

**ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO 2003 SENATE BILL 441**

March 11, 2004 – Offered by Representatives KRUG and STASKUNAS.

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* 978.13 (2) and 980.01 (1);
3 **to renumber and amend** 938.396 (2) (e), 978.043, 980.015 (1), 980.015 (4),
4 980.03 (4), 980.04 (2), 980.07 (1), 980.09 (1) (a), 980.09 (1) (b) and 980.09 (1) (c);
5 **to amend** 48.396 (1), 48.396 (5) (a) (intro.), 51.30 (3) (a), 51.30 (3) (b), 51.30 (4)
6 (b) 8m., 51.30 (4) (b) 11., 51.375 (1) (a), 109.09 (1), 146.82 (2) (c), 301.45 (1g) (dt),
7 301.45 (3) (a) 3r., 301.45 (3) (b) 3., 301.45 (5) (b) 2., 756.06 (2) (b), 801.52, 808.04
8 (3), 808.04 (4), 808.075 (4) (h), 905.04 (4) (a), 911.01 (4) (c), 938.396 (1), 938.396
9 (5) (a) (intro.), 938.78 (2) (e), 946.42 (1) (a), 950.04 (1v) (xm), 967.03, 972.15 (4),
10 978.03 (3), 978.045 (1r) (intro.), 978.05 (6) (a), 978.05 (8) (b), 980.01 (5), 980.01
11 (6) (a), 980.01 (6) (b), 980.01 (6) (c), 980.01 (7), 980.015 (2) (intro.), 980.015 (2)
12 (a), 980.015 (2) (b), 980.015 (2) (c), 980.02 (1) (a), 980.02 (2) (c), 980.02 (4)
13 (intro.), 980.03 (2) (intro.), 980.03 (3), 980.04 (1), 980.04 (3), 980.05 (1), 980.05

1 (3) (a), 980.05 (3) (b), 980.07 (2), 980.07 (3), 980.09 (title), 980.101 (2) (a), 980.11
2 (2) (intro.) and 980.12 (1); **to repeal and recreate** 809.10 (1) (d), 809.30 (1) (c),
3 809.30 (1) (f) and 980.08; and **to create** 48.396 (6), 48.78 (2) (e), 48.981 (7) (a)
4 8s., 51.30 (3) (bm), 51.30 (4) (b) 8s., 118.125 (2) (ck), 146.82 (2) (cm), 756.06 (2)
5 (cm), 814.61 (1) (c) 6., 938.35 (1) (e), 946.42 (3m), 972.15 (6), 973.155 (1) (c),
6 978.043 (2), 978.13 (2) (a), 980.01 (1g), 980.01 (1m), 980.01 (6) (am), 980.01 (6)
7 (bm), 980.015 (1) (b), 980.015 (2) (d), 980.02 (1) (b) 3., 980.02 (1m), 980.02 (6),
8 980.031 (title), 980.031 (1) and (2), 980.034, 980.036, 980.038, 980.04 (2) (b),
9 980.05 (2m), 980.07 (1) (b), 980.07 (1g), 980.07 (1m), 980.07 (4) to (7), 980.093,
10 980.095, 980.14 (title) and 980.14 (1) of the statutes; **relating to:** the definition
11 of sexually violent person, sexually violent person commitment proceedings,
12 criteria for supervised release, escape from custody by a person who is subject
13 to a sexually violent person commitment proceeding, creating a committee to
14 make recommendations regarding the location of a facility for the treatment of
15 sexual predators, and providing penalties.

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

16 **SECTION 1.** 48.396 (1) of the statutes is amended to read:

17 48.396 (1) Law enforcement officers' records of children shall be kept separate
18 from records of adults. Law enforcement officers' records of the adult expectant
19 mothers of unborn children shall be kept separate from records of other adults. Law
20 enforcement officers' records of children and the adult expectant mothers of unborn
21 children shall not be open to inspection or their contents disclosed except under sub.
22 (1b), (1d) ~~or~~ (5), or (6) or s. 48.293 or by order of the court. This subsection does not
23 apply to the representatives of newspapers or other reporters of news who wish to

1 obtain information for the purpose of reporting news without revealing the identity
2 of the child or expectant mother involved, to the confidential exchange of information
3 between the police and officials of the school attended by the child or other law
4 enforcement or social welfare agencies or to children 10 years of age or older who are
5 subject to the jurisdiction of the court of criminal jurisdiction. A public school official
6 who obtains information under this subsection shall keep the information
7 confidential as required under s. 118.125 and a private school official who obtains
8 information under this subsection shall keep the information confidential in the
9 same manner as is required of a public school official under s. 118.125. A law
10 enforcement agency that obtains information under this subsection shall keep the
11 information confidential as required under this subsection and s. 938.396 (1). A
12 social welfare agency that obtains information under this subsection shall keep the
13 information confidential as required under ss. 48.78 and 938.78.

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

15 48.396 **(5)** (a) (intro.) Any person who is denied access to a record under sub.
16 (1), (1b) ~~or~~, (1d), or (6) may petition the court to order the disclosure of the records
17 governed by the applicable subsection. The petition shall be in writing and shall
18 describe as specifically as possible all of the following:

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

20 48.396 **(6)** Records of law enforcement officers and of the court assigned to
21 exercise jurisdiction under this chapter and ch. 938 shall be open for inspection by
22 and production to authorized representatives of the department of corrections, the
23 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 records involve or relate to an individual who is the subject of or who is being

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

8 **SECTION 4.** 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 5.** 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 6.** 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 7.** 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 8.** 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 9.** 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 10.** 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 11.** 51.30 (4) (b) 10m. of the statutes is repealed.

1 **SECTION 12.** 51.30 (4) (b) 11. of the statutes is amended to read:

2 51.30 **(4)** (b) 11. To the subject individual's counsel or guardian ad litem and
3 the corporation counsel, without modification, at any time in order to prepare for
4 involuntary commitment or recommitment proceedings, reexaminations, appeals, or
5 other actions relating to detention, admission, commitment, or patients' rights under
6 this chapter or ch. 48, 971, ~~or 975,~~ or 980.

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

8 51.375 **(1)** (a) "Community placement" means conditional transfer into the
9 community under s. 51.35 (1), conditional release under s. 971.17, parole from a
10 commitment for specialized treatment under ch. 975, ~~or conditional supervised~~
11 release under ch. 980.

12 **SECTION 14.** 109.09 (1) of the statutes is amended to read:

13 109.09 **(1)** The department shall investigate and attempt equitably to adjust
14 controversies between employers and employees as to alleged wage claims. The
15 department may receive and investigate any wage claim which is filed with the
16 department, or received by the department under s. 109.10 (4), no later than 2 years
17 after the date the wages are due. The department may, after receiving a wage claim,
18 investigate any wages due from the employer against whom the claim is filed to any
19 employee during the period commencing 2 years before the date the claim is filed.
20 The department shall enforce this chapter and ss. 66.0903, 103.02, 103.49, 103.82,
21 104.12 and 229.8275. In pursuance of this duty, the department may sue the
22 employer on behalf of the employee to collect any wage claim or wage deficiency and
23 ss. 109.03 (6) and 109.11 (2) and (3) shall apply to such actions. Except for actions
24 under s. 109.10, the department may refer such an action to the district attorney of
25 the county in which the violation occurs for prosecution and collection and the

1 district attorney shall commence an action in the circuit court having appropriate
2 jurisdiction. Any number of wage claims or wage deficiencies against the same
3 employer may be joined in a single proceeding, but the court may order separate
4 trials or hearings. In actions that are referred to a district attorney under this
5 subsection, any taxable costs recovered by the district attorney shall be paid into the
6 general fund of the county in which the violation occurs and used by that county to
7 meet its financial responsibility under s. 978.13 (2) (b) for the operation of the office
8 of the district attorney who prosecuted the action.

9 **SECTION 15.** 118.125 (2) (ck) of the statutes is created to read:

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

22 **SECTION 16.** 146.82 (2) (c) of the statutes is amended to read:

23 146.82 **(2)** (c) Notwithstanding sub. (1), patient health care records shall be
24 released to appropriate examiners and facilities in accordance with ss. s. 971.17 (2)
25 (e), (4) (c) and (7) (c), ~~980.03 (4) and 980.08 (3)~~. The recipient of any information from

1 the records shall keep the information confidential except as necessary to comply
2 with s. 971.17 ~~or ch. 980~~.

3 **SECTION 17.** 146.82 (2) (cm) of the statutes is created to read:

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

17 **SECTION 18.** 301.45 (1g) (dt) of the statutes is amended to read:

18 301.45 (1g) (dt) Is in institutional care or on conditional supervised release
19 under ch. 980 on or after June 2, 1994.

20 **SECTION 19.** 301.45 (3) (a) 3r. of the statutes is amended to read:

21 301.45 (3) (a) 3r. If the person has been committed under ch. 980, he or she is
22 subject to this subsection upon being placed on supervised release under s. 980.06
23 (2), 1997 stats., or s. 980.08 or, if he or she was not placed on supervised release,
24 before being discharged under s. 980.09 or ~~980.10~~ 980.093.

25 **SECTION 20.** 301.45 (3) (b) 3. of the statutes is amended to read:

1 301.45 (3) (b) 3. The department of health and family services shall notify a
2 person who is being placed on conditional release, supervised release, conditional
3 transfer or parole, or is being terminated or discharged from a commitment, under
4 s. 51.20, 51.35 or 971.17 or ch. 975 or 980 and who is covered under sub. (1g) of the
5 need to comply with the requirements of this section.

6 **SECTION 21.** 301.45 (5) (b) 2. of the statutes is amended to read:

7 301.45 (5) (b) 2. The person has been found to be a sexually violent person under
8 ch. 980, regardless of whether the person is has been discharged under s. 980.10,
9 2001 stats., s. 980.09 or ~~980.10~~ 980.093 from the sexually violent person
10 commitment, except that the person no longer has to comply with this section if the
11 finding that the person is a sexually violent person has been reversed, set aside or
12 vacated.

13 **SECTION 22.** 756.06 (2) (b) of the statutes is amended to read:

14 756.06 (2) (b) Except as provided in ~~par. pars.~~ par. (c) and (cm), a jury in a civil case
15 shall consist of 6 persons unless a party requests a greater number, not to exceed 12.
16 The court, on its own motion, may require a greater number, not to exceed 12.

17 **SECTION 23.** 756.06 (2) (cm) of the statutes is created to read:

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

24 **SECTION 24.** 801.52 of the statutes is amended to read:

1 **801.52 Discretionary change of venue.** The court may at any time, upon
2 its own motion, the motion of a party or the stipulation of the parties, change the
3 venue to any county in the interest of justice or for the convenience of the parties or
4 witnesses. This section does not apply to proceedings under ch. 980.

5 **SECTION 25.** 808.04 (3) of the statutes is amended to read:

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

9 **SECTION 26.** 808.04 (4) of the statutes is amended to read:

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

13 **SECTION 27.** 808.075 (4) (h) of the statutes is amended to read:

14 808.075 (4) (h) Commitment, supervised release, recommitment, discharge,
15 and postcommitment relief under ss. 980.06, 980.08, 980.09, ~~980.10~~ 980.093, and
16 980.101 of a person found to be a sexually violent person under ch. 980.

17 **SECTION 28.** 809.10 (1) (d) of the statutes, as affected by Supreme Court Order
18 02–01, is repealed and recreated to read:

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

1 statements need not be filed in appeals brought under s. 809.30 or 974.05, or by the
2 state or defendant in permissive appeals in criminal cases pursuant to s. 809.50,
3 except that docketing statements shall be filed in cases arising under chs. 48, 51, 55,
4 or 938.

5 **SECTION 29.** 809.30 (1) (c) of the statutes, as affected by Supreme Court 02–01,
6 is repealed and recreated to read:

7 809.30 (1) (c) “Postconviction relief” means an appeal or a motion for
8 postconviction relief in a criminal case, other than an appeal, motion, or petition
9 under ss. 302.113 (7m), 302.113 (9g), 973.19, 973.195, 974.06, or 974.07 (2). In a ch.
10 980 case, the term means an appeal or a motion for postcommitment relief under s.
11 980.038 (4).

12 **SECTION 30.** 809.30 (1) (f) of the statutes, as affected by Supreme Court 02–01,
13 is repealed and recreated to read:

14 809.30 (1) (f) “Sentencing” means the imposition of a sentence, a fine, or
15 probation in a criminal case. In a ch. 980 case, the term means the entry of an order
16 under s. 980.06.

17 **SECTION 31.** 814.61 (1) (c) 6. of the statutes is created to read:

18 814.61 (1) (c) 6. An action for civil commitment under ch. 51, 55, or 980.

19 **SECTION 32.** 905.04 (4) (a) of the statutes is amended to read:

20 905.04 (4) (a) *Proceedings for hospitalization, control, care, and treatment of*
21 *a sexually violent person, guardianship, protective services, or protective placement.*

22 There is no privilege under this rule as to communications and information relevant
23 to an issue in proceedings to hospitalize the patient for mental illness, to appoint a
24 guardian under s. 880.33, for control, care, and treatment of a sexually violent person
25 under ch. 980, for court–ordered protective services or protective placement, or for

1 review of guardianship, protective services, or protective placement orders, if the
2 physician, registered nurse, chiropractor, psychologist, social worker, marriage and
3 family therapist, or professional counselor in the course of diagnosis or treatment
4 has determined that the patient is in need of hospitalization, control, care, and
5 treatment as a sexually violent person, guardianship, protective services, or
6 protective placement.

7 **SECTION 33.** 911.01 (4) (c) of the statutes is amended to read:

8 911.01 (4) (c) *Miscellaneous proceedings.* Proceedings for extradition or
9 rendition; sentencing, granting or revoking probation, modification of a bifurcated
10 sentence under s. 302.113 (9g), adjustment of a bifurcated sentence under s. 973.195
11 (1r), issuance of arrest warrants, criminal summonses and search warrants;
12 hearings under s. 980.093 (2); proceedings under s. 971.14 (1) (c); proceedings with
13 respect to pretrial release under ch. 969 except where habeas corpus is utilized with
14 respect to release on bail or as otherwise provided in ch. 969.

15 **SECTION 34.** 938.35 (1) (e) of the statutes is created to read:

16 938.35 (1) (e) In a hearing, trial, or other proceeding under ch. 980 relating to
17 a person.

18 **SECTION 35.** 938.396 (1) of the statutes is amended to read:

19 938.396 (1) Law enforcement officers' records of juveniles shall be kept
20 separate from records of adults. Law enforcement officers' records of juveniles shall
21 not be open to inspection or their contents disclosed except under sub. (1b), (1d), (1g),
22 (1m), (1r), (1t), (1x) ~~or~~ (5), or (10) or s. 938.293 or by order of the court. This
23 subsection does not apply to representatives of the news media who wish to obtain
24 information for the purpose of reporting news without revealing the identity of the
25 juvenile involved, to the confidential exchange of information between the police and

1 officials of the school attended by the juvenile or other law enforcement or social
2 welfare agencies, or to juveniles 10 years of age or older who are subject to the
3 jurisdiction of the court of criminal jurisdiction. A public school official who obtains
4 information under this subsection shall keep the information confidential as
5 required under s. 118.125 and a private school official who obtains information under
6 this subsection shall keep the information confidential in the same manner as is
7 required of a public school official under s. 118.125. A law enforcement agency that
8 obtains information under this subsection shall keep the information confidential as
9 required under this subsection and s. 48.396 (1). A social welfare agency that obtains
10 information under this subsection shall keep the information confidential as
11 required under ss. 48.78 and 938.78.

12 **SECTION 36.** 938.396 (2) (e) of the statutes is renumbered 938.396 (10) and
13 amended to read:

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

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

6 **SECTION 37.** 938.396 (5) (a) (intro.) of the statutes is amended to read:

7 938.396 (5) (a) (intro.) Any person who is denied access to a record under sub.
8 (1), (1b), (1d), (1g), (1m), (1r) ~~or~~ (1t), or (10) may petition the court to order the
9 disclosure of the records governed by the applicable subsection. The petition shall
10 be in writing and shall describe as specifically as possible all of the following:

11 **SECTION 38.** 938.78 (2) (e) of the statutes is amended to read:

12 938.78 (2) (e) ~~Paragraph (a) does not prohibit the department from disclosing~~
13 Notwithstanding par. (a), an agency shall, upon request, disclose information about
14 an individual adjudged delinquent under s. 938.183 or 938.34 for a sexually violent
15 offense, as defined in s. 980.01 (6), to authorized representatives of the department
16 of corrections, the department of health and family services, the department of
17 justice, or a district attorney or a judge acting under ch. 980 or to an attorney who
18 represents a person subject to a petition for use in the evaluation or prosecution of
19 any proceeding under ch. 980, if the information involves or relates to an individual
20 who is the subject of or who is being evaluated for a proceeding under ch. 980. The
21 court in which the ~~petition proceeding~~ proceeding under s. 980.02 is filed ch. 980 is pending may
22 issue any protective orders that it determines are appropriate concerning
23 information disclosed under this paragraph. Any representative of the department
24 of corrections, the department of health and family services, the department of

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

3 **SECTION 39.** 946.42 (1) (a) of the statutes is amended to read:

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

23 **SECTION 40.** 946.42 (3m) of the statutes is created to read:

24 946.42 (3m) A person who intentionally escapes from custody under any of the
25 following circumstances is guilty of a Class F felony:

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

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

6 **SECTION 41.** 950.04 (1v) (xm) of the statutes is amended to read:

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

10 **SECTION 42.** 967.03 of the statutes is amended to read:

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

14 **SECTION 43.** 972.15 (4) of the statutes is amended to read:

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

19 **SECTION 44.** 972.15 (6) of the statutes is created to read:

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

24 (a) The department of corrections.

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

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

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

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

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

7 **SECTION 45.** 973.155 (1) (c) of the statutes is created to read:

8 973.155 (1) (c) The categories in par. (a) include time during which the
9 convicted offender was in the custody of the department of health and family services
10 under ch. 980 only if the offender was confined during that time and the confinement
11 and the offender's conviction resulted from the same course of conduct.

12 **SECTION 46.** 978.03 (3) of the statutes is amended to read:

13 978.03 (3) Any assistant district attorney under sub. (1), (1m) or (2) must be
14 an attorney admitted to practice law in this state and, except as provided in ss.
15 978.043 (1) and 978.044, may perform any duty required by law to be performed by
16 the district attorney. The district attorney of the prosecutorial unit under sub. (1),
17 (1m), or (2) may appoint such temporary counsel as may be authorized by the
18 department of administration.

19 **SECTION 47.** 978.043 of the statutes is renumbered 978.043 (1) and amended
20 to read.

21 978.043 (1) The district attorney of the prosecutorial unit that consists of
22 Brown County and the district attorney of the prosecutorial unit that consists of
23 Milwaukee County shall each assign one assistant district attorney in his or her
24 prosecutorial unit to be a sexually violent person commitment prosecutor. An
25 assistant district attorney assigned under this section ~~section~~ subsection to be a sexually

1 violent person commitment prosecutor may engage only in the prosecution of
2 sexually violent person commitment proceedings under ch. 980 and, at the request
3 of the district attorney of the prosecutorial unit, may file and prosecute sexually
4 violent person commitment proceedings under ch. 980 in any prosecutorial unit in
5 this state.

6 **SECTION 48.** 978.043 (2) of the statutes is created to read:

7 978.043 (2) If an assistant district attorney assigned under sub. (1) prosecutes
8 or assists in the prosecution of a case under ch. 980 in a prosecutorial unit other than
9 his or her own, the prosecutorial unit in which the case is heard shall reimburse the
10 assistant district attorney's own prosecutorial unit for his or her reasonable costs
11 associated with the prosecution, including transportation, lodging, and meals.
12 Unless otherwise agreed upon by the prosecutorial units involved, the court hearing
13 the case shall determine the amount of money to be reimbursed for expert witness
14 fees under this subsection.

15 **SECTION 49.** 978.045 (1r) (intro.) of the statutes is amended to read:

16 978.045 (1r) (intro.) Any judge of a court of record, by an order entered in the
17 record stating the cause ~~therefor~~ for it, may appoint an attorney as a special
18 prosecutor to perform, for the time being, or for the trial of the accused person, the
19 duties of the district attorney. An attorney appointed under this subsection shall
20 have all of the powers of the district attorney. The judge may appoint an attorney
21 as a special prosecutor at the request of a district attorney to assist the district
22 attorney in the prosecution of persons charged with a crime, in grand jury or John
23 Doe proceedings, in proceedings under ch. 980, or in investigations. The judge may
24 appoint an attorney as a special prosecutor if any of the following conditions exists:

25 **SECTION 50.** 978.05 (6) (a) of the statutes is amended to read:

1 978.05 **(6)** (a) Institute, commence or appear in all civil actions or special
2 proceedings under and perform the duties set forth for the district attorney under ch.
3 980 and ss. 17.14, 30.03 (2), 48.09 (5), 59.55 (1), 59.64 (1), 70.36, 103.50 (8), 103.92
4 (4), 109.09, 343.305 (9) (a), 453.08, 806.05, 938.09, 938.18, 938.355 (6) (b) and (6g) (a),
5 946.86, 946.87, 961.55 (5), 971.14 and 973.075 to 973.077, perform any duties in
6 connection with court proceedings in a court assigned to exercise jurisdiction under
7 chs. 48 and 938 as the judge may request and perform all appropriate duties and
8 appear if the district attorney is designated in specific statutes, including matters
9 within chs. 782, 976 and 979 and ss. 51.81 to 51.85. Nothing in this paragraph limits
10 the authority of the county board to designate, under s. 48.09 (5), that the corporation
11 counsel provide representation as specified in s. 48.09 (5) or to designate, under s.
12 48.09 (6) or 938.09 (6), the district attorney as an appropriate person to represent the
13 interests of the public under s. 48.14 or 938.14.

14 **SECTION 51.** 978.05 (8) (b) of the statutes is amended to read:

15 978.05 **(8)** (b) Hire, employ, and supervise his or her staff and, subject to ss.
16 978.043 (1) and 978.044, make appropriate assignments of the staff throughout the
17 prosecutorial unit. The district attorney may request the assistance of district
18 attorneys, deputy district attorneys, or assistant district attorneys from other
19 prosecutorial units or assistant attorneys general who then may appear and assist
20 in the investigation and prosecution of any matter for which a district attorney is
21 responsible under this chapter in like manner as assistants in the prosecutorial unit
22 and with the same authority as the district attorney in the unit in which the action
23 is brought. Nothing in this paragraph limits the authority of counties to regulate the
24 hiring, employment, and supervision of county employees.

25 **SECTION 52.** 978.13 (2) of the statutes is renumbered 978.13 (2) (b).

1 **SECTION 53.** 978.13 (2) (a) of the statutes is created to read:

2 978.13 **(2)** (a) In this subsection, “costs related to the operation of the district
3 attorney’s office” include costs that a prosecutorial unit must pay under s. 978.043
4 (2) but do not include costs for which a prosecutorial unit receives reimbursement
5 under s. 978.043 (2).

6 **SECTION 54.** 980.01 (1) of the statutes is renumbered 980.01 (1m).

7 **SECTION 55.** 980.01 (1g) of the statutes is created to read:

8 980.01 **(1g)** “Act of sexual violence” means conduct that constitutes the
9 commission of a sexually violent offense.

10 **SECTION 56.** 980.01 (1m) of the statutes is created to read:

11 980.01 **(1m)** “Likely” means more likely than not.

12 **SECTION 57.** 980.01 (5) of the statutes is amended to read:

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

16 **SECTION 58.** 980.01 (6) (a) of the statutes is amended to read:

17 980.01 **(6)** (a) Any crime specified in s. 940.225 (1) ~~or~~ (2), or (3), 948.02 (1) or
18 (2), 948.025, 948.06₁ or 948.07.

19 **SECTION 59.** 980.01 (6) (am) of the statutes is created to read:

20 980.01 **(6)** (am) An offense that, prior to June 2, 1994, was a crime under the
21 law of this state and that is comparable to any crime specified in par. (a).

22 **SECTION 60.** 980.01 (6) (b) of the statutes is amended to read:

23 980.01 **(6)** (b) Any crime specified in s. 940.01, 940.02, 940.03, 940.05, 940.06,
24 940.19 (4) or (5), 940.195 (4) or (5), 940.30, 940.305, 940.31 ~~or~~ 941.32, 943.10, 943.32,

1 or 948.03 that is determined, in a proceeding under s. 980.05 (3) (b), to have been
2 sexually motivated.

3 **SECTION 61.** 980.01 (6) (bm) of the statutes is created to read:

4 980.01 (6) (bm) An offense that, prior to June 2, 1994, was a crime under the
5 law of this state, that is comparable to any crime specified in par. (b) and that is
6 determined, in a proceeding under s. 980.05 (3) (b), to have been sexually motivated.

7 **SECTION 62.** 980.01 (6) (c) of the statutes is amended to read:

8 980.01 (6) (c) Any solicitation, conspiracy, or attempt to commit a crime under
9 par. (a) ~~or~~, (am), (b), or (bm).

10 **SECTION 63.** 980.01 (7) of the statutes is amended to read:

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

18 **SECTION 64.** 980.015 (1) of the statutes is renumbered 980.015 (1) (intro.) and
19 amended to read:

20 980.015 (1) (intro.) In this section, “agency:

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

23 **SECTION 65.** 980.015 (1) (b) of the statutes is created to read:

24 980.015 (1) (b) “Continuous term of incarceration, any part of which was
25 imposed for a sexually violent offense,” includes confinement in a secured

1 correctional facility, as defined in s. 938.02 (15m), or a secured child caring
2 institution, as defined in s. 938.02 (15g), or a secured group home, as defined in s.
3 938.02 (15p), if the person was placed in the facility for being adjudicated delinquent
4 under s. 48.34, 1993 stats., or under s. 938.183 or 938.34 on the basis of a sexually
5 violent offense.

6 **SECTION 66.** 980.015 (2) (intro.) of the statutes is amended to read:

7 980.015 (2) (intro.) If an agency with jurisdiction has control or custody over
8 a person who may meet the criteria for commitment as a sexually violent person, the
9 agency with jurisdiction shall inform each appropriate district attorney and the
10 department of justice regarding the person as soon as possible beginning ~~3 months~~
11 90 days prior to the applicable date of the following:

12 **SECTION 67.** 980.015 (2) (a) of the statutes is amended to read:

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

20 **SECTION 68.** 980.015 (2) (b) of the statutes is amended to read:

21 980.015 (2) (b) The anticipated release from a secured correctional facility, as
22 defined in s. 938.02 (15m), or a secured child caring institution, as defined in s. 938.02
23 (15g), or a secured group home, as defined in s. 938.02 (15p), ~~of a~~ if the person was
24 placed in the facility as a result of being adjudicated delinquent under s. 48.34, 1993
25 stats., or under s. 938.183 or 938.34 on the basis of a sexually violent offense.

1 **SECTION 69.** 980.015 (2) (c) of the statutes is amended to read:

2 980.015 **(2)** (c) The anticipated release on conditional release under s. 971.17
3 or the anticipated termination of or discharge of a from a commitment order under
4 s. 971.17, if the person who has been found not guilty of a sexually violent offense by
5 reason of mental disease or defect ~~under s. 971.17.~~

6 **SECTION 70.** 980.015 (2) (d) of the statutes is created to read:

7 980.015 **(2)** (d) The anticipated release on parole or discharge of a person
8 committed under ch. 975 for a sexually violent offense.

9 **SECTION 71.** 980.015 (4) of the statutes is renumbered 980.14 (2) and amended
10 to read:

11 980.14 **(2)** Any agency or officer, employee, or agent of an agency is immune
12 from criminal or civil liability for any acts or omissions as the result of a good faith
13 effort to comply with any provision of this section chapter.

14 **SECTION 72.** 980.02 (1) (a) of the statutes is amended to read:

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

19 **SECTION 73.** 980.02 (1) (b) 3. of the statutes is created to read:

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

24 **SECTION 74.** 980.02 (1m) of the statutes is created to read:

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

3 **SECTION 75.** 980.02 (2) (ag) of the statutes is repealed.

4 **SECTION 76.** 980.02 (2) (c) of the statutes is amended to read:

5 **980.02 (2)** (c) The person is dangerous to others because the person's mental
6 disorder ~~creates a substantial probability~~ makes it likely that he or she will engage
7 in acts of sexual violence.

8 **SECTION 77.** 980.02 (4) (intro.) of the statutes is amended to read:

9 **980.02 (4)** (intro.) A petition under this section shall be filed in ~~any~~ one of the
10 following:

11 **SECTION 78.** 980.02 (6) of the statutes is created to read:

12 **980.02 (6)** A court assigned to exercise jurisdiction under chs. 48 and 938 does
13 not have jurisdiction over a petition filed under this section alleging that a child is
14 a sexually violent person.

15 **SECTION 79.** 980.03 (2) (intro.) of the statutes is amended to read:

16 **980.03 (2)** (intro.) Except as provided in ss. ~~980.09 (2) (a)~~ 980.038 (2) and
17 ~~980.10~~ 980.093 and without limitation by enumeration, at any hearing under this
18 chapter, the person who is the subject of the petition has the right to:

19 **SECTION 80.** 980.03 (3) of the statutes is amended to read:

20 **980.03 (3)** The person who is the subject of the petition, the person's attorney,
21 the department of justice or the district attorney may request that a trial under s.
22 980.05 be to a jury ~~of 12~~. A request for a jury trial shall be made as provided under
23 s. 980.05 (2). Notwithstanding s. 980.05 (2), if the person, the person's attorney, the
24 department of justice or the district attorney does not request a jury trial, the court
25 may on its own motion require that the trial be to a jury ~~of 12~~. The jury shall be

1 selected as provided under s. 980.05 (2m). A verdict of a jury under this chapter is
2 not valid unless it is unanimous.

3 **SECTION 81.** 980.03 (4) of the statutes is renumbered 980.031 (3) and amended
4 to read:

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

18 (4) If the person a party retains ~~a qualified expert~~ or the court appoints a
19 licensed physician, licensed psychologist, or other mental health professional person
20 ~~of his or her own choice~~ to conduct an examination under this chapter of the person's
21 mental condition, the examiner shall have reasonable access to the person for the
22 purpose of the examination, as well as to the person's past and present treatment
23 records, as defined in s. 51.30 (1) (b), and patient health care records as provided
24 under s. 146.82 (2) (c). ~~If the person is indigent, the court shall, upon the person's~~
25 ~~request, appoint a qualified and available expert or professional person to perform~~

1 ~~an examination and participate in the trial or other proceeding on the person's~~
2 ~~behalf. Upon the order of the circuit court, the county shall pay, as part of the costs~~
3 ~~of the action, the costs of an expert or professional person appointed by a court under~~
4 ~~this subsection to perform an examination and participate in the trial or other~~
5 ~~proceeding on behalf of an indigent person. An expert (cm), past and present juvenile~~
6 ~~records, as provided under ss. 48.396 (6), 48.78 (2) (e), 938.396 (10), and 938.78 (2)~~
7 ~~(e), and the person's past and present correctional records, including presentence~~
8 ~~investigation reports under s. 972.15 (6).~~

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

18 **SECTION 82.** 980.03 (5) of the statutes is repealed.

19 **SECTION 83.** 980.031 (title) of the statutes is created to read:

20 **980.031** (title) **Examinations.**

21 **SECTION 84.** 980.031 (1) and (2) of the statutes are created to read:

22 980.031 (1) If a person who is the subject of a petition filed under s. 980.02
23 denies the facts alleged in the petition, the court may appoint at least one qualified
24 licensed physician, licensed psychologist, or other mental health professional to
25 conduct an examination of the person's mental condition and testify at trial.

1 **(2)** The state may retain a licensed physician, licensed psychologist, or other
2 mental health professional to examine the mental condition of a person who is the
3 subject of a petition under s. 980.02 or who has been committed under s. 980.06 and
4 to testify at trial or at any other proceeding under this chapter at which testimony
5 is authorized.

6 **SECTION 85.** 980.034 of the statutes is created to read:

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

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

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

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

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

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

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

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

11 **SECTION 86.** 980.036 of the statutes is created to read:

12 **980.036 Discovery and inspection. (1) DEFINITIONS.** In this section:

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

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

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

24 (a) Any written or recorded statement made by the person concerning the
25 allegations in the petition filed under s. 980.02 or concerning other matters at issue

1 in the trial or proceeding and the names of witnesses to the person's written
2 statements.

3 (b) A written summary of all oral statements of the person that the prosecuting
4 attorney plans to use in the course of the trial or proceeding and the names of
5 witnesses to the person's oral statements.

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

8 (d) A copy of the person's criminal record.

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

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

- 14 1. Any videotaped oral statement of a child under s. 908.08.
- 15 2. Any reports prepared in accordance with s. 980.031 (5).

16 (g) The results of any physical or mental examination or any scientific or
17 psychological test or instrument, experiment, or comparison that the prosecuting
18 attorney intends to offer in evidence at the trial or proceeding, and any raw data that
19 were collected, used, or considered in any manner as part of the examination, test,
20 experiment, or comparison.

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

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

25 (j) Any exculpatory evidence.

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

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

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

14 (c) The results of any physical or mental examination or any scientific or
15 psychological test or instrument, experiment, or comparison that the person intends
16 to offer in evidence at the trial or proceeding, and any raw data that were collected,
17 used, or considered in any manner as part of the examination, test, experiment, or
18 comparison.

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

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

23 **(4) COMMENT OR INSTRUCTION ON FAILURE TO CALL WITNESS.** No comment or
24 instruction regarding the failure to call a witness at the trial may be made or given

1 if the sole basis for the comment or instruction is the fact that the name of the witness
2 appears upon a list furnished under this section.

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

7 **(6) PROTECTIVE ORDER.** Upon motion of a party, the court may at any time order
8 that discovery, inspection, or the listing of witnesses required under this section be
9 denied, restricted, or deferred, or make other appropriate orders. If the prosecuting
10 attorney or the attorney for a person subject to this chapter certifies that to list a
11 witness may subject the witness or others to physical or economic harm or coercion,
12 the court may order that the deposition of the witness be taken pursuant to s. 967.04
13 (2) to (6). The name of the witness need not be divulged prior to the taking of such
14 deposition. If the witness becomes unavailable or changes his or her testimony, the
15 deposition shall be admissible at trial as substantive evidence.

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

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

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

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

9 **(10) PAYMENT OF PHOTOCOPY COSTS IN CASES INVOLVING INDIGENT RESPONDENTS.**
10 When the state public defender or a private attorney appointed under s. 977.08
11 requests photocopies of any item that is discoverable under this section, the state
12 public defender shall pay any fee charged for the photocopies from the appropriation
13 under s. 20.550 (1) (a). If the person providing photocopies under this section charges
14 the state public defender a fee for the photocopies, the fee may not exceed the actual,
15 necessary, and direct cost of photocopying.

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

19 **SECTION 87.** 980.038 of the statutes is created to read:

20 **980.038 Miscellaneous procedural provisions. (1) MOTIONS CHALLENGING**
21 **JURISDICTION OR COMPETENCY OF COURT OR TIMELINESS OF PETITION.** (a) A motion
22 challenging the jurisdiction or competency of the court or the timeliness of a petition
23 filed under s. 980.02 shall be filed within 10 days after the court holds the probable
24 cause hearing under s. 980.04 (2). Failure to file a motion within the time specified

1 in this paragraph waives the right to challenge the jurisdiction or competency of the
2 court or the timeliness of a petition filed under s. 980.02.

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

8 **(2) EVIDENCE OF REFUSAL TO PARTICIPATE IN EXAMINATION.** (a) At any hearing
9 under this chapter, the state may present evidence or comment on evidence that a
10 person who is the subject of a petition filed under s. 980.02 or a person who has been
11 committed under this chapter refused to participate in an examination of his or her
12 mental condition that was being conducted under this chapter or that was conducted
13 before the petition under s. 980.02 was filed for the purpose of evaluating whether
14 to file a petition.

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

19 **(3) TESTIMONY BY TELEPHONE OR LIVE AUDIOVISUAL MEANS.** Unless good cause to
20 the contrary is shown, proceedings under ss. 980.04 (2) (a) and 980.08 (5) (d) may be
21 conducted by telephone or audiovisual means, if available. If the proceedings are
22 required to be reported under SCR 71.02 (2), the proceedings shall be reported by a
23 court reporter who is in simultaneous voice communication with all parties to the
24 proceeding. Regardless of the physical location of any party to the telephone call, any
25 action taken by the court or any party shall have the same effect as if made in open

1 court. The proceedings shall be conducted in a courtroom or other place reasonably
2 accessible to the public. Simultaneous access to the proceeding shall be provided to
3 persons entitled to attend by means of a loudspeaker or, upon request to the court,
4 by making a person party to the telephone call without charge.

5 **(4) MOTIONS FOR POSTCOMMITMENT RELIEF; APPEAL.** (a) A motion for
6 postcommitment relief by a person committed under s. 980.06 shall be made in the
7 time and manner provided in ss. 809.30 and 809.40. An appeal by a person who has
8 been committed under s. 980.06 from a final order under s. 980.06, 980.08, or 980.09
9 or from an order denying a motion for postcommitment relief or from both shall be
10 taken in the time and manner provided in ss. 808.04 (3), 809.30, and 809.40. If a
11 person is seeking relief from an order of commitment under s. 980.06, the person
12 shall file a motion for postcommitment relief in the trial court prior to an appeal
13 unless the grounds for seeking relief are sufficiency of the evidence or issues
14 previously raised.

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

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

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

4 **SECTION 88.** 980.04 (1) of the statutes is amended to read:

5 **980.04 (1)** Upon the filing of a petition under s. 980.02, the court shall review
6 the petition to determine whether to issue an order for detention of the person who
7 is the subject of the petition. The person shall be detained only if there is probable
8 cause to believe that the person is eligible for commitment under s. 980.05 (5). A
9 person detained under this subsection shall be held in a facility approved by the
10 department. If the person is serving a sentence of imprisonment, is in a secured
11 correctional facility, as defined in s. 938.02 (15m), a secured child caring institution,
12 as defined in s. 938.02 (15g), or a secured group home, as defined in s. 938.02 (15p),
13 or is committed to institutional care, and the court orders detention under this
14 subsection, the court shall order that the person be transferred to a detention facility
15 approved by the department. A detention order under this subsection remains in
16 effect until the ~~person is discharged~~ petition is dismissed after a hearing under sub.
17 (3) or after a trial under s. 980.05 (5) or until the effective date of a commitment order
18 under s. 980.06, whichever is applicable.

19 **SECTION 89.** 980.04 (2) of the statutes is renumbered 980.04 (2) (a) and
20 amended to read:

21 **980.04 (2) (a)** Whenever a petition is filed under s. 980.02, the court shall hold
22 a hearing to determine whether there is probable cause to believe that the person
23 named in the petition is a sexually violent person. ~~If the person named in the petition~~
24 ~~is in custody, the court shall hold the probable cause hearing within 72 hours after~~
25 ~~the petition is filed, excluding Saturdays, Sundays and legal holidays.~~ If the person

1 ~~named in the petition is not in custody, the~~ Except as provided in par. (b), the court
2 shall hold the probable cause hearing within ~~a reasonable time~~ 30 days, excluding
3 Saturdays, Sundays, and legal holidays, after the filing of the petition, unless that
4 time is extended by the court for good cause shown upon its own motion, the motion
5 of any party, or the stipulation of the parties.

6 **SECTION 90.** 980.04 (2) (b) of the statutes is created to read:

7 980.04 **(2)** (b) If the person named in the petition is in custody under a sentence,
8 dispositional order, or commitment and the probable cause hearing will be held after
9 the date on which the person is scheduled to be released or discharged from the
10 sentence, dispositional order, or commitment, the probable cause hearing under par.
11 (a) shall be held no later than 10 days after the person's scheduled release or
12 discharge date, excluding Saturdays, Sundays, and legal holidays, unless that time
13 is extended by the court for good cause shown upon its own motion, the motion of any
14 party, or the stipulation of the parties.

15 **SECTION 91.** 980.04 (3) of the statutes is amended to read:

16 980.04 **(3)** If the court determines after a hearing that there is probable cause
17 to believe that the person named in the petition is a sexually violent person, the court
18 shall order that the person be taken into custody if he or she is not in custody and
19 shall order the person to be transferred within a reasonable time to an appropriate
20 facility specified by the department for an evaluation by the department as to
21 whether the person is a sexually violent person. If the court determines that
22 probable cause does not exist to believe that the person is a sexually violent person,
23 the court shall dismiss the petition.

24 **SECTION 92.** 980.05 (1) of the statutes is amended to read:

1 980.05 (1) A trial to determine whether the person who is the subject of a
2 petition under s. 980.02 is a sexually violent person shall commence no later than 45
3 90 days after the date of the probable cause hearing under s. 980.04. The court may
4 grant ~~a continuance~~ one or more continuances of the trial date for good cause upon
5 its own motion, the motion of any party or the stipulation of the parties.

6 **SECTION 93.** 980.05 (1m) of the statutes is repealed.

7 **SECTION 94.** 980.05 (2m) of the statutes is created to read:

8 980.05 (2m) (a) At a jury trial under this section, juries shall be selected and
9 treated in the same manner as they are selected and treated in civil actions in circuit
10 court, except that, notwithstanding s. 805.08 (3), each party shall be entitled to 4
11 peremptory challenges or, if the court orders additional jurors to be selected under
12 s. 805.08 (2), to 5 peremptory challenges. A party may waive in advance any or all
13 of its peremptory challenges and the number of jurors called under par. (b) shall be
14 reduced by this number.

15 (b) The number of jurors selected shall be the number prescribed in sub. (2),
16 unless a lesser number has been stipulated to and approved under par. (c) or the court
17 orders that additional jurors be selected. That number of jurors, plus the number
18 of peremptory challenges available to all of the parties, shall be called initially and
19 maintained in the jury box by calling others to replace jurors excused for cause until
20 all jurors have been examined. The parties shall thereupon exercise in their order,
21 the state beginning, the peremptory challenges available to them, and if any party
22 declines to challenge, the challenge shall be made by the clerk by lot.

23 (c) At any time before the verdict in a jury trial under this section, the parties
24 may stipulate in writing or by statement in open court, on the record, with the

1 approval of the court, that the jury shall consist of any number less than the number
2 prescribed in sub. (2).

3 **SECTION 95.** 980.05 (3) (a) of the statutes is amended to read:

4 980.05 (3) (a) At a trial on a petition under this chapter, the petitioner has the
5 burden of proving the allegations in the petition beyond a reasonable doubt that the
6 person who is the subject of the petition is a sexually violent person.

7 **SECTION 96.** 980.05 (3) (b) of the statutes is amended to read:

8 980.05 (3) (b) If the state alleges that the sexually violent offense or act that
9 forms the basis for the petition was an act that was sexually motivated as provided
10 in s. 980.01 (6) (b) or (bm), the state is required to prove beyond a reasonable doubt
11 that the alleged sexually violent act was sexually motivated.

12 **SECTION 97.** 980.07 (1) of the statutes is renumbered 980.07 (1) (intro.) and
13 amended to read:

14 980.07 (1) (intro.) If a person ~~has been~~ is committed under s. 980.06 and has
15 not been discharged under s. 980.09 or 980.093, the department shall conduct an
16 examination of his or her mental condition within ~~6~~ 12 months after ~~an~~ the date of
17 the initial commitment order under s. 980.06 and again thereafter at least once each
18 12 months ~~for the purpose of determining to determine~~ whether the person has made
19 sufficient progress for the court to consider whether the person should be placed on
20 supervised release or discharged. At the time of a reexamination under this section,
21 the person who has been committed may retain or seek to have the court appoint an
22 any of the following:

23 (a) An examiner as provided under s. 980.03 (4) 980.031 (3). The county shall
24 pay the costs of an examiner appointed under this paragraph as provided under s.
25 51.20 (18) (a).

1 **SECTION 98.** 980.07 (1) (b) of the statutes is created to read:

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

3 **SECTION 99.** 980.07 (1g) of the statutes is created to read:

4 980.07 (1g) Any examiners under this section shall have reasonable access to
5 the person for purposes of examination and to the person's past and present
6 treatment records, as defined in s. 51.30 (1) (b), and patient health care records, as
7 provided under s. 146.82 (2) (c).

8 **SECTION 100.** 980.07 (1m) of the statutes is created to read:

9 980.07 (1m) At the time for any examination under sub. (1), the department
10 shall prepare a treatment report based on its treating professionals' evaluation of the
11 person's progress in treatment and of whether that progress has been sufficient and
12 their description of the type of treatment that the person would need in the
13 community if supervised release were ordered. The department shall provide a copy
14 of this report to any examiner conducting an examination under sub. (1).

15 **SECTION 101.** 980.07 (2) of the statutes is amended to read:

16 980.07 (2) Any examiner conducting an examination under ~~this section~~ sub. (1)
17 shall prepare a written report of the examination no later than 30 days after the date
18 of the examination. The examiner shall place a copy of the report in the person's
19 medical records and shall provide a copy of the report to the department. The report
20 shall include an assessment of the risk that the person will reoffend, whether the risk
21 can be safely managed in the community if reasonable conditions of supervision and
22 security are imposed, and whether the treatment that the person needs is available
23 in the community. The department shall then send the treatment report, the written
24 examination report, and a written statement from the department recommending
25 continued institutional care, supervised release, or discharge to the court that

1 committed the person under s. 980.06. A copy of each report and the department's
2 recommendation shall be provided also to the district attorney or department of
3 justice, whichever is applicable, and to the person's attorney as soon as he or she is
4 retained or appointed. If the department concludes that the person does not meet
5 the criteria for commitment as a sexually violent person, the department shall
6 petition for discharge in accordance with the provisions of s. 980.09 (1).

7 **SECTION 102.** 980.07 (3) of the statutes is amended to read:

8 980.07 **(3)** Notwithstanding sub. (1), the court that committed a person under
9 s. 980.06 may order a reexamination of the person at any time during the period in
10 which the person is subject to the commitment order. Any report ordered under this
11 subsection shall conform to subs. (1m) and (2).

12 **SECTION 103.** 980.07 (4) to (7) of the statutes are created to read:

13 980.07 **(4)** (a) Within 30 days after the filing of the reexamination report,
14 treatment report, and recommendation under this section, the person subject to the
15 commitment, the district attorney, or the department of justice, whichever is
16 applicable, may object to the department's recommendation under sub. (2) by filing
17 a written objection with the court.

18 (b) If no timely objection is filed under par. (a), one of the following applies:

19 1. If the department's recommendation under sub. (2) is for continued
20 institutional care, the department's recommendation shall be implemented without
21 a hearing.

22 2. If the department's recommendation under sub. (2) is for supervised release
23 or discharge, the court shall proceed under sub. (7) or s. 980.09.

24 **(5)** (a) If the person files a timely objection without counsel, the court shall
25 serve a copy of the objection and any supporting documents on the district attorney

1 or department of justice, whichever is applicable. If the person objects through
2 counsel, his or her attorney shall serve the district attorney or department of justice,
3 whichever is applicable. If the district attorney or department of justice objects, it
4 shall serve the person or his or her counsel.

5 (b) If the person filing an objection is requesting discharge, the court may not
6 proceed under sub. (7). The court may proceed under s. 980.093 if the person files
7 a petition under that section.

8 (6) The district attorney or department of justice, whichever is applicable, may
9 employ experts or professional persons to support or oppose any recommendation.

10 (6m) Subject to s. 980.03 (2) (a), the court, before proceeding under sub. (7),
11 shall refer the matter to the authority for indigency determinations under s. 977.07
12 (1) and appointment of counsel under s. 977.05 (4) (j) if the person is not represented
13 by counsel. The determination of indigency and the appointment of counsel shall be
14 done as soon as circumstances permit.

15 (7) (a) Except as provided in subs. (4) (b) 1. and (5) (b), unless the department
16 recommends discharge, the court, without a jury, shall hold a hearing to determine
17 whether to authorize supervised release. The court shall hold the hearing within 30
18 days after the date on which objections are due under sub. (4), unless the petitioner
19 waives this time limit. Expenses of proceedings under this subsection shall be paid
20 as provided under s. 51.20 (18) (b), (c), and (d).

21 (am) The department of justice shall represent the department of health and
22 family services at any hearing under this subsection unless the departments have
23 adverse interests. If the departments have adverse interests, the department of
24 health and family services shall be represented at the hearing by its agency counsel
25 or by an attorney that it retains.

1 (b) The court shall determine from all of the evidence whether to continue
2 institutional care and, if not, what the appropriate placement would be for the person
3 while on supervised release. In making a decision under this subsection, the court
4 may consider, without limitation because of enumeration, the nature and
5 circumstances of the behavior that was the basis of the allegation in the petition
6 under s. 980.02 (2) (a), the person's mental history and present mental condition, the
7 person's progress or lack of progress in treatment, and, if the court were to authorize
8 supervised release, where the person would live, how the person would support
9 himself or herself, and what arrangements would be available to ensure that the
10 person would have access to and would participate in necessary treatment.

11 (bm) The court shall select a county to prepare a report under par. (c). Unless
12 the court has good cause to select another county, the court shall select the person's
13 county of residence. A preliminary decision by the court under this paragraph or
14 under par. (cm) to refer a case to a county department or the court's failure to make
15 such a decision shall not affect the court's power to authorize or not authorize
16 supervised release under this subsection.

17 (c) The court shall order the county department under s. 51.42 in the county
18 of intended placement to prepare a report, either independently or with the
19 department of health and family services, identifying prospective residential options
20 for community placement. In identifying prospective residential options, the county
21 department shall consider the proximity of any potential placement to the residence
22 of other persons on supervised release and to the residence of persons who are in the
23 custody of the department of corrections and regarding whom a sex offender
24 notification bulletin has been issued to law enforcement agencies under s. 301.46
25 (2m) (a) or (am).

1 (cm) If the court determines that the prospective residential options identified
2 in the report under par. (c) are inadequate, the court shall select another county to
3 prepare a report under par. (c).

4 (d) The court may order that a person be placed on supervised release if it finds,
5 based on all of the reports, trial records, and evidence presented, that all of the
6 following apply:

7 1. The person who will be placed on supervised release has made sufficient
8 progress in treatment such that the risk that the person will reoffend can be safely
9 managed in the community.

10 2. There is treatment reasonably available in the community and the person
11 who will be placed on supervised release will be treated by a provider who is qualified
12 to provide the necessary treatment in this state.

13 3. The provider presents a specific course of treatment for the person who will
14 be placed on supervised release, agrees to assume responsibility for the person's
15 treatment, agrees to comply with the rules and conditions of supervision imposed by
16 the court and the department, agrees to report on the person's progress to the court
17 on a regular basis, and agrees to report any violations of supervised release
18 immediately to the court the department of justice or the district attorney, as
19 applicable.

20 4. The person who will be placed on supervised release has housing
21 arrangements that are sufficiently secure to protect the community, and the person
22 or agency that is providing the housing to the person who will be placed on supervised
23 release agrees in writing to the following conditions:

24 a. To accept the person who will be placed supervised release.

25 b. To provide or allow for the level of safety that the court requires.

1 c. To immediately report to the court and the department of justice or the
2 district attorney, as applicable, any unauthorized absence of the person who will be
3 placed on supervised release from the housing arrangement to which the person has
4 been assigned. This subd. 4. c. does not apply unless the person or agency that is
5 providing the housing is a state or local government agency or is licensed by the
6 department.

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

10 6. The department has made provisions for the necessary services, including
11 sex offender treatment, other counseling, medication, community support services,
12 residential services, vocational services, and alcohol or other drug abuse treatment.

13 **SECTION 104.** 980.08 of the statutes is repealed and recreated to read:

14 **980.08 Supervised release; procedures, implementation, revocation.**

15 **(1)** If the court determines under s. 980.07 (7) that supervised release is appropriate,
16 the court shall order the county department under s. 51.42 in the county of intended
17 placement to assist the department of health and family services in implementing
18 the supervised release placement.

19 **(2)** The department shall file with the court any additional rules of supervision
20 not inconsistent with the rules or conditions imposed by the court within 10 days of
21 imposing the rule.

22 **(3)** If the department wishes to change a rule or condition of supervision
23 imposed by the court, it must obtain the court's approval.

24 **(4)** An order granting supervised release places the person in the care, control,
25 and custody of the department. The department shall arrange for the care, control,

1 and treatment of the person in the least restrictive manner consistent with the
2 requirements of the person and in accordance with the order for supervised release.
3 Before a person is actually released under this section, the court shall notify the
4 municipal police department and county sheriff for the municipality and county in
5 which the person will be residing. The notification requirement under this
6 subsection does not apply if a municipal police department or county sheriff submits
7 to the court a written statement waiving the right to be notified.

8 (5) (a) If the department concludes that a person on supervised release, or
9 awaiting placement on supervised release, violated or threatened to violate a rule of
10 supervised release, it may petition for revocation of the order granting supervised
11 release. The department may also detain the person.

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

16 (c) If the department concludes that the order granting supervised release
17 should be revoked, it shall file a statement alleging the violation and a petition to
18 revoke the order for supervised release with the committing court and provide a copy
19 of each to the regional office of the state public defender responsible for handling
20 cases in the county where the committing court is located. If the department has
21 detained the person under par. (a) or (b), the department shall file the statement and
22 the petition and provide them to the state public defender within 72 hours after the
23 detention, excluding Saturdays, Sundays, and legal holidays. The court shall refer
24 the matter to the authority for indigency determinations under s. 977.07 (1) and

1 appointment of counsel under s. 977.05 (4) (j). The determination of indigency and
2 the appointment of counsel shall be done as soon as circumstances permit.

3 (d) The court shall hear the petition within 30 days, unless the hearing or time
4 deadline is waived. A final decision on the petition to revoke shall be made within
5 90 days of the filing of the petition. Pending the final revocation hearing, the
6 department may detain the person in the county jail or return him or her to
7 institutional care.

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

14 (b) If the court finds after a hearing, by clear and convincing evidence, that the
15 safety of others requires that supervised release be revoked, the court shall revoke
16 the order granting supervised release and order that the person be placed in
17 institutional care. The person shall remain in institutional care until he or she is
18 discharged from the commitment or again placed on supervised release.

19 **SECTION 105.** 980.09 (title) of the statutes is amended to read:

20 **980.09** (title) **Petition for discharge; procedure with department's**
21 **approval.**

22 **SECTION 106.** 980.09 (1) (title) of the statutes is repealed.

23 **SECTION 107.** 980.09 (1) (a) of the statutes is renumbered 980.09 (1) and
24 amended to read:

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

9 **SECTION 108.** 980.09 (1) (b) of the statutes is renumbered 980.09 (2m) and
10 amended to read:

11 980.09 (2m) At a hearing under this ~~subsection~~ section, the district attorney
12 or the department of justice, whichever filed the original petition, shall represent the
13 state and shall have the right to have the petitioner examined by an expert or
14 professional person of his, her or its choice. ~~The hearing shall be before the court~~
15 ~~without a jury.~~ The state has the burden of proving by clear and convincing evidence
16 that the petitioner ~~is still~~ currently meets the criteria for commitment as a sexually
17 violent person.

18 **SECTION 109.** 980.09 (1) (c) of the statutes is renumbered 980.09 (3) and
19 amended to read:

20 980.09 (3) If the court is satisfied that the state has not met its burden of proof
21 under ~~par. (b)~~ sub. (2m), 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)~~ sub. (2m), the court may proceed under 980.07 (7) (b)
24 to (d) to determine, ~~using the criterion specified in s. 980.08 (4),~~ whether to modify
25 the petitioner's existing commitment order by authorizing supervised release.

1 **SECTION 110.** 980.09 (2) of the statutes is repealed.

2 **SECTION 111.** 980.093 of the statutes is created to read:

3 **980.093 Petition for discharge without department’s approval. (1)**

4 PETITIONS IN GENERAL. A committed person may petition the committing court for
5 discharge without the department’s approval. The court shall deny the petition
6 under this section without a hearing unless the petition alleges facts from which the
7 court or jury may conclude the person’s condition has changed so that the person does
8 not meet the criteria for commitment as a sexually violent person.

9 **(2) COURT REVIEW OF PETITION.** The court shall review the petition within 30
10 days and the court may hold a hearing to determine if it contains facts from which
11 the court or jury may conclude that the person does not meet the criteria for
12 commitment as a sexually violent person. In determining under this subsection
13 whether facts exist that might warrant such a conclusion, the court shall consider
14 any current or past reports filed under s. 980.07, relevant arguments in the petition
15 and in the state’s written response, and any supporting documentation provided by
16 the person or the state. If the court determines that the petition does not contain
17 facts from which a court or jury may conclude that the person does not meet the
18 criteria for commitment, the court shall deny the petition.

19 **(3) HEARING.** The court shall hold a hearing within 90 days of the determination
20 that the petition contains facts from which the court or jury may conclude that the
21 person does not meet the criteria for commitment as a sexually violent person. The
22 state has the burden of proving by clear and convincing evidence that the person
23 meets the criteria for commitment as a sexually violent person.

24 **(4) DISPOSITION.** If the court or jury is satisfied that the state has not met its
25 burden of proof under sub. (3), the petitioner shall be discharged from the custody

1 of the department. If the court or jury is satisfied that the state has met its burden
2 of proof under sub. (3), the court may proceed under s. 980.07 (7) (b) to (d) to
3 determine whether to modify the petitioner’s existing commitment order by
4 authorizing supervised release.

5 **SECTION 112.** 980.095 of the statutes is created to read:

6 **980.095 Procedures for discharge hearings. (1) USE OF JURIES.** (a) The
7 district attorney or the department of justice, whichever filed the original petition,
8 or the petitioner or his or her attorney may request that a hearing under s. 980.093
9 or 980.096 be to a jury of 6. A jury trial is deemed waived unless it is demanded
10 within 10 days of the filing of the petition for discharge.

11 (b) Juries shall be selected and treated in the same manner as they are selected
12 and treated in civil actions in circuit court. The number of jurors prescribed in
13 par.(a), plus the number of peremptory challenges available to all of the parties, shall
14 be called initially and maintained in the jury box by calling others to replace jurors
15 excused for cause until all jurors have been examined. The parties shall thereupon
16 exercise in their order, the state beginning, the peremptory challenges available to
17 them, and if any party declines to challenge, the challenge shall be made by the clerk
18 by lot.

19 (c) No verdict shall be valid or received unless it is agreed to by at least 5 of the
20 jurors.

21 **(2) DEPARTMENT’S RIGHT TO BE HEARD.** The department of justice shall represent
22 the department of health and family services at any discharge hearing unless the
23 departments have adverse interest. If the departments have adverse interests, the
24 department of health and family services shall be represented at the hearing by its
25 agency counsel or an attorney that it retains.

1 **(3) POST VERDICT MOTIONS.** Motions after verdict may be made without further
2 notice upon receipt of the verdict.

3 **(4) APPEALS.** Any party may appeal an order under this subsection as a final
4 order under chs. 808 and 809.

5 **SECTION 113.** 980.10 of the statutes is repealed.

6 **SECTION 114.** 980.101 (2) (a) of the statutes is amended to read:

7 980.101 **(2)** (a) If the sexually violent offense was the sole basis for the
8 allegation under s. 980.02 (2) (a) and there are no other judgments relating to a
9 sexually violent offense committed by the person, the court shall reverse, set aside,
10 or vacate the judgment under s. 980.05 (5) that the person is a sexually violent
11 person, vacate the commitment order, and discharge the person from the custody or
12 supervision of the department.

13 **SECTION 115.** 980.11 (2) (intro.) of the statutes is amended to read:

14 980.11 **(2)** (intro.) If the court places a person on supervised release under s.
15 980.08 or discharges a person under s. 980.09 or ~~980.10~~ 980.093, the department
16 shall do all of the following:

17 **SECTION 116.** 980.12 (1) of the statutes is amended to read:

18 980.12 **(1)** Except as provided in ss. ~~980.03 (4)~~ 980.031 (3) and 980.08 (3), the
19 department shall pay from the appropriations under s. 20.435 (2) (a) and (bm) for all
20 costs relating to the evaluation, treatment, and care of persons evaluated or
21 committed under this chapter.

22 **SECTION 117.** 980.14 (title) of the statutes is created to read:

23 **980.14 (title) Immunity.**

24 **SECTION 118.** 980.14 (1) of the statutes is created to read:

1 980.14 (1) In this section, “agency” means the department of corrections, the
2 department of health and family services, the department of justice, or a district
3 attorney.

4 **SECTION 119. Nonstatutory provisions.**

5 (1) In this section, “facility for children” means a public or private school, a
6 group home, as defined in section 48.02 (7) of the statutes, a residential care center
7 for children and youth, as defined in section 48.02 (15d) of the statutes, a shelter care
8 facility, as defined in section 48.02 (17) of the statutes, a foster home, as defined in
9 section 48.02 (6) of the statutes, a treatment foster home, as defined in section 48.02
10 (17q) of the statutes, a day care center licensed under section 48.65 of the statutes,
11 a day care program established under section 120.13 (14) of the statutes, a day care
12 provider certified under section 48.651 of the statutes, or a youth center, as defined
13 in section 961.01 (22) of the statutes.

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

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

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

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

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

10 8. One representative of the Intergovernmental Cooperation Council who is not
11 from the city of Milwaukee.

12 9. Three persons, other than elected officials, who are residents of Milwaukee
13 County but two of whom may not be residents of the city of Milwaukee, to be
14 appointed by the governor.

15 10. Four persons, other than elected officials, who are residents of Milwaukee
16 County, to be appointed as follows:

17 a. One by the speaker of the assembly and one by the majority leader of the
18 senate, appointed before the appointments in subdivision 10. b.

19 b. One by the minority leader of the assembly and one by the minority leader
20 of the senate. If the speaker of the assembly appointed a resident of the city of
21 Milwaukee, the minority leader of the assembly may not appoint a resident of the city
22 of Milwaukee. If the speaker of the assembly appointed a person who is not a resident
23 of the city of Milwaukee, the minority leader of the assembly may not appoint a
24 person who is not a resident of the city of Milwaukee. If the majority leader of the
25 senate appointed a resident of the city of Milwaukee, the minority leader of the

1 senate may not appoint a resident of the city of Milwaukee. If the majority leader
2 of the senate appointed a person who is not a resident of the city of Milwaukee, the
3 minority leader of the senate may not appoint a person who is not a resident of the
4 city of Milwaukee.

5 (e) The committee shall elect the chair of the committee from the individuals
6 appointed under paragraph (d) 9. and 10.

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

12 (g) The committee shall hold public hearings in Milwaukee County regarding
13 the selection of a location of the facility. The committee shall consider all of the
14 following factors when determining the criteria for the location of the facility or when
15 determining specific locations for the facility:

- 16 1. Community safety.
- 17 2. Proximity to sensitive locations.
- 18 3. Ability to make the facility secure.
- 19 4. Accessibility to treatment for the persons living in the facility.
- 20 5. Payments that may be made in lieu of property taxes.
- 21 6. Availability of tax incentives to a community to locate the facility within its
22 jurisdiction.
- 23 7. Proximity of the placement to all of the following:
 - 24 a. The residence of other persons on supervised release.

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

4 c. Any facility for children of which the committee is aware.

5 d. Any residential subdivision.

6 (h) No later than December 31, 2004, the committee shall submit a report to
7 the departments of corrections and health and family services recommending at
8 least 3 specific locations that the committee determines are appropriate for the
9 placement of the facility. The report shall list the strengths and weaknesses of each
10 location the committee recommends. Each of the locations shall be suitable for the
11 development of a facility that can house at least the number of persons set forth in
12 the estimate submitted to the committee under paragraph (f). When considering
13 locations, the committee shall make a reasonable effort to reach and to maximize
14 consensus among its members.

15 **SECTION 120. Initial applicability.**

16 (1) This act first applies to reviews regarding detention and probable cause
17 hearings under section 980.04 of the statutes, as affected by this act, and trials under
18 section 980.05 of the statutes, as affected by this act, that are based on a petition filed
19 under s. 980.02 of the statutes, as affected by this act, on the effective date of this
20 subsection.

21 (2) This act first applies to periodic reexaminations conducted under section
22 980.07 of the statutes, as affected by this act, begun on the effective date of this
23 subsection and to court proceedings resulting from those reexaminations.

24 (3) This act first applies to proceedings to revoke supervised release under
25 section 980.08 (5) of the statutes, as affected by this act, that are commenced on the

1 effective date of this subsection, except that the treatment of section 980.08 (5) of the
2 statutes, with respect to where a person may be detained while a petition to revoke
3 supervised release is pending, first applies to a person whose detention commences
4 on the effective date of this subsection.

5 (4) This act first applies to discharge proceedings commenced on the effective
6 date of this subsection.

7 **SECTION 121. Effective date.**

8 (1) This act takes effect on the first day of the 2nd month beginning after
9 publication.

10 (END)