CHAPTER 980

SEXUALLY VIOLENT PERSON COMMITMENTS

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980.01 Definitions. In this chapter:

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

(1d) "Agency with jurisdiction" means the agency with the authority or duty to release or discharge the person.

(1e) "Assisted living facility" has the meaning given in s. 101.123 (1) (ab).

(1g) "Child care facility" means a child care facility that is operated by a person licensed under s. 48.65 or certified under s. 48.651 or that is established or contracted for under s. 120.13 (14).

(1h) "Department" means the department of health services.

(1j) "Incarceration" includes confinement in a juvenile correctional facility, as defined in s. 938.02 (10p), or a secured residential care center for children and youth, as defined in s. 938.02 (15g), if the person was placed in the facility for being adjudicated delinquent under s. 48.34, 1993 stats., or under s. 938.183 or 938.34 on the basis of a sexually violent offense.

(1m) "Likely" means more likely than not.

(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.

(2m) "Nursing home" has the meaning given in s. 50.01 (3).

(3) "Petitioner" means the agency or person that filed a petition under s. 980.02.

(3d) "Place of worship" means a church building where religious services are held.

(3g) "Public park" means a park or playground that is owned or maintained by the state or by a city, village, town, or county.

(3m) "School premises" has the meaning given in s. 948.61 (1) (c).

(4) "Secretary" means the secretary of health services.

(4m) "Serious child sex offender" means a person who has been convicted, adjudicated delinquent or found not guilty or not responsible by reason of insanity or mental disease, defect or illness for committing a violation of a crime specified in s. 948.02 (1) or (2), 948.025 (1), or 948.085 against a child who had not attained the age of 13 years.

(5) "Sexually motivated" means that one of the purposes for an act is for the actor's sexual arousal or gratification or for the sexual humiliation or degradation of the victim.

(6) "Sexually violent offense" means any of the following:

(a) Any crime specified in s. 940.225 (1), (2), or (3), 948.02 (1) or (2), 948.025, 948.06, 948.07, or 948.085.

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

(b) Any crime specified in s. 940.01, 940.02, 940.03, 940.05, 940.06, 940.19 (2), (4), (5), or (6), 940.195 (4) or (5), 940.30, 940.305, 940.31, 941.32, 943.10, 943.32, or 948.03 that is determined, in a proceeding under s. 980.05 (3) (b), to have been sexually motivated.

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

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

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

(8) "Significant progress in treatment" means that the person is doing all of the following:

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

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

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

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

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

(10) "Treating professional" means a licensed physician, licensed psychologist, licensed social worker, or other mental health professional who provides, or supervises the provision of, sex offender treatment at a facility described under s. 980.065.

(11) "Youth center" means any center that provides, on a regular basis, recreational, vocational, academic, or social services

activities for persons younger than 18 years old or for those persons and their families.

History: 1993 a. 479; 1995 a. 27 s. 9126 (19); 1997 a. 284, 295; 2003 a. 187; 2005 a. 277, 2005 a. 434 ss. 60 to 73; 2007 a. 20 s. 9121 (6) (a); 2007 a. 96, 97; 2013 a. 84; 2015 a. 156.

Chapter 980 creates a civil commitment procedure primarily intended to provide treatment and protect the public, not to punish the offender. As such the chapter does not provide for "punishment" in violation of the constitutional prohibitions against double jeopardy or ex post facto laws. State v. Carpenter, 197 Wis. 2d 252, 541 N.W.2d 105 (1995), 94−1898.

Chapter 980 does not violate substantive due process guarantees. The definitions of "mental disorder" and "dangerous" are not overbroad. The treatment obligations under ch. 980 are consistent with the nature and duration of commitments under the chapter. The lack of a precommitment finding of treatability is not offensive to due process requirements. State v. Post, 197 Wis. 2d 279, 541 N.W.2d 115 (1995), 94−2356.

Chapter 980 does not violate equal protection guarantees. The state's compelling interest in protecting the public justifies the differential treatment of the sexually violent persons subject to the chapter. State v. Post, 197 Wis. 2d 279, 541 N.W.2d 115 (1995), 94−2356.

A child enticement conviction under a statute that had been repealed and recreated under a new statute number was a sexually violent offense under sub. (6), although the former number was not listed in the new statute. State v. Irish, 210 Wis. 2d 107, 565 N.W.2d 161 (Ct. App. 1997), 96−2303.

Under [former] sub. (7), a "mental disorder that makes it substantially probable that the person will engage in acts of sexual violence" is a disorder that predisposes the affected person to sexual violence. A diagnosis of "antisocial personality disorder," uncoupled with any other diagnosis but coupled with sufficient evidence establishing that a defendant is a "sexually violent person," may constitute a mental disorder that makes it substantially probable that the person will engage in acts of sexual violence under [former] sub. (7). State v. Adams, 223 Wis. 2d 60, 588 N.W.2d 336 (Ct. App. 1998), 96−3136.

Definitions in ch. 980 serve a legal, and not medical, function. The court will not adopt a definition of pedophilia for ch. 980 purposes. State v. Zanelli, 223 Wis. 2d 545, 589 N.W.2d 687 (Ct. App. 1998), 98−0733.

That the state's expert opined that pedophilia is a lifelong disorder did not mean that commitment was based solely on prior bad acts rather than a present condition. Jury instructions are discussed. State v. Matek, 223 Wis. 2d 611, 589 N.W.2d 441 (Ct. App. 1998), 96−3524.

As used in this chapter, "substantial probability" and "substantially probable" both mean much more likely than not. This standard for dangerousness does not violate equal protection nor is the term unconstitutionally vague. State v. Curiel, 227 Wis. 2d 389, 597 N.W.2d 697 (1999), 97−1337.

The definition of "sexually violent person" includes conduct prohibited by a previous version of a statute enumerated in sub. (6) as long as the conduct prohibited under the predecessor statute remains prohibited under the current statute. State v. Pharm, 2000 WI App 167, 238 Wis. 2d 97, 617 N.W.2d 163, 98−1542.

Chapter 980 is not facially unconstitutional. Due process does not require proof of a recent overt act in evaluating the dangerousness of the offender when there has been a break in the offender's incarceration and the offender is reincarcerated for nonsexual behavior. Substantive due process allows for a ch. 980 commitment when there is sufficient evidence of current dangerousness. There is no bright−line rule that requires current dangerousness to be proven by a particular type of evidence. State v. Bush, 2005 WI 103, 283 Wis. 2d 90, 699 N.W.2d 80, 03−2306.

Exclusion of the conditions of a person's probation supervision from his ch. 980 trial was proper as under sub. (7) as such evidence was irrelevant in determining whether he was a sexually violent person. State v. Mark, 2006 WI 78, 292 Wis. 2d 1, 718 N.W.2d 90, 03−2068.

The legislature's replacement of "substantially probable" in sub. (7) with "likely," lowered the level of dangerousness required to commit a person under ch. 980 but did not violate the constitution on either due process or equal protection grounds. State v. Nelson, 2007 WI App 2, 298 Wis. 2d 453, 727 N.W.2d 364, 05−0810.

A ch. 980 commitment did not violate equal protection or due process guarantees when the person was released to the community upon a finding that he was ineligible for commitment and subsequently committed after parole violations that did not involve overt acts of sexual violence. State v. Feldmann, 2007 WI App 35, 300 Wis. 2d 474, 730 N.W.2d 440, 05−2347.

"More likely than not," as used in sub. (1m), is not an obscure or specialized term of art, but a commonly−used expression. An expert witness's ambiguous and confusing misstatement regarding the meaning of "more likely than not" could not have convinced a reasonable person the phrase meant other than more likely to happen than not to happen. State v. Smalley, 2007 WI App 219, 305 Wis. 2d 709, 741 N.W.2d 286, 06−1475.

Under sub. (7), a sexually violent person is one who is dangerous because he or she suffers from a mental disorder that makes it likely that the person will engage in one or more acts of sexual violence. Actuarial instruments that measure dangerousness without regard to the defendant's mental illness were relevant to determining whether the defendant was a sexually violent person. Dangerousness was a fact of consequence to the proceedings although not the only fact that needed to be shown. Evidence need not go to every facet of a party's case in order to be relevant. State v. Smalley, 2007 WI App 219, 305 Wis. 2d 709, 741 N.W.2d 286, 06−1475.

Under the reasoning of *Mark* that conditions of supervision that a person will be subject to if released are irrelevant to the determination of whether the person is a sexually violent person under sub. (7), that a person will be subject to supervision if released is also irrelevant to whether the person is a sexually violent person. State v. Budd, 2007 WI App 245, 306 Wis. 2d 167, 742 N.W.2d 887, 07−0011.

Evidence of the department of correction's screening process for potential ch. 980 cases was irrelevant as to the determination of whether a defendant was a sexually violent person under sub. (7) when the evidence did not establish why the defendant was selected for ch. 980 proceedings. State v. Budd, 2007 WI App 245, 306 Wis. 2d 167, 742 N.W.2d 887, 07−0011.

Postcommitment annual reviews do not, generally, bear on the factual issues the jury must resolve in order to determine whether a person is a sexually violent person, but there is not a blanket exclusion for all testimony of annual reviews. Rather, the question of relevancy of such evidence needs to be examined in the particular context in which the evidence is offered. State v. Sugden, 2010 WI App 166, 330 Wis. 2d 628, 795 N.W.2d 456, 09−2445.

The existence of treatment for committed persons is a consequence of commitment and, generally, is not relevant in determining whether a person is a sexually violent person. State v. Sugden, 2010 WI App 166, 330 Wis. 2d 268, 795 N.W.2d 456, 09−2445.

The proportion of about−to−be released sex offenders who are referred for a special purpose evaluation to determine whether they meet the requirements of ch. 980 is not, in itself, relevant to whether a particular person referred meets the requirements of being a sexually violent person. This is true whether that proportion is expressed in terms of a specific percentage or a more general description of the relative size of the group. State v. Sugden, 2010 WI App 166, 330 Wis. 2d 628, 795 N.W.2d 456, 09−2445.

The Kansas Sexually Violent Predator Act comports with due process requirements, does not run afoul of double jeopardy principles, and is not an *ex post facto* law. Kansas v. Hendricks, 521 U.S. 346, 138 L. Ed. 2d 501 (1997).

Civil commitment upon a finding of a "mental disorder" does not violate due process when the predicate diagnosis is not found within the four corners of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association. A factfinder may have stronger confidence in his or her conclusions when the examining mental health professionals rely upon authoritative, consensus materials in the field, and a particular diagnosis may be so devoid of content, or so near−universal in its rejection by mental health professionals, that a court's reliance on it to satisfy the "mental disorder" prong of the statutory requirements for commitment would violate due process. McGee v. Bartow, 594 F.3d 555 (2010).

The constitutionality of Wisconsin's Sexual Predator Law. Straub & Kachelski. Wis. Law. July, 1995.

980.015 Notice to the department of justice and district attorney. (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 90 days prior to the applicable date of the following:

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

(b) The anticipated release from a juvenile correctional facility, as defined in s. 938.02 (10p), or a secured residential care center for children and youth, as defined in s. 938.02 (15g), if the person was placed in the facility as a result of being adjudicated delinquent under s. 48.34, 1993 stats., or under s. 938.183 or 938.34 on the basis of a sexually violent offense.

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

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

(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.

History: 1993 a. 479; 1995 a. 77; 1997 a. 205, 283; 1999 a. 9; 2005 a. 344, 434; 2007 a. 97; 2015 a. 197 s. 51.

The "appropriate district attorney" under sub. (2) is the district attorney in the county of conviction or the county to which prison officials propose to release the person. In re Commitment of Goodson, 199 Wis. 2d 426, 544 N.W.2d 611 (Ct. App. 1996), 95−0664.

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 over the person.

(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 or extended supervision, or release from imprisonment, from a juvenile correctional facility, as defined in s. 938.02 (10p), from a residential care center for children and youth, as defined in s. 938.02 (15g), or from a commitment order.

3. The county in which the person is in custody under a sentence, a placement to a juvenile correctional facility, as defined in s. 938.02 (10p), or a secured residential care center for children and youth, as defined in s. 938.02 (15g), or a commitment order.

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

(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.

(b) The person has a mental disorder.

(c) The person is dangerous to others because the person's mental disorder makes it likely 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 one 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.

(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 or extended supervision, or release from imprisonment, from a juvenile correctional facility, as defined in s. 938.02 (10p), from a secured residential care center for children and youth, as defined in s. 938.02 (15g), or from a commitment order.

(b) The circuit court for the county in which the person is in custody under a sentence, a placement to a juvenile correctional facility, as defined in s. 938.02 (10p), a secured residential care center for children and youth, as defined in s. 938.02 (15g), or a commitment order.

(5) Notwithstanding sub. (4), if the department of justice decides to file a petition under sub. (1) (a), it may file the petition in the circuit court for Dane County.

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

History: 1993 a. 479; 1995 a. 77, 225; 1997 a. 27, 205, 283; 1999 a. 9; 2003 a. 187; 2005 a. 344, 434; 2007 a. 96.

A ch. 980 commitment is not an extension of a commitment under ch. 975, and s. 975.12 does not limit the state's ability to seek a separate commitment under ch. 980 of a person originally committed under ch. 975. State v. Post, 197 Wis. 2d 279, 541 N.W.2d 115 (1995), 94−2356.

To the extent that s. 938.35 (1) prohibits the admission of delinquency adjudications in ch. 980 proceedings, it is repealed by implication. State v. Matthew A.B. 231 Wis. 2d 688, 605 N.W.2d 598 (Ct. App. 1999), 98−0229.

In a trial on a petition filed under sub. (2), the state has the burden to prove beyond a reasonable doubt that the petition was filed within 90 days of the subject's release or discharge based on a sexually violent offense. State v. Thiel, 2000 WI 67, 235 Wis. 2d 823, 612 N.W.2d 94, 99−0316. See also State v. Thiel, 2001 WI App 52, 241 Wis. 2d 439, 625 N.W.2d 321, 99−0316.

While a commitment under ch. 980 is civil, a court does not lose subject matter jurisdiction because a petition is filed under a criminal case number. State v. Pharm, 2000 WI App 167, 238 Wis. 2d 97, 617 N.W.2d 163, 98−1542.

Chapter 980 provides its own procedures for commencing actions, and, as such, chs. 801 and 802 are inapplicable to the commencement of ch. 980 actions. State v. Wolfe, 2001 WI App 136, 246 Wis. 2d 233, 631 N.W.2d 240, 99−2145.

When a ch. 980 petition was filed within 90 days of release from a sentence for an offense that was not a sexually violent offense, which was being served concurrently with a shorter sentence imposed for a sexually violent offense, the petition was timely. State v. Treadway, 2002 WI App 195, 257 Wis. 2d. 467, 651 N.W.2d 334, 00−2957.

The state was not precluded from seeking a ch. 980 commitment following the defendant's parole revocation, even though the state had failed to prove that the defendant was a sexually violent person in need of commitment in a previous ch. 980 trial that took place prior to the defendant's parole. State v. Parrish, 2002 WI App 263, 258 Wis. 2d 521, 654 N.W.2d 273, 00−2524.

The circuit court had jurisdiction to conduct ch. 980 proceedings involving an enrolled tribal member who committed the underlying sexual offense on an Indian reservation. State v. Burgess, 2003 WI 71, 262 Wis. 2d 354, 665 N.W.2d 124, 00−3074. See also Burgess v. Watters, 467 F.3d 676 (2007).

Under sub. (1), a request from the agency with jurisdiction and a subsequent decision by the department of justice not to file are prerequisites to a district attorney's authority to file a ch. 980 petition. State v. Byers, 2003 WI 86, 263 Wis. 2d 113, 665 N.W.2d 729.

The threshold decision of whether a petition should be filed remains in the hands of the agency with jurisdiction and outside of the political process. A district attorney may contact the agency to seek clarification of the ch. 980 evaluator's determination, to correct factual mistakes, to provide new or additional information, or to ask for a second opinion with a different evaluator. However, the agency can independently exercise its judgment and choose to ignore the district attorney's efforts or to decline the district attorney's request for a second evaluation if the agency determines that these efforts and requests are improperly politically motivated. State v. Bell, 2006 WI App 30, 289 Wis. 2d 275, 710 N.W.2d 525, 05−0890.

That the ch. 980 definition of "dangerousness" lacks a temporal context limited to imminent danger. does not render the statute unconstitutional. State v. Olson, 2006 WI App 32, 290 Wis. 2d 202, 712 N.W.2d 61, 04−0412

Chapter 980 does not require the dismissal of a pending commitment petition when the individual subject to the petition is incarcerated because of the revocation of either parole or extended supervision. Section 980.06 requires the circuit court to order the person to be committed to the custody of DHS for control, care, and treatment, but ch. 980 does not specify when that commitment must commence. While this section sets forth the requirements for a proper commitment order, neither this section nor any other section of ch. 980 contains language stating when the individual requirements of that order must be satisfied. State v. Gilbert, 2012 WI 72, 342 Wis. 2d 82, 816 N.W.2d 215, 10−0594.

If a ch. 980 petition satisfies the statutory requirements in this section at the time it is filed, it will not be invalidated if the conviction recited in the petition is later reversed. Subsequent facts that impact the status of the allegations in the petition may be relevant at trial under s. 980.05, but they will not invalidate a petition that met the requirements of this section at the time of filing. State v. Spaeth, 2014 WI 71, 355 Wis. 2d 761, 850 N.W.2d 93, 12−2170.

Applying the common and accepted legal meanings of "released" and "discharged" as those terms are used in sub. (1m), a ch. 980 petition must be filed either before the person is freed from confinement in prison or before the person's entire sentence is completed. Even assuming that the department of corrections was required to release the defendant on his presumptive mandatory release (PMR) date, a ch. 980 filed petition after the PMR date but while the defendant remained incarcerated was timely filed based on the language of sub. (1m), which permits filing a ch. 980 petition before a person is "discharged." State v. Stanley, 2014 WI App 89, 356 Wis. 2d 268, 853 N.W.2d 600, 13−2477.

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. 980.038 (2) and 980.09 and without limitation by enumeration, at any hearing under this chapter, the person who is the subject of the petition has the right to:

(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, or the petitioner may request that a trial under s. 980.05 be to a jury. A request for a jury trial shall be made as provided

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

History: 1993 a. 479; 1997 a. 252; 1999 a. 9; 2005 a. 434.

There are circumstances when comment on the defendant's silence is permitted. If a defendant refuses to be interviewed by the state's psychologist and the defense attorney challenges the psychologist's findings based on the lack of an interview, it is appropriate for the psychologist to testify about the refusal. State v. Adams, 223 Wis. 2d 60, 588 N.W.2d 336 (Ct. App. 1998), 96−3136.

If all jurors agree that the defendant suffers from a mental disease, unanimity requirements are met even if the jurors disagree on the disease that predisposes the defendant to reoffend. State v. Pletz, 2000 WI App 221, 239 Wis. 2d 49, 619 N.W.2d 97, 98−2455.

Chapter 980 provides its own procedures for commencing actions, and, as such, chs. 801 and 802 are inapplicable to the commencement of ch. 980 actions. State v. Wolfe, 2001 WI App 136, 246 Wis. 2d 233, 631 N.W.2d 240, 99−2145.

The circuit court must appoint an examiner for the court under sub. (3) regardless of whether the court also appointed an examiner for the petitioner under sub. (4), 2001 stats. An indigent party petitioning for supervised release is not entitled under sub. (4), 2001 stats., to an examiner of his or her choice, but is entitled to a "qualified and available" court−appointed examiner. Requirements for a qualified examiner are discussed. State v. Thiel, 2004 WI App 225, 277 Wis. 2d 698, 691 N.W.2d 388, 03−2649.

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

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

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

(4) If a party retains or the court appoints a licensed physician, licensed psychologist, or other mental health professional to conduct an examination under this chapter of the person's mental condition, the examiner shall have reasonable access to the person for the purpose of the examination, as well as to the person's past and present treatment records, as defined in s. 51.30 (1) (b), and patient health care records as provided under s. 146.82 (2) (cm), past and present juvenile records, as provided under ss. 48.396 (6), 48.78 (2) (e), 938.396 (10), and 938.78 (2) (e), and the person's past and present correctional records, including presentence investigation reports under s. 972.15 (6).

(5) A licensed physician, licensed psychologist, or other mental health professional who is expected to be called as a witness by one of the parties or by the court may not be subject to any order by the court for the sequestration of witnesses at any proceeding under this chapter. No licensed physician, licensed psychologist, or other mental health professional who is expected to be called as a witness by one of the parties or by the court may testify at any proceeding under this chapter unless a written report of his or her examination has been submitted to the court and to both parties at least 10 days before the proceeding.

History: 2005 a. 434 ss. 88, 90, 91.

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

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

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

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

1. The court will sequester the jurors during the trial.

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

3. The estimated cost to the county of using the procedure under this subsection is less than the estimated cost to the county of holding the trial in another county.

(b) A court that proceeds under this subsection shall follow the procedure under sub. (3) until the jury is chosen in the 2nd county. At that time, the proceedings shall return to the original county using the jurors selected in the 2nd county. The original county shall reimburse the 2nd county for all applicable costs under s. 814.22.

History: 2005 a. 434.

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

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

(b) "Prosecuting attorney" means an attorney representing the state in a proceeding under this chapter.

(2) WHAT A PROSECUTING ATTORNEY MUST DISCLOSE TO A PERSON SUBJECT TO THIS CHAPTER. Upon demand, a prosecuting attorney shall disclose to a person subject to this chapter or his or her attorney, and permit the person subject to this chapter or his or her attorney to inspect and copy or photograph, all of the following materials and information, if the material or information is within the possession, custody, or control of the state:

(a) Any written or recorded statement made by the person subject to this chapter concerning the allegations in the petition filed under s. 980.02 or concerning other matters at issue in the trial or proceeding and the names of witnesses to the written statements of the person subject to this chapter.

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

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

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

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

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

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

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

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

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

(j) Any exculpatory evidence.

(3) WHAT A PERSON SUBJECT TO THIS CHAPTER MUST DISCLOSE TO THE PROSECUTING ATTORNEY. Upon demand, a person who is subject to this chapter or his or her attorney shall disclose to the prosecuting attorney, and permit the prosecuting attorney to inspect and copy or photograph, all of the following materials and information, if the material or information is within the possession, custody, or control of the person who is subject to this chapter or his or her attorney:

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

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

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

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

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

(3m) WHEN DISCLOSURE MUST BE MADE. A party required to make a disclosure under this section shall do so within a reasonable time after the probable cause hearing and within a reasonable time before a trial under s. 980.05, if the other party's demand is made in connection with a trial. If the demand is made in connection with a proceeding under s. 980.08 or 980.09 (3), the party shall make the disclosure within a reasonable time before the start of that proceeding.

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

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

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

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

(8) CONTINUING DUTY TO DISCLOSE. If, after complying with a requirement of this section, and before or during trial, a party discovers additional material or the names of additional witnesses requested that are subject to discovery, inspection, or production under this section, the party shall promptly notify the other party of the existence of the additional material or names.

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

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

(10) PAYMENT OF COPYING COSTS IN CASES INVOLVING INDIGENT RESPONDENTS. When the state public defender or a private attorney appointed under s. 977.08 requests copies, in any format, of any item that is discoverable under this section, the state public defender shall pay any fee charged for the copies from the appropriation account under s. 20.550 (1) (a). If the person providing copies under this section charges the state public defender a fee for the copies, the fee may not exceed the applicable maximum fee for copies of discoverable materials that is established by rule under s. 977.02 (9).

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

History: 2005 a. 434; 2007 a. 20; 2009 a. 28.

980.038 Miscellaneous procedural provisions. **(1)** MOTIONS CHALLENGING JURISDICTION OR COMPETENCY OF COURT OR TIMELINESS OF PETITION. (a) A motion challenging the jurisdiction or competency of the court or the timeliness of a petition filed under s. 980.02 shall be filed within 30 days after the court holds the probable cause hearing under s. 980.04 (2). Failure to file a motion within the time specified in this paragraph waives the right to challenge the jurisdiction or competency of the court or the timeliness of a petition filed under s. 980.02.

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

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

ter or that was conducted for the purpose of evaluating whether to file a petition before the petition under s. 980.02 was filed.

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

(3) TESTIMONY BY TELEPHONE OR LIVE AUDIOVISUAL MEANS. Unless good cause to the contrary is shown, proceedings under ss. 980.04 (2) (a) and 980.08 (7) (d) may be conducted by telephone or audiovisual means, if available. If the proceedings are required to be reported under SCR 71.02 (2), the proceedings shall be reported by a court reporter who is in simultaneous voice communication with all parties to the proceeding. Regardless of the physical location of any party to the telephone call, any action taken by the court or any party has the same effect as if made in open court. A proceeding under this subsection shall be conducted in a courtroom or other place reasonably accessible to the public. Simultaneous access to the proceeding shall be provided to a person entitled to attend by means of a loudspeaker or, upon request to the court, by making the person party to the telephone call without charge.

(4) MOTIONS FOR POSTCOMMITMENT RELIEF; APPEAL. (a) A motion for postcommitment relief by a person committed under s. 980.06 shall be made in the time and manner provided in ss. 809.30 to 809.32. An appeal by a person who has been committed under s. 980.06 from a final order under s. 980.06, 980.08, or 980.09 or from an order denying a motion for postcommitment relief or from both shall be taken in the time and manner provided in ss. 808.04 (3) and 809.30 to 809.32. If a person is seeking relief from an order of commitment under s. 980.06, the person shall file a motion for postcommitment relief in the trial court prior to an appeal unless the grounds for seeking relief are sufficiency of the evidence or issues previously raised.

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

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

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

History: 2005 a. 434; 2007 a. 96; 2009 a. 26.

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 probable cause to believe that the person is eligible for commitment under s. 980.05 (5). A person detained under this subsection shall be held in a facility approved by the department. If the person is serving a sentence of imprisonment, is in a juvenile correctional facility, as defined in s. 938.02 (10p), or a secured residential care center for children and youth, as defined in s. 938.02 (15g), or is committed to institutional care, and the court orders detention under this subsection, the court shall order that the person be transferred to a detention facility approved by the department. A detention order under this subsection remains in effect until the petition is dismissed after a hearing under sub. (3) or after a trial under s. 980.05 (5) or until the effective date of a commitment order under s. 980.06, whichever is applicable.

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

(b) 1. Except as provided in subd. 2., the court shall 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 upon its own motion, the motion of any party, or the stipulation of the parties.

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

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

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

History: 1993 a. 479; 1995 a. 77; 1999 a. 9; 2005 a. 344, 434; 2007 a. 97.

Cross−reference: See also ch. DHS 99, Wis. adm. code.

The rules of evidence apply to probable cause hearings under ch. 980. The exceptions to the rules for preliminary examinations also apply. Although s. 907.03 allows an expert to base an opinion on hearsay, an expert's opinion based solely on hearsay cannot constitute probable cause. State v. Watson, 227 Wis. 2d 167, 595 N.W.2d 403 (1999), 95−1067.

In sub. (2), "in custody" means in custody pursuant to ch. 980 and does not apply to custody under a previously imposed sentence. State v. Brissette, 230 Wis. 2d 82, 601 N.W.2d 678 (Ct. App. 1999), 98−2152.

Chapter 980 provides its own procedures for commencing actions, and, as such, chs. 801 and 802 are inapplicable to the commencement of ch. 980 actions. State v. Wolfe, 2001 WI App 136, 246 Wis. 2d 233, 631 N.W.2d 240, 99−2145.

The 72−hour time limit in sub. (2) is directory rather than mandatory. However, the individual's due process rights prevent the state from indefinitely delaying the probable cause hearing when the subject of the petition is in custody awaiting the hearing and has made a request for judicial substitution. State v. Beyer, 2001 WI App 167, 247 Wis. 2d 13, 633 N.W.2d 627, 00−0036.

Sub. (3) is not a rule regarding the admissibility of expert testimony. It provides the procedure for determining probable cause to believe a person is a sexually violent offender. The general rule for determining the qualification of an expert applies. State v. Sprosty, 2001 WI App 231, 248 Wis. 2d 480, 636 N.W.2d 213, 00−2404.

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 90 days after the date of the probable cause hearing under s. 980.04 (2) (a). The court may grant one or more continuances of the trial date for good cause upon its own motion, the motion of any party or the stipulation of the parties.

(2) The person who is the subject of the petition, the person's attorney, or the petitioner may request that a trial under this section be to a jury of 12. A request for a jury trial under this subsection shall be made within 10 days after the probable cause hearing under s. 980.04 (2) (a). If no request is made, the trial shall be to the court. The person, the person's attorney, or the petitioner may

withdraw his, her, or its request for a jury trial if the 2 persons who did not make the request consent to the withdrawal.

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

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

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

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

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

(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.

History: 1993 a. 479; 1999 a. 9; 2005 a. 434.

The trier of fact is free to weigh expert testimony that conflicts and decide which is more reliable, to accept or reject an expert's testimony, including accepting only parts of the testimony, and to consider all non−expert testimony. State v. Kienitz, 227 Wis. 2d 423, 597 N.W.2d 712 (1999), 97−1460.

This section does not confine expert testimony to any specific standard nor mandate the type or character of relevant evidence that the state may choose to meet its burden of proof. State v. Zanelli, 223 Wis. 2d 545, 589 N.W.2d 687 (Ct. App. 1998), 98−0733.

The standard of review for commitments under ch. 980 is the standard applicable to the review of criminal cases — whether the evidence could have led the trier of fact to find beyond a reasonable doubt that the person subject to commitment is a sexually violent person. State v. Curiel, 227 Wis. 2d 389, 597 N.W.2d 697 (1999), 97−1337.

The right to a jury trial under ch. 980 is governed by sub. (2) rather than case law governing the right to a jury trial in criminal proceedings. State v. Bernstein, 231 Wis. 2d 392, 605 N.W.2d 555 (1999), 98−2259.

The sub. (2) requirement that the 2 persons who did not request the withdrawal of a request for a jury trial consent to the withdrawal does not require a personal statement from the person subject to the commitment proceeding. Consent may be granted by defense counsel. State v. Bernstein, 231 Wis. 2d 392, 605 N.W.2d 555 (1999), 98−2259.

To the extent that s. 938.35 (1) prohibits the admission of delinquency adjudications in ch. 980 proceedings, it is repealed by implication. State v. Matthew A.B. 231 Wis. 2d 688, 605 N.W.2d 598 (Ct. App. 1999), 98−0229.

Sub. (2) does not require that a respondent be advised by the court that a jury verdict must be unanimous in order for the withdrawal of a request for a jury trial to be valid. State v. Denman, 2001 WI App 96, 243 Wis. 2d 14, 626 N.W.2d 296, 99−1829.

Chapter 980 respondents are afforded the same constitutional protections as criminal defendants. Although the doctrine of issue preclusion may generally apply in ch. 980 cases, application of the doctrine may be fundamentally unfair. When new evidence of victim recantation was offered at the ch. 980 trial, the defendant had a due process interest in gaining admission of the evidence to ensure accurate expert opinions on his mental disorder and future dangerousness when the experts' opinions presented were based heavily on the fact that the defendants committed the underlying crime. State v. Sorenson, 2002 WI 78, 254 Wis. 2d 54, 646 N.W.2d 354, 98−3107.

A sexually violent person committed under ch. 980 preserves the right to appeal, as a matter of right, by filing postverdict motions within 20 days of the commitment order. State v. Treadway, 2002 WI App 195, 257 Wis. 2d. 467, 651 N.W.2d 334, 00−2957.

A parole and probation agent who had been employed full−time in a specialized sex−offender unit for 3 years during which he had supervised hundreds of sex offenders was prepared by both training and experience to assess a sex offender, and was qualified to render an opinion on whether he would reoffend. That the agent did not provide the nexus to any mental disorder did not render his testimony inadmissible. State v. Treadway, 2002 WI App 195, 257 Wis. 2d. 467, 651 N.W.2d 334, 00−2957.

Neither ch. 980 nor ch. 51 grants persons being committed under ch. 980 the right to request confidential proceedings. That ch. 51 hearings are closed while ch. 980 hearings are not does not violate equal protection. State v. Burgess, 2002 WI App 264, 258 Wis. 2d 548, 654 N.W.2d 81, 00−3074.
Affirmed. 2003 WI 71, 262 WI 2d 354, 665 N.W.2d 124. See also Burgess v. Watters, 467 F.3d 676 (2007).

Article I, section 7 does not prohibit the legislature from enacting statutes requiring that trials be held in certain counties. The legislature could properly provide in sub. (2) that ch. 980 proceedings be held in a county other than the one in which the predicate offense was committed. State v. Tainter, 2002 WI App 296, 259 Wis. 2d 387, 655 N.W.2d 538, 01−2644.

During a commitment proceeding under ch. 980, s. 904.04 (2), relating to other crimes evidence, does not apply to evidence offered to prove that the respondent has a mental disorder that makes it substantially probable that the respondent will commit acts of sexual violence in the future, as required under [former] s. 980.01 (7). State v. Franklin, 2004 WI 38, 270 Wis. 2d 271, 677 N.W.2d 276, 00−2426.

No error was found in giving a jury a general verdict form in a ch. 980 hearing when the defendant failed to establish that ch. 980 respondents are routinely deprived of special verdicts and that general verdicts are more likely to result in commitments. State v. Madison, 2004 WI App 46, 271 Wis. 2d 218, 678 N.W.2d 607, 02−3099.

When a defendant seeks to exclude prior statements based upon his or her 5th amendment privilege, he or she must first establish that the statements at issue are 1) testimonial; 2) compelled; and 3) incriminating. The mere fact that a statement is compelled does not require it to be excluded from a ch. 980 commitment trial. While an individual has a pre−petition or pre−arrest right against self−incrimination, that right is ordinarily not self−executing and must be invoked. State v. Mark, 2006 WI 78, 292 Wis. 2d 1, 718 N.W.2d 90, 03−2068.

Under *Mark*, 2006 WI 78, the respondent has the same 5th amendment privilege against self−incrimination as does a defendant at a criminal trial. *Kastigar*, 406 U.S. 441, articulates the scope of the privilege in terms of the protection at trial when a criminal defendant has given an immunized statement, providing that immunity from the use of compelled testimony, as well as evidence derived directly and indirectly therefrom, affords the protection of the 5th amendment privilege. It prohibits the prosecutorial authorities from using the compelled testimony in any respect, and it therefore insures that the testimony cannot lead to the infliction of criminal penalties on the witness. State v. Harrell, 2008 WI App 37, 308 Wis. 2d 166, 747 N.W.2d 770, 05−2393.

Testimony referring to incidents revealed by the defendants compelled testimony and two experts' opinions that the defendant was much more likely than not to reoffend should have been excluded because that evidence was derived from compelled statements that were testimonial and incriminating. State v. Mark, 2008 WI App 44, 308 Wis. 2d 191, 747 N.W.2d 727, 07−0522.

A person against whom a ch. 980 petition has been filed is not entitled to a competency evaluation under s. 971.14. Although the result of a successful ch. 980 petition is confinement, the confinement is for treatment not punishment and there is no criminal−law−based due−process right to a competency hearing in a ch. 980 proceeding. State v. Luttrell, 2008 WI App 93, 312 Wis. 2d 695, 754 N.W.2d 249, 07−1840.

Section 904.04 (2) does not apply in ch. 980 commitment proceedings. The *Franklin* court discerned an unambiguous legislative intent to restrict the application of s. 904.04 (2) to analyzing evidence used to prove past acts. Future conduct is the relevant question in ch. 980 proceedings. The nature of ch. 980 hearings demands the jury consider evidence that would normally be barred in a traditional criminal trial. Although *Franklin* did not discuss the due process implications of its decision, the inapplicability of s. 904.04 (2) is consistent with the demands of due process under both the United States and Wisconsin constitutions. State v. Kaminski, 2009 WI App 175, 322 Wis. 2d 653, 777 N.W.2d 654, 08−2439.

980.06 Commitment. 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. A commitment order under this section shall specify that the person be placed in institutional care.

History: 1993 a. 479; 1995 a. 276; 1997 a. 27, 275, 284; 1999 a. 9.

In the event that there is a failure to develop an appropriate treatment program, the remedy is to obtain appropriate treatment and not supervised release. State v. Seibert, 220 Wis. 2d 308, 582 N.W.2d 745 (Ct. App. 1998), 97−2554.

Chapter 980 and s. 51.61 provide the statutory basis for a court to issue an involuntary medication order for individuals who suffer from a chronic mental illness and are committed under ch. 980. State v. Anthony D.B. 2000 WI 94, 237 Wis. 2d 1, 614 N.W.2d 435, 98−0576.

The incremental infringement by s. 980.06 on the liberty interests of those who have a sexually violent, predatory past and are currently suffering from a mental disorder that makes them dangerous sexual predators does not violate constitutional guarantees of due process. State v. Ransdell, 2001 WI App 202, 247 Wis. 2d 613, 634 N.W.2d 871, 00−2224.

Although ch. 51 is more "lenient" with those who are subject to its provisions than is ch. 980, the significant differences between the degree of danger posed by each of the two classes of persons subject to commitment under the two chapters, as well as the differences in what must be proven in order to commit under each, does not result in a violation of equal protection. State v. Williams, 2001 WI App 263, 249 Wis. 2d 1, 637 N.W.2d 791, 00−2899.

Chapter 980, as amended, is not a punitive criminal statute. Because whether a statute is punitive is a threshold question for both double jeopardy and ex post facto analysis, neither of those clauses is violated by ch. 980. State v. Rachel, 2002 WI 81, 254 Wis. 2d 215, 646 N.W.2d 375, 00−0467.

The mere limitation of a committed person's access to supervised release does not impose a restraint to the point that it violates due process. As amended, ch. 980 serves the legitimate and compelling state interests of providing treatment to, and protecting the public from, the dangerously mentally ill. The statute is narrowly tailored to meet those interests, and, as such, it does not violate substantive due process. State v. Rachel, 2002 WI 81, 254 Wis. 2d 215, 646 N.W.2d 375, 00−0467.

Commitment under ch. 980 does not require a separate factual finding that an individual's mental disorder involves serious difficulty for the person in controlling his or her behavior. Proof that the person's mental disorder predisposes the individual to engage in acts of sexual violence and establishes a substantial probability that the person will again commit those acts necessarily and implicitly includes proof that the person's mental disorder involves serious difficulty in controlling his or her behavior. State v. Laxton, 2002 WI 82, 254 Wis. 2d 185, 647 N.W.2d 784, 99−3164.

Chapter 980 does not preclude finding that a person with a sexually−related mental disorder has difficulty in controlling his or her behavior even if that person is able to conform his conduct to the requirements of the law. State v. Burgess, 2002 WI App 264, 258 Wis. 2d 548, 654 N.W.2d 81, 00−3074.

Affirmed. 2003 WI 71, 262 WI 2d 354, 665 N.W.2d 354.

Chapter 980 does not require the dismissal of a pending commitment petition when the individual subject to the petition is incarcerated because of the revocation of either parole or extended supervision. This section requires the circuit court to order the person to be committed to the custody of DHS for control, care, and treatment, but ch. 980 does not specify when that commitment must commence. While this section sets forth the requirements for a proper commitment order, neither that section nor any other section of ch. 980 contains language stating when the individual requirements of that order must be satisfied. State v. Gilbert, 2012 WI 72, 342 Wis. 2d 82, 816 N.W.2d 215, 10−0594.

Patients civilly committed under ch. 980 are not employees under federal or Wisconsin minimum wage law. Tran v. Speech, 2010 WI App 58, 324 Wis. 2d 567, 782 N.W.2d 107, 09−0884.

Chapter 980 does not require dismissal of a pending commitment petition when the person who is the subject of the petition is incarcerated because of a new sentence or a parole/extended supervision revocation. The wide discretion given to the trial court regarding the timing of the probable cause hearing together with the evident recognition that the subject of the petition might be incarcerated during the commitment proceedings compels the conclusion that the legislature did not intend for commitment proceedings to stop because the person subject to the petition is returned to department of corrections custody. State v. Gilbert, 2011 WI App 61, 333 Wis. 2d 157, 798 N.W.2d 889, 10−0594.

The use of polygraph tests as part of a sex offender treatment program does not violate due process. Wilson v. Watters, 348 F. Supp. 2d 1031 (2004).

To the extent that plaintiffs are uncontrollably violent and pose a danger to others, the state is entitled to hold them in segregation for that reason alone. Preserving the safety of the staff and other detainees takes precedence over medical goals. West v. Schwebke, 333 F.3d 745 (2003).

980.063 Deoxyribonucleic acid analysis requirements. (1) (a) If a person is found to be a sexually violent person under this chapter, the court shall require the person to provide a biological specimen to the state crime laboratories for deoxyribonucleic acid analysis. The court shall inform the person that he or she may request expungement under s. 165.77 (4).

(b) The results from deoxyribonucleic acid analysis of a specimen under par. (a) may be used only as authorized under s. 165.77 (3).

(2) Biological samples required under sub. (1) (a) shall be obtained and submitted as specified in rules promulgated by the department of justice under s. 165.76 (4).

History: 1995 a. 440; 2013 a. 20.

980.065 Institutional care for sexually violent persons. (1m) The department shall place a person committed under s. 980.06 at the secure mental health facility established under s. 46.055, the Wisconsin resource center established under s. 46.056 or a secure mental health unit or facility provided by the department of corrections under sub. (2).

(1r) Notwithstanding sub. (1m), the department may place a female person committed under s. 980.06 at Mendota Mental Health Institute, Wisconsin Women's Resource Center, Winnebago Mental Health Institute, or a privately operated residential facility under contract with the department of health services.

(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. 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 by the department in the secure mental health unit or facility provided by the department of corrections under this subsection.

History: 1993 a. 479; 1997 a. 27; 1999 a. 9; 2001 a. 16; 2007 a. 20 s. 9121 (6) (a); 2013 a. 84.

Chapter 980 does not require dismissal of a pending commitment petition when the person who is the subject of the petition is incarcerated because of a new sentence or a parole/extended supervision revocation. The wide discretion given to the trial court regarding the timing of the probable cause hearing together with the evident recognition that the subject of the petition might be incarcerated during the commitment proceedings compels the conclusion that the legislature did not intend for commitment proceedings to stop because the person subject to the petition is returned to department of corrections custody. State v. Gilbert, 2011 WI App 61, 333 Wis. 2d 157, 798 N.W.2d 889, 10−0594.

Nothing in the U.S. Constitution prevents state officials from temporarily detaining a civil committee in conditions normally reserved for inmates so that he or she may attend court proceedings concerning his commitment. Thiel v. State, 399 F. Supp. 929 (2005).

980.067 Activities off grounds. The superintendent of the facility at which a person is placed under s. 980.065 may allow the person to leave the grounds of the facility under escort. The department of health services shall promulgate rules for the administration of this section.

History: 2001 a. 16; 2007 a. 20 s. 9121 (6) (a).

Cross−reference: See also s. DHS 95.10, Wis. adm. code.

980.07 Periodic reexamination and treatment progress; report from the department. (1) If a person is committed under s. 980.06 and has not been discharged under s. 980.09 (4), the department shall appoint an examiner to conduct a reexamination of the person's mental condition within 12 months after the date of the initial commitment order under s. 980.06 and again thereafter at least once each 12 months to determine whether the person has made sufficient progress for the court to consider whether the person should be placed on supervised release or discharged. The examiner shall apply the criteria under s. 980.08 (4) (cg) when considering if the person should be placed on supervised release and shall apply the criteria under s. 980.09 (3) when considering if the person should be discharged. At the time of a reexamination under this section, the court shall appoint an examiner as provided under s. 980.031 (3) upon request of the committed person or the person may retain an examiner. The county shall pay the costs of an examiner appointed by the court as provided under s. 51.20 (18) (a).

(2) Any examiner conducting a reexamination under sub. (1) shall prepare a written report of the reexamination no later than 30 days after the date of the reexamination. The examiner shall provide a copy of the report to the department.

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

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

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

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

(c) The ongoing treatment needs of the person.

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

(5) Any examiners under sub. (1) and treating professionals under sub. (4) shall have reasonable access to the person for purposes of reexamination, to the person's past and present treatment

records, as defined in s. 51.30 (1) (b), and to the person's patient health care records, as provided under s. 146.82 (2) (c).

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

(b) When the department provides a copy of the report under par. (a) to the person who has been committed under s. 980.06, the department shall provide to the person a standardized petition form for supervised release under s. 980.08 and a standardized petition form for discharge under s. 980.09.

(6m) If a person committed under s. 980.06 is incarcerated at a county jail, state correctional institution, or federal correction institution for a new criminal charge or conviction or because his or her parole was revoked, any reporting requirement under sub. (1), (4), or (6) (a) does not apply during the incarceration period. A court may order a reexamination of the person under sub. (3) if the courts finds reexamination to be necessary. The schedule for reporting established under sub. (1) shall resume upon the release of the person.

(7) At any time before a hearing under s. 980.08 or 980.09, the department may file a supplemental report if the department determines that court should have additional information. The court shall accept the supplemental report and permit testimony from the department regarding the report or any relevant portion of the report.

History: 1993 a. 479; 1999 a. 9; 2005 a. 434; 2009 a. 248; 2013 a. 84 ss. 4 to 7, 9, 13.

As part of an annual review, an involuntary medication order must be reviewed following the same procedure used to obtain the initial order. State v. Anthony D.B. 2000 WI 94, 237 Wis. 2d 1, 614 N.W.2d 435, 98−0576.

It is within the committed person's discretion to ask for an independent examination. The trial court does not have discretion to refuse the request. State v. Thiel, 2001 WI App 32, 241 Wis. 2d 465, 626 N.W.2d 26, 00−0142.

The 6−month time period in [former] sub. (1) for an initial reexamination is mandatory. State ex rel. Marberry v. Macht, 2003 WI 79, 262 Wis. 2d 720, 665 N.W.2d 155, 99−2446.

The Supreme Court's decision to uphold the commitment in *Laxton* in light of the jury instructions in the case was not diametrically different or opposite in character or nature from any clearly established federal law. Laxton v. Bartow, 421 F.3d 565 (2005).

The 14th amendment due process guarantee was violated by a delay of over 22 months between the first annual periodic examination report was provided to the circuit court under s. 980.07 and the circuit court's probable cause hearing under [former] s. 980.09 (2) (a) to determine if facts warranted a hearing on whether the committee was still a sexually violent person. Discharge is not an appropriate remedy for a sexually violent person who is dangerous because he or she suffers from a mental disorder that makes it likely that he or she will engage in acts of sexual violence. Appropriate remedies are motions for mandamus or equitable relief, but because a ch. 980 committee may encounter considerable obstacles to pursuing these remedies, DHFS, the Department of Justice, the bar, and the circuit courts must bear substantial responsibility for ensuring prompt judicial review of annual periodic examination reports. State v. Beyer, 2006 WI 2, 287 Wis. 2d 1, 707 N.W.2d 509, 04−1208.

A rule in a supervised release plan requiring the petitioner to "abide by all rules of any detention, treatment or correctional facility in which [the petitioner] may be confined" was permissible. While the rule did not give DHS the power to detain the petitioner in prison solely for a rules violation, it did require him to abide by all rules of the prison should he find himself detained there for other reasons. State v. Thiel, 2012 WI App 48, 340 Wis. 2d 654, 813 N.W.2d 709, 11−0933.

Sub. (1) (2011 stats.) states that the committed person may retain or have the court appoint an independent examiner "at the time of a reexamination," and s. 980.031 (3) requires the circuit court to appoint, upon request, an independent examiner to perform an examination of the individual's mental condition. That the independent examiner is also to participate at trial or a hearing involving testimony does not limit his or her initial role in examining the committed person "at the time of a reexamination." The committed person does not have to wait until his or her petition has passed the paper review; indeed, the independent examiner is meant to help assess the petitioner's readiness for discharge and gather facts to support the petition, if appropriate. State v. Jones, 2013 WI App 151, 352 Wis. 2d 87, 841 N.W.2d 306, 13−0321.

980.08 Supervised release; procedures, implementation, revocation. (1) Any person who is committed under s. 980.06 may petition the committing court to modify its order by authorizing supervised release if at least 12 months have elapsed since the initial commitment order was entered or at least 12 months have elapsed since the most recent release petition was denied, since supervised release was denied under s. 980.09 (4), or since 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.

(2m) The person submitting the petition may use experts or professional persons to support his or her petition. The district attorney or the department of justice may use experts or professional persons to support or oppose any petition.

(3) (a) Within 20 days after receipt of the petition, the court shall appoint one or more examiners for the court who have 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 60 days after appointment, unless the court for good cause extends this time limit. If the person requests appointment of an examiner within 20 days after the filing of the petition, the court shall appoint an examiner for the person, unless the court appointed an examiner under s. 980.031 (3) or 980.07 (1) for the current reexamination period. If a report filed by an examiner appointed under s. 980.07 (1) to conduct a reexamination of the person's mental condition within the 6 months preceding the filing of the petition supports supervised release, the court may appoint that examiner as the examiner for the person under this subsection.

(b) The examiners appointed under par. (a) shall have reasonable access to the person for purposes of examination and to the person's past and present treatment records, as defined in s. 51.30 (1) (b), and patient health care records, as provided under s. 146.82 (2) (c). If any such examiner believes that the person is appropriate for supervised release under the criteria specified in sub. (4) (cg), the examiner shall report on the type of treatment and services that the person may need while in the community on supervised release. The county shall pay the costs of an examiner appointed under par. (a) as provided under s. 51.20 (18) (a).

(4) (a) The court, without a jury, shall hear the petition within 120 days after the report of the court−appointed examiner appointed under sub. (3) (a) is filed with the court, unless the court for good cause extends this time limit. Expenses of proceedings under this subsection shall be paid as provided under s. 51.20 (18) (b), (c), and (d).

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

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

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

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

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

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

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

(cj) The person has the burden of proving by clear and convincing evidence that the person meets the criteria in par. (cg).

(cm) If the court finds that all of the criteria in par. (cg) are met, the court shall select a county to prepare a report under par. (e). Unless the court has good cause to select another county, the court shall select the person's county of residence as determined by the department under s. 980.105. An actual or alleged lack of available housing for the person within a county because of an ordinance or resolution in effect or proposed by the county or by a city, town, or village within the county may not constitute good cause to select another county under this paragraph. The court may not select a county where there is a facility in which persons committed to institutional care under this chapter are placed unless that county is also that person's county of residence.

(d) The court shall authorize the petitioner, the person's attorney, the district attorney, any law enforcement agency in the county of intended placement, and any local governmental unit in the county of intended placement to submit prospective residential options for community placement to the department within 60 days following the selection of the county under par. (cm).

(e) The court shall order the county department under s. 51.42 in the county of intended placement to prepare a report, either independently or with the department of health services, identifying prospective residential options for community placement. In identifying prospective residential options, the county department shall 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 the department of corrections and regarding whom a sex offender notification bulletin has been issued to law enforcement agencies under s. 301.46 (2m) (a) or (am). The county department shall submit its report to the department within 60 days following the court order.

(em) The department shall consult with a local law enforcement agency having jurisdiction over any prospective residential option identified under par. (e) and shall request the law enforcement agency to submit a written report that provides information relating to the prospective residential option.

(f) The court shall direct the department to use any submissions under par. (d), the report submitted under par. (e), any report submitted under par. (em), and other residential options identified by the department to prepare a supervised release plan for the person. The department shall search its victim database, and consult with the office of victim services in the department of corrections, the department of justice, and the county coordinator of victims and witnesses services in the county of intended placement, the county where the person was convicted, and the county of commitment to determine the identity and location of known and registered victims of the person's acts. The department shall prepare a supervised release plan that identifies the proposed residence. The supervised release plan shall be submitted to the court within 90 days of the finding under par. (cg). The court may grant extensions of this time period for good cause. The plan shall do all of the following:

1. 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.

2. Ensure that the person's placement is into a residence that is not less than 1,500 feet from any school premises, child care facility, public park, place of worship, or youth center. A person is not in violation of a condition or rule of supervised release under sub. (7) (a) if any school premises, child care facility, public park, place of worship, or youth center is established within 1,500 feet from the person's residence after he or she is placed in the residence under this section.

3. If the person committed a sexually violent offense against an adult at risk, as defined in s. 55.01 (1e), or an elder adult at risk, as defined in s. 46.90 (1) (br), ensure that the person's placement is into a residence that is not less than 1,500 feet from a nursing home or an assisted living facility. A person is not in violation of a condition or rule of supervised release under sub. (7) (a) if a nursing home or an assisted living facility is established within 1,500 feet from the person's residence after he or she is placed in the residence under this section.

4. If the person is a serious child sex offender, ensure that the person's placement is into a residence that is not on a property adjacent to a property where a child's primary residence exists. For the purpose of this subdivision, adjacent properties are properties that share a property line without regard to a public or private road if the living quarters on each property are not more than 1,500 feet apart. A person is not in violation of a condition or rule of supervised release under sub. (7) (a) if a child establishes primary residence in a property adjacent to the person's residence after the person is placed in the residence under this section.

(g) The court shall review the plan submitted by the department under par. (cm). If the details of the plan adequately meet the treatment needs of the individual and the safety needs of the community, then the court shall approve the plan and determine that supervised release is appropriate. If the details of the plan do not adequately meet the treatment needs of the individual or the safety needs of the community, then the court shall determine that supervised release is not appropriate or direct the preparation of another supervised release plan to be considered by the court under this paragraph.

(5m) The department may not arrange placement under this section in a facility that did not exist before January 1, 2006.

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

(7) (a) If the department believes that a person on supervised release, or awaiting placement on supervised release, has violated, or threatened to violate, any condition or rule of supervised release, the department may petition for revocation of the order granting supervised release as described in par. (c) or may detain the person.

(b) If the department believes that a person on supervised release, or awaiting placement on supervised release, is a threat to the safety of others, the department shall detain the person and petition for revocation of the order granting supervised release as described in par. (c).

(c) If the department concludes that the order granting supervised release should be revoked, it shall file with the committing court a statement alleging the violation and or threat of a violation and a petition to revoke the order for supervised release and provide a copy of each to the regional office of the state public defender responsible for handling cases in the county where the committing court is located. If the department has detained the person under par. (a) or (b), the department shall file the statement and the petition and provide them to the regional office of the state public defender within 72 hours after the detention, excluding Saturdays, Sundays and legal holidays. Pending the revocation hearing, the department may detain the person in a jail or 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.

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

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

(b) If the court finds after a hearing, by clear and convincing evidence, that the safety of others requires that supervised release be revoked the court shall revoke the order for supervised release and order that the person be placed in institutional care. The person shall remain in institutional care until the person is discharged from the commitment under s. 980.09 or is placed on supervised release under sub. (4) (g).

(9) (a) As a condition of supervised release granted under this chapter, for the first year of supervised release, the court shall restrict the person on supervised release to the person's residence except for outings approved by the department of health services that are under the direct supervision of a department of corrections escort and that are for employment or volunteer purposes, religious purposes, educational purposes, treatment and exercise purposes, supervision purposes, or residence maintenance, or for caring for the person's basic living needs.

(b) The department of corrections may contract for the escort services under par. (a).

History: 1993 a. 479; 1995 a. 276; 1997 a. 27, 275, 284; 1999 a. 9 ss. 3223L, 3232p to 3238d; 1999 a. 32; 2001 a. 16; 2003 a. 187; 2005 a. 431, 434; 2007 a. 20 ss. 3929, 3930, 9121 (6) (a); 2007 a. 96, 97; 2013 a. 84; 2015 a. 156.

Cross−reference: See also ch. DHS 98, Wis. adm. code.

Sub. (6m) [formerly s. 980.06 (2) (d)] requires post−hearing notice to the local law enforcement agencies. In re Commitment of Goodson, 199 Wis. 2d 426, 544 N.W.2d 611 (Ct. App. 1996), 95−0664.

Whether in a proceeding for an initial ch. 980 commitment or a later petition for supervised release, there is no requirement that the state prove the person is treatable. State v. Seibert, 220 Wis. 2d 308, 582 N.W.2d 745 (Ct. App. 1998), 97−2554.

As used in this chapter, "substantial probability" and "substantially probable" both mean much more likely than not. This standard for dangerousness does not violate equal protection nor is the term unconstitutionally vague. State v. Curiel, 227 Wis. 2d 389, 597 N.W.2d 697 (1999), 97−1337.

An institutionalized sex offender who agreed to a stipulation providing supervised release, giving up his right to a jury trial on his discharge petition in exchange, had a constitutional right to enforcement of the agreement. State v. Krueger, 2001 WI App 76, 242 Wis. 2d 793, 626 N.W.2d 83, 00−0152.

An indigent sexually violent person is constitutionally entitled to assistance of counsel in bringing a first appeal as of right from a denial of his or her petition for supervised release. State ex rel. Seibert v. Macht, 2001 WI 67, 244 Wis. 2d 378, 627 N.W.2d 881, 99−3354.

A person subject to a proceeding to revoke supervised release is entitled to the same due process protections as afforded persons in probation and parole revocation proceedings. Notice of the grounds that are the basis for the revocation must be given. A court can only base a revocation on the grounds of public safety under sub. (6m) when notice has been properly given. State v. VanBronkhorst, 2001 WI App 190, 247 Wis. 2d 247, 633 N.W.2d 236, 00−3075.

The relevant inquiry under sub. (4) is whether the person's behavior indicates a likelihood to reoffend. A sexual assault need not occur and the person's behavior need not be criminal. State v. Sprosty, 2001 WI App 231, 248 Wis. 2d 480, 636 N.W.2d 213, 00−2404.

Sub. (6m), not s. 806.07 (1) (h), governs granting relief to the state from a ch. 980 committee's supervised release when the committee is confined in an institution awaiting placement on supervised release. Sub. (6m) provides no procedure for initiating revocation other than by the department of health and family services action, preventing courts or prosecutors from initiating revocations. State v. Morford, 2004 WI 5, 268 Wis. 2d 300, 674 N.W.2d 349, 01−2461.

Ch. 980 was not unconstitutionally applied to the defendant when an order for supervised release could not be carried out due to an inability to find an appropriate placement and the defendant remained in custody. Any judicial decision that puts the community at risk because of what agents of government may have done or not done must balance the potential injury to society's interests against the potential benefits that would flow from any rule designed to deter future conduct by those agents. State v. Schulpius, 2006 WI 2, 287 Wis. 2d 44, 707 N.W.2d 495, 02−1056.

A rule regulating the conduct of a sexually violent person on supervised release satisfies the procedural due process requirement of adequate notice if it is sufficiently precise for the probationer to know what conduct is required or prohibited. State v. Burris, 2004 WI 91, 273 Wis. 2d 294, 682 N.W.2d 812, 00−1425.

Under sub. (6m) [formerly s. 980.06 (2) (d)], a circuit court must determine whether any rule or condition of release has been violated or whether the safety of others requires revocation. A circuit court is not required to expressly consider alternatives to revocation before revoking a sexually violent person's supervised release when the court determines that the safety of the public requires the person's commitment to a secure facility. State v. Burris, 2004 WI 91, 273 Wis. 2d 294, 682 N.W.2d 812, 00−1425.

The sufficiency of evidence standard of review applies when reviewing a circuit court's order denying a petition for supervised release under sub. (4). The test for the sufficiency of the evidence to support the order is not whether a reviewing court is convinced by clear and convincing evidence that a person's petition for supervised release should be denied, but whether a circuit court, acting reasonably, could be so convinced by evidence it has a right to believe and accept as true. State v. Brown, 2005 WI 29, 279 Wis. 2d 102, 693 N.W.2d 715, 03−1419.

Sub. (4) (cg) unambiguously places the burden of proof with the committed individual. The appropriate burden of persuasion is clear and convincing evidence. This allocation does not violate the guarantees of due process and equal protection in the Wisconsin and United States Constitutions. State v. West, 2011 WI 83, 336 Wis. 2d 578, 800 N.W.2d 929, 09−1579.

Supervised Release Under Chapter 980: Alternatives to Protect Wisconsin While Upholding the Constitution. Hamrin. 2007 WLR 889.

980.09 Petition for discharge. (1) A committed person may petition the committing court for discharge at any time. The court shall deny the petition under this section without a hearing unless the petition alleges facts from which the court or jury would likely conclude the person's condition has changed since the most recent order denying a petition for discharge after a hearing on the merits, or since the date of his or her initial commitment order if the person has never received a hearing on the merits of a discharge petition, so that the person no longer meets the criteria for commitment as a sexually violent person.

(1m) (a) If the person files a petition for discharge under sub. (1) without counsel, the court shall serve a copy of the petition and any supporting documents on the district attorney or department of justice, whichever is applicable. If the person petitions for discharge under sub. (1) through counsel, his or her attorney shall serve the district attorney or department of justice, whichever is applicable.

(b) If the person files a petition for a discharge under sub. (1) without counsel, as soon as circumstances permit, 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).

(c) If a person files a petition for discharge under sub. (1), the person may use experts or professional persons to support his or her petition. The district attorney or the department of justice may use experts or professional persons to support or oppose any petition filed under sub. (1).

(d) After receiving a petition for discharge under sub. (1) and upon the request of the person filing the petition, unless the court previously appointed an examiner under s. 980.031 (3) or 980.07

(1) for the current reexamination period, the court shall appoint for the person an examiner having the specialized knowledge determined by the court to be appropriate. If an examination conducted under s. 980.07 (1) within the 6 months preceding the filing of the petition supports discharge, the court may appoint the examiner who conducted that examination as the examiner for the person. The examiner 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 in s. 146.82 (2) (c). The county shall pay the costs of an examiner appointed under this paragraph as provided under s. 51.20 (18) (a).

(2) In reviewing the petition, the court may hold a hearing to determine if the person's condition has sufficiently changed such that a court or jury would likely conclude the person no longer meets the criteria for commitment as a sexually violent person. In determining under this subsection whether the person's condition has sufficiently changed such that a court or jury would likely conclude that the person no longer meets the criteria for commitment, the court may consider the record, including evidence introduced at the initial commitment trial or the most recent trial on a petition for discharge, any current or past reports filed under s. 980.07, relevant facts in the petition and in the state's written response, arguments of counsel, and any supporting documentation provided by the person or the state. If the court determines that the record does not contain facts from which a court or jury would likely conclude that the person no longer meets the criteria for commitment, the court shall deny the petition. If the court determines that the record contains facts from which a court or jury would likely conclude the person no longer meets the criteria for commitment, the court shall set the matter for trial.

(3) The court shall hold a trial within 90 days of the determination that the person's condition has sufficiently changed such that a court or jury would likely conclude that the person no longer meets the criteria for commitment as a sexually violent person. At trial, the state has the burden of proving by clear and convincing evidence that the person meets the criteria for commitment as a sexually violent person.

(4) If the court or jury is satisfied that the state has not met its burden of proof under sub. (3), the person shall be discharged from the custody of the department. If the court or jury is satisfied that the state has met its burden of proof under sub. (3), the court shall proceed under s. 980.08 (4) to determine whether to modify the person's existing commitment order by authorizing supervised release, unless the person waives consideration of the criteria in s. 980.08 (4) (cg). If the person waives consideration of these criteria, the waiver is a denial of supervised release for purposes of s. 980.08 (1).

(5) If a court orders discharge of a committed person under this section, the court shall stay the execution of the order so that the department may comply with its statutory duties under s. 980.11 (2) and (3). The stay of execution may not exceed 10 working days and shall be for as short a period as necessary to permit the department to comply with s. 980.11 (2) and (3).

History: 1993 a. 479; 1999 a. 9; 2003 a. 187; 2005 a. 434; 2013 a. 84 ss. 10 to 12, 21 to 25; 2013 a. 168 s. 20.

Persons committed under ch. 980 must be afforded the right to request a jury for discharge hearings under this section. State v. Post, 197 Wis. 2d 279, 541 N.W.2d 115 (1995), 94−2356.

Progress in treatment is one way of showing that a person is not still a sexually violent person under [former] sub. (2) (a). A new diagnosis is another. A new diagnosis need not attack the original finding that an individual was sexually violent, but focuses on the present and is evidence of whether an individual is still a sexually violent person. State v. Pocan, 2003 WI App 233, 267 Wis. 2d 953, 671 N.W.2d 680, 02−3342.

Under sub. (1), the circuit court engages in a paper review of the petition only, including its attachments, to determine whether it alleges facts from which a reasonable trier of fact could conclude that the petitioner does not meet the criteria for commitment as a sexually violent person. This review is a limited one aimed at assessing the sufficiency of the allegations in the petition. If the petition does allege sufficient facts, the circuit court proceeds to a review under sub. (2). State v. Arends, 2010 WI 46, 325 Wis. 2d 1, 784 N.W.2d 513, 08−0052.

Sub. (2) requires the circuit court to review specific items enumerated in that subsection. The court need not seek out items not already within the record. Nevertheless, it may request additional enumerated items not previously submitted, and also has the discretion to conduct a hearing to aid in its determination. The court's task is to determine whether the petition and the additional supporting materials before it contain facts from which a reasonable trier of fact could conclude that the petitioner does not meet the criteria for commitment as a sexually violent person. State v. Arends, 2010 WI 46, 325 Wis. 2d 1, 784 N.W.2d 513, 08−0052.

Sub. (2) explicitly prescribes a different procedure than that for summary judgment set forth in s. 802.08. As such, summary judgment is not available in discharge proceedings under this section. The state's burden of proof is implicated only during a hearing under sub. (3). When a trial court granted summary judgment prior to a hearing under sub. (3), no one could say with any certainty whether the state possessed enough evidence to meet its burden of proof. State v. Allison, 2010 WI App 103, 329 Wis. 2d 129, 789 N.W.2d 120, 09−1232.

A research paper is not sufficient evidence to demonstrate that a sex offender's condition has changed. New actuarial research, absent a psychological examination, is not enough to demonstrate that an offender is no longer a sexually violent person. State v. Richard, 2011 WI App 66, 333 Wis. 2d 708, 799 N.W.2d 509, 10−1188.

The only reasonable construction of the "condition has changed" in sub. (1) is that it encompasses all the changes that a fact finder could determine result in the person not meeting the criteria for commitment as a sexually violent person. This language includes not only a change in the person himself or herself, but also a change in the professional knowledge or research used to evaluate a person's mental disorder or dangerousness if the change is such that a fact finder could conclude the person does not meet the criteria for commitment. The circuit court may not deny a discharge petition without a hearing if the petition alleges facts from which a fact finder could determine that, as a result of any one of those changes, the person does not meet the criteria for a sexually violent person. State v. Ermers, 2011 WI App 113, 336 Wis. 2d 451, 802 N.W.2d 540, 10−2634.

When determining whether to hold a hearing on a petition for discharge, the circuit court must determine whether the petitioner has set forth new evidence, not considered by a prior trier of fact, from which a reasonable trier of fact could conclude that the petitioner does not meet the criteria for commitment as a sexually violent person. An expert's opinion that is not based on some new fact, new professional knowledge, or new research is not sufficient for a new discharge hearing under sub. (2). A doctor's further reflection on past scoring of a test is not sufficient for a new discharge hearing because it is not new professional knowledge or research about how to predict dangerousness. State v. Schulpius, 2012 WI App 134, 345 Wis. 2d 351, 825 N.W.2d 311, 11−2565.

A petition alleging a change in a sexually violent person's status based upon a change in the research or writings on how professionals are to interpret and score actuarial instruments is sufficient for a petitioner to receive a discharge hearing, if it is properly supported by a psychological evaluation applying the new research. State v. Richard, 2014 WI App 28, 353 Wis. 2d 219, 844 N.W.2d 370, 12−2748.

The clear and convincing evidence standard under sub. (3) satisfies due process at a ch. 980 discharge trial. State v. Talley, 2015 WI App 4, 359 Wis. 2d 522, 859 N.W.2d 155, 13−0492.

980.095 Procedures for discharge hearings. (1) USE OF JURIES. (a) The district attorney or the department of justice, whichever filed the original petition, or the person who filed the petition for discharge or his or her attorney may request that a trial under s. 980.09 (3) be to a jury of 6. A jury trial is deemed waived unless it is demanded within 10 days of the determination by the court that a court or jury would likely conclude under s. 980.09 (1) that the person's condition has sufficiently changed.

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

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

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

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

History: 2005 a. 434; 2013 a. 84.

980.101 Reversal, vacation or setting aside of judgment relating to a sexually violent offense; effect. (1) In this section, "judgment relating to a sexually violent offense" means a judgment of conviction for a sexually violent offense, an adjudication of delinquency on the basis of a sexually violent offense, or a judgment of not guilty of a sexually violent offense by reason of mental disease or defect.

(2) If, at any time after a person is committed under s. 980.06, a judgment relating to a sexually violent offense committed by the person is reversed, set aside, or vacated and that sexually violent offense was a basis for the allegation made in the petition under

s. 980.02 (2) (a), the person may bring a motion for postcommitment relief in the court that committed the person. The court shall proceed as follows on the motion for postcommitment relief:

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

(b) If the sexually violent offense was the sole basis for the allegation under s. 980.02 (2) (a) but there are other judgments relating to a sexually violent offense committed by the person that have not been reversed, set aside, or vacated, or if the sexually violent offense was not the sole basis for the allegation under s. 980.02 (2) (a), the court shall determine whether to grant the person a new trial under s. 980.05 because the reversal, setting aside, or vacating of the judgment for the sexually violent offense would probably change the result of the trial.

(3) An appeal may be taken from an order entered under sub. (2) as from a final judgment.

History: 2001 a. 16; 2005 a. 253, 434.

980.105 Determination of county and city, village, or town of residence. (1m) The department shall determine a person's county of residence for the purposes of this chapter by doing all of the following:

(a) The department shall consider residence as the voluntary concurrence of physical presence with intent to remain in a place of fixed habitation and shall consider physical presence as prima facie evidence of intent to remain.

(b) The department shall apply the criteria for consideration of residence and physical presence under par. (a) to the facts that existed on the date that the person committed the sexually violent offense that resulted in the sentence, placement, or commitment that was in effect when the petition was filed under s. 980.02.

(2m) The department shall determine a person's city, village, or town of residence for the purposes of s. 980.08 (5) by doing all of the following:

NOTE: 2005 Wis. Act 431 created sub. (2m) and made extensive substantive changes to s. 980.08 (5). 2005 Wis. Act 434 repealed s. 980.08 (5).

(a) The department shall consider residence as the voluntary concurrence of physical presence with intent to remain in a place of fixed habitation and shall consider physical presence as prima facie evidence of intent to remain.

(b) The department shall apply the criteria for consideration of residence and physical presence under par. (a) to the facts that existed on the date that the person committed the sexually violent offense that resulted in the sentence, placement, or commitment that was in effect when the petition was filed under s. 980.02.

History: 1995 a. 276; 2001 a. 16; 2005 a. 431.

A person's county of residence shall be determined based on the facts that existed on the date of the underlying offense. A court does not have jurisdiction merely because the defendant was in a Wisconsin prison at the time the petition was filed. State v. Burgess, 2002 WI App 264, 258 Wis. 2d 548, 654 N.W.2d 81, 00−3074. Affirmed on other grounds. 2003 WI 71, 262 WI 2d 354, 665 N.W.2d 124, 00−3074.

The circuit court had jurisdiction to conduct ch. 980 proceedings involving an enrolled tribal member who committed the underlying sexual offense on an Indian reservation. State v. Burgess, 2003 WI 71, 262 Wis. 2d 354, 665 N.W.2d 124, 00−3074.

980.11 Notice concerning supervised release or discharge. (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, domestic partner under ch. 770, 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. 980.08 (4) or discharges a person under s. 980.09 (4), the department shall do all of the following:

(am) Make a reasonable attempt to notify whichever of the following persons is appropriate, if he or she can be found, in accordance with sub. (3):

1. The victim of the act of sexual violence.

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

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

(bm) Notify the department of corrections.

(3) The notice under sub. (2) shall inform the department of corrections and the person under sub. (2) (am) 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 department of corrections and to the last−known address of the person under sub. (2) (am).

(4) The department shall design and prepare cards for persons specified in sub. (2) (am) 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) (am). These persons may send completed cards to the department of health services. All records or portions of records of the department of health 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 request by the department of corrections under s. 301.46 (3) (d).

History: 1993 a. 479; 1995 a. 27 s. 9126 (19); 1995 a. 440; 1997 a. 181; 1999 a. 9; 2005 a. 434; 2007 a. 20 s. 9121 (6) (a); 2009 a. 28.

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

(2) By February 1, 2002, the department shall submit a report to the legislature under s. 13.172 (2) concerning the extent to which pharmacological treatment using an antiandrogen or the chemical equivalent of an antiandrogen has been required as a condition of supervised release under s. 980.06, 1997 stats., or s. 980.08 and the effectiveness of the treatment in the cases in which its use has been required.

History: 1993 a. 479; 1997 a. 284; 1999 a. 9; 2005 a. 434.

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 June 2, 1994.

History: 1993 a. 479.

980.135 Local restrictions; limited exemption. No county, city, town, or village may enforce an ordinance or resolution that restricts or prohibits a sex offender from residing at a certain location or that restricts or prohibits a person from providing housing to a sex offender against an individual who is released under s. 980.08 or against a person who provides housing to the individual so long as the individual is subject to supervised release under this chapter, the individual is residing where he or she is ordered to reside under s. 980.08, and the individual is in compliance with all court orders issued under this chapter.

History: 2015 a. 156.

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

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

History: 2005 a. 434 ss. 79, 129, 130; 2007 a. 20 s. 9121 (6) (a).