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(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2005-06

(session year)

Senate

(Assembly, Senate or Joint)

Committee on Judiciary, Corrections and Privacy...

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
 - (**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
 - (**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

* Contents organized for archiving by: Stefanie Rose (LRB) (July 2012)

Senate

Record of Committee Proceedings

Committee on Judiciary, Corrections and Privacy

Senate Bill 318

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.

By Joint Legislative Council.

September 07, 2005 Referred to Committee on Judiciary, Corrections and Privacy.

February 1, 2006 **PUBLIC HEARING HELD**

Present: (5) Senators Zien, Roessler, Grothman, Taylor and
Risser.

Absent: (0) None.

Appearances For

- Alberta Darling — Senator, 8th Senate District

Appearances Against

- None.

Appearances for Information Only

- Ron Hermes — DHFS
- Steve Watters — DHFS

Registrations For

- Peggy Lautenschlager, Madison — Department of Justice

Registrations Against

- None.

February 14, 2006 **EXECUTIVE SESSION HELD**

Present: (5) Senators Zien, Roessler, Grothman, Taylor and
Risser.

Absent: (0) None.

February 16, 2006 **EXECUTIVE SESSION HELD**

Present: (5) Senators Zien, Roessler, Grothman, Taylor and
Risser.
Absent: (0) None.

March 1, 2006

EXECUTIVE SESSION HELD

Present: (5) Senators Zien, Roessler, Grothman, Taylor and
Risser.
Absent: (0) None.

Moved by Senator Roessler, seconded by Senator Zien that **Senate
Substitute Amendment s0491 /1** be recommended for adoption.

Ayes: (4) Senators Zien, Roessler, Grothman and
Risser.

Noes: (0) None.

Absent: (1) Senator Taylor.

ADOPTION OF SENATE SUBSTITUTE AMENDMENT S0491
/1 RECOMMENDED, Ayes 4, Noes 0

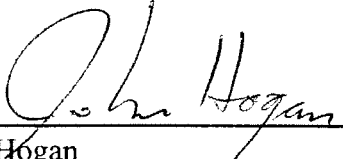
Moved by Senator Zien, seconded by Senator Roessler that **Senate
Bill 318** be recommended for passage as amended.

Ayes: (4) Senators Zien, Roessler, Grothman and
Risser.

Noes: (0) None.

Absent: (1) Senator Taylor.

PASSAGE AS AMENDED RECOMMENDED, Ayes 4, Noes 0



John Hogan
Committee Clerk

Vote Record

~~No Subject~~

Report 3/1

Committee on Judiciary, Corrections and Privacy

Date: 3-1-06 ~~No vote~~

Moved by: Roessler Seconded by: Z

AB _____ SB 318 Clearinghouse Rule _____
AJR _____ SJR _____ Appointment _____
AR _____ SR _____ Other _____

A/S Amdt _____
A/S Amdt _____ to A/S Amdt _____
 Sub Amdt LRB 5 0491/1 *We have sub today*
A/S Amdt _____ to A/S Sub Amdt _____
A/S Amdt _____ to A/S Amdt _____ to A/S Sub Amdt _____

- Be recommended for:
 Passage Adoption Confirmation Concurrence Indefinite Postponement
 Introduction Rejection Tabling Nonconcurrency

<u>Committee Member</u>	<u>Aye</u>	<u>No</u>	<u>Absent</u>	<u>Not Voting</u>
Senator David Zien, Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Carol Roessler	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Glenn Grothman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Lena Taylor	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Fred Risser	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Totals:	_____	_____	_____	_____

Vote Record
Committee on Judiciary, Corrections and Privacy

Date: 3-1-06

Moved by: 2

Seconded by: Russ

*No Sub
No Vote*

AB _____ SB 318 Clearinghouse Rule _____
 AJR _____ SJR _____ Appointment _____
 AR _____ SR _____ Other _____

A/S Amdt _____
 A/S Amdt _____ to A/S Amdt _____
 A/S Sub Amdt _____
 A/S Amdt _____ to A/S Sub Amdt _____
 A/S Amdt _____ to A/S Amdt _____ to A/S Sub Amdt _____

Be recommended for: *As^{Sub} Amd*

- Passage Adoption Confirmation Concurrence Indefinite Postponement
- Introduction Rejection Tabling Nonconcurrence

<u>Committee Member</u>	<u>Aye</u>	<u>No</u>	<u>Absent</u>	<u>Not Voting</u>
Senator David Zien, Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Carol Roessler	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Glenn Grothman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Lena Taylor	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Fred Risser	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Totals:	_____	_____	_____	_____



State of Wisconsin
JOINT LEGISLATIVE COUNCIL

Co-Chairs

ALAN LASEE
President, State Senate

STEVE WIECKERT
Representative, State Assembly



LEGISLATIVE COUNCIL STAFF
Terry C. Anderson
Director
Laura D. Rose
Deputy Director

TO: MEMBERS OF THE SENATE COMMITTEE ON JUDICIARY, CORRECTIONS AND
PRIVACY

FROM: Terry C. Anderson, Director *TCA*

RE: Hearing on 2005 Senate Bill 318

DATE: January 30, 2006

Enclosed, for your information, is a copy of Wisconsin Legislative Council Report to the Legislature, RL 2005-08, dated September 9, 2005.

The following recommendation of the Special Committee on Sexually Violent Person Commitments has been referred to your committee:

2005 Senate Bill 318, 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.

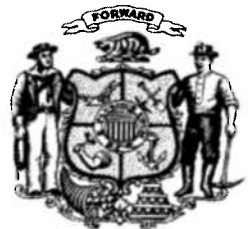
Senate Bill 318 is scheduled to be considered by your committee at its meeting which will be held on **Wednesday, February 1, 2006, beginning at 12:30 p.m., in Room 411 South, State Capitol.**

If you have any questions relating to the above report or bill, please feel free to contact Ron Sklansky, Senior Staff Attorney, at 266-1946, or Don Salm, Senior Staff Attorney, at 266-8540.

TCA:wu;jal
Enclosure



WISCONSIN STATE LEGISLATURE





**STATE OF WISCONSIN
DEPARTMENT OF JUSTICE**

**PEGGY A. LAUTENSCHLAGER
ATTORNEY GENERAL**

**Daniel P. Bach
Deputy Attorney General**

114 East, State Capitol
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608/266-1221
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**TESTIMONY OF
WISCONSIN ATTORNEY GENERAL PEG LAUTENSCHLAGER
IN THE MATTER OF SENATE BILL 318**

February 1, 2006

Thank you for the opportunity to comment on this bill.

Generally, The Department of Justice supports Senate Bill 318. However, the Department of Health and Family Services has proposed some technical changes to SB 318 for purposes of clarity and consistency, primarily in regard to discharge and supervised release. After consulting with DHFS on their proposed amendments, DOJ believes there is substantial agreement between DHFS and DOJ on the proposed amendments. Resolution of any differences between DOJ and DHFS can be accomplished within a short time.

While DOJ supports SB 318, in a modestly amended form, it is compelled to raise the issue of adequate resources to prosecute sexual predator cases. The number of Chapter 980 cases doubled in 2005. In 2003 and 2004, DOJ handled approximately 16 initial commitment cases each year. That number increased to 30 in 2005. These cases were handled in at least 16 counties. The Brown County and Milwaukee prosecutorial units have seen similar increases in caseloads. Much of this increase is due to the lowering of the commitment standard to "more likely than not" from "much more likely than not" as adopted in 2003 Act 187. Information received from the Department of Corrections indicates that this increased number of commitment referrals will remain at these higher levels or even increase.

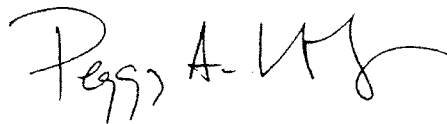
In addition to initial commitments, there has been a corresponding increase in the number of post-commitment proceedings involving discharge and supervised release. In 2005, DOJ handled 36 post-commitment proceedings. These numbers are likewise expected to increase for the simple reason that as more people are committed there is an ever increasing number of discharge and supervised release proceedings. Since the enactment of Chapter 980 through August of 2005, approximately 400 persons have been committed. Each of these persons is potentially entitled to a discharge or supervised release hearing every year based on the annual re-evaluation process. As more persons are committed the number of such proceedings will likewise increase.

The prosecution of Chapter 980 cases is difficult and time-consuming due to the specialized skills necessary to deal with the medical and legal issues, the fact that virtually all initial commitments involve a multi-day trial, the extensive document review and trial preparation that is needed, including dealing with multiple expert witnesses, the difficult factual

and legal issues that often arise, and the need for ongoing handling of discharge and supervised release proceedings. While SB 318 will serve to clarify and simplify the law in some respects, it will not result in any decrease in the level of work required to ensure that all sexual predators are committed and maintained in control for treatment purposes.

In order to continue to effectively handle these matters, additional prosecutorial resources are needed. A number of years ago the state had requested the funding of 12 attorney positions to handle sexual predator cases. Prosecutors received a total of 4 positions (1 in Brown County, 1 in Milwaukee and 2 in DOJ). In light of the increasing number of sexual predator cases being handled, and the corresponding workload associated with these cases, it is imperative that additional resources be added. At a minimum, this would involve the doubling of sex predator prosecutor positions from 4 to 8 and the addition of support personnel such as paralegals. DOJ and the other prosecutorial units are committed to adequately protecting the public from sexual predators. The addition of these minimal resources would allow prosecutors to continue to deal effectively with sexual predators and to better protect the public.

Very truly yours,

A handwritten signature in black ink, appearing to read "Peggy A. Lautenschlager". The signature is fluid and cursive, with a prominent initial "P" and a long, sweeping flourish at the end.

Peggy A. Lautenschlager
Attorney General



**DHFS Testimony on
Senate Bill 318**

**Steve Watters, Director
Sand Ridge Secure Treatment Center**

As you undoubtedly know, SB 318 is a lengthy and complex piece of legislation. Fortunately, the report completed by the Legislative Council does an excellent job of summarizing the diverse components of the bill. Accordingly, my testimony is going to be directed at trying to summarize a number of the major themes incorporated in the bill and then focusing on several areas of specific concern for DHFS, that will be addressed in an amendment from Sen. Darling.

As a macro-overview of SB 318, I will point to four major themes:

1. The first theme is an effort to eliminate statutory barriers that exist in terms of the ability of agencies to share information about an individual's background. The assessment and treatment of high-risk sex offenders is a very challenging task. It is essential that the experts who are involved in that process have the most complete information available. SB 318 will greatly reduce the barriers that currently exist in this regard.
2. The second theme of SB 318 is an effort to modify the court procedures for Chapter 980 proceedings. In some cases this takes the form of establishing guidelines for certain issues (such as rules of evidence and change of venue) that do not currently exist under Chapter 980. In other cases, the bill changes current procedures to make the 980 trial more civil - - as opposed to criminal - - in its operation. These changes were developed by prosecutors who handle 980 litigation and have been characterized as streamlining court procedures.

3. The third theme of SB 318 is a restructuring of the judicial process for the consideration of Supervised Release and Discharge requests. The current statutory framework for these processes is very cumbersome and confusing. In addition, the bill proposes the establishment of a series of specific criteria that must be met before a Supervised Release is granted, with a considerable emphasis on the selection and approval process for residential placement. DHFS is very supportive of the need to restructure the statutory scheme for Supervised Release and Discharge. However, we believe that there are significant problems with the process that is proposed in this legislation. The Department also is sympathetic with the goal of spelling out in greater detail the specific criteria that must be met in order for Supervised Release to be granted. We believe that the intent of the legislation will be better achieved through some restructuring of these criteria. I will briefly discuss these proposed changes at the end of my testimony.

4. The final theme of SB 318 is what I refer to as miscellaneous statutory corrections associated with Chapter 980. Specifically, the bill includes several provisions which are very important to the safe operation of the Chapter 980 program: (A) it will create a crime for escape while under Chapter 980; and (B) it will create a crime for battery by a sexually violent person. These provisions will correct long-standing issues in the program.

As I mentioned earlier, the Department believes that there are a number of problems with the current version of SB 318. We have had discussions with Senator Darling about these items, and an amendment is being drafted that will address these issues. Let me also note that I have reviewed our concerns with the prosecutors who drafted much of the original legislation, and there is a consensus among us that several corrective changes need to be made in SB 318.

The Department believes that the following changes makes SB 318 stronger and will allow me to better manage the Chapter 980 population at Sand Ridge.

1. As I mentioned earlier, SB 318 will establish an entirely new process for the Court to use when considering a request for Supervised Release. The goal of these changes is to ensure that Supervised Release will not be granted until the Court approves a specific residence. However, because of the process that is created, the bill will require a residence to be identified for every Supervised Release petition, even for individuals the Court has no intention of granting supervised release because of the patient's continued risk to the public. Accordingly, this will greatly increase administrative costs for the program, without any increase in overall community safety. DHFS believes that the intent of this provision can be met by establishing a bifurcated process for granting Supervised Release. Under this process, the Court will be provided with a proposed residential address only after the Court has concluded that the other release criteria have been met.

2. SB 318 creates a series of detailed criteria that need to be met for Supervised Release purposes. The Department's proposal will make a substantive change in two of these criteria.
 - A. First, under the bill, in order to attain Supervised Release an individual's risk will have to be reduced to where he is no longer likely to commit a future sexual assault. DHFS believes that given the resources that are associated with a Supervised Release placement, it is more appropriate that the release criteria specify that the person's risk for re-offense has been reduced to a level where it is "substantially probable" that the person will not re-offend while on Supervised Release. This change will work towards attempting to prevent premature community placements based only on modest changes in the person's overall risk.

 - B. Second, the bill eliminates the current law requirement that a person has to have made "significant progress in treatment" and replaces it

with the requirement that the person has made “sufficient progress in treatment.” DHFS strongly believes that treatment needs to be at the center of Chapter 980. Accordingly, the Department recommends that the current criterion of “significant progress in treatment” be retained because it is a higher standard than the phrase “sufficient progress in treatment.”

- C. Finally, the Department proposes a number of other miscellaneous changes in Chapter 980 addressing issues that will help better manage the program.

Thank you for the opportunity to testify on SB 318. DHFS looks forward to working with the Legislature to make these improvements. I will now try to answer your questions.





WISCONSIN LEGISLATIVE COUNCIL
REPORT TO THE LEGISLATURE

SPECIAL COMMITTEE ON
SEXUALLY VIOLENT PERSON
COMMITMENTS
[2005 Senate Bill 318]

September 9, 2005

RL 2005-08

Special Committee on Sexually Violent Person Commitments

Prepared by:
Don Salm and Ronald Sklansky, Senior Staff Attorneys
September 9, 2005

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PART I

KEY PROVISIONS OF COMMITTEE RECOMMENDATIONS

The Special Committee on Sexually Violent Person Commitments recommends the following proposal to the Joint Legislative Council for introduction in the 2005-06 Session of the Legislature.

2005 Senate Bill 318, 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

Senate Bill 318, relating to sexually violent person commitments and providing penalties, does the following:

- Revises the definition of “sexually violent person” (SVP) for purposes of ch. 980, Stats. (SVP commitments chapter), to define the term “act of sexual violence” that appears in the definition, add certain criminal offenses, and revise the meaning of the term “sexually motivated” in the definition.
- Revises and creates, in general, various provisions relating to the commencement of, and general proceedings in, ch. 980 proceedings, including filing the petition, the probable cause hearing, experts appointed for examinations, jury requirements, and use of presentence reports by specified persons.
- Creates a change of venue procedure specific to SVP proceedings.
- Creates specific discovery provisions applicable to ch. 980 proceedings and provides that the general discovery process applicable in other civil actions does not apply in these proceedings.
- Allows certain records (currently confidential), including juvenile, pupil, mental health commitment and patient health care records, to be open for inspection by specified state agencies or a district attorney for use in the evaluation or prosecution of any SVP proceeding, if the records relate to a person who is subject to or who is being evaluated for an SVP proceeding.
- Makes a person’s juvenile delinquency dispositions admissible for a hearing, trial, or other SVP proceeding relating to the person.
- Creates an additional exception to a patient’s privileged communications with a health care provider for communications and information relevant to an issue in proceedings for control, care, and treatment of an SVP.
- Revises the period for periodic reexamination of the mental condition of a committed SVP to within 12 months after the date of the initial commitment order and every 12 months thereafter.
- Creates a new process for granting supervised release, including: (1) a requirement for a court order that a county prepare a report on the SVP’s prospective residential options and for the

county to report within 30 days of the order; and (2) a requirement that a court may order supervised release only if it finds that all of the specified conditions in the bill have been met.

- Modifies provisions relating to the revocation of supervised release to specify the conditions and procedures for petitioning for revocation, detaining the person on release, and court revocation of the release order.
- Modifies provisions relating to petitions for discharge from custody or supervision without the approval of the Secretary of the Department of Health and Family Services (DHFS).
- Modifies the current criminal escape statute to include: (1) persons who are in actual custody in a facility used for the detention of persons committed as SVPs; and (2) the constructive custody of a person placed on supervised release.
- Creates a special battery statute relating to a battery caused by an SVP committed to an institution.

PART II

COMMITTEE ACTIVITY

Assignment

The Joint Legislative Council established the Special Committee on Sexually Violent Person Commitments and appointed the chair by a May 21, 2004 mail ballot. The committee was directed to study current law relating to the commitment, periodic reexamination, supervised release, and discharge of SVPs.

Membership of the Special Committee, appointed by a July 21, 2004 mail ballot, consisted of three Senators, three Representatives and four public members. A list of committee members is included as **Appendix 3** to this report.

Summary of Meetings

The Special Committee held three meetings in Madison. The meetings of the Special Committee were held on the following dates:

September 28, 2004
November 16, 2004
January 31, 2005

September 28, 2004: At the first meeting of the Special Committee, the committee heard testimony from several persons familiar with issues relating to ch. 980, Stats. (the sexually violent offender law):

- **Steven Watters, Director of the Sand Ridge Secure Treatment Center (SRSTC)** for persons committed under ch. 980, gave the committee an overview of ch. 980 commitments, including the legal bases for these commitments, a description of the facilities and the process used at Sand Ridge, a brief comparison of the Wisconsin law with laws in other states, a description of supervised release and discharge of persons under ch. 980, and several suggested changes in the law that the DHFS consider to be important.
- **Thomas Fallon, Assistant Attorney General, Wisconsin Department of Justice (DOJ)**, provided information on the impact of the new standard of commitment in ch. 980, comments on Substitute Amendment 2 to 2003 Assembly Bill 861 relating to revisions in ch. 980, and a brief review of how ch. 980 cases are prosecuted.

November 16, 2004: At this meeting, the committee heard testimony from invited speakers relating to evaluation and treatment of persons committed under ch. 980. **Steven Watters, Director, SRSTC**, described the general philosophy of the SRSTC's program relative to assessment and evaluation of patients. **Dennis Doren, Director, SRSTC Evaluation Unit**, described the statutory evaluation and court testimony requirements and the evaluation process for determining "mental disorder" and the patient's recidivism risk. **Lloyd Sinclair, Associate Treatment Director, SRSTC**, discussed the concept of "significant progress in treatment," described treatment progress reports and the effect of treatment on recidivism, reviewed four treatment targets to reduce recidivism, and discussed methods of assessing a patient's treatment progress. The committee then discussed its charge and directed the staff to prepare Assembly Substitute Amendment 2 to 2003 Assembly Bill 861, including an amendment to create a crime of battery by a patient on any person at an SRSTC-type institution, in Legislative Council draft form. The chair requested committee members to submit any additional amendments to the substitute amendment.

January 31, 2005: At the last meeting of the committee, the committee reviewed the redraft (WLC: 0083/1) of the substitute amendment, which included new criminal escape and battery provisions. The committee then discussed a number of amendments to the draft suggested by Thomas Fallon, relating to polygraph results, factors in treatment evaluations, and factors and conditions for supervised release. After discussing WLC: 0083/1, there was a general consensus that WLC: 0083/1, along with the amendments presented at the meeting, should be placed in a mail ballot for a committee vote.

PART III

RECOMMENDATIONS INTRODUCED BY THE JOINT LEGISLATIVE COUNCIL

This part of the report provides background information on, and a description of, Senate Bill 318.

Background

Chapter 980, Stats., relating to civil commitment of sexually violent persons, was created by 1993 Wisconsin Act 479 and took effect on June 2, 1994.

Description

The bill makes various changes to current law (particularly ch. 980, Stats.), relating to the commitment, periodic reexamination, supervised release, and discharge of SVPs. General descriptions of the major provisions of the bill are set forth below. A more detailed description of each provision is set forth in the Joint Legislative Council prefatory note and notes following specific provisions in the bill.

Definitions

The bill revises the definition of "**sexually violent person**" (SVP), and related definitions, for purposes of ch. 980 as follows:

1. Defines "act of sexual violence" (a term found in the definition of "sexually violent person") to mean conduct that constitutes the commission of a **sexually violent offense (SVO)**, and adds third-degree sexual assault to the list of SVOs covered by the definition.
2. Adds felony murder, administering a dangerous or stupefying drug, robbery, and physical abuse of a child to the list of SVOs if such an offense is determined to be sexually motivated; expands the list of SVOs to include comparable crimes committed prior to June 2, 1994; and revises the term "sexually motivated" to mean that one of the purposes for an act is for the actor's sexual arousal or gratification (current law) or **for the sexual humiliation or degradation of the victim**. [SECS. 61 to 70.]

Commencement of Commitment Proceedings

Under **current law**, if an agency with jurisdiction (i.e., the agency with the authority or duty to release or discharge the person) has control or custody over a person who may meet the criteria for commitment as an SVP, the agency must inform each appropriate district attorney (DA) and DOJ regarding the person as soon as possible beginning three months prior to the applicable date of the following: (1) the anticipated discharge from a sentence, anticipated release on parole or extended supervision, or anticipated release from imprisonment of a person who has been convicted of an SVO; (2) the anticipated release from a secure juvenile facility of a person adjudicated delinquent on the basis of an SVO; or (3) the termination or discharge of a person who has been found not guilty of an SVO by reason of mental disease or defect.

Under the **bill**, for persons under a sentence, the agency must inform the DA and DOJ regarding the person as soon as possible beginning 90 days before the date of the anticipated discharge or release on parole or extended supervision, or otherwise, from a sentence of imprisonment or term of

confinement in prison that was imposed for a conviction for an SVO, from a continuous term of incarceration, any part of which was imposed for an SVO, or from a prison placement under the intensive sanctions program, any part of which was imposed for an SVO. ["Continuous term of incarceration, any part of which was imposed for a sexually violent offense" is defined to include confinement in a juvenile facility if the person was placed in the facility for being adjudicated delinquent on the basis of an SVO.] The DA and DOJ must also be notified of the anticipated release on parole or discharge of a person committed under ch. 975, Stats. (the sex crimes chapter in effect prior to the creation of ch. 980.), for an SVO. [SECS. 71, 72, 73, and 76.]

Filing a Commitment Petition

Under **current law**, DOJ may file a petition to commit a person as an SVP at the request of the agency with the authority or duty to release or discharge the person. If DOJ does not file a petition, the DA for the county in which the person was convicted, adjudicated delinquent, or found not guilty by reason of insanity or mental disease, defect, or illness, or the county in which the person will reside, may file the petition. The **bill** specifies that the DA of the county in which the person is in custody may also file the petition; a juvenile court does not have jurisdiction over a petition involving a child; and filing fees are eliminated. [SECS. 35, 79, and 83.]

Probable Cause Hearing

Under **current law**, whenever a commitment petition is filed, the court must hold a hearing to determine whether there is probable cause to believe that the person named in the petition is an SVP. If the person is in custody, the court must hold the probable cause hearing **within 72 hours** after the petition is filed, excluding Saturdays, Sundays, and legal holidays. If the person is not in custody, the court must hold the hearing within a reasonable time after the filing of the petition.

Under the **bill**, generally, the court must hold the probable cause hearing **within 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. If the person named in the petition is in custody and the probable cause hearing will be held after the date on which the person is scheduled to be released or discharged, the hearing must 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. [SEC. 94.]

Commencement of Trial on Commitment Petition

Current law specifies that a trial to determine whether the person who is the subject of a commitment petition is an SVP must commence **no later than 45 days** after the date of the probable cause hearing. The court may grant a **continuance** of the trial date for good cause.

The **bill** specifies that the trial must commence **no later than 90 days** after the probable cause hearing; and the court may grant **one or more** continuances for good cause. [SEC. 98.]

Change of Venue

The bill creates a change of venue procedure specific to SVP proceedings. The person who is the subject of a commitment petition or who has been committed as an SVP may move for a change of the place of a jury trial on the ground that an impartial jury cannot be had in the county in which the trial is set to be held. If the court determines that there exists in the county such prejudice that a fair trial cannot be had, it must, with one exception, order that the trial be held in any county where an impartial trial can be had. Only one change may be granted and the judge who orders the change in the place of trial must preside over the trial.

Alternatively, the bill provides that instead of changing the place of the trial, the court may order that the jury be selected in another county if all of the following apply: (1) the court has decided

to sequester jurors after the commencement of the trial; (2) there are grounds for changing the place of the trial; and (3) the estimated costs to the county appear to be less using an alternate jury rather than changing the place of the trial. [SEC. 90.]

Experts for Examinations

Under **current law**, whenever a person who is the subject of a commitment petition or who has been committed as an SVP is required to submit to an examination, he or she may retain experts or professional persons to perform an examination. The **bill** provides that, in addition to current law, if a person who is the subject of a commitment petition denies the facts alleged in the petition, the court may appoint at least one qualified physician, psychologist, or other mental health professional to conduct an examination of the person's mental condition and testify at trial. The state may retain a physician, psychologist, or other mental health professional to examine the mental condition of a person who is the subject of a petition or who has been committed and to testify at the trial or any other SVP proceeding at which testimony is authorized. [SEC. 89.]

Comment on Person's Refusal to Participate in Examination

The bill provides that the state may present evidence or comment on evidence that a person who is the subject of a commitment petition or a person who has been committed refused to participate in an examination of his or her mental condition that was being conducted as part of an SVP proceeding or that was conducted before the commitment petition was filed for the purpose of evaluating whether to file a petition. [SEC. 92.]

Hearings to Juries; Commitment and Discharge

Under **current law**, the person who is the subject of a **commitment petition**, the person's attorney, DOJ, or the DA may request that the trial be to a jury of 12 in order to determine whether the person who is the subject of the petition is an SVP. The court may also, on its own motion, require that the trial be to a jury of 12. A verdict of a jury is not valid unless it is unanimous. The **bill**: (1) provides for a jury of 12, but the parties may stipulate to a smaller number of jurors [SEC. 102]; and (2) specifies that juries must be selected and treated in the same manner as they are selected and treated in civil actions in circuit court, except that each party is entitled to four peremptory challenges (instead of three, as for other civil actions), unless fewer jurors are to serve on the jury. [SEC. 101.]

The **bill** also provides a separate jury requirement for **discharge hearings**. The DA or DOJ, whichever filed the original petition, or the petitioner may request that the discharge hearing be to a jury of six. A jury trial is deemed waived unless it is demanded within 10 days after the filing of the petition for discharge. No verdict is valid unless it is agreed to by at least five of the jurors. [SEC. 119.]

Discovery in Ch. 980 Proceedings

The bill creates provisions that are specific to discovery in proceedings relating to SVPs and specifically provides that the general discovery process does not apply in ch. 980 proceedings. The court must exclude any witness not listed or evidence not presented for inspection unless good cause is shown for failure to comply; and may advise the jury of the nonresponsiveness of a party. [SEC. 91.]

Confidential Juvenile, Pupil, Mental Health Commitment, and Patient Health Care Records

Under **current law**, certain records are confidential and may be disclosed only to persons and entities specified in the statutes: juvenile court records; law enforcement records relating to juveniles; pupil records; and reports of child abuse and neglect. In addition, the files and records of mental health court proceedings are closed but are accessible to any person who is the subject of a petition for involuntary commitment or other petition under ch. 51, Stats. (the Mental Health Act). Patient health care records are confidential and may be released upon request without informed consent only under specified conditions.

Under the **bill**, such records are open for inspection by and production to authorized representatives of the Department of Corrections (DOC), DHFS, DOJ, or a DA for use in the evaluation or prosecution of any SVP proceeding, if the records involve or relate to an individual who is the subject of or who is being evaluated for an SVP proceeding. The court in which the proceeding is pending may issue any protective orders that it determines are appropriate concerning information that is made available or disclosed under this provision. Any representative of DOC, DHFS, DOJ, or a DA may disclose information obtained under this provision for any purpose consistent with any SVP proceeding. [See, for example, SECS. 5, 6, 7, 10, 19, 21, 40, 42, and 86.]

Mental Health Registration and Treatment Records

Under **current law**, treatment records of an individual may be released without informed consent under specified circumstances. Regarding SVP proceedings, such records may be released to appropriate examiners and facilities for the examination of an individual who is the subject of a petition for commitment or for supervised release. The recipient of any information from the records must keep the information confidential except as necessary to comply with the provisions of the chapter relating to SVP commitments. In addition, such records may be released to DOJ or a DA for a commitment petition if the treatment records are maintained by the agency that has custody or control over the person who is the subject of the petition.

Under the **bill**, treatment records may be disclosed to a physician, psychologist, or other mental health professional retained by a party or appointed by the court to examine a person under the chapter relating to SVP commitments or to authorized representatives of DOC, DHFS, DOJ, or a DA for use in the evaluation or prosecution of any SVP proceeding, with the same limitations as provided for other confidential records, as described above. [SEC. 12.]

Admissibility of Juvenile Delinquency Dispositions

Under **current law**, the disposition of a juvenile, and any record of evidence given in a hearing in juvenile court, is not admissible as evidence against the juvenile in any case or proceeding in any other court except as specified under the statutes. The **bill** creates an exception [i.e., such dispositions are admissible] for a hearing, trial, or other SVP proceeding relating to a person. [SEC. 38.]

Privileged Communications With Health Care Providers

Under **current law**, generally, a patient has a privilege to refuse to disclose, and to prevent any other person from disclosing, confidential communications made or information obtained or disseminated for purposes of diagnosis or treatment of the patient's physical, mental, or emotional condition, between the patient and a health care provider. However, there is **no privilege** as to communications and information relevant to an issue in proceedings to hospitalize the patient for mental illness, to appoint a guardian, for court-ordered protective services, or for protective placement if the health care provider in the course of diagnosis or treatment has determined that the patient is in need of hospitalization, guardianship, protective services, or protective placement.

The **bill** includes, in the exception to the privilege, communications and information relevant to an issue in proceedings for control, care, and treatment of an SVP. [SEC. 36.]

Presentence Reports

Under **current law**, after a conviction, the court may order a presentence investigation, which must be disclosed to the defendant's attorney (or the defendant, if unrepresented) and the DA prior to sentencing. The **bill** specifies that the presentence investigation report and any information contained in it or upon which it is based may be used by any of the following persons in any evaluation, examination, referral, hearing, trial, post commitment relief proceeding, appeal, or other SVP proceeding: DOC and DHFS; the person who is the subject of the report and his or her attorney; the attorney representing the state or an agent or employee of the attorney; a physician, psychologist, or

other mental health professional who is examining the subject of the report; and the court and, if applicable, the jury hearing the case. [SEC. 49.]

Periodic Reexamination

Under **current law**, DHFS must conduct an examination of the mental condition of each person who has been committed as an SVP **within six months** of the initial commitment and every 12 months thereafter 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 conducting an examination must prepare a written report of the examination no later than 30 days after the date of the examination.

Under the **bill**, DHFS must conduct the examination **within 12 months** after the date of the initial commitment order and every 12 months thereafter. At the time of the examination, DHFS must prepare a treatment report based on its treating professionals' evaluation of: (1) the specific factors associated with the person's risk for committing another SVO; (2) whether the person has made significant progress in treatment or has refused treatment; (3) the ongoing treatment needs of the person; and (4) any specialized needs or conditions associated with the person that must be considered in future treatment planning. [SEC. 104.]

The bill specifies that the examiner's report must: (1) include an assessment of the risk that the person will reoffend, whether the risk can be safely managed in the community if reasonable conditions of supervision and security are imposed, and whether the treatment that the person needs is available in the community; and (2) be prepared no later than 30 days after the date of the examination and must be provided to DHFS. DHFS must send the treatment and written examination reports, and a written statement from DHFS recommending either continued institutional care, supervised release, or discharge to the court. If the report concludes that the person does not meet the criteria for commitment as an SVP, DHFS must petition for discharge. [SEC. 108.]

Requests for Supervised Release

The bill creates a new process for granting supervised release:

1. Within 30 days after the filing of the reexamination report, treatment report, and DHFS recommendation, the person subject to the commitment, the DA, or DOJ, may object to the recommendation by filing a written objection with the court. If DHFS's recommendation is continued institutional care, and there is no objection, the recommendation is implemented without a hearing. If DHFS recommends discharge or the person files an objection requesting discharge, the court shall proceed with determining whether discharge is appropriate. Otherwise the court, without a jury, must hold a hearing to determine whether to authorize supervised release within 30 days after the date on which objections are due, unless the time limit is waived by the petitioner.

2. The court must determine from all of the evidence whether to continue institutional care and, if not, what the appropriate placement would be for the person while on supervised release. In making this decision, the court may consider the same items as under current law, except that the person's progress in treatment or refusal to participate in treatment is added.

3. The court must select a county to prepare a report on the person's prospective residential options. Unless the court has good cause to select another county, the court must select the person's county of residence. The court must order the county department in the county of intended placement to prepare the report, either independently or with DHFS, identifying prospective residential options. In identifying options, the county department must consider the proximity of any potential placement to the residence of other persons on supervised release and to the residence of persons who are in the custody of DOC and regarding whom a sex offender notification bulletin has been issued. If the court determines that the options identified in the report are inadequate, the court must select another county to prepare a report. The county must report within 30 days of the court order.

4. The court may order that a person be placed on supervised release if it finds that **all of the following apply**: (a) the person has made sufficient progress in treatment such that the risk that the person will reoffend can be safely managed in the community and the progress can be sustained and the person's risk for reoffense has been reduced to a level that it is not likely that the person will reoffend if so placed; (b) there is treatment reasonably available in the community and the person will be treated by a provider who is qualified to provide the necessary treatment in this state; (c) the provider presents a specific course of treatment for the person, agrees to assume responsibility for the person's treatment, agrees to comply with the rules and conditions of supervision imposed by the court and DHFS, agrees to report on the person's progress to the court on a regular basis, and agrees to report any violations of supervised release immediately to the court, DOJ, or the DA, as applicable; (d) the person has housing arrangements that are sufficiently secure to protect the community, and the person or agency that is providing the housing to the person agrees in writing to accept the person, provide or allow for the level of safety the court requires, and, if the person or agency providing the housing is a state or local government agency or is licensed by DHFS, immediately report to the court and DOJ or the DA, as applicable, any unauthorized absence of the person from the housing arrangement; (e) the person will comply with the provider's treatment requirements and all of the requirements that are imposed by DHFS and the court; (f) DHFS has made provisions for the necessary services, including sex offender treatment, other counseling, medication, community support services, residential services, vocational services, and AODA treatment; and (g) the degree of supervision and ongoing treatment needs of the person required for the safe management of the person in the community can be provided through the allocation of a reasonable level of resources. [SEC. 110.]

Supervision of Persons on Supervised Release

The bill modifies current law relating to revocation of supervised release as follows:

1. If DHFS concludes that a person on supervised release, or awaiting placement on supervised release, violated or threatened to violate a rule of supervised release, it may petition for revocation of the order granting supervised release.

2. As under current law, DHFS may detain a person for a violation or threatened violation. In addition, under the bill, if DHFS concludes that such a person is a threat to the safety of others, it must detain the person and petition for revocation of the order granting supervised release.

3. If DHFS concludes that the order should be revoked, it must file a statement alleging the violation and a petition to revoke the order with the committing court and provide a copy of each to the regional office of the state public defender within 72 hours after the detention. The court must hear the petition within 30 days, unless the hearing or time deadline is waived. A final decision on the petition must be made within 90 days of its filing.

4. If the court finds after a hearing, by clear and convincing evidence, that any rule has been violated and that the violation merits the revocation of the order granting supervised release, the court may revoke the order and order that the person be placed in institutional care. If the court finds by clear and convincing evidence that the safety of others requires that supervised release be revoked, the court must revoke the order granting supervised release and order that the person be placed in institutional care. [SEC. 111.]

Discharge From Commitment

The bill modifies provisions in current law that permit a person to petition the court for discharge from custody or supervision **without the approval** of the Secretary of DHFS. Under the bill, the court must deny the petition without a hearing unless the petition alleges facts from which the court may conclude that the person's condition has changed so that the person does not meet the criteria for commitment as an SVP. In determining whether such facts exist, the court must consider any current or past reports filed in connection with a reexamination, relevant facts and arguments in

the petition and in the state's written response, arguments of counsel, and any supporting documentation provided by the person or the state.

The court must hold a hearing within 90 days of the determination that the petition contains facts from which the court may conclude that the person does not meet the criteria for commitment as an SVP. Upon request, the hearing may be to a jury of six. A verdict must be agreed to by at least five of the six jurors. The state has the burden of proving by clear and convincing evidence that the person meets the criteria for commitment. The general rules of evidence are inapplicable at such hearings. If the court is satisfied that the state has not met its burden of proof, the petitioner must be discharged from the custody and supervision of DHFS. If the court is satisfied that the state has met its burden, the court may proceed to determine whether to modify the person's existing commitment order by authorizing supervised release. [SECS. 118 and 119.]

Failure to Comply With Time Limits

The bill provides that failure to comply with any time limit specified in ch. 980 does not deprive the court of personal or subject matter jurisdiction or of competency to exercise that jurisdiction; and is not grounds for an appeal or grounds to vacate any order, judgment, or commitment issued or entered. 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. [SEC. 92.]

Immunity for Noncompliance With SVP Provisions

Under **current law**, 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 the requirement that an agency notify the DA or DOJ of the anticipated release or discharge of a person who may be an SVP. The **bill** specifies that such a person 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 ch. 980. "Agency" means DOC, DHFS, DOJ, or a DA. [SECS. 77 and 125.]

Escape

Under **current law**, a person in custody who intentionally escapes from custody is guilty of a Class H felony, punishable by a fine not to exceed \$10,000 and a term of imprisonment and extended supervision not to exceed six years. "Custody" is defined as actual custody in an institution, including a secure juvenile facility. It does not include the custody of a probationer, parolee, or person on extended supervision unless the person is in actual custody.

The **bill** modifies the definition of "custody" to include: (1) actual custody in a facility used for the detention of persons committed as SVPs; and (2) without limitation, the constructive custody of a person placed on supervised release. The bill specifies that a person who intentionally escapes from custody under the following circumstances is guilty of a Class F felony, punishable by a fine not to exceed \$25,000 and a term of imprisonment and extended supervision not to exceed 12 years and six months: (1) while subject to a detention or custody order pending a petition to commit the person as an SVP; or (2) while subject to an order committing the person to custody of DHFS, regardless of whether the person is placed in institutional care or on supervised release. [SECS. 44 and 45.]

Battery

The bill creates a new criminal battery provision specifying that an SVP who has been committed under ch. 980 and who intentionally causes bodily harm to an officer, employee, agent, visitor, or other resident of the institution, without his or her consent, is guilty of a Class H felony. The term "bodily harm" is defined in s. 939.22 (4), Stats., to mean physical pain or injury, illness, or any impairment of physical condition. A Class H felony is punishable by a fine not to exceed \$10,000 or a term of confinement and extended supervision not to exceed six years, or both. This provision is comparable to current crimes of battery by prisoners and battery to law enforcement officers and fire

fighters; probation, extended supervision and parole agents and aftercare agents; and emergency medical care providers. [SEC. 43.]

District Attorneys; Cost Reimbursement

Under **current law**, the DA in Brown County and the DA in Milwaukee County must each assign one assistant DA to be an SVP commitment prosecutor. Those assistant DAs may file and prosecute SVP commitment proceedings in any prosecutorial unit in the state. The **bill** specifies that if an assistant DA prosecutes or assists in the prosecution of an SVP case in another prosecutorial unit, the unit in which the case is heard must reimburse the assistant DA's own unit for his or her reasonable costs associated with the prosecution, including transportation, lodging, and meals. [SEC. 54.]

Other Items

The bill also provides that:

1. Notwithstanding the normal process for gaining personal jurisdiction in a judicial proceeding, a court may exercise personal jurisdiction over the subject of an SVP petition even though the person is not served under the normal process with a verified petition and summons or served with an order for detention and the person has not had a probable cause hearing. [SEC. 92.]
2. A motion for post-commitment relief by an SVP or an appeal from a final order or from an order denying a motion for post-commitment relief will follow criminal appellate procedure. An appeal by the state from a final judgment or order will follow the procedure for civil appeals. [SEC. 92.]
3. Constitutional rights available to a defendant in a criminal proceeding are not necessarily available to the person who is the subject to a commitment petition. [SEC. 89.]

Appendix 1

Committee and Joint Legislative Council Votes

WLC: 0083/2, relating to the definition of sexually violent person, sexually violent person 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, was recommended by the Special Committee on Sexually Violent Persons to the Joint Legislative Council for introduction in the 2005-06 Session of the Legislature.

Special Committee Vote

- In a February 21, 2005 mail ballot, the Special Committee recommended WLC: 0083/2, on a vote of Ayes 9 (Sens. Darling, Lazich, and Plale; Reps. Gundrum, Stone, and Staskunas; and Public Members Dallet, Nofzinger, and Tess); Noes, 0; and Not Voting, 1 (Public Member Sankovitz).

Joint Legislative Council Vote

At its April 6, 2005 meeting, the Joint Legislative Council voted as follows on the recommendation of the Special Committee:

- Sen. Zien moved, seconded by Co-Chair Wieckert, that WLC: 0083/2, 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, be approved by the Joint Legislative Council. The motion passed on a roll call vote as follows: Ayes, 16 (Sens. Lasee, Brown, Decker, Grothman, Kapanke, Miller, Robson and Zien; and Reps. Wieckert, Ainsworth, Gard, Huebsch, Nischke, Pocan, Schneider and Travis); Noes, 2 (Sen. Risser and Rep. Kreuser); and Excused, 4 (Sens. Fitzgerald and Schultz; and Reps. Freese and Kaufert).

[Sens. Fitzgerald and Schultz and Reps. Freese and Kaufert noted that had they been present, they would have voted "aye" on WLC: 0083/2.]

The proposal that the Joint Legislative Council voted to introduce was subsequently introduced as 2005 Senate Bill 318.

Joint Legislative Council

[Joint Legislative Council Members Who Selected and Appointed Committee and Its Membership]

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This 22-member committee consists of the majority and minority party leadership of both houses of the Legislature, the co-chairs and ranking minority members of the Joint Committee on Finance, and 5 Senators and 5 Representatives appointed as are members of standing committees. [s. 13.81, Stats.]

Joint Legislative Council

[Current Joint Legislative Council Members Receiving Committee Report]

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Appendix 3

Sexually Violent Person Commitments

Senator Alberta Darling, **Chair**
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Representative Mark Gundrum
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Senator Mary Lazich
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Senator Jeff Plale
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Representative Tony Staskunas
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Representative Jeff A. Stone
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Sally Tess
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3099 East Washington Avenue
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Madison, WI 53707-7925

STUDY ASSIGNMENT: The committee is directed to study current law relating to the commitment, periodic reexamination, supervised release, and discharge of sexually violent persons.

10 MEMBERS: 3 Senators, 3 Representatives, and 4 Public Members.

LEGISLATIVE COUNCIL STAFF: Don Salm and Ronald Sklansky, Senior Staff Attorneys, and Julie Learned, Support Staff.

Committee Materials List

(Copies of documents are available at www.legis.state.wi.us/lc)

February 10, 2005 Mail Ballot

- WLC: 0083/2, 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

January 31, 2005 Meeting

- WLC: 0083/1, 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
- **Memo No. 2, Clarifications to WLC: 0083/1 Proposed by Thomas Fallon, Department of Justice** (1-27-05)
 - Enclosure 1
 - Enclosure 2
 - Enclosure 3
 - Enclosure 4
 - Enclosure 5
 - Enclosure 6
- **Memo** from Krista Ginger, Legislative Liaison, Wisconsin Public Defender, **Written Testimony/Comments** regarding Assembly Substitute Amendment 2 to 2003 Assembly Bill 861
- **Memo** from Krista Ginger, Legislative Liaison, Wisconsin Public Defender, Proposed re-draft language for Assembly Substitute Amendment 2 to 2003 Assembly Bill 861

November 16, 2004 Meeting

- WLC: 0041/1, relating to battery to staff providing institutional care for sexually violent persons
- **Presentation to the Legislative Council Special Committee on Sexually Violent Person Commitments**, by Steve Watters, SRSTC Director, Department of Health and Family Services (11-16-04)
 - **Rapid Risk Assessment for Sex Offender Recidivism (RRASOR)**, included with above presentation
- Memo, **Review of AB 861 Substitute Amendment 2**, from Sally Tess, Department of Corrections (11-15-04)

September 28, 2004 Meeting

- Staff Brief 04-3, "**Sexual Predator Law**": **Civil Commitment of Sexually Violent Persons Under Ch. 980, Stats.** (9-17-04)
- Chapter 980, Stats., as amended by 2003 Wisconsin Act 187
- Memo No. 1, **Assembly Substitute Amendment 2 to 2003 Assembly Bill 861, Relating to Sexually Violent Persons** (9-13-04)
- Assembly Substitute Amendment 2 to 2003 Assembly Bill 861
- Testimony, Steve Watters, Director, DHFS, Sand Ridge Secure Treatment Center
- Testimony, Thomas Fallon, Assistant Attorney General, Wisconsin Department of Justice