

# Wisconsin Acts

Enacted by the 1993 Legislature  
Volume 3: Acts 479 to 497

May 1994 Spec. Sess.  
Assembly Bill 3

Date of enactment: May 26, 1994  
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## 1993 Wisconsin Act 479 (Vetoed in Part)

AN ACT to renumber and amend 301.046 (4) (b), 301.048 (4m) (b) and 304.063 (2); to amend 20.435 (2) (a), 46.011 (2), 46.10 (2), 51.05 (2), 51.30 (4) (b) 12m, 51.30 (4) (b) 8m, 51.39, 51.61 (1) (intro.), 146.82 (2) (c), 301.01 (2) (intro.), 301.03 (3c), 301.046 (4) (c), 301.048 (4m) (c), 304.06 (1) (d) 1, 304.06 (1) (em), 304.063 (3), 304.063 (4), 609.65 (1) (intro.), 895.54 and 977.05 (4) (j); to repeal and recreate 46.10 (2); and to create 20.435 (2) (bm), 48.396 (2) (e), 48.78 (2) (e), 51.30 (4) (b) 10m, 165.255, 301.03 (3d), 301.046 (4) (b) 2, 301.048 (4m) (b) 2, 302.115, 303.068 (4m), 304.063 (2) (b), 808.075 (4) (h) and ch. 980 of the statutes, relating to civil commitment of sexually violent persons, sex offender registration and notice of release, granting rule-making authority, making an appropriation and providing a penalty.

Vetoed  
in Part

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

SECTION 1. 20.005 (3) (schedule) of the statutes: at the appropriate place, insert the following amounts for the purposes indicated:

	<u>1993-94</u>	<u>1994-95</u>
<b>20.435 Health and social services,</b>		
<b>Department of</b>		
(2) CARE AND TREATMENT FACILITIES		
(bm) Secure mental health		
units or facilities	GPR A	364,000
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SECTION 2. 20.435 (2) (a) of the statutes is amended to read:

20.435 (2) (a) *General program operations.* The amounts in the schedule to operate institutions and provide administrative services and evaluate, treat and care for persons under ch. 980.

SECTION 3. 20.435 (2) (bm) of the statutes is created to read:

20.435 (2) (bm) *Secure mental health units or facilities.* The amounts in the schedule for the general program operations of secure mental health units or facilities under s. 980.065 for persons committed to a secure mental health placement under s. 980.06 (2) (b).

SECTION 6. 46.011 (2) of the statutes is amended to read:

46.011 (2) "Prisoner" means any person who is either arrested, incarcerated, imprisoned or otherwise

detained in excess of 12 hours by any law enforcement agency of this state, except when detention is pursuant to s. 51.15, 51.20, 51.45 (11) (b) or 55.06 (11) (a) or ch. 980. "Prisoner" does not include any person who is serving a sentence of detention under s. 973.03 (4) unless the person is in the county jail under s. 973.03 (4) (c).

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

46.10 (2) Except as provided in sub. (2m), 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. 48.34 (4m), 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) and 975.06 and 980.06, receiving care, maintenance, services and supplies provided by any institution in this state

including university of Wisconsin hospital 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. 49.175, and any person receiving treatment and services from a public or private agency under s. 971.17 (3) (d) or (4) (e), 980.06 (2) (c) or 980.08 (5) 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 8. 46.10 (2) of the statutes, as affected by 1993 Wisconsin Act 385, is repealed and recreated to read:

46.10 (2) Except as provided in sub. (2m), 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. 48.34 (4m), 48.357 (4) and (5) (e), 48.366, 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 hospital 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. 49.175, and any person receiving treatment and services from a public or private agency under s. 971.17 (3) (d) or (4) (e), 980.06 (2) (c) or 980.08 (5) 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 9. 48.396 (2) (e) of the statutes is created to read:

48.396 (2) (e) Upon request of the department of health and social services to review court records for the purpose of providing, under s. 980.015 (3) (a), 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 health and social services the records of the court relating to any child who has been adjudicated delinquent for a sexually violent offense, as defined in s. 980.01 (6).

SECTION 10. 48.78 (2) (e) of the statutes is created to read:

48.78 (2) (e) Paragraph (a) does not prohibit the department of health and social services from disclosing information about an individual adjudged delinquent under s. 48.31 for a sexually violent offense, as defined in s. 980.01 (6), to 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 under ch. 980. The court in which the petition under s. 980.02 is filed may issue any protective orders that it determines are appropriate concerning information disclosed under this paragraph.

SECTION 11. 51.05 (2) of the statutes is amended to read:

51.05 (2) The department may not accept for admission to a mental health institute any resident person, except in an emergency, unless the county department under s. 51.42 in the county where the person has legal residency authorizes the care, as provided in s. 51.42 (3) (as). Patients who are committed to the department under s. 975.01, 1977 stats., or s. 975.02, 1977 stats., or s. 971.14, 971.17 ~~or~~, 975.06 or 980.06, admitted by the department under s. 975.17, 1977 stats., or are transferred from a juvenile correctional facility to a state treatment facility under

s. 51.35 (3) or from a jail or prison to a state treatment facility under s. 51.37 (5) are not subject to this section.

SECTION 12. 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 13. 51.30 (4) (b) 10m of the statutes is created 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), 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) 12m of the statutes is amended to read:

51.30 (4) (b) 12m. To any person if the patient was admitted under s. 971.14 ~~or~~ 971.17 or 980.06 or ch. 975 or transferred under s. 51.35 (3) or 51.37 and is on unauthorized absence from a treatment facility. Information released under this subdivision is limited to information that would assist in the apprehension of the patient.

SECTION 15. 51.39 of the statutes is amended to read:

**51.39 Resident patients on unauthorized absence.** If any patient who is admitted under s. 51.13, 51.15, 51.20, 51.45 (11) (b), (12) or (13) or 55.06 or ch. 971 ~~or~~ 975 or 980 or transferred under s. 51.35 (3) or 51.37 is on unauthorized absence from a treatment facility, the sheriff or any other law enforcement agency in the county in which the patient is found or in which it is believed the patient may be present, upon the request of the director, shall take charge of and return the patient to the facility. The costs incident to the return shall be paid out of the facility's operating funds and be charged back to the patient's county of residence.

SECTION 16. 51.61 (1) (intro.) of the statutes is amended to read:

51.61 (1) (intro.) In this section, "patient" means any individual who is receiving services for mental illness, developmental disabilities, alcoholism or drug dependency, including any individual who is admitted to a treatment facility in accordance with this chapter or ch. 55 or who is detained, committed or placed under this chapter or ch. 55, 971 ~~or~~ 975 or 980, or who is transferred to a treatment facility under s. 51.35 (3) or 51.37 or who is receiving care or treatment for those conditions through the department or a county department under s. 51.42 or 51.437 or in a private treatment facility. "Patient" does not include persons committed under ch. 975 who are transferred to or residing in any state prison listed under s. 302.01. In

private hospitals and in public general hospitals, "patient" includes any individual who is admitted for the primary purpose of treatment of mental illness, developmental disability, alcoholism or drug abuse but does not include an individual who receives treatment in a hospital emergency room nor an individual who receives treatment on an outpatient basis at those hospitals, unless the individual is otherwise covered under this subsection. Except as provided in sub. (2), each patient shall:

SECTION 17. 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 ~~s. ss.~~ 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 18. 165.255 of the statutes is created to read:

**165.255 Representation in sexually violent person commitment proceedings.** The department of justice may, at the request of an agency under s. 980.02 (1), represent the state in sexually violent person commitment proceedings under ch. 980.

SECTION 19. 301.01 (2) (intro.) of the statutes is amended to read:

301.01 (2) (intro.) "Prisoner" means any person who is either arrested, incarcerated, imprisoned or otherwise detained in excess of 12 hours by any law enforcement agency of this state, except when detention is pursuant to s. 51.15, 51.20, 51.45 (11) (b) or 55.06 (11) (a) or ch. 980. "Prisoner" does not include any of the following:

SECTION 20. 301.03 (3c) of the statutes is amended to read:

301.03 (3c) If requested by the department of health and social services, contract with that department to supervise and provide services to persons who are conditionally transferred or discharged under s. 51.37 (9) ~~or~~ conditionally released under s. 971.17 (3) or placed on supervised release under s. 980.06 (2) or 980.08.

SECTION 21. 301.03 (3d) of the statutes is created to read:

301.03 (3d) If requested by the department of health and social services, contract with that department to provide a secure mental health unit or facility under s. 980.065 (2).

SECTION 22. 301.046 (4) (b) of the statutes, as affected by 1993 Wisconsin Act 227, is renumbered 301.046 (4) (b) (intro.) and amended to read:

301.046 (4) (b) (intro.) Before a prisoner is confined under sub. (1) for a violation of s. 940.03, 940.05, 940.225 (1) or (2), 948.02 (1) or (2) ~~or~~ 948.025, 948.06 or 948.07, the department shall make a reasonable effort to notify all of the following ~~person~~ persons, if

~~he or she~~ they can be found, in accordance with par. (c) and after receiving a completed card under par. (d): ~~the~~

1. The victim of the crime committed by the ~~inmate prisoner~~ or, if the victim died as a result of the crime, an adult member of the victim's family or, if the victim is younger than 18 years old, the victim's parent or legal guardian.

SECTION 23. 301.046 (4) (b) 2 of the statutes is created to read:

301.046 (4) (b) 2. Any witness who testified against the prisoner in any court proceeding involving the offense.

SECTION 24. 301.046 (4) (c) of the statutes, as created by 1993 Wisconsin Act 97, is amended to read:

301.046 (4) (c) The department shall make a reasonable effort to send the notice, postmarked at least 7 days before a prisoner is confined under sub. (1), to the last-known address of the ~~person~~ persons under par. (b).

SECTION 25. 301.048 (4m) (b) of the statutes, as affected by 1993 Wisconsin Act 227, is renumbered 301.048 (4m) (b) (intro.) and amended to read:

301.048 (4m) (b) (intro.) As soon as possible after a prisoner, probationer or parolee who has violated s. 940.03, 940.05, 940.225 (1) or (2), 948.02 (1) or (2) ~~or~~, 948.025, 948.06 or 948.07 enters the intensive sanctions program, the department shall make a reasonable effort to notify all of the following ~~person~~ persons, if ~~he or she~~ they can be found, in accordance with par. (c) and after receiving a completed card under par. (d): ~~the~~

1. The victim of the crime committed by the ~~inmate prisoner, probationer or parolee~~ or, if the victim died as a result of the crime, an adult member of the victim's family or, if the victim is younger than 18 years old, the victim's parent or legal guardian.

SECTION 26. 301.048 (4m) (b) 2 of the statutes is created to read:

301.048 (4m) (b) 2. Any witness who testified against the prisoner, probationer or parolee in any court proceeding involving the offense.

SECTION 27. 301.048 (4m) (c) of the statutes, as created by 1993 Wisconsin Act 97, is amended to read:

301.048 (4m) (c) The department shall make a reasonable effort to send the notice to the last-known address of the ~~person~~ persons under par. (b).

SECTION 28. 302.115 of the statutes is created to read:

**302.115 Notification prior to expiration of sentence.** (1) In this section:

(a) "Member of the family" means spouse, child, sibling, parent or legal guardian.

(b) "Victim" means a person against whom a crime has been committed.

(2) Before an inmate who is in a prison serving a sentence for a violation of s. 940.01, 940.03, 940.05, 940.225 (1) or (2), 948.02 (1) or (2), 948.025, 948.06 or

948.07 is released from imprisonment because he or she has reached the expiration date of his or her sentence, the department shall make a reasonable effort to notify all of the following persons, if they can be found, in accordance with sub. (3) and after receiving a completed card under sub. (4):

(a) The victim of the crime committed by the inmate or, if the victim died as a result of the crime, an adult member of the victim's family or, if the victim is younger than 18 years old, the victim's parent or legal guardian.

(b) Any witness who testified against the inmate in any court proceeding involving the offense.

(3) The department shall make a reasonable effort to send the notice, postmarked at least 7 days before an inmate's sentence expires and he or she is released from imprisonment, to the last-known address of the persons under sub. (2).

(4) The department shall design and prepare cards for any person specified in sub. (2) to send to the department. The cards shall have space for any such person to provide his or her name and address, the name of the applicable inmate and any other information the department determines is necessary. The department shall provide the cards, without charge, to district attorneys. District attorneys shall provide the cards, without charge, to persons specified in sub. (2). These persons may send completed cards to the department. All department records or portions of records that relate to mailing addresses of these persons are not subject to inspection or copying under s. 19.35 (1).

SECTION 29. 303.068 (4m) of the statutes is created to read:

303.068 (4m) (a) In this subsection:

1. "Member of the family" means spouse, child, sibling, parent or legal guardian.

2. "Victim" means a person against whom a crime has been committed.

(b) Before an inmate who is imprisoned for a violation of s. 940.01, 940.03, 940.05, 940.225 (1) or (2), 948.02 (1) or (2), 948.025, 948.06 or 948.07 is released on leave under this section, the department shall make a reasonable effort to notify all of the following persons, if they can be found, in accordance with par. (c) and after receiving a completed card under par. (d):

1. The victim of the crime committed by the inmate or, if the victim died as a result of the crime, an adult member of the victim's family or, if the victim is younger than 18 years old, the victim's parent or legal guardian.

2. Any witness who testified against the inmate in any court proceeding involving the offense.

(c) The department shall make a reasonable effort to send the notice, postmarked at least 7 days before an inmate is released on leave, to the last-known address of the persons under par. (b).

(d) The department shall design and prepare cards for any person specified in par. (b) to send to the department. The cards shall have space for any such person to provide his or her name and address, the name of the applicable inmate and any other information the department determines is necessary. The department shall provide the cards, without charge, to district attorneys. District attorneys shall provide the cards, without charge, to persons specified in par. (b). These persons may send completed cards to the department. All department records or portions of records that relate to mailing addresses of these persons are not subject to inspection or copying under s. 19.35 (1).

SECTION 30. 304.06 (1) (d) 1 of the statutes, as affected by 1993 Wisconsin Act 227, is amended to read:

304.06 (1) (d) 1. The notice under par. (c) shall inform the offices and persons under par. (c) 1 to 3 of the manner in which they may provide written statements under this subsection and inform persons under par. (c) 3 who are victims, or family members of victims, of crimes specified in s. 940.01, 940.03, 940.05, 940.225 (1) or (2), 948.02 (1) or (2) ~~or~~, 948.025, 948.06 or 948.07 of the manner in which they may have direct input in the parole decision-making process under par. (em). The parole commission shall provide notice under this paragraph for an inmate's first application for parole and, upon request, for subsequent applications for parole.

SECTION 31. 304.06 (1) (em) of the statutes, as affected by 1993 Wisconsin Act 227, is amended to read:

304.06 (1) (em) The parole commission shall promulgate rules that provide a procedure to allow any person who is a victim, or a family member of a victim, of a crime specified in s. 940.01, 940.03, 940.05, 940.225 (1) or (2), 948.02 (1) or (2) ~~or~~, 948.025, 948.06 or 948.07 to have direct input in the parole decision-making process.

SECTION 32. 304.063 (2) of the statutes, as affected by 1993 Wisconsin Act 227, is renumbered 304.063 (2) (intro.) and amended to read:

304.063 (2) (intro.) Before a prisoner is released on parole under s. 302.11, 304.02 or 304.06, if applicable, for a violation of s. 940.01, 940.03, 940.05, 940.225 (1) or (2), 948.02 (1) or (2) ~~or~~, 948.025, 948.06 or 948.07, the department shall make a reasonable effort to notify all of the following ~~person~~ persons, if ~~he or she~~ they can be found, in accordance with sub. (3) and after receiving a completed card under sub. (4): ~~the~~

(a) The victim of the crime committed by the ~~inmate~~ prisoner or, if the victim died as a result of the crime, an adult member of the victim's family or, if the victim is younger than 18 years old, the victim's parent or legal guardian.

SECTION 33. 304.063 (2) (b) of the statutes is created to read:

304.063 (2) (b) Any witness who testified against the prisoner in any court proceeding involving the offense.

SECTION 34. 304.063 (3) of the statutes, as created by 1993 Wisconsin Act 97, is amended to read:

304.063 (3) The department shall make a reasonable effort to send the notice, postmarked at least 7 days before a prisoner is released on parole, to the last-known address of the ~~person~~ persons under sub. (2).

SECTION 35. 304.063 (4) of the statutes, as created by 1993 Wisconsin Act 97, is amended to read:

304.063 (4) The department shall design and prepare cards for any person specified in sub. (2) to send to the department. The cards shall have space for any such person to provide his or her name and address, the name of the applicable prisoner and any other information the department determines is necessary. The department shall provide the cards, without charge, to district attorneys. District attorneys shall provide the cards, without charge, to persons specified in ~~par. (b)~~ sub. (2). These persons may send completed cards to the department. All department records or portions of records that relate to mailing addresses of these persons are not subject to inspection or copying under s. 19.35 (1).

SECTION 36. 609.65 (1) (intro.) of the statutes, as affected by 1993 Wisconsin Act 316, is amended to read:

609.65 (1) (intro.) If an enrolled participant of a health maintenance organization, limited service health organization or preferred provider plan is examined, evaluated or treated for a nervous or mental disorder pursuant to an emergency detention under s. 51.15, a commitment or a court order under s. 51.20 or 880.33 (4m) or (4r) or ch. 980, then, notwithstanding the limitations regarding selected providers, primary providers and referrals under ss. 609.01 (2) to (4) and 609.05 (3), the health maintenance organization, limited service health organization or preferred provider plan shall do all of the following:

SECTION 37. 808.075 (4) (h) of the statutes is created to read:

808.075 (4) (h) Commitment, supervised release, recommitment and discharge under ss. 980.06, 980.08, 980.09 and 980.10 of a person found to be a sexually violent person under ch. 980.

SECTION 38. 895.54 of the statutes is amended to read:

**895.54 Liability exemption; notification of release.** A person is immune from any liability regarding any act or omission regarding the notification of any applicable office or person under s. 51.37 (10), 304.06 (1) ~~or~~, 971.17 (4m) or (6m) or 980.11. This section does not apply to wilful or wanton acts or omissions.

SECTION 39. 977.05 (4) (j) of the statutes is amended to read:

977.05 (4) (j) At the request of any person determined by the state public defender to be indigent or upon referral of any court, prosecute a writ of error, appeal, action or proceeding for habeas corpus or other postconviction or post-commitment remedy or attack the conditions of confinement on behalf of the person before any court, if the state public defender determines the case should be pursued. The state public defender must pursue the case of any indigent person entitled to counsel under s. 971.17 (7) (b) 1 or 980.03 (2) (a).

SECTION 40. Chapter 980 of the statutes is created to read:

CHAPTER 980

SEXUALLY VIOLENT PERSON COMMITMENTS

**980.01 Definitions.** In this chapter:

- (1) "Department" means the department of health and social services.
- (2) "Mental disorder" means a congenital or acquired condition affecting the emotional or volitional capacity that predisposes a person to engage in acts of sexual violence.
- (4) "Secretary" means the secretary of health and social services.
- (5) "Sexually motivated" means that one of the purposes for an act is for the actor's sexual arousal or gratification.
- (6) "Sexually violent offense" means any of the following:
  - (a) Any crime specified in s. 940.225 (1) or (2), 948.02 (1) or (2), 948.025, 948.06 or 948.07.
  - (b) Any crime specified in s. 940.01, 940.02, 940.05, 940.06, 940.19 (4) or (5), 940.30, 940.305, 940.31 or 943.10 that is determined, in a proceeding under s. 980.05 (3) (b), to have been sexually motivated.
  - (c) Any solicitation, conspiracy or attempt to commit a crime under par. (a) or (b).
- (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 substantially probable that the person will engage in acts of sexual violence.

**980.015 Notice to the department of justice and district attorney.** (1) In this section, "agency with jurisdiction" means the agency with the authority or duty to release or discharge the person.

(2) 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 prior to the applicable date of the following:

(a) The anticipated discharge from a sentence, anticipated release on parole or anticipated release from imprisonment of a person who has been convicted of a sexually violent offense.

(b) The anticipated release from a secured correctional facility, as defined in s. 48.02 (15m), of a person adjudicated delinquent under s. 48.34 on the basis of a sexually violent offense.

(c) The termination or discharge of a person who has been found not guilty of a sexually violent offense by reason of mental disease or defect under s. 971.17.

(3) The agency with jurisdiction shall provide the district attorney and department of justice with all of the following:

(a) The person's name, identifying factors, anticipated future residence and offense history.

(b) If applicable, documentation of any treatment and the person's adjustment to any institutional placement.

(4) Any agency or officer, employe 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 this section.

**980.02 Sexually violent person petition; contents; filing.** (1) A petition alleging that a person is a sexually violent person may be filed by one of the following:

(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 ~~no later than 30 days~~ before the date of the release or discharge of the person.

Vetoed  
in Part

(b) If the department of justice does not file a petition under par. (a), the district attorney for one of the following:

1. The county in which the person was convicted of a sexually violent offense, adjudicated delinquent for a sexually violent offense or found not guilty of or not responsible for a sexually violent offense by reason of insanity or mental disease, defect or illness.

2. The county in which the person will reside or be placed upon his or her discharge from a sentence, release on parole, release from imprisonment, ~~release from a secured correctional facility, as defined in s. 48.02 (15m), or termination or discharge from a commitment order under s. 971.17.~~

Vetoed  
in Part  
Vetoed  
in Part

(2) A petition filed under this section shall allege that all of the following apply to the person alleged to be a sexually violent person:

(a) The person satisfies any of the following criteria:

1. The person has been convicted of a sexually violent offense.

2. The person has been found delinquent for a sexually violent offense.

3. The person has been found not guilty of a sexually violent offense by reason of mental disease or defect.

**Vetoed in Part** (ag) The person satisfies any of the following criteria:

1. The person is within 90 days of discharge or release, on parole or otherwise, from a sentence that was imposed for a conviction for a sexually violent offense.

**Vetoed in Part** 2. The person is within 90 days of release from a secured correctional facility, as defined in s. 48.02 (15m), if the person was placed in the facility for being adjudicated delinquent under s. 48.34 on the basis of a sexually violent offense.

**Vetoed in Part** 3. The person is within 90 days of termination of or discharge from a commitment order under s. 971.17 that was entered as a result of the person being found not guilty of a sexually violent offense by reason of mental disease or defect.

(b) The person has a mental disorder.

(c) The person is dangerous to others because the person's mental disorder creates a substantial probability that he or she will engage in acts of sexual violence.

(3) A petition filed under this section shall state with particularity essential facts to establish probable cause to believe the person is a sexually violent person. If the petition alleges that a sexually violent offense or act that is a basis for the allegation under sub. (2) (a) was an act that was sexually motivated as provided under s. 980.01 (6) (b), the petition shall state the grounds on which the offense or act is alleged to be sexually motivated.

(4) A petition under this section shall be filed in any of the following:

(a) The circuit court for the county in which the person was convicted of a sexually violent offense, adjudicated delinquent for a sexually violent offense or found not guilty of a sexually violent offense by reason of mental disease or defect.

**Vetoed in Part** (am) The circuit court for the county in which the person will reside or be placed upon his or her discharge from a sentence, release on parole, release from imprisonment, ~~release~~ **Vetoed in Part** from a secured correctional facility, as defined in s. 48.02 (15m), or **Vetoed in Part** termination or discharge from a commitment order under s. 971.17.

**Vetoed in Part** (b) The circuit court for the county in which the person is in custody under a sentence, a placement to a secured correctional facility, as defined in s. 48.02 (15m), or a commitment order ~~under s. 971.17~~.

**980.03 Rights of persons subject to petition.** (1) The circuit court in which a petition under s. 980.02 is filed shall conduct all hearings under this chapter. The court shall give the person who is the subject of the petition reasonable notice of the time and place of each such hearing. The court may designate additional persons to receive these notices.

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

(a) Counsel. If the person claims or appears to be indigent, the court shall refer the person to the authority for indigency determinations under s. 977.07 (1) and, if applicable, the appointment of counsel.

(b) Remain silent.

(c) Present and cross-examine witnesses.

(d) Have the hearing recorded by a court reporter.

(3) The person who is the subject of the petition, the person's attorney, the department of justice or the district attorney 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. Notwithstanding s. 980.05 (2), if the person, the person's attorney, the department of justice or the district attorney does not request a jury trial, the court may on its own motion require that the trial be to a jury of 12. A verdict of a jury under this chapter is not valid unless it is unanimous.

(4) Whenever the person who is the subject of the petition is required to submit to an examination under this chapter, he or she may retain experts or professional persons to perform an examination. If the person retains a qualified expert or professional person of his or her own choice to conduct an examination, 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 under s. 146.82 (2) (c). If the person is indigent, the court shall, upon the person's request, appoint a qualified and available expert or professional person to perform an examination and participate in the trial on the person's behalf. Upon the order of the circuit court, the county shall pay, as part of the costs of the action, the costs of a court-appointed expert or professional person to perform an examination and participate in the trial on behalf of an indigent person. An expert or professional person appointed to assist an indigent person who is subject to a petition may not be subject to any order by the court for the sequestration of witnesses at any proceeding under this chapter.

(5) Upon a showing by the proponent of good cause under s. 807.13 (2) (c), testimony may be received into the record of a hearing under this section by telephone or live audio-visual means.

**980.04 Detention; probable cause hearing; transfer for examination.** (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 cause to believe that the person is eligible for commitment under s. 980.05 (5). A person detained under this

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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. 48.02 (15m), or is committed to institutional care ~~under s. 977.07~~, 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 after a trial under s. 980.05 or until the effective date of a commitment order under s. 980.06, whichever is applicable.

(2) 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, the court shall hold the probable cause hearing within a reasonable time after the filing of the petition.

(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 for an evaluation 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.

(4) The department shall promulgate rules that provide the qualifications for persons conducting evaluations under sub. (3).

(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), refer the person to the authority for indigency determinations under s. 977.07 (1) and, if applicable, the appointment of counsel.

**980.05 Trial.** (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 days after the date of the probable cause hearing under s. 980.04. The court may grant a continuance of the trial date for good cause upon its own motion, the motion of any party or the stipulation of the parties.

(1m) At the trial to determine whether the person who is the subject of a petition under s. 980.02 is a sexually violent person, all rules of evidence in criminal actions apply. All constitutional rights available to a defendant in a criminal proceeding are available to the person.

(2) The person who is the subject of the petition, the person's attorney, the department of justice or the

district attorney 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. 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, 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.

(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.

(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), the state is required to prove beyond a reasonable doubt that the alleged sexually violent act was sexually motivated.

(4) Evidence that the person who is the subject of a petition under s. 980.02 was convicted for or committed sexually violent offenses before committing the offense or act on which the petition is based is not sufficient to establish beyond a reasonable doubt that the person has a mental disorder.

(5) If the court or jury determines that the person who is the subject of a petition under s. 980.02 is a sexually violent person, the court shall enter a judgment on that finding and shall commit the person as provided under s. 980.06. If the court or jury is not satisfied beyond a reasonable doubt that the person is a sexually violent person, the court shall dismiss the petition and direct that the person be released unless he or she is under some other lawful restriction.

(6) A judgment entered under sub. (5) on the finding that the person who is the subject of a petition under s. 980.02 is a sexually violent person is interlocutory to a commitment order under s. 980.06 and is reviewable on appeal.

**980.06 Commitment.** (1) If a court or jury determines that the person who is the subject of a petition under s. 980.02 is a sexually violent person, the court shall order the person to be committed to the custody of the department for control, care and treatment until such time as the person is no longer a sexually violent person.

(2) (a) The court shall enter an initial commitment order under this section pursuant to a hearing held as soon as practicable after the judgment that the person who is the subject of a petition under s. 980.02 is a sexually violent person is entered. If the court lacks sufficient information to make the determination required by par. (b) immediately after trial, it may adjourn the hearing and order the department to conduct a predisposition investigation using the procedure in s. 972.15 or a supplementary mental examination, or both, to assist the court in framing the commitment order. A supplementary mental



examination under this paragraph shall be conducted in accordance with s. 971.17 (2) (b) to (f).

(b) An order for commitment under this section shall specify either institutional care in a secure mental health unit or facility, as provided under s. 980.065, or other facility or supervised release. In determining whether commitment shall be for institutional care in a secure mental health unit or facility or other facility or for supervised release, 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. 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 court's commitment order.

(c) If the court finds that the person is appropriate for supervised release, the court shall notify the department. The department 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, counseling, medication, community support services, residential services, vocational services, and alcohol or other drug abuse treatment. The department 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 supervised release, unless the department, county department 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 may arrange for another county to prepare the plan if that county agrees to prepare the plan and if the person will be living in that county. If the department is unable to arrange for another county to prepare a plan, the court shall designate a county department to prepare the plan, order the county department to prepare the plan and place the person on supervised release in that county.

(d) An order for supervised release places the person in the custody and control of the department. A person on supervised release is subject to the conditions set by the court and to the rules of the department. 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 paragraph does not apply if a municipal police department or county sheriff submits to the court a written statement waiving the right to be notified. If the department alleges that a released person has violated any condition or rule, or that 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 petition to revoke the order for supervised 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 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 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 revoke the order for supervised release and order that the released person be placed in an appropriate institution until the person is discharged from the commitment under s. 980.09 or until again placed on supervised release under s. 980.08.

**980.065 Secure mental health unit or facility for sexually violent persons.** (1) The department shall place a person committed to a secure mental health unit or facility under s. 980.06 (2) (b) at one of the following:

(a) The Wisconsin resource center established under s. 46.056.

(b) A secure mental health unit or facility provided by the department of corrections under sub. (2).

(2) The department may contract with the department of corrections for the provision of a secure mental health unit or facility for persons committed under s. 980.06 (2) (b) to a secure mental health unit or facility. The department shall operate a secure mental health unit or facility provided by the department of corrections under this subsection and shall promulgate rules governing the custody and discipline of persons placed in the secure mental health unit or facility provided by the department of corrections under this subsection.

**980.07 Periodic reexamination; report.** (1) If a person has been committed under s. 980.06 and has not been discharged under s. 980.09, the department shall conduct an examination of his or her mental

condition within 6 months after an initial commitment under s. 980.06 and again thereafter at least once each 12 months for the purpose of determining whether the person has made sufficient progress to be entitled to transfer to a less restrictive facility, to supervised release or to discharge. At the time of a reexamination under this section, the person who has been committed may retain or, if he or she is indigent and so requests, the court may appoint a qualified expert or a professional person to examine him or her.

(2) Any examiner conducting an examination under this section shall prepare a written report of the examination no later than 30 days after the date of the examination. 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.

(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.

**980.08 Petition for supervised release.** (1) Any person who is committed for institutional care in a secure mental health unit or facility or other facility under s. 980.06 may petition the committing court to modify its order by authorizing supervised release if at least 6 months have elapsed since the initial commitment order was entered, 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.

(2) If the person files a timely petition without counsel, the court shall serve a copy of the petition on the district attorney or department of justice, whichever is applicable and, subject to s. 980.03 (2) (a), refer the matter to the authority for indigency determinations under s. 977.07 (1) and appointment of counsel under s. 977.05 (4) (j). If the person petitions through counsel, his or her attorney shall serve the district attorney or department of justice, whichever is applicable.

(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, the examiner shall report on the type of treatment and services that the person may need while in the community on supervised release.

(4) 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 this time limit. Expenses of proceedings under this subsection shall be paid as provided under s. 51.20 (18). The court shall grant the petition unless the state proves by clear and convincing evidence that the person is still a sexually violent person and that it is still substantially probable that the person will engage in acts of sexual violence if the person is not confined in a secure mental health unit or facility. In making a decision under this subsection, 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.

(5) If the court finds that the person is appropriate for supervised release, the court shall notify the department. The department 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, counseling, medication, community support services, residential services, vocational services, and alcohol or other drug abuse treatment. The department 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 60 days after the court finding that the person is appropriate for supervised release, unless the department, county department 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 may arrange for another county to prepare the plan if that county agrees to prepare the plan and if the person will be living in that county. If the department is unable to arrange for another county to prepare a plan, the court shall designate a county department to prepare the plan, order the county department to prepare the plan and place the person on supervised release in that county.

(6) The provisions of s. 980.06 (2) (d) apply to an order for supervised release issued under this section.

**980.09 Petition for discharge; procedure.** (1) PETITION WITH SECRETARY'S APPROVAL. (a) If the secretary determines at any time that a person committed under this chapter is no longer a sexually

violent person, the secretary shall authorize the person to petition the committing court for discharge. The person shall file the petition with the court and serve a copy upon the department of justice or the district attorney's office that filed the petition under s. 980.02 (1), whichever is applicable. The court, upon receipt of the petition for discharge, shall order a hearing to be held within 45 days after the date of receipt of the petition.

(b) At a hearing under this subsection, the district attorney or the department of justice, whichever filed the original petition, shall represent the state and shall have the right to have the petitioner examined by an expert or professional person of his, her or its choice. The hearing shall be before the court without a jury. The state has the burden of proving by clear and convincing evidence that the petitioner is still a sexually violent person.

(c) If the court is satisfied that the state has not met its burden of proof under par. (b), the petitioner shall be discharged from the custody or supervision of the department. If the court is satisfied that the state has met its burden of proof under par. (b), the court may proceed under s. 980.06 to determine whether to modify the petitioner's existing commitment order.

(2) **PETITION WITHOUT SECRETARY'S APPROVAL.** (a) A person may petition the committing court for discharge from custody or supervision without the secretary's approval. At the time of an examination under s. 980.07 (1), the secretary shall provide the committed person with a written notice of the person's right to petition the court for discharge over the secretary's objection. The notice shall contain a waiver of rights. The secretary shall forward the notice and waiver form to the court with the report of the department's examination under s. 980.07. If the person does not affirmatively waive the right to petition, the court shall set a probable cause hearing to determine whether facts exist that warrant a hearing on whether the person is still a sexually violent person. The committed person has a right to have an attorney represent him or her at the probable cause hearing, but the person is not entitled to be present at the probable cause hearing.

(b) If the court determines at the probable cause hearing under par. (a) that probable cause exists to believe that the committed person is no longer a sexually violent person, then the court shall set a hearing on the issue. At a hearing under this paragraph, the committed person is entitled to be present and to the benefit of the protections afforded to the person under s. 980.03. The district attorney or the department of justice, whichever filed the original petition, shall represent the state at a hearing under this paragraph. The hearing under this paragraph shall be to the court. The state has the right to have the committed person evaluated by experts chosen by the state. At the hearing, the state has the burden of

proving by clear and convincing evidence that the committed person is still a sexually violent person.

(c) If the court is satisfied that the state has not met its burden of proof under par. (b), the person shall be discharged from the custody or supervision of the department. If the court is satisfied that the state has met its burden of proof under par. (b), the court may proceed under s. 980.06 to determine whether to modify the person's existing commitment order.

**980.10 Additional discharge petitions.** In addition to the procedures under s. 980.09, a committed person may petition the committing court for discharge at any time, but if a person has previously filed a petition for discharge without the secretary's approval and the court determined, either upon review of the petition or following a hearing, that the person's petition was frivolous or that the person was still a sexually violent person, then the court shall deny any subsequent petition under this section without a hearing unless the petition contains facts upon which a court could find that the condition of the person had so changed that a hearing was warranted. If the court finds that a hearing is warranted, the court shall set a probable cause hearing in accordance with s. 980.09 (2) (a) and continue proceedings under s. 980.09 (2) (b), if appropriate. If the person has not previously filed a petition for discharge without the secretary's approval, the court shall set a probable cause hearing in accordance with s. 980.09 (2) (a) and continue proceedings under s. 980.09 (2) (b), if appropriate.

**980.11 Notice to victims.** (1) In this section:

(a) "Act of sexual violence" means an act or attempted act that is a basis for an allegation made in a petition under s. 980.02 (2) (a).

(b) "Member of the family" means spouse, child, sibling, parent or legal guardian.

(c) "Victim" means a person against whom an act of sexual violence has been committed.

(2) If the court places a person on supervised release under s. 980.06 or discharges a person under s. 980.09 or 980.10, the district attorney or department of justice, whichever is applicable, shall notify whichever of the following persons is appropriate, if he or she can be found, in accordance with sub. (3):

(a) The victim of the act of sexual violence.

(b) An adult member of the victim's family, if the victim died as a result of the act of sexual violence.

(c) The victim's parent or legal guardian, if the victim is younger than 18 years old.

(3) The notice under sub. (2) shall inform the person under sub. (2) of the name of the person committed under this chapter and the date the person is placed on supervised release or discharged. The department shall send the notice, postmarked at least 7 days before the date the person committed under this chapter is placed on supervised release or discharged, to the last-known address of the person under sub. (2).

(4) The department shall design and prepare cards for persons specified in sub. (2) to send to the department. The cards shall have space for these persons to provide their names and addresses, the name of the person committed under this chapter and any other information the department determines is necessary. The department shall provide the cards, without charge, to the department of justice and district attorneys. The department of justice and district attorneys shall provide the cards, without charge, to persons specified in sub. (2). These persons may send completed cards to the department of health and social services. All records or portions of records of the department of health and social services that relate to mailing addresses of these persons are not subject to inspection or copying under s. 19.35 (1), except as needed to comply with a written request by a district attorney or the department of justice for assistance in locating persons to be notified under sub. (2).

**980.12 Department duties; costs.** 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.

**980.13 Applicability.** This chapter applies to a sexually violent person regardless of whether the person engaged in acts of sexual violence before, on or after the effective date of this section .... [revisor inserts date].

**SECTION 40g. Nonstatutory provisions.** (1) **CORRECTIONS.** The department of corrections may not

expend the moneys appropriated or fill the positions authorized under SECTION 40m (1) of this act unless approved by the secretary of administration under section 16.50 of the statutes.

(2) **HEALTH AND SOCIAL SERVICES.** The authorized FTE positions for the department of health and social services are increased by 11.25 GPR positions to be funded from the appropriation under section 20.435 (2) (bm) of the statutes, as created by this act. The department of health and social services may not expend the moneys appropriated for fiscal year 1994-95 under section 20.435 (2) (bm) of the statutes, as created by this act, or fill the additional positions authorized under this subsection unless approved by the secretary of administration under section 16.50 of the statutes.

**SECTION 40m. Appropriation changes.** (1) **CORRECTIONS.** In the schedule under section 20.005 (3) of the statutes for the appropriation to the department of corrections under section 20.410 (1) (a) of the statutes, as affected by the acts of 1993, the dollar amount is increased by \$171,200 for fiscal year 1994-95 for the purposes for which the appropriation is made and to increase the authorized FTE positions for the department by 5.0 GPR positions.

**SECTION 41. Effective dates.** This act takes effect on the day after publication, except as follows:

(1) The repeal and recreation of section 46.10 (2) of the statutes takes effect on July 1, 1995.

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