# State of Wisconsin
**2005 – 2006 LEGISLATURE**

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PRELIMINARY DRAFT – NOT READY FOR INTRODUCTION

**SENATE SUBSTITUTE AMENDMENT ,**

**TO 2005 SENATE BILL 318**

AN ACT ***to repeal*** 980.02 (2) (ag), 980.03 (5), 980.05 (1m), 980.08 (4) (b), 980.08 (5) and 980.10; ***to renumber*** 978.13 (2) and 980.01 (1); ***to renumber and amend*** 938.396 (2) (e), 978.043, 980.015 (1), 980.015 (4), 980.03 (4) and 980.04 (2); ***to amend*** 20.435 (2) (bj), 46.10 (2), 48.396 (1), 48.396 (5) (a) (intro.), 51.30 (3) (a), 51.30 (3) (b), 51.30 (4) (b) 8m., 51.30 (4) (b) 10m., 51.30 (4) (b) 11., 51.375 (1) (a), 51.375 (2) (b), 51.42 (3) (aw) 1. d., 51.61 (1) (o), 109.09 (1), 146.82 (2) (c), 301.03 (19), 301.45 (1g) (dt), 301.45 (3) (a) 3r., 301.45 (3) (b) 3., 301.45 (5) (b) 2., 756.06 (2) (b), 801.52, 808.04 (3), 808.04 (4), 808.075 (4) (h), 809.10 (1) (d), 809.30 (1) (c), 809.30 (1) (f), 905.04 (4) (a), 911.01 (4) (c), 938.396 (1), 938.396 (5) (a) (intro.), 938.78 (2) (e), 946.42 (1) (a), 950.04 (1v) (xm), 967.03, 972.15 (4), 978.03 (3), 978.04, 978.045 (1r) (intro.), 978.05 (6) (a), 978.05 (8) (b), 980.01 (5), 980.01 (6) (a), 980.01 (6) (b), 980.01 (6) (c), 980.01 (7), 980.015 (2) (intro.),

980.015 (2) (a), 980.015 (2) (b), 980.015 (2) (c), 980.02 (1) (a), 980.02 (4) (intro.), 980.03 (2) (intro.), 980.03 (3), 980.04 (1), 980.04 (3), 980.04 (5), 980.05 (1), 980.05 (2), 980.05 (3) (a), 980.05 (3) (b), 980.07 (title), 980.07 (1), 980.07 (2), 980.07 (3), 980.08 (1), 980.08 (3), 980.08 (4) (a), 980.08 (4) (c), 980.08 (6m), 980.101 (2) (a), 980.11 (2) (intro.) and 980.12 (1); ***to repeal and recreate*** 980.08 (title) and 980.09; and ***to create*** 48.396 (6), 48.78 (2) (e), 48.981 (7) (a) 8s., 51.30 (3) (bm), 51.30 (4) (b) 8s., 118.125 (2) (ck), 146.82 (2) (cm), 814.61 (1) (c) 6., 938.35 (1) (e), 940.20 (1g), 946.42 (3m), 972.15 (6), 978.043 (2), 978.13 (2) (a), 980.01 (1b), 980.01 (1j), 980.01 (3), 980.01 (6) (am), 980.01 (6) (bm), 980.01 (8), 980.01 (9), 980.015 (2) (d), 980.02 (1) (b) 3., 980.02 (1m), 980.02 (6), 980.031 (title), 980.031 (1) and (2), 980.034, 980.036, 980.038, 980.04 (2) (b) 2., 980.05 (2m), 980.07 (4), (5) and (6), 980.075, 980.08 (4) (cg), 980.08 (4) (cm), 980.08 (4) (d), (e), (f) and (g), 980.095, 980.14 (title) and 980.14 (1) of the statutes; **relating to:** the definition of sexually violent person, sexually violent person commitment proceedings, criteria for supervised release, battery by certain committed persons, escape from custody by a person who is subject to a sexually violent person commitment proceeding, and providing penalties.

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

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

20.435 **(2)** (bj) *Competency examinations and conditional and supervised release services.* Biennially, the amounts in the schedule for outpatient competency examinations and for payment by the department of costs for treatment and services for persons released under s. 980.06 (2) (c), 1997 stats., <u>s. 980.08 (5), 2003 stats.,</u> or s. 971.17 (3) (d) or (4) (e) or 980.08 ~~(5)~~ <u>(4) (g)</u>, for which the department has contracted

with county departments under s. 51.42 (3) (aw) 1. d., with other public agencies, or with private agencies to provide the treatment and services.

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

46.10 **(2)** Except as provided in subs. (2m) and (14) (b) and (c), any person, including but not limited to a person admitted, committed or placed under s. 975.01, 1977 stats., s. 975.02, 1977 stats., and s. 975.17, 1977 stats., and ss. 51.10, 51.13, 51.15, 51.20, 51.35 (3), 51.37 (5), 51.45 (10), (11), (12) and (13), 55.05, 55.06, 971.14 (2) and (5), 971.17 (1), 975.06 and 980.06, receiving care, maintenance, services and supplies provided by any institution in this state including University of Wisconsin Hospitals and Clinics, in which the state is chargeable with all or part of the person's care, maintenance, services and supplies, any person receiving care and services from a county department established under s. 51.42 or 51.437 or from a facility established under s. 49.73, and any person receiving treatment and services from a public or private agency under s. 980.06 (2) (c), 1997 stats., s. 980.08 (5), 2003 stats., or s. 971.17 (3) (d) or (4) (e) or 980.08 ~~(5)~~ (4) (g) and the person's property and estate, including the homestead, and the spouse of the person, and the spouse's property and estate, including the homestead, and, in the case of a minor child, the parents of the person, and their property and estates, including their homestead, and, in the case of a foreign child described in s. 48.839 (1) who became dependent on public funds for his or her primary support before an order granting his or her adoption, the resident of this state appointed guardian of the child by a foreign court who brought the child into this state for the purpose of adoption, and his or her property and estate, including his or her homestead, shall be liable for the cost of the care, maintenance, services and supplies in accordance with the fee schedule established by the department under s. 46.03 (18). If a spouse, widow or minor, or an

incapacitated person may be lawfully dependent upon the property for their support, the court shall release all or such part of the property and estate from the charges that may be necessary to provide for those persons. The department shall make every reasonable effort to notify the liable persons as soon as possible after the beginning of the maintenance, but the notice or the receipt thereof is not a condition of liability.

**SECTION 3.** 48.396 (1) of the statutes is amended to read:

48.396 **(1)** Law enforcement officers' records of children shall be kept separate from records of adults. Law enforcement officers' records of the adult expectant mothers of unborn children shall be kept separate from records of other adults. Law enforcement officers' records of children and the adult expectant mothers of unborn children shall not be open to inspection or their contents disclosed except under sub. (1b), (1d) ~~or~~, (5), or (6) or s. 48.293 or by order of the court. This subsection does not apply to the representatives of newspapers or other reporters of news who wish to obtain information for the purpose of reporting news without revealing the identity of the child or expectant mother involved, to the confidential exchange of information between the police and officials of the school attended by the child or other law enforcement or social welfare agencies or to children 10 years of age or older who are subject to the jurisdiction of the court of criminal jurisdiction. A public school official who obtains information under this subsection shall keep the information confidential as required under s. 118.125 and a private school official who obtains information under this subsection shall keep the information confidential in the same manner as is required of a public school official under s. 118.125. A law enforcement agency that obtains information under this subsection shall keep the information confidential as required under this subsection and s. 938.396 (1). A

social welfare agency that obtains information under this subsection shall keep the information confidential as required under ss. 48.78 and 938.78.

**SECTION 4.** 48.396 (5) (a) (intro.) of the statutes is amended to read:

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

**SECTION 5.** 48.396 (6) of the statutes is created to read:

48.396 **(6)** Records of law enforcement officers and of the court assigned to exercise jurisdiction under this chapter and ch. 938 shall be open for inspection to authorized representatives of the department of corrections, the department of health and family services, the department of justice, or a district attorney for use in the prosecution of any proceeding or any evaluation conducted under ch. 980, if the records involve or relate to an individual who is the subject of the proceeding or evaluation. The court in which the proceeding under ch. 980 is pending may issue any protective orders that it determines are appropriate concerning information made available or disclosed under this subsection. Any representative of the department of corrections, the department of health and family services, the department of justice, or a district attorney may disclose information obtained under this subsection for any purpose consistent with any proceeding under ch. 980.

**SECTION 6.** 48.78 (2) (e) of the statutes is created to read:

48.78 **(2)** (e) Notwithstanding par. (a), an agency shall, upon request, disclose information to authorized representatives of the department of corrections, the department of health and family services, the department of justice, or a district attorney for use in the prosecution of any proceeding or any evaluation conducted

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

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

10 48.981 **(7)** (a) 8s. Authorized representatives of the department of corrections,
11 the department of health and family services, the department of justice, or a district
12 attorney for use in the prosecution of any proceeding or any evaluation conducted
13 under ch. 980, if the reports or records involve or relate to an individual who is the
14 subject of the proceeding or evaluation. The court in which the proceeding under ch.
15 980 is pending may issue any protective orders that it determines are appropriate
16 concerning information made available or disclosed under this subdivision. Any
17 representative of the department of corrections, the department of health and family
18 services, the department of justice, or a district attorney may disclose information
19 obtained under this subdivision for any purpose consistent with any proceeding
20 under ch. 980.

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

22 51.30 **(3)** (a) Except as provided in pars. (b) ~~and~~, (bm), (c), and (d), the files and
23 records of the court proceedings under this chapter shall be closed but shall be
24 accessible to any individual who is the subject of a petition filed under this chapter.

25 **SECTION 9.** 51.30 (3) (b) of the statutes is amended to read:

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

**SECTION 10.** 51.30 (3) (bm) of the statutes is created to read:

51.30 **(3)** (bm) Authorized representatives of the department of corrections, the department of health and family services, the department of justice, or a district attorney shall have access to the files and records of court proceedings under this chapter for use in the prosecution of any proceeding or any evaluation conducted under ch. 980, if the files or records involve or relate to an individual who is the subject of the proceeding or evaluation. The court in which the proceeding under ch. 980 is pending may issue any protective orders that it determines are appropriate concerning information made available or disclosed under this paragraph. Any representative of the department of corrections, the department of health and family services, the department of justice, or a district attorney may disclose information obtained under this paragraph for any purpose consistent with any proceeding under ch. 980.

**SECTION 11.** 51.30 (4) (b) 8m. of the statutes is amended to read:

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

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

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

**SECTION 13.** 51.30 (4) (b) 10m. of the statutes is amended to read:

51.30 **(4)** (b) 10m. To the department of justice or a district attorney under s. 980.015 (3) (b), if the treatment records are maintained by an agency with jurisdiction, as defined in s. ~~980.015 (1)~~ 980.01 (1d), that has control or custody over a person who may meet the criteria for commitment as a sexually violent person under ch. 980.

**SECTION 14.** 51.30 (4) (b) 11. of the statutes is amended to read:

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

**SECTION 15.** 51.375 (1) (a) of the statutes is amended to read:

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

**SECTION 16.** 51.375 (2) (b) of the statutes is amended to read:

51.375 **(2)** (b) The department may administer a lie detector test to a sex offender as part of the sex offender's programming, care, or treatment. A patient may refuse to submit to a lie detector test under this paragraph. This refusal does not constitute a general refusal to participate in treatment. The results of a lie detector test under this paragraph may be used only in the care, treatment, or assessment of the subject or in programming for the subject. The results of a test may be disclosed only to persons employed at the facility at which the subject is placed who need to know the results for purposes related to care, treatment, or assessment of the patient, the committing court, the patient's attorney, or the attorney representing the state in a proceeding under ch. 980. The committing court to which the results of a test have been disclosed may admit the results in evidence in a proceeding under ch. 980.

**SECTION 17.** 51.42 (3) (aw) 1. d. of the statutes is amended to read:

51.42 **(3)** (aw) 1. d. Provide treatment and services that are specified in a conditional release plan approved by a court for a person who is a county resident and is conditionally released under s. 971.17 (3) or (4) or that are specified in a supervised release plan approved by a court under s. 980.06 (2) (c), 1997 stats., s. 980.08 (5), 2003 stats., or s. 980.08 ~~(5)~~ (4) (g). If the county department provides treatment and services under this subdivision, the department of health and family services shall,

from the appropriation under s. 20.435 (2) (bj), pay the county department for the costs of the treatment and services.

**SECTION 18.** 51.61 (1) (o) of the statutes is amended to read:

51.61 **(1)** (o) Except as otherwise provided, have a right not to be filmed or taped, unless the patient signs an informed and voluntary consent that specifically authorizes a named individual or group to film or tape the patient for a particular purpose or project during a specified time period. The patient may specify in such consent periods during which, or situations in which, the patient may not be filmed or taped. If a patient is legally incompetent, such consent shall be granted on behalf of the patient by the patient's guardian. A patient in Goodland Hall at the Mendota Mental Health Institute, or a patient detained or committed under ch. 980 and placed in a facility specified under s. 980.065, may be filmed or taped for security purposes without the patient's consent, except that such a patient may not be filmed in patient bedrooms or bathrooms ~~for any purpose~~ without the patient's consent <u>unless the patient is engaged in dangerous or disruptive behavior. A treatment activity involving a patient committed or detained under ch. 980 may be filmed or taped if the purpose of the recording is to assess the quality of the treatment activity or to facilitate clinical supervision of the staff involved in the treatment activity</u>.

**SECTION 19.** 109.09 (1) of the statutes is amended to read:

109.09 **(1)** The department shall investigate and attempt equitably to adjust controversies between employers and employees as to alleged wage claims. The department may receive and investigate any wage claim which is filed with the department, or received by the department under s. 109.10 (4), no later than 2 years after the date the wages are due. The department may, after receiving a wage claim, investigate any wages due from the employer against whom the claim is filed to any

employee during the period commencing 2 years before the date the claim is filed. The department shall enforce this chapter and ss. 66.0903, 103.02, 103.49, 103.82, 104.12 and 229.8275. In pursuance of this duty, the department may sue the employer on behalf of the employee to collect any wage claim or wage deficiency and ss. 109.03 (6) and 109.11 (2) and (3) shall apply to such actions. Except for actions under s. 109.10, the department may refer such an action to the district attorney of the county in which the violation occurs for prosecution and collection and the district attorney shall commence an action in the circuit court having appropriate jurisdiction. Any number of wage claims or wage deficiencies against the same employer may be joined in a single proceeding, but the court may order separate trials or hearings. In actions that are referred to a district attorney under this subsection, any taxable costs recovered by the district attorney shall be paid into the general fund of the county in which the violation occurs and used by that county to meet its financial responsibility under s. 978.13 (2) (b) for the operation of the office of the district attorney who prosecuted the action.

**SECTION 20.** 118.125 (2) (ck) of the statutes is created to read:

118.125 **(2)** (ck) The school district clerk or his or her designee shall make pupil records available for inspection or, upon request, disclose the contents of pupil records to authorized representatives of the department of corrections, the department of health and family services, the department of justice, or a district attorney for use in the prosecution of any proceeding or any evaluation conducted under ch. 980, if the pupil records involve or relate to an individual who is the subject of the proceeding or evaluation. The court in which the proceeding under ch. 980 is pending may issue any protective orders that it determines are appropriate concerning pupil records made available or disclosed under this paragraph. Any

representative of the department of corrections, the department of health and family services, the department of justice, or a district attorney may disclose information obtained under this paragraph for any purpose consistent with any proceeding under ch. 980.

**SECTION 21.** 146.82 (2) (c) of the statutes is amended to read:

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

**SECTION 22.** 146.82 (2) (cm) of the statutes is created to read:

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

**SECTION 23.** 301.03 (19) of the statutes is amended to read:

301.03 **(19)** Work to minimize, to the greatest extent possible, the residential population density of sex offenders, as defined in s. 302.116 (1) (b), who are on probation, parole, or extended supervision or placed on supervised release under s. 980.06 (2) (c), 1997 stats., s. 980.08 (5), 2003 stats., or s. 980.08 ~~(5)~~ (4) (g).

**SECTION 24.** 301.45 (1g) (dt) of the statutes is amended to read:

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

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

301.45 **(3)** (a) 3r. If the person has been committed under ch. 980, he or she is subject to this subsection upon being placed on supervised release under s. 980.06 (2), 1997 stats., or s. 980.08 or, if he or she was not placed on supervised release, before being discharged under s. 980.10, 2003 stats., or s. 980.09 ~~or 980.10~~ (4).

**SECTION 26.** 301.45 (3) (b) 3. of the statutes is amended to read:

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

**SECTION 27.** 301.45 (5) (b) 2. of the statutes is amended to read:

301.45 **(5)** (b) 2. The person has been found to be a sexually violent person under ch. 980, regardless of whether the person ~~is~~ has been discharged under s. 980.10, 2003 stats., or s. 980.09 ~~or 980.10~~ (4) from the sexually violent person commitment, except that the person no longer has to comply with this section if the finding that the person is a sexually violent person has been reversed, set aside or vacated.

**SECTION 28.** 756.06 (2) (b) of the statutes is amended to read:

756.06 **(2)** (b) Except as provided in par. (c) and ss. 980.05 (2) and (2m) (c), 980.09 (3), and 980.095 (1), a jury in a civil case shall consist of 6 persons unless a party requests a greater number, not to exceed 12. The court, on its own motion, may require a greater number, not to exceed 12.

~~****NOTE: Please review the cross-references to ensure they are what you intend.~~

**SECTION 29.** 801.52 of the statutes is amended to read:

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

**SECTION 30.** 808.04 (3) of the statutes is amended to read:

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

**SECTION 31.** 808.04 (4) of the statutes is amended to read:

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

**SECTION 32.** 808.075 (4) (h) of the statutes is amended to read:

808.075 **(4)** (h) Commitment, supervised release, recommitment, discharge, and postcommitment relief under s. 980.10, 2003 stats., or ss. 980.06, 980.08, 980.09~~,~~ ~~980.10~~ (4), and 980.101 of a person found to be a sexually violent person under ch. 980.

**SECTION 33.** 809.10 (1) (d) of the statutes is amended to read:

809.10 **(1)** (d) *Docketing statement.* The person shall send the court of appeals an original and one copy of a completed docketing statement on a form prescribed by the court of appeals. The docketing statement shall accompany the court of appeals' copy of the notice of appeal. The person shall send a copy of the completed docketing statement to the other parties to the appeal. Docketing statements need not be filed in appeals brought under s. 809.105, 809.107, 809.32, or 974.06 (7), in cases under ch. 980, or in cases in which a party represents himself or herself. Docketing statements need not be filed in appeals brought under s. 809.30 or 974.05, or by the state or defendant in permissive appeals in criminal cases pursuant to s. 809.50, except that docketing statements shall be filed in cases arising under chs. 48, 51, 55, or 938.

**SECTION 34.** 809.30 (1) (c) of the statutes is amended to read:

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

**SECTION 35.** 809.30 (1) (f) of the statutes is amended to read:

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

**SECTION 36.** 814.61 (1) (c) 6. of the statutes is created to read:

814.61 **(1)** (c) 6. An action to commit a person under ch. 51, 55, or 980.

**SECTION 37.** 905.04 (4) (a) of the statutes is amended to read:

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

**SECTION 38.** 911.01 (4) (c) of the statutes is amended to read:

911.01 **(4)** (c) *Miscellaneous proceedings.* Proceedings for extradition or rendition; sentencing, granting or revoking probation, modification of a bifurcated sentence under s. 302.113 (9g), adjustment of a bifurcated sentence under s. 973.195 (1r), issuance of arrest warrants, criminal summonses and search warrants; hearings under s. 980.09 (2); proceedings under s. 971.14 (1) (c); proceedings with respect to pretrial release under ch. 969 except where habeas corpus is utilized with respect to release on bail or as otherwise provided in ch. 969.

***NOTE: Please review the cross-reference to ensure it is what you intend.

**SECTION 39.** 938.35 (1) (e) of the statutes is created to read:

938.35 **(1)** (e) In a hearing, trial, or other proceeding under ch. 980.

**SECTION 40.** 938.396 (1) of the statutes is amended to read:

938.396 **(1)** Law enforcement officers' records of juveniles shall be kept separate from records of adults. Law enforcement officers' records of juveniles shall not be open to inspection or their contents disclosed except under sub. (1b), (1d), (1g), (1m), (1r), (1t), (1x) ~~or~~, (5), or (10) or s. 938.293 or by order of the court. This subsection does not apply to representatives of the news media who wish to obtain information for the purpose of reporting news without revealing the identity of the juvenile involved, to the confidential exchange of information between the police and officials of the school attended by the juvenile or other law enforcement or social welfare agencies, or to juveniles 10 years of age or older who are subject to the jurisdiction of the court of criminal jurisdiction. A public school official who obtains information under this subsection shall keep the information confidential as required under s. 118.125 and a private school official who obtains information under this subsection shall keep the information confidential in the same manner as is required of a public school official under s. 118.125. A law enforcement agency that obtains information under this subsection shall keep the information confidential as required under this subsection and s. 48.396 (1). A social welfare agency that obtains information under this subsection shall keep the information confidential as required under ss. 48.78 and 938.78.

**SECTION 41.** 938.396 (2) (e) of the statutes is renumbered 938.396 (10) and amended to read:

938.396 **(10)** ~~Upon request of the department of corrections to review court~~ A law enforcement agency's records and records ~~for the purpose of providing, under s. 980.015 (3) (a)~~ of the court assigned to exercise jurisdiction under this chapter and ch. 48 shall be open for inspection by authorized representatives of the department of corrections, the department of health and family services, the department of

justice, or a district attorney ~~with a person's offense history, the court shall open for inspection by authorized representatives of the department of corrections the records of the court relating to any juvenile who has been adjudicated delinquent for a sexually violent offense, as defined in s. 980.01 (6)~~ for use in the prosecution of any proceeding or any evaluation conducted under ch. 980, if the records involve or relate to an individual who is the subject of the proceeding or evaluation. The court in which the proceeding under ch. 980 is pending may issue any protective orders that it determines are appropriate concerning information made available or disclosed under this subsection. Any representative of the department of corrections, the department of health and family services, the department of justice, or a district attorney may disclose information obtained under this subsection for any purpose consistent with any proceeding under ch. 980.

**SECTION 42.** 938.396 (5) (a) (intro.) of the statutes is amended to read:

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

**SECTION 43.** 938.78 (2) (e) of the statutes is amended to read:

938.78 **(2)** (e) ~~Paragraph (a) does not prohibit the department from disclosing~~ Notwithstanding par. (a), an agency shall, upon request, disclose information ~~about an individual adjudged delinquent under s. 938.183 or 938.34 for a sexually violent offense, as defined in s. 980.01 (6),~~ to authorized representatives of the department of corrections, the department of health and family services, the department of justice, or a district attorney ~~or a judge acting under ch. 980 or to an attorney who represents a person subject to a petition~~ for use in the prosecution of any proceeding

1 or any evaluation conducted under ch. 980, if the information involves or relates to
2 an individual who is the subject of the proceeding or evaluation. The court in which
3 the ~~petition~~ proceeding under ~~s. 980.02 is filed~~ ch. 980 is pending may issue any
4 protective orders that it determines are appropriate concerning information
5 disclosed under this paragraph. Any representative of the department of
6 corrections, the department of health and family services, the department of justice,
7 or a district attorney may disclose information obtained under this paragraph for any
8 purpose consistent with any proceeding under ch. 980.

9 **SECTION 44.** 940.20 (1g) of the statutes is created to read:

10 940.20 **(1g)** BATTERY BY CERTAIN COMMITTED PERSONS. Any person placed in a
11 facility under s. 980.065 and who intentionally causes bodily harm to an officer,
12 employee, agent, visitor, or other resident of the facility, without his or her consent,
13 is guilty of a Class H felony.

14 **SECTION 45.** 946.42 (1) (a) of the statutes is amended to read:

15 946.42 **(1)** (a) "Custody" includes without limitation actual custody of an
16 institution, including a secured correctional facility, as defined in s. 938.02 (15m), a
17 secured child caring institution, as defined in s. 938.02 (15g), a secured group home,
18 as defined in s. 938.02 (15p), a secure detention facility, as defined in s. 938.02 (16),
19 a Type 2 child caring institution, as defined in s. 938.02 (19r), a facility used for the
20 detention of persons detained under s. 980.04 (1), a facility specified in s. 980.065,
21 or a juvenile portion of a county jail, or actual custody of a peace officer or institution
22 guard. "Custody" also includes the constructive custody of persons placed on
23 supervised release under ch. 980 and constructive custody of prisoners and juveniles
24 subject to an order under s. 48.366, 938.183, 938.34 (4d), (4h) or (4m) or 938.357 (4)
25 or (5) (e) temporarily outside the institution whether for the purpose of work, school,

medical care, a leave granted under s. 303.068, a temporary leave or furlough granted to a juvenile or otherwise. Under s. 303.08 (6) it means, without limitation, that of the sheriff of the county to which the prisoner was transferred after conviction. It does not include the custody of a probationer, parolee or person on extended supervision by the department of corrections or a probation, extended supervision or parole officer or the custody of a person who has been released to aftercare supervision under ch. 938 unless the person is in actual custody or is subject to a confinement order under s. 973.09 (4).

**SECTION 46.** 946.42 (3m) of the statutes is created to read:

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

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

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

**SECTION 47.** 950.04 (1v) (xm) of the statutes is amended to read:

950.04 **(1v)** (xm) To have the department of health and family services make a reasonable attempt to notify the victim under s. 980.11 regarding supervised release under s. 980.08 and discharge under s. 980.09 ~~or 980.10~~ (4).

**SECTION 48.** 967.03 of the statutes is amended to read:

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

**SECTION 49.** 972.15 (4) of the statutes is amended to read:

1 972.15 **(4)** After sentencing, unless otherwise authorized under sub. (5) or (6)
2 or ordered by the court, the presentence investigation report shall be confidential
3 and shall not be made available to any person except upon specific authorization of
4 the court.

5 **SECTION 50.** 972.15 (6) of the statutes is created to read:

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

10 (a) The department of corrections.

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

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

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

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

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

18 **SECTION 51.** 978.03 (3) of the statutes, as affected by 2005 Wisconsin Act 25,
19 is amended to read:

20 978.03 **(3)** Any assistant district attorney under sub. (1), (1m), or (2) must be
21 an attorney admitted to practice law in this state and, except as provided in s.
22 978.043 (1), may perform any duty required by law to be performed by the district
23 attorney. The district attorney of the prosecutorial unit under sub. (1), (1m), or (2)
24 may appoint such temporary counsel as may be authorized by the department of
25 administration.

1 **SECTION 52.** 978.04 of the statutes is amended to read:

2 **978.04 Assistants in certain prosecutorial units.** The district attorney of
3 any prosecutorial unit having a population of less than 100,000 may appoint one or
4 more assistant district attorneys as necessary to carry out the duties of his or her
5 office and as may be requested by the department of administration authorized in
6 accordance with s. 16.505. Any such assistant district attorney must be an attorney
7 admitted to practice law in this state and, except as provided in s. 978.043 (1), may
8 perform any duty required by law to be performed by the district attorney.

9 **SECTION 53.** 978.043 of the statutes is renumbered 978.043 (1) and amended
10 to read.

11 978.043 **(1)** The district attorney of the prosecutorial unit that consists of
12 Brown County and the district attorney of the prosecutorial unit that consists of
13 Milwaukee County shall each assign one assistant district attorney in his or her
14 prosecutorial unit to be a sexually violent person commitment prosecutor. An
15 assistant district attorney assigned under this ~~section~~ subsection to be a sexually
16 violent person commitment prosecutor may engage only in the prosecution of
17 sexually violent person commitment proceedings under ch. 980 and, at the request
18 of the district attorney of the prosecutorial unit, may file and prosecute sexually
19 violent person commitment proceedings under ch. 980 in any prosecutorial unit in
20 this state.

21 **SECTION 54.** 978.043 (2) of the statutes is created to read:

22 978.043 **(2)** If an assistant district attorney assigned under sub. (1) prosecutes
23 or assists in the prosecution of a case under ch. 980 in a prosecutorial unit other than
24 his or her own, the prosecutorial unit in which the case is heard shall reimburse the
25 assistant district attorney's own prosecutorial unit for his or her reasonable costs

associated with the prosecution, including transportation, lodging, and meals. Unless otherwise agreed upon by the prosecutorial units involved, the court hearing the case shall determine the amount of money to be reimbursed for expert witness fees under this subsection.

**SECTION 55.** 978.045 (1r) (intro.) of the statutes is amended to read:

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

**SECTION 56.** 978.05 (6) (a) of the statutes is amended to read:

978.05 **(6)** (a) Institute, commence or appear in all civil actions or special proceedings under and perform the duties set forth for the district attorney under ch. 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), 109.09, 343.305 (9) (a), 453.08, 806.05, 938.09, 938.18, 938.355 (6) (b) and (6g) (a), 946.86, 946.87, 961.55 (5), 971.14 and 973.075 to 973.077, perform any duties in connection with court proceedings in a court assigned to exercise jurisdiction under chs. 48 and 938 as the judge may request and perform all appropriate duties and appear if the district attorney is designated in specific statutes, including matters within chs. 782, 976 and 979 and ss. 51.81 to 51.85. Nothing in this paragraph limits the authority of the county board to designate, under s. 48.09 (5), that the corporation

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

4 **SECTION 57.** 978.05 (8) (b) of the statutes, as affected by 2005 Wisconsin Act 25,
5 is amended to read:

6 978.05 **(8)** (b) Hire, employ, and supervise his or her staff and, subject to s.
7 978.043 (1), make appropriate assignments of the staff throughout the prosecutorial
8 unit. The district attorney may request the assistance of district attorneys, deputy
9 district attorneys, or assistant district attorneys from other prosecutorial units or
10 assistant attorneys general who then may appear and assist in the investigation and
11 prosecution of any matter for which a district attorney is responsible under this
12 chapter in like manner as assistants in the prosecutorial unit and with the same
13 authority as the district attorney in the unit in which the action is brought. Nothing
14 in this paragraph limits the authority of counties to regulate the hiring, employment,
15 and supervision of county employees.

16 **SECTION 58.** 978.13 (2) of the statutes is renumbered 978.13 (2) (b).

17 **SECTION 59.** 978.13 (2) (a) of the statutes is created to read:

18 978.13 **(2)** (a) In this subsection, "costs related to the operation of the district
19 attorney's office" include costs that a prosecutorial unit must pay under s. 978.043
20 (2) but do not include costs for which a prosecutorial unit receives reimbursement
21 under s. 978.043 (2).

22 **SECTION 60.** 980.01 (1) of the statutes is renumbered 980.01 (1h).

23 **SECTION 61.** 980.01 (1b) of the statutes is created to read:

24 980.01 **(1b)** "Act of sexual violence" means conduct that constitutes the
25 commission of a sexually violent offense.

1 **SECTION 62.** 980.01 (1j) of the statutes is created to read:

2 980.01 **(1j)** "Incarceration" includes confinement in a secured correctional
3 facility, as defined in s. 938.02 (15m), or a secured child caring institution, as defined
4 in s. 938.02 (15g), or a secured group home, as defined in s. 938.02 (15p), if the person
5 was placed in the facility for being adjudicated delinquent under s. 48.34, 1993 stats.,
6 or under s. 938.183 or 938.34 on the basis of a sexually violent offense.

7 **SECTION 63.** 980.01 (3) of the statutes is created to read:

8 980.01 **(3)** Except in ss. 980.075, 980.09, and 980.095, "petitioner" means the
9 agency or person that filed a petition under s. 980.02.

10 **SECTION 64.** 980.01 (5) of the statutes is amended to read:

11 980.01 **(5)** "Sexually motivated" means that one of the purposes for an act is
12 for the actor's sexual arousal or gratification <u>or for the sexual humiliation or</u>
13 <u>degradation of the victim</u>.

14 **SECTION 65.** 980.01 (6) (a) of the statutes is amended to read:

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

17 **SECTION 66.** 980.01 (6) (am) of the statutes is created to read:

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

20 **SECTION 67.** 980.01 (6) (b) of the statutes is amended to read:

21 980.01 **(6)** (b) Any crime specified in s. 940.01, 940.02, <u>940.03,</u> 940.05, 940.06,
22 940.19 <u>(2),</u> (4) ~~or~~, (5)<u>, or (6)</u>, 940.195 (4) or (5), 940.30, 940.305, 940.31 ~~or~~<u>, 941.32,</u>
23 943.10<u>, 943.32, or 948.03</u> that is determined, in a proceeding under s. 980.05 (3) (b),
24 to have been sexually motivated.

25 **SECTION 68.** 980.01 (6) (bm) of the statutes is created to read:

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

**SECTION 69.** 980.01 (6) (c) of the statutes is amended to read:

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

**SECTION 70.** 980.01 (7) of the statutes is amended to read:

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

**SECTION 71.** 980.01 (8) of the statutes is created to read:

980.01 **(8)** "Significant progress in treatment" means that the person has done all of the following:

(a) Meaningfully participated in the treatment program specifically designed to reduce his or her risk to reoffend offered at a facility described under s. 980.065.

(b) Participated in the treatment program at a level that was sufficient to allow the identification of his or her specific treatment needs and then demonstrated, through overt behavior, a willingness to work on addressing the specific treatment needs.

(c) Demonstrated an understanding of the thoughts, attitudes, emotions, behaviors, and sexual arousal linked to his or her sexual offending and an ability to identify when the thoughts, emotions, behaviors, or sexual arousal occur.

(d) Demonstrated sufficiently sustained change in the thoughts, attitudes, emotions, and behaviors and sufficient management of sexual arousal such that one could reasonably assume that, with continued treatment, the change could be maintained.

**SECTION 72.** 980.01 (9) of the statutes is created to read:

980.01 **(9)** "Substantially probable" means much more likely than not.

**SECTION 73.** 980.015 (1) of the statutes is renumbered 980.01 (1d) and amended to read:

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

**SECTION 74.** 980.015 (2) (intro.) of the statutes is amended to read:

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

**SECTION 75.** 980.015 (2) (a) of the statutes is amended to read:

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

**SECTION 76.** 980.015 (2) (b) of the statutes is amended to read:

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

**SECTION 77.** 980.015 (2) (c) of the statutes is amended to read:

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

**SECTION 78.** 980.015 (2) (d) of the statutes is created to read:

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

**SECTION 79.** 980.015 (4) of the statutes is renumbered 980.14 (2) and amended to read:

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

**SECTION 80.** 980.02 (1) (a) of the statutes is amended to read:

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

**SECTION 81.** 980.02 (1) (b) 3. of the statutes is created to read:

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

**SECTION 82.** 980.02 (1m) of the statutes is created to read:

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

**SECTION 83.** 980.02 (2) (ag) of the statutes is repealed.

**SECTION 84.** 980.02 (4) (intro.) of the statutes is amended to read:

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

**SECTION 85.** 980.02 (6) of the statutes is created to read:

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

**SECTION 86.** 980.03 (2) (intro.) of the statutes is amended to read:

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

****NOTE: Please check the cross-references to ensure they are what you intended.

**SECTION 87.** 980.03 (3) of the statutes is amended to read:

980.03 **(3)** The person who is the subject of the petition, the person's attorney, or the ~~department of justice or the district attorney~~ petitioner may request that a trial under s. 980.05 be to a jury ~~of 12~~. A request for a jury trial shall be made as provided under s. 980.05 (2). Notwithstanding s. 980.05 (2), if the person, the

person's attorney, or the ~~department of justice or the district attorney~~ petitioner does not request a jury trial, the court may on its own motion require that the trial be to a jury ~~of 12~~. The jury shall be selected as provided under s. 980.05 (2m). A verdict of a jury under this chapter is not valid unless it is unanimous.

**SECTION 88.** 980.03 (4) of the statutes is renumbered 980.031 (3) and amended to read:

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

**(4)** If ~~the person~~ a party retains ~~a qualified expert~~ or the court appoints a licensed physician, licensed psychologist, or other mental health professional ~~person of his or her own choice~~ to conduct an examination under this chapter of the person's mental condition, the examiner shall have reasonable access to the person for the purpose of the examination, as well as to the person's past and present treatment records, as defined in s. 51.30 (1) (b), and patient health care records as provided

1 under s. 146.82 (2) ~~(c). If the person is indigent, the court shall, upon the person's~~
2 ~~request, appoint a qualified and available expert or professional person to perform~~
3 ~~an examination and participate in the trial or other proceeding on the person's~~
4 ~~behalf. Upon the order of the circuit court, the county shall pay, as part of the costs~~
5 ~~of the action, the costs of an expert or professional person appointed by a court under~~
6 ~~this subsection to perform an examination and participate in the trial or other~~
7 ~~proceeding on behalf of an indigent person. An expert~~ (cm), past and present juvenile
8 records, as provided under ss. 48.396 (6), 48.78 (2) (e), 938.396 (10), and 938.78 (2)
9 (e), and the person's past and present correctional records, including presentence
10 investigation reports under s. 972.15 (6).

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

20 **SECTION 89.** 980.03 (5) of the statutes is repealed.

21 **SECTION 90.** 980.031 (title) of the statutes is created to read:

22 **980.031** (title) **Examinations.**

23 **SECTION 91.** 980.031 (1) and (2) of the statutes are created to read:

24 980.031 **(1)** If a person who is the subject of a petition filed under s. 980.02
25 denies the facts alleged in the petition, the court may appoint at least one qualified

licensed physician, licensed psychologist, or other mental health professional to conduct an examination of the person's mental condition and testify at trial.

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

**SECTION 92.** 980.034 of the statutes is created to read:

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

**(2)** The motion shall be in writing and supported by affidavit which shall state evidentiary facts showing the nature of the prejudice alleged. The petitioner may file counter affidavits.

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

1 **(4)** (a) Instead of changing the place of trial under sub. (3), the court may
2 require the selection of a jury under par. (b) if all of the following apply:
3 1. The court will sequester the jurors during the trial.
4 2. There are grounds for changing the place of trial under sub. (1).
5 3. The estimated cost to the county of using the procedure under this subsection
6 is less than the estimated cost to the county of holding the trial in another county.
7 (b) A court that proceeds under this subsection shall follow the procedure under
8 sub. (3) until the jury is chosen in the 2nd county. At that time, the proceedings shall
9 return to the original county using the jurors selected in the 2nd county. The original
10 county shall reimburse the 2nd county for all applicable costs under s. 814.22.
11 **SECTION 93.** 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 disclose to a person subject to
19 this chapter or his or her attorney, and permit the person subject to this chapter or
20 his or her attorney to inspect and copy or photograph, all of the following materials
21 and information, if the material or information is within the possession, custody, or
22 control of the state:
23 (a) Any written or recorded statement made by the person subject to this
24 chapter concerning the allegations in the petition filed under s. 980.02 or concerning

other matters at issue in the trial or proceeding and the names of witnesses to the written statements of the person subject to this chapter.

(b) A written summary of all oral statements of the person subject to this chapter that the prosecuting attorney plans to use at the trial or proceeding and the names of witnesses to the oral statements of the person subject to this chapter.

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

(d) A copy of the criminal record of the person subject to this chapter.

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

(f) Any relevant written or recorded statements of a witness listed under par. (e), including all of the following:

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

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

(g) The criminal record of a witness listed under par. (e) that is known to the prosecuting attorney.

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

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

(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 his or her attorney
3 shall disclose to the prosecuting attorney, and permit the prosecuting attorney to
4 inspect and copy or photograph, all of the following materials and information, if the
5 material or information is within the possession, custody, or control of the person who
6 is subject to this chapter or his or her attorney:

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

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

13 (c) The criminal record of a witness listed under par. (a) if the criminal record
14 is known to the attorney for the person who is subject to this chapter.

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

20 (e) Any physical or documentary evidence that the person who is subject to this
21 chapter intends to offer in evidence at the trial or proceeding.

22 **(3m)** WHEN DISCLOSURE MUST BE MADE. A party required to make a disclosure
23 under this section shall do so within a reasonable time after the probable cause
24 hearing and within a reasonable time before a trial under s. 980.05, if the other
25 party's demand is made in connection with a trial. If the demand is made in

1 connection with a proceeding under s. 980.08 or 980.09 (3), the party shall make the
2 disclosure within a reasonable time before the start of that proceeding.

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

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

11 **(6)** PROTECTIVE ORDER. Upon motion of a party, the court may at any time order
12 that discovery, inspection, or the listing of witnesses required under this section be
13 denied, restricted, or deferred, or make other appropriate orders. If the prosecuting
14 attorney or the attorney for a person subject to this chapter certifies that listing a
15 witness under sub. (2) (e) or (3) (a) may subject the witness or others to physical or
16 economic harm or coercion, the court may order that the deposition of the witness be
17 taken under s. 967.04 (2) to (6). The name of the witness need not be divulged prior
18 to the taking of such deposition. If the witness becomes unavailable or changes his
19 or her testimony, the deposition shall be admissible at trial as substantive evidence.

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

24 **(8)** CONTINUING DUTY TO DISCLOSE. If, after complying with a requirement of this
25 section, and before or during trial, a party discovers additional material or the names

of additional witnesses requested that are subject to discovery, inspection, or production under this section, the party shall promptly notify the other party of the existence of the additional material or names.

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

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

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

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

**SECTION 94.** 980.038 of the statutes is created to read:

**980.038 Miscellaneous procedural provisions. (1)** MOTIONS CHALLENGING JURISDICTION OR COMPETENCY OF COURT OR TIMELINESS OF PETITION. (a) A motion challenging the jurisdiction or competency of the court or the timeliness of a petition

filed under s. 980.02 shall be filed within 30 days after the court holds the probable cause hearing under s. 980.04 (2). Failure to file a motion within the time specified in this paragraph waives the right to challenge the jurisdiction or competency of the court or the timeliness of a petition filed under s. 980.02.

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

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

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

**(3)** TESTIMONY BY TELEPHONE OR LIVE AUDIOVISUAL MEANS. Unless good cause to the contrary is shown, proceedings under ss. 980.04 (2) (a) and 980.08 (7) (d) may be conducted by telephone or audiovisual means, if available. If the proceedings are required to be reported under SCR 71.02 (2), the proceedings shall be reported by a court reporter who is in simultaneous voice communication with all parties to the

1 proceeding. Regardless of the physical location of any party to the telephone call, any
2 action taken by the court or any party has the same effect as if made in open court.
3 A proceeding under this subsection shall be conducted in a courtroom or other place
4 reasonably accessible to the public. Simultaneous access to the proceeding shall be
5 provided to a person entitled to attend by means of a loudspeaker or, upon request
6 to the court, by making the person party to the telephone call without charge.

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

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

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

Failure to object to a period of delay or a continuance waives the time limit that is the subject of the period of delay or continuance.

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

**SECTION 95.** 980.04 (1) of the statutes is amended to read:

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

**SECTION 96.** 980.04 (2) of the statutes is renumbered 980.04 (2) (a) and amended to read:

980.04 **(2)** (a) Whenever a petition is filed under s. 980.02, the court shall hold a hearing to determine whether there is probable cause to believe that the person named in the petition is a sexually violent person. ~~If the person named in the petition~~

~~is in custody, the court shall hold the probable cause hearing within 72 hours after the petition is filed, excluding Saturdays, Sundays and legal holidays. If the person named in the petition is not in custody~~

(b) 1. Except as provided in subd. 2., the court shall hold the probable cause hearing within ~~a reasonable time~~ 30 days, excluding Saturdays, Sundays, and legal holidays, after the filing of the petition, unless that time is extended by the court for good cause shown upon its own motion, the motion of any party, or the stipulation of the parties.

**SECTION 97.** 980.04 (2) (b) 2. of the statutes is created to read:

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

**SECTION 98.** 980.04 (3) of the statutes is amended to read:

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

probable cause does not exist to believe that the person is a sexually violent person, the court shall dismiss the petition.

**SECTION 99.** 980.04 (5) of the statutes is amended to read:

980.04 **(5)** If the person named in the petition claims or appears to be indigent, the court shall, prior to the probable cause hearing under sub. (2) (a), refer the person to the authority for indigency determinations under s. 977.07 (1) and, if applicable, the appointment of counsel.

**SECTION 100.** 980.05 (1) of the statutes is amended to read:

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

**SECTION 101.** 980.05 (1m) of the statutes is repealed.

**SECTION 102.** 980.05 (2) of the statutes is amended to read:

980.05 **(2)** The person who is the subject of the petition, the person's attorney, or the ~~department of justice or the district attorney~~ petitioner may request that a trial under this section be to a jury of 12. A request for a jury trial under this subsection shall be made within 10 days after the probable cause hearing under s. 980.04 (2) (a). If no request is made, the trial shall be to the court. The person, the person's attorney, or the ~~district attorney or department of justice, whichever is applicable,~~ petitioner may withdraw his, her, or its request for a jury trial if the 2 persons who did not make the request consent to the withdrawal.

**SECTION 103.** 980.05 (2m) of the statutes is created to read:

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

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

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

**SECTION 104.** 980.05 (3) (a) of the statutes is amended to read:

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

**SECTION 105.** 980.05 (3) (b) of the statutes is amended to read:

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

**SECTION 106.** 980.07 (title) of the statutes is amended to read:

**980.07** (title) **Periodic reexamination and treatment progress; report from the department.**

**SECTION 107.** 980.07 (1) of the statutes is amended to read:

980.07 **(1)** If a person ~~has been~~ is committed under s. 980.06 and has not been discharged under s. 980.09 (4), the department shall appoint a commissioner to conduct ~~an examination~~ a reexamination of ~~his or her~~ the person's mental condition within ~~6~~ 12 months after ~~an~~ the date of the initial commitment order under s. 980.06 and again thereafter at least once each 12 months ~~for the purpose of determining~~ to determine whether the person has made sufficient progress for the court to consider whether the person should be placed on supervised release or discharged. The examiner shall apply the criteria under s. 980.08 (4) (cg) when considering if the person should be placed on supervised release and shall apply the criteria under s. 980.09 (3) when considering if the person should be discharged. At the time of a reexamination under this section, the person who has been committed may retain or ~~seek to~~ have the court appoint an examiner as provided under s. ~~980.03 (4)~~ 980.031 (3), except that the court is not required to appoint an examiner if supervised release or discharge is supported by the examination conducted by the examiner appointed by the department. The county shall pay the costs of an examiner appointed by the court as provided under s. 51.20 (18) (a).

**SECTION 108.** 980.07 (2) of the statutes is amended to read:

980.07 **(2)** Any examiner conducting ~~an examination~~ a reexamination under ~~this section~~ sub. (1) shall prepare a written report of the ~~examination~~ reexamination no later than 30 days after the date of the ~~examination~~ reexamination. The examiner ~~shall place a copy of the report in the person's medical records and~~ shall provide a copy of the report to the ~~court that committed the person under s. 980.06~~ department.

**SECTION 109.** 980.07 (3) of the statutes is amended to read:

980.07 **(3)** Notwithstanding sub. (1), the court that committed a person under s. 980.06 may order a reexamination of the person at any time during the period in which the person is subject to the commitment order. Any report ordered under this subsection shall conform to sub. (4).

****NOTE: Please review the cross-reference in the scored text. The instructions read "sub. (1)" but I changed it to "sub. (4)."

**SECTION 110.** 980.07 (4), (5) and (6) of the statutes are created to read:

980.07 **(4)** At any reexamination under sub. (1), the treating professional shall prepare a treatment progress report. The treating professional shall provide a copy of the treatment progress report to the department. The treatment progress report shall consider all of the following:

****NOTE: Should "treating professional" be defined?

(a) The specific factors associated with the person's risk for committing another sexually violent offense.

(b) Whether the person has made significant progress in treatment or has refused treatment.

(c) The ongoing treatment needs of the person.

(d) Any specialized needs or conditions associated with the person that must be considered in future treatment planning.

1 **(5)** Any examiners under sub. (1) and treating professionals under sub. (4) shall
2 have reasonable access to the person for purposes of reexamination, to the person's
3 past and present treatment records, as defined in s. 51.30 (1) (b), and to the person's
4 patient health care records, as provided under s. 146.82 (2) (c).

5 **(6)** The department shall submit an annual report comprised of the
6 reexamination report under sub. (1) and the treatment progress report under sub.
7 (4) to the court that committed the person under s. 980.06. A copy of the annual
8 report shall be placed in the person's treatment records. The department shall
9 provide a copy of the annual report to the person committed under s. 980.06, the
10 department of justice, and the district attorney, if applicable. The court shall provide
11 a copy of the annual report to the person's attorney as soon as he or she is retained
12 or appointed.

13 **SECTION 111.** 980.075 of the statutes is created to read:

14 **980.075 Patient petition process. (1)** When the department submits its
15 report to the court under s. 980.07 (6), the person who has been committed under s.
16 980.06 may retain or have the court appoint an attorney as provided in s. 980.03 (2)
17 (a).

18 **(1m)** (a) When the department provides a copy of the report under s. 980.07 (6)
19 to the person who has been committed under s. 980.06, the department shall provide
20 to the person a standardized petition form for supervised release under s. 980.08 and
21 a standardized petition form for discharge under s. 980.09.

22 (b) The department shall, after consulting with the department of justice and
23 the state public defender, develop the standardized petition forms required under
24 par. (a).

1 **(2)** (a) Within 30 days after the department submits its report to the court
2 under s. 980.07 (6), the person who has been committed under s. 980.06 or his or her
3 attorney may submit one of the completed forms provided under sub. (1m) to the
4 court to initiate either a petition for supervised release or a petition for discharge.
5 (b) If no completed petition is filed in a timely manner under par. (a), the person
6 who has been committed under s. 980.06 will remain committed.
7 **(3)** If the person files a petition for discharge under s. 980.09 without counsel,
8 the court shall serve a copy of the petition and any supporting documents on the
9 district attorney or department of justice, whichever is applicable. If the person
10 petitions for discharge under s. 980.09 through counsel, his or her attorney shall
11 serve the district attorney or department of justice, whichever is applicable.
12 **(4)** (a) The petitioner may use experts or professional persons to support his
13 or her petition.
14 (b) The district attorney or the department of justice may use experts or
15 professional persons to support or oppose any petition.
16 **(5)** Subject to s. 980.03 (2) (a), before proceeding under s. 980.08 or 980.09 but
17 as soon as circumstances permit, the court shall refer the matter to the authority for
18 indigency determinations under s. 977.07 (1) and appointment of counsel under s.
19 977.05 (4) (j) if the person is not represented by counsel.

****NOTE: ~~See s. 980.08 (2)—is there any way to reduce the language redundancies?~~

20 **(6)** At any time before a hearing under s. 980.08 or 980.09, the department may
21 file a supplemental report if the department determines that court should have
22 additional information.
23 **SECTION 112.** 980.08 (title) of the statutes is repealed and recreated to read:

**980.08** (title) **Supervised release; procedures, implementation, revocation.**

**SECTION 113.** 980.08 (1) of the statutes is amended to read:

980.08 **(1)** Any person who is committed under s. 980.06 may petition the committing court to modify its order by authorizing supervised release if at least ~~18~~ 12 months have elapsed since the initial commitment order was entered or at least ~~6~~ 12 months have elapsed since the most recent release petition was denied or the most recent order for supervised release was revoked. The director of the facility at which the person is placed may file a petition under this subsection on the person's behalf at any time.

**SECTION 114.** 980.08 (3) of the statutes is amended to read:

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

**SECTION 115.** 980.08 (4) (a) of the statutes is amended to read:

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

**SECTION 116.** 980.08 (4) (b) of the statutes is repealed.

**SECTION 117.** 980.08 (4) (c) of the statutes is amended to read:

980.08 **(4)** (c) In making a decision under par. ~~(b)~~ (cg), the court may consider, without limitation because of enumeration, the nature and circumstances of the behavior that was the basis of the allegation in the petition under s. 980.02 (2) (a), the person's mental history and present mental condition, where the person will live, how the person will support himself or herself, and what arrangements are available to ensure that the person has access to and will participate in necessary treatment, including pharmacological treatment using an antiandrogen or the chemical equivalent of an antiandrogen if the person is a serious child sex offender. A decision under par. ~~(b)~~ (cg) on a petition filed by a person who is a serious child sex offender may not be made based on the fact that the person is a proper subject for pharmacological treatment using an antiandrogen or the chemical equivalent of an antiandrogen or on the fact that the person is willing to participate in pharmacological treatment using an antiandrogen or the chemical equivalent of an antiandrogen.

**SECTION 118.** 980.08 (4) (cg) of the statutes is created to read:

980.08 **(4)** (cg) The court may not authorize supervised release unless, based on all of the reports, trial records, and evidence presented, the court finds that all of the following criteria are met:

1. The person has made significant progress in treatment and the person's progress can be sustained while on supervised release.

2. It is substantially probable that the person will not engage in an act of sexual violence while on supervised release.

3. Treatment that meets the person's needs and a qualified provider of the treatment are reasonably available.

4. The person can be reasonably expected to comply with his or her treatment requirements and with all of his or her conditions or rules of supervised release that are imposed by the court or by the department.

5. A reasonable level of resources can provide for the level of residential placement, supervision, and ongoing treatment needs that are required for the safe management of the person while on supervised release.

**SECTION 119.** 980.08 (4) (cm) of the statutes is created to read:

980.08 **(4)** (cm) If the court finds that all of the criteria in par. (cg) are met, the court shall select a county to prepare a report under par. (e). Unless the court has good cause to select another county, the court shall select the person's county of residence as determined by the department under s. 980.105. The court may not select a county where there is a facility in which persons committed to institutional care under this chapter are placed unless that county is also that person's county of residence.

**SECTION 120.** 980.08 (4) (d), (e), (f) and (g) of the statutes are created to read:

980.08 **(4)** (d) The court shall authorize the petitioner, the person's attorney, the district attorney, any law enforcement agency in the county of intended placement, and any local governmental unit in the county of intended placement to

1 submit prospective residential options for community placement to the department
2 within 60 days following the selection of the county under par. (cm).
3 (e) The court shall order the county department under s. 51.42 in the county
4 of intended placement to prepare a report, either independently or with the
5 department of health and family services, identifying prospective residential options
6 for community placement. In identifying prospective residential options, the county
7 department shall consider the proximity of any potential placement to the residence
8 of other persons on supervised release and to the residence of persons who are in the
9 custody of the department of corrections and regarding whom a sex offender
10 notification bulletin has been issued to law enforcement agencies under s. 301.46
11 (2m) (a) or (am). The county department shall submit its report to the department
12 within 60 days following the court order.
13 (f) The court shall direct the department to use any submissions under par. (d),
14 the report submitted under par. (e), or other residential options identified by the
15 department to prepare a supervised release plan for the person. The department
16 shall prepare a supervised release plan that identifies the proposed residence. The
17 plan shall address the person's need, if any, for supervision, counseling, medication,
18 community support services, residential services, vocational services, and alcohol or
19 other drug abuse treatment. The supervised release plan shall be submitted to the
20 court within 90 days of the finding under par. (cg). The court may grant extensions
21 of this time period for good cause.
22 (g) The court shall review the plan submitted by the department under par.
23 (cm). If the details of the plan adequately meet the treatment needs of the individual
24 and the safety needs of the community, then the court shall approve the plan and
25 determine that supervised release is appropriate. If the details of the plan do not

adequately meet the treatment needs of the individual or the safety needs of the community, then the court shall determine that supervised release is not appropriate or direct the preparation of another supervised release plan to be considered by the court under this paragraph.

**SECTION 121.** 980.08 (5) of the statutes is repealed.

**SECTION 122.** 980.08 (6m) of the statutes is amended to read:

980.08 **(6m)** An order for supervised release places the person in the custody and control of the department. The department shall arrange for control, care and treatment of the person in the least restrictive manner consistent with the requirements of the person and in accordance with the plan for supervised release approved by the court under sub. ~~(5)~~ (4) (g). A person on supervised release is subject to the conditions set by the court and to the rules of the department. Within 10 days of imposing a rule, the department shall file with the court any additional rule of supervision not inconsistent with the rules or conditions imposed by the court. If the department wants to change a rule or condition of supervision imposed by the court, the department must obtain the court's approval. Before a person is placed on supervised release by the court under this section, the court shall so notify the municipal police department and county sheriff for the municipality and county in which the person will be residing. The notification requirement under this subsection does not apply if a municipal police department or county sheriff submits to the court a written statement waiving the right to be notified.

**(7)** (a) If the department ~~alleges~~ believes that a ~~released~~ person on supervised release, or awaiting placement on supervised release, has violated, or threatened to violate, any condition or rule ~~, or that~~ of supervised release, the department may

petition for revocation of the order granting supervised release as described in par. (c) or may detain the person.

(b) If the department believes that a person on supervised release, or awaiting placement on supervised release, is a threat to the safety of others ~~requires that supervised release be revoked, he or she may be taken into custody under the rules of the department. The department shall submit a statement showing probable cause of the detention and a~~, the department shall detain the person and petition ~~to revoke~~ for revocation of the order ~~for~~ granting supervised release ~~to~~ as described in par. (c).

(c) If the department concludes that the order granting supervised release should be revoked, it shall file with the committing court a statement alleging the violation and or threat of a violation and a petition to revoke the order for supervised release and provide a copy of each to the regional office of the state public defender responsible for handling cases in the county where the committing court is located. If the department has detained the person under par. (a) or (b), the department shall file the statement and the petition and provide them to the regional office of the state public defender within 72 hours after the detention, excluding Saturdays, Sundays and legal holidays. Pending the revocation hearing, the department may detain the person in a jail or in a hospital, center, or facility under s. 51.15 (2). The court shall refer the matter to the authority for indigency determinations under s. 977.07 (1) and appointment of counsel under s. 977.05 (4) (j). The determination of indigency and the appointment of counsel shall be done as soon as circumstances permit.

(d) The court shall hear the petition within 30 days, unless the hearing or time deadline is waived by the detained person. A final decision on the petition to revoke the order for supervised release shall be made within 90 days of the filing. Pending

the revocation hearing, the department may detain the person in ~~a jail or in a hospital, center or facility specified by s. 51.15 (2). The state has the burden of proving~~ the county jail or return him or her to institutional care.

**(8)** (a) If the court finds after a hearing, by clear and convincing evidence, that any rule or condition of release has been violated~~, or~~ and the court finds that the violation of the rule or condition merits the revocation of the order granting supervised release, the court may revoke the order for supervised release and order that the person be placed in institutional care. The court may consider alternatives to revocation. The person shall remain in institutional care until the person is discharged from the commitment under s. 980.09 or is placed again on supervised release under sub. (4) (g).

(b) If the court finds after a hearing, by clear and convincing evidence, that the safety of others requires that supervised release be revoked~~. If~~ the court ~~determines after hearing that any rule or condition of release has been violated, or that the safety of others requires that supervised release be revoked, it may~~ shall revoke the order for supervised release and order that the ~~released~~ person be placed in ~~an appropriate institution~~ institutional care. The person shall remain in institutional care until the person is discharged from the commitment under s. 980.09 or ~~until again~~ is placed on supervised release under ~~this section~~ sub. (4) (g).

**SECTION 123.** 980.09 of the statutes is repealed and recreated to read:

**980.09 Petition for discharge.** A committed person may petition the committing court for discharge at any time. The court shall deny the petition under this section without a hearing unless the petition alleges facts from which the court or jury may conclude the person's condition has changed since the date of his or her

1 initial commitment order so that the person does not meet the criteria for
2 commitment as a sexually violent person.

3 **(2)** The court shall review the petition within 30 days and may hold a hearing
4 to determine if it contains facts from which the court or jury may conclude that the
5 person does not meet the criteria for commitment as a sexually violent person. In
6 determining under this subsection whether facts exist that might warrant such a
7 conclusion, the court shall consider any current or past reports filed under s. 980.07,
8 relevant facts in the petition and in the state's written response, arguments of
9 counsel, and any supporting documentation provided by the person or the state. If
10 the court determines that the petition does not contain facts from which a court or
11 jury may conclude that the person does not meet the criteria for commitment, the
12 court shall deny the petition. If the court determines that facts exist from which a
13 court or jury could conclude the person does not meet criteria for commitment the
14 court shall set the matter for hearing.

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

20 **(4)** If the court or jury is satisfied that the state has not met its burden of proof
21 under sub. (3), the petitioner shall be discharged from the custody of the department.
22 If the court or jury is satisfied that the state has met its burden of proof under sub.
23 (3), the court may proceed under s. 980.08 (4) to determine whether to modify the
24 petitioner's existing commitment order by authorizing supervised release.

25 **SECTION 124.** 980.095 of the statutes is created to read:

1 **980.095 Procedures for discharge hearings. (1)** USE OF JURIES. (a) The
2 district attorney or the department of justice, whichever filed the original petition,
3 or the petitioner or his or her attorney may request that a hearing under s. 980.09
4 (3) be to a jury of 6. A jury trial is deemed waived unless it is demanded within 10
5 days of the filing of the petition for discharge.

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

13 (c) No verdict shall be valid or received unless at least 5 of the jurors agree to
14 it.

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

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

19 **SECTION 125.** 980.10 of the statutes is repealed.

20 **SECTION 126.** 980.101 (2) (a) of the statutes is amended to read:

21 980.101 **(2)** (a) If the sexually violent offense was the sole basis for the
22 allegation under s. 980.02 (2) (a) and there are no other judgments relating to a
23 sexually violent offense committed by the person, the court shall reverse, set aside,
24 or vacate the judgment under s. 980.05 (5) that the person is a sexually violent

person, vacate the commitment order, and discharge the person from the custody ~~or supervision~~ of the department.

**SECTION 127.** 980.11 (2) (intro.) of the statutes is amended to read:

980.11 **(2)** (intro.) If the court places a person on supervised release under s. 980.08 (4) or discharges a person under s. 980.09 ~~or 980.10~~ (4), the department shall do all of the following:

**SECTION 128.** 980.12 (1) of the statutes is amended to read:

980.12 **(1)** Except as provided in ss. ~~980.03 (4)~~ 980.031 (3) and ~~980.08 (3)~~ 980.07 (1), the department shall pay from the appropriations under s. 20.435 (2) (a) and (bm) for all costs relating to the evaluation, treatment, and care of persons evaluated or committed under this chapter.

**SECTION 129.** 980.14 (title) of the statutes is created to read:

**980.14** (title) **Immunity.**

**SECTION 130.** 980.14 (1) of the statutes is created to read:

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

**SECTION 131. Initial applicability.**

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

1 (2) This act first applies to periodic reexaminations conducted under section
2 980.07 of the statutes, as affected by this act, begun on the effective date of this
3 subsection and to court proceedings resulting from those reexaminations.
4 (3) This act first applies to proceedings to revoke supervised release under
5 section 980.08 of the statutes, as affected by this act, that are commenced on the
6 effective date of this subsection, except that the treatment of section 980.08 (7) of the
7 statutes, with respect to where a person may be detained while a petition to revoke
8 supervised release is pending, first applies to a person whose detention commences
9 on the effective date of this subsection.
10 (4) This act first applies to discharge proceedings commenced on the effective
11 date of this subsection.
12 **SECTION 132. Effective date.**
13 (1) This act takes effect on the first day of the 2nd month beginning after
14 publication.
15 **(END)**