



State of Wisconsin  
2003 - 2004 LEGISLATURE

LRB-4158/P2  
CMH&MGD:kg:jf

P3

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

§ CS

4/5 Analysis

Delete 4-star notes except for last one

analysis to ch. 980

Repeal cat

1 AN ACT *to repeal* 51.30 (4) (b) 10m., 980.02 (2) (ag), 980.03 (5), 980.05 (1m),  
2 980.09 (1) (title), 980.09 (2) and 980.10; *to renumber* 980.01 (1); *to renumber*  
3 *and amend* 938.396 (2) (e), 980.015 (1), 980.015 (4), 980.03 (4), 980.04 (2),  
4 980.07 (1), 980.09 (1) (a), 980.09 (1) (b) and 980.09 (1) (c); *to amend* 48.396 (1),  
5 48.396 (5) (a) (intro.), 48.78 (1), 51.30 (3) (a), 51.30 (3) (b), 51.30 (4) (b) 8m.,  
6 51.375 (1) (a), 146.82 (2) (c), 301.45 (1g) (dt), 301.45 (3) (a) 3r., 301.45 (3) (b) 3.,  
7 301.45 (5) (b) 2., 756.06 (2) (b), 801.52, 808.04 (3), 808.04 (4), 808.075 (4) (h),  
8 809.10 (1) (d), 809.30 (1) (c), 809.30 (1) (f), 905.04 (4) (a), 911.01 (4) (c), 938.396  
9 (1), 938.396 (5) (a) (intro.), 938.78 (2) (e), 946.42 (1) (a), 950.04 (1v) (xm), 967.03,  
10 972.15 (4), 978.045 (1r) (intro.), 978.05 (6) (a), 980.01 (5), 980.01 (6) (a), 980.01  
11 (6) (b), 980.01 (6) (c), 980.01 (7), 980.015 (2) (intro.), 980.015 (2) (a), 980.015 (2)  
12 (b), 980.015 (2) (c), 980.02 (1) (a), 980.02 (2) (c), 980.02 (4) (intro.), 980.03 (2)  
13 (intro.), 980.03 (3), 980.04 (1), 980.04 (3), 980.05 (1), 980.05 (3) (a), 980.05 (3)  
14 (b), 980.07 (2), 980.07 (3), 980.09 (title), 980.11 (2) (intro.) and 980.12 (1); *to*  
15 *repeal and recreate* 980.08; and *to create* 48.396 (6), 48.78 (2) (e), 48.981 (7)

1 (a) 8s., 51.30 (3) (bm), 51.30 (4) (b) 8s., 118.125 (2) (ck), 146.82 (2) (cm), 756.06  
 2 (2) (cm), 814.61 (1) (c) 6., 938.35 (1) (e), 946.42 (3m), 972.15 (6), 980.01 (1g),  
 3 980.01 (1m), 980.01 (6) (am), 980.01 (6) (bm), 980.015 (1) (b), 980.015 (2) (d),  
 4 980.02 (1) (b) 3., 980.02 (1m), 980.02 (6), 980.031 (title), 980.031 (1) and (2),  
 5 980.034, 980.035, 980.036, 980.038, 980.04 (2) (b), 980.05 (2m), 980.07 (1) (b),  
 6 980.07 (1m), 980.07 (4) to (7), 980.093, 980.095, 980.14 (title) and 980.14 (1) of  
 7 the statutes; **relating to:** the definition of sexually violent person, sexually  
 8 violent person commitment proceedings, criteria for supervised release, escape  
 9 from custody by a person who is subject to a sexually violent person  
 10 commitment proceeding, ~~sentencing of persons who have prior convictions for~~  
 11 ~~certain crimes,~~ requiring persons who commit certain offenses to register as a  
 12 sex offender, and providing penalties.

### *Analysis by the Legislative Reference Bureau*

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

#### ~~*Sexually violent person commitment proceedings*~~

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

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

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

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

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

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

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

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

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

any of these provisions must be a licensed physician, licensed psychologist, or other mental health professional.

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

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

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

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

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

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

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

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

7. *Reexaminations of persons found to be sexually violent persons.* Under current law, a person who has been committed as a sexually violent person must be examined by DHFS within six months after the initial commitment and again

thereafter at least once each 12 months for the purpose of determining whether the person has made sufficient progress for the court to consider whether the person should be placed on supervised release or discharged from the commitment. This bill provides that DHFS is not required to examine the person until 18 months after the person's initial commitment. The bill does not change the requirement that DHFS conduct further evaluations at least once each 12 months thereafter.

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

- a. Substitution of judge.
- b. Making motions to challenge the jurisdiction of the court or the timeliness of the filing of a petition.
- c. Methods by which one party may discover and inspect material in the possession of the other party.
- d. Changing the place where the trial on the petition is held.
- e. Jury selection.
- f. Filing motions for relief from a commitment order that is entered after a person has been found to be a sexually violent person.

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

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

- a. The bill provides that a person may be subject to a sexually violent person commitment proceeding at the time that he or she is being paroled under or discharged from a commitment under a previous sex crimes commitment law that was repealed in 1980. This codifies a holding of *State v. Post*, 197 Wis. 2d 279 (1995).
- b. The bill provides that, for purposes of determining the proper time to file a petition, confinement under a sentence of imprisonment that was imposed for a sexually violent offense includes confinement that was imposed consecutively to any sentence for a sexually violent offense. This codifies a holding of *State v. Keith*, 216 Wis. 2d 61 (Ct. App. 1997).
- c. The bill provides that a person committed as a sexually violent person must be afforded the right to request a jury for a hearing on his or her petition for a discharge from the commitment. This codifies a holding of *State v. Post*, 197 Wis. 2d 279 (1995).

### ***Escape***

Current law provides penalties for escaping from certain types of custody, including actual physical custody in a jail, state prison, or juvenile correctional institution, actual physical custody of a law enforcement officer or institution guard, and constructive custody of prisoners and juveniles temporarily outside an institution for the purpose of work, school, medical care, or other authorized

temporary leave. A person who is convicted of escape is subject to fines or imprisonment or both. The maximum term of imprisonment that may be imposed depends on the type of custody from which the person escapes. For instance, a person who escapes after being arrested for, charged with, or sentenced for a crime may be imprisoned for not more than six years or fined not more than \$10,000 or both, while a person who escapes after being arrested for, charged with, or convicted of a violation of a law that is penalized with a forfeiture (a civil monetary penalty) may be imprisoned for not more than nine months or fined not more than \$10,000 or both.

This bill provides that the maximum term of imprisonment or the maximum fine for escape may be doubled if the person escapes while he or she is in custody in connection with a sexually violent person commitment proceeding or while he or she is in institutional care or on supervised release after having been found to be a sexually violent person.

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:*

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from  
-3519

1 SECTION 1. 48.396 (1) of the statutes is amended to read:  
 2 48.396 (1) Law enforcement officers' records of children shall be kept separate  
 3 from records of adults. Law enforcement officers' records of the adult expectant  
 4 mothers of unborn children shall be kept separate from records of other adults. Law  
 5 enforcement officers' records of children and the adult expectant mothers of unborn  
 6 children shall not be open to inspection or their contents disclosed except under sub.  
 7 (1b), (1d) ~~or~~, (5), or (6) or s. 48.293 or by order of the court. This subsection does not  
 8 apply to the representatives of newspapers or other reporters of news who wish to  
 9 obtain information for the purpose of reporting news without revealing the identity  
 10 of the child or expectant mother involved, to the confidential exchange of information  
 11 between the police and officials of the school attended by the child or other law  
 12 enforcement or social welfare agencies or to children 10 years of age or older who are  
 13 subject to the jurisdiction of the court of criminal jurisdiction. A public school official  
 14 who obtains information under this subsection shall keep the information

1 confidential as required under s. 118.125 and a private school official who obtains  
2 information under this subsection shall keep the information confidential in the  
3 same manner as is required of a public school official under s. 118.125. A law  
4 enforcement agency that obtains information under this subsection shall keep the  
5 information confidential as required under this subsection and s. 938.396 (1). A  
6 social welfare agency that obtains information under this subsection shall keep the  
7 information confidential as required under ss. 48.78 and 938.78.

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

9 48.396 (5) (a) (intro.) Any person who is denied access to a record under sub.  
10 (1), (1b) ~~or~~, (1d), or (6) may petition the court to order the disclosure of the records  
11 governed by the applicable subsection. The petition shall be in writing and shall  
12 describe as specifically as possible all of the following:

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

14 48.396 (6) Records of law enforcement officers and of the court assigned to  
15 exercise jurisdiction under this chapter and ch. 938 shall be open for inspection by  
16 and production to authorized representatives of the department of corrections, the  
17 department of health and family services, the department of justice, or a district  
18 attorney for use in the evaluation or prosecution of any proceeding under ch. 980, if  
19 the records involve or relate to an individual who is the subject of or who is being  
20 evaluated for a proceeding under ch. 980. The court in which the proceeding under  
21 ch. 980 is pending may issue any protective orders that it determines are appropriate  
22 concerning information made available or disclosed under this subsection. Any  
23 representative of the department of corrections, the department of health and family  
24 services, the department of justice, or a district attorney may disclose information

1 obtained under this subsection for any purpose consistent with any proceeding under  
2 ch. 980.

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

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

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

9 48.78 (2) (e) Notwithstanding par. (a), an agency shall, upon request, disclose  
10 information to authorized representatives of the department of corrections, the  
11 department of health and family services, the department of justice, or a district  
12 attorney for use in the evaluation or prosecution of any proceeding under ch. 980, if  
13 the information involves or relates to an individual who is the subject of or who is  
14 being evaluated for a proceeding under ch. 980. The court in which the proceeding  
15 under ch. 980 is pending may issue any protective orders that it determines are  
16 appropriate concerning information made available or disclosed under this  
17 paragraph. Any representative of the department of corrections, the department of  
18 health and family services, the department of justice, or a district attorney may  
19 disclose information obtained under this paragraph for any purpose consistent with  
20 any proceeding under ch. 980.

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

22 48.981 (7) (a) 8s. Authorized representatives of the department of corrections,  
23 the department of health and family services, the department of justice, or a district  
24 attorney for use in the evaluation or prosecution of any proceeding under ch. 980, if  
25 the reports or records involve or relate to an individual who is the subject of or who

1 is being evaluated for a proceeding under ch. 980. The court in which the proceeding  
2 under ch. 980 is pending may issue any protective orders that it determines are  
3 appropriate concerning information made available or disclosed under this  
4 subdivision. Any representative of the department of corrections, the department  
5 of health and family services, the department of justice, or a district attorney may  
6 disclose information obtained under this subdivision for any purpose consistent with  
7 any proceeding under ch. 980.

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

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

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

13 51.30 (3) (b) An individual's attorney or guardian ad litem and the corporation  
14 counsel shall have access to the files and records of the court proceedings under this  
15 chapter without the individual's consent and without modification of the records in  
16 order to prepare for involuntary commitment or recommitment proceedings,  
17 reexaminations, appeals, or other actions relating to detention, admission, or  
18 commitment under this chapter or ch. 971 ~~or~~, 975, or 980.

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

20 51.30 (3) (bm) The files and records of court proceedings under this chapter  
21 shall be released to authorized representatives of the department of corrections, the  
22 department of health and family services, the department of justice, or a district  
23 attorney for use in the evaluation or prosecution of any proceeding under ch. 980, if  
24 the files or records involve or relate to an individual who is the subject of or who is  
25 being evaluated for a proceeding under ch. 980. The court in which the proceeding

1 under ch. 980 is pending may issue any protective orders that it determines are  
2 appropriate concerning information made available or disclosed under this  
3 paragraph. Any representative of the department of corrections, the department of  
4 health and family services, the department of justice, or a district attorney may  
5 disclose information obtained under this paragraph for any purpose consistent with  
6 any proceeding under ch. 980.

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

8 51.30 (4) (b) 8m. To appropriate examiners and facilities in accordance with s.  
9 971.17 (2) (e), (4) (c), and (7) (c), ~~980.03 (4) or 980.08 (3)~~. The recipient of any  
10 information from the records shall keep the information confidential except as  
11 necessary to comply with s. 971.17 ~~or ch. 980~~.

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

13 51.30 (4) (b) 8s. To appropriate persons in accordance with s. 980.031 (4) and  
14 to authorized representatives of the department of corrections, the department of  
15 health and family services, the department of justice, or a district attorney for use  
16 in the evaluation or prosecution of any proceeding under ch. 980, if the treatment  
17 records involve or relate to an individual who is the subject of or who is being  
18 evaluated for a proceeding under ch. 980. The court in which the proceeding under  
19 ch. 980 is pending may issue any protective orders that it determines are appropriate  
20 concerning information made available or disclosed under this subdivision. Any  
21 representative of the department of corrections, the department of health and family  
22 services, the department of justice, or a district attorney may disclose information  
23 obtained under this subdivision for any purpose consistent with any proceeding  
24 under ch. 980.

25 **SECTION 12.** 51.30 (4) (b) 10m. of the statutes is repealed.

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1           **SECTION 13.** 51.375 (1) (a) of the statutes is amended to read:

2           51.375 (1) (a) “Community placement” means conditional transfer into the  
3 community under s. 51.35 (1), conditional release under s. 971.17, parole from a  
4 commitment for specialized treatment under ch. 975, or conditional supervised  
5 release under ch. 980.

6           **SECTION 14.** 118.125 (2) (ck) of the statutes is created to read:

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

19           **SECTION 15.** 146.82 (2) (c) of the statutes is amended to read:

20           146.82 (2) (c) Notwithstanding sub. (1), patient health care records shall be  
21 released to appropriate examiners and facilities in accordance with ~~ss. s.~~ s. 971.17 (2)  
22 (e), (4) (c) and (7) (c), ~~980.03 (4) and 980.08 (3)~~. The recipient of any information from  
23 the records shall keep the information confidential except as necessary to comply  
24 with s. 971.17 ~~or ch. 980~~.

25           **SECTION 16.** 146.82 (2) (cm) of the statutes is created to read:

1           146.82 (2) (cm) Notwithstanding sub. (1), patient health care records shall be  
2 released to appropriate persons in accordance with s. 980.031 (4) and to authorized  
3 representatives of the department of corrections, the department of health and  
4 family services, the department of justice, or a district attorney for use in the  
5 evaluation or prosecution of any proceeding under ch. 980, if the treatment records  
6 involve or relate to an individual who is the subject of or who is being evaluated for  
7 a proceeding under ch. 980. The court in which the proceeding under ch. 980 is  
8 pending may issue any protective orders that it determines are appropriate  
9 concerning records made available or disclosed under this paragraph. Any  
10 representative of the department of corrections, the department of health and family  
11 services, the department of justice, or a district attorney may disclose information  
12 obtained under this paragraph for any purpose consistent with any proceeding under  
13 ch. 980.

14           **SECTION 17.** 301.45 (1g) (dt) of the statutes is amended to read:

15           301.45 (1g) (dt) Is in institutional care or on ~~conditional~~ supervised release  
16 under ch. 980 on or after June 2, 1994.

\*\*\*\*NOTE: Vaughn, I thought this provision needed to be amended; do you agree? 

17           **SECTION 18.** 301.45 (3) (a) 3r. of the statutes is amended to read:

18           301.45 (3) (a) 3r. If the person has been committed under ch. 980, he or she is  
19 subject to this subsection upon being placed on supervised release under s. 980.06  
20 (2), 1997 stats., or s. 980.08 or, if he or she was not placed on supervised release,  
21 before being discharged under s. 980.09 or ~~980.10~~ 980.093.

22           **SECTION 19.** 301.45 (3) (b) 3. of the statutes is amended to read:

23           301.45 (3) (b) 3. The department of health and family services shall notify a  
24 person who is being placed on conditional release, supervised release, conditional

1 transfer or parole, or is being terminated or discharged from a commitment, under  
2 s. 51.20, 51.35 or 971.17 or ch. 975 or 980 and who is covered under sub. (1g) of the  
3 need to comply with the requirements of this section.

\*\*\*\*NOTE: Vaughn, I thought this provision needed to be amended; do you agree? 

4 **SECTION 20.** 301.45 (5) (b) 2. of the statutes is amended to read: s. 980.10, 2001 statute or

5 301.45 (5) (b) 2. The person has been found to be a sexually violent person under  
6 has been ch. 980, regardless of whether the person ~~is~~ discharged under s. 980.09 or 980.10  
7 980.093 from the sexually violent person commitment, except that the person no  
8 longer has to comply with this section if the finding that the person is a sexually  
9 violent person has been reversed, set aside or vacated.

10 **SECTION 21.** 756.06 (2) (b) of the statutes is amended to read:

11 756.06 (2) (b) Except as provided in ~~par.~~ pars. (c) and (cm), a jury in a civil case  
12 shall consist of 6 persons unless a party requests a greater number, not to exceed 12.  
13 The court, on its own motion, may require a greater number, not to exceed 12.

14 **SECTION 22.** 756.06 (2) (cm) of the statutes is created to read:

15 756.06 (2) (cm) A jury in a trial under s. 980.05 shall consist of the number of  
16 persons specified in s. 980.05 (2) unless a lesser number has been stipulated to and  
17 approved under s. 980.05 (2m) (c). A jury in a hearing under s. 980.09 (2m) or 980.093  
18 (3) shall consist of the number of persons specified in s. 980.09 (2m) or 980.093 (3),  
19 whichever is applicable, unless a lesser number has been stipulated to and approved  
20 under s. 980.095 (3).

21 **SECTION 23.** 801.52 of the statutes is amended to read:

22 **801.52 Discretionary change of venue.** The court may at any time, upon  
23 its own motion, the motion of a party or the stipulation of the parties, change the

1 venue to any county in the interest of justice or for the convenience of the parties or  
2 witnesses. This section does not apply to proceedings under ch. 980.

3 SECTION 24. 808.04 (3) of the statutes is amended to read:

4 808.04 (3) Except as provided in subs. (4) and (7), an appeal in a criminal case  
5 or a case under ch. 48, 51, 55 ~~or~~, 938, or 980 shall be initiated within the time period  
6 specified in s. 809.30.

7 SECTION 25. 808.04 (4) of the statutes is amended to read:

8 808.04 (4) Except as provided in sub. (7m), an appeal by the state in either a  
9 criminal case under s. 974.05 or a case under ch. 48 ~~or~~, 938, or 980 shall be initiated  
10 within 45 days of entry of the judgment or order appealed from.

11 SECTION 26. 808.075 (4) (h) of the statutes is amended to read:

12 808.075 (4) (h) Commitment, supervised release, recommitment, discharge,  
13 and postcommitment relief under ss. 980.06, 980.08, 980.09, ~~980.10~~ 980.093, and  
14 980.101 of a person found to be a sexually violent person under ch. 980.

15 SECTION 27. 809.10 (1) (d) of the statutes <sup>as affected by Supreme Court Order</sup> ~~is amended~~ to read: <sup>02-015</sup>

16 809.10 (1) (d) *Docketing statement.* The person shall send the court of appeals  
17 an original and one copy of a completed docketing statement on a form prescribed by  
18 the court of appeals. The docketing statement shall accompany the court of appeals'  
19 copy of the notice of appeal. The person shall send a copy of the completed docketing  
20 statement to the other parties to the appeal. Docketing statements need not be filed  
21 in appeals brought under s. 809.105, 809.107, 809.32, or 974.06 (7), in cases under  
22 ch. 980, or in cases in which a party represents himself or herself. Docketing  
23 statements need not be filed in appeals brought under s. 809.30 or 974.05, or by the  
24 state or defendant in permissive appeals in criminal cases pursuant to s. 809.50,

repealed  
and  
recreated

DLIN

SECTION 27

1 except that docketing statements shall be filed in cases arising under chs. 48, 51, 55, 02-01,  
2 or 938.

as affected  
by Supreme Court Order

3 SECTION 28. 809.30 (1) (c) of the statutes is amended to read:

4 809.30 (1) (c) "Postconviction relief" means an appeal or a motion for  
5 postconviction relief in a criminal case, other than an appeal, motion, or petition  
6 under ss. 302.113 (7m), 302.113 (9g), 973.19, 973.195, 974.06, or 974.07 (2). In a ch.  
7 980 case, the term means an appeal or a motion for postcommitment relief under s.  
8 980.038 (4).

repealed and recreated

PLAIN

9 SECTION 29. 809.30 (1) (f) of the statutes is amended to read:

10 809.30 (1) (f) "Sentencing" means the imposition of a sentence, a fine, or  
11 probation in a criminal case. In a ch. 980 case, the term means the entry of an order  
12 under s. 980.06.

repealed and recreated

13 SECTION 30. 814.61 (1) (c) 6. of the statutes is created to read:

14 814.61 (1) (c) 6. An action for civil commitment under ch. 51, 55, or 980.

15 SECTION 31. 905.04 (4) (a) of the statutes is amended to read:

16 905.04 (4) (a) Proceedings for hospitalization, control, care, and treatment of  
17 a sexually violent person, guardianship, protective services, or protective placement.

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

1 treatment as a sexually violent person, guardianship, protective services, or  
2 protective placement.

3 **SECTION 32.** 911.01 (4) (c) of the statutes is amended to read:

4 911.01 (4) (c) *Miscellaneous proceedings.* Proceedings for extradition or  
5 rendition; sentencing, granting or revoking probation, modification of a bifurcated  
6 sentence under s. 302.113 (9g), adjustment of a bifurcated sentence under s. 973.195  
7 (1r), issuance of arrest warrants, criminal summonses and search warrants;  
8 hearings under s. 980.07 (7) or 980.093 (3); proceedings under s. 971.14 (1) (c);  
9 proceedings with respect to pretrial release under ch. 969 except where habeas  
10 corpus is utilized with respect to release on bail or as otherwise provided in ch. 969.

11 **SECTION 33.** 938.35 (1) (e) of the statutes is created to read:

12 938.35 (1) (e) In a hearing, trial, or other proceeding under ch. 980 relating to  
13 a juvenile.

14 **SECTION 34.** 938.396 (1) of the statutes is amended to read:

15 938.396 (1) Law enforcement officers' records of juveniles shall be kept  
16 separate from records of adults. Law enforcement officers' records of juveniles shall  
17 not be open to inspection or their contents disclosed except under sub. (1b), (1d), (1g),  
18 (1m), (1r), (1t), (1x) ~~or~~, (5), or (10) or s. 938.293 or by order of the court. This  
19 subsection does not apply to representatives of the news media who wish to obtain  
20 information for the purpose of reporting news without revealing the identity of the  
21 juvenile involved, to the confidential exchange of information between the police and  
22 officials of the school attended by the juvenile or other law enforcement or social  
23 welfare agencies, or to juveniles 10 years of age or older who are subject to the  
24 jurisdiction of the court of criminal jurisdiction. A public school official who obtains  
25 information under this subsection shall keep the information confidential as

1 required under s. 118.125 and a private school official who obtains information under  
2 this subsection shall keep the information confidential in the same manner as is  
3 required of a public school official under s. 118.125. A law enforcement agency that  
4 obtains information under this subsection shall keep the information confidential as  
5 required under this subsection and s. 48.396 (1). A social welfare agency that obtains  
6 information under this subsection shall keep the information confidential as  
7 required under ss. 48.78 and 938.78.

8       **SECTION 35.** 938.396 (2) (e) of the statutes is renumbered 938.396 (10) and  
9 amended to read:

10       938.396 (10) ~~Upon request of the department of corrections to review court A~~  
11 law enforcement agency's records and records for the purpose of providing, under s.  
12 980.015 (3) (a), of the court assigned to exercise jurisdiction under this chapter and  
13 ch. 48 shall be open for inspection by authorized representatives of the department  
14 of corrections, the department of health and family services, the department of  
15 justice, or a district attorney with a person's offense history, the court shall open for  
16 inspection by authorized representatives of the department of corrections the  
17 records of the court relating to any juvenile who has been adjudicated delinquent for  
18 a sexually violent offense, as defined in s. 980.01 (6) for use in the evaluation or  
19 prosecution of any proceeding under ch. 980, if the records involve or relate to an  
20 individual who is the subject of or who is being evaluated for a proceeding under ch.  
21 980. The court in which the proceeding under ch. 980 is pending may issue any  
22 protective orders that it determines are appropriate concerning information made  
23 available or disclosed under this subsection. Any representative of the department  
24 of corrections, the department of health and family services, the department of

add  
48  
7 (1)  
938.78 (1)

justice, or a district attorney may disclose information obtained under this subsection for any purpose consistent with any proceeding under ch. 980.

SECTION 36. 938.396 (5) (a) (intro.) of the statutes is amended to read:

938.396 (5) (a) (intro.) Any person who is denied access to a record under sub. (1), (1b), (1d), (1g), (1m), (1r) or, (1t), or (10) may petition the court to order the disclosure of the records governed by the applicable subsection. The petition shall be in writing and shall describe as specifically as possible all of the following:

SECTION 37. 938.78 (2) (e) of the statutes is amended to read:

an agency

938.78 (2) (e) Paragraph (a) does not prohibit Notwithstanding par. (a) the department from disclosing shall, upon request, disclose information about an individual adjudged delinquent under s. 938.183 or 938.34 for a sexually violent offense, as defined in s. 980.01 (6), to authorized representatives of the department of corrections, the department of health and family services, the department of justice, or a district attorney or a judge acting under ch. 980 or to an attorney who represents a person subject to a petition for use in the evaluation or prosecution of any proceeding under ch. 980, if the information involves or relates to an individual who is the subject of or who is being evaluated for a proceeding under ch. 980. The court in which the petition proceeding under s. 980.02 is filed ch. 980 is pending may issue any protective orders that it determines are appropriate concerning information disclosed under this paragraph. Any representative of the department of corrections, the department of health and family services, the department of justice, or a district attorney may disclose information obtained under this paragraph for any purpose consistent with any proceeding under ch. 980.

SECTION 38. 946.42 (1) (a) of the statutes is amended to read:

*[Handwritten signature]*

1 946.42 (1) (a) "Custody" includes without limitation actual custody of an  
 2 institution, including a secured correctional facility, as defined in s. 938.02 (15m), a  
 3 secured child caring institution, as defined in s. 938.02 (15g), a secured group home,  
 4 as defined in s. 938.02 (15p), a secure detention facility, as defined in s. 938.02 (16),  
 5 a Type 2 child caring institution, as defined in s. 938.02 (19r), a facility used for the  
 6 detention of persons detained under s. 980.04 (1), a facility specified in s. 980.065,  
 7 or a juvenile portion of a county jail, or actual custody of a peace officer or institution  
 8 guard. "Custody" also includes without limitation the constructive custody of  
 9 persons placed on supervised release under a commitment order issued under ch. 980  
 10 and constructive custody of prisoners and juveniles subject to an order under s.  
 11 48.366, 938.183, 938.34 (4d), (4h) or (4m) or 938.357 (4) or (5) (e) temporarily outside  
 12 the institution whether for the purpose of work, school, medical care, a leave granted  
 13 under s. 303.068, a temporary leave or furlough granted to a juvenile or otherwise.  
 14 Under s. 303.08 (6) it means, without limitation, that of the sheriff of the county to  
 15 which the prisoner was transferred after conviction. It does not include the custody  
 16 of a probationer, parolee or person on extended supervision by the department of  
 17 corrections or a probation, extended supervision or parole officer or the custody of a  
 18 person who has been released to aftercare supervision under ch. 938 unless the  
 19 person is in actual custody or is subject to a confinement order under s. 973.09 (4).

**SECTION 39.** 946.42 (3m) of the statutes is created to read:

946.42 (3m) ~~is~~ is a person ~~in custody~~ in custody under any of the following circumstances

who intentionally escapes from custody, the maximum term of imprisonment or  
maximum fine may be doubled: is guilty of a Class F felony

(a) While subject to a detention order under s. 980.04 (1) or a custody order under s. 980.04 (3).

*Class F felony*

*Not w. the statute*  
 Court should determine if sentence imposed for month or stayed until commitment  
 216 Wis 2d 495

*M. W. Quince*  
 case cited in 03-175  
 237 Wis 2d 697  
 2000 WIS 14

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

4 **SECTION 40.** 950.04 (1v) (xm) of the statutes is amended to read:

5 950.04 (1v) (xm) To have the department of health and family services make  
6 a reasonable attempt to notify the victim under s. 980.11 regarding supervised  
7 release under s. 980.08 and discharge under s. 980.09 or ~~980.10~~ 980.093.

8 **SECTION 41.** 967.03 of the statutes is amended to read:

9 **967.03 District attorneys.** Wherever in chs. 967 to ~~979~~ 980 powers or duties  
10 are imposed upon district attorneys, the same powers and duties may be discharged  
11 by any of their duly qualified deputies or assistants.

12 **SECTION 42.** 972.15 (4) of the statutes is amended to read:

13 972.15 (4) After sentencing, unless otherwise authorized under sub. (5) or (6)  
14 or ordered by the court, the presentence investigation report shall be confidential  
15 and shall not be made available to any person except upon specific authorization of  
16 the court.

17 **SECTION 43.** 972.15 (6) of the statutes is created to read:

18 972.15 (6) The presentence investigation report and any information contained  
19 in it or upon which it is based may be used by any of the following persons in any  
20 evaluation, examination, referral, hearing, trial, postcommitment relief proceeding,  
21 appeal, or other proceeding under ch. 980:

22 (a) The department of corrections.

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

24 (c) The person who is the subject of the presentence investigation report, his  
25 or her attorney, or an agent or employee of the attorney.

1 (d) The attorney representing the state or an agent or employee of the attorney.

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

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

22/4 5 **SECTION 44.** 978.045 (1r) (intro.) of the statutes is amended to read:

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

15 **SECTION 45.** 978.05 (6) (a) of the statutes is amended to read:

16 978.05 (6) (a) Institute, commence or appear in all civil actions or special  
17 proceedings under and perform the duties set forth for the district attorney under ch.  
18 980 and ss. 17.14, 30.03 (2), 48.09 (5), 59.55 (1), 59.64 (1), 70.36, 103.50 (8), 103.92  
19 (4), 109.09, 343.305 (9) (a), 453.08, 806.05, 938.09, 938.18, 938.355 (6) (b) and (6g) (a),  
20 946.86, 946.87, 961.55 (5), 971.14 and 973.075 to 973.077, perform any duties in  
21 connection with court proceedings in a court assigned to exercise jurisdiction under  
22 chs. 48 and 938 as the judge may request and perform all appropriate duties and  
23 appear if the district attorney is designated in specific statutes, including matters  
24 within chs. 782, 976 and 979 and ss. 51.81 to 51.85. Nothing in this paragraph limits  
25 the authority of the county board to designate, under s. 48.09 (5), that the corporation

1 counsel provide representation as specified in s. 48.09 (5) or to designate, under s.  
2 48.09 (6) or 938.09 (6), the district attorney as an appropriate person to represent the  
3 interests of the public under s. 48.14 or 938.14.

4 **SECTION 46.** 980.01 (1) of the statutes is renumbered 980.01 (1m).

5 **SECTION 47.** 980.01 (1g) of the statutes is created to read:

6 980.01 (1g) “Act of sexual violence” means conduct that constitutes the  
7 commission of a sexually violent offense.

8 **SECTION 48.** 980.01 (1m) of the statutes is created to read:

9 980.01 (1m) “Likely” means more likely than not.

10 **SECTION 49.** 980.01 (5) of the statutes is amended to read:

11 980.01 (5) “Sexually motivated” means that one of the purposes for an act is  
12 for the actor’s sexual arousal or gratification or for the sexual humiliation or  
13 degradation of the victim.

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

15 980.01 (6) (a) Any crime specified in s. 940.225 (1) ~~or~~, (2), or (3), 948.02 (1) or  
16 (2), 948.025, 948.06, or 948.07.

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

18 980.01 (6) (am) An offense that, prior to June 2, 1994, was a crime under the  
19 law of this state and that is comparable to any crime specified in par. (a).

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

21 980.01 (6) (b) Any crime specified in s. 940.01, 940.02, 940.03, 940.05, 940.06,  
22 940.19 (4) or (5), 940.195 (4) or (5), 940.30, 940.305, 940.31 ~~or~~, 941.32, 943.10, 943.32,  
23 or 948.03 that is determined, in a proceeding under s. 980.05 (3) (b), to have been  
24 sexually motivated.

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

1           980.01 (6) (bm) An offense that, prior to June 2, 1994, was a crime under the  
2 law of this state, that is comparable to any crime specified in par. (b) and that is  
3 determined, in a proceeding under s. 980.05 (3) (b), to have been sexually motivated.

4           **SECTION 54.** 980.01 (6) (c) of the statutes is amended to read:

5           980.01 (6) (c) Any solicitation, conspiracy, or attempt to commit a crime under  
6 par. (a) ~~or~~, (am), (b), or (bm).

7           **SECTION 55.** 980.01 (7) of the statutes is amended to read:

8           980.01 (7) “Sexually violent person” means a person who has been convicted  
9 of a sexually violent offense, has been adjudicated delinquent for a sexually violent  
10 offense, or has been found not guilty of or not responsible for a sexually violent  
11 offense by reason of insanity or mental disease, defect, or illness, and who is  
12 dangerous because he or she suffers from a mental disorder that makes it  
13 ~~substantially probable~~ likely that the person will engage in one or more acts of sexual  
14 violence.

15           **SECTION 56.** 980.015 (1) of the statutes is renumbered 980.015 (1) (intro.) and  
16 amended to read:

17           980.015 (1) (intro.) In this section, “agency:

18           (a) “Agency with jurisdiction” means the agency with the authority or duty to  
19 release or discharge the person.

20           **SECTION 57.** 980.015 (1) (b) of the statutes is created to read:

21           980.015 (1) (b) “Continuous term of incarceration,” any part of which was  
22 imposed for a sexually violent offense, includes confinement in a secured correctional  
23 facility, as defined in s. 938.02 (15m), or a secured child caring institution, as defined  
24 in s. 938.02 (15g), or a secured group home, as defined in s. 938.02 (15p), if the person

1 was placed in the facility for being adjudicated delinquent under s. 48.34, 1993 stats.,  
2 or under s. 938.183 or 938.34 on the basis of a sexually violent offense.

3 **SECTION 58.** 980.015 (2) (intro.) of the statutes is amended to read:

4 980.015 (2) (intro.) If an agency with jurisdiction has control or custody over  
5 a person who may meet the criteria for commitment as a sexually violent person, the  
6 agency with jurisdiction shall inform each appropriate district attorney and the  
7 department of justice regarding the person as soon as possible beginning ~~3 months~~  
8 90 days prior to the applicable date of the following:

9 **SECTION 59.** 980.015 (2) (a) of the statutes is amended to read:

10 980.015 (2) (a) The anticipated discharge ~~from a sentence, anticipated or~~  
11 ~~release, on parole or, extended supervision, or anticipated release otherwise, from a~~  
12 sentence of imprisonment of a person who has been convicted of or term of  
13 confinement in prison that was imposed for a conviction for a sexually violent offense,  
14 from a continuous term of incarceration, any part of which was imposed for a sexually  
15 violent offense, or from a placement in a Type 1 prison under s. 301.048 (3) (a) 1., any  
16 part of which was imposed for a sexually violent offense.

17 **SECTION 60.** 980.015 (2) (b) of the statutes is amended to read:

18 980.015 (2) (b) The anticipated release from a secured correctional facility, as  
19 defined in s. 938.02 (15m), or a secured child caring institution, as defined in s. 938.02  
20 (15g), or a secured group home, as defined in s. 938.02 (15p), ~~of a~~ if the person was  
21 placed in the facility for being adjudicated delinquent under s. 48.34, 1993 stats., or  
22 under s. 938.183 or 938.34 on the basis of a sexually violent offense.

23 **SECTION 61.** 980.015 (2) (c) of the statutes is amended to read:

24 980.015 (2) (c) The anticipated release on conditional release under s. 971.17  
25 or the anticipated termination of or discharge of a ~~from a commitment order under~~

1 s. 971.17, if the person who has been found not guilty of a sexually violent offense by  
2 reason of mental disease or defect under ~~s. 971.17~~.

3 **SECTION 62.** 980.015 (2) (d) of the statutes is created to read:

4 980.015 (2) (d) The anticipated release on parole or discharge of a person  
5 committed under ch. 975 for a sexually violent offense.

6 **SECTION 63.** 980.015 (4) of the statutes is renumbered 980.14 (2) and amended  
7 to read:

8 980.14 (2) Any agency or officer, employee, or agent of an agency is immune  
9 from criminal or civil liability for any acts or omissions as the result of a good faith  
10 effort to comply with any provision of this section chapter.

11 **SECTION 64.** 980.02 (1) (a) of the statutes is amended to read:

12 980.02 (1) (a) The department of justice at the request of the agency with  
13 jurisdiction, as defined in s. 980.015 (1), over the person. ~~If the department of justice  
14 decides to file a petition under this paragraph, it shall file the petition before the date  
15 of the release or discharge of the person.~~

16 **SECTION 65.** 980.02 (1) (b) 3. of the statutes is created to read:

17 980.02 (1) (b) 3. The county in which the person is in custody under a sentence,  
18 a placement to a secured correctional facility, as defined in s. 938.02 (15m), a secured  
19 child caring institution, as defined in s. 938.02 (15g), or a secured group home, as  
20 defined in s. 938.02 (15p), or a commitment order.

21 **SECTION 66.** 980.02 (1m) of the statutes is created to read:

22 980.02 (1m) A petition filed under this section shall be filed before the person  
23 is released or discharged.

24 **SECTION 67.** 980.02 (2) (ag) of the statutes is repealed.

25 **SECTION 68.** 980.02 (2) (c) of the statutes is amended to read:

1           980.02 (2) (c) The person is dangerous to others because the person's mental  
2 disorder ~~creates a substantial probability~~ makes it likely that he or she will engage  
3 in acts of sexual violence.

4           **SECTION 69.** 980.02 (4) (intro.) of the statutes is amended to read:

5           980.02 (4) (intro.) A petition under this section shall be filed in any one of the  
6 following:

7           **SECTION 70.** 980.02 (6) of the statutes is created to read:

8           980.02 (6) A court assigned to exercise jurisdiction under chs. 48 and 938 does  
9 not have jurisdiction over a petition filed under this section alleging that a child is  
10 a sexually violent person.

11           **SECTION 71.** 980.03 (2) (intro.) of the statutes is amended to read:

12           980.03 (2) (intro.) Except as provided in ss. ~~980.09 (2) (a)~~ 980.038 (2) and  
13 ~~980.10~~ 980.093 and without limitation by enumeration, at any hearing under this  
14 chapter, the person who is the subject of the petition has the right to:

15           **SECTION 72.** 980.03 (3) of the statutes is amended to read:

16           980.03 (3) The person who is the subject of the petition, the person's attorney,  
17 the department of justice or the district attorney may request that a trial under s.  
18 980.05 be to a jury of ~~12~~. A request for a jury trial shall be made as provided under  
19 s. 980.05 (2). Notwithstanding s. 980.05 (2), if the person, the person's attorney, the  
20 department of justice or the district attorney does not request a jury trial, the court  
21 may on its own motion require that the trial be to a jury of ~~12~~. The jury shall be  
22 selected as provided under s. 980.05 (2m). A verdict of a jury under this chapter is  
23 not valid unless it is unanimous.

24           **SECTION 73.** 980.03 (4) of the statutes is renumbered 980.031 (3) and amended  
25 to read:

1           980.031 (3) Whenever a person who is the subject of a petition filed under s.  
2           980.02 or who has been committed under s. 980.06 is required to submit to an  
3           examination of his or her mental condition under this chapter, he or she may retain  
4           experts ~~or a licensed physician, licensed psychologist, or other mental health~~  
5           professional persons to perform an examination. If the person is indigent, the court  
6           shall, upon the person's request, appoint a qualified and available licensed  
7           physician, licensed psychologist, or other mental health professional to perform an  
8           examination of the person's mental condition and participate on the person's behalf  
9           in a trial or other proceeding under this chapter at which testimony is authorized.  
10          Upon the order of the circuit court, the county shall pay, as part of the costs of the  
11          action, the costs of a licensed physician, licensed psychologist, or other mental health  
12          professional appointed by a court under this subsection to perform an examination  
13          and participate in the trial or other proceeding on behalf of an indigent person.

14          (4) ~~If the person a party retains a qualified expert or the court appoints a~~  
15          ~~licensed physician, licensed psychologist, or other mental health professional person~~  
16          ~~of his or her own choice to conduct an examination under this chapter of the person's~~  
17          ~~mental condition, the examiner shall have reasonable access to the person for the~~  
18          purpose of the examination, as well as to the person's past and present treatment  
19          records, as defined in s. 51.30 (1) (b), and patient health care records as provided  
20          under s. 146.82 (2) (e). ~~If the person is indigent, the court shall, upon the person's~~  
21          ~~request, appoint a qualified and available expert or professional person to perform~~  
22          ~~an examination and participate in the trial or other proceeding on the person's~~  
23          ~~behalf. Upon the order of the circuit court, the county shall pay, as part of the costs~~  
24          ~~of the action, the costs of an expert or professional person appointed by a court under~~  
25          ~~this subsection to perform an examination and participate in the trial or other~~

1 ~~proceeding on behalf of an indigent person. An expert (cm), past and present juvenile~~  
2 ~~records, as provided under ss. 48.396 (6), 48.78 (2) (e), 938.396 (10), and 938.78 (2)~~  
3 ~~(e), and the person's past and present correctional records, including presentence~~  
4 ~~investigation reports under s. 972.15 (6).~~

5 (5) A licensed physician, licensed psychologist, or other mental health  
6 professional person appointed to assist an indigent person who is subject to a petition  
7 who is expected to be called as a witness by one of the parties or by the court may not  
8 be subject to any order by the court for the sequestration of witnesses at any  
9 proceeding under this chapter. No licensed physician, licensed psychologist, or other  
10 mental health professional who is expected to be called as a witness by one of the  
11 parties or by the court may be permitted to testify at any proceeding under this  
12 chapter unless a written report of his or her examination has been submitted to the  
13 court and to both parties at least 10 days before the proceeding.

14 SECTION 74. 980.03 (5) of the statutes is repealed.

15 SECTION 75. 980.031 (title) of the statutes is created to read:

16 **980.031 (title) Examinations.**

17 SECTION 76. 980.031 (1) and (2) of the statutes are created to read:

18 980.031 (1) If a person who is the subject of a petition filed under s. 980.02  
19 denies the facts alleged in the petition, the court may appoint at least one qualified  
20 licensed physician, licensed psychologist, or other mental health professional to  
21 conduct an examination of the person's mental condition and testify at trial.

22 (2) The state may retain a licensed physician, licensed psychologist, or other  
23 mental health professional to examine the mental condition of a person who is the  
24 subject of a petition under s. 980.02 or who has been committed under s. 980.06 and

1 to testify at trial or at any other proceeding under this chapter at which testimony  
2 is authorized.

3 **SECTION 77.** 980.034 of the statutes is created to read:

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

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

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

21 (4) (a) Instead of changing the place of trial under sub. (3), the court may  
22 require the selection of a jury under par. (b) if all of the following apply:

23 1. The court has decided to sequester the jurors after the commencement of the  
24 trial.

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

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

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

8           ~~SECTION 78. 980.035 of the statutes is created to read:~~

9           **980.035 Substitution of judge.** (1) ONE SUBSTITUTION. A person who is  
10 subject to a petition under s. 980.02 or who has been committed under s. 980.06 may  
11 file a written request with the clerk of courts for a substitution of a new judge for the  
12 judge assigned to the case. Except as provided in sub. (5), no party may file more than  
13 one such written request in any one action, nor may any single such request name  
14 more than one judge.

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

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

23           (4) SUBSTITUTION OF TRIAL JUDGE SUBSEQUENTLY ASSIGNED. If a new judge is  
24 assigned to the trial under s. 980.05 and the party has not exercised the right under  
25 this section to substitute an assigned judge, a written request for the substitution of

1 the new judge may be filed with the clerk within 10 days of the clerk's giving actual  
2 notice or sending notice of the assignment to the parties. If the notification occurs  
3 within 20 days of the date set for trial, the request shall be filed within 48 hours of  
4 the clerk's giving actual notice or sending notice of the assignment. If the notification  
5 occurs within 48 hours of the trial or if there has been no notification, the party may  
6 make an oral or written request for substitution prior to the commencement of the  
7 proceedings.

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

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

20 (8) RETURN OF ACTION TO SUBSTITUTED JUDGE. Upon the filing of an agreement  
21 signed by the person and the person's attorney and by the attorney representing the  
22 state in a proceeding under this chapter, the substituted judge, and the substituting  
23 judge, the action and all pertinent records shall be transferred back to the  
24 substituted judge.

25 SECTION 79. 980.036 of the statutes is created to read:

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

2           (a) “Person subject to this chapter” means a person who is subject to a petition  
3 filed under s. 980.02 or a person who has been committed under s. 980.06.

4           (b) “Prosecuting attorney” means an attorney representing the state in a  
5 proceeding under this chapter.

6           **(2) WHAT A PROSECUTING ATTORNEY MUST DISCLOSE TO A PERSON SUBJECT TO THIS**  
7 **CHAPTER.** Upon demand, a prosecuting attorney shall, within a reasonable time after  
8 the probable cause hearing and before a trial under s. 980.05 or other proceeding  
9 under s. 980.07 (7), 980.09 (2m), or 980.093 (3), disclose to a person subject to this  
10 chapter or the person’s attorney, and permit the person or the person’s attorney to  
11 inspect and copy or photograph, all of the following materials and information, if the  
12 material or information is within the possession, custody, or control of the state:

13           (a) Any written or recorded statement made by the person concerning the  
14 allegations in the petition filed under s. 980.02 or concerning other matters at issue  
15 in the trial or proceeding and the names of witnesses to the person’s written  
16 statements.

17           (b) A written summary of all oral statements of the person that the prosecuting  
18 attorney plans to use in the course of the trial or proceeding and the names of  
19 witnesses to the person’s oral statements.

20           (c) Evidence obtained in the manner described under s. 968.31 (2) (b), if the  
21 prosecuting attorney intends to use the evidence at the trial or proceeding.

22           (d) A copy of the person’s criminal record.

23           (e) A list of all witnesses, and their addresses, whom the prosecuting attorney  
24 intends to call at the trial or proceeding. This paragraph does not apply to rebuttal  
25 witnesses or witnesses called for impeachment only.

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

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

4 2. Any reports prepared in accordance with s. 980.031 (5).

5 (g) The results of any physical or mental examination or any scientific or  
6 psychological test, experiment, or comparison that the prosecuting attorney intends  
7 to offer in evidence at the trial or proceeding, and any raw data that were collected,  
8 used, or considered in any manner as part of the examination, test, experiment, or  
9 comparison.

10 (h) The criminal record of a witness for the state that is known to the  
11 prosecuting attorney.

12 (i) Any physical or documentary evidence that the prosecuting attorney intends  
13 to offer in evidence at a trial or proceeding.

14 (j) Any exculpatory evidence.

15 **(3) WHAT A PERSON SUBJECT TO THIS CHAPTER MUST DISCLOSE TO THE PROSECUTING**  
16 **ATTORNEY.** Upon demand, a person who is subject to this chapter or the person's  
17 attorney shall, within a reasonable time after the probable cause hearing and before  
18 a trial under s. 980.05 or other proceeding under s. 980.07 (7), 980.09 (2m), or 980.093  
19 (3), disclose to the prosecuting attorney, and permit the prosecuting attorney to  
20 inspect and copy or photograph, all of the following materials and information, if the  
21 material or information is within the possession, custody, or control of the person or  
22 the person's attorney:

23 (a) A list of all witnesses, other than the person, whom the person intends to  
24 call at the trial or proceeding, together with their addresses. This paragraph does  
25 not apply to rebuttal witnesses or witnesses called for impeachment only.

1 (b) Any relevant written or recorded statements of a witness named on a list  
2 under par. (a), including any reports prepared in accordance with s. 980.031 (5).

3 (c) The results of any physical or mental examination or any scientific or  
4 psychological test, experiment, or comparison that the person intends to offer in  
5 evidence at the trial or proceeding, and any raw data that were collected, used, or  
6 considered in any manner as part of the examination, test, experiment, or  
7 comparison.

8 (d) The criminal record of a witness named on a list under par. (a) if the criminal  
9 record is known to the person's attorney.

10 (e) Any physical or documentary evidence that the person intends to offer in  
11 evidence at the trial or proceeding.

12 (4) COMMENT OR INSTRUCTION ON FAILURE TO CALL WITNESS. No comment or  
13 instruction regarding the failure to call a witness at the trial may be made or given  
14 if the sole basis for the comment or instruction is the fact that the name of the witness  
15 appears upon a list furnished under this section.

16 (5) TESTING OR ANALYSIS OF EVIDENCE. On motion of a party, the court may order  
17 the production of any item of evidence or raw data that is intended to be introduced  
18 at the trial for testing or analysis under such terms and conditions as the court  
19 prescribes.

20 (6) PROTECTIVE ORDER. Upon motion of a party, the court may at any time order  
21 that discovery, inspection, or the listing of witnesses required under this section be  
22 denied, restricted, or deferred, or make other appropriate orders. If the prosecuting  
23 attorney or the attorney for a person subject to this chapter certifies that to list a  
24 witness may subject the witness or others to physical or economic harm or coercion,  
25 the court may order that the deposition of the witness be taken pursuant to s. 967.04

1 (2) to (6). The name of the witness need not be divulged prior to the taking of such  
2 deposition. If the witness becomes unavailable or changes his or her testimony, the  
3 deposition shall be admissible at trial as substantive evidence.

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

8 (8) CONTINUING DUTY TO DISCLOSE. If, subsequent to compliance with a  
9 requirement of this section, and prior to or during trial, a party discovers additional  
10 material or the names of additional witnesses requested that are subject to discovery,  
11 inspection, or production under this section, the party shall promptly notify the other  
12 party of the existence of the additional material or names.

13 (9) SANCTIONS FOR FAILURE TO COMPLY. (a) The court shall exclude any witness  
14 not listed or evidence not presented for inspection, copying, or photographing  
15 required by this section, unless good cause is shown for failure to comply. The court  
16 may in appropriate cases grant the opposing party a recess or a continuance.

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

21 (10) PAYMENT OF PHOTOCOPY COSTS IN CASES INVOLVING INDIGENT RESPONDENTS.  
22 When the state public defender or a private attorney appointed under s. 977.08  
23 requests photocopies of any item that is discoverable under this section, the state  
24 public defender shall pay any fee charged for the photocopies from the appropriation  
25 under s. 20.550 (1) (a). If the person providing photocopies under this section charges

1 the state public defender a fee for the photocopies, the fee may not exceed the actual,  
2 necessary, and direct cost of photocopying.

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

6 SECTION 80. 980.038 of the statutes is created to read:

7 **980.038 Miscellaneous procedural provisions. (1) MOTIONS CHALLENGING**  
8 **JURISDICTION OR COMPETENCY OF COURT OR TIMELINESS OF PETITION. (a)** A motion  
9 challenging the jurisdiction or competency of the court or the timeliness of a petition  
10 filed under s. 980.02 shall be filed within 10 days after the court holds the probable  
11 cause hearing under s. 980.04 (2). Failure to file a motion within the time specified  
12 in this paragraph waives the right to challenge the jurisdiction or competency of the  
13 court or the timeliness of a petition filed under s. 980.02.

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

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

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

5 (3) TESTIMONY BY TELEPHONE OR LIVE AUDIOVISUAL MEANS. Unless good cause to  
6 the contrary is shown, proceedings under ss. 980.04 (2) (a) and 980.08 (5) (d) may be  
7 conducted by telephone or audiovisual means, if available. If the proceedings are  
8 required to be reported under SCR 71.02 (2), the proceedings shall be reported by a  
9 court reporter who is in simultaneous voice communication with all parties to the  
10 proceeding. Regardless of the physical location of any party to the telephone call, any  
11 action taken by the court or any party shall have the same effect as if made in open  
12 court. The proceedings shall be conducted in a courtroom or other place reasonably  
13 accessible to the public. Simultaneous access to the proceeding shall be provided to  
14 persons entitled to attend by means of a loudspeaker or, upon request to the court,  
15 by making a person party to the telephone call without charge.

16 (4) MOTIONS FOR POSTCOMMITMENT RELIEF; APPEAL. (a) A motion for  
17 postcommitment relief by a person committed under s. 980.06 shall be made in the  
18 time and manner provided in ss. 809.30 and 809.40. An appeal by a person who has  
19 been committed under ch. 980 from a final order under s. 980.06, 980.08, or 980.09  
20 or from an order denying a motion for postcommitment relief or from both shall be  
21 taken in the time and manner provided in ss. 808.04 (3), 809.30, and 809.40. If a  
22 person is seeking relief from an order of commitment under s. 980.06, the person  
23 shall file a motion for postcommitment relief in the trial court prior to an appeal  
24 unless the grounds for seeking relief are sufficiency of the evidence or issues  
25 previously raised.

1 (b) An appeal by the state from a final judgment or order under this chapter  
2 may be taken to the court of appeals within the time specified in s. 808.04 (4) and in  
3 the manner provided for civil appeals under chs. 808 and 809.

4 (5) FAILURE TO COMPLY WITH TIME LIMITS; EFFECT. Failure to comply with any time  
5 limit specified in this chapter does not deprive the circuit court of personal or subject  
6 matter jurisdiction or of competency to exercise that jurisdiction. Failure to comply  
7 with any time limit specified in this chapter is not grounds for an appeal or grounds  
8 to vacate any order, judgment, or commitment issued or entered under this chapter.  
9 Failure to object to a period of delay or a continuance waives the time limit that is  
10 the subject of the period of delay or continuance.

11 (6) ERRORS AND DEFECTS NOT AFFECTING SUBSTANTIAL RIGHTS. The court shall, in  
12 every stage of a proceeding under this chapter, disregard any error or defect in the  
13 pleadings or proceedings that does not affect the substantial rights of either party.

14 SECTION 81. 980.04 (1) of the statutes is amended to read:

15 980.04 (1) Upon the filing of a petition under s. 980.02, the court shall review  
16 the petition to determine whether to issue an order for detention of the person who  
17 is the subject of the petition. The person shall be detained only if there is probable  
18 cause to believe that the person is eligible for commitment under s. 980.05 (5). A  
19 person detained under this subsection shall be held in a facility approved by the  
20 department. If the person is serving a sentence of imprisonment, is in a secured  
21 correctional facility, as defined in s. 938.02 (15m), a secured child caring institution,  
22 as defined in s. 938.02 (15g), or a secured group home, as defined in s. 938.02 (15p),  
23 or is committed to institutional care, and the court orders detention under this  
24 subsection, the court shall order that the person be transferred to a detention facility  
25 approved by the department. A detention order under this subsection remains in

1 effect until the person is ~~discharged~~ petition is dismissed after a hearing under sub.  
2 (3) or after a trial under s. 980.05 (5) or until the effective date of a commitment order  
3 under s. 980.06, whichever is applicable.

4 SECTION 82. 980.04 (2) of the statutes is renumbered 980.04 (2) (a) and  
5 amended to read:

6 980.04 (2) (a) Whenever a petition is filed under s. 980.02, the court shall hold  
7 a hearing to determine whether there is probable cause to believe that the person  
8 named in the petition is a sexually violent person. ~~If the person named in the petition~~  
9 ~~is in custody, the court shall hold the probable cause hearing within 72 hours after~~  
10 ~~the petition is filed, excluding Saturdays, Sundays and legal holidays. If the person~~  
11 ~~named in the petition is not in custody, the~~ Except as provided in par. (b), the court  
12 shall hold the probable cause hearing within a reasonable time 30 days, excluding  
13 Saturdays, Sundays, and legal holidays, after the filing of the petition, unless that  
14 time is extended by the court for good cause shown upon its own motion, the motion  
15 of any party, or the stipulation of the parties.

16 SECTION 83. 980.04 (2) (b) of the statutes is created to read:

17 980.04 (2) (b) If the person named in the petition is in custody under a sentence,  
18 dispositional order, or commitment and the probable cause hearing will be held after  
19 the date on which the person is scheduled to be released or discharged from the  
20 sentence, dispositional order, or commitment, the probable cause hearing under par.  
21 (a) shall be held no later than 10 days after the person's scheduled release or  
22 discharge date, excluding Saturdays, Sundays, and legal holidays, unless that time  
23 is extended by the court for good cause shown upon its own motion, the motion of any  
24 party, or the stipulation of the parties.

25 SECTION 84. 980.04 (3) of the statutes is amended to read:

1           980.04 (3) If the court determines after a hearing that there is probable cause  
2 to believe that the person named in the petition is a sexually violent person, the court  
3 shall order that the person be taken into custody if he or she is not in custody and  
4 shall order the person to be transferred within a reasonable time to an appropriate  
5 facility specified by the department for an evaluation by the department as to  
6 whether the person is a sexually violent person. If the court determines that  
7 probable cause does not exist to believe that the person is a sexually violent person,  
8 the court shall dismiss the petition.

9           **SECTION 85.** 980.05 (1) of the statutes is amended to read:

10           980.05 (1) A trial to determine whether the person who is the subject of a  
11 petition under s. 980.02 is a sexually violent person shall commence no later than 45  
12 90 days after the date of the probable cause hearing under s. 980.04. The court may  
13 grant ~~a continuance~~ one or more continuances of the trial date for good cause upon  
14 its own motion, the motion of any party or the stipulation of the parties.

15           **SECTION 86.** 980.05 (1m) of the statutes is repealed.

16           **SECTION 87.** 980.05 (2m) of the statutes is created to read:

17           980.05 (2m) (a) At a jury trial under this section, juries shall be selected and  
18 treated in the same manner as they are selected and treated in civil actions in circuit  
19 court, except that, notwithstanding s. 805.08 (3), each party shall be entitled to 4  
20 peremptory challenges or, if the court orders additional jurors to be selected under  
21 s. 805.08 (2), to 5 peremptory challenges. A party may waive in advance any or all  
22 of its peremptory challenges and the number of jurors called under par. (b) shall be  
23 reduced by this number.

24           (b) The number of jurors selected shall be the number prescribed in sub. (2),  
25 unless a lesser number has been stipulated to and approved under par. (c) or the court

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1 orders that additional jurors be selected. That number of jurors, plus the number  
2 of peremptory challenges available to all of the parties, shall be called initially and  
3 maintained in the jury box by calling others to replace jurors excused for cause until  
4 all jurors have been examined. The parties shall thereupon exercise in their order,  
5 the state beginning, the peremptory challenges available to them, and if any party  
6 declines to challenge, the challenge shall be made by the clerk by lot.

7 (c) At any time before the verdict in a jury trial under this section, the parties  
8 may stipulate in writing or by statement in open court, on the record, with the  
9 approval of the court, that the jury shall consist of any number less than the number  
10 prescribed in sub. (2).

11 SECTION 88. 980.05 (3) (a) of the statutes is amended to read:

12 980.05 (3) (a) At a trial on a petition under this chapter, the petitioner has the  
13 burden of proving ~~the allegations in the petition~~ beyond a reasonable doubt that the  
14 person who is the subject of the petition is a sexually violent person.

15 SECTION 89. 980.05 (3) (b) of the statutes is amended to read:

16 980.05 (3) (b) If the state alleges that the sexually violent offense or act that  
17 forms the basis for the petition was an act that was sexually motivated as provided  
18 in s. 980.01 (6) (b) or (bm), the state is required to prove beyond a reasonable doubt  
19 that the alleged sexually violent act was sexually motivated.

20 SECTION 90. 980.07 (1) of the statutes is renumbered 980.07 (1) (intro.) and  
21 amended to read:

22 980.07 (1) (intro.) If a person has been committed under s. 980.06 and has not  
23 been discharged under s. 980.09, the department shall conduct an examination of his  
24 or her mental condition within 6 18 months after ~~an~~ the date of the initial  
25 commitment order under s. 980.06 and again thereafter at least once each 12 months

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1 ~~for the purpose of determining to determine~~ whether the person has made sufficient  
2 progress for the court to consider whether the person should be placed on supervised  
3 release or discharged. At the time of a reexamination under this section, the person  
4 who has been committed may retain or ~~seek to~~ have the court appoint ~~an~~ any of the  
5 following:

6 (a) An examiner as provided under s. 980.03 (4) 980.031 (3).

7 **SECTION 91.** 980.07 (1) (b) of the statutes is created to read:

8 980.07 (1) (b) An attorney as provided under s. 980.03 (2) (a).

9 **SECTION 92.** 980.07 (1m) of the statutes is created to read:

10 980.07 (1m) At the time for any examination under sub. (1), the department  
11 shall provide a treatment report based on the treating professional's evaluation of  
12 the person's progress, or lack of sufficient progress, in treatment and a description  
13 of the type of treatment that the person would need in the community if supervised  
14 release were ordered. A copy of this report shall be given to any examiner conducting  
15 an examination under sub. (1).

16 **SECTION 93.** 980.07 (2) of the statutes is amended to read:

17 980.07 (2) Any examiner conducting an examination under ~~this section~~ sub. (1)  
18 shall prepare a written report of the examination no later than 30 days after the date  
19 of the examination. The examiner shall place a copy of the report in the person's  
20 medical records and shall provide a copy of the report to the department. The report  
21 shall include an assessment of the person's risk for reoffense, whether the risk can  
22 be safely managed in the community assuming reasonable conditions of supervision  
23 and security, and whether the treatment that the person needs is available in the  
24 community. The department shall attach the treatment report to the written  
25 examination report and send the reports to the court that committed the person

1 under s. 980.06. A copy of each report and the department's recommendation shall  
2 be provided also to the district attorney or department of justice, whichever is  
3 applicable, and to the person's attorney as soon as he or she is retained or appointed.  
4 The department of health and family services shall recommend continued  
5 institutional care, supervised release, or discharge, whichever is appropriate. The  
6 department of health and family services shall advise the person of its  
7 recommendation at the conclusion of the reexamination process. If the department's  
8 examiner concludes that the person does not meet the criteria for commitment as a  
9 sexually violent person, the department shall petition for discharge in accordance  
10 with the provisions of s. 980.09 (1).

11 **SECTION 94.** 980.07 (3) of the statutes is amended to read:

12 980.07 (3) Notwithstanding sub. (1), the court that committed a person under  
13 s. 980.06 may order a reexamination of the person at any time during the period in  
14 which the person is subject to the commitment order. Any report ordered under this  
15 subsection shall conform to subs. (1m) and (2).

16 **SECTION 95.** 980.07 (4) to (7) of the statutes are created to read:

17 980.07 (4) Within 30 days of the filing of the reexamination report, treatment  
18 report, and recommendation under this section, the person subject to the  
19 commitment, the district attorney, or the department of justice, whichever is  
20 applicable, may object to the department's recommendation under sub. (2).

21 (5) (a) If the person files a timely objection without counsel, the court shall  
22 serve a copy of the objection and any supporting documents on the district attorney  
23 or department of justice, whichever is applicable, and, subject to s. 980.03 (2) (a),  
24 refer the matter to the authority for indigency determinations under s. 977.07 (1) and  
25 appointment of counsel under s. 977.05 (4) (j). The determination of indigency and

1 the appointment of counsel shall be done as soon as circumstances permit. If the  
2 person objects through counsel, his or her attorney shall serve the district attorney  
3 or department of justice, whichever is applicable. If the district attorney or  
4 department of justice objects, it shall serve the person or his or her counsel.

5 (b) If the person filing an objection is requesting discharge, a petition shall be  
6 filed in accordance with the provisions of s. 980.093.

7 (c) If the department chooses to appear and be heard at any hearing, the  
8 department shall be represented at the hearing by its agency counsel.

9 (6) Any examiners under this section shall have reasonable access to the person  
10 for purposes of examination and to the person's past and present treatment records,  
11 as defined in s. 51.30 (1) (b), and patient health care records, as provided under s.  
12 146.82 (2) (c). The county shall pay the costs of an examiner appointed under this  
13 subsection as provided under s. 51.20 (18) (a). The district attorney or department  
14 of justice, whichever is applicable, may employ experts or professional persons to  
15 oppose any recommendation. If any examination under this subsection recommends  
16 supervised release, the department of health and family services shall file a  
17 treatment report as required by sub. (2) unless it has already filed a treatment report  
18 for this reexamination period.

19 (7) (a) The court, without a jury, shall hear the objection within 30 days after  
20 all of the reports of the persons who examined the petitioner are filed with the court,  
21 unless the petitioner waives this time limit. Expenses of proceedings under this  
22 subsection shall be paid as provided under s. 51.20 (18) (b), (c), and (d).

23 (b) The court shall determine from all of the evidence the appropriate  
24 placement for the person. In making a decision under this subsection, the court may  
25 consider, without limitation because of enumeration, the nature and circumstances

1 of the behavior that was the basis of the allegation in the petition under s. 980.02 (2)  
2 (a), the person’s mental history and present mental condition, treatment progress,  
3 or the lack of treatment progress, where the person will live, how the person will  
4 support himself or herself, and what arrangements are available to ensure that the  
5 person has access to and will participate in necessary treatment.

6 (c) The court shall order the county department under s. 51.42 in the county of  
7 residence of the person, as determined under s. 980.105, or the county of intended  
8 placement, whichever is appropriate, to prepare a report, either independently or  
9 with the department of health and family services, identifying prospective  
10 residential options for community placement.

\*\*\*NOTE: Vaughn, please look carefully at the ordering of this section.

11 (d) ~~The court shall grant the petition unless the state proves by clear and~~  
12 ~~convincing evidence that one of the following does not apply:~~

13 1. The person who will be placed on supervised release has made sufficient  
14 progress in treatment such that the risk to reoffend can be safely managed in the  
15 community.

16 2. The person who will be placed on supervised release will be treated by a  
17 provider who is qualified to provide the necessary treatment in this state.

18 3. The provider presents a specific course of treatment for the person who will  
19 be placed on supervised release, agrees to assume responsibility for the person’s  
20 treatment, will report on the person’s progress to the court on a regular basis, and  
21 will report any violations as prescribed in subds. 4. and 5. immediately to the court,  
22 the attorney for the state, and the attorney for the institution under s. 980.065.

23 4. The person who will be placed on supervised release has housing  
24 arrangements that are sufficiently secure to protect the community, and the person

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1 or agency that is providing the housing to the person who will be placed on supervised  
2 release agrees in writing to the following conditions:

- 3 a. To accept the person who will be placed supervised release.  
4 b. To provide or allow for the level of safety that the court requires.  
5 c. To report immediately the unauthorized absence of the person who will be  
6 placed on supervised release from the housing arrangement to which the person has  
7 been assigned.

8 5. The person who will be placed on supervised release will comply with the  
9 provider and all of the requirements that are imposed by the department and the  
10 court.

11 6. The provider will comply with the rules of supervision imposed by the court  
12 and the department.

13 7. The department has made provisions for the necessary sex offender  
14 treatment, other counseling, medication, community support services, residential  
15 services, vocational services, and alcohol or other drug abuse treatment.

16 **SECTION 96.** 980.08 of the statutes is repealed and recreated to read:

17 **980.08 Supervised release; procedures, implementation, revocation.**

18 (1) The court shall order the county department under s. 51.42 in the county of  
19 residence of the person, as determined under s. 980.105, or the county of intended  
20 placement, whichever is appropriate, to assist the department of health and family  
21 services in implementing the supervised release placement. If the person is to be  
22 placed outside of the county of residence, the county department under s. 51.42 for  
23 the county of placement shall assist in implementing the supervised release  
24 placement.

1           (2) The department shall file with the court any additional rules of supervision  
2 not inconsistent with the rules imposed by the court within 10 days of imposing the  
3 rule.

4           (3) If the department wishes to change a rule of supervision imposed by the  
5 court, it must obtain the court's approval.

6           (4) An order granting supervised release places the person in the care, control,  
7 and custody of the department. The department shall arrange for the care, control,  
8 and treatment of the person in the least restrictive manner consistent with the  
9 requirements of the person and in accordance with the order for supervised release.  
10 Before a person is actually released under this section, the court shall notify the  
11 municipal police department and county sheriff for the municipality and county in  
12 which the person will be residing. The notification requirement under this  
13 subsection does not apply if a municipal police department or county sheriff submits  
14 to the court a written statement waiving the right to be notified.

15           (5) (a) If the department concludes that a person on supervised release, or  
16 awaiting placement on supervised release, violated or threatened to violate a rule of  
17 supervised release, it may petition for revocation of the order granting supervised  
18 release.

19           (b) If the department concludes that a person on supervised release, or  
20 awaiting placement on supervised release, is a threat to the safety of others, it shall  
21 detain the person and petition for revocation of the order granting supervised  
22 release.

23           (c) If the department determines that the person has violated a rule, it may  
24 detain the person. If the department concludes that the order granting supervised  
25 release should be revoked, it shall file a statement alleging the violation and a

1 petition to revoke the order for supervised release with the committing court and the  
2 regional office of the state public defender responsible for handling cases in the  
3 county where the committing court is located within 72 hours after the detention,  
4 excluding Saturdays, Sundays, and legal holidays. The court shall refer the matter  
5 to the authority for indigency determinations under s. 977.07 (1) and appointment  
6 of counsel under s. 977.05 (4) (j). The determination of indigency and the  
7 appointment of counsel shall be done as soon as circumstances permit.

8 (d) The court shall hear the petition within 30 days, unless the hearing or time  
9 deadline is waived. A final decision on the petition to revoke shall be made within  
10 90 days of the filing of the petition. Pending the final revocation hearing, the  
11 department may detain the person in the county jail or return him or her to  
12 institutional care.

13 (6) (a) If the court finds after a hearing, by clear and convincing evidence, that  
14 any rule has been violated and that the violation of the rule merits the revocation of  
15 the order granting supervised release, the court may revoke the order for supervised  
16 release and order that the person be placed in institutional care. The person shall  
17 remain in institutional care until he or she is discharged from the commitment or  
18 again placed on supervised release.

19 (b) If the court determines after a hearing, by clear and convincing evidence,  
20 that the safety of others requires that supervised release be revoked, the court shall  
21 revoke the order granting supervised release and order that the person be placed in  
22 institutional care. The person shall remain in institutional care until he or she is  
23 discharged from the commitment or again placed on supervised release.

24 **SECTION 97.** 980.09 (title) of the statutes is amended to read:

1           **980.09** (title) **Petition for discharge with department's approval;**  
2 **procedure.**

3           **SECTION 98.** 980.09 (1) (title) of the statutes is repealed.

4           **SECTION 99.** 980.09 (1) (a) of the statutes is renumbered 980.09 (1) and  
5 amended to read:

6           980.09 (1) If the ~~secretary~~ department determines at any time that a person  
7 committed under this chapter ~~is no longer~~ does not meet criteria for commitment as  
8 a sexually violent person, the ~~secretary~~ department shall ~~authorize the person to~~  
9 petition the committing court for discharge. ~~The person~~ department shall file the  
10 petition with the court and serve a copy upon the department of justice or the district  
11 attorney's office that filed the petition under s. 980.02 (1), whichever is applicable.  
12 The court, upon receipt of the petition for discharge, shall order a hearing to be held  
13 within ~~45~~ 90 days after the date of receipt of the petition.

14           **SECTION 100.** 980.09 (1) (b) of the statutes is renumbered 980.09 (2m) and  
15 amended to read:

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

1           **SECTION 101.** 980.09 (1) (c) of the statutes is renumbered 980.09 (3) and  
2 amended to read:

3           980.09 (3) If the court is satisfied that the state has not met its burden of proof  
4 under par. (b) sub. (2m), the petitioner shall be discharged from the custody ~~or~~ <sup>↓</sup>  
5 ~~supervision~~ <sup>↓</sup> of the department. ~~If the court is satisfied that the state has met its~~  
6 ~~burden of proof under par. (b), the court may proceed to determine, using the criterion~~  
7 ~~specified in s. 980.08 (4), whether to modify the petitioner's existing commitment~~  
8 ~~order by authorizing supervised release.~~

9           **SECTION 102.** 980.09 (2) of the statutes is repealed.

10          **SECTION 103.** 980.093 of the statutes is created to read:

11          **980.093 Discharge petitions without the secretary's approval;**  
12 **procedure.** (1) PETITIONS IN GENERAL. A committed person may petition the  
13 committing court for discharge without the secretary's approval. The court shall  
14 deny the petition under this section without a hearing unless the petition alleges  
15 facts from which the court may conclude the person's condition has changed so that  
16 the person does not meet the criteria for commitment as a sexually violent person.

17          (2) COURT REVIEW OF PETITION. The court shall review the petition to determine  
18 if it contains facts from which the court may conclude that the person does not meet  
19 the criteria for commitment as a sexually violent person. In determining under this  
20 subsection whether facts exist that might warrant such a conclusion, the court shall  
21 consider any current or past reports filed under s. 980.07, relevant arguments, and  
22 any supporting documentation provided by the person or the state.

23          (3) HEARING. The court shall hold a hearing within 90 days of the determination  
24 that the petition contains facts from which the court may conclude that the person  
25 does not meet the criteria for commitment as a sexually violent person. The district

1 attorney or the department of justice, whichever filed the original petition, or the  
2 petitioner or his or her attorney may request that the hearing under this subsection  
3 be to a jury of 6. A jury trial is deemed waived unless it is demanded within 10 days  
4 of the filing of the petition for discharge. The state has the burden of proving by clear  
5 and convincing evidence that the person meets the criteria for commitment as a  
6 sexually violent person. No verdict shall be valid or received unless it is agreed to  
7 by at least 5 of the jurors. Motions after verdict may be made without further notice  
8 upon receipt of the verdict.

9 (4) DISPOSITION. The court shall enter an order denying the petition or  
10 discharging the person unless the court orders a new trial based on post verdict  
11 motions. Any party may appeal an order under this subsection as a final order under  
12 chs. 808 and 809.

\*\*\*\*NOTE: DOJ had this s. 980.093 as a repealed and recreated s. 980.10, but this  
order made more sense to me and this section was different than s. 980.10, so I repealed  
s. 980.10.

13 SECTION 104. 980.095 of the statutes is created to read:

14 **980.095 Jury selection.** (1) At a hearing to a jury on a petition for discharge  
15 under s. 980.09 or 980.093, juries shall be selected and treated in the same manner  
16 as they are selected and treated in civil actions in circuit court.

17 (2) The number of jurors selected shall be the number prescribed in s. 980.09  
18 (2m) or 980.093 (3), whichever is applicable, unless a lesser number has been  
19 stipulated to and approved under sub. (3) or the court orders that additional jurors  
20 be selected. That number of jurors, plus the number of peremptory challenges  
21 available to all of the parties, shall be called initially and maintained in the jury box  
22 by calling others to replace jurors excused for cause until all jurors have been  
23 examined. The parties shall thereupon exercise in their order, the state beginning,

1 the peremptory challenges available to them, and if any party declines to challenge,  
2 the challenge shall be made by the clerk by lot.

3 (3) At any time before the verdict in a hearing to a jury on a petition for  
4 discharge, the parties may stipulate in writing or by statement in open court, on the  
5 record, with the approval of the court, that the jury shall consist of any number less  
6 than the number prescribed in s. 980.09 (2m) or 980.093 (3), whichever is applicable.

SECTION 105. 980.10 of the statutes is repealed.

SECTION 106. 980.11 (2) (intro.) of the statutes is amended to read:

9 980.11 (2) (intro.) If the court places a person on supervised release under s.  
10 980.08 or discharges a person under s. 980.09 or ~~980.10~~ 980.093, the department  
11 shall do all of the following:

12 SECTION 107. 980.12 (1) of the statutes is amended to read:

13 980.12 (1) Except as provided in ss. ~~980.03 (4)~~ 980.031 (3) and 980.08 (3), the  
14 department shall pay from the appropriations under s. 20.435 (2) (a) and (bm) for all  
15 costs relating to the evaluation, treatment, and care of persons evaluated or  
16 committed under this chapter.

17 SECTION 108. 980.14 (title) of the statutes is created to read:

18 **980.14 (title) Immunity.**

19 SECTION 109. 980.14 (1) of the statutes is created to read:

20 980.14 (1) In this section, "agency" means the department of corrections, the  
21 department of health and family services, the department of justice, or a district  
22 attorney.

23 SECTION 110. Initial applicability.

24 (1) SEXUALLY VIOLENT PERSON COMMITMENT PROCEEDINGS GENERALLY. The  
25 treatment of sections 48.396 (6), 48.78 (2) (e), 48.981 (7) (a) 8s., 51.30 (3) (bm) and

Handwritten notes: "Supervised release or other person" with arrows pointing to lines 3-6.

Handwritten notes: "980.10" and "8 53/7" in a circle with arrows pointing to lines 10 and 8.

Handwritten notes: "INS 53/22" and "From -3519" with an arrow pointing to line 23.

Handwritten notes: "J" and "(b)" with arrows pointing to lines 24 and 25.

1 (4) (b) 8m., 8s. and 10m., 118.125 (2) (ck), 146.82 (2) (c) and (cm), 801.52, 808.04 (3)  
2 and (4), 809.10 (1) (a), 809.30 (1) (a) and (b), 809.40 (1), 814.61 (1) (c) 6., 905.04 (4)  
3 (a), 911.01 (4) (c), 938.35 (1) (e), 938.396 (2) (e), 938.78 (2) (e), 972.15 (6), 980.01 (2),  
4 (5) and (6) (a), (am), (b), (bm), (c) and (d), 980.015 (2) (c), 980.03 (2) (intro.), (3), (4)  
5 and (5), 980.031 (title), (1) and (2), 980.034, 980.035, 980.036, 980.038, 980.04 (1) and  
6 (3), 980.05 (1), (1m), (2m) and (3) (a) and (b), 980.07 (1) and (3), 980.08 (3) and (4) and  
7 980.09 (1) (b), (2) (a) and (b) and (3) of the statutes, the renumbering and amendment  
8 of section 980.04 (2) of the statutes and the creation of section 980.04 (2) (b) of the  
9 statutes first apply to proceedings under chapter 980 of the statutes that are  
10 initiated by a petition filed under section 980.02 of the statutes, as affected by this  
11 act, on the effective date of this subsection.

12 (2) **SEXUALLY VIOLENT PERSON COMMITMENT PETITIONS.** The treatment of section  
13 980.02 (1) (a) and (b) 3., (1m), (2) (ag) and (4) (intro.) of the statutes first applies to  
14 petitions filed on the effective date of this subsection.

15 (3) **IMMUNITY PROVISIONS.** The treatment of sections 980.015 (4) and 980.14  
16 (title) and (1) of the statutes first applies to acts or omissions occurring on the  
17 effective date of this subsection.

18 (4) **INCREASED PENALTY FOR PERSONS WITH PRIOR CONVICTIONS FOR CERTAIN CRIMES.**  
19 The renumbering and amendment of sections 939.623 (1) and 939.624 (1) of the  
20 statutes and the creation of sections 939.623 (1) (b) and 939.624 (1) (b) of the statutes  
21 first apply to offenses committed on the effective date of this subsection, but do not  
22 preclude the counting of other offenses as prior serious sex crimes, prior serious  
23 violent crimes or prior child sex crimes for purposes of sentencing a person under  
24 section 939.623 or 939.624 of the statutes, as affected by this act.

\*\*\*NOTE: Editors, I have not updated the initial applicability section yet.

1

(END)

SA ✓

# 2003 BILL

Subsub Transitional facility for <sup>supervised release of</sup> sexually violent persons

1 AN ACT to renumber 46.055; to amend 20.435 (2) (bm), 46.03 (1), 46.055 (title),  
 2 46.058 (2m) and 980.065 (1m); and to create 46.055 (2) of the statutes;  
 3 relating to creating a committee to make recommendations regarding the  
 4 location of a facility for the treatment of sexual predators, payments in lieu of  
 5 taxes and grants for a municipality in which such a facility is located, and  
 6 making an appropriation.

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### Analysis by the Legislative Reference Bureau

This bill creates a committee composed of officials from the city of Milwaukee and Milwaukee County and individual residents of Milwaukee County to prepare recommendations regarding the location of a proposed transitional facility for persons who have been committed to the custody of the Department of Health and Family Services (DHFS) as sexually violent persons. The bill also requires DHFS to pay annually to the municipality in which the transitional facility is ultimately located a sum in lieu of property taxes for the services, improvements, or facilities that the municipality furnishes to the transitional facility. The amount of the payment may not exceed the amount that the municipality would have otherwise levied upon the transitional facility. DHFS must also make an annual grant of

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\$100,000 to the municipality for the cost of providing additional security near the facility.

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

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

20.435 (2) (bm) *Secure mental health units or facilities; payments relating to transitional facilities.* The amounts in the schedule for the general program operations of secure mental health units or facilities under s. 980.065 for persons committed under s. 980.06 and placed in a secure mental health unit or facility and for making payments to municipalities under s. 46.055 (2) (b) and grants to municipalities under s. 46.055 (2) (c).

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

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

**SECTION 3.** 46.055 (title) of the statutes is amended to read:

46.055 (title) ~~Secure mental health facility~~ **Facilities for sexually violent persons.**

**SECTION 4.** 46.055 of the statutes is renumbered 46.055 (1).

**SECTION 5.** 46.055 (2) of the statutes is created to read:

46.055 (2) (a) In this subsection, "transitional facility" means the facility that is enumerated in 2001 Wisconsin Act 16, section 9107 (1) (d) 1., and that will be a transitional facility for the housing of persons committed to the custody of the department under ch. 980.

**BILL**

1 (b) Annually, from the appropriation under s. 20.435 (2) (bm), the department  
 2 shall pay a municipality in which a transitional facility is located a sum in lieu of  
 3 taxes for the services, improvements, or facilities that the municipality furnishes to  
 4 the transitional facility. The municipality shall determine the amount that the  
 5 department shall pay, but it may not exceed the amount that would be levied as the  
 6 annual property tax of the municipality upon the transitional facility.

7 (c) Annually, from the appropriation under s. 20.435 (2) (bm), the department  
 8 shall make a grant of \$100,000 to a municipality in which a transitional facility is  
 9 located to reimburse the municipality for the cost of providing additional security for  
 10 the area in which the transitional facility is located.

11 **SECTION 6.** 46.058 (2m) of the statutes is amended to read:

12 46.058 (2m) The superintendents of the secure mental health facility  
 13 established under s. 46.055 (1), the Wisconsin resource center established under s.  
 14 46.056 and any secure mental health unit or facility provided by the department of  
 15 corrections under s. 980.065 (2) shall adopt proper means to prevent escapes of  
 16 persons detained or committed to the facility, center or unit under ch. 980 and may  
 17 adopt proper means to pursue and capture persons detained or committed to the  
 18 facility, center or unit under ch. 980 who have escaped. In adopting means under this  
 19 subsection to prevent escape and pursue and capture persons who have escaped, a  
 20 superintendent may delegate to designated staff members of the facility, center or  
 21 unit the power to use necessary and appropriate force, as defined by the department  
 22 by rule, to prevent escapes and capture escaped persons.

23 **SECTION 7.** 980.065 (1m) of the statutes is amended to read:

24 980.065 (1m) The department shall place a person committed under s. 980.06  
 25 at the secure mental health facility established under s. 46.055 (1), the Wisconsin

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**BILL**

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1 resource center established under s. 46.056 or a secure mental health unit or facility  
2 provided by the department of corrections under sub. (2).

**SECTION 8. Nonstatutory provisions.**

4 (1) (a) There is created a committee to assist the state in determining the  
5 location for the facility enumerated in 2001 Wisconsin Act 16, section 9107 (1) (d) 1.,  
6 that will be a transitional facility for the housing of persons committed to the custody  
7 of the department of health and family services under chapter 980 of the statutes.

8 (b) The departments of corrections and health and family services shall provide  
9 necessary administrative support services to the committee.

10 (c) The department of administration shall reimburse members of the  
11 committee for their actual and necessary expenses incurred in carrying out their  
12 functions, from the appropriation under section 20.505 (4) (ba) of the statutes, within  
13 the budget authorized under section 16.40 (14) of the statutes.

14 (d) The members of the committee shall be:

15 1. The chairperson of the Milwaukee County board of supervisors or his or her  
16 designee.

17 2. The chief of police of the city of Milwaukee or his or her designee.

18 3. The county executive of Milwaukee County or his or her designee.

19 4. The district attorney of Milwaukee County or his or her designee.

20 5. The mayor of the city of Milwaukee or his or her designee.

21 6. The sheriff of Milwaukee County or his or her designee.

22 7. <sup>One</sup> ~~Two~~ representatives of the Milwaukee County Law Enforcement Executives  
23 Association who <sup>is</sup> ~~are~~ not from the city of Milwaukee.

24 8. <sup>One</sup> ~~Two~~ representatives of the intergovernmental cooperation council who <sup>is</sup> ~~are~~  
25 not from the city of Milwaukee.

INS 53/22

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*the city of*

1           9. <sup>Three</sup> ~~Five~~ other individuals who are residents of ~~Milwaukee County~~, to be  
2 appointed by the governor.

3           (e) The governor shall appoint the chair of the committee from the ~~5~~  
4 appointed under par. (d) 9. *and 10.*

5           (f) The committee shall hold public hearings in Milwaukee County regarding  
6 the selection of a location of the facility. The committee shall consider all of the  
7 following factors when determining the criteria for the location of the facility or when  
8 determining specific locations for the facility:

- 9           1. Community safety.
- 10          2. Proximity to sensitive locations.
- 11          3. Ability to make the facility secure.
- 12          4. Accessibility to treatment for the persons living in the facility.

13          (g) No later than December 31, 2004, the committee shall submit a report to  
14 the departments of corrections and health and family services recommending  
15 specific locations that the committee determines are appropriate for the placement  
16 of the facility.

*(END)*

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*INS 53/02*

2003-2004 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-4158/P3ins  
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3 **INSERT 11/25**

4 **SECTION 1.** 51.30 (4) (b) 11. of the statutes is amended to read:

5 51.30 (4) (b) 11. To the subject individual's counsel or guardian ad litem and  
6 the corporation counsel, without modification, at any time in order to prepare for  
7 involuntary commitment or recommitment proceedings, reexaminations, appeals, or  
8 other actions relating to detention, admission, commitment, or patients' rights under  
9 this chapter or ch. 48, 971, ~~or~~ 975, or 980.

History: 1975 c. 430; 1977 c. 26 s. 75; 1977 c. 61, 428; 1979 c. 110 s. 60 (1); 1983 a. 27, 292, 398, 538; 1985 a. 29, 176; 1985 a. 292 s. 3; 1985 a. 332 ss. 97, 98, 251 (1); 1987 a. 352, 355, 362, 367, 399, 403; 1989 a. 31, 334, 336; 1991 a. 39, 189; 1993 a. 196, 445, 479; 1995 a. 169, 440; 1997 a. 35, 231, 237, 283, 292; 1999 a. 32, 78, 79, 109; 2001 a. 16, 38.

10 **INSERT 22/4**

11 **SECTION 2.** 973.155 (1) (c) of the statutes is created to read:

12 973.155 (1) (c) The categories in par. (a) include time during which the  
13 convicted offender was in the custody of the department of health and family services  
14 under ch. 980 only if the offender was confined during that time and the confinement  
15 and the offender's conviction resulted from the same course of conduct. ✓

16 **INSERT 46/11**

17 (d) The court may not order that a person be placed on supervised release  
18 unless it finds, based on all of the reports, trial records, and evidence presented, that  
19 all of the following apply: ✓

20 **INSERT 53/7**

21 **SECTION 3.** 980.101 (2) (a) of the statutes is amended to read:

1           980.101 (2) (a) If the sexually violent offense was the sole basis for the  
2 allegation under s. 980.02 (2) (a) and there are no other judgments relating to a  
3 sexually violent offense committed by the person, the court shall reverse, set aside,  
4 or vacate the judgment under s. 980.05 (5) that the person is a sexually violent  
5 person, vacate the commitment order, and discharge the person from the custody or  
6 supervision of the department.

History: 2001 a. 16.

7           **INSERT X (goes into 03-3519/2 insert)**

8           10. Two other individuals who are residents of Milwaukee County but who are  
9 not residents of the city of Milwaukee, to be appointed by the governor.

~~1/2/04~~

Plc from Tom

Change in threshold applies

petition  
petion  
re-exam

} on or after E.D.