leave is allowed and the standard for permitting leave in the statutes, the bill could provide that superintendents may grant escorted leave and direct DHFS to promulgate rules regarding leave.

Good idea.

*Remove specificity on purpose for leave - add rule making authority*

4. Night lock: The bill simply grants DHFS the authority to lock 980 patients in their rooms during the night shift and requires that they be given the opportunity to use a toilet at least once an hour if placed in a room without a toilet (this is similar to the language for emergency lock-downs), rather than including provisions about counting the number of persons who are out of their rooms versus number of toilets. OK?

*already changed for 6/15/11*

The current draft language in this regard would not reflect the Department's intent and would conflict with its agreement with WCA. The Department has proposed the following three alternatives:

Patients detained or committed under ch. 980 and placed in a facility specified under s. 980.065 may be locked in their rooms during the night shift only if they reside in maximum or medium security units where each room is equipped with a toilet and sink, or if they do not have toilets in their rooms and the number of patients in the unit who are out of their rooms equals the number of toilets in the unit except that every patient shall be given an opportunity to use a toilet at least once every hour, or more frequently if medically indicated.

Patients detained or committed under ch. 980 and placed in a facility specified under s. 980.065 may be locked in their rooms during the night shift only if they reside in maximum or medium security units where each room is equipped with a toilet and sink, or if they reside in units where each room is not equipped with a toilet and sink and the number of patients in the unit who are out of their rooms equals the number of toilets in the unit except that every patient shall be given an opportunity to use a toilet at least once every hour, or more frequently if medically indicated.

Patients detained or committed under ch. 980 and placed in a facility specified under s. 980.065 who reside in maximum or medium security units where each room is equipped with a toilet and sink may be locked in their rooms during the night shift; patients detained or committed under ch. 980 and placed in a facility specified under s. 980.065 who reside in units where each room is not equipped with a toilet and sink may be locked in their

**rooms during the night shift only when the number of patients in the unit who are out of their rooms equals the number of toilets in the unit, except that every patient shall be given an opportunity to use a toilet at least once every hour, or more frequently if medically indicated.**



State of Wisconsin  
2001 - 2002 LEGISLATURE

LRBb1544/1 2

RLR:wlj:ak

RMR

ARC:.....Hughes – Patient’s rights of sexually violent persons; operation of Sand Ridge treatment center

FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION

CAUCUS ASSEMBLY AMENDMENT

TO ASSEMBLY SUBSTITUTE AMENDMENT 1,

TO 2001 SENATE BILL 55

D-Note

1 At the locations indicated, amend the substitute amendment as follows:  
2 1. Page 2, line 25: after that line insert:  
3 “SECTION 29n. 6.10 (7m) of the statutes is created to read:  
4 6.10 (7m) (a) The residence of a person who is detained, or committed and  
5 institutionalized, under s. 51.20, 971.14, or 971.17 or ch. 980 shall be determined by  
6 applying the standards under sub. (1) to whichever of the following dates is  
7 applicable to the circumstances of the person:  
8 1. For a person detained or committed under s. 51.20, the date that the person  
9 was detained under s. 51.20 (2) or, if the person was not detained under s. 51.20 (2),  
10 the date that the person was committed under s. 51.20 (13).

1           2. For a person committed under s. 971.14 or 971.17, the date of the offense or  
2 alleged offense that resulted in the person’s commitment.

3           3. For a person detained or committed under ch. 980, the date that the person  
4 committed the sexually violent offense that resulted in the sentence, placement, or  
5 commitment that was in effect when the state filed a petition under s. 980.02 against  
6 the person.

7           (b) That the person’s habitation was fixed at the place established under par.  
8 (a) before he or she was detained or committed shall be considered prima facie  
9 evidence that the person intends to return to that place. The prima facie evidence  
10 of intent to return to the place determined under par. (a) may be rebutted by  
11 presenting information that indicates that the person is not likely to return to that  
12 place if the person’s detention or commitment is terminated.”.

13           **2.** Page 93, line 3: after that line insert:

14           ~~SECTION 382wd. 19.32(1b) of the statutes is repealed.~~

15           ~~SECTION 382we. 19.32(1d) of the statutes is repealed.~~

Insert 2-15

16           **SECTION 382wf. 19.35 (1) (am) 2. c.** of the statutes is amended to read:

17           19.35 (1) (am) 2. c. Endanger the security, including the security of the  
18 population or staff, of any state prison under s. 302.01, jail, as defined in s. 165.85  
19 (2) (bg), secured correctional facility, as defined in s. 938.02 (15m), secured child  
20 caring institution, as defined in s. 938.02 (15g), secured group home, as defined in  
21 s. 938.02 (15p), mental health institute, as defined in s. 51.01 (12), ~~or~~ center for the  
22 developmentally disabled, as defined in s. 51.01 (3), or facility, specified under s.  
23 980.065, for the institutional care of sexually violent persons.”.

24           **3.** Page 656, line 10: after that line insert:



*No # A patient may refuse to submit to a lie detector test under this paragraph. This refusal*

1 "SECTION 1967n. 51.375 (2) of the statutes is renumbered 51.375 (2) (a).

2 SECTION 1967p. 51.375 (2) (b) of the statutes is created to read:

3 51.375 (2) (b) The department may administer a lie detector test to a sex  
4 offender as part of the sex offender's programming, care, or treatment, ~~A patient's~~

5 ~~refusal to submit to a lie detector test under this paragraph~~ does not constitute a  
6 general refusal to participate in treatment. A person administering a lie detector test  
7 under this paragraph may not ask the subject of the test any question that can  
8 reasonably be anticipated to elicit information as to whether the subject committed  
9 an offense for which the subject has not been convicted, found not guilty by reason  
10 of mental disease or defect, or adjudicated delinquent. The results of a lie detector  
11 test under this paragraph may be used only in the care, treatment, or assessment of  
12 the subject or in programming for the subject. The results of a test may be disclosed  
13 only to the committing court, the patient's attorney, <sup>or</sup> the attorney representing the  
14 state in a proceeding under ch. 980, ~~and~~ persons employed at the facility at which

15 the subject is placed<sup>s</sup>. *who need to know the results for purposes related to care, treatment or assessment of the patients*  
16 4. Page 660, line 5: after that line insert:

17 "SECTION 1993d. 51.61 (1) (c) of the statutes is renumbered 51.61 (1) (cm) 1.  
18 and amended to read:

19 51.61 (1) (cm) 1. Have Patients have an unrestricted right to send sealed mail  
20 and receive sealed mail to or from legal counsel, the courts, governmental  
21 government officials, private physicians, and licensed psychologists, and have  
22 reasonable access to letter writing materials including postage stamps. A patient  
23 shall also have a right to send sealed mail and receive sealed mail to or from other  
24 persons, subject to physical examination in the patient's presence if there is reason

1 to believe that such communication contains contraband materials or objects which  
2 that threaten the security of patients, prisoners, or staff. Such reasons shall be  
3 written in the individual's treatment record. The officers and staff of a facility may  
4 not read any mail covered by this ~~paragraph~~ subdivision.

5 **SECTION 1993e.** 51.61 (1) (cm) (intro.) of the statutes is created to read:

6 51.61 (1) (cm) Have the rights specified under subd. 1. to send and receive  
7 sealed mail, subject to the limitations specified under subd. 2.

8 **SECTION 1993f.** 51.61 (1) (cm) 2. of the statutes is created to read:

9 51.61 (1) (cm) 2. The rights of a patient detained or committed under ch. 980  
10 to send and receive sealed mail are subject to the following limitations:

11 a. If the mail appears to be from legal counsel, a court, a government official,  
12 or a private physician or licensed psychologist, an officer or staff member of the  
13 facility at which the patient is placed may delay delivery of the mail to the patient  
14 for a reasonable period of time to verify whether the person named as the sender  
15 actually sent the mail; may open the mail in the presence of the patient and inspect  
16 it for contraband; or may, if the officer or staff member cannot determine whether the  
17 mail contains contraband, return the mail to the sender along with notice of the  
18 facility mail policy.

19 b. If the mail is to or from a person other than a person specified in subd. 2. a.,  
20 an officer or staff member of the facility at which the patient is placed may open the  
21 mail outside the presence of the patient and inspect it for contraband or other objects  
22 that pose a threat to security at the facility.

23 c. If the mail appears to be from a person other than a person specified in subd.  
24 2. a., the director of the facility or his or her designee may, in accordance with the  
25 standards and the procedure under sub. (2) for denying a right for cause, authorize

1 a member of the facility treatment staff to read the mail, if the director or his or her  
2 designee has reason to believe that the mail could pose a threat to security at the  
3 facility or seriously interfere with the treatment, rights, or safety of others.

4 **SECTION 1993g.** 51.61 (1) (i) 1. of the statutes is amended to read:

5 51.61 (1) (i) 1. Except as provided in subd. 2., have a right to be free from  
6 physical restraint and isolation except for emergency situations or when isolation or  
7 restraint is a part of a treatment program. Isolation or restraint may be used only  
8 when less restrictive measures are ineffective or not feasible and shall be used for  
9 the shortest time possible. When a patient is placed in isolation or restraint, his or  
10 her status shall be reviewed once every 30 minutes. Each facility shall have a written  
11 policy covering the use of restraint or isolation ~~which~~ that ensures that the dignity  
12 of the individual is protected, that the safety of the individual is ensured, and that  
13 there is regular, frequent monitoring by trained staff to care for bodily needs as may  
14 be required. Isolation or restraint may be used for emergency situations only when  
15 it is likely that the patient may physically harm himself or herself or others. The  
16 treatment director shall specifically designate physicians who are authorized to  
17 order isolation or restraint, and shall specifically designate licensed psychologists  
18 who are authorized to order isolation. ~~In the instance where~~ If the treatment director  
19 is not a physician, the medical director shall make the designation. In the case of a  
20 center for the developmentally disabled, use shall be authorized by the director of the  
21 center. The authorization for emergency use of isolation or restraint shall be in  
22 writing, except that isolation or restraint may be authorized in emergencies for not  
23 more than one hour, after which time an appropriate order in writing shall be  
24 obtained from the physician or licensed psychologist designated by the director, in  
25 the case of isolation, or the physician so designated in the case of restraint.

1 Emergency isolation or restraint may not be continued for more than 24 hours  
2 without a new written order. Isolation may be used as part of a treatment program  
3 if it is part of a written treatment plan, and the rights specified in this subsection are  
4 provided to the patient. The use of isolation as a part of a treatment plan shall be  
5 explained to the patient and to his or her guardian, if any, by the person who  
6 ~~undertakes such~~ provides the treatment. Such A treatment plan that incorporates  
7 isolation shall be evaluated at least once every 2 weeks. Patients who have a recent  
8 history of physical aggression may be restrained during transport to or from the  
9 facility. Persons who are committed or transferred under s. 51.35 (3) or 51.37 or  
10 under ch. 971 or 975, or who are detained or committed under ch. 980, and who, while  
11 under this status, are transferred to a hospital, as defined in s. 50.33 (2), for medical  
12 care may be isolated for security reasons within locked facilities in the hospital.  
13 Patients who are committed or transferred under s. 51.35 (3) or 51.37 or under ch.  
14 971 or 975, or who are detained or committed under ch. 980, may be restrained for  
15 security reasons during transport to or from the facility.

16 **SECTION 1993h.** 51.61 (1) (i) 2. of the statutes is amended to read:

17 51.61 (1) (i) 2. Patients in the maximum security facility at the Mendota Mental  
18 Health Institute may be locked in their rooms during the night shift and for a period  
19 of no longer than one hour and 30 minutes during each change of shift by staff to  
20 permit staff review of patient needs. Patients detained or committed under ch. 980  
21 and placed in a facility specified under s. 980.065 may be locked in their rooms during  
22 the night shift, if they reside in a maximum or medium security unit in which each  
23 room is equipped with a toilet and sink, or if they reside in a unit in which each room  
24 is not equipped with a toilet and sink and the number of patients outside their rooms  
25 equals or exceeds the number of toilets in the unit, except that patients who do not

1 have toilets in their rooms must be given an opportunity to use a toilet at least once  
2 every hour, or more frequently if medically indicated. Patients in the maximum  
3 security facility at the Mendota Mental Health Institute, or patients detained or  
4 committed under ch. 980 and placed in a facility specified under s. 980.065, may also  
5 be locked in their rooms on a unit-wide or facility-wide basis as an emergency  
6 measure as needed for security purposes to deal with an escape or attempted escape,  
7 the discovery of a dangerous weapon in the unit or facility or the receipt of reliable  
8 information that a dangerous weapon is in the unit or facility, or to prevent or control  
9 a riot or the taking of a hostage. A unit-wide or facility-wide emergency isolation  
10 order may only be authorized by the director of the unit or ~~maximum security facility~~  
11 where the order is applicable or his or her designee ~~and shall.~~ A unit-wide or  
12 facility-wide emergency isolation order affecting the Mendota Mental Health  
13 Institute must be approved within one hour after it is authorized by the director of  
14 the Mendota ~~mental health facility~~ Mental Health Institute or the director's  
15 designee. An emergency order for unit-wide or facility-wide isolation may only be  
16 in effect for the period of time needed to preserve order while dealing with the  
17 situation and may not be used as a substitute for adequate staffing. During a period  
18 of unit-wide or facility-wide isolation, the status of each patient shall be reviewed  
19 every 30 minutes to ensure the safety and comfort of the patient, and each patient  
20 who is locked in a room without a toilet shall be given an opportunity to use a toilet  
21 at least once every hour, or more frequently if medically indicated. Each unit in the  
22 maximum security facility at the Mendota Mental Health Institute and each unit in  
23 a facility specified under s. 980.065 shall have a written policy covering the use of  
24 isolation ~~which~~ that ensures that the dignity of the individual is protected, that the  
25 safety of the individual is secured, and that there is regular, frequent monitoring by

1 trained staff to care for bodily needs as may be required. ~~Each policy~~ The isolation  
2 policies shall be reviewed and approved by the director of the Mendota Mental  
3 Health Institute or the director's designee, or by the director of the facility specified  
4 under s. 980.065 or his or her designee, whichever is applicable.

5 **SECTION 1993i.** 51.61 (1) (o) of the statutes is amended to read:

6 51.61 (1) (o) Except as otherwise provided, have a right not to be filmed or  
7 taped, unless the patient signs an informed and voluntary consent ~~which~~ that  
8 specifically authorizes a named individual or group to film or tape the patient for a  
9 particular purpose or project during a specified time period. The patient may specify  
10 in such consent periods during which, or situations in which, the patient may not be  
11 filmed or taped. If a patient is legally incompetent, such consent shall be granted on  
12 behalf of the patient by the patient's guardian. A patient in Goodland Hall at the  
13 Mendota Mental Health Institute, or a patient detained or committed under ch. 980  
14 and placed in a facility specified under s. 980.065, may be filmed or taped for security  
15 purposes without the patient's consent, except that such a patient may not be filmed  
16 in patient bedrooms or bathrooms for any purpose without the patient's consent.”.

17 **5.** Page 1234, line 24: after that line insert:

18 **“SECTION 3937u.** 940.20 (1d) of the statutes is created to read:

19 940.20 (1d) BATTERY BY CERTAIN DETAINED OR COMMITTED PERSONS. Any person  
20 committed to the custody of the department of health and family services under s.  
21 971.17 and placed in a mental health institute under s. 51.05 or any person detained  
22 or committed to the department of health and family services under ch. 980 and  
23 placed in a facility specified under s. 980.065 who intentionally causes bodily harm

1 to an officer, employee, visitor, or another patient of the institute or facility, without  
2 his or her consent, is guilty of a Class D felony.”.

3 **6.** Page 1236, line 12: after that line insert:

4 “**SECTION 3938r.** 942.06 (2m) (b) of the statutes is amended to read:

5 942.06 (2m) (b) An employee or agent of the department of health and family  
6 services who conducts a lie detector test of a person under the rules promulgated  
7 ~~under~~ s. 51.375.

8 **SECTION 3938s.** 942.06 (2q) (b) (intro.) of the statutes is amended to read:

9 942.06 (2q) (b) (intro.) An employee or agent of the department of health and  
10 family services who discloses, to any of the following, the fact that a person has had  
11 a lie detector test ~~under the rules promulgated under~~ s. 51.375 or the results of such  
12 a lie detector test:

13 **SECTION 3938t.** 942.06 (2q) (b) 1. of the statutes is amended to read:

14 942.06 (2q) (b) 1. Another employee or agent of the department of health and  
15 family services or another person to whom disclosure is permitted under s. 51.375  
16 (2) (b).”.

17 **7.** Page 1245, line 21: after that line insert:

18 “**SECTION 3966qi.** 946.42 (3) (h) of the statutes is created to read:

19 946.42 (3) (h) Detained under s. 980.04 or committed to the department of  
20 health and family services under s. 980.06 and placed in institutional care under s.  
21 980.065.”.

22 **8.** Page 1280, line 9: after that line insert:

23 “**SECTION 4034yd.** 980.065 (1r) of the statutes is created to read:

1 980.065 (1r) Notwithstanding sub. (1m), the department may place a female  
2 person committed under s. 980.06 at Mendota Mental Health Institute, Winnebago  
3 Mental Health Institute, or a privately operated residential facility under contract  
4 with the department of health and family services.

5 SECTION 4034ye. 980.067 of the statutes is created to read:

6 980.067 Activities off grounds. (1) The superintendent of the facility at  
7 which a person is placed under s. 980.065 may allow the person to leave the grounds

8 of the facility under escort ~~for any of the following purposes if the superintendent~~  
9 determines that the escorted leave is in the best therapeutic interests of the person  
10 and that it does not present a substantial risk of harm to the community:

- 11 a. To visit a relative as defined under s. 48.02 (15) who is seriously ill.
- 12 b. To attend the funeral of a relative as defined under s. 48.02 (15).
- 13 c. To obtain medical services that are not provided at the facility.
- 14 d. To engage in pre-placement activities, if the court has granted the person's
- 15 petition for supervised release under s. 980.08 (4).

16 ~~The superintendent shall establish the maximum length of any leave~~  
17 ~~granted under this section and may impose conditions on the leave that are~~  
18 ~~appropriate to the safety of the community, the security of the facility, and the~~  
19 ~~person's treatment.~~

20 (2) ~~12~~ A person remains placed in institutional care under s. 980.065 for purposes  
21 of s. 946.42 (3) (h) while on a leave granted under this section.”.

22 9. Page 1416, line 16: after that line insert:

(No F) The department of health and family services shall promulgate rules for the administration of this section.





**2001-2002 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRBb1544/2ins  
RLR:.....

1           **Insert 2-15:**

2           “**SECTION 382wd.** 19.32 (1d) (b) of the statutes is repealed.

3           **SECTION 382we.** 19.32 (1d) (c) of the statutes is amended to read:

4           **19.32 (1d) (c)** ~~A secure mental health unit or facility established or unit for the~~  
5           institutional care of sexually violent persons specified under s. 980.065 (2).

**History:** 1981 c. 335; 1985 a. 26, 29, 332; 1987 a. 305; 1991 a. 39, 1991 a. 269 ss. 26pd, 33b; 1993 a. 215, 263, 491; 1995 a. 158; 1997 a. 79, 94; 1999 a. 9.

DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRBb1544/2dn

RLR:.....

WJ

*scoring* The treatment of s. 19.32 (1d) (c), *stats.* in the e-mail message from DHFS dated June 26, 2001, does not include any stricken or *scored* ~~underlined~~ text. I assume DHFS wants the language suggested in earlier communications regarding this draft and that the striking and ~~underlining~~ simply did not paste appropriately into the e-mail message. I also assume that s. 19.32 (1d) (c) should reference units as well as facilities so that it covers all types of institutional settings provided for under s. 980.065.

*stats.)* Robin Ryan  
Legislative Attorney  
Phone: (608) 261-6927  
E-mail: robin.ryan@legis.state.wi.us

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

LRBb1544/2dn  
RLR:wlj:cmh

June 27, 2001

The treatment of s. 19.32 (1d) (c), stats., in the e-mail message from DHFS dated June 26, 2001, does not include any stricken or scored text. I assume DHFS wants the language suggested in earlier communications regarding this draft and that the striking and scoring simply did not paste appropriately into the e-mail message. I also assume that s. 19.32 (1d) (c), stats., should reference units as well as facilities so that it covers all types of institutional settings provided for under s. 980.065.

Robin Ryan  
Legislative Attorney  
Phone: (608) 261-6927  
E-mail: robin.ryan@legis.state.wi.us



State of Wisconsin  
2001 - 2002 LEGISLATURE

LRBb1544/2  
RLR:wlj:cmh

ARC:.....Hughes – Patient’s rights of sexually violent persons; operation of  
Sand Ridge treatment center

FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION

**CAUCUS ASSEMBLY AMENDMENT**

**TO ASSEMBLY SUBSTITUTE AMENDMENT 1,**

**TO 2001 SENATE BILL 55**

1 At the locations indicated, amend the substitute amendment as follows:

2 **1.** Page 2, line 25: after that line insert:

3 “SECTION 29n. 6.10 (7m) of the statutes is created to read:

4 6.10 (7m) (a) The residence of a person who is detained, or committed and  
5 institutionalized, under s. 51.20, 971.14, or 971.17 or ch. 980 shall be determined by  
6 applying the standards under sub. (1) to whichever of the following dates is  
7 applicable to the circumstances of the person:

8 1. For a person detained or committed under s. 51.20, the date that the person  
9 was detained under s. 51.20 (2) or, if the person was not detained under s. 51.20 (2),  
10 the date that the person was committed under s. 51.20 (13).

1           2. For a person committed under s. 971.14 or 971.17, the date of the offense or  
2 alleged offense that resulted in the person's commitment.

3           3. For a person detained or committed under ch. 980, the date that the person  
4 committed the sexually violent offense that resulted in the sentence, placement, or  
5 commitment that was in effect when the state filed a petition under s. 980.02 against  
6 the person.

7           (b) That the person's habitation was fixed at the place established under par.  
8 (a) before he or she was detained or committed shall be considered prima facie  
9 evidence that the person intends to return to that place. The prima facie evidence  
10 of intent to return to the place determined under par. (a) may be rebutted by  
11 presenting information that indicates that the person is not likely to return to that  
12 place if the person's detention or commitment is terminated.”

13           **2.** Page 93, line 3: after that line insert:

14           “**SECTION 382wd.** 19.32 (1d) (b) of the statutes is repealed.

15           **SECTION 382we.** 19.32 (1d) (c) of the statutes is amended to read:

16           19.32 (1d) (c) ~~A secure mental health unit or facility established or unit for the~~  
17 institutional care of sexually violent persons specified under s. 980.065 (2).

18           **SECTION 382wf.** 19.35 (1) (am) 2. c. of the statutes is amended to read:

19           19.35 (1) (am) 2. c. Endanger the security, including the security of the  
20 population or staff, of any state prison under s. 302.01, jail, as defined in s. 165.85  
21 (2) (bg), secured correctional facility, as defined in s. 938.02 (15m), secured child  
22 caring institution, as defined in s. 938.02 (15g), secured group home, as defined in  
23 s. 938.02 (15p), mental health institute, as defined in s. 51.01 (12), ~~or~~ center for the

1       developmentally disabled, as defined in s. 51.01 (3), or facility, specified under s.  
2       980.065, for the institutional care of sexually violent persons.”.

3               **3.** Page 656, line 10: after that line insert:

4               “**SECTION 1967n.** 51.375 (2) of the statutes is renumbered 51.375 (2) (a).

5               **SECTION 1967p.** 51.375 (2) (b) of the statutes is created to read:

6               51.375 (2) (b) The department may administer a lie detector test to a sex  
7       offender as part of the sex offender’s programming, care, or treatment. A patient may  
8       refuse to submit to a lie detector test under this paragraph. This refusal does not  
9       constitute a general refusal to participate in treatment. A person administering a  
10      lie detector test under this paragraph may not ask the subject of the test any question  
11      that can reasonably be anticipated to elicit information as to whether the subject  
12      committed an offense for which the subject has not been convicted, found not guilty  
13      by reason of mental disease or defect, or adjudicated delinquent. The results of a lie  
14      detector test under this paragraph may be used only in the care, treatment, or  
15      assessment of the subject or in programming for the subject. The results of a test may  
16      be disclosed only to persons employed at the facility at which the subject is placed  
17      who need to know the results for purposes related to care, treatment, or assessment  
18      of the patient, the committing court, the patient’s attorney, or the attorney  
19      representing the state in a proceeding under ch. 980.”.

20              **4.** Page 660, line 5: after that line insert:

21              “**SECTION 1993d.** 51.61 (1) (c) of the statutes is renumbered 51.61 (1) (cm) 1.  
22      and amended to read:

23              51.61 (1) (cm) 1. Have Patients have an unrestricted right to send sealed mail  
24      and receive sealed mail to or from legal counsel, the courts, governmental

1 government officials, private physicians, and licensed psychologists, and have  
2 reasonable access to letter writing materials including postage stamps. A patient  
3 shall also have a right to send sealed mail and receive sealed mail to or from other  
4 persons, subject to physical examination in the patient's presence if there is reason  
5 to believe that such communication contains contraband materials or objects ~~which~~  
6 that threaten the security of patients, prisoners, or staff. Such reasons shall be  
7 written in the individual's treatment record. The officers and staff of a facility may  
8 not read any mail covered by this ~~paragraph~~ subdivision.

9 **SECTION 1993e.** 51.61 (1) (cm) (intro.) of the statutes is created to read:

10 51.61 (1) (cm) Have the rights specified under subd. 1. to send and receive  
11 sealed mail, subject to the limitations specified under subd. 2.

12 **SECTION 1993f.** 51.61 (1) (cm) 2. of the statutes is created to read:

13 51.61 (1) (cm) 2. The rights of a patient detained or committed under ch. 980  
14 to send and receive sealed mail are subject to the following limitations:

15 a. If the mail appears to be from legal counsel, a court, a government official,  
16 or a private physician or licensed psychologist, an officer or staff member of the  
17 facility at which the patient is placed may delay delivery of the mail to the patient  
18 for a reasonable period of time to verify whether the person named as the sender  
19 actually sent the mail; may open the mail in the presence of the patient and inspect  
20 it for contraband; or may, if the officer or staff member cannot determine whether the  
21 mail contains contraband, return the mail to the sender along with notice of the  
22 facility mail policy.

23 b. If the mail is to or from a person other than a person specified in subd. 2. a.,  
24 an officer or staff member of the facility at which the patient is placed may open the



1 mail outside the presence of the patient and inspect it for contraband or other objects  
2 that pose a threat to security at the facility.

3 c. If the mail appears to be from a person other than a person specified in subd.  
4 2. a., the director of the facility or his or her designee may, in accordance with the  
5 standards and the procedure under sub. (2) for denying a right for cause, authorize  
6 a member of the facility treatment staff to read the mail, if the director or his or her  
7 designee has reason to believe that the mail could pose a threat to security at the  
8 facility or seriously interfere with the treatment, rights, or safety of others.

9 **SECTION 1993g.** 51.61 (1) (i) 1. of the statutes is amended to read:

10 51.61 (1) (i) 1. Except as provided in subd. 2., have a right to be free from  
11 physical restraint and isolation except for emergency situations or when isolation or  
12 restraint is a part of a treatment program. Isolation or restraint may be used only  
13 when less restrictive measures are ineffective or not feasible and shall be used for  
14 the shortest time possible. When a patient is placed in isolation or restraint, his or  
15 her status shall be reviewed once every 30 minutes. Each facility shall have a written  
16 policy covering the use of restraint or isolation ~~which~~ that ensures that the dignity  
17 of the individual is protected, that the safety of the individual is ensured, and that  
18 there is regular, frequent monitoring by trained staff to care for bodily needs as may  
19 be required. Isolation or restraint may be used for emergency situations only when  
20 it is likely that the patient may physically harm himself or herself or others. The  
21 treatment director shall specifically designate physicians who are authorized to  
22 order isolation or restraint, and shall specifically designate licensed psychologists  
23 who are authorized to order isolation. ~~In the instance where~~ If the treatment director  
24 is not a physician, the medical director shall make the designation. In the case of a  
25 center for the developmentally disabled, use shall be authorized by the director of the

1 center. The authorization for emergency use of isolation or restraint shall be in  
2 writing, except that isolation or restraint may be authorized in emergencies for not  
3 more than one hour, after which time an appropriate order in writing shall be  
4 obtained from the physician or licensed psychologist designated by the director, in  
5 the case of isolation, or the physician so designated in the case of restraint.  
6 Emergency isolation or restraint may not be continued for more than 24 hours  
7 without a new written order. Isolation may be used as part of a treatment program  
8 if it is part of a written treatment plan, and the rights specified in this subsection are  
9 provided to the patient. The use of isolation as a part of a treatment plan shall be  
10 explained to the patient and to his or her guardian, if any, by the person who  
11 ~~undertakes such~~ provides the treatment. ~~Such~~ A treatment plan that incorporates  
12 isolation shall be evaluated at least once every 2 weeks. Patients who have a recent  
13 history of physical aggression may be restrained during transport to or from the  
14 facility. Persons who are committed or transferred under s. 51.35 (3) or 51.37 or  
15 under ch. 971 or 975, or who are detained or committed under ch. 980, and who, while  
16 under this status, are transferred to a hospital, as defined in s. 50.33 (2), for medical  
17 care may be isolated for security reasons within locked facilities in the hospital.  
18 Patients who are committed or transferred under s. 51.35 (3) or 51.37 or under ch.  
19 971 or 975, or who are detained or committed under ch. 980, may be restrained for  
20 security reasons during transport to or from the facility.

21 **SECTION 1993h.** 51.61 (1) (i) 2. of the statutes is amended to read:

22 51.61 (1) (i) 2. Patients in the maximum security facility at the Mendota Mental  
23 Health Institute may be locked in their rooms during the night shift and for a period  
24 of no longer than one hour and 30 minutes during each change of shift by staff to  
25 permit staff review of patient needs. Patients detained or committed under ch. 980

1 and placed in a facility specified under s. 980.065 may be locked in their rooms during  
2 the night shift, if they reside in a maximum or medium security unit in which each  
3 room is equipped with a toilet and sink, or if they reside in a unit in which each room  
4 is not equipped with a toilet and sink and the number of patients outside their rooms  
5 equals or exceeds the number of toilets in the unit, except that patients who do not  
6 have toilets in their rooms must be given an opportunity to use a toilet at least once  
7 every hour, or more frequently if medically indicated. Patients in the maximum  
8 security facility at the Mendota Mental Health Institute, or patients detained or  
9 committed under ch. 980 and placed in a facility specified under s. 980.065, may also  
10 be locked in their rooms on a unit-wide or facility-wide basis as an emergency  
11 measure as needed for security purposes to deal with an escape or attempted escape,  
12 the discovery of a dangerous weapon in the unit or facility or the receipt of reliable  
13 information that a dangerous weapon is in the unit or facility, or to prevent or control  
14 a riot or the taking of a hostage. A unit-wide or facility-wide emergency isolation  
15 order may only be authorized by the director of the unit or ~~maximum security~~ facility  
16 where the order is applicable or his or her designee and shall. A unit-wide or  
17 facility-wide emergency isolation order affecting the Mendota Mental Health  
18 Institute must be approved within one hour after it is authorized by the director of  
19 the Mendota ~~mental health facility~~ Mental Health Institute or the director's  
20 designee. An emergency order for unit-wide or facility-wide isolation may only be  
21 in effect for the period of time needed to preserve order while dealing with the  
22 situation and may not be used as a substitute for adequate staffing. During a period  
23 of unit-wide or facility-wide isolation, the status of each patient shall be reviewed  
24 every 30 minutes to ensure the safety and comfort of the patient, and each patient  
25 who is locked in a room without a toilet shall be given an opportunity to use a toilet

1 at least once every hour, or more frequently if medically indicated. Each unit in the  
2 maximum security facility at the Mendota Mental Health Institute and each unit in  
3 a facility specified under s. 980.065 shall have a written policy covering the use of  
4 isolation ~~which~~ that ensures that the dignity of the individual is protected, that the  
5 safety of the individual is secured, and that there is regular, frequent monitoring by  
6 trained staff to care for bodily needs as may be required. ~~Each policy~~ The isolation  
7 policies shall be reviewed and approved by the director of the Mendota Mental  
8 Health Institute or the director's designee, or by the director of the facility specified  
9 under s. 980.065 or his or her designee, whichever is applicable.

10 **SECTION 1993i.** 51.61 (1) (o) of the statutes is amended to read:

11 51.61 (1) (o) Except as otherwise provided, have a right not to be filmed or  
12 taped, unless the patient signs an informed and voluntary consent ~~which~~ that  
13 specifically authorizes a named individual or group to film or tape the patient for a  
14 particular purpose or project during a specified time period. The patient may specify  
15 in such consent periods during which, or situations in which, the patient may not be  
16 filmed or taped. If a patient is legally incompetent, such consent shall be granted on  
17 behalf of the patient by the patient's guardian. A patient in Goodland Hall at the  
18 Mendota Mental Health Institute, or a patient detained or committed under ch. 980  
19 and placed in a facility specified under s. 980.065, may be filmed or taped for security  
20 purposes without the patient's consent, except that such a patient may not be filmed  
21 in patient bedrooms or bathrooms for any purpose without the patient's consent.”.

22 **5.** Page 1234, line 24: after that line insert:

23 **“SECTION 3937u.** 940.20 (1d) of the statutes is created to read:

1           940.20 (1d) BATTERY BY CERTAIN DETAINED OR COMMITTED PERSONS. Any person  
2 committed to the custody of the department of health and family services under s.  
3 971.17 and placed in a mental health institute under s. 51.05 or any person detained  
4 or committed to the department of health and family services under ch. 980 and  
5 placed in a facility specified under s. 980.065 who intentionally causes bodily harm  
6 to an officer, employee, visitor, or another patient of the institute or facility, without  
7 his or her consent, is guilty of a Class D felony.”

8           **6.** Page 1236, line 12: after that line insert:

9           “**SECTION 3938r.** 942.06 (2m) (b) of the statutes is amended to read:

10           942.06 (2m) (b) An employee or agent of the department of health and family  
11 services who conducts a lie detector test of a person under ~~the rules promulgated~~  
12 ~~under~~ s. 51.375.

13           **SECTION 3938s.** 942.06 (2q) (b) (intro.) of the statutes is amended to read:

14           942.06 (2q) (b) (intro.) An employee or agent of the department of health and  
15 family services who discloses, to any of the following, the fact that a person has had  
16 a lie detector test under ~~the rules promulgated under~~ s. 51.375 or the results of such  
17 a lie detector test:

18           **SECTION 3938t.** 942.06 (2q) (b) 1. of the statutes is amended to read:

19           942.06 (2q) (b) 1. Another employee or agent of the department of health and  
20 family services or another person to whom disclosure is permitted under s. 51.375  
21 (2) (b).”

22           **7.** Page 1245, line 21: after that line insert:

23           “**SECTION 3966qi.** 946.42 (3) (h) of the statutes is created to read:

