

## 2007 DRAFTING REQUEST

### Bill

Received: **09/20/2006**

Received By: **phurley**

Wanted: **As time permits**

Identical to LRB:

For: **Administration-Budget**

By/Representing: **Jablonsky**

This file may be shown to any legislator: **NO**

Drafter: **phurley**

May Contact:

Addl. Drafters:

Subject: **Correctional System - misc**

Extra Copies:

Submit via email: **YES**

Requester's email:

Carbon copy (CC:) to:

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### Pre Topic:

DOA:.....Jablonsky, BB0018 -

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### Topic:

Conditional release

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### Instructions:

See Attached

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### Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	phurley 09/21/2006	wjackson 09/21/2006		_____			
/1	phurley 10/10/2006	wjackson 10/10/2006	jfrantze 09/22/2006	_____	mbarman 09/22/2006		
/2			jfrantze 10/11/2006	_____	lparisi 10/11/2006		

FE Sent For:

<END>

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/1		1/2 WJ 10/10	jfrantze 09/22/2006	_____	mbarman 09/22/2006		

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1/?	phurley	1 wly 9/21					

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<END>

## 2007-09 Budget Bill Statutory Language Drafting Request

- Topic: Conditional Release
- Tracking Code: B30018
- SBO team: Health/Ins
- SBO analyst: Sue Jablonsky
  - Phone: 7-9546
  - Email: Sue.Jablonsky@Wisconsin.gov
- Agency acronym: DHFS
- Agency number: 435

Make the time limit for filing a petition for detention for someone on conditional release 72 hours so it is the same as that for someone on supervised release.

High Priority

## Conditional Release Revocation Petition Timing

### Current Language

s. 971.17(3)

### Proposed Change

Revise the language in s. 971.17(3)(e) to reflect the same language as in s. 980.08(6m) which states "The department shall submit a statement showing probable cause of the detention and a petition to revoke the order for conditional release to the committing court and the regional office of the state public defender responsible for handling cases in the county where the committing court is located within 72 hours after the detention, excluding Saturdays, Sundays and legal holidays."

### Effect of the Change

This amendment would make the two procedures consistent for supervising persons committed to DHFS under Ch. 971 and Ch. 980 and decrease the risk of confusion on the part of DOC agents when supervising both groups of individuals. Making the different timeframes consistent would eliminate the increased risk of DOC agents missing the 48 hour timeframe for Ch. 971 Conditional Release clients because of an assumption that it matched the 72 hour timeframe that exists for supervising Ch. 980 sexually violent persons under the Supervised Release program.

### Rationale for the Change

The Conditional Release program provides community supervision to persons found not guilty of crimes by reason of mental disease or defect. Conditional Release (CR) clients are found "safe" to be placed in the community if they follow certain court-ordered and department-ordered conditions and treatment plans. If they do not follow the conditions imposed by the court or by the department, they are considered to pose a risk to community safety. Therefore, the statute requires that they be placed in custody and their conditional release reviewed by the court.

Current law requires DHFS to file a statement of probable cause of the detention. A petition to revoke the order for conditional release must be filed with the committing court within 48 hours of the detention. This short timeframe creates a problem when CR clients are placed in other

counties than the committing county, or when the detention occurs on a Friday and the petition must be filed by Sunday.

DHFS contracts with the Department of Corrections (DOC) to manage the Conditional Release (CR) program, including filing the petitions. DOC has raised concerns about the timeframe and is concerned that their agents would be unable to file the petition with the court within the currently specified 48 hours and that a potentially dangerous person would be returned to the community without additional psychiatric intervention. Legally, if the court does not receive the petition in 48 hours, the petition may be dismissed and the person would be released into the community.

State policymakers are increasingly concerned about the safety of the citizens of the state from violent, mentally ill offenders. If the release of a conditional release client were to occur because of failure to comply with the 48 hour timeframe, it could be perceived as putting the community's safety at risk based on a minor technicality. The Ch. 980, Sexually Violent Persons law language was amended on the grounds of protecting the community's safety.

DOC fully supports the request to amend the statutory language.

<b>Desired Effective Date:</b>	Upon passage
<b>Agency:</b>	DHFS
<b>Agency Contact:</b>	Donna Moore
<b>Phone:</b>	266-8156

971.17(3)

**(3) Commitment order.**

971.17(3)(a)

(a) An order for commitment under this section shall specify either institutional care or conditional release. The court shall order institutional care if it finds by clear and convincing evidence that conditional release of the person would pose a significant risk of bodily harm to himself or herself or to others or of serious property damage. If the court does not make this finding, it shall order conditional release. In determining whether commitment shall be for institutional care or conditional release, the court may consider, without limitation because of enumeration, the nature and circumstances of the crime, the person's mental history and present mental condition, where the person will live, how the person will support himself or herself, what arrangements are available to ensure that the person has access to and will take necessary medication, and what arrangements are possible for treatment beyond medication.

971.17(3)(b)

(b) If the state proves by clear and convincing evidence that the person is not competent to refuse medication or treatment for the person's mental condition, under the standard specified in s. 971.16 (3), the court shall issue, as part of the commitment order, an order that the person is not competent to refuse medication or treatment for the person's mental condition and that whoever administers the medication or treatment to the person shall observe appropriate medical standards.

971.17(3)(c)

(c) If the court order specifies institutional care, the department of health and family services shall place the person in an institution under s. 51.37 (3) that the department considers appropriate in light of the rehabilitative services required by the person and the protection of public safety. If the person is not subject to a court order determining the person to be not competent to refuse medication or treatment for the person's mental condition and if the institution in which the person is placed determines that the person should be subject to such a court order, the institution may file with the court, with notice to the person and his or her counsel and the district attorney, a motion for a hearing, under the standard specified in s. 971.16 (3), on whether the person is not competent to refuse medication or treatment. A report on which the motion is based shall accompany the motion and notice of motion and shall include a statement signed by a licensed physician that asserts that the person needs medication or treatment and that the person is not competent to refuse medication or treatment, based on an examination of the person by a licensed physician. Within 10 days after a motion is filed under this paragraph, the court shall determine the person's competency to refuse medication or treatment for the person's mental condition. At the request of the person, his or her counsel or the district attorney, the hearing may be postponed, but in no case may the postponed hearing be held more than 20 days after a motion is filed under this paragraph. If the district attorney, the person and his or her counsel waive their respective opportunities to present other evidence on the issue, the court shall determine the person's competency to refuse medication or treatment on the basis of the report accompanying the motion. In the absence of these waivers, the court shall hold an evidentiary hearing on the issue. If the state proves by evidence that is clear and convincing that the person is not competent to refuse medication or treatment, under the standard specified in s. 971.16 (3), the court shall order that the person is not competent to refuse medication or treatment for the person's mental condition and that whoever administers the medication or treatment to the person shall observe appropriate medical standards.

971.17(3)(d)

(d) If the court finds that the person is appropriate for conditional release, the court shall notify the department of health and family services. The department of health and family services and the county department under s. 51.42 in the county of residence of the person shall prepare a plan that identifies the



treatment and services, if any, that the person will receive in the community. The plan shall address the person's need, if any, for supervision, medication, community support services, residential services, vocational services, and alcohol or other drug abuse treatment. The department of health and family services may contract with a county department, under s. 51.42 (3) (aw) 1. d., with another public agency or with a private agency to provide the treatment and services identified in the plan. The plan shall specify who will be responsible for providing the treatment and services identified in the plan. The plan shall be presented to the court for its approval within 21 days after the court finding that the person is appropriate for conditional release, unless the county department, department of health and family services and person to be released request additional time to develop the plan. If the county department of the person's county of residence declines to prepare a plan, the department of health and family services may arrange for another county to prepare the plan if that county agrees to prepare the plan and if the individual will be living in that county.

971.17(3)(e)

(e) An order for conditional release places the person in the custody and control of the department of health and family services. A conditionally released person is subject to the conditions set by the court and to the rules of the department of health and family services. Before a person is conditionally released by the court under this subsection, the court shall so notify the municipal police department and county sheriff for the area where the person will be residing. The notification requirement under this paragraph does not apply if a municipal department or county sheriff submits to the court a written statement waiving the right to be notified. If the department of health and family services alleges that a released person has violated any condition or rule, or that the safety of the person or others requires that conditional release be revoked, he or she may be taken into custody under the rules of the department. The department of health and family services shall submit a statement showing probable cause of the detention and a petition to revoke the order for conditional release to the committing court and the regional office of the state public defender responsible for handling cases in the county where the committing court is located within 48 hours after the detention. The court shall hear the petition within 30 days, unless the hearing or time deadline is waived by the detained person. Pending the revocation hearing, the department of health and family services 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 by clear and convincing evidence that any rule or condition of release has been violated, or that the safety of the person or others requires that conditional release be revoked. If the court determines after hearing that any rule or condition of release has been violated, or that the safety of the person or others requires that conditional release be revoked, it may revoke the order for conditional release and order that the released person be placed in an appropriate institution under s. 51.37 (3) until the expiration of the commitment or until again conditionally released under this section.

, excluding  
Sats, sun,  
& legal  
holidays.

72

980.08(7)(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 a facility described under s. 980.065. 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.

DOA:.....Jablonsky, BB0018 - Conditional release

FOR 2007-09 BUDGET -- NOT READY FOR INTRODUCTION

9-21-08

SOON

Do Not Gen

1

AN ACT ...; relating to: the budget

Analysis by the Legislative Reference Bureau

Need → CORRECTIONAL SYSTEM

✓ ADULT CORRECTIONAL SYSTEM

\* Under current law, a person found not guilty of a crime by reason of mental disease or defect may be institutionalized or may receive supervision in the community under the Conditional Release program. If a participant in the Conditional Release program violates a condition of his or her release, or is otherwise deemed unsafe for community living, DHFS may require the person to be detained pending a petition by DHFS to revoke the person's Conditional Release. Current law requires DHFS to file the petition within 48 hours of the person's detention.

This bill extends the time for DHFS to file a petition for revocation of person's Conditional Release from 48 to 72 hours, excluding Saturdays, Sundays, and legal holidays.

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

2  
3  
4

SECTION 1. 971.17 (3) (e) of the statutes is amended to read:

971.17 (3) (e) An order for conditional release places the person in the custody and control of the department of health and family services. A conditionally released

1 person is subject to the conditions set by the court and to the rules of the department  
2 of health and family services. Before a person is conditionally released by the court  
3 under this subsection, the court shall so notify the municipal police department and  
4 county sheriff for the area where the person will be residing. The notification  
5 requirement under this paragraph does not apply if a municipal department or  
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24 release and order that the released person be placed in an appropriate institution

1 under s. 51.37 (3) until the expiration of the commitment or until again conditionally  
2 released under this section.

History: 1975 c. 430; 1977 c. 353; 1977 c. 428 s. 115; 1983 a. 359; Sup. Ct. Order, 141 Wis. 2d xiii (1987); 1987 a. 394; 1989 a. 31, 142, 334, 359; Sup. Ct. Order, 158 Wis. 2d xvii (1990); 1991 a. 39, 189, 269; 1993 a. 16, 98, 227; 1995 a. 27 s. 9126 (19); 1995 a. 417, 425, 440, 448; 1997 a. 35, 130, 181, 252, 275; 1999 a. 89; 2001 a. 95, 109; 2003 a. 50; 2005 a. 277, 431.

3 **SECTION 9309. Initial applicability; corrections.**

4 (1) The treatment of section 971.17 (3) (e) of the statutes first applies to persons  
5 who are detained on the effective date of this subsection.

6 (END)

LP6: Please  
fix font.

DOA:.....Jablonsky, BB0018 - Conditional release

FOR 2007-09 BUDGET -- NOT READY FOR INTRODUCTION

1 AN ACT <sup>Do Not Gen</sup>; relating to: the budget.

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**ADULT CORRECTIONAL SYSTEM**

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3 **SECTION 9309. Initial applicability; Corrections.**

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5 who are detained on the effective date of this subsection.

6 (END)

CS  
= Revocation of conditional RELEASE





State of Wisconsin  
2007 - 2008 LEGISLATURE

LRB-0293/2

PJH:wlj:jf

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4 (1) REVOCATION OF CONDITIONAL RELEASE. The treatment of section 971.17 (3) (e)  
5 of the statutes first applies to persons who are detained on the effective date of this  
6 subsection.

7 (END)