

1 **AN ACT** *to repeal* 51.30 (4) (b) 10m., 980.02 (2) (ag), 980.03 (5), 980.05 (1m), 980.09
2 (1) (title), 980.09 (2) and 980.10; *to renumber* 978.13 (2) and 980.01 (1); *to*
3 *renumber and amend* 938.396 (2) (e), 978.043, 980.015 (1), 980.015 (4), 980.03
4 (4), 980.04 (2), 980.07 (1), 980.09 (1) (a), 980.09 (1) (b) and 980.09 (1) (c); *to*
5 *amend* 48.396 (1), 48.396 (5) (a) (intro.), 51.30 (3) (a), 51.30 (3) (b), 51.30 (4) (b)
6 8m., 51.30 (4) (b) 11., 51.375 (1) (a), 51.375 (2) (b), 109.09 (1), 146.82 (2) (c),
7 301.45 (1g) (dt), 301.45 (3) (a) 3r., 301.45 (3) (b) 3., 301.45 (5) (b) 2., 756.06 (2)
8 (b), 801.52, 808.04 (3), 808.04 (4), 808.075 (4) (h), 905.04 (4) (a), 911.01 (4) (c),
9 938.396 (1), 938.396 (5) (a) (intro.), 938.78 (2) (e), 946.42 (1) (a), 950.04 (1v) (xm),
10 967.03, 972.15 (4), 978.03 (3), 978.045 (1r) (intro.), 978.05 (6) (a), 978.05 (8) (b),
11 980.01 (5), 980.01 (6) (a), 980.01 (6) (b), 980.01 (6) (c), 980.01 (7), 980.015 (2)
12 (intro.), 980.015 (2) (a), 980.015 (2) (b), 980.015 (2) (c), 980.02 (1) (a), 980.02 (4)
13 (intro.), 980.03 (2) (intro.), 980.03 (3), 980.04 (1), 980.04 (3), 980.05 (1), 980.05 (3)
14 (a), 980.05 (3) (b), 980.07 (2), 980.07 (3), 980.09 (title), 980.101 (2) (a), 980.11 (2)
15 (intro.) and 980.12 (1); *to repeal and recreate* 809.10 (1) (d), 809.30 (1) (c), 809.30
16 (1) (f) and 980.08; and *to create* 48.396 (6), 48.78 (2) (e), 48.981 (7) (a) 8s., 51.30
17 (3) (bm), 51.30 (4) (b) 8s., 118.125 (2) (ck), 146.82 (2) (cm), 756.06 (2) (cm),
18 814.61 (1) (c) 6., 938.35 (1) (e), 940.20 (1g), 946.42 (3m), 972.15 (6), 973.155 (1)
19 (c), 978.043 (2), 978.13 (2) (a), 980.01 (1g), 980.01 (6) (am), 980.01 (6) (bm),
20 980.015 (1) (b), 980.015 (2) (d), 980.02 (1) (b) 3., 980.02 (1m), 980.02 (6), 980.031
21 (title), 980.031 (1) and (2), 980.034, 980.036, 980.038, 980.04 (2) (b), 980.05 (2m),
22 980.07 (1) (b), 980.07 (1g), 980.07 (1m), 980.07 (4) to (7), 980.093, 980.095, 980.14

1 (title) and 980.14 (1) of the statutes; **relating to:** the definition of sexually violent
2 person, sexually violent person commitment proceedings, criteria for supervised
3 release, battery by certain committed persons, escape from custody by a person who
4 is subject to a sexually violent person commitment proceeding, and providing
5 penalties.

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

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This draft was prepared for the joint legislative council's special committee on sexually violent person commitments. The draft makes various changes to current law (particularly ch. 980, stats.), relating to the commitment, periodic reexamination, supervised release, and discharge of sexually violent persons. The draft makes the following changes in current law:

Definitions

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

1. Defines "act of sexual violence" (a term found in the definition of "sexually violent person") to mean conduct that constitutes the commission of a sexually violent offense (SVO).
2. Adds 3rd-degree sexual assault to the list of SVOs covered by the definition.
3. Adds felony murder, administering a dangerous or stupefying drug, robbery, and physical abuse of a child to the list of SVOs if such an offense is determined to be sexually motivated.
4. Expands the list of SVOs to include comparable crimes committed prior to June 2, 1994.
5. Revises the term "sexually motivated" to mean that one of the purposes for an act is for the actor's sexual arousal or gratification (current law) *or for the sexual humiliation or degradation of the victim.* [SECS. 56 to 63.]

Commencement of Commitment Proceedings

Under *current law*, if an agency with jurisdiction (i.e., the agency with the authority or duty to release or discharge the person) has control or

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

Under the *draft*, for persons under a sentence, the agency must inform the DA and DOJ regarding the person as soon as possible beginning 90 days before the date of the anticipated discharge or release on parole or extended supervision, or otherwise, from a sentence of imprisonment or term of confinement in prison that was imposed for a conviction for an SVO, from a continuous term of incarceration, any part of which was imposed for an SVO, or from a prison placement under the intensive sanctions program, any part of which was imposed for an SVO. [SECS. 66 and 67.] [“Continuous term of incarceration, any part of which was imposed for a sexually violent offense” is defined to include confinement in a juvenile facility if the person was placed in the facility for being adjudicated delinquent on the basis of an SVO.] [SEC. 65.] The DA and DOJ must also be notified of the anticipated release on parole or discharge of a person committed under ch. 975, stats. (the sex crimes chapter in effect prior to the creation of ch. 980, stats.), for an SVO. [SEC. 70.]

Filing a Commitment Petition

Under *current law*, DOJ may file a petition to commit a person as an SVP at the request of the agency with the authority or duty to release or discharge the person. If DOJ does not file a petition, the DA for the county in which the person was convicted, adjudicated delinquent, or found not guilty by reason of insanity or mental disease, defect, or illness, or the county in which the person will reside, may file the petition.

Under the *draft*: (1) the DA of the county *in which the person is in custody* may also file the petition; (2) a juvenile court does *not* have jurisdiction over a petition involving a child; and (3) filing fees are eliminated. [SECS. 31, 73, and 77.]

Probable Cause Hearing

Under *current law*, whenever a commitment petition is filed, the court must hold a hearing to determine whether there is probable cause to

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

Under the *draft*, generally, the court must hold the probable cause hearing *within 30 days*, excluding Saturdays, Sundays, and legal holidays, after the filing of the petition, unless that time is extended by the court for good cause shown. If the person named in the petition is in custody and the probable cause hearing will be held after the date on which the person is scheduled to be released or discharged, the hearing must be held no later than *10 days* after the person's scheduled release or discharge date, excluding Saturdays, Sundays, and legal holidays, unless that time is extended by the court for good cause. [SEC. 89.]

Commencement of Trial on Commitment Petition

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

Under the *draft*: (1) the trial must commence no later than 90 days after the probable cause hearing; and (2) the court may grant *one or more* continuances for good cause. [SEC. 91.]

Change of Venue

Under *current law*, in most civil actions, the court may at any time, upon its own motion, the motion of a party, or the stipulation of the parties, change the venue to any county in the interest of justice, or for the convenience of the parties or witnesses.

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

Alternatively, the definition provides that instead of changing the place of the trial, the court may order that the jury be selected in another

county if all of the following apply: (1) the court has decided to sequester jurors after the commencement of the trial; (2) there are grounds for changing the place of the trial; and (3) the estimated costs to the county appear to be less using an alternate jury rather than changing the place of the trial. [SEC. 84.]

Experts for Examinations

Under *current law*, whenever a person who is the subject of a commitment petition or who has been committed as a sexually violent person is required to submit to an examination, he or she may retain experts or professional persons to perform an examination.

The *draft* provides that, in addition to current law, if a person who is the subject of a commitment petition denies the facts alleged in the petition, the court may appoint at least one qualified physician, psychologist, or other mental health professional to conduct an examination of the person's mental condition and testify at trial. The state may retain a physician, psychologist, or other mental health professional to examine the mental condition of a person who is the subject of a petition or who has been committed and to testify at the trial or any other SVP proceeding at which testimony is authorized. [SEC. 83.]

Right to Remain Silent

In general, under *current law*, at any hearing relating to an SVP commitment, the person who is the subject of the petition has the right to remain silent.

The *draft* does not affect the person's right to remain silent. However, the draft provides that the state may present evidence or comment on evidence that a person who is the subject of a commitment petition or a person who has been committed refused to participate in an examination of his or her mental condition that was being conducted as part of an SVP proceeding or that was conducted before the commitment petition was filed for the purpose of evaluating whether to file a petition. [SEC. 86.]

Hearings to Juries

Under *current law*, the person who is the subject of a commitment petition, the person's attorney, DOJ, or the DA may request that the trial be to a jury of 12 in order to determine whether the person who is the subject of the petition is an SVP. The court may also, on its own motion, require that the trial be to a jury of 12. A verdict of a jury is not valid unless it is unanimous.

The *draft*: (1) provides for a jury of 12, but the parties may stipulate to a smaller number of jurors [SEC. 94]; and (2) specifies that juries must be selected and treated in the same manner as they are selected and treated in civil actions in circuit court, except that each party is entitled to 4 peremptory challenges (instead of 3, as for other civil actions), unless fewer jurors are to serve on the jury. [SEC. 93.]

The draft also provides a separate jury requirement for discharge hearings. Specifically, the DA or DOJ, whichever filed the original petition, or the petitioner may request that the discharge hearing be to a jury of 6. A jury trial is deemed waived unless it is demanded within 10 days after the filing of the petition for discharge. No verdict is valid unless it is agreed to by at least 5 of the jurors. [SEC. 111.]

Discovery

In general, under *current law*, in civil proceedings, parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action. Failure to comply with discovery requests may result in payment of expenses, evidentiary punishment, or contempt findings.

The *draft* includes provisions that are specific to discovery in proceedings relating to SVPs and specifically provides that the general discovery process does not apply in ch. 980, stats., proceedings.

Under the draft, upon demand, a prosecuting attorney (PA) must disclose and permit the person or the person's attorney to inspect and copy or photograph all of the following if it is in the possession, custody, or control of the state: (1) any written or recorded statement made by the person concerning the allegations in a petition to commit the person as an SVP or concerning other matters at issue in the trial or proceeding; (2) a written summary of all oral statements of the person that the PA plans to use in the course of the trial or proceeding; (3) evidence obtained by intercepting any oral communication that the PA intends to use as evidence; (4) a copy of the person's criminal record; (5) a list of all witnesses whom the PA intends to call, except rebuttal or impeachment witnesses; (6) any relevant written or recorded statements of a witness; (7) the results of any physical or mental examination or any scientific or psychological test or instrument, experiment, or comparison that the PA intends to offer in evidence and any raw data that were collected, used, or considered in any manner as part of the examination, test, experiment, or comparison; (8) the criminal record of a witness for the state that is known to the PA; (9) any physical or documentary evidence that the PA intends to offer as evidence; and (10) any exculpatory evidence.

Under the *draft*, upon demand, the person who is subject to SVP proceedings must disclose all of the following: (1) a list of all witnesses whom the person intends to call; (2) any relevant written or recorded statements of a witness, except rebuttal or impeachment witnesses; (3) the results of any physical or mental examination or any scientific or psychological test or instrument, experiment, or comparison that the person intends to offer as evidence and any raw data that were collected, used, or considered in any manner as part of the examination, test, experiment, or comparison; (4) the criminal record of a witness for the person that is known to the person's attorney; and (5) any physical or documentary evidence that the person intends to offer as evidence. If, subsequent to compliance with these requirements, and prior to or during trial, a party discovers additional material or witness names, the party must promptly notify the other party of the existence of the materials or names.

The draft specifies that the court: (1) must exclude any witness not listed or evidence not presented for inspection unless good cause is shown for failure to comply; and (2) may advise the jury of the nonresponsiveness of a party. [SEC. 85.]

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

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

Under the *draft*, such records are open for inspection by and production to authorized representatives of the department of corrections (DOC), the department of health and family services (DHFS), DOJ, or a DA for use in the evaluation or prosecution of any SVP proceeding, if the records involve or relate to an individual who is the subject of or who is being evaluated for an SVP proceeding. The court in which the proceeding is pending may issue any protective orders that it determines are appropriate concerning information that is made available or disclosed under this provision. Any representative of DOC, DHFS, DOJ, or a DA may disclose information obtained under this provision for any purpose consistent with any SVP proceeding. [See, for example, SECS. 3, 4, 5, 8, 15, 17, 36, 38, and 80.]

Mental Health Registration and Treatment Records

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

Under the *draft*, treatment records may be disclosed to a physician, psychologist, or other mental health professional retained by a party or appointed by the court to examine a person under the chapter relating to SVP commitments or to authorized representatives of DOC, DHFS, DOJ, or a DA for use in the evaluation or prosecution of any SVP proceeding, with the same limitations as provided for other confidential records, as described above. [SEC. 10.]

Admissibility of Juvenile Delinquency Dispositions

Under *current law*, the disposition of a juvenile, and any record of evidence given in a hearing in juvenile court, is not admissible as evidence against the juvenile in any case or proceeding in any other court except as specified under the statutes.

The *draft* creates an exception [i.e., such dispositions are admissible] for a hearing, trial, or other SVP proceeding relating to a person. [SEC. 34.]

Privileged Communications With Health Care Providers

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

The *draft* includes in the privilege exception communications and information relevant to an issue in proceedings for control, care, and treatment of an SVP. [SEC. 32.]

Presentence Reports

Under *current law*, after a conviction, the court may order a presentence investigation, which must be disclosed to the defendant's attorney (or the defendant, if unrepresented) and the DA prior to sentencing. The DOC may use the investigation report for correctional programming, parole consideration, or care and treatment.

The *draft* specifies that the presentence investigation report and any information contained in it or upon which it is based may be used by any of the following persons in any evaluation, examination, referral, hearing, trial, post commitment relief proceeding, appeal, or other SVP proceeding: DOC and DHFS; the person who is the subject of the report and his or her attorney; the attorney representing the state or an agent or employee of the attorney; a physician, psychologist, or other mental health professional who is examining the subject of the report; and the court and, if applicable, the jury hearing the case. [SEC. 45.]

Periodic Reexamination

Under *current law*, DHFS must conduct an examination of the mental condition of each person who has been committed as an SVP *within 6 months* of the initial commitment and *every 12 months thereafter* to determine whether the person has made sufficient progress for the court to consider whether the person should be placed on supervised release or discharged. The examiner conducting an examination must prepare a written report of the examination no later than 30 days after the date of the examination. The report must be placed in the person's medical records and a copy must be given to the court.

Under the *draft*:

1. DHFS must conduct the examination *within 12 months* after the date of the initial commitment order and *every 12 months thereafter*. [SEC. 96.]
2. At the time of the examination, DHFS must prepare a treatment report based on its treating professionals' evaluation of: (a) the specific factors associated with the person's risk for committing another sexually violent offense; (b) whether the person has made significant progress in treatment or has refused treatment; (c) the ongoing treatment needs of the person; and (d) any specialized needs or conditions associated with the person that must be considered in future treatment planning.

3. The examiner's report must include an assessment of the risk that the person will reoffend, whether the risk can be safely managed in the community if reasonable conditions of supervision and security are imposed, and whether the treatment that the person needs is available in the community. The report must be prepared no later than 30 days after the date of the examination and must be provided to DHFS. [SEC. 100.]
4. DHFS must send the treatment report, the written examination report, and a written statement from DHFS recommending either continued institutional care, supervised release, or discharge to the court, with copies to the DA or DOJ and to the person's attorney. [SEC. 100.]
5. If the report concludes that the person does not meet the criteria for commitment as an SVP, DHFS must petition for discharge. [SEC. 100.]

Requests for Supervised Release

Under *current law*:

1. A person who is committed as an SVP may petition the committing court to authorize supervised release if at least 18 months have elapsed since the initial commitment order was entered or at least 6 months have elapsed since the most recent release petition was denied or the most recent order for supervised release was revoked. The director of the facility at which the person is placed may petition on the person's behalf at any time.
2. Within 20 days after receiving the petition, the court must appoint one or more examiners who have specialized knowledge determined by the court to be appropriate, who must examine the person and furnish a written report to the court within 30 days after the appointment. If any examiner believes that the person is appropriate for supervised release, the examiner must report on the type of treatment and services that the person may need while in the community on supervised release.
3. The court, without a jury, must hear the petition within 30 days after the examiner's report is filed, unless the time limit is waived by the petitioner. The court must grant the petition unless the state proves by clear and convincing evidence that: (a) it is still likely that the person will engage in acts of sexual violence if the person is not continued in institutional care; or (b) the person has not demonstrated significant progress in his or her treatment or the person has refused treatment. In making this decision, the court may consider the nature and circumstances of the behavior that was the basis of the allegation in the petition to commit the person; 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 if the person is a serious child sex offender.

4. If the court finds that the person is appropriate for supervised release, the court must notify DHFS. DHFS must make its best effort to arrange for placement of the person in a residential facility or dwelling that is in the person's county of residence.

5. DHFS and the county department in the county of residence must prepare a plan that does all of the following: (a) identifies the treatment and services, if any, that the person will receive in the community; (b) addresses the person's need, if any, for supervision, counseling, medication, community support services, residential services, vocational services, and alcohol and other drug abuse (AODA) treatment; and (c) specifies who will be responsible for providing the treatment and services identified in the plan. The plan must be presented to the court for its approval within 60 days after the court finding that the person is appropriate for supervised release, unless DHFS, the county department, and the person request additional time to develop the plan.

The *draft* creates a new process for granting supervised release. As noted above, DHFS must recommend continued institutional care, supervised release, or discharge through the reexamination process. The new process in the draft is as follows:

1. Within 30 days after the filing of the reexamination report, treatment report, and DHFS recommendation, the person subject to the commitment, the DA, or DOJ, may object to the recommendation by filing a written objection with the court.

2. If DHFS's recommendation is continued institutional care, and there is no objection, the recommendation is implemented without a hearing. If DHFS recommends discharge or the person files an objection requesting discharge, the court shall proceed with determining whether discharge is appropriate. Otherwise the court, without a jury, must hold a hearing to determine whether to authorize supervised release within 30 days after the date on which objections are due, unless the time limit is waived by the petitioner.

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

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

5. The court may order that a person be placed on supervised release if it finds that all of the following apply: (a) the person has made sufficient progress in treatment such that the risk that the person will reoffend can be safely managed in the community and the progress can be sustained and the person's risk for reoffense has been reduced to a level that it is not likely that the person will reoffend if so placed; (b) there is treatment reasonably available in the community and the person will be treated by a provider who is qualified to provide the necessary treatment in this state; (c) the provider presents a specific course of treatment for the person, agrees to assume responsibility for the person's treatment, agrees to comply with the rules and conditions of supervision imposed by the court and DHFS, agrees to report on the person's progress to the court on a regular basis, and agrees to report any violations of supervised release immediately to the court, DOJ, or the DA, as applicable; (d) the person has housing arrangements that are sufficiently secure to protect the community, and the person or agency that is providing the housing to the person agrees in writing to accept the person, provide or allow for the level of safety the court requires, and, if the person or agency providing the housing is a state or local government agency or is licensed by DHFS, immediately report to the court and DOJ or the DA, as applicable, any unauthorized absence of the person from the housing arrangement; (e) the person will comply with the provider's treatment requirements and all of the requirements that are imposed by DHFS and the court; (f) DHFS has made provisions for the necessary services, including sex offender treatment, other counseling, medication, community support services, residential services, vocational services, and AODA treatment; and (g) the degree of supervision and ongoing treatment needs of the person required for the safe management of the person in the community can be provided through the allocation of a reasonable level of resources. [SEC. 102.]

Supervision of Persons on Supervised Release

Under *current law*, an order for supervised release places the person in the custody and control of DHFS. DHFS must 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. A person on supervised release is subject to the conditions set by the court and to DHFS' rules. If DHFS alleges that a person has violated any condition or rule, or that the safety of others requires that supervised release be revoked, he or she may be taken into custody under DHFS' rules. DHFS must submit a statement showing probable cause of the detention and a petition to revoke the order for supervised release to the committing court and the regional office of the state public defender responsible for handling cases for that court's county within 72 hours after the detention. The court must hear the petition within 30 days, unless the deadline is waived by the detained person. The state has the burden of proving by clear and convincing evidence that any rule or condition of release has been violated or that the safety of others requires that supervised release be revoked. If the court determines that any rule or condition of release has been violated or that the safety of others requires that supervised release be revoked, it may revoke the order for supervised release and order that the person be placed in an appropriate institution.

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

1. If DHFS concludes that a person on supervised release, or awaiting placement on supervised release, violated or threatened to violate a rule of supervised release, it may petition for revocation of the order granting supervised release.
2. As under current law, DHFS may detain a person for a violation or threatened violation. In addition, under the *draft*, if DHFS concludes that such a person is a threat to the safety of others, it must detain the person and petition for revocation of the order granting supervised release.
3. If DHFS concludes that the order should be revoked, it must file a statement alleging the violation and a petition to revoke the order with the committing court and provide a copy of each to the regional office of the state public defender within 72 hours after the detention. The court must hear the petition within 30 days, unless the hearing or time deadline is waived. A final decision on the petition must be made within 90 days of its filing.

4. If the court finds after a hearing, by clear and convincing evidence, that any rule has been violated and that the violation merits the revocation of the order granting supervised release, the court may revoke the order and order that the person be placed in institutional care. If the court finds by clear and convincing evidence that the safety of others requires that supervised release be revoked, the court must revoke the order granting supervised release and order that the person be placed in institutional care. [SEC. 103.]

Discharge From Commitment

Under *current law*, if the secretary of DHFS (secretary) determines at any time that a person is no longer an SVP, the secretary must authorize the person to petition the committing court for discharge. The court must hold a hearing, before the court without a jury, within 45 days after receipt of the petition. The state has the burden of proving by clear and convincing evidence that the person is still an SVP. If the court is satisfied that the state has not met its burden, the petitioner must be discharged from the custody and supervision of DHFS. If the court is satisfied that the state has met its burden, the court may proceed to determine whether to modify the person's existing commitment order by authorizing supervised release.

Current law also permits a person to petition the court for discharge from custody or supervision *without the approval of the secretary*. At the time of the person's reexamination, the secretary must provide the person with written notice of the person's right to petition for discharge over the secretary's objections. If the person does not affirmatively waive the right to petition, the court must set a probable cause hearing to determine whether facts exist that warrant a hearing on whether the person is still an SVP. If the court determines at the probable cause hearing that probable cause exists to believe that the committed person is no longer an SVP, then the court must set a hearing, to the court, on the issue. The state has the right to have the person evaluated by experts chosen by the state. The state has the burden of proving by clear and convincing evidence that the committed person is likely to engage in acts of sexual violence or has not made significant progress in treatment or has refused treatment. If the court is satisfied that the state has not met its burden, the petitioner must be discharged from the custody and supervision of DHFS. If the court is satisfied that the state has met its burden, the court may proceed to determine whether to modify the person's existing commitment order by authorizing supervised release.

The *draft* modifies the provisions relating to petitions for discharge *that do not have DHFS's approval*. The court must deny the petition without a hearing unless the petition alleges facts from which the court may

conclude that the person's condition has changed so that the person does not meet the criteria for commitment as an SVP. In determining whether such facts exist, the court must consider any current or past reports filed in connection with a reexamination, relevant facts and arguments in the petition and in the state's written response, arguments of counsel, and any supporting documentation provided by the person or the state.

The court must hold a hearing within 90 days of the determination that the petition contains facts from which the court may conclude that the person does not meet the criteria for commitment as an SVP. Upon request, the hearing may be to a jury of 6. A verdict must be agreed to by at least 5 of the 6 jurors. The state has the burden of proving by clear and convincing evidence that the person meets the criteria for commitment. The general rules of evidence are inapplicable at such hearings. If the court is satisfied that the state has not met its burden of proof, the petitioner must be discharged from the custody and supervision of DHFS. If the court is satisfied that the state has met its burden, the court may proceed to determine whether to modify the person's existing commitment order by authorizing supervised release. [SECS. 110 and 111.]

Failure to Comply With Time Limits

The *draft* provides that failure to comply with any time limit specified in ch. 980, stats.: (1) does not deprive the court of personal or subject matter jurisdiction or of competency to exercise that jurisdiction; and (2) is not grounds for an appeal or grounds to vacate any order, judgment, or commitment issued or entered. Failure to object to a period of delay or a continuance waives the time limit that is the subject of the period of delay or continuance. [SEC. 86.]

Immunity for Noncompliance With SVP Provisions

Under *current law*, any agency or officer, employee, or agent of an agency is immune from criminal or civil liability for any acts or omissions as the result of a good faith effort to comply with the requirement that an agency notify the DA or DOJ of the anticipated release or discharge of a person who may be an SVP.

Under the *draft*, 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 the chapter governing SVP commitments (ch. 980, stats.). "Agency" means DOC, DHFS, DOJ, or a DA. [SECS. 71 and 117.]

Escape

Under *current law*, a person in custody who intentionally escapes from custody is guilty of a class H felony, punishable by a fine not to exceed \$10,000 and a term of imprisonment and extended supervision not to exceed 6 years. “Custody” is defined as actual custody in an institution, including a secure juvenile facility. It does not include the custody of a probationer, parolee, or person on extended supervision unless the person is in actual custody.

The *draft* modifies the definition of “custody” to include: (1) actual custody in a facility used for the detention of persons committed as SVPs; and (2) without limitation, the constructive custody of a person placed on supervised release. The draft specifies that a person who intentionally escapes from custody under the following circumstances is guilty of a class F felony, punishable by a fine not to exceed \$25,000 and a term of imprisonment and extended supervision not to exceed 12 years and 6 months: (1) while subject to a detention or custody order pending a petition to commit the person as an SVP; or (2) while subject to an order committing the person to custody of DHFS, regardless of whether the person is placed in institutional care or on supervised release. [SECS. 40 and 41.]

District Attorneys

Under *current law*, the DA in Brown County and the DA in Milwaukee County must each assign one assistant DA to be an SVP commitment prosecutor. Those assistant DAs may file and prosecute SVP commitment proceedings in any prosecutorial unit in the state.

The *draft* specifies that if an assistant DA prosecutes or assists in the prosecution of an SVP case in another prosecutorial unit, the unit in which the case is heard must reimburse the assistant DA’s own unit for his or her reasonable costs associated with the prosecution, including transportation, lodging, and meals. [SEC. 49.]

Other Items

The *draft* also provides that:

1. Notwithstanding the normal process for gaining personal jurisdiction in a judicial proceeding, a court may exercise personal jurisdiction over the subject of an SVP petition even though the person is not served under the normal process with a verified petition and summons or served with an order for detention and the person has not had a probable cause hearing. [SEC. 86.]

2. A motion for post-commitment relief by an SVP or an appeal from a final order or from an order denying a motion for post-commitment relief will follow criminal appellate procedure. An appeal by the state from a final judgment or order will follow the procedure for civil appeals. [SEC. 86.]

3. Constitutional rights available to a defendant in a criminal proceeding are not necessarily available to the person who is the subject to a commitment petition. [SEC. 92.]

Significant changes to, or additions to, current law are also explained in NOTES following the statutory provision or provisions affected by the draft.

1 **SECTION 1.** 48.396 (1) of the statutes is amended to read:

2 48.396 (1) Law enforcement officers' records of children shall be kept separate from
3 records of adults. Law enforcement officers' records of the adult expectant mothers of unborn
4 children shall be kept separate from records of other adults. Law enforcement officers'
5 records of children and the adult expectant mothers of unborn children shall not be open to
6 inspection or their contents disclosed except under sub. (1b), (1d) ~~or (5)~~, or (6) or s. 48.293
7 or by order of the court. This subsection does not apply to the representatives of newspapers
8 or other reporters of news who wish to obtain information for the purpose of reporting news
9 without revealing the identity of the child or expectant mother involved, to the confidential
10 exchange of information between the police and officials of the school attended by the child
11 or other law enforcement or social welfare agencies or to children 10 years of age or older who
12 are subject to the jurisdiction of the court of criminal jurisdiction. A public school official who
13 obtains information under this subsection shall keep the information confidential as required
14 under s. 118.125 and a private school official who obtains information under this subsection
15 shall keep the information confidential in the same manner as is required of a public school
16 official under s. 118.125. A law enforcement agency that obtains information under this
17 subsection shall keep the information confidential as required under this subsection and s.

1 938.396 (1). A social welfare agency that obtains information under this subsection shall keep
2 the information confidential as required under ss. 48.78 and 938.78.

3 **SECTION 2.** 48.396 (5) (a) (intro.) of the statutes is amended to read:

4 48.396 (5) (a) (intro.) Any person who is denied access to a record under sub. (1), (1b)
5 ~~or (1d), or (6)~~ may petition the court to order the disclosure of the records governed by the
6 applicable subsection. The petition shall be in writing and shall describe as specifically as
7 possible all of the following:

8 **SECTION 3.** 48.396 (6) of the statutes is created to read:

9 48.396 (6) Records of law enforcement officers and of the court assigned to exercise
10 jurisdiction under this chapter and ch. 938 shall be open for inspection by and production to
11 authorized representatives of the department of corrections, the department of health and
12 family services, the department of justice, or a district attorney for use in the evaluation or
13 prosecution of any proceeding under ch. 980, if the records involve or relate to an individual
14 who is the subject of or who is being evaluated for a proceeding under ch. 980. The court in
15 which the proceeding under ch. 980 is pending may issue any protective orders that it
16 determines are appropriate concerning information made available or disclosed under this
17 subsection. Any representative of the department of corrections, the department of health and
18 family services, the department of justice, or a district attorney may disclose information
19 obtained under this subsection for any purpose consistent with any proceeding under ch. 980.

NOTE: Creates a new provision [s. 48.396 (6)] relating to confidentiality of certain records. *Current law* provides that the following records are confidential and may be disclosed only to persons and entities specified in the statutes: (1) juvenile court records; (2) law enforcement records relating to juveniles; (3) pupil records; and (4) reports of child abuse and neglect. Under current law: (1) the files and records of mental health court proceedings are closed but are accessible to any person who is the subject of a petition for involuntary commitment or other petition under

ch. 51, Stats. (the mental health act); and (2) patient health care records are confidential and may be released upon request without informed consent only under specified conditions.

Under new s. 48.396 (6):

1. Juvenile court records and law enforcement records relating to juveniles are open for inspection by and production to authorized representatives of the DOC, the DHFS, DOJ, or a DA for use in the evaluation or prosecution of any SVP proceeding, if the records involve or relate to an individual who is the subject of or who is being evaluated for an SVP proceeding.

2. The court in which the proceeding is pending may issue any protective orders that it determines are appropriate concerning information that is made available or disclosed under this provision.

3. Any representative of DOC, DHFS, DOJ, or a DA may disclose information obtained under this provision for any purpose consistent with any SVP proceeding.

1 **SECTION 4.** 48.78 (2) (e) of the statutes is created to read:

2 48.78 (2) (e) Notwithstanding par. (a), an agency shall, upon request, disclose
3 information to authorized representatives of the department of corrections, the department of
4 health and family services, the department of justice, or a district attorney for use in the
5 evaluation or prosecution of any proceeding under ch. 980, if the information involves or
6 relates to an individual who is the subject of or who is being evaluated for a proceeding under
7 ch. 980. The court in which the proceeding under ch. 980 is pending may issue any protective
8 orders that it determines are appropriate concerning information made available or disclosed
9 under this paragraph. Any representative of the department of corrections, the department of
10 health and family services, the department of justice, or a district attorney may disclose
11 information obtained under this paragraph for any purpose consistent with any proceeding
12 under ch. 980.

NOTE: Makes specified juvenile records accessible in SVP proceedings as described in the NOTE to SECTION 3.

1 **SECTION 5.** 48.981 (7) (a) 8s. of the statutes is created to read:

2 48.981 (7) (a) 8s. Authorized representatives of the department of corrections, the
3 department of health and family services, the department of justice, or a district attorney for
4 use in the evaluation or prosecution of any proceeding under ch. 980, if the reports or records
5 involve or relate to an individual who is the subject of or who is being evaluated for a
6 proceeding under ch. 980. The court in which the proceeding under ch. 980 is pending may
7 issue any protective orders that it determines are appropriate concerning information made
8 available or disclosed under this subdivision. Any representative of the department of
9 corrections, the department of health and family services, the department of justice, or a
10 district attorney may disclose information obtained under this subdivision for any purpose
11 consistent with any proceeding under ch. 980.

NOTE: Makes juvenile records relating to abuse or neglect accessible in
SVP proceedings as described in the NOTE to SECTION 3.

12 **SECTION 6.** 51.30 (3) (a) of the statutes is amended to read:

13 51.30 (3) (a) Except as provided in pars. (b) ~~and (bm)~~, (c), and (d), the files and records
14 of the court proceedings under this chapter shall be closed but shall be accessible to any
15 individual who is the subject of a petition filed under this chapter.

16 **SECTION 7.** 51.30 (3) (b) of the statutes is amended to read:

17 51.30 (3) (b) An individual's attorney or guardian ad litem and the corporation counsel
18 shall have access to the files and records of the court proceedings under this chapter without
19 the individual's consent and without modification of the records in order to prepare for
20 involuntary commitment or recommitment proceedings, reexaminations, appeals, or other
21 actions relating to detention, admission, or commitment under this chapter or ch. 971 ~~or~~ 975,
22 or 980.

1 **SECTION 8.** 51.30 (3) (bm) of the statutes is created to read:

2 51.30 (3) (bm) The files and records of court proceedings under this chapter shall be
3 released to authorized representatives of the department of corrections, the department of
4 health and family services, the department of justice, or a district attorney for use in the
5 evaluation or prosecution of any proceeding under ch. 980, if the files or records involve or
6 relate to an individual who is the subject of or who is being evaluated for a proceeding under
7 ch. 980. The court in which the proceeding under ch. 980 is pending may issue any protective
8 orders that it determines are appropriate concerning information made available or disclosed
9 under this paragraph. Any representative of the department of corrections, the department of
10 health and family services, the department of justice, or a district attorney may disclose
11 information obtained under this paragraph for any purpose consistent with any proceeding
12 under ch. 980.

NOTE: Make records under the mental health act accessible in SVP
proceedings as described in the NOTE to SECTION 3.

13 **SECTION 9.** 51.30 (4) (b) 8m. of the statutes is amended to read:

14 51.30 (4) (b) 8m. To appropriate examiners and facilities in accordance with s. 971.17
15 (2) (e), (4) (c), and (7) (c), ~~980.03 (4) or 980.08 (3)~~. The recipient of any information from
16 the records shall keep the information confidential except as necessary to comply with s.
17 971.17 ~~or ch. 980~~.

18 **SECTION 10.** 51.30 (4) (b) 8s. of the statutes is created to read:

19 51.30 (4) (b) 8s. To appropriate persons in accordance with s. 980.031 (4) and to
20 authorized representatives of the department of corrections, the department of health and
21 family services, the department of justice, or a district attorney for use in the evaluation or
22 prosecution of any proceeding under ch. 980, if the treatment records involve or relate to an

1 individual who is the subject of or who is being evaluated for a proceeding under ch. 980. The
2 court in which the proceeding under ch. 980 is pending may issue any protective orders that
3 it determines are appropriate concerning information made available or disclosed under this
4 subdivision. Any representative of the department of corrections, the department of health
5 and family services, the department of justice, or a district attorney may disclose information
6 obtained under this subdivision for any purpose consistent with any proceeding under ch. 980.

NOTE: Creates a new provision [s. 51.30 (4) (b) 8s.], relating to registration and treatment records under the mental health act. *Current law* specifies that:

1. Treatment records of an individual may be released without informed consent under specified circumstances.

2. Regarding SVP proceedings, such records may be released to appropriate examiners and facilities for the examination of an individual who is the subject of a petition for commitment or for supervised release. The recipient of any information from the records must keep the information confidential except as necessary to comply with the provisions of the chapter relating to SVP commitments.

3. The records may be released to DOJ or a DA for a commitment petition if the treatment records are maintained by the agency that has custody or control over the person who is the subject of the petition.

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

7 **SECTION 11.** 51.30 (4) (b) 10m. of the statutes is repealed.

8 **SECTION 12.** 51.30 (4) (b) 11. of the statutes is amended to read:

9 51.30 (4) (b) 11. To the subject individual's counsel or guardian ad litem and the
10 corporation counsel, without modification, at any time in order to prepare for involuntary
11 commitment or recommitment proceedings, reexaminations, appeals, or other actions relating

1 to detention, admission, commitment, or patients' rights under this chapter or ch. 48, 971, ~~or~~
2 975, or 980.

3 **SECTION 13.** 51.375 (1) (a) of the statutes is amended to read:

4 51.375 (1) (a) "Community placement" means conditional transfer into the community
5 under s. 51.35 (1), conditional release under s. 971.17, parole from a commitment for
6 specialized treatment under ch. 975, ~~or conditional~~ supervised release under ch. 980.

7 **SECTION 13m.** 51.375 (2) (b) of the statutes is amended to read:

8 51.375 (2) (b) The department may administer a lie detector test to a sex offender as
9 part of the sex offender's programming, care, or treatment. A patient may refuse to submit
10 to a lie detector test under this paragraph. This refusal does not constitute a general refusal
11 to participate in treatment. The results of a lie detector test under this paragraph may be used
12 only in the care, treatment, or assessment of the subject or in programming for the subject.
13 The results of a test may be disclosed only to persons employed at the facility at which the
14 subject is placed who need to know the results for purposes related to care, treatment, or
15 assessment of the patient, the committing court, the patient's attorney, or the attorney
16 representing the state in a proceeding under ch. 980. The committing court to which the results
17 of a test have been disclosed may admit the results in evidence in a proceeding under ch. 980.

NOTE: Clarifies that the results of a lie detector test that are disclosed to
a committing court also may be admitted into evidence by the court in a
proceeding under ch. 980.

18 **SECTION 14.** 109.09 (1) of the statutes is amended to read:

19 109.09 (1) The department shall investigate and attempt equitably to adjust
20 controversies between employers and employees as to alleged wage claims. The department
21 may receive and investigate any wage claim which is filed with the department, or received
22 by the department under s. 109.10 (4), no later than 2 years after the date the wages are due.

1 The department may, after receiving a wage claim, investigate any wages due from the
2 employer against whom the claim is filed to any employee during the period commencing 2
3 years before the date the claim is filed. The department shall enforce this chapter and ss.
4 66.0903, 103.02, 103.49, 103.82, 104.12 and 229.8275. In pursuance of this duty, the
5 department may sue the employer on behalf of the employee to collect any wage claim or wage
6 deficiency and ss. 109.03 (6) and 109.11 (2) and (3) shall apply to such actions. Except for
7 actions under s. 109.10, the department may refer such an action to the district attorney of the
8 county in which the violation occurs for prosecution and collection and the district attorney
9 shall commence an action in the circuit court having appropriate jurisdiction. Any number
10 of wage claims or wage deficiencies against the same employer may be joined in a single
11 proceeding, but the court may order separate trials or hearings. In actions that are referred to
12 a district attorney under this subsection, any taxable costs recovered by the district attorney
13 shall be paid into the general fund of the county in which the violation occurs and used by that
14 county to meet its financial responsibility under s. 978.13 (2) (b) for the operation of the office
15 of the district attorney who prosecuted the action.

16 **SECTION 15.** 118.125 (2) (ck) of the statutes is created to read:

17 118.125 (2) (ck) The school district clerk or his or her designee shall make pupil records
18 available for inspection or disclose the contents of pupil records to authorized representatives
19 of the department of corrections, the department of health and family services, the department
20 of justice, or a district attorney for use in the evaluation or prosecution of any proceeding under
21 ch. 980, if the pupil records involve or relate to an individual who is the subject of or who is
22 being evaluated for a proceeding under ch. 980. The court in which the proceeding under ch.
23 980 is pending may issue any protective orders that it determines are appropriate concerning
24 pupil records made available or disclosed under this paragraph. Any representative of the

1 department of corrections, the department of health and family services, the department of
2 justice, or a district attorney may disclose information obtained under this paragraph for any
3 purpose consistent with any proceeding under ch. 980.

NOTE: Makes pupil records accessible in SVP proceedings as described
in the NOTE to SECTION 3.

4 **SECTION 16.** 146.82 (2) (c) of the statutes is amended to read:

5 146.82 (2) (c) Notwithstanding sub. (1), patient health care records shall be released to
6 appropriate examiners and facilities in accordance with ~~ss. s.~~ 971.17 (2) (e), (4) (c) and (7) (c),
7 980.03 (4) and 980.08 (3). The recipient of any information from the records shall keep the
8 information confidential except as necessary to comply with s. 971.17 ~~or ch. 980~~.

9 **SECTION 17.** 146.82 (2) (cm) of the statutes is created to read:

10 146.82 (2) (cm) Notwithstanding sub. (1), patient health care records shall be released
11 to appropriate persons in accordance with s. 980.031 (4) and to authorized representatives of
12 the department of corrections, the department of health and family services, the department
13 of justice, or a district attorney for use in the evaluation or prosecution of any proceeding under
14 ch. 980, if the treatment records involve or relate to an individual who is the subject of or who
15 is being evaluated for a proceeding under ch. 980. The court in which the proceeding under
16 ch. 980 is pending may issue any protective orders that it determines are appropriate
17 concerning records made available or disclosed under this paragraph. Any representative of
18 the department of corrections, the department of health and family services, the department
19 of justice, or a district attorney may disclose information obtained under this paragraph for any
20 purpose consistent with any proceeding under ch. 980.

NOTE: Makes patient health care records accessible in SVP proceedings
as described in the NOTE to SECTION 3.

21 **SECTION 18.** 301.45 (1g) (dt) of the statutes is amended to read:

1 301.45 (1g) (dt) Is in institutional care or on ~~conditional~~ supervised release under ch.
2 980 on or after June 2, 1994.

3 **SECTION 19.** 301.45 (3) (a) 3r. of the statutes is amended to read:

4 301.45 (3) (a) 3r. If the person has been committed under ch. 980, he or she is subject
5 to this subsection upon being placed on supervised release under s. 980.06 (2), 1997 stats., or
6 s. 980.08 or, if he or she was not placed on supervised release, before being discharged under
7 s. 980.09 or ~~980.10~~ 980.093.

8 **SECTION 20.** 301.45 (3) (b) 3. of the statutes is amended to read:

9 301.45 (3) (b) 3. The department of health and family services shall notify a person who
10 is being placed on conditional release, supervised release, conditional transfer or parole, or
11 is being terminated or discharged from a commitment, under s. 51.20, 51.35 or 971.17 or ch.
12 975 or 980 and who is covered under sub. (1g) of the need to comply with the requirements
13 of this section.

14 **SECTION 21.** 301.45 (5) (b) 2. of the statutes is amended to read:

15 301.45 (5) (b) 2. The person has been found to be a sexually violent person under ch.
16 980, regardless of whether the person is has been discharged under s. 980.10, 2001 stats., s.
17 980.09 or ~~980.10~~ 980.093 from the sexually violent person commitment, except that the
18 person no longer has to comply with this section if the finding that the person is a sexually
19 violent person has been reversed, set aside or vacated.

20 **SECTION 22.** 756.06 (2) (b) of the statutes is amended to read:

21 756.06 (2) (b) Except as provided in ~~par.~~ pars. (c) and (cm), a jury in a civil case shall
22 consist of 6 persons unless a party requests a greater number, not to exceed 12. The court, on
23 its own motion, may require a greater number, not to exceed 12.

24 **SECTION 23.** 756.06 (2) (cm) of the statutes is created to read:

1 756.06 (2) (cm) A jury in a trial under s. 980.05 shall consist of the number of persons
2 specified in s. 980.05 (2) unless a lesser number has been stipulated to and approved under s.
3 980.05 (2m) (c). A jury in a hearing under s. 980.09 (2m) or 980.093 (3) shall consist of the
4 number of persons specified in s. 980.09 (2m) or 980.093 (3), whichever is applicable, unless
5 a lesser number has been stipulated to and approved under s. 980.095 (3).

NOTE: See the NOTE to SECTION 93.

6 **SECTION 24.** 801.52 of the statutes is amended to read:

7 **801.52 Discretionary change of venue.** The court may at any time, upon its own
8 motion, the motion of a party or the stipulation of the parties, change the venue to any county
9 in the interest of justice or for the convenience of the parties or witnesses. This section does
10 not apply to proceedings under ch. 980.

NOTE: See the NOTE to SECTION 84.

11 **SECTION 25.** 808.04 (3) of the statutes is amended to read:

12 808.04 (3) Except as provided in subs. (4) and (7), an appeal in a criminal case or a case
13 under ch. 48, 51, 55 ~~or~~ 938, or 980 shall be initiated within the time period specified in s.
14 809.30.

15 **SECTION 26.** 808.04 (4) of the statutes is amended to read:

16 808.04 (4) Except as provided in sub. (7m), an appeal by the state in either a criminal
17 case under s. 974.05 or a case under ch. 48 ~~or~~ 938, or 980 shall be initiated within 45 days of
18 entry of the judgment or order appealed from.

19 **SECTION 27.** 808.075 (4) (h) of the statutes is amended to read:

20 808.075 (4) (h) Commitment, supervised release, recommitment, discharge, and
21 postcommitment relief under ss. 980.06, 980.08, 980.09, ~~980.10~~ 980.093, and 980.101 of a
22 person found to be a sexually violent person under ch. 980.

1 **SECTION 28.** 809.10 (1) (d) of the statutes, as affected by Supreme Court Order 02-01,
2 is repealed and recreated to read:

3 809.10 (1) (d) *Docketing statement.* The person shall send the court of appeals an
4 original and one copy of a completed docketing statement on a form prescribed by the court
5 of appeals. The docketing statement shall accompany the court of appeals' copy of the notice
6 of appeal. The person shall send a copy of the completed docketing statement to the other
7 parties to the appeal. Docketing statements need not be filed in appeals brought under s.
8 809.105, 809.107, 809.32, or 974.06 (7), in cases under ch. 980, or in cases in which a party
9 represents himself or herself. Docketing statements need not be filed in appeals brought under
10 s. 809.30 or 974.05, or by the state or defendant in permissive appeals in criminal cases
11 pursuant to s. 809.50, except that docketing statements shall be filed in cases arising under chs.
12 48, 51, 55, or 938.

13 **SECTION 29.** 809.30 (1) (c) of the statutes, as affected by Supreme Court 02-01, is
14 repealed and recreated to read:

15 809.30 (1) (c) "Postconviction relief" means an appeal or a motion for postconviction
16 relief in a criminal case, other than an appeal, motion, or petition under ss. 302.113 (7m),
17 302.113 (9g), 973.19, 973.195, 974.06, or 974.07 (2). In a ch. 980 case, the term means an
18 appeal or a motion for postcommitment relief under s. 980.038 (4).

19 **SECTION 30.** 809.30 (1) (f) of the statutes, as affected by Supreme Court 02-01, is
20 repealed and recreated to read:

21 809.30 (1) (f) "Sentencing" means the imposition of a sentence, a fine, or probation in
22 a criminal case. In a ch. 980 case, the term means the entry of an order under s. 980.06.

23 **SECTION 31.** 814.61 (1) (c) 6. of the statutes is created to read:

24 814.61 (1) (c) 6. An action for civil commitment under ch. 51, 55, or 980.

NOTE: See the NOTE to SECTION 73.

1 **SECTION 32.** 905.04 (4) (a) of the statutes is amended to read:

2 905.04 (4) (a) *Proceedings for hospitalization, control, care, and treatment of a sexually*
3 *violent person, guardianship, protective services, or protective placement.* There is no
4 privilege under this rule as to communications and information relevant to an issue in
5 proceedings to hospitalize the patient for mental illness, to appoint a guardian under s. 880.33,
6 for control, care, and treatment of a sexually violent person under ch. 980, for court-ordered
7 protective services or protective placement, or for review of guardianship, protective services,
8 or protective placement orders, if the physician, registered nurse, chiropractor, psychologist,
9 social worker, marriage and family therapist, or professional counselor in the course of
10 diagnosis or treatment has determined that the patient is in need of hospitalization, control,
11 care, and treatment as a sexually violent person, guardianship, protective services, or
12 protective placement.

NOTE: Revises current s. 905.04 (4) (c), stats., relating to privileged communications with health care providers. Under *current law*, in general, a patient has a privilege to refuse to disclose, and to prevent any other person from disclosing, confidential communications made or information obtained or disseminated for purposes of diagnosis or treatment of the patient's physical, mental, or emotional condition, between the patient and a health care provider. There is no privilege as to communications and information relevant to an issue in proceedings to hospitalize the patient for mental illness, to appoint a guardian, for court-ordered protective services, or for protective placement if the health care provider in the course of diagnosis or treatment has determined that the patient is in need of hospitalization, guardianship, protective services, or protective placement.

The *draft* includes in the privilege exception communications and information relevant to an issue in proceedings for control, care, and treatment of an SVP.

13 **SECTION 33.** 911.01 (4) (c) of the statutes is amended to read:

1 911.01 (4) (c) *Miscellaneous proceedings*. Proceedings for extradition or rendition;
2 sentencing, granting or revoking probation, modification of a bifurcated sentence under s.
3 302.113 (9g), adjustment of a bifurcated sentence under s. 973.195 (1r), issuance of arrest
4 warrants, criminal summonses and search warrants; hearings under s. 980.093 (2);
5 proceedings under s. 971.14 (1) (c); proceedings with respect to pretrial release under ch. 969
6 except where habeas corpus is utilized with respect to release on bail or as otherwise provided
7 in ch. 969.

8 **SECTION 34.** 938.35 (1) (e) of the statutes is created to read:

9 938.35 (1) (e) In a hearing, trial, or other proceeding under ch. 980 relating to a person.

NOTE: Creates, with reference to the admissibility of delinquency
 dispositions, an exception for a hearing, trial, or other SVP proceeding
 relating to a juvenile. Under current law, the disposition of a juvenile,
 and any record of evidence given in a hearing in juvenile court, is not
 admissible as evidence against the juvenile in any case or proceeding in
 any other court except as specified under the statutes. This SECTION
 provides that such information is admissible in an SVP proceeding.

10 **SECTION 35.** 938.396 (1) of the statutes is amended to read:

11 938.396 (1) Law enforcement officers' records of juveniles shall be kept separate from
12 records of adults. Law enforcement officers' records of juveniles shall not be open to
13 inspection or their contents disclosed except under sub. (1b), (1d), (1g), (1m), (1r), (1t), (1x)
14 or (5), or (10) or s. 938.293 or by order of the court. This subsection does not apply to
15 representatives of the news media who wish to obtain information for the purpose of reporting
16 news without revealing the identity of the juvenile involved, to the confidential exchange of
17 information between the police and officials of the school attended by the juvenile or other
18 law enforcement or social welfare agencies, or to juveniles 10 years of age or older who are
19 subject to the jurisdiction of the court of criminal jurisdiction. A public school official who
20 obtains information under this subsection shall keep the information confidential as required

1 under s. 118.125 and a private school official who obtains information under this subsection
2 shall keep the information confidential in the same manner as is required of a public school
3 official under s. 118.125. A law enforcement agency that obtains information under this
4 subsection shall keep the information confidential as required under this subsection and s.
5 48.396 (1). A social welfare agency that obtains information under this subsection shall keep
6 the information confidential as required under ss. 48.78 and 938.78.

NOTE: See the NOTE to SECTION 37.

7 **SECTION 36.** 938.396 (2) (e) of the statutes is renumbered 938.396 (10) and amended
8 to read:

9 938.396 (10) ~~Upon request of the department of corrections to review court~~ A law
10 enforcement agency's records and records for the purpose of providing, under s. 980.015 (3)
11 (a), of the court assigned to exercise jurisdiction under this chapter and ch. 48 shall be open
12 for inspection by authorized representatives of the department of corrections, the department
13 of health and family services, the department of justice, or a district attorney with a person's
14 offense history, the court shall open for inspection by authorized representatives of the
15 department of corrections the records of the court relating to any juvenile who has been
16 adjudicated delinquent for a sexually violent offense, as defined in s. 980.01 (6) for use in the
17 evaluation or prosecution of any proceeding under ch. 980, if the records involve or relate to
18 an individual who is the subject of or who is being evaluated for a proceeding under ch. 980.
19 The court in which the proceeding under ch. 980 is pending may issue any protective orders
20 that it determines are appropriate concerning information made available or disclosed under
21 this subsection. Any representative of the department of corrections, the department of health
22 and family services, the department of justice, or a district attorney may disclose information
23 obtained under this subsection for any purpose consistent with any proceeding under ch. 980.

NOTE: Makes law enforcement records relating to juveniles accessible in SVP proceedings as described in the NOTE to SECTION 3.

1 **SECTION 37.** 938.396 (5) (a) (intro.) of the statutes is amended to read:

2 938.396 **(5)** (a) (intro.) Any person who is denied access to a record under sub. (1), (1b),
3 (1d), (1g), (1m), (1r) ~~or (1t)~~, or (10) may petition the court to order the disclosure of the
4 records governed by the applicable subsection. The petition shall be in writing and shall
5 describe as specifically as possible all of the following:

6 **SECTION 38.** 938.78 (2) (e) of the statutes is amended to read:

7 938.78 **(2)** (e) ~~Paragraph (a) does not prohibit the department from disclosing~~
8 Notwithstanding par. (a), an agency shall, upon request, disclose information about an
9 individual adjudged delinquent under s. 938.183 or 938.34 for a sexually violent offense, as
10 defined in s. 980.01 (6), to authorized representatives of the department of corrections, the
11 department of health and family services, the department of justice, or a district attorney ~~or~~
12 a judge acting under ch. 980 or to an attorney who represents a person subject to a petition for
13 use in the evaluation or prosecution of any proceeding under ch. 980, if the information
14 involves or relates to an individual who is the subject of or who is being evaluated for a
15 proceeding under ch. 980. The court in which the ~~petition proceeding~~ under s. 980.02 is filed
16 ch. 980 is pending may issue any protective orders that it determines are appropriate
17 concerning information disclosed under this paragraph. Any representative of the department
18 of corrections, the department of health and family services, the department of justice, or a
19 district attorney may disclose information obtained under this paragraph for any purpose
20 consistent with any proceeding under ch. 980.

NOTE: Makes specified juvenile records accessible in SVP proceedings as described in the NOTE to SECTION 3.

21 **SECTION 39.** 940.20 (1g) of the statutes is created to read:

1 940.20 **(1g)** BATTERY BY CERTAIN COMMITTED PERSONS. Any person committed to an
2 institution, described under s. 980.065, that provides care for sexually violent persons and who
3 intentionally causes bodily harm to an officer, employee, agent, visitor, or other resident of
4 the institution, without his or her consent, is guilty of a Class H felony.

NOTE: Creates s. 940.20 (1g) to provide that an SVP who has been committed under ch. 980 and who intentionally causes bodily harm to an officer, employee, agent, visitor, or other resident of the institution, without his or her consent, is guilty of a class H felony. The term “bodily harm” is defined in s. 939.22 (4), stats., to mean physical pain or injury, illness, or any impairment of physical condition. A class H felony is punishable by a fine not to exceed \$10,000 or a term of confinement and extended supervision not to exceed 6 years, or both. The crime created in this provision is comparable to the crimes of battery by prisoners and battery to law enforcement officers and fire fighters; probation, extended supervision and parole agents and aftercare agents; and emergency medical care providers. [See s. 940.20 (1), (2), (2m), (3), and (7), stats.]

5 **SECTION 40.** 946.42 (1) (a) of the statutes is amended to read:

6 946.42 **(1)** (a) “Custody” includes without limitation actual custody of an institution,
7 including a secured correctional facility, as defined in s. 938.02 (15m), a secured child caring
8 institution, as defined in s. 938.02 (15g), a secured group home, as defined in s. 938.02 (15p),
9 a secure detention facility, as defined in s. 938.02 (16), a Type 2 child caring institution, as
10 defined in s. 938.02 (19r), a facility used for the detention of persons detained under s. 980.04
11 (1), a facility specified in s. 980.065, or a juvenile portion of a county jail, or actual custody
12 of a peace officer or institution guard. “Custody” also includes without limitation the
13 constructive custody of persons placed on supervised release under a commitment order
14 issued under ch. 980 and constructive custody of prisoners and juveniles subject to an order
15 under s. 48.366, 938.183, 938.34 (4d), (4h) or (4m) or 938.357 (4) or (5) (e) temporarily
16 outside the institution whether for the purpose of work, school, medical care, a leave granted

1 under s. 303.068, a temporary leave or furlough granted to a juvenile or otherwise. Under s.
2 303.08 (6) it means, without limitation, that of the sheriff of the county to which the prisoner
3 was transferred after conviction. It does not include the custody of a probationer, parolee or
4 person on extended supervision by the department of corrections or a probation, extended
5 supervision or parole officer or the custody of a person who has been released to aftercare
6 supervision under ch. 938 unless the person is in actual custody or is subject to a confinement
7 order under s. 973.09 (4).

NOTE: See the NOTE to SECTION 41.

8 **SECTION 41.** 946.42 (3m) of the statutes is created to read:

9 946.42 (3m) A person who intentionally escapes from custody under any of the
10 following circumstances is guilty of a Class F felony:

11 (a) While subject to a detention order under s. 980.04 (1) or a custody order under s.
12 980.04 (3).

13 (b) While subject to an order issued under s. 980.06 committing the person to custody
14 of the department of health and family services, regardless of whether the person is placed in
15 institutional care or on supervised release.

NOTE: Revises SECS. 40 and 41, the current crime relating to a person in custody who intentionally escapes from custody (a class H felony, punishable by a fine not to exceed \$10,000 and a term of imprisonment and extended supervision not to exceed 6 years). Under *current law*, “custody” is defined as actual custody in an institution, including a secure juvenile facility, but does not include the custody of a probationer, parolee, or person on extended supervision unless the person is in actual custody.

The draft:

1. Modifies [in SEC. 40] the definition of “custody” to include: (a) actual custody in a facility used for the detention of persons committed as SVPs; and (b) without limitation the constructive custody of a person placed on supervised release.

2. Specifies [in SEC. 41] that a person who intentionally escapes from custody under the following circumstances is guilty of a class F felony (punishable by a fine not to exceed \$25,000 and a term of imprisonment and extended supervision not to exceed 12 years and 6 months):

(a) While subject to a detention or custody order pending a petition to commit the person as an SVP.

(b) While subject to an order committing the person to custody of DHFS, regardless of whether the person is placed in institutional care or on supervised release.

1 **SECTION 42.** 950.04 (1v) (xm) of the statutes is amended to read:

2 950.04 (1v) (xm) To have the department of health and family services make a
3 reasonable attempt to notify the victim under s. 980.11 regarding supervised release under s.
4 980.08 and discharge under s. 980.09 or ~~980.10~~ 980.093.

5 **SECTION 43.** 967.03 of the statutes is amended to read:

6 **967.03 District attorneys.** Wherever in chs. 967 to ~~979~~ 980 powers or duties are
7 imposed upon district attorneys, the same powers and duties may be discharged by any of their
8 duly qualified deputies or assistants.

9 **SECTION 44.** 972.15 (4) of the statutes is amended to read:

10 972.15 (4) After sentencing, unless otherwise authorized under sub. (5) or (6) or ordered
11 by the court, the presentence investigation report shall be confidential and shall not be made
12 available to any person except upon specific authorization of the court.

13 **SECTION 45.** 972.15 (6) of the statutes is created to read:

14 972.15 (6) The presentence investigation report and any information contained in it or
15 upon which it is based may be used by any of the following persons in any evaluation,
16 examination, referral, hearing, trial, postcommitment relief proceeding, appeal, or other
17 proceeding under ch. 980:

18 (a) The department of corrections.

- 1 (b) The department of health and family services.
- 2 (c) The person who is the subject of the presentence investigation report, his or her
3 attorney, or an agent or employee of the attorney.
- 4 (d) The attorney representing the state or an agent or employee of the attorney.
- 5 (e) A licensed physician, licensed psychologist, or other mental health professional who
6 is examining the subject of the presentence investigation report.
- 7 (f) The court and, if applicable, the jury hearing the case.

NOTE: Revises the current law specifying that, after a conviction, the court may order a presentence investigation, and, if ordered, it must be disclosed to the defendant's attorney (or the defendant, if unrepresented) and the DA prior to sentencing. The DOC may use the investigation report for correctional programming, parole consideration, or care and treatment.

The draft creates new s. 972.15 (6), permitting the presentence investigation report and any information contained in it or upon which it is based to be used by any of the following agencies or persons in any evaluation, examination, referral, hearing, trial, post commitment relief proceeding, appeal, or other SVP proceeding: (1) DOC and DHFS; (2) the person who is the subject of the presentence investigation report and his or her attorney; (3) the attorney representing the state or an agent or employee of the attorney; (4) a physician, psychologist, or other mental health professional who is examining the subject of the report; and (5) the court and, if applicable, the jury hearing the case.

8 **SECTION 46.** 973.155 (1) (c) of the statutes is created to read:

9 973.155 (1) (c) The categories in par. (a) include time during which the convicted
10 offender was in the custody of the department of health and family services under ch. 980 only
11 if the offender was confined during that time and the confinement and the offender's
12 conviction resulted from the same course of conduct.

NOTE: Creates s. 973.155 (1) (c), relating to allowing sentence credit time for a convicted offender who was in the custody of the DHFS under ch. 980 if the offender was confined during that time and the

confinement and the offender's conviction resulted from the same course of conduct.

1 **SECTION 47.** 978.03 (3) of the statutes is amended to read:

2 978.03 (3) Any assistant district attorney under sub. (1), (1m) or (2) must be an attorney
3 admitted to practice law in this state and, except as provided in ss. 978.043 (1) and 978.044,
4 may perform any duty required by law to be performed by the district attorney. The district
5 attorney of the prosecutorial unit under sub. (1), (1m), or (2) may appoint such temporary
6 counsel as may be authorized by the department of administration.

7 **SECTION 48.** 978.043 of the statutes is renumbered 978.043 (1) and amended to read.

8 978.043 (1) The district attorney of the prosecutorial unit that consists of Brown County
9 and the district attorney of the prosecutorial unit that consists of Milwaukee County shall each
10 assign one assistant district attorney in his or her prosecutorial unit to be a sexually violent
11 person commitment prosecutor. An assistant district attorney assigned under this section
12 subsection to be a sexually violent person commitment prosecutor may engage only in the
13 prosecution of sexually violent person commitment proceedings under ch. 980 and, at the
14 request of the district attorney of the prosecutorial unit, may file and prosecute sexually violent
15 person commitment proceedings under ch. 980 in any prosecutorial unit in this state.

16 **SECTION 49.** 978.043 (2) of the statutes is created to read:

17 978.043 (2) If an assistant district attorney assigned under sub. (1) prosecutes or assists
18 in the prosecution of a case under ch. 980 in a prosecutorial unit other than his or her own, the
19 prosecutorial unit in which the case is heard shall reimburse the assistant district attorney's
20 own prosecutorial unit for his or her reasonable costs associated with the prosecution,
21 including transportation, lodging, and meals. Unless otherwise agreed upon by the

1 prosecutorial units involved, the court hearing the case shall determine the amount of money
2 to be reimbursed for expert witness fees under this subsection.

NOTE: Creates a new provision specifying that if an assistant DA prosecutes or assists in the prosecution of an SVP case in another prosecutorial unit, the prosecutorial unit in which the case is heard must reimburse the assistant DA's own prosecutorial unit for his or her reasonable costs associated with the prosecution, including transportation, lodging, and meals. *Current law* requires the DA in Brown County and the DA in Milwaukee County to each assign one assistant DA to be an SVP commitment prosecutor, and specifies that those assistant DAs may file and prosecute SVP commitment proceedings in any prosecutorial unit in the state.

3 **SECTION 50.** 978.045 (1r) (intro.) of the statutes is amended to read:

4 978.045 (1r) (intro.) Any judge of a court of record, by an order entered in the record
5 stating the cause ~~therefor~~ for it, may appoint an attorney as a special prosecutor to perform,
6 for the time being, or for the trial of the accused person, the duties of the district attorney. An
7 attorney appointed under this subsection shall have all of the powers of the district attorney.
8 The judge may appoint an attorney as a special prosecutor at the request of a district attorney
9 to assist the district attorney in the prosecution of persons charged with a crime, in grand jury
10 or John Doe proceedings, in proceedings under ch. 980, or in investigations. The judge may
11 appoint an attorney as a special prosecutor if any of the following conditions exists:

12 **SECTION 51.** 978.05 (6) (a) of the statutes is amended to read:

13 978.05 (6) (a) Institute, commence or appear in all civil actions or special proceedings
14 under and perform the duties set forth for the district attorney under ch. 980 and ss. 17.14,
15 30.03 (2), 48.09 (5), 59.55 (1), 59.64 (1), 70.36, 103.50 (8), 103.92 (4), 109.09, 343.305 (9)
16 (a), 453.08, 806.05, 938.09, 938.18, 938.355 (6) (b) and (6g) (a), 946.86, 946.87, 961.55 (5),
17 971.14 and 973.075 to 973.077, perform any duties in connection with court proceedings in
18 a court assigned to exercise jurisdiction under chs. 48 and 938 as the judge may request and

1 perform all appropriate duties and appear if the district attorney is designated in specific
2 statutes, including matters within chs. 782, 976 and 979 and ss. 51.81 to 51.85. Nothing in
3 this paragraph limits the authority of the county board to designate, under s. 48.09 (5), that the
4 corporation counsel provide representation as specified in s. 48.09 (5) or to designate, under
5 s. 48.09 (6) or 938.09 (6), the district attorney as an appropriate person to represent the
6 interests of the public under s. 48.14 or 938.14.

7 **SECTION 52.** 978.05 (8) (b) of the statutes is amended to read:

8 978.05 (8) (b) Hire, employ, and supervise his or her staff and, subject to ss. 978.043
9 (1) and 978.044, make appropriate assignments of the staff throughout the prosecutorial unit.
10 The district attorney may request the assistance of district attorneys, deputy district attorneys,
11 or assistant district attorneys from other prosecutorial units or assistant attorneys general who
12 then may appear and assist in the investigation and prosecution of any matter for which a
13 district attorney is responsible under this chapter in like manner as assistants in the
14 prosecutorial unit and with the same authority as the district attorney in the unit in which the
15 action is brought. Nothing in this paragraph limits the authority of counties to regulate the
16 hiring, employment, and supervision of county employees.

17 **SECTION 53.** 978.13 (2) of the statutes is renumbered 978.13 (2) (b).

18 **SECTION 54.** 978.13 (2) (a) of the statutes is created to read:

19 978.13 (2) (a) In this subsection, “costs related to the operation of the district attorney’s
20 office” include costs that a prosecutorial unit must pay under s. 978.043 (2) but do not include
21 costs for which a prosecutorial unit receives reimbursement under s. 978.043 (2).

NOTE: See the NOTE to SECTION 49.

22 **SECTION 55.** 980.01 (1) of the statutes is renumbered 980.01 (1m).

23 **SECTION 56.** 980.01 (1g) of the statutes is created to read:

1 980.01 (1g) “Act of sexual violence” means conduct that constitutes the commission
2 of a sexually violent offense.

NOTE: Creates a new provision [s. 980.01 (1g)] defining “act of sexual violence” to mean conduct that constitutes the commission of an SVO. Under *current law*, one part of the definition of “sexually violent person” is that the person is dangerous because he or she suffers from a mental disorder that makes it likely that the person will engage in “acts of sexual violence”.

3 **SECTION 57.** 980.01 (5) of the statutes is amended to read:

4 980.01 (5) “Sexually motivated” means that one of the purposes for an act is for the
5 actor’s sexual arousal or gratification or for the sexual humiliation or degradation of the
6 victim.

NOTE: Revises the definition of “sexually motivated” for purposes of ch. 980. Under the *draft*, “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.* *Current law* specifies that “sexually motivated” means that one of the purposes for an act is for the actor’s sexual arousal or gratification.

7 **SECTION 58.** 980.01 (6) (a) of the statutes is amended to read:

8 980.01 (6) (a) Any crime specified in s. 940.225 (1) ~~or~~ (2), or (3), 948.02 (1) or (2),
9 948.025, 948.06, ~~or~~ 948.07.

10 **SECTION 59.** 980.01 (6) (am) of the statutes is created to read:

11 980.01 (6) (am) An offense that, prior to June 2, 1994, was a crime under the law of this
12 state and that is comparable to any crime specified in par. (a).

13 **SECTION 60.** 980.01 (6) (b) of the statutes is amended to read:

14 980.01 (6) (b) Any crime specified in s. 940.01, 940.02, 940.03, 940.05, 940.06, 940.19
15 (4) or (5), 940.195 (4) or (5), 940.30, 940.305, 940.31 ~~or~~ 941.32, 943.10, 943.32, or 948.03
16 that is determined, in a proceeding under s. 980.05 (3) (b), to have been sexually motivated.

17 **SECTION 61.** 980.01 (6) (bm) of the statutes is created to read:

1 980.01 (6) (bm) An offense that, prior to June 2, 1994, was a crime under the law of this
2 state, that is comparable to any crime specified in par. (b) and that is determined, in a
3 proceeding under s. 980.05 (3) (b), to have been sexually motivated.

NOTE: Revises [in SECS. 58 to 61] the definition of “sexually violent offense” in ch. 980 to:

1. Add 3rd-degree sexual assault to the list of sexually violent offenses. Under current law, “sexually violent offense” means first- or 2nd-degree sexual assault, first- or 2nd-degree sexual assault of a child, incest with a child, or child enticement. In addition, “sexually violent offense” includes first- or 2nd-degree intentional homicide, first- or 2nd-degree reckless homicide, aggravated battery, aggravated battery to an unborn child, false imprisonment, taking hostages, kidnapping, or burglary if determined to be sexually motivated.

2. Add felony murder, administering a dangerous or stupefying drug, robbery, and physical abuse of a child to the list of sexually violent offenses if such an offense is determined to be sexually motivated.

3. Expand the list of sexually violent offenses to include comparable crimes committed prior to June 2, 1994.

4 **SECTION 62.** 980.01 (6) (c) of the statutes is amended to read:

5 980.01 (6) (c) Any solicitation, conspiracy, or attempt to commit a crime under par. (a)
6 ~~or, (am), (b), or (bm).~~

7 **SECTION 63.** 980.01 (7) of the statutes is amended to read:

8 980.01 (7) “Sexually violent person” means a person who has been convicted of a
9 sexually violent offense, has been adjudicated delinquent for a sexually violent offense, or has
10 been found not guilty of or not responsible for a sexually violent offense by reason of insanity
11 or mental disease, defect, or illness, and who is dangerous because he or she suffers from a
12 mental disorder that makes it likely that the person will engage in one or more acts of sexual
13 violence.

14 **SECTION 64.** 980.015 (1) of the statutes is renumbered 980.015 (1) (intro.) and amended
15 to read:

1 980.015 (1) (intro.) In this section, “agency:

2 (a) “Agency with jurisdiction” means the agency with the authority or duty to release
3 or discharge the person.

4 **SECTION 65.** 980.015 (1) (b) of the statutes is created to read:

5 980.015 (1) (b) “Continuous term of incarceration, any part of which was imposed for
6 a sexually violent offense,” includes confinement in a secured correctional facility, as defined
7 in s. 938.02 (15m), or a secured child caring institution, as defined in s. 938.02 (15g), or a
8 secured group home, as defined in s. 938.02 (15p), if the person was placed in the facility for
9 being adjudicated delinquent under s. 48.34, 1993 stats., or under s. 938.183 or 938.34 on the
10 basis of a sexually violent offense.

NOTE: Revises [in SECS. 65 to 70] current law relating to the commencement of commitment proceedings. Under *current law*, if an agency with jurisdiction (i.e., the agency with the authority or duty to release or discharge the person) has control or custody over a person who may meet the criteria for commitment as an SVP, the agency must inform each appropriate DA and DOJ regarding the person as soon as possible beginning 3 months prior to the applicable date of the following:

1. The anticipated discharge from a sentence, anticipated release on parole or extended supervision or anticipated release from imprisonment of a person who has been convicted of an SVP.
2. The anticipated release from a secure juvenile facility of a person adjudicated delinquent on the basis of an SVO.
3. The termination or discharge of a person who has been found not guilty of an SVO by reason of mental disease or defect.

Under the *draft*:

1. For persons under a sentence, the agency must inform the DA and DOJ regarding the person as soon as possible beginning 90 days before the date of the anticipated discharge or release on parole or extended supervision, or otherwise, from a sentence of imprisonment or term of confinement in prison that was imposed for a conviction for an SVO, from a continuous term of incarceration, any part of which was imposed

for an SVO, or from a prison placement under the intensive sanctions program, any part of which was imposed for an SVO.

2. Determines “continuous term of incarceration, any part of which was imposed for a sexually violent offense,” to include confinement in a juvenile facility if the person was placed in the facility for being adjudicated delinquent on the basis of an SVO.

3. Requires the DA and DOJ to be notified of the anticipated release on parole or discharge of a person committed under ch. 975, Stats. (the sex crimes in effect prior to the creation of ch. 980, Stats.), for an SVO.

1 **SECTION 66.** 980.015 (2) (intro.) of the statutes is amended to read:

2 980.015 (2) (intro.) If an agency with jurisdiction has control or custody over a person
3 who may meet the criteria for commitment as a sexually violent person, the agency with
4 jurisdiction shall inform each appropriate district attorney and the department of justice
5 regarding the person as soon as possible beginning ~~3 months~~ 90 days prior to the applicable
6 date of the following:

7 **SECTION 67.** 980.015 (2) (a) of the statutes is amended to read:

8 980.015 (2) (a) The anticipated discharge ~~from a sentence, anticipated or release, on~~
9 parole ~~or, extended supervision, or anticipated release~~ otherwise, from a sentence of
10 imprisonment of a person who has been convicted of or term of confinement in prison that was
11 imposed for a conviction for a sexually violent offense, from a continuous term of
12 incarceration, any part of which was imposed for a sexually violent offense, or from a
13 placement in a Type 1 prison under s. 301.048 (3) (a) 1., any part of which was imposed for
14 a sexually violent offense.

15 **SECTION 68.** 980.015 (2) (b) of the statutes is amended to read:

16 980.015 (2) (b) The anticipated release from a secured correctional facility, as defined
17 in s. 938.02 (15m), or a secured child caring institution, as defined in s. 938.02 (15g), or a
18 secured group home, as defined in s. 938.02 (15p), ~~of a~~ if the person was placed in the facility

1 as a result of being adjudicated delinquent under s. 48.34, 1993 stats., or under s. 938.183 or
2 938.34 on the basis of a sexually violent offense.

3 **SECTION 69.** 980.015 (2) (c) of the statutes is amended to read:

4 980.015 (2) (c) The anticipated release on conditional release under s. 971.17 or the
5 anticipated termination of or discharge of a from a commitment order under s. 971.17, if the
6 person ~~who~~ has been found not guilty of a sexually violent offense by reason of mental disease
7 or defect ~~under s. 971.17.~~

8 **SECTION 70.** 980.015 (2) (d) of the statutes is created to read:

9 980.015 (2) (d) The anticipated release on parole or discharge of a person committed
10 under ch. 975 for a sexually violent offense.

NOTE: See the NOTE to SEC. 64.

11 **SECTION 71.** 980.015 (4) of the statutes is renumbered 980.14 (2) and amended to read:

12 980.14 (2) Any agency or officer, employee, or agent of an agency is immune from
13 criminal or civil liability for any acts or omissions as the result of a good faith effort to comply
14 with any provision of this section chapter.

NOTE: Revises s. 980.14 (2), stats., to provide that 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 ch. 980, stats.* (“Agency” means DOC, DHFS, DOJ, or a DA. See SEC. 116.) *Current law* specifies that any agency or officer, employee, or agent of an agency is immune from criminal or civil liability for any acts or omissions as the result of a good faith effort to comply with the requirement that an agency notify the DA or DOJ of the anticipated release or discharge of a person who may be an SVP. See, also, SEC. 117.

15 **SECTION 72.** 980.02 (1) (a) of the statutes is amended to read:

16 980.02 (1) (a) The department of justice at the request of the agency with jurisdiction,
17 as defined in s. 980.015 (1), over the person. ~~If the department of justice decides to file a~~

1 ~~petition under this paragraph, it shall file the petition before the date of the release or discharge~~
2 ~~of the person.~~

NOTE: See the NOTE to SEC. 74.

3 **SECTION 73.** 980.02 (1) (b) 3. of the statutes is created to read:

4 980.02 (1) (b) 3. The county in which the person is in custody under a sentence, a
5 placement to a secured correctional facility, as defined in s. 938.02 (15m), a secured child
6 caring institution, as defined in s. 938.02 (15g), or a secured group home, as defined in s.
7 938.02 (15p), or a commitment order.

NOTE: Revises current law specifying that: (1) DOJ may file a petition to commit a person as an SVP at the request of the agency with the authority or duty to release or discharge the person; and (2) if DOJ does not file a petition, the DA for the county in which the person was convicted, adjudicated delinquent, or found not guilty by reason of insanity or mental disease, defect, or illness, or the county in which the person will reside, may file the petition.

The draft in this SECTION and SECS. 31 and 77: (1) permits the DA of the county *in which the person is in custody* to file the petition; (2) specifies that a juvenile court does *not* have jurisdiction over a petition involving a child; and (3) eliminates filing fees.

8 **SECTION 74.** 980.02 (1m) of the statutes is created to read:

9 980.02 (1m) A petition filed under this section shall be filed before the person is
10 released or discharged.

NOTE: Creates s. 980.02 (1m), specifying that any SVP petition, not only a petition filed by DOJ under current law, must be filed before the person is released or discharged.

11 **SECTION 75.** 980.02 (2) (ag) of the statutes is repealed.

NOTE: Repeals s. 980.02 (2) (ag), stats., providing that the petition may be filed only if the person is within 90 days of discharge or release or other specified circumstances apply.

12 **SECTION 76.** 980.02 (4) (intro.) of the statutes is amended to read:

13 980.02 (4) (intro.) A petition under this section shall be filed in any one of the following:

1 **SECTION 77.** 980.02 (6) of the statutes is created to read:

2 980.02 (6) A court assigned to exercise jurisdiction under chs. 48 and 938 does not have
3 jurisdiction over a petition filed under this section alleging that a child is a sexually violent
4 person.

NOTE: See the NOTE to SEC. 72.

5 **SECTION 78.** 980.03 (2) (intro.) of the statutes is amended to read:

6 980.03 (2) (intro.) Except as provided in ss. ~~980.09 (2) (a)~~ 980.038 (2) and 980.10
7 980.093 and without limitation by enumeration, at any hearing under this chapter, the person
8 who is the subject of the petition has the right to:

9 **SECTION 79.** 980.03 (3) of the statutes is amended to read:

10 980.03 (3) The person who is the subject of the petition, the person's attorney, the
11 department of justice or the district attorney may request that a trial under s. 980.05 be to a
12 jury ~~of 12~~. A request for a jury trial shall be made as provided under s. 980.05 (2).
13 Notwithstanding s. 980.05 (2), if the person, the person's attorney, the department of justice
14 or the district attorney does not request a jury trial, the court may on its own motion require
15 that the trial be to a jury ~~of 12~~. The jury shall be selected as provided under s. 980.05 (2m).
16 A verdict of a jury under this chapter is not valid unless it is unanimous.

17 **SECTION 80.** 980.03 (4) of the statutes is renumbered 980.031 (3) and amended to read:

18 980.031 (3) Whenever a person who is the subject of a petition filed under s. 980.02
19 or who has been committed under s. 980.06 is required to submit to an examination of his or
20 her mental condition under this chapter, he or she may retain ~~experts or a licensed physician,~~
21 licensed psychologist, or other mental health professional persons to perform an examination.
22 If the person is indigent, the court shall, upon the person's request, appoint a qualified and
23 available licensed physician, licensed psychologist, or other mental health professional to

1 perform an examination of the person's mental condition and participate on the person's
2 behalf in a trial or other proceeding under this chapter at which testimony is authorized. Upon
3 the order of the circuit court, the county shall pay, as part of the costs of the action, the costs
4 of a licensed physician, licensed psychologist, or other mental health professional appointed
5 by a court under this subsection to perform an examination and participate in the trial or other
6 proceeding on behalf of an indigent person.

7 (4) If the person a party retains ~~a qualified expert~~ or the court appoints a licensed
8 physician, licensed psychologist, or other mental health professional ~~person of his or her own~~
9 ~~choice~~ to conduct an examination under this chapter of the person's mental condition, the
10 examiner shall have reasonable access to the person for the purpose of the examination, as well
11 as to the person's past and present treatment records, as defined in s. 51.30 (1) (b), and patient
12 health care records as provided under s. 146.82 (2) (e). ~~If the person is indigent, the court shall,~~
13 ~~upon the person's request, appoint a qualified and available expert or professional person to~~
14 ~~perform an examination and participate in the trial or other proceeding on the person's behalf.~~
15 ~~Upon the order of the circuit court, the county shall pay, as part of the costs of the action, the~~
16 ~~costs of an expert or professional person appointed by a court under this subsection to perform~~
17 ~~an examination and participate in the trial or other proceeding on behalf of an indigent person.~~
18 An expert (cm), past and present juvenile records, as provided under ss. 48.396 (6), 48.78 (2)
19 (e), 938.396 (10), and 938.78 (2) (e), and the person's past and present correctional records,
20 including presentence investigation reports under s. 972.15 (6).

21 (5) A licensed physician, licensed psychologist, or other mental health professional
22 person appointed to assist an indigent person who is subject to a petition who is expected to
23 be called as a witness by one of the parties or by the court may not be subject to any order by
24 the court for the sequestration of witnesses at any proceeding under this chapter. No licensed

1 physician, licensed psychologist, or other mental health professional who is expected to be
2 called as a witness by one of the parties or by the court may be permitted to testify at any
3 proceeding under this chapter unless a written report of his or her examination has been
4 submitted to the court and to both parties at least 10 days before the proceeding.

NOTE: Clarifies that a person who is required to submit to an examination will be submitting to an examination of mental condition and the person may retain a licensed physician, licensed psychologist, or other mental health professional to perform the examination. Further, the expert will have full access to juvenile records and correctional records, as well as treatment records and health care records under current law. Finally, an expert will be allowed to testify only if a written report of the examination has been submitted to the court and to both parties at least 10 days before the proceeding.

5 **SECTION 81.** 980.03 (5) of the statutes is repealed.

6 **SECTION 82.** 980.031 (title) of the statutes is created to read:

7 **980.031 (title) Examinations.**

8 **SECTION 83.** 980.031 (1) and (2) of the statutes are created to read:

9 980.031 (1) If a person who is the subject of a petition filed under s. 980.02 denies the
10 facts alleged in the petition, the court may appoint at least one qualified licensed physician,
11 licensed psychologist, or other mental health professional to conduct an examination of the
12 person's mental condition and testify at trial.

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

NOTE: Revises *current law* specifying that whenever a person who is the subject of a commitment petition or who has been committed as an SVP is required to submit to an examination, he or she may retain experts or professional persons to perform an examination.

The *draft* creates s. 980.031 (1) and (2) to provide that:

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

2. The state may retain a physician, psychologist, or other mental health professional to: (a) examine the mental condition of a person who is the subject of a commitment petition or who has been committed; and (b) testify at the trial or any other SVP proceeding at which testimony is authorized.

1 **SECTION 84.** 980.034 of the statutes is created to read:

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

8 (2) The motion shall be in writing and supported by affidavit which shall state
9 evidentiary facts showing the nature of the prejudice alleged. The department of justice or the
10 district attorney, whichever filed the petition under s. 980.02, may file counter-affidavits.

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

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

- 1 1. The court has decided to sequester the jurors after the commencement of the trial.
- 2 2. There are grounds for changing the place of trial under sub. (1).
- 3 3. The estimated costs to the county appear to be less using the procedure under this
- 4 subsection than using the procedure for holding the trial in another county.
- 5 (b) If the court decides to proceed under this subsection it shall follow the procedure
- 6 under sub. (3) until the jury is chosen in the 2nd county. At that time, the proceedings shall
- 7 return to the original county using the jurors selected in the 2nd county. The original county
- 8 shall reimburse the 2nd county for all applicable costs under s. 814.22.

NOTE: Creates new s. 980.034 that: (1) specifies that the general statutory “change of venue” provision does not apply to SVP proceedings; and (2) establishes a change of venue procedure specific to ch. 980 proceedings. Under the draft, the person who is the subject of a commitment petition or who has been committed as an SVP may move for a change of the place of a jury trial on the ground that an impartial jury cannot be had in the county in which the trial is set to be held. If the court determines that there exists in the county such prejudice that a fair trial cannot be had, it must, with one exception, order that the trial be held in any county where an impartial trial can be had. Only one change may be granted and the judge who orders the change in the place of trial must preside over the trial.

Alternatively, instead of changing the place of the trial, the court may order that the jury be selected in another county if all of the following apply:

1. The court has decided to sequester jurors after the commencement of the trial.
2. There are grounds for changing the place of the trial.
3. The estimated costs to the county appear to be less using an alternate jury rather than changing the place of the trial.

9 **SECTION 85.** 980.036 of the statutes is created to read:

10 **980.036 Discovery and inspection. (1) DEFINITIONS.** In this section:

- 11 (a) “Person subject to this chapter” means a person who is subject to a petition filed
- 12 under s. 980.02 or a person who has been committed under s. 980.06.

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

3 (2) WHAT A PROSECUTING ATTORNEY MUST DISCLOSE TO A PERSON SUBJECT TO THIS
4 CHAPTER. Upon demand, a prosecuting attorney shall, within a reasonable time after the
5 probable cause hearing and before a trial under s. 980.05 or other proceeding under s. 980.07
6 (7), 980.09 (2m), or 980.093 (3), disclose to a person subject to this chapter or the person's
7 attorney, and permit the person or the person's attorney to inspect and copy or photograph, all
8 of the following materials and information, if the material or information is within the
9 possession, custody, or control of the state:

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

13 (b) A written summary of all oral statements of the person that the prosecuting attorney
14 plans to use in the course of the trial or proceeding and the names of witnesses to the person's
15 oral statements.

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

18 (d) A copy of the person's criminal record.

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

22 (f) Any relevant written or recorded statements of a witness named on a list under par.
23 (e), including all of the following:

24 1. Any videotaped oral statement of a child under s. 908.08.

1 2. Any reports prepared in accordance with s. 980.031 (5).

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

6 (h) The criminal record of a witness for the state that is known to the prosecuting
7 attorney.

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

10 (j) Any exculpatory evidence.

11 **(3) WHAT A PERSON SUBJECT TO THIS CHAPTER MUST DISCLOSE TO THE PROSECUTING**
12 **ATTORNEY.** Upon demand, a person who is subject to this chapter or the person's attorney shall,
13 within a reasonable time after the probable cause hearing and before a trial under s. 980.05
14 or other proceeding under s. 980.07 (7), 980.09 (2m), or 980.093 (3), disclose to the
15 prosecuting attorney, and permit the prosecuting attorney to inspect and copy or photograph,
16 all of the following materials and information, if the material or information is within the
17 possession, custody, or control of the person or the person's attorney:

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

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

23 (c) The results of any physical or mental examination or any scientific or psychological
24 test or instrument, experiment, or comparison that the person intends to offer in evidence at

1 the trial or proceeding, and any raw data that were collected, used, or considered in any manner
2 as part of the examination, test, experiment, or comparison.

3 (d) The criminal record of a witness named on a list under par. (a) if the criminal record
4 is known to the person's attorney.

5 (e) Any physical or documentary evidence that the person intends to offer in evidence
6 at the trial or proceeding.

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

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

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

23 **(7) IN CAMERA PROCEEDINGS.** Either party may move for an in camera inspection by the
24 court of any document required to be disclosed under sub. (2) or (3) for the purpose of masking

1 or deleting any material that is not relevant to the case being tried. The court shall mask or
2 delete any irrelevant material.

3 **(8) CONTINUING DUTY TO DISCLOSE.** If, subsequent to compliance with a requirement of
4 this section, and prior to or during trial, a party discovers additional material or the names of
5 additional witnesses requested that are subject to discovery, inspection, or production under
6 this section, the party shall promptly notify the other party of the existence of the additional
7 material or names.

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

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

16 **(10) PAYMENT OF PHOTOCOPY COSTS IN CASES INVOLVING INDIGENT RESPONDENTS.** When
17 the state public defender or a private attorney appointed under s. 977.08 requests photocopies
18 of any item that is discoverable under this section, the state public defender shall pay any fee
19 charged for the photocopies from the appropriation under s. 20.550 (1) (a). If the person
20 providing photocopies under this section charges the state public defender a fee for the
21 photocopies, the fee may not exceed the actual, necessary, and direct cost of photocopying.

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

NOTE: Creates, in new s. 980.036, provisions that are specific to discovery in proceedings relating to SVPs and specifically provides that the general discovery process in civil actions does not apply in ch. 980, stats., proceedings. Under the draft:

1. Upon demand, a ***PA must disclose*** and permit the person or the person's attorney to inspect and copy or photograph all of the following if it is in the possession, custody, or control of the state:

a. Any written or recorded statement made by the person concerning the allegations in a petition to commit the person as an SVP or concerning other matters at issue in the trial or proceeding.

b. A written summary of all oral statements of the person that the PA plans to use in the course of the trial or proceeding.

c. Evidence obtained by intercepting any oral communication that the PA intends to use as evidence.

d. A copy of the person's criminal record.

e. A list of all witnesses whom the PA intends to call, except rebuttal or impeachment witnesses.

f. Any relevant written or recorded statements of a witness.

g. The results of any physical or mental examination or any scientific or psychological test or instrument, experiment, or comparison that the PA intends to offer in evidence and any raw data that were collected, used, or considered in any manner as part of the examination, test, experiment, or comparison.

h. The criminal record of a witness for the state that is known to the PA.

i. Any physical or documentary evidence that the PA intends to offer as evidence.

j. Any exculpatory evidence.

2. Upon demand, ***the person who is subject to SVP proceedings must disclose*** all of the following:

a. A list of all witnesses whom the person intends to call.

b. Any relevant written or recorded statements of a witness, except rebuttal or impeachment witnesses.

c. The results of any physical or mental examination or any scientific or psychological test or instrument, experiment, or comparison that the person intends to offer as evidence and any raw data that were collected,

used, or considered in any manner as part of the examination, test, experiment, or comparison.

d. The criminal record of a witness for the person that is known to the person's attorney.

e. Any physical or documentary evidence that the person intends to offer as evidence.

3. If, subsequent to compliance with these requirements, and prior to or during trial, a party discovers additional material or the names of additional witnesses, the party must promptly notify the other party of the existence of the additional materials or names.

4. The court must exclude any witness not listed or evidence not presented for inspection unless good cause is shown for failure to comply. The court may advise the jury of the nonresponsiveness of a party.

1 **SECTION 86.** 980.038 of the statutes is created to read:

2 **980.038 Miscellaneous procedural provisions. (1) MOTIONS CHALLENGING**
3 JURISDICTION OR COMPETENCY OF COURT OR TIMELINESS OF PETITION. (a) A motion challenging
4 the jurisdiction or competency of the court or the timeliness of a petition filed under s. 980.02
5 shall be filed within 10 days after the court holds the probable cause hearing under s. 980.04
6 (2). Failure to file a motion within the time specified in this paragraph waives the right to
7 challenge the jurisdiction or competency of the court or the timeliness of a petition filed under
8 s. 980.02.

9 (b) Notwithstanding s. 801.11, a court may exercise personal jurisdiction over a person
10 who is the subject of a petition filed under s. 980.02 even though the person is not served as
11 provided under s. 801.11 (1) or (2) with a verified petition and summons or with an order for
12 detention under s. 980.04 (1) and the person has not had a probable cause hearing under s.
13 980.04 (2).

14 **(2) EVIDENCE OF REFUSAL TO PARTICIPATE IN EXAMINATION.** (a) At any hearing under this
15 chapter, the state may present evidence or comment on evidence that a person who is the

1 subject of a petition filed under s. 980.02 or a person who has been committed under this
2 chapter refused to participate in an examination of his or her mental condition that was being
3 conducted under this chapter or that was conducted before the petition under s. 980.02 was
4 filed for the purpose of evaluating whether to file a petition.

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

9 **(3) TESTIMONY BY TELEPHONE OR LIVE AUDIOVISUAL MEANS.** Unless good cause to the
10 contrary is shown, proceedings under ss. 980.04 (2) (a) and 980.08 (5) (d) may be conducted
11 by telephone or audiovisual means, if available. If the proceedings are required to be reported
12 under SCR 71.02 (2), the proceedings shall be reported by a court reporter who is in
13 simultaneous voice communication with all parties to the proceeding. Regardless of the
14 physical location of any party to the telephone call, any action taken by the court or any party
15 shall have the same effect as if made in open court. The proceedings shall be conducted in
16 a courtroom or other place reasonably accessible to the public. Simultaneous access to the
17 proceeding shall be provided to persons entitled to attend by means of a loudspeaker or, upon
18 request to the court, by making a person party to the telephone call without charge.

19 **(4) MOTIONS FOR POSTCOMMITMENT RELIEF; APPEAL.** (a) A motion for postcommitment
20 relief by a person committed under s. 980.06 shall be made in the time and manner provided
21 in ss. 809.30 and 809.40. An appeal by a person who has been committed under s. 980.06 from
22 a final order under s. 980.06, 980.08, or 980.09 or from an order denying a motion for
23 postcommitment relief or from both shall be taken in the time and manner provided in ss.
24 808.04 (3), 809.30, and 809.40. If a person is seeking relief from an order of commitment

1 under s. 980.06, the person shall file a motion for postcommitment relief in the trial court prior
2 to an appeal unless the grounds for seeking relief are sufficiency of the evidence or issues
3 previously raised.

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

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

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

NOTE: Creates s. 980.038, providing that:

1. Notwithstanding the normal process for gaining personal jurisdiction in a judicial proceeding, a court may exercise personal jurisdiction over the subject of an SVP petition even though the person is not served under the normal process with a verified petition and summons or served with an order for detention and the person has not had a probable cause hearing.

2. A motion for post-commitment relief by an SVP or an appeal from a final order or from an order denying a motion for post-commitment relief must follow criminal appellate procedure.

3. An appeal by the state from a final judgment or order must follow the procedure for civil appeals.

4. The state is permitted to present evidence or comment on evidence that a person who is the subject of an SVP commitment petition, or that a person who has been committed, refused to participate in an examination of his or her mental condition that was being conducted as part of an SVP proceeding or that was conducted before the commitment petition was filed for the purpose of evaluating whether to file a petition. The draft does not affect the general right to remain silent at any hearing relating to an SVP commitment.

The draft also creates new provisions relating to failure to comply with time limits, specifying that:

1. Failure to comply with any time limit specified in ch. 980, stats., does not deprive the court of personal or subject matter jurisdiction or of competency to exercise that jurisdiction.
2. Failure to comply with any time limit is not grounds for an appeal or grounds to vacate any order, judgment, or commitment issued or entered.
3. 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.

1 **SECTION 87.** 980.04 (1) of the statutes is amended to read:

2 980.04 (1) Upon the filing of a petition under s. 980.02, the court shall review the
3 petition to determine whether to issue an order for detention of the person who is the subject
4 of the petition. The person shall be detained only if there is probable cause to believe that the
5 person is eligible for commitment under s. 980.05 (5). A person detained under this subsection
6 shall be held in a facility approved by the department. If the person is serving a sentence of
7 imprisonment, is in a secured correctional facility, as defined in s. 938.02 (15m), a secured
8 child caring institution, as defined in s. 938.02 (15g), or a secured group home, as defined in
9 s. 938.02 (15p), or is committed to institutional care, and the court orders detention under this
10 subsection, the court shall order that the person be transferred to a detention facility approved
11 by the department. A detention order under this subsection remains in effect until the person
12 is ~~discharged~~ petition is dismissed after a hearing under sub. (3) or after a trial under s. 980.05
13 (5) or until the effective date of a commitment order under s. 980.06, whichever is applicable.

1 **SECTION 88.** 980.04 (2) of the statutes is renumbered 980.04 (2) (a) and amended to
2 read:

3 980.04 (2) (a) Whenever a petition is filed under s. 980.02, the court shall hold a hearing
4 to determine whether there is probable cause to believe that the person named in the petition
5 is a sexually violent person. ~~If the person named in the petition is in custody, the court shall~~
6 ~~hold the probable cause hearing within 72 hours after the petition is filed, excluding Saturdays,~~
7 ~~Sundays and legal holidays. If the person named in the petition is not in custody, the Except~~
8 ~~as provided in par. (b), the court shall hold the probable cause hearing within a reasonable time~~
9 ~~30 days, excluding Saturdays, Sundays, and legal holidays, after the filing of the petition,~~
10 ~~unless that time is extended by the court for good cause shown upon its own motion, the motion~~
11 ~~of any party, or the stipulation of the parties.~~

12 **SECTION 89.** 980.04 (2) (b) of the statutes is created to read:

13 980.04 (2) (b) If the person named in the petition is in custody under a sentence,
14 dispositional order, or commitment and the probable cause hearing will be held after the date
15 on which the person is scheduled to be released or discharged from the sentence, dispositional
16 order, or commitment, the probable cause hearing under par. (a) shall be held no later than 10
17 days after the person's scheduled release or discharge date, excluding Saturdays, Sundays, and
18 legal holidays, unless that time is extended by the court for good cause shown upon its own
19 motion, the motion of any party, or the stipulation of the parties.

NOTE: Revises *current law* [s. 980.04 (2) (a)] which specifies that: (1) whenever an SVP commitment petition is filed, the court must hold a hearing to determine whether there is probable cause to believe that the person named in the petition is an SVP; (2) if the person is in custody, the court must hold the probable cause hearing within 72 hours after the petition is filed, excluding Saturdays, Sundays, and legal holidays; and (3) if the person is not in custody, the court must hold the hearing within a reasonable time after the filing of the petition.

The *draft*:

1. Requires the court, in general, to 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.

2. If the person named in the petition is in custody and the probable cause hearing will be held after the date on which the person is scheduled to be released or discharged, requires the hearing to 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. See, also, SEC. 90.

1 **SECTION 90.** 980.04 (3) of the statutes is amended to read:

2 980.04 (3) If the court determines after a hearing that there is probable cause to believe
3 that the person named in the petition is a sexually violent person, the court shall order that the
4 person be taken into custody if he or she is not in custody and shall order the person to be
5 transferred within a reasonable time to an appropriate facility specified by the department for
6 an evaluation by the department as to whether the person is a sexually violent person. If the
7 court determines that probable cause does not exist to believe that the person is a sexually
8 violent person, the court shall dismiss the petition.

9 **SECTION 91.** 980.05 (1) of the statutes is amended to read:

10 980.05 (1) A trial to determine whether the person who is the subject of a petition under
11 s. 980.02 is a sexually violent person shall commence no later than ~~45~~ 90 days after the date
12 of the probable cause hearing under s. 980.04. The court may grant ~~a continuance~~ one or more
13 continuances of the trial date for good cause upon its own motion, the motion of any party or
14 the stipulation of the parties.

NOTE: Revises s. 980.05 (1), stats., to require the trial to commence no later than **90 days** after the probable cause hearing (45 days under current law) and permits the court to grant one or more continuances of the trial date for good cause (current law permits granting "a continuance").

1 **SECTION 92.** 980.05 (1m) of the statutes is repealed.

NOTE: Specifies, by repealing s. 980.05 (1m), that constitutional rights available to a defendant in a criminal proceeding are not necessarily available to the person who is the subject to an SVP commitment petition. Current s. 980.05 (1m), stats., specifies that: (1) at the trial to determine whether the person is a “sexually violent person”, all rules of evidence in criminal actions apply; and (2) all constitutional rights available to a defendant in a criminal proceeding are available to the person.

2 **SECTION 93.** 980.05 (2m) of the statutes is created to read:

3 980.05 **(2m)** (a) At a jury trial under this section, juries shall be selected and treated in
4 the same manner as they are selected and treated in civil actions in circuit court, except that,
5 notwithstanding s. 805.08 (3), each party shall be entitled to 4 peremptory challenges or, if the
6 court orders additional jurors to be selected under s. 805.08 (2), to 5 peremptory challenges.
7 A party may waive in advance any or all of its peremptory challenges and the number of jurors
8 called under par. (b) shall be reduced by this number.

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

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

NOTE: Revises *current law* specifying that: (1) the person who is the subject of an SVP commitment petition, the person's attorney, DOJ, or the DA may request that the trial be to a jury of 12 in order to determine whether the person who is the subject of a commitment petition is an SVP; (2) the court may also, on its own motion, require that the trial be to a jury of 12; and (3) a verdict of a jury is not valid unless it is unanimous.

The *draft* creates s. 980.05 (2m) to provide:

1. For a jury of 12, but the parties may stipulate to a smaller number of jurors.

2. That juries must be selected and treated in the same manner as they are selected and treated in civil actions in circuit court, except that each party is entitled to 4 peremptory challenges (instead of 3, as for other civil actions), unless fewer jurors are to serve on the jury.

1 **SECTION 94.** 980.05 (3) (a) of the statutes is amended to read:

2 980.05 (3) (a) At a trial on a petition under this chapter, the petitioner has the burden
3 of proving the allegations in the petition beyond a reasonable doubt that the person who is the
4 subject of the petition is a sexually violent person.

NOTE: Revises s. 980.05 (3) to clarify that in a trial under ch. 980, the petitioner's burden is to prove beyond a reasonable doubt *that the person is an SVP* (and not the general "allegations in the petition" under current law).

5 **SECTION 95.** 980.05 (3) (b) of the statutes is amended to read:

6 980.05 (3) (b) If the state alleges that the sexually violent offense or act that forms the
7 basis for the petition was an act that was sexually motivated as provided in s. 980.01 (6) (b)
8 or (bm), the state is required to prove beyond a reasonable doubt that the alleged sexually
9 violent act was sexually motivated.

10 **SECTION 96.** 980.07 (1) of the statutes is renumbered 980.07 (1) (intro.) and amended
11 to read:

12 980.07 (1) (intro.) If a person ~~has been~~ is committed under s. 980.06 and has not been
13 discharged under s. 980.09 or 980.093, the department shall conduct an examination of his or

1 her mental condition within ~~6~~ 12 months after ~~an~~ the date of the initial commitment order under
2 s. 980.06 and again thereafter at least once each 12 months ~~for the purpose of determining to~~
3 determine whether the person has made sufficient progress for the court to consider whether
4 the person should be placed on supervised release or discharged. At the time of a
5 reexamination under this section, the person who has been committed may retain or seek to
6 have the court appoint ~~an~~ any of the following:

7 (a) An examiner as provided under s. 980.03 (4) 980.031 (3), except that the court is
8 not required to appoint an examiner if supervised release or discharge is supported by the
9 examination conducted by the department. The county shall pay the costs of an examiner
10 appointed under this paragraph as provided under s. 51.20 (18) (a).

NOTE: Provides that a court is not required to appoint an examiner at the request of a petitioner for supervised release when supervised release or discharge is supported by the examination conducted by DHFS. See, also, NOTE to SEC. 100.

11 **SECTION 97.** 980.07 (1) (b) of the statutes is created to read:

12 980.07 (1) (b) An attorney as provided under s. 980.03 (2) (a).

13 **SECTION 98.** 980.07 (1g) of the statutes is created to read:

14 980.07 (1g) Any examiners under this section shall have reasonable access to the person
15 for purposes of examination and to the person's past and present treatment records, as defined
16 in s. 51.30 (1) (b), and patient health care records, as provided under s. 146.82 (2) (c).

17 **SECTION 99.** 980.07 (1m) of the statutes is created to read:

18 980.07 (1m) At the time for any examination under sub. (1), the department shall
19 prepare a treatment report based on its treating professionals' evaluation of the person and
20 shall provide a copy of the report to any examiner conducting an examination under sub. (1).
21 The report shall consider all of the following:

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

3 (b) Whether the person has made significant progress in treatment or has refused
4 treatment.

5 (c) The ongoing treatment needs of the person.

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

NOTE: See the NOTE to SEC. 100.

8 **SECTION 100.** 980.07 (2) of the statutes is amended to read:

9 980.07 (2) Any examiner conducting an examination under ~~this section~~ sub. (1) shall
10 prepare a written report of the examination no later than 30 days after the date of the
11 examination. The examiner shall place a copy of the report in the person's medical records
12 and shall provide a copy of the report to the department. The report shall include an assessment
13 of the risk that the person will reoffend, whether the risk can be safely managed in the
14 community if reasonable conditions of supervision and security are imposed, and whether the
15 treatment that the person needs is available in the community. The department shall then send
16 the treatment report, the written examination report, and a written statement from the
17 department recommending continued institutional care, supervised release, or discharge to the
18 court that committed the person under s. 980.06. A copy of each report and the department's
19 recommendation shall be provided also to the district attorney or department of justice,
20 whichever is applicable, and to the person's attorney as soon as he or she is retained or
21 appointed. If the department concludes that the person does not meet the criteria for
22 commitment as a sexually violent person, the department shall petition for discharge in
23 accordance with the provisions of s. 980.09 (1).

NOTE: Revises, in SECS. 96 to 100, *current law* requiring DHFS to conduct an examination of the mental condition of each person who has been committed as an SVP within 6 months of the initial commitment and every 12 months thereafter to determine whether the person has made sufficient progress for the court to consider whether the person should be placed on supervised release or discharged. Current law requires any examiner conducting an examination to prepare a written report of the examination no later than 30 days after the date of the examination, and requires the report to be placed in the person's medical records and a copy must be given to the court.

Under the *draft*:

1. DHFS must conduct the examination *within 12 months* after the date of the initial commitment order and every 12 months thereafter.
2. At the time of the examination, DHFS must prepare a treatment report based on its treating professionals' evaluation of: (a) the specific factors associated with the person's risk for committing another sexually violent offense; (b) whether the person has made significant progress in treatment or has refused treatment; (c) the ongoing treatment needs of the person; and (d) any specialized needs or conditions associated with the person that must be considered in future treatment planning. A copy of the report must be given to the examiner.
3. The examiner's report must include an assessment of the risk that the person will re-offend, whether the risk can be safely managed in the community if reasonable conditions of supervision and security are imposed, and whether the treatment that the person needs is available in the community. The report must be prepared no later than 30 days after the date of the examination and must be provided to DHFS.
4. DHFS must send the treatment report, the written examination report, and a written statement from DHFS recommending either continued institutional care, supervised release, or discharge to the court. Copies of these documents must also be provided to the DA or DOJ and to the person's attorney.
5. If the report concludes that the person does not meet the criteria for commitment as an SVP, DHFS must petition for discharge.

1 **SECTION 101.** 980.07 (3) of the statutes is amended to read:
 2 980.07 (3) Notwithstanding sub. (1), the court that committed a person under s. 980.06
 3 may order a reexamination of the person at any time during the period in which the person is

1 subject to the commitment order. Any report ordered under this subsection shall conform to
2 subs. (1m) and (2).

3 **SECTION 102.** 980.07 (4) to (7) of the statutes are created to read:

4 980.07 (4) (a) Within 30 days after the filing of the reexamination report, treatment
5 report, and recommendation under this section, the person subject to the commitment, the
6 district attorney, or the department of justice, whichever is applicable, may object to the
7 department's recommendation under sub. (2) by filing a written objection with the court.

8 (b) If no timely objection is filed under par. (a), one of the following applies:

9 1. If the department's recommendation under sub. (2) is for continued institutional care,
10 the department's recommendation shall be implemented without a hearing.

11 2. If the department's recommendation under sub. (2) is for supervised release or
12 discharge, the court shall proceed under sub. (7) or s. 980.09.

13 (5) (a) If the person files a timely objection without counsel, the court shall serve a copy
14 of the objection and any supporting documents on the district attorney or department of
15 justice, whichever is applicable. If the person objects through counsel, his or her attorney shall
16 serve the district attorney or department of justice, whichever is applicable. If the district
17 attorney or department of justice objects, it shall serve the person or his or her counsel.

18 (b) If the person filing an objection is requesting discharge, the court may not proceed
19 under sub. (7). The court may proceed under s. 980.093 if the person files a petition under that
20 section.

21 (6) The district attorney or department of justice, whichever is applicable, may employ
22 experts or professional persons to support or oppose any recommendation.

23 (6m) Subject to s. 980.03 (2) (a), the court, before proceeding under sub. (7), shall refer
24 the matter to the authority for indigency determinations under s. 977.07 (1) and appointment

1 of counsel under s. 977.05 (4) (j) if the person is not represented by counsel. The determination
2 of indigency and the appointment of counsel shall be done as soon as circumstances permit.

3 (7) (a) Except as provided in subs. (4) (b) 1. and (5) (b), unless the department
4 recommends discharge, the court, without a jury, shall hold a hearing to determine whether
5 to authorize supervised release. The court shall hold the hearing within 30 days after the date
6 on which objections are due under sub. (4), unless the petitioner waives this time limit.
7 Expenses of proceedings under this subsection shall be paid as provided under s. 51.20 (18)
8 (b), (c), and (d).

9 (am) The department of justice shall represent the department of health and family
10 services at any hearing under this subsection unless the departments have adverse interests.
11 If the departments have adverse interests, the department of health and family services shall
12 be represented at the hearing by its agency counsel or by an attorney that it retains.

13 (b) The court shall determine from all of the evidence whether to continue institutional
14 care and, if not, what the appropriate placement would be for the person while on supervised
15 release. In making a decision under this subsection, the court may consider, without limitation
16 because of enumeration, the nature and circumstances of the behavior that was the basis of the
17 allegation in the petition under s. 980.02 (2) (a), the person's mental history and present mental
18 condition, whether the person has demonstrated significant progress in his or her treatment,
19 whether the person has refused treatment, and, if the court were to authorize supervised
20 release, where the person would live, how the person would support himself or herself, and
21 what arrangements would be available to ensure that the person would have access to and
22 would participate in necessary treatment.

23 (bm) The court shall select a county to prepare a report under par. (c). Unless the court
24 has good cause to select another county, the court shall select the person's county of residence.

1 A preliminary decision by the court under this paragraph or under par. (cm) to refer a case to
2 a county department or the court's failure to make such a decision shall not affect the court's
3 power to authorize or not authorize supervised release under this subsection.

4 (c) The court shall order the county department under s. 51.42 in the county of intended
5 placement to prepare a report, either independently or with the department of health and
6 family services, identifying prospective residential options for community placement. In
7 identifying prospective residential options, the county department shall consider the
8 proximity of any potential placement to the residence of other persons on supervised release
9 and to the residence of persons who are in the custody of the department of corrections and
10 regarding whom a sex offender notification bulletin has been issued to law enforcement
11 agencies under s. 301.46 (2m) (a) or (am). The county department shall complete its report
12 within 30 days following the court order.

13 (cm) If the court determines that the prospective residential options identified in the
14 report under par. (c) are inadequate, the court shall select another county to prepare a report
15 under par. (c).

16 (d) The court may order that a person be placed on supervised release only if it finds,
17 based on all of the reports, trial records, and evidence presented, that all of the following apply:

18 1. The person who will be placed on supervised release:

19 a. Has made sufficient progress in treatment such that the risk that the person will
20 reoffend can be safely managed in the community and the person's treatment progress can be
21 sustained in the community; and

22 b. The person's risk for reoffense has been reduced to a level that it is not likely that the
23 person will reoffend if so placed.

1 2. There is treatment reasonably available in the community and the person who will
2 be placed on supervised release will be treated by a provider who is qualified to provide the
3 necessary treatment in this state.

4 3. The provider presents a specific course of treatment for the person who will be placed
5 on supervised release, agrees to assume responsibility for the person's treatment, agrees to
6 comply with the rules and conditions of supervision imposed by the court and the department,
7 agrees to report on the person's progress to the court on a regular basis, and agrees to report
8 any violations of supervised release immediately to the court the department of justice or the
9 district attorney, as applicable.

10 4. The person who will be placed on supervised release has housing arrangements that
11 are sufficiently secure to protect the community, and the person or agency that is providing
12 the housing to the person who will be placed on supervised release agrees in writing to the
13 following conditions:

14 a. To accept the person who will be placed supervised release.

15 b. To provide or allow for the level of safety that the court requires.

16 c. To immediately report to the court and the department of justice or the district
17 attorney, as applicable, any unauthorized absence of the person who will be placed on
18 supervised release from the housing arrangement to which the person has been assigned. This
19 subd. 4. c. does not apply unless the person or agency that is providing the housing is a state
20 or local government agency or is licensed by the department.

21 5. The person who will be placed on supervised release will comply with the provider's
22 treatment requirements and all of the requirements that are imposed by the department and the
23 court.

1 6. The department has made provisions for the necessary services, including sex
2 offender treatment, other counseling, medication, community support services, residential
3 services, vocational services, and alcohol or other drug abuse treatment.

4 7. The degree of supervision and ongoing treatment needs of the person required for
5 the safe management of the person in the community can be provided through the allocation
6 of a reasonable level of resources.

NOTE: Creates new s. 980.07 (4) to (7) revising current law relating to requests for supervised release. Under *current law*:

1. A person who is committed as an SVP may petition the committing court to authorize supervised release if at least 18 months have elapsed since the initial commitment order was entered or at least 6 months have elapsed since the most recent release petition was denied or the most recent order for supervised release was revoked. The director of the facility at which the person is placed may petition on the person's behalf at any time.

2. Within 20 days after receiving the petition, the court must appoint one or more examiners who have specialized knowledge determined by the court to be appropriate, who must examine the person and furnish a written report to the court within 30 days after the appointment. If any examiner believes that the person is appropriate for supervised release, the examiner must report on the type of treatment and services that the person may need while in the community on supervised release.

3. The court, without a jury, must hear the petition within 30 days after the examiner's report is filed, unless the time limit is waived by the petitioner.

4. The court must grant the petition unless the state proves by clear and convincing evidence that: (a) it is still likely that the person will engage in acts of sexual violence if the person is not continued in institutional care; or (b) the person has not demonstrated significant progress in his or her treatment or the person has refused treatment.

5. In making this decision, the court may consider: (a) The nature and circumstances of the behavior that was the basis of the allegation in the petition to commit the person; (b) the person's mental history and present mental condition; (c) where the person will live; (d) how the person will support himself or herself; and (e) what arrangements are available to ensure that the person has access to and will participate in

necessary treatment, including pharmacological treatment if the person is a serious child sex offender.

6. If the court finds that the person is appropriate for supervised release, the court must notify DHFS. DHFS must make its best effort to arrange for placement of the person in a residential facility or dwelling that is in the person's county of residence.

7. DHFS and the county department in the county of residence must prepare a plan that does all of the following: (a) identifies the treatment and services, if any, that the person will receive in the community; (b) addresses the person's need, if any, for supervision, counseling, medication, community support services, residential services, vocational services, and AODA treatment; and (c) specifies who will be responsible for providing the treatment and services identified in the plan.

8. The plan must be presented to the court for its approval within 60 days after the court finding that the person is appropriate for supervised release, unless DHFS, the county department, and the person request additional time to develop the plan.

The *draft* creates a new process for granting supervised release. As noted above, DHFS must recommend continued institutional care, supervised release, or discharge through the reexamination process. The new process is:

1. Within 30 days after the filing of the reexamination report, treatment report, and DHFS recommendation, the person subject to the SVP commitment, the DA, or DOJ, may object to the recommendation by filing a written objection with the court.

2. If DHFS's recommendation is continued institutional care, and there is no objection, the recommendation is implemented without a hearing. If DHFS recommends discharge or the person files an objection requesting discharge, the court shall proceed with determining whether discharge is appropriate. Otherwise the court, without a jury, must hold a hearing to determine whether to authorize supervised release within 30 days after the date on which objections are due, unless the time limit is waived by the petitioner.

3. The court must determine from all of the evidence whether to continue institutional care and, if not, what the appropriate placement would be for the person while on supervised release. As under current law, in making this decision, the court may consider the following: (a) the nature and circumstances of the behavior that was the basis of the allegation in the commitment petition; (b) the person's mental history and present mental condition; (c) the person's progress in treatment; (d)

the person's refusal to participate in treatment; and (e) if the court were to authorize supervised release, where the person would live, how the person would support himself or herself, and what arrangements would be available to ensure that the person would have access to and would participate in treatment.

4. The court must select a county to prepare a report on the person's prospective residential options. Unless the court has good cause to select another county, the court must select the person's county of residence.

5. The court must order the county department in the county of intended placement to prepare the report, either independently or with DHFS, identifying prospective residential options. In identifying prospective residential options, the county department must consider the proximity of any potential placement to the residence of other persons on supervised release and to the residence of persons who are in the custody of DOC and regarding whom a sex offender notification bulletin has been issued. The county department must complete its report within 30 days following the court order.

6. If the court determines that the prospective residential options identified in the report are inadequate, the court must select one or more other counties to prepare a report.

7. The court may order that a person be placed on supervised release if it finds that all of the following apply:

a. The person who will be placed on supervised release: (1) has made sufficient progress in treatment such that the risk that the person will reoffend can be safely managed in the community and the progress can be sustained; and (2) the person's risk for reoffense has been reduced to a level that it is not likely that the person will reoffend if so placed.

b. That there is treatment reasonably available in the community and the person who will be placed on supervised release will be treated by a provider who is qualified to provide the necessary treatment in this state.

c. The provider presents a specific course of treatment for the person who will be placed on supervised release, agrees to assume responsibility for the person's treatment, agrees to comply with the rules and conditions of supervision imposed by the court and DHFS, agrees to report on the person's progress to the court on a regular basis, and agrees to report any violations of supervised release immediately to the court, DOJ, or the DA, as applicable.

d. The person who will be placed on supervised release has housing arrangements that are sufficiently secure to protect the community, and the person or agency that is providing the housing to the person agrees in

writing to accept the person, provide or allow for the level of safety the court requires, and, if the person or agency providing the housing is a state or local government agency or is licensed by DHFS, immediately report to the court and DOJ or the DA, as applicable, any unauthorized absence of the person from the housing arrangement.

e. The person who will be placed on supervised release will comply with the provider's treatment requirements and all of the requirements that are imposed by DHFS and the court.

f. DHFS has made provisions for the necessary services, including sex offender treatment, other counseling, medication, community support services, residential services, vocational services, and AODA treatment.

g. The degree of supervision and ongoing treatment needs of the person required for the safe management of the person in the community can be provided through the allocation of a reasonable level of resources.

1 **SECTION 103.** 980.08 of the statutes is repealed and recreated to read:

2 **980.08 Supervised release; procedures, implementation, revocation.** (1) If the
3 court determines under s. 980.07 (7) that supervised release is appropriate, the court shall
4 order the county department under s. 51.42 in the county of intended placement to assist the
5 department of health and family services in implementing the supervised release placement.

6 (2) The department shall file with the court any additional rules of supervision not
7 inconsistent with the rules or conditions imposed by the court within 10 days of imposing the
8 rule.

9 (3) If the department wishes to change a rule or condition of supervision imposed by
10 the court, it must obtain the court's approval.

11 (4) An order granting supervised release places the person in the care, control, and
12 custody of the department. The department shall arrange for the care, control, and treatment
13 of the person in the least restrictive manner consistent with the requirements of the person and
14 in accordance with the order for supervised release. Before a person is actually released under
15 this section, the court shall notify the municipal police department and county sheriff for the

1 municipality and county in which the person will be residing. The notification requirement
2 under this subsection does not apply if a municipal police department or county sheriff submits
3 to the court a written statement waiving the right to be notified.

4 (5) (a) If the department concludes that a person on supervised release, or awaiting
5 placement on supervised release, violated or threatened to violate a rule of supervised release,
6 it may petition for revocation of the order granting supervised release. The department may
7 also detain the person.

8 (b) If the department concludes that a person on supervised release, or awaiting
9 placement on supervised release, is a threat to the safety of others, it shall detain the person
10 and petition for revocation of the order granting supervised release.

11 (c) If the department concludes that the order granting supervised release should be
12 revoked, it shall file a statement alleging the violation and a petition to revoke the order for
13 supervised release with the committing court and provide a copy of each to the regional office
14 of the state public defender responsible for handling cases in the county where the committing
15 court is located. If the department has detained the person under par. (a) or (b), the department
16 shall file the statement and the petition and provide them to the state public defender within
17 72 hours after the detention, excluding Saturdays, Sundays, and legal holidays. The court shall
18 refer the matter to the authority for indigency determinations under s. 977.07 (1) and
19 appointment of counsel under s. 977.05 (4) (j). The determination of indigency and the
20 appointment of counsel shall be done as soon as circumstances permit.

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

1 (6) (a) If the court finds after a hearing, by clear and convincing evidence, that any rule
2 has been violated and the court finds that the violation of the rule merits the revocation of the
3 order granting supervised release, the court may revoke the order for supervised release and
4 order that the person be placed in institutional care. The person shall remain in institutional
5 care until he or she is discharged from the commitment or again placed on supervised release.

6 (b) If the court finds after a hearing, by clear and convincing evidence, that the safety
7 of others requires that supervised release be revoked, the court shall revoke the order granting
8 supervised release and order that the person be placed in institutional care. The person shall
9 remain in institutional care until he or she is discharged from the commitment or again placed
10 on supervised release.

NOTE: Revises, by repealing and recreating s. 980.08, stats., current law relating to supervision of persons on supervised release. Under *current law*:

1. An order for supervised release places the person in the custody and control of DHFS. DHFS must 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. A person on supervised release is subject to the conditions set by the court and to DHFS rules.

2. If DHFS alleges that a person has violated any condition or rule, or that the safety of others requires that supervised release be revoked, he or she may be taken into custody under DHFS rules. DHFS must submit a statement showing probable cause of the detention and a petition to revoke the order for supervised release to the committing court and the regional office of the state public defender responsible for handling cases for that court's county within 72 hours after the detention.

3. The court must hear the petition within 30 days, unless the deadline is waived by the detained person. The state has the burden of proving by clear and convincing evidence that any rule or condition of release has been violated or that the safety of others requires that supervised release be revoked. If the court determines that any rule or condition of release has been violated or that the safety of others requires that supervised release be revoked, it may revoke the order for supervised release and order that the person be placed in an appropriate institution.

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

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

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

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

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

1 **SECTION 104.** 980.09 (title) of the statutes is amended to read:

2 **980.09 (title) Petition for discharge; procedure with department's approval.**

3 **SECTION 105.** 980.09 (1) (title) of the statutes is repealed.

4 **SECTION 106.** 980.09 (1) (a) of the statutes is renumbered 980.09 (1) and amended to
5 read:

6 980.09 (1) If the secretary department determines at any time that a person committed
7 under this chapter is ~~no longer~~ does not meet the criteria for commitment as a sexually violent
8 person, the secretary department shall ~~authorize the person to~~ petition the committing court

1 for discharge. The ~~person~~ department shall file the petition with the court and serve a copy
2 upon the department of justice or the district attorney's office that filed the petition under s.
3 980.02 (1), whichever is applicable. The court, upon receipt of the petition for discharge, shall
4 order a hearing to be held within ~~45~~ 90 days after the date of receipt of the petition.

NOTE: Amends s. 980.09 (1) to:

1. Change the time limit for a hearing on a DHFS petition for discharge from within 45 days to within 90 days (after the date of receipt of the petition).

2. Require DHFS, not the person committed, to file the petition when the department determines that the person does not meet the criteria of an SVP.

5 **SECTION 107.** 980.09 (1) (b) of the statutes is renumbered 980.09 (2m) and amended
6 to read:

7 980.09 (2m) At a hearing under this ~~subsection~~ section, the district attorney or the
8 department of justice, whichever filed the original petition, shall represent the state and shall
9 have the right to have the petitioner examined by an expert or professional person of his, her
10 or its choice. ~~The hearing shall be before the court without a jury.~~ The state has the burden
11 of proving by clear and convincing evidence that the petitioner ~~is still~~ currently meets the
12 criteria for commitment as a sexually violent person.

13 **SECTION 108.** 980.09 (1) (c) of the statutes is renumbered 980.09 (3) and amended to
14 read:

15 980.09 (3) If the court is satisfied that the state has not met its burden of proof under
16 ~~par. (b) sub. (2m)~~, the petitioner shall be discharged from the custody ~~or supervision~~ of the
17 department. If the court is satisfied that the state has met its burden of proof under ~~par. (b) sub.~~
18 (2m), the court may proceed under 980.07 (7) (b) to (d) to determine, ~~using the criterion~~

1 ~~specified in s. 980.08 (4)~~, whether to modify the petitioner's existing commitment order by
2 authorizing supervised release.

3 **SECTION 109.** 980.09 (2) of the statutes is repealed.

NOTE: Repeals the current provision regarding a discharge petition brought without the approval of DHFS. See the NOTE to SEC. 109 for the replacement to s. 980.09 (2).

4 **SECTION 110.** 980.093 of the statutes is created to read:

5 **980.093 Petition for discharge without department's approval. (1) PETITIONS IN**
6 **GENERAL.** A committed person may petition the committing court for discharge without the
7 department's approval. The court shall deny the petition under this section without a hearing
8 unless the petition alleges facts from which the court or jury may conclude the person's
9 condition has changed so that the person does not meet the criteria for commitment as a
10 sexually violent person.

11 **(2) COURT REVIEW OF PETITION.** The court shall review the petition within 30 days and
12 the court may hold a hearing to determine if it contains facts from which the court or jury may
13 conclude that the person does not meet the criteria for commitment as a sexually violent
14 person. In determining under this subsection whether facts exist that might warrant such a
15 conclusion, the court shall consider any current or past reports filed under s. 980.07, relevant
16 facts and arguments in the petition and in the state's written response, arguments of counsel,
17 and any supporting documentation provided by the person or the state. If the court determines
18 that the petition does not contain facts from which a court or jury may conclude that the person
19 does not meet the criteria for commitment, the court shall deny the petition.

20 **(3) HEARING.** The court shall hold a hearing within 90 days of the determination that
21 the petition contains facts from which the court or jury may conclude that the person does not
22 meet the criteria for commitment as a sexually violent person. The state has the burden of

1 proving by clear and convincing evidence that the person meets the criteria for commitment
2 as a sexually violent person.

3 (4) DISPOSITION. If the court or jury is satisfied that the state has not met its burden of
4 proof under sub. (3), the petitioner shall be discharged from the custody of the department.

5 If the court or jury is satisfied that the state has met its burden of proof under sub. (3), the court
6 may proceed under s. 980.07 (7) (b) to (d) to determine whether to modify the petitioner's
7 existing commitment order by authorizing supervised release.

NOTE: Creates new s. 980.093 revising the current law relating to discharge from commitment. Under *current law*:

1. If the secretary of DHFS determines at any time that a person is no longer an SVP, the secretary must authorize the person to petition the committing court for discharge. The court must hold a hearing within 45 days after receipt of the petition. The hearing must be before the court without a jury. The state has the burden of proving by clear and convincing evidence that the person is still an SVP.

2. If the court is satisfied that the state has not met its burden of proof, the petitioner must be discharged from the custody and supervision of DHFS. If the court is satisfied that the state has met its burden, the court may proceed to determine whether to modify the person's existing commitment order by authorizing supervised release.

3. A person may also petition the court for discharge from custody or supervision without the approval of the secretary of DHFS.

4. At the time of the person's reexamination, the secretary of DHFS must provide the person with written notice of the person's right to petition for discharge over the secretary's objections. If the person does not affirmatively waive the right to petition, the court must set a probable cause hearing to determine whether facts exist that warrant a hearing on whether the person is still an SVP.

5. If the court determines at the probable cause hearing that probable cause exists to believe that the committed person is no longer an SVP, the court must set a hearing on the issue. The hearing must be to the court. The state has the right to have the person evaluated by experts chosen by the state. The state has the burden of proving by clear and convincing evidence that the committed person is likely to engage in acts of sexual violence or has not made significant progress in treatment or

has refused treatment. If the court is satisfied that the state has not met its burden of proof, the petitioner must be discharged from the custody and supervision of DHFS. If the court is satisfied that the state has met its burden, the court may proceed to determine whether to modify the person's existing SVP commitment order by authorizing supervised release.

The *draft* modifies the provisions relating to petitions for discharge that do not have DHFS's approval as follows:

1. The court must deny the petition without a hearing unless the petition alleges facts from which the court may conclude that the person's condition has changed so that the person does not meet the criteria for commitment as an SVP. In determining whether such facts exist, the court must consider any current or past reports filed in connection with a reexamination, relevant facts and arguments in the petition and in the state's written response, arguments of counsel, and any supporting documentation provided by the person or the state.

2. The court must hold a hearing within 90 days of the determination that the petition contains facts from which the court may conclude that the person does not meet the criteria for commitment as an SVP. Upon request, the hearing may be to a jury of 6. A verdict must be agreed to by at least 5 of the 6 jurors. The state has the burden of proving by clear and convincing evidence that the person meets the criteria for commitment. The substitute amendment specifies that the general rules of evidence are inapplicable at such hearings.

3. If the court is satisfied that the state has not met its burden of proof, the petitioner must be discharged from the custody and supervision of DHFS. If the court is satisfied that the state has met its burden, the court may proceed to determine whether to modify the person's existing commitment order by authorizing supervised release.

1 **SECTION 111.** 980.095 of the statutes is created to read:

2 **980.095 Procedures for discharge hearings. (1) USE OF JURIES.** (a) The district
3 attorney or the department of justice, whichever filed the original petition, or the petitioner
4 or his or her attorney may request that a hearing under s. 980.093 or 980.096 be to a jury of
5 6. A jury trial is deemed waived unless it is demanded within 10 days of the filing of the
6 petition for discharge.

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

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

9 (2) DEPARTMENT'S RIGHT TO BE HEARD. The department of justice shall represent the
10 department of health and family services at any discharge hearing unless the departments have
11 adverse interest. If the departments have adverse interests, the department of health and
12 family services shall be represented at the hearing by its agency counsel or an attorney that
13 it retains.

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

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

NOTE: Creates new s. 980.095 providing for a separate jury requirement for discharge hearings. Specifically, the DA or DOJ, whichever filed the original petition, or the petitioner may request that the discharge hearing be to a jury of 6. A jury trial is deemed waived unless it is demanded within 10 days after the filing of the petition for discharge. No verdict is valid unless it is agreed to by at least 5 of the jurors. See, also, the NOTE to SEC. 110.

18 **SECTION 112.** 980.10 of the statutes is repealed.

NOTE: Repeals a provision granting an additional method by which a committed person may petition a committing court for discharge at any time. However, under this provision, if a person has previously filed a

petition for discharge without the secretary's approval and the court determined that the petition was frivolous or that the petitioner remained an SVP, than the court was required to deny any subsequent petition without a hearing until the petition contained facts upon which a court could find that the condition of the person had so changed that a hearing was warranted.

1 **SECTION 113.** 980.101 (2) (a) of the statutes is amended to read:

2 980.101 (2) (a) If the sexually violent offense was the sole basis for the allegation under
3 s. 980.02 (2) (a) and there are no other judgments relating to a sexually violent offense
4 committed by the person, the court shall reverse, set aside, or vacate the judgment under s.
5 980.05 (5) that the person is a sexually violent person, vacate the commitment order, and
6 discharge the person from the custody ~~or supervision~~ of the department.

7 **SECTION 114.** 980.11 (2) (intro.) of the statutes is amended to read:

8 980.11 (2) (intro.) If the court places a person on supervised release under s. 980.08 or
9 discharges a person under s. 980.09 or ~~980.10~~ 980.093, the department shall do all of the
10 following:

11 **SECTION 115.** 980.12 (1) of the statutes is amended to read:

12 980.12 (1) Except as provided in ss. ~~980.03 (4)~~ 980.031 (3) and 980.08 (3), the
13 department shall pay from the appropriations under s. 20.435 (2) (a) and (bm) for all costs
14 relating to the evaluation, treatment, and care of persons evaluated or committed under this
15 chapter.

16 **SECTION 116.** 980.14 (title) of the statutes is created to read:

17 **980.14 (title) Immunity.**

18 **SECTION 117.** 980.14 (1) of the statutes is created to read:

19 980.14 (1) In this section, "agency" means the department of corrections, the
20 department of health and family services, the department of justice, or a district attorney.

NOTE: See the NOTE to SEC. 71.

1 **SECTION 118. Initial applicability.**

2 (1) This act first applies to reviews regarding detention and probable cause hearings
3 under section 980.04 of the statutes, as affected by this act, and trials under section 980.05 of
4 the statutes, as affected by this act, that are based on a petition filed under s. 980.02 of the
5 statutes, as affected by this act, on the effective date of this subsection.

6 (2) This act first applies to periodic reexaminations conducted under section 980.07 of
7 the statutes, as affected by this act, begun on the effective date of this subsection and to court
8 proceedings resulting from those reexaminations.

9 (3) This act first applies to proceedings to revoke supervised release under section
10 980.08 (5) of the statutes, as affected by this act, that are commenced on the effective date of
11 this subsection, except that the treatment of section 980.08 (5) of the statutes, with respect to
12 where a person may be detained while a petition to revoke supervised release is pending, first
13 applies to a person whose detention commences on the effective date of this subsection.

14 (4) This act first applies to discharge proceedings commenced on the effective date of
15 this subsection.

16 **SECTION 119. Effective date.**

17 (1) This act takes effect on the first day of the 2nd month beginning after publication.

18 **(END)**