

**2003 DRAFTING REQUEST**

**Bill**

Received: 02/17/2004

Received By: mdsida

Wanted: As time permits

Identical to LRB:

For: Alberta Darling (608) 266-5830

By/Representing: Marsha Dake

This file may be shown to any legislator: NO

Drafter: mdsida

May Contact:

Addl. Drafters:

Subject: **Mental Health - detent/commit  
Criminal Law - sex offenses**

Extra Copies:

Submit via email: YES

Requester's email: **Sen.Darling@legis.state.wi.us**

Carbon copy (CC:) to:

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**Pre Topic:**

No specific pre topic given

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**Topic:**

Supervised release of sex predators

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**Instructions:**

Same as 03-4094

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**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mdsida 02/17/2004	jdyer 02/17/2004					S&L
		jdyer 02/17/2004					
/1		jdyer 02/20/2004	jfrantze 02/17/2004		sbasford 02/17/2004		S&L

Vers.      Drafted      Reviewed      Typed      Proofed      Submitted      Jacketed      Required

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		1/2 2/20 jld		_____			
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1 AN ACT *to renumber* 46.055; *to renumber and amend* 980.08 (4), 980.08 (5)  
2 and 980.08 (6m); *to amend* 20.435 (2) (bj), 46.03 (1), 46.055 (title), 46.058 (2m),  
3 46.10 (2), 51.42 (3) (aw) 1. d., 980.01 (7), 980.065 (1m), 980.08 (3), 980.09 (1) (c)  
4 and 980.09 (2) (c); and *to create* 46.055 (2), 980.01 (1m), 980.08 (4) (b) 2. to 6.,  
5 (d) and (e), 980.08 (5) (a) 5. and 6. and (b) and (6), 980.08 (6m) (b) 2. and 980.085  
6 of the statutes; **relating to:** standard for commitment and supervised release  
7 of sexually violent persons.

***Analysis by the Legislative Reference Bureau***

Under current law, a person who commits a sexually violent offense may be committed to the Department of Health and Family Services (DHFS) after serving a sentence or disposition for the offense if a court finds that the person is a sexually violent person. Current law defines a "sexually violent person" as a person: 1) who has been convicted of, or adjudicated delinquent for, a sexually violent offense or who has been found not guilty of a sexually violent offense by reason of mental disease, defect, or illness; and 2) who is dangerous because he or she suffers from a mental disorder that makes it substantially probable that he or she will engage in acts of sexual violence.

A person committed to DHFS as a sexually violent person is initially placed in institutional care. After 18 months, a sexually violent person may petition the court



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for supervised release, which allows the person to reside in the community subject to the conditions set by the court and to the rules of DHFS. If a person petitions the court for supervised release, the court must grant the petition unless the state proves that it is still substantially probable that the person will engage in future acts of sexual violence if institutionalized care is not continued.

If a court determines that supervised release is appropriate, DHFS must make its best effort to place the person in the county in which the person lived at the time of the sexually violent offense. DHFS and the county in which the person is to be placed must then prepare a plan for treating and monitoring the person upon his or her release. Current law specifies what the plan must contain (such as what services the person will receive in the community). In addition, current law requires DHFS, when developing the supervised release plan, to consider the proximity of the person's proposed residence to the homes of certain other sex offenders. Then, within 60 days after the court's determination that supervised release is appropriate, DHFS and the county in which the person is to be placed must submit the supervised release plan to the court for its approval. (This two-part hearing process, in which the court determines whether supervised release is appropriate before reviewing the supervised release plan, is sometimes referred to as a bifurcated hearing.)

This bill makes a number of changes relating to the commitment, release, and placement of sexually violent persons. First, the bill changes the second part of the definition of "sexually violent person." As a result of the change, a person who has committed a sexually violent offense may be committed to DHFS if the state merely shows that the person is dangerous because he or she suffers from a mental disorder that makes it more likely than not (as opposed to substantially probable) that he or she will engage in acts of sexual violence.

Second, the bill substantially modifies the existing bifurcated hearing process. Under the bill, the court considers whether the person may be appropriate for supervised release as a first step, but only with respect to certain issues. Specifically, the court must assess: 1) whether it is still likely that the person will engage in acts of sexual violence if the person is not continued in institutional care; 2) whether the person has demonstrated significant or satisfactory progress in his or her treatment or the person has refused treatment; 3) whether there is appropriate treatment that is reasonably available in the community; 4) whether the person has agreed to comply with conditions, rules, and requirements for supervised release and whether the person is likely to violate such conditions, rules, or requirements; 5) whether a major discipline report was issued regarding the person during the six months immediately preceding the hearing; and 6) whether supervised release is in the best interest of the person. If the state proves by clear and convincing evidence that the person is not appropriate for supervised release under any of these criteria, the court must deny the petition.

If the court does not deny the petition at that stage of the process, it refers the case to DHFS for the preparation of a supervised release plan, which, under the bill, must identify where the person will live. If the county in which the person will be placed has a transitional facility for the placement of sexually violent persons, the plan must provide for the placement of the person in that facility. (See below for

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additional discussion of the bill's requirements regarding the siting of such a facility.) If the person is to be placed in anywhere else, DHFS and the county must follow the procedure established under the bill regarding selecting the placement. Initially, DHFS and the county must consider the proximity of any proposed residence to certain types of facilities for children, including schools, day care providers, group homes, foster homes, and youth centers. In doing so, DHFS and the county must: 1) prepare a list and a map of such facilities in consultation with affected municipalities; 2) submit the list and map, along with the address of the proposed residence, to the local common councils and village or town boards; and 3) consider any comments from the municipalities regarding the proposed placement before finalizing the supervised release plan. Then, when DHFS and the county submit the supervised release plan to the court (which they must do within 90 days after the court refers the case to DHFS), DHFS and the county must provide the map, the list, and any comments from affected municipalities to the court and to the chief elected official, the police chief, and the sheriff for the community in which the proposed placement is located.

After the court receives a plan for supervised release, it must hold a hearing to determine whether to approve the plan and whether to grant the petition for supervised release. The bill requires that the court notify the chief elected official, the police chief, and the sheriff for the community in which the proposed placement is located of the hearing at least five days beforehand. After reviewing the plan, the court must: 1) order DHFS and the county to modify the plan; 2) deny the petition for supervised release, but only if the state proves by clear and convincing evidence that the community would not be adequately protected under the plan; or 3) approve the plan and grant the petition.

Third, the bill requires any person who is on supervised release to actively participate in treatment as a condition of supervised release.

Fourth, the 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 DHFS as sexually violent persons. The bill specifies the factors that the committee must consider in making its recommendation and specifies that the location must be suitable for the development of a facility that can house the number of people that DHFS expects to be on supervised release in Milwaukee County.

Fifth, if DHFS establishes a transitional facility of the type described in the preceding paragraph, it must move any sexually violent person who is on supervised release in the county in which the facility is located into the facility if it has a vacancy there for that person.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

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1           **SECTION 1.** 20.435 (2) (bj) of the statutes, as affected by 2003 Wisconsin Act 33,  
2 is amended to read:

3           20.435 (2) (bj) *Competency examinations and conditional and supervised*  
4 *release services.* Biennially, the amounts in the schedule for outpatient competency  
5 examinations and for payment by the department of costs for treatment and services  
6 for persons released under s. 980.06 (2) (c), 1997 stats., s. 980.08 (5), 2001 stats., or  
7 s. 971.17 (3) (d) or (4) (e) or 980.08 ~~(5) (6) (c) 3.~~, for which the department has  
8 contracted with county departments under s. 51.42 (3) (aw) 1. d., with other public  
9 agencies, or with private agencies to provide the treatment and services.

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

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

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

15           **46.055 (title) ~~Secure mental health facility~~ Facilities for sexually**  
16 **violent persons.**

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

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

19           46.055 (2) The department shall submit a report each February 1 to the chief  
20 clerk of each house of the legislature, for distribution to the appropriate standing  
21 committees under s. 13.172 (3), regarding the effectiveness of its efforts to find and  
22 maintain appropriate placements for persons on supervised release under s. 980.06,  
23 1997 stats., or s. 980.08 and its anticipated need for finding additional placements  
24 in the 5 years following the date of the report.

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

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1           46.058 (2m) The superintendents of the secure mental health facility  
2 established under s. 46.055 (1), the Wisconsin resource center established under s.  
3 46.056 and any secure mental health unit or facility provided by the department of  
4 corrections under s. 980.065 (2) shall adopt proper means to prevent escapes of  
5 persons detained or committed to the facility, center or unit under ch. 980 and may  
6 adopt proper means to pursue and capture persons detained or committed to the  
7 facility, center or unit under ch. 980 who have escaped. In adopting means under this  
8 subsection to prevent escape and pursue and capture persons who have escaped, a  
9 superintendent may delegate to designated staff members of the facility, center or  
10 unit the power to use necessary and appropriate force, as defined by the department  
11 by rule, to prevent escapes and capture escaped persons.

12           **SECTION 7.** 46.10 (2) of the statutes is amended to read:

13           46.10 (2) Except as provided in subs. (2m) and (14) (b) and (c), any person,  
14 including but not limited to a person admitted, committed or placed under s. 975.01,  
15 1977 stats., s. 975.02, 1977 stats., and s. 975.17, 1977 stats., and ss. 51.10, 51.13,  
16 51.15, 51.20, 51.35 (3), 51.37 (5), 51.45 (10), (11), (12) and (13), 55.05, 55.06, 971.14  
17 (2) and (5), 971.17 (1), 975.06 and 980.06, receiving care, maintenance, services and  
18 supplies provided by any institution in this state including University of Wisconsin  
19 Hospitals and Clinics, in which the state is chargeable with all or part of the person's  
20 care, maintenance, services and supplies, any person receiving care and services  
21 from a county department established under s. 51.42 or 51.437 or from a facility  
22 established under s. 49.73, and any person receiving treatment and services from a  
23 public or private agency under s. 980.06 (2) (c), 1997 stats., or s. 971.17 (3) (d) or (4)  
24 (e) or 980.08 (5) (6m) (a) and the person's property and estate, including the  
25 homestead, and the spouse of the person, and the spouse's property and estate,

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

15 **SECTION 8.** 51.42 (3) (aw) 1. d. of the statutes is amended to read:

16 51.42 (3) (aw) 1. d. Provide treatment and services that are specified in a  
17 conditional release plan approved by a court for a person who is a county resident and  
18 is conditionally released under s. 971.17 (3) or (4) or that are specified in a supervised  
19 release plan approved by a court under s. 980.06 (2) (c), 1997 stats., ~~or~~ s. 980.08 (5),  
20 2001 stats., or s. 980.08 (6) (c) 3. If the county department provides treatment and  
21 services under this subdivision, the department of health and family services shall,  
22 from the appropriation under s. 20.435 (2) (bj), pay the county department for the  
23 costs of the treatment and services.

24 **SECTION 9.** 980.01 (1m) of the statutes is created to read:

25 980.01 (1m) "Likely" means more likely than not.

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1           **SECTION 10.** 980.01 (7) of the statutes is amended to read:

2           980.01 (7) "Sexually violent person" means a person who has been convicted  
3 of a sexually violent offense, has been adjudicated delinquent for a sexually violent  
4 offense, or has been found not guilty of or not responsible for a sexually violent  
5 offense by reason of insanity or mental disease, defect, or illness, and who is  
6 dangerous because he or she suffers from a mental disorder that makes it  
7 ~~substantially probable~~ likely that the person will engage in acts of sexual violence.

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

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

13           **SECTION 12.** 980.08 (3) of the statutes is amended to read:

14           980.08 (3) Within 20 days after receipt of the petition, the court shall appoint  
15 one or more examiners having the specialized knowledge determined by the court to  
16 be appropriate, who shall examine the person and furnish a written report of the  
17 examination to the court within 30 days after appointment. The examiners shall  
18 have reasonable access to the person for purposes of examination and to the person's  
19 past and present treatment records, as defined in s. 51.30 (1) (b), and patient health  
20 care records, as provided under s. 146.82 (2) (c). If any such examiner believes that  
21 the person is appropriate for supervised release under the ~~criterion~~ criteria specified  
22 in sub. (4) (b), the examiner shall report on the type of treatment and services that  
23 the person may need while in the community on supervised release. The county shall  
24 pay the costs of an examiner appointed under this subsection as provided under s.  
25 51.20 (18) (a).

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1           **SECTION 13.** 980.08 (4) of the statutes is renumbered 980.08 (4) (a) and  
2 amended to read:

3           980.08 (4) (a) The court, without a jury, shall ~~hear the petition~~ proceed under  
4 par. (b) within 30 days after the report of the court-appointed examiner is filed with  
5 the court, unless the petitioner waives this time limit. Expenses of proceedings  
6 under this subsection shall be paid as provided under s. 51.20 (18) (b), (c), and (d).

7           (b) The court shall ~~grant deny~~ the petition ~~unless if~~ the state proves any of the  
8 following by clear and convincing evidence ~~that the person is still a sexually violent~~  
9 ~~person and that:~~

10           1. That it is ~~still substantially probable~~ likely that the person will engage in acts  
11 of sexual violence if the person is not continued in institutional care.

12           (c) In making a decision under ~~this subsection~~ par. (b), the court may consider,  
13 without limitation because of enumeration, the nature and circumstances of the  
14 behavior that was the basis of the allegation in the petition under s. 980.02 (2) (a),  
15 the person's mental history and present mental condition, where the person ~~will~~  
16 might live, how the person will support himself or herself, and what arrangements  
17 are available to ensure that the person has access to and will participate in necessary  
18 treatment, including pharmacological treatment using an antiandrogen or the  
19 chemical equivalent of an antiandrogen if the person is a serious child sex offender.

20           (6g) A decision under ~~this subsection~~ sub. (4) (b) or (6) (c) on a petition filed by  
21 a person who is a serious child sex offender may not be made based on the fact that  
22 the person is a proper subject for pharmacological treatment using an antiandrogen  
23 or the chemical equivalent of an antiandrogen or on the fact that the person is willing  
24 to participate in pharmacological treatment using an antiandrogen or the chemical  
25 equivalent of an antiandrogen.

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1           **SECTION 14.** 980.08 (4) (b) 2. to 6., (d) and (e) of the statutes are created to read:

2           980.08 (4) (b) 2. That the person has not demonstrated significant or  
3           satisfactory progress in his or her treatment or the person has refused treatment.

4           3. That there is no treatment reasonably available in the community that  
5           meets all of the following requirements:

6           a. The treatment will meet the person's ongoing treatment needs.

7           b. The treatment will be provided by a department-approved provider.

8           c. The treatment provider has presented a specific course of treatment to the  
9           department, has agreed to provide the treatment, will report progress to the  
10          department on a regular basis, and will report violations immediately to the  
11          department, consistent with the treatment and supervision needs of the person.

12          4. That the person has not agreed to comply with the conditions of, or  
13          department rules regarding, supervised release or the requirements of the  
14          treatment provider, or the person is likely to violate such conditions, rules, or  
15          requirements.

16          5. That a major discipline report was issued regarding the person during the  
17          6 months immediately preceding the hearing.

18          6. That supervised release is not in the best interest of the person.

19          (d) The court may defer hearing evidence or making a finding regarding  
20          whether the state has met its burden under par. (b) 1., 3., or 6. until it conducts a  
21          hearing under sub. (6) (b).

22          (e) If the court does not deny the petition under par. (b), the court shall notify  
23          the department and proceed under sub. (6).

24          **SECTION 15.** 980.08 (5) of the statutes is renumbered 980.08 (5) (a) and  
25          amended to read:



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1           980.08 (5) (a) If the court ~~finds that the person is appropriate for supervised~~  
2 ~~release~~ does not deny the petition under sub. (4) (b), the court shall notify the  
3 department. ~~The department shall make its best effort to arrange for placement of~~  
4 ~~the person in a residential facility or dwelling that is in the person's county of~~  
5 ~~residence, as determined by the department under s. 980.105. The department and,~~  
6 except as provided in par. (c), the county department under s. 51.42 in the person's  
7 county of residence ~~of the person~~ shall make its best effort to prepare a supervised  
8 release plan that identifies for the person that does all of the following:

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

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

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

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1           4. Specifies who will be responsible for providing the treatment and services  
2 identified in the plan. ~~The plan shall be presented to the court for its approval within~~  
3 ~~60 days after the court finding that the person is appropriate for supervised release,~~  
4 ~~unless the department, county department and person to be released request~~  
5 ~~additional time to develop the plan.~~

6           (c) The department shall make its best effort to arrange for placement of the  
7 person in a residential facility or dwelling that is in the person's county of residence.

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

18           **SECTION 16.** 980.08 (5) (a) 5. and 6. and (b) and (6) of the statutes are created  
19 to read:

20           980.08 (5) (a) 5. Identifies where the person shall live.

21           6. Includes a written agreement from the person providing the housing  
22 described in subd. 5. to accept the person who will reside there, to provide the level  
23 of security required by the court, and to immediately report to the department if the  
24 person leaves the housing without authorization. This subdivision does not apply  
25 to a person to whom s. 980.085 applies.

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1 (b) Before submitting a supervised release plan to the court under sub. (6) (a)  
2 for a person other than one to whom s. 980.085 applies, the department and county  
3 department shall do all of the following in the order specified:

4 1. Identify a proposed placement. In identifying any proposed placement, the  
5 department and the county department shall consider the proximity of the  
6 placement to all of the following:

7 a. The residence of other persons on supervised release.

8 b. The residence of persons who are in the custody of the department of  
9 corrections and regarding whom a sex offender notification bulletin has been issued  
10 to law enforcement agencies under s. 301.46 (2m) (a) or (am).

11 c. Any facility for children described in subd. 2. of which the department or the  
12 county department is aware.

13 2. Prepare a list and a map of all public or private schools, group homes, as  
14 defined in s. 48.02 (7), residential care centers for children and youth, as defined in  
15 s. 48.02 (15d), shelter care facilities, as defined in s. 48.02 (17), foster homes, as  
16 defined in s. 48.02 (6), treatment foster homes, as defined in s. 48.02 (17q), day care  
17 centers licensed under s. 48.65, day care programs established under s. 120.13 (14),  
18 day care providers certified under s. 48.651, and youth centers, as defined in s. 961.01  
19 (22), that are located within one mile of any proposed residence. The department and  
20 the county department shall work with the municipality in which the residence is  
21 located and each municipality within one mile of the residence in preparing the list  
22 and the map.

23 3. Submit the address of the proposed placement, the list, and the map to the  
24 common council or the village or town board for the municipality in which the  
25 residence is located and each municipality within one mile of the residence. Each

**BILL**

1 such common council or village or town board shall review the list and map and may  
2 provide the department and the county department comments regarding the risks  
3 that the use of the proposed placement might entail for the community based on its  
4 proximity to any facility included in the list.

5 4. Consider any comments that it receives under subd. 3.

6 (6) (a) The department and the county department shall present the plan for  
7 supervised release prepared under sub. (5) and, unless s. 980.085 (1) applies, the list  
8 and map of facilities for children prepared under sub. (5) (b) 2. and the comments  
9 submitted under sub. (5) (b) 3. to the court no less than 90 days after the notification  
10 under sub. (4) (e), unless the department, county department, and person to be  
11 released request additional time to develop the plan. When the department and  
12 county department submit the plan to the court, the department and county  
13 department shall notify the individuals identified under par. (b) 1. to 3. of the  
14 residence identified in the plan. Unless s. 980.085 (1) applies, the department and  
15 the county department shall also provide those individuals copies of the list and map  
16 of facilities for children compiled under sub. (5) (b) 2. and the comments submitted  
17 under sub. (5) (b) 3. If any of those individuals receiving the list notifies the  
18 department in writing of a facility that the department and county department are  
19 required to include on the list, but that is not on the list, the department shall notify  
20 the court of the additional facility before the hearing under par. (b).

21 (b) After receiving the plan, the court shall hold a hearing regarding the plan.  
22 The court shall notify all of the following of the hearing at least 5 days before the  
23 hearing:

24 1. The sheriff for the county in which the residence identified under sub. (5) (a)  
25 5. is located.

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1           2. The police chief for the municipality in which the residence identified under  
2 sub. (5) (a) 5. is located.

3           3. The chief elected official, as defined in s. 229.821 (3), of the municipality in  
4 which the residence identified under sub. (5) (a) 5. is located.

5           (c) After conducting the hearing, the court shall do one of the following:

6           1. Order the department and county department to modify the plan.

7           2. Deny the petition, but only if the state proves, by clear and convincing  
8 evidence, that the plan does not provide sufficient security to protect the community  
9 or that sub. (4) (b) 1., 3., or 6. applies.

10          3. Subject to s. 980.085, approve the supervised release plan and grant the  
11 petition.

12          **SECTION 17.** 980.08 (6m) of the statutes is renumbered 980.08 (6m) (a) and  
13 amended to read:

14          980.08 (6m) (a) An order for supervised release places the person in the custody  
15 and control of the department. The department shall arrange for control, care and  
16 treatment of the person in the least restrictive manner consistent with the  
17 requirements of the person and, except as provided in s. 980.085 (2), in accordance  
18 with the plan for supervised release approved by the court under sub. (5)- (6) (c) 3.  
19 The department may contract with a county department, under s. 51.42 (3) (aw) 1.  
20 d., with another public agency, or with a private agency to provide the treatment and  
21 services identified in the plan.

22          (b) 1. A person on supervised release is subject to the conditions set by the court  
23 and to, the rules of the department, and the conditions specified in subd. 2. and s.  
24 980.085 (2).

**BILL**

1           (c) Before a person is placed on supervised release by the court under this  
2 section, the court shall so notify the municipal police department and county sheriff  
3 for the municipality and county in which the person will be residing. The notification  
4 requirement under this subsection does not apply if a municipal police department  
5 or county sheriff submits to the court a written statement waiving the right to be  
6 notified.

7           (d) If the department alleges that a released person has violated any condition  
8 or rule, or that the safety of others requires that supervised release be revoked, he  
9 or she may be taken into custody under the rules of the department. The department  
10 shall submit a statement showing probable cause of the detention and a petition to  
11 revoke the order for supervised release to the committing court and the regional  
12 office of the state public defender responsible for handling cases in the county where  
13 the committing court is located within 72 hours after the detention, excluding  
14 Saturdays, Sundays and legal holidays. The court shall hear the petition within 30  
15 days, unless the hearing or time deadline is waived by the detained person. Pending  
16 the revocation hearing, the department may detain the person in a jail or in a  
17 hospital, center or facility specified by s. 51.15 (2). The state has the burden of  
18 proving by clear and convincing evidence that any rule or condition of release has  
19 been violated, or that the safety of others requires that supervised release be  
20 revoked. If the court determines after hearing that any rule or condition of release  
21 has been violated, or that the safety of others requires that supervised release be  
22 revoked, it may revoke the order for supervised release and order that the released  
23 person be placed in an appropriate institution until the person is discharged from the  
24 commitment under s. 980.09 or until again placed on supervised release under this  
25 section.

**BILL**

1           **SECTION 18.** 980.08 (6m) (b) 2. of the statutes is created to read:

2           980.08 (6m) (b) 2. A person on supervised release shall actively participate in  
3 treatment as a condition of supervised release.

4           **SECTION 19.** 980.085 of the statutes is created to read:

5           **980.085 Placements in transitional facilities.** (1) If a court, on or after the  
6 effective date of this subsection .... [revisor inserts date], places a person on  
7 supervised release in a county in which the department has a vacancy in a  
8 transitional facility for the placement of such persons, including the facility  
9 enumerated in 2001 Wisconsin Act 16, section 9107 (1) (d) 1., the court may not  
10 approve a supervised release plan for the person unless the plan requires that the  
11 person reside in the facility.

12           (2) If, on or after the effective date of this subsection .... [revisor inserts date],  
13 a person is on supervised release in a county in which the department has a vacancy  
14 in a transitional facility for the placement of such persons, including the facility  
15 enumerated in 2001 Wisconsin Act 16, section 9107 (1) (d) 1., the department, after  
16 allowing the person a reasonable amount of time to move there, shall require the  
17 person to reside in the facility as a condition of supervised release, notwithstanding  
18 what the person's supervised release plan provides under s. 980.08 (5) (a) 5.

19           **SECTION 20.** 980.09 (1) (c) of the statutes is amended to read:

20           980.09 (1) (c) If the court is satisfied that the state has not met its burden of  
21 proof under par. (b), the petitioner shall be discharged from the custody or  
22 supervision of the department. If the court is satisfied that the state has met its  
23 burden of proof under par. (b), the court may proceed to determine, using the ~~criteria~~  
24 criteria specified in s. 980.08 (4) (b), whether to modify the petitioner's existing  
25 commitment order by authorizing supervised release.

**BILL**

1           **SECTION 21.** 980.09 (2) (c) of the statutes is amended to read:

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

8           **SECTION 22. Nonstatutory provisions.**

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

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

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

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

20           1. The chairperson of the Milwaukee County board of supervisors or his or her  
21 designee.

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

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

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

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



**BILL**

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

2           7. A representative of the Milwaukee County Law Enforcement Executives  
3 Association who is not from the city of Milwaukee.

4           8. A representative of the intergovernmental cooperation council who is not  
5 from the city of Milwaukee.

6           9. Three other individuals who are residents of Milwaukee County, 2 of whom  
7 do not reside in the city of Milwaukee, to be appointed by the governor.

8           10. Two members who reside in Milwaukee County, at least one of whom resides  
9 outside of the city of Milwaukee, to be appointed by the senate majority leader.

10           11. Two members who reside in Milwaukee County, at least one of whom resides  
11 outside of the city of Milwaukee, to be appointed by the speaker of the assembly.

12           (e) The committee shall elect the chair of the committee from the 3 individuals  
13 whom the governor appoints to the committee.

14           (f) No later than June 1, 2004, the department of health and family services  
15 shall provide the committee an estimate of the maximum number of persons likely  
16 to be placed in Milwaukee County on supervised release under section 980.06, 1997  
17 stats., or section 980.08 of the statutes at any one time between that date and  
18 February 1, 2009.

19           (g) The committee shall hold public hearings in Milwaukee County regarding  
20 the selection of a location for the facility.

21           (h) Subject to paragraph (i) no later than December 31, 2004, the committee  
22 shall submit a report to the departments of corrections and health and family  
23 services recommending at least 3 specific locations for the facility. Each of the  
24 locations shall be suitable for the development of a facility that can house at least the  
25 number of persons set forth in the estimate submitted to the committee under

**BILL**

1 paragraph (f). The committee shall consider all of the following factors when making  
2 its recommendations:

- 3 1. Community safety.
- 4 2. Proximity to sensitive locations.
- 5 3. Ability to make the facility secure.
- 6 4. Accessibility to treatment for the persons living in the facility.
- 7 5. Payments that may be made in lieu of property taxes.
- 8 6. Availability of tax incentives to a community to locate the facility within its  
9 jurisdiction.
- 10 7. Proximity to any residence or facility under section 980.08 (5) (b) 1. a. to c.  
11 of the statutes, as created by this act.

12 (i) When acting under paragraph (h), the committee may not recommend any  
13 location in a municipality that is located in a county with a population that exceeds  
14 500,000 if the total number of persons incarcerated at any facility located in that  
15 municipality exceeds 1 percent of the municipality's population.

**SECTION 23. Initial applicability.**

16  
17 (1) DEFINITION OF SEXUALLY VIOLENT PERSON. The treatment of section 980.01  
18 (1m) and (7) of the statutes first applies to hearings, trials, and other proceedings  
19 that are commenced on the effective date of this subsection.

20 (2) PETITIONS FOR SUPERVISED RELEASE. The treatment of sections 980.09 (1) (c)  
21 and (2) (c) and 980.085 (1) of the statutes, the renumbering and amendment of  
22 section 980.08 (4) and (5) of the statutes, and the creation of section 980.08 (4) (b) 2.  
23 to 6., (d), and (e) and (5) (a) 5. and 6. and (b) of the statutes first apply to proceedings  
24 regarding petitions for supervised release that are commenced on the effective date  
25 of this subsection.





2

2003 BILL

FR 1

Eds/LPS -

Please replace all of this draft  
(LRB-4286/2)

w/ 03-4094/3 instead.

Thx

1 **AN ACT to renumber 46.055; to renumber and amend 980.08 (4), 980.08 (5)**  
 2 **and 980.08 (6m); to amend 20.435 (2) (bj), 46.03 (1), 46.055 (title), 46.058 (2m),**  
 3 **46.10 (2), 51.42 (3) (aw) 1. d., 980.01 (7), 980.065 (1m), 980.08 (3), 980.09 (1) (c)**  
 4 **and 980.09 (2) (c); and to create 46.055 (2), 980.01 (1m), 980.08 (4) (b) 2. to 6.,**  
 5 **(d) and (e), 980.08 (5) (a) 5. and 6. and (b) and (6), 980.08 (6m) (b) 2. and 980.085**  
 6 **of the statutes; relating to: standard for commitment and supervised release**  
 7 **of sexually violent persons.**

***Analysis by the Legislative Reference Bureau***

Under current law, a person who commits a sexually violent offense may be committed to the Department of Health and Family Services (DHFS) after serving a sentence or disposition for the offense if a court finds that the person is a sexually violent person. Current law defines a "sexually violent person" as a person: 1) who has been convicted of, or adjudicated delinquent for, a sexually violent offense or who has been found not guilty of a sexually violent offense by reason of mental disease, defect, or illness; and 2) who is dangerous because he or she suffers from a mental disorder that makes it substantially probable that he or she will engage in acts of sexual violence.

A person committed to DHFS as a sexually violent person is initially placed in institutional care. After 18 months, a sexually violent person may petition the court





## 2003 ASSEMBLY BILL 861

February 19, 2004 - Introduced by Representatives STONE, CULLEN, MONTGOMERY, OWENS, JESKEWITZ, GOTTLIEB, LEMAHIEU, KREIBICH and OTT, cosponsored by Senators DARLING, HANSEN and LAZICH. Referred to Committee on Criminal Justice

Regen

1 AN ACT *to renumber* 46.055; *to renumber and amend* 980.08 (4), 980.08 (5)  
2 and 980.08 (6m); *to amend* 20.435 (2) (bj), 46.03 (1), 46.055 (title), 46.058 (2m),  
3 46.10 (2), 51.42 (3) (aw) 1. d., 980.01 (7), 980.065 (1m), 980.08 (3), 980.09 (1) (c)  
4 and 980.09 (2) (c); and *to create* 46.055 (2), 980.01 (1m), 980.08 (4) (b) 2. to 6.,  
5 (d) and (e), 980.08 (5) (a) 5. and 6. and (b) and (6), 980.08 (6m) (b) 2. and 980.085  
6 of the statutes; **relating to:** standard for commitment and supervised release  
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### *Analysis by the Legislative Reference Bureau*

Under current law, a person who commits a sexually violent offense may be committed to the Department of Health and Family Services (DHFS) after serving a sentence or disposition for the offense if a court finds that the person is a sexually violent person. Current law defines a "sexually violent person" as a person: 1) who has been convicted of, or adjudicated delinquent for, a sexually violent offense or who has been found not guilty of a sexually violent offense by reason of mental disease, defect, or illness; and 2) who is dangerous because he or she suffers from a mental disorder that makes it substantially probable that he or she will engage in acts of sexual violence.

A person committed to DHFS as a sexually violent person is initially placed in institutional care. After 18 months, a sexually violent person may petition the court

**ASSEMBLY BILL 861**

for supervised release, which allows the person to reside in the community subject to the conditions set by the court and to the rules of DHFS. If a person petitions the court for supervised release, the court must grant the petition unless the state proves that it is still substantially probable that the person will engage in future acts of sexual violence if institutionalized care is not continued.

If a court determines that supervised release is appropriate, DHFS must make its best effort to place the person in the county in which the person lived at the time of the sexually violent offense. DHFS and the county in which the person is to be placed must then prepare a plan for treating and monitoring the person upon his or her release. Current law specifies what the plan must contain (such as what services the person will receive in the community). In addition, current law requires DHFS, when developing the supervised release plan, to consider the proximity of the person's proposed residence to the homes of certain other sex offenders. Then, within 60 days after the court's determination that supervised release is appropriate, DHFS and the county in which the person is to be placed must submit the supervised release plan to the court for its approval. (This two-part hearing process, in which the court determines whether supervised release is appropriate before reviewing the supervised release plan, is sometimes referred to as a bifurcated hearing.)

This bill makes a number of changes relating to the commitment, release, and placement of sexually violent persons. First, the bill changes the second part of the definition of "sexually violent person." As a result of the change, a person who has committed a sexually violent offense may be committed to DHFS if the state merely shows that the person is dangerous because he or she suffers from a mental disorder that makes it more likely than not (as opposed to substantially probable) that he or she will engage in acts of sexual violence.

Second, the bill substantially modifies the existing bifurcated hearing process. Under the bill, the court considers whether the person may be appropriate for supervised release as a first step, but only with respect to certain issues. Specifically, the court must assess: 1) whether it is still likely that the person will engage in acts of sexual violence if the person is not continued in institutional care; 2) whether the person has demonstrated significant or satisfactory progress in his or her treatment or the person has refused treatment; 3) whether there is appropriate treatment that is reasonably available in the community; 4) whether the person has agreed to comply with conditions, rules, and requirements for supervised release and whether the person is likely to violate such conditions, rules, or requirements; 5) whether a major discipline report was issued regarding the person during the six months immediately preceding the hearing; and 6) whether supervised release is in the best interest of the person. If the state proves by clear and convincing evidence that the person is not appropriate for supervised release under any of these criteria, the court must deny the petition.

If the court does not deny the petition at that stage of the process, it refers the case to DHFS for the preparation of a supervised release plan, which, under the bill, must identify where the person will live. If the county in which the person will be placed has a transitional facility for the placement of sexually violent persons, the plan must provide for the placement of the person in that facility. (See below for

**ASSEMBLY BILL 861**

additional discussion of the bill's requirements regarding the siting of such a facility.) If the person is to be placed in anywhere else, DHFS and the county must follow the procedure established under the bill regarding selecting the placement. Initially, DHFS and the county must consider the proximity of any proposed residence to residential subdivisions and to certain types of facilities for children, including schools, day care providers, group homes, foster homes, and youth centers. In doing so, DHFS and the county must: 1) prepare a list and a map of residential subdivisions and relevant facilities for children in consultation with affected municipalities; 2) submit the list and map, along with the address of the proposed residence, to the local common councils and village or town boards; and 3) consider any comments from the municipalities regarding the proposed placement before finalizing the supervised release plan. Then, when DHFS and the county submit the supervised release plan to the court (which they must do within 90 days after the court refers the case to DHFS), DHFS and the county must provide the map, the list, and any comments from affected municipalities to the court and to the chief elected official, the police chief, and the sheriff for the community in which the proposed placement is located.

After the court receives a plan for supervised release, it must hold a hearing to determine whether to approve the plan and whether to grant the petition for supervised release. The bill requires that the court notify the chief elected official, the police chief, and the sheriff for the community in which the proposed placement is located of the hearing at least five days beforehand. After reviewing the plan, the court must: 1) order DHFS and the county to modify the plan; 2) deny the petition for supervised release, but only if the state proves by clear and convincing evidence that the community would not be adequately protected under the plan; or 3) approve the plan and grant the petition.

Third, the bill requires any person who is on supervised release to actively participate in treatment as a condition of supervised release.

Fourth, the 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 DHFS as sexually violent persons. The bill specifies the factors that the committee must consider in making its recommendation and specifies that the location must be suitable for the development of a facility that can house the number of people that DHFS expects to be on supervised release in Milwaukee County.

Fifth, if DHFS establishes a transitional facility of the type described in the preceding paragraph, it must move any sexually violent person who is on supervised release in the county in which the facility is located into the facility if it has a vacancy there for that person.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

**ASSEMBLY BILL 861****SECTION 1**

1           **SECTION 1.** 20.435 (2) (bj) of the statutes, as affected by 2003 Wisconsin Act 33,  
2 is amended to read:

3           20.435 (2) (bj) *Competency examinations and conditional and supervised*  
4 *release services.* Biennially, the amounts in the schedule for outpatient competency  
5 examinations and for payment by the department of costs for treatment and services  
6 for persons released under s. 980.06 (2) (c), 1997 stats., s. 980.08 (5), 2001 stats., or  
7 s. 971.17 (3) (d) or (4) (e) or 980.08 ~~(5)~~ (6) (c) 3., for which the department has  
8 contracted with county departments under s. 51.42 (3) (aw) 1. d., with other public  
9 agencies, or with private agencies to provide the treatment and services.

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

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

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

15           **46.055 (title) ~~Secure mental health facility~~ Facilities for sexually**  
16 **violent persons.**

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

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

19           46.055 (2) The department shall submit a report each February 1 to the chief  
20 clerk of each house of the legislature, for distribution to the appropriate standing  
21 committees under s. 13.172 (3), regarding the effectiveness of its efforts to find and  
22 maintain appropriate placements for persons on supervised release under s. 980.06,  
23 1997 stats., or s. 980.08 and its anticipated need for finding additional placements  
24 in the 5 years following the date of the report.

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



**ASSEMBLY BILL 861**

1           46.058 (2m) The superintendents of the secure mental health facility  
2 established under s. 46.055 (1), the Wisconsin resource center established under s.  
3 46.056 and any secure mental health unit or facility provided by the department of  
4 corrections under s. 980.065 (2) shall adopt proper means to prevent escapes of  
5 persons detained or committed to the facility, center or unit under ch. 980 and may  
6 adopt proper means to pursue and capture persons detained or committed to the  
7 facility, center or unit under ch. 980 who have escaped. In adopting means under this  
8 subsection to prevent escape and pursue and capture persons who have escaped, a  
9 superintendent may delegate to designated staff members of the facility, center or  
10 unit the power to use necessary and appropriate force, as defined by the department  
11 by rule, to prevent escapes and capture escaped persons.

12           **SECTION 7.** 46.10 (2) of the statutes is amended to read:

13           46.10 (2) Except as provided in subs. (2m) and (14) (b) and (c), any person,  
14 including but not limited to a person admitted, committed or placed under s. 975.01,  
15 1977 stats., s. 975.02, 1977 stats., and s. 975.17, 1977 stats., and ss. 51.10, 51.13,  
16 51.15, 51.20, 51.35 (3), 51.37 (5), 51.45 (10), (11), (12) and (13), 55.05, 55.06, 971.14  
17 (2) and (5), 971.17 (1), 975.06 and 980.06, receiving care, maintenance, services and  
18 supplies provided by any institution in this state including University of Wisconsin  
19 Hospitals and Clinics, in which the state is chargeable with all or part of the person's  
20 care, maintenance, services and supplies, any person receiving care and services  
21 from a county department established under s. 51.42 or 51.437 or from a facility  
22 established under s. 49.73, and any person receiving treatment and services from a  
23 public or private agency under s. 980.06 (2) (c), 1997 stats., or s. 971.17 (3) (d) or (4)  
24 (e) or 980.08 ~~(5)~~ (6m) (a) and the person's property and estate, including the  
25 homestead, and the spouse of the person, and the spouse's property and estate,

**ASSEMBLY BILL 861****SECTION 7**

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

15 **SECTION 8.** 51.42 (3) (aw) 1. d. of the statutes is amended to read:

16 51.42 (3) (aw) 1. d. Provide treatment and services that are specified in a  
17 conditional release plan approved by a court for a person who is a county resident and  
18 is conditionally released under s. 971.17 (3) or (4) or that are specified in a supervised  
19 release plan approved by a court under s. 980.06 (2) (c), 1997 stats., ~~or~~ s. 980.08 (5),  
20 2001 stats., or s. 980.08 (6) (c) 3. If the county department provides treatment and  
21 services under this subdivision, the department of health and family services shall,  
22 from the appropriation under s. 20.435 (2) (bj), pay the county department for the  
23 costs of the treatment and services.

24 **SECTION 9.** 980.01 (1m) of the statutes is created to read:

25 980.01 (1m) "Likely" means more likely than not.

**ASSEMBLY BILL 861**

1           **SECTION 10.** 980.01 (7) of the statutes is amended to read:

2           980.01 (7) "Sexually violent person" means a person who has been convicted  
3 of a sexually violent offense, has been adjudicated delinquent for a sexually violent  
4 offense, or has been found not guilty of or not responsible for a sexually violent  
5 offense by reason of insanity or mental disease, defect, or illness, and who is  
6 dangerous because he or she suffers from a mental disorder that makes it  
7 ~~substantially probable~~ likely that the person will engage in acts of sexual violence.

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

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

13           **SECTION 12.** 980.08 (3) of the statutes is amended to read:

14           980.08 (3) Within 20 days after receipt of the petition, the court shall appoint  
15 one or more examiners having the specialized knowledge determined by the court to  
16 be appropriate, who shall examine the person and furnish a written report of the  
17 examination to the court within 30 days after appointment. The examiners shall  
18 have reasonable access to the person for purposes of examination and to the person's  
19 past and present treatment records, as defined in s. 51.30 (1) (b), and patient health  
20 care records, as provided under s. 146.82 (2) (c). If any such examiner believes that  
21 the person is appropriate for supervised release under the ~~criteria~~ criteria specified  
22 in sub. (4) (b), the examiner shall report on the type of treatment and services that  
23 the person may need while in the community on supervised release. The county shall  
24 pay the costs of an examiner appointed under this subsection as provided under s.  
25 51.20 (18) (a).

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## SECTION 13

1           **SECTION 13.** 980.08 (4) of the statutes is renumbered 980.08 (4) (a) and  
2 amended to read:

3           980.08 (4) (a) The court, without a jury, shall ~~hear the petition~~ proceed under  
4 par. (b) within 30 days after the report of the court-appointed examiner is filed with  
5 the court, unless the petitioner waives this time limit. Expenses of proceedings  
6 under this subsection shall be paid as provided under s. 51.20 (18) (b), (c), and (d).

7           (b) The court shall ~~grant deny~~ the petition ~~unless if~~ the state proves any of the  
8 following by clear and convincing evidence ~~that the person is still a sexually violent~~  
9 ~~person and that:~~

10           1. That it is ~~still substantially probable~~ likely that the person will engage in acts  
11 of sexual violence if the person is not continued in institutional care.

12           (c) In making a decision under ~~this subsection~~ par. (b), the court may consider,  
13 without limitation because of enumeration, the nature and circumstances of the  
14 behavior that was the basis of the allegation in the petition under s. 980.02 (2) (a),  
15 the person's mental history and present mental condition, where the person ~~will~~  
16 might live, how the person will support himself or herself, and what arrangements  
17 are available to ensure that the person has access to and will participate in necessary  
18 treatment, including pharmacological treatment using an antiandrogen or the  
19 chemical equivalent of an antiandrogen if the person is a serious child sex offender.

20           (6g) A decision under ~~this subsection~~ sub. (4) (b) or (6) (c) on a petition filed by  
21 a person who is a serious child sex offender may not be made based on the fact that  
22 the person is a proper subject for pharmacological treatment using an antiandrogen  
23 or the chemical equivalent of an antiandrogen or on the fact that the person is willing  
24 to participate in pharmacological treatment using an antiandrogen or the chemical  
25 equivalent of an antiandrogen.

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1           **SECTION 14.** 980.08 (4) (b) 2. to 6., (d) and (e) of the statutes are created to read:

2           980.08 (4) (b) 2. That the person has not demonstrated significant or  
3           satisfactory progress in his or her treatment or the person has refused treatment.

4           3. That there is no treatment reasonably available in the community that  
5           meets all of the following requirements:

6           a. The treatment will meet the person's ongoing treatment needs.

7           b. The treatment will be provided by a department-approved provider.

8           c. The treatment provider has presented a specific course of treatment to the  
9           department, has agreed to provide the treatment, will report progress to the  
10          department on a regular basis, and will report violations immediately to the  
11          department, consistent with the treatment and supervision needs of the person.

12          4. That the person has not agreed to comply with the conditions of, or  
13          department rules regarding, supervised release or the requirements of the  
14          treatment provider, or the person is likely to violate such conditions, rules, or  
15          requirements.

16          5. That a major discipline report was issued regarding the person during the  
17          6 months immediately preceding the hearing.

18          6. That supervised release is not in the best interest of the person.

19          (d) The court may defer hearing evidence or making a finding regarding  
20          whether the state has met its burden under par. (b) 1., 3., or 6. until it conducts a  
21          hearing under sub. (6) (b).

22          (e) If the court does not deny the petition under par. (b), the court shall notify  
23          the department and proceed under sub. (6).

24          **SECTION 15.** 980.08 (5) of the statutes is renumbered 980.08 (5) (a) and  
25          amended to read:

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1           980.08 (5) (a) ~~If the court finds that the person is appropriate for supervised~~  
2 ~~release~~ does not deny the petition under sub. (4) (b), ~~the court shall notify the~~  
3 ~~department. The department shall make its best effort to arrange for placement of~~  
4 ~~the person in a residential facility or dwelling that is in the person's county of~~  
5 ~~residence, as determined by the department under s. 980.105. The department and,~~  
6 ~~except as provided in par. (c), the county department under s. 51.42 in the person's~~  
7 ~~county of residence of the person shall~~ make its best effort to prepare a supervised  
8 release plan that identifies for the person that does all of the following:

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

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

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

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1           4. Specifies who will be responsible for providing the treatment and services  
2 identified in the plan. ~~The plan shall be presented to the court for its approval within~~  
3 ~~60 days after the court finding that the person is appropriate for supervised release,~~  
4 ~~unless the department, county department and person to be released request~~  
5 ~~additional time to develop the plan.~~

6           (c) The department shall make its best effort to arrange for placement of the  
7 person in a residential facility or dwelling that is in the person's county of residence.

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

18           **SECTION 16.** 980.08 (5) (a) 5. and 6. and (b) and (6) of the statutes are created  
19 to read:

20           980.08 (5) (a) 5. Identifies where the person shall live.

21           6. Includes a written agreement from the person providing the housing  
22 described in subd. 5. to accept the person who will reside there, to provide the level  
23 of security required by the court, and to immediately report to the department if the  
24 person leaves the housing without authorization. This subdivision does not apply  
25 to a person to whom s. 980.085 applies.

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1 (b) Before submitting a supervised release plan to the court under sub. (6) (a)  
2 for a person other than one to whom s. 980.085 applies, the department and county  
3 department shall do all of the following in the order specified:

4 1. Identify a proposed placement. In identifying any proposed placement, the  
5 department and the county department shall consider the proximity of the  
6 placement to all of the following:

7 a. The residence of other persons on supervised release.

8 b. The residence of persons who are in the custody of the department of  
9 corrections and regarding whom a sex offender notification bulletin has been issued  
10 to law enforcement agencies under s. 301.46 (2m) (a) or (am).

11 c. Any facility for children described in subd. 2. of which the department or the  
12 county department is aware.

13 d. Any residential subdivision.

14 2. Prepare a list and a map of all public or private schools, group homes, as  
15 defined in s. 48.02 (7), residential care centers for children and youth, as defined in  
16 s. 48.02 (15d), shelter care facilities, as defined in s. 48.02 (17), foster homes, as  
17 defined in s. 48.02 (6), treatment foster homes, as defined in s. 48.02 (17q), day care  
18 centers licensed under s. 48.65, day care programs established under s. 120.13 (14),  
19 day care providers certified under s. 48.651, youth centers, as defined in s. 961.01  
20 (22), and residential subdivisions that are located within one mile of any proposed  
21 residence. The department and the county department shall work with the  
22 municipality in which the residence is located and each municipality within one mile  
23 of the residence in preparing the list and the map.

24 3. Submit the address of the proposed placement, the list, and the map to the  
25 common council or the village or town board for the municipality in which the



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1 residence is located and each municipality within one mile of the residence. Each  
2 such common council or village or town board shall review the list and map and may  
3 provide the department and the county department comments regarding the risks  
4 that the use of the proposed placement might entail for the community based on its  
5 proximity to any residential subdivision or any facility for children described in subd.  
6 2. included in the list.

7 4. Consider any comments that it receives under subd. 3.

8 (6) (a) The department and the county department shall present the plan for  
9 supervised release prepared under sub. (5) and, unless s. 980.085 (1) applies, the list  
10 and map of facilities for children and residential subdivisions prepared under sub.  
11 (5) (b) 2. and the comments submitted under sub. (5) (b) 3. to the court no less than  
12 90 days after the notification under sub. (4) (e), unless the department, county  
13 department, and person to be released request additional time to develop the plan.  
14 When the department and county department submit the plan to the court, the  
15 department and county department shall notify the individuals identified under par.  
16 (b) 1. to 3. of the residence identified in the plan. Unless s. 980.085 (1) applies, the  
17 department and the county department shall also provide those individuals copies  
18 of the list and map of facilities for children and residential subdivisions compiled  
19 under sub. (5) (b) 2. and the comments submitted under sub. (5) (b) 3. If any of those  
20 individuals receiving the list notifies the department in writing of a facility or  
21 residential subdivision that the department and county department are required to  
22 include on the list, but that is not on the list, the department shall notify the court  
23 of the additional facility or residential subdivision before the hearing under par. (b).

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1 (b) After receiving the plan, the court shall hold a hearing regarding the plan.

2 The court shall notify all of the following of the hearing at least 5 days before the  
3 hearing:

4 1. The sheriff for the county in which the residence identified under sub. (5) (a)  
5 is located.

6 2. The police chief for the municipality in which the residence identified under  
7 sub. (5) (a) 5. is located.

8 3. The chief elected official, as defined in s. 229.821 (3), of the municipality in  
9 which the residence identified under sub. (5) (a) 5. is located.

10 (c) After conducting the hearing, the court shall do one of the following:

11 1. Order the department and county department to modify the plan.

12 2. Deny the petition, but only if the state proves, by clear and convincing  
13 evidence, that the plan does not provide sufficient security to protect the community  
14 or that sub. (4) (b) 1., 3., or 6. applies.

15 3. Subject to s. 980.085, approve the supervised release plan and grant the  
16 petition.

17 **SECTION 17.** 980.08 (6m) of the statutes is renumbered 980.08 (6m) (a) and  
18 amended to read:

19 980.08 (6m) (a) An order for supervised release places the person in the custody  
20 and control of the department. The department shall arrange for control, care and  
21 treatment of the person in the least restrictive manner consistent with the  
22 requirements of the person and, except as provided in s. 980.085 (2), in accordance  
23 with the plan for supervised release approved by the court under sub. (5). (6) (c) 3.  
24 The department may contract with a county department, under s. 51.42 (3) (aw) 1.

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1 d., with another public agency, or with a private agency to provide the treatment and  
2 services identified in the plan.

3 (b) 1. A person on supervised release is subject to the conditions set by the court  
4 ~~and to,~~ the rules of the department, and the conditions specified in subd. 2. and s.  
5 980.085 (2).

6 (c) Before a person is placed on supervised release by the court under this  
7 section, the court shall so notify the municipal police department and county sheriff  
8 for the municipality and county in which the person will be residing. The notification  
9 requirement under this subsection does not apply if a municipal police department  
10 or county sheriff submits to the court a written statement waiving the right to be  
11 notified.

12 (d) If the department alleges that a released person has violated any condition  
13 or rule, or that the safety of others requires that supervised release be revoked, he  
14 or she may be taken into custody under the rules of the department. The department  
15 shall submit a statement showing probable cause of the detention and a petition to  
16 revoke the order for supervised release to the committing court and the regional  
17 office of the state public defender responsible for handling cases in the county where  
18 the committing court is located within 72 hours after the detention, excluding  
19 Saturdays, Sundays and legal holidays. The court shall hear the petition within 30  
20 days, unless the hearing or time deadline is waived by the detained person. Pending  
21 the revocation hearing, the department may detain the person in a jail or in a  
22 hospital, center or facility specified by s. 51.15 (2). The state has the burden of  
23 proving by clear and convincing evidence that any rule or condition of release has  
24 been violated, or that the safety of others requires that supervised release be  
25 revoked. If the court determines after hearing that any rule or condition of release

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1 has been violated, or that the safety of others requires that supervised release be  
2 revoked, it may revoke the order for supervised release and order that the released  
3 person be placed in an appropriate institution until the person is discharged from the  
4 commitment under s. 980.09 or until again placed on supervised release under this  
5 section.

6 **SECTION 18.** 980.08 (6m) (b) 2. of the statutes is created to read:

7 980.08 (6m) (b) 2. A person on supervised release shall actively participate in  
8 treatment as a condition of supervised release.

9 **SECTION 19.** 980.085 of the statutes is created to read:

10 **980.085 Placements in transitional facilities.** (1) If a court, on or after the  
11 effective date of this subsection ... [revisor inserts date], places a person on  
12 supervised release in a county in which the department has a vacancy in a  
13 transitional facility for the placement of such persons, including the facility  
14 enumerated in 2001 Wisconsin Act 16, section 9107 (1) (d) 1., the court may not  
15 approve a supervised release plan for the person unless the plan requires that the  
16 person reside in the facility.

17 (2) If, on or after the effective date of this subsection ... [revisor inserts date],  
18 a person is on supervised release in a county in which the department has a vacancy  
19 in a transitional facility for the placement of such persons, including the facility  
20 enumerated in 2001 Wisconsin Act 16, section 9107 (1) (d) 1., the department, after  
21 allowing the person a reasonable amount of time to move there, shall require the  
22 person to reside in the facility as a condition of supervised release, notwithstanding  
23 what the person's supervised release plan provides under s. 980.08 (5) (a) 5.

24 **SECTION 20.** 980.09 (1) (c) of the statutes is amended to read:

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1           980.09 (1) (c) If the court is satisfied that the state has not met its burden of  
2 proof under par. (b), the petitioner shall be discharged from the custody or  
3 supervision of the department. If the court is satisfied that the state has met its  
4 burden of proof under par. (b), the court may proceed to determine, using the ~~criteria~~  
5 criteria specified in s. 980.08 (4) (b), whether to modify the petitioner's existing  
6 commitment order by authorizing supervised release.

7           **SECTION 21.** 980.09 (2) (c) of the statutes is amended to read:

8           980.09 (2) (c) If the court is satisfied that the state has not met its burden of  
9 proof under par. (b), the person shall be discharged from the custody or supervision  
10 of the department. If the court is satisfied that the state has met its burden of proof  
11 under par. (b), the court may proceed to determine, using the ~~criteria~~ criteria  
12 specified in s. 980.08 (4) (b), whether to modify the person's existing commitment  
13 order by authorizing supervised release.

14           **SECTION 22. Nonstatutory provisions.**

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

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

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

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

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

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

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

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

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

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

8           7. A representative of the Milwaukee County Law Enforcement Executives  
9           Association who is not from the city of Milwaukee.

10          8. A representative of the intergovernmental cooperation council who is not  
11          from the city of Milwaukee.

12          9. Three other individuals who are residents of Milwaukee County, 2 of whom  
13          do not reside in the city of Milwaukee, to be appointed by the governor.

14          10. Two members who reside in Milwaukee County, at least one of whom resides  
15          outside of the city of Milwaukee, to be appointed by the senate majority leader.

16          11. Two members who reside in Milwaukee County, at least one of whom resides  
17          outside of the city of Milwaukee, to be appointed by the speaker of the assembly.

18          (e) The committee shall elect the chair of the committee from the 3 individuals  
19          whom the governor appoints to the committee.

20          (f) No later than June 1, 2004, the department of health and family services  
21          shall provide the committee an estimate of the maximum number of persons likely  
22          to be placed in Milwaukee County on supervised release under section 980.06, 1997  
23          stats., or section 980.08 of the statutes at any one time between that date and  
24          February 1, 2009.

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1 (g) The committee shall hold public hearings in Milwaukee County regarding  
2 the selection of a location for the facility.

3 (h) Subject to paragraph (i) no later than December 31, 2004, the committee  
4 shall submit a report to the departments of corrections and health and family  
5 services recommending at least 3 specific locations for the facility. Each of the  
6 locations shall be suitable for the development of a facility that can house at least the  
7 number of persons set forth in the estimate submitted to the committee under  
8 paragraph (f). The committee shall consider all of the following factors when making  
9 its recommendations:

- 10 1. Community safety.
- 11 2. Proximity to sensitive locations.
- 12 3. Ability to make the facility secure.
- 13 4. Accessibility to treatment for the persons living in the facility.
- 14 5. Payments that may be made in lieu of property taxes.
- 15 6. Availability of tax incentives to a community to locate the facility within its  
16 jurisdiction.
- 17 7. Proximity to any residence or facility under section 980.08 (5) (b) 1. a. to c.  
18 of the statutes, as created by this act.

19 (i) When acting under paragraph (h), the committee may not recommend any  
20 location in a municipality that is located in a county with a population that exceeds  
21 500,000 if the total number of persons incarcerated at any facility located in that  
22 municipality exceeds 1 percent of the municipality's population.

23 **SECTION 23. Initial applicability.**





**Northrop, Lori**

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**From:** Volz, David  
**Sent:** Friday, February 20, 2004 12:05 PM  
**To:** LRB.Legal  
**Subject:** Draft review: LRB 03-4286/2 Topic: Supervised release of sex predators

It has been requested by <Volz, David> that the following draft be jacketed for the SENATE:

Draft review: LRB 03-4286/2 Topic: Supervised release of sex predators