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## State of Wisconsin Department of Corrections

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Date: November 15, 2004  
To: Legislative Council Special Committee on Sexually Violent Person Commitments  
From: Sally Tess  
Department of Corrections  
Re: Review of AB 861 Substitute Amendment 2

Following the meeting of the Special Committee on Sexually Violent Person Commitment held on September 28, 2004, committee members were asked to review Substitute Amendment 2 to 2003 Assembly Bill 861 and submit suggestions for additions or deletions to the amendment. Suggestions from the Department of Corrections (DOC) are described below.

### **Greater Access to Confidential Records**

The substitute amendment provides greater access for the DOC, Department of Health and Family Services (DHFS), the Department of Justice (DOJ) and district attorneys to records previously unavailable without an authorized release or a court order. This includes juvenile records, school records, and drug and alcohol and mental health records. Under the current statute, Chapter 980 evaluators frequently are not able to view these records without the offender authorizing release, and since the information learned from these records may be detrimental to the offender's defense, offenders wouldn't authorize release of certain confidential records. Valuable information could then not be considered when determining level of risk or making a recommendation for commitment. The substitute language clearly states the release of records is related to 980 proceedings, eliminating concern about abusing released records. This applies to records for both adults and juveniles. The DOC supports this change.

### **Change to Sex Offender Registration Language**

DOC supports the changes to 301.45 to clarify the current language involving individuals committed under Chapter 980, including change from "conditional release" to "supervised release."

### **Felony Penalty for Escape**

The DOC understands the concerns surrounding escape from a facility housing persons committed under the Sexually Violent Persons Act. It is suggested that the Special Committee review any constitutional ramifications for Chapter 980 by creating a criminal penalty for a "patient" under commitment.

### **Presentence Investigations**

The substitute amendment permits use of the presentence investigation (PSI) through many of the steps in the commitment process. The PSI is perhaps the most comprehensive document prepared by the DOC, and it contains information recent to the offense that isn't likely to be available at the time of a commitment evaluation, namely victim information. Without this change, the DOC must seek court approval to access this document, resulting in possible court time for hearings and/or inability to use information contained in the PSI. The DOC supports this change.

## **“Sexually Motivated”**

The substitute amendment changed the definition of sexually motivated to include acts committed for the purpose of “sexual humiliation or degradation of the victim.” This expanded the definition previously used and is appropriate for consideration in civil commitments. The DOC supports this change.

## **Additional Statutes**

Felony murder, administering dangerous or stupefying drugs, and robbery were added to the list of offenses to be reviewed as sexually motivated offenses. Third degree sexual assault [940.225(3)] was added as a sexually violent offense. The amendment also includes offenses committed prior to June 2, 1994 that are comparable to specified crimes and determined to be sexually motivated. These changes provide a more exhaustive list of offenses to be considered and lessens the likelihood that an offender would not be reviewed when he or she is appropriate for possible commitment. The DOC supports this change.

## **Change in Standard**

The change from “substantially probable” to “likely” was accomplished with the passage of 2003 WI Act 187 and was supported by DOC.

## **Requirements for Supervised Release**

This is a complex issue and any changes must be workable for the courts, law enforcement, communities, DHFS and DOC. Any changes would have to be constitutional and not jeopardize Wisconsin’s civil commitment law. One of the bigger changes that affects supervised release has already been accomplished by 2003 WI Act 187 which amended the standard for initial and continued commitment.

The DOC appreciates the opportunity to provide input on this important piece of legislation and is able to provide further clarification on any of these points if necessary.

cc: Matthew Frank, Secretary  
Rick Raemisch, Deputy Secretary  
Jessica Clark, Executive Assistant  
Robert Margolies, Legislative Liaison  
William Grosshans, Assistant Administrator