

A detailed black and white illustration of the Wisconsin State Capitol building, featuring a large central dome topped with a statue, and a portico with columns in the foreground.

Joint Legislative Council's Report of the Special Committee on Supervised Release and Discharge of Sexually Violent Persons

[2013 Assembly Bill 28]

February 19, 2013

JLCR 2013-03

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SPECIAL COMMITTEE ON SUPERVISED RELEASE AND DISCHARGE OF SEXUALLY VIOLENT PERSONS

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PART I

KEY PROVISIONS OF COMMITTEE RECOMMENDATION

The Joint Legislative Council recommends the following for introduction in the 2013-14 Session of the Legislature.

2013 ASSEMBLY BILL 28, RELATING TO CRITERIA FOR SUPERVISED RELEASE FROM COMMITMENT AS SEXUALLY VIOLENT PERSONS, PLACEMENT OF FEMALES COMMITTED AS SEXUALLY VIOLENT PERSONS, PERMITTED OUTINGS UNDER DIRECT SUPERVISION FOR INDIVIDUALS ON SUPERVISED RELEASE, AND SUPERVISED RELEASE AND DISCHARGE OF PERSONS COMMITTED AS SEXUALLY VIOLENT PERSONS

2013 Assembly Bill 28 makes various changes to the discharge and supervised release provisions of ch. 980, Stats. These changes include the following:

- Assigning the burden of proof regarding supervised release criteria to the petitioner.
- Extending the timelines within which a court must hold a supervised release hearing or discharge trial.
- Altering the pleading requirement a petitioner must meet before receiving a discharge trial.
- Repealing s. 980.075, Stats., relating to the supervised release and discharge petition process, and relocating certain provisions to the statutory sections specifically relating to supervised release and discharge.
- Requiring a court to make a supervised release determination after denying discharge at a discharge trial.
- Requiring a delay of up to 10 days for the execution of a court order granting discharge to a committed individual.
- Altering the criteria which a committed person must show before a court may grant supervised release.
- Expanding the list of activities for which a committed person on supervised release may leave his or her residence under the direct supervision of a Department of Corrections escort.

The Special Committee on Supervised Release and Discharge of Sexually Violent Persons also recommends that the Legislature do the following:

- Study the requirement that individuals discharged from ch. 980 commitments be subject to lifetime GPS tracking.

Identify the causes and challenges of placing sexually violent persons (SVPs) on supervised release in Milwaukee County.

PART II

COMMITTEE ACTIVITY

ASSIGNMENT

The Joint Legislative Council established the Special Committee on Supervised Release and Discharge of Sexually Violent Persons and appointed the chairperson by an April 24, 2012 mail ballot. The committee was directed to review the current process for granting supervised release and discharging persons who have been committed as sexually violent persons under ch. 980, Stats. The committee was charged with the following: determine what level of judicial input regarding the determination whether to grant a sexually violent person supervised release or discharge from a civil commitment under ch. 980 is appropriate; review the criteria for determining whether a person is fit for supervised release and determine whether this criteria should be modified; and review the criteria for determining whether a person should be discharged from his or her civil commitment to determine whether the criteria are appropriate.

Membership of the Special Committee, appointed by a May 31, 2012 mail ballot, consisted of two Senators, three Representatives, and nine public members. The final list of committee members is included as Appendix 3 to this report.

SUMMARY OF MEETINGS

The Special Committee held four meetings on the following dates:

August 8, 2012

September 19, 2012

October 4, 2012

November 14, 2012

At the August 8, 2012 meeting, the Special Committee heard invited testimony from the Wisconsin Department of Health Services (DHS) and the Wisconsin Department of Justice (DOJ) regarding ch. 980 supervised release and discharge.

The Special Committee received testimony from individuals employed at the Sand Ridge Secure Treatment Center, the facility in which individuals committed under ch. 980 are housed. Deborah McCulloch, Institution Director, and Lloyd Sinclair, Court Assessment and Community Program Director, provided background on SVP commitments and explained the role of DHS in the ch. 980 commitment process. The presenters addressed the criteria, historical experience, and current trends relating to discharge and supervised release of SVPs. Ms. McCulloch provided statistics regarding SVP commitments, discharges, and grants of supervised release and Mr. Sinclair addressed assessment of SVPs for risk of re-offending. Ms. McCulloch and Mr. Sinclair concluded their presentation by noting that most SVP re-offenses occur after discharge, rather than occurring while an SVP is on supervised release.

The Special Committee also received testimony from Michael Schaefer, Assistant Attorney General. Mr. Schaefer addressed the constitutionality of changes to the existing discharge and supervised release statutory scheme and commented on several potential revisions which the Special Committee could consider. He noted that any changes must balance the public interest with the needs of the individual and emphasized that if an individual no longer meets the standard for commitment, it is unconstitutional to continue holding that individual. Finally, Mr. Schaefer explained the generally applicable constitutional standards that must be considered when altering the current civil commitment scheme under ch. 980.

At the September 19, 2012 meeting, the Special Committee heard invited testimony from the Wisconsin Department of Corrections (DOC); Vincent Rust, Assistant State Public Defender, La Crosse Trial Office, Office of the Public Defender; and Holly Bunch, Assistant District Attorney, 980 Unit, Milwaukee County District Attorney's Office, regarding ch. 980 supervised release and discharge.

Grace Roberts, Director of Sex Offender Programs for the Division of Community Corrections, provided background on sex offenders and the role of DOC in the ch. 980 commitment process. Ms. Roberts provided statistics regarding sex offenders in Wisconsin, discussed the process used by DOC to recommend sex offenders for commitment under ch. 980, and described DOC's role in the supervised release of individuals committed under ch. 980. Ms. Roberts noted that offenders are more successful in the community if they have a stable residence, employment, chaperones, and offense-related programming. Ms. Roberts also explained GPS monitoring and displayed GPS equipment. She then commented that it is beneficial to the community if a committed individual is discharged from supervised release rather than being discharged from the ch. 980 commitment directly from an institution. Ms. Roberts further explained that supervised release allows the person to make re-entry plans, build life skills, gain employment, and participate in valuable programming.

Vincent Rust, Assistant State Public Defender, discussed the ch. 980 commitment process and the periodic review of these commitments. He provided information about the State Public Defender's (SPD) role in ch. 980 proceedings. Mr. Rust also spoke about the purpose and benefits of supervised release and provided recommendations to the Special Committee. He noted that the most difficult criterion for SVPs to satisfy when requesting supervised release is the requirement that the person show that he has made significant progress in treatment.

Holly Bunch, Assistant District Attorney, provided information about ch. 980 release mechanisms--supervised release and discharge--in addition to information about risk assessment tools and options for legislation. Ms. Bunch noted that supervised release is always preferable to discharge and provided the committee with options for legislation. Ms. Bunch expressed support for limiting an SVP's ability to seek discharge to once per year; providing prosecutors with greater means to obtain experts; shifting the burden of proof to the committed individual for discharge trials; and changing the pleading requirement to make it more difficult to obtain a discharge trial. In addition, Ms. Bunch stated her support for requiring supervised release before discharge and changing the "more likely than not" standard for ch. 980 commitment to a less rigorous standard.

Following testimony from invited speakers, Chair Strachota addressed options provided by DOJ at the August 8, 2012 meeting. At the Chair's request, Assistant Attorney General Michael Schaefer answered questions from committee members.

At the October 4, 2012 meeting, the Special Committee heard testimony from committee Public Member Judge Michael Bohren, Waukesha County Juvenile Court, and from Assistant Attorney General Michael Schaefer. The committee also discussed legislative options presented in Memo No. 1, *Options for Study Committee Consideration*, prepared by Legislative Council staff as a summary of proposals raised at previous meetings.

Judge Bohren provided a judicial perspective on ch. 980 supervised release and discharge proceedings and the proposed legislative options. He presented statistics regarding initial commitment, supervised release, and discharge filings in Waukesha County from 1994 to the present. Judge Bohren also provided his analysis of the legislative options before the committee.

At the conclusion of Judge Bohren's remarks, Mr. Schaefer distributed a DOJ memorandum to committee members and explained the legislative options it contained. Mr. Schaefer noted that the options were consistent with his understanding of the committee's objective--to determine whether an imbalance exists between supervised release and discharge, and if such an imbalance exists, to recommend changes so a court is more likely to order supervised release than discharge. Mr. Schaefer described many of the presented options as enacting procedural changes that would streamline the ch. 980 process and remove contradictions within the statutory language of the chapter. Following Mr. Schaefer's remarks, the committee requested that the DOJ proposals be drafted for consideration at the November 14, 2012 meeting.

Katie Bender-Olson and Michael Queensland, Wisconsin Legislative Council Staff Attorneys, summarized the contents of Memo No. 1 for committee members. Following the summary of each option, the committee discussed the option and indicated whether the committee wished to have draft legislation prepared. The committee asked that a number of proposals contained in Memo No. 1 be drafted for consideration at the November 14, 2012 meeting.

At the November 14, 2012 meeting, the Special Committee considered bill drafts that had been requested at the prior meeting. The drafts considered by the Special Committee included WLC: 0032/1, relating to supervised release and discharge proceedings; WLC: 0035/1, relating to petitions for supervised release; and WLC: 0034/1, relating to supervised release.

The Special Committee discussed the bill drafts and requested that WLC: 0032/1 and WLC: 0034/1 be combined into a single bill draft, with some modifications, and that the draft be submitted to the committee for approval by mail ballot. In addition, Chair Strachota stated that the committee's final report will indicate that placement of SVPs on supervised release is an ongoing problem that should be explored by the Legislature.

PART III

RECOMMENDATION INTRODUCED BY THE JOINT LEGISLATIVE COUNCIL

This part of the report provides background information on, and a description of, the bill as recommended by the Special Committee on Supervised Release and Discharge of Sexually Violent Persons and introduced by the Joint Legislative Council.

2013 ASSEMBLY BILL 28

Chapter 980 of the Wisconsin Statutes provides a statutory scheme for the involuntary civil commitment of individuals who have completed their criminal sentences and are determined to be “sexually violent persons.” Current law contains provisions for the supervised release or discharge of individuals committed under ch. 980.

Supervised release from ch. 980 commitment is a community placement option for individuals who are still under the custody and control of DHS. Before a court may authorize supervised release for a committed individual, that individual must prove that he or she meets five specific criteria relating to treatment progress, likelihood of reoffending, treatment availability, compliance with treatment and conditions, and resources necessary for managing the person on supervised release. Individuals on supervised release from ch. 980 commitment are subject to rules imposed by DHS, as well as conditions imposed by the court which authorized supervised release. These individuals are restricted to their homes for the first year, except that they are permitted outings for specified reasons under the direct supervision of a DOC escort.

Discharge from ch. 980 commitment is release from civil commitment without care and control imposed by DHS or DOC. A court orders discharge when an individual no longer meets the statutory criteria for commitment as an SVP. To be discharged, a committed individual must first petition the court and the petition must meet certain pleading requirements. The petition must provide facts from which a court or jury could conclude that the individual’s condition has changed since the SVP was initially committed as an SVP, such that he or she no longer meets the criteria for commitment.

CHAPTER 980 BACKGROUND

Burden of Proof

Background

The statutes setting forth the procedure for supervised release do not specify whether the SVP petitioning for supervised release or the State bears the burden of proof regarding whether the SVP meets the criteria for supervised release. However, pursuant to a decision by the

Wisconsin Supreme Court in *State v. West*, 2011 WI 83, the SVP currently bears the burden of proof.

Description

At the request of DOJ, the bill provides that the person petitioning for supervised release bears the burden of proving that he or she meets the criteria by clear and convincing evidence, codifying the Wisconsin Supreme Court's decision in *State v. West*, 2011 WI 83.

Discharge Petition Pleading Requirement

Background

A discharge petition must meet certain pleading requirements before a court will hold a discharge trial. Under current law, an SVP must allege facts in his or her petition from which a fact-finder may determine the individual's condition has changed since initial commitment such that he or she no longer qualifies as a "sexually violent person."

Description

The bill alters the pleading requirement which an SVP must meet before his or her discharge petition will receive a discharge trial. Under the draft, an individual must allege facts which *would likely* lead a fact-finder to determine that the individual no longer qualifies as a sexually violent person, rather than alleging facts which *may* lead a fact-finder to this determination.

The bill also alters the time period during which an SVP must show his or her "condition has changed" in order to merit a discharge trial. Under the bill, an SVP must allege a change occurring since the last discharge trial at which a fact-finder determined that the individual remains a "sexually violent person," rather than a change occurring at any time since the individual was initially committed.

Timeline for Supervised Release or Discharge Jury Trial

Background

Under current law, a court must hold a hearing on an SVP's petition for supervised release within 30 days. Current law also requires an SVP petitioning for discharge to request a jury trial within 10 days after filing his or her discharge petition. Because a court only holds a discharge trial if the SVP's petition meets certain requirements, the 10-day deadline requires an individual to request a jury trial before the court determines whether or not the SVP will even receive a trial.

Description

The bill extends the timeline within which a court must hold a supervised release hearing from 30 days to 120 days. The bill also alters the timeline for requesting a jury trial in discharge proceedings. Rather than requiring the SVP to request a jury trial within 10 days of filing the discharge petition, the bill requires the SVP to request a jury within 10 days after the court determines that a discharge trial is warranted.

Repeal of s. 980.075, Stats.

Background

Chapter 980 currently contains s. 980.075, **Patient petition process**, which provides general procedural requirements for supervised release and discharge petitions. DOJ advised the committee that provisions contained in s. 980.075, Stats., are unnecessary, are in conflict with more specific provisions appearing elsewhere in the chapter, or are more appropriately contained within the supervised release or discharge statutes.

Description

The bill repeals s. 980.075, Stats., and relocates portions into ss. 980.07, 980.08, and 980.09, Stats. Under the bill, nearly all current provisions of s. 980.075 are retained in other statutory sections. The two sections which are not relocated are either without effect or provide deadlines that conflict with more specific deadlines appearing in ss. 980.08 and 980.09, Stats.

Delayed Order for Discharge

Background

Under current law, a court must order discharge of a committed individual when that individual no longer qualifies as an SVP. DOJ, DHS, and DOC advised the committee that an immediate discharge does not allow time for DHS to meet its statutory obligations to notify victims and does not allow DOC time to arrange GPS monitoring of the discharged SVP.

Description

The bill delays the execution of a court order discharging an SVP to permit the agencies time to comply with statutory requirements. Under the bill, a court ordering discharge must delay the execution of the order for a period of time, not to exceed 10 days, during which DHS must issue a notice to victims and their family members and must notify DOC.

Supervised Release Criteria

Background

An SVP must meet five specified criteria before a court may grant the SVP supervised release. One of the criteria requires that the SVP has made “significant progress in treatment” and that the progress can be sustained while on supervised release. Under current law, “significant progress in treatment” means that the SVP has done all of the following:

- Meaningfully participated in the treatment program specifically designed to reduce the SVP’s risk to reoffend offered at the facility where the SVP is civilly committed.
- Participated in the treatment program at a level that was sufficient to allow the identification of the SVP’s specific treatment needs and then demonstrated, through overt behavior, a willingness to work on addressing the specific treatment needs.

- Demonstrated an understanding of the thoughts, attitudes, emotions, behaviors, and sexual arousal linked to the SVP's sexual offending and an ability to identify when the thoughts, emotions, behaviors, or sexual arousal occur.
- Demonstrated sufficiently sustained change in the thoughts, attitudes, emotions, and behaviors and sufficient management of sexual arousal such that one could reasonably assume that, with continued treatment, the change could be maintained.

Description

At the request of DHS, the bill changes the supervised release criteria by requiring that the SVP "is making significant progress," instead of the current standard requiring that the SVP "has made significant progress in treatment." In addition, the bill changes the definition of "significant progress in treatment." Rather than require the SVP to show completion of each of the above listed requirements, the bill requires that the SVP show that he or she is currently working towards each of the listed requirements.

Supervised Release Determination Requirement

Background

Following a discharge trial, the court may choose to evaluate whether the petitioner meets the supervised release criteria, but is not required to do so.

Description

At the request of DOJ, the bill requires a court to consider supervised release for an SVP after denying the SVP discharge at a discharge trial. An SVP is permitted to waive the court's consideration of supervised release, but the bill treats the waiver as a denial of supervised release for purposes of calculating when an SVP may file a petition for supervised release.

Approved Activities While on Supervised Release

Background

An SVP may not leave his home during the first year of supervised release except for outings that are under the direct supervision of a DOC escort and that are for employment purposes, for religious purposes, or for caring for the person's basic living needs.

Description

At the request of DHS, the bill expands the list of activities for which a committed individual on supervised release may leave his or her residence under direct supervision of a DOC escort and requires that all outings be approved by DHS. In addition to existing purposes, the bill provides that an SVP may leave his or her residence for volunteer, educational, treatment, exercise, or supervision purposes, or for maintenance of the SVP's residence. The bill also replaces use of the term "home," with the term "residence."

COMMITTEE AND JOINT LEGISLATIVE COUNCIL VOTES

The following draft was recommended by the Special Committee on Supervised Release and Discharge of Sexually Violent Persons to the Joint Legislative Council for introduction in the 2013-14 Session of the Legislature.

SPECIAL COMMITTEE VOTE

The Special Committee voted by a December 12, 2012 mail ballot, to recommend WLC: 0051/1 to the Joint Legislative Council for introduction in the 2013-14 Session of the Legislature. The vote on the draft was as follows:

- WLC: 0051/1, relating to criteria for supervised release from commitment as sexually violent persons under chapter 980, placement of females committed as sexually violent persons, and permitted outings under direct supervision for individuals on supervised release from commitment; supervised release and discharge of individuals committed as sexually violent persons under chapter 980, passed by a vote of Ayes, 13 (Reps. Strachota and Molepske, Jr.; Sens. Darling, Cullen, and Lazich; and Public Members Bensen, Bohren, Cramer, Dallet, Hanneman, Henderson, Oliva, and Rios); Noes, 0; and Not Voting, 1 (Public Member Liska).

JOINT LEGISLATIVE COUNCIL VOTE

At its January 16, 2013 meeting, the Joint Legislative Council voted as follows on the recommendation of the Special Committee:

*Sen. Farrow moved, seconded by Sen. Darling, that **WLC: 0051/1**, relating to criteria for supervised release from commitment as sexually violent persons under chapter 980, placement of females committed as sexually violent persons, and permitted outings under direct supervision for individuals on supervised release from commitment; supervised release and discharge of individuals committed as sexually violent persons under chapter 980, be introduced by the Joint Legislative Council. The motion passed on a roll call vote as follows: Ayes, 19 (Reps. Ballweg, Barca, Berceau, Loudenbeck, Mason, Nygren, Stone, Suder, and Vos; and Sens. Olsen, Darling, Farrow, Fitzgerald, Leibham, Miller, Petrowski, Risser, Shilling, and Schultz); Noes, 0; and Absent, 3 (Reps. Kramer and Pasch; and Sen. Larson).*

[Sen. Larson indicated that had he been present he would have voted "aye".]

JOINT LEGISLATIVE COUNCIL

[s. 13.81, Stats.]

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This 22-member committee consists of the majority and minority party leadership of both houses of the Legislature, the co-chairs and ranking minority members of the Joint Committee on Finance, and 5 Senators and 5 Representatives appointed as are members of standing committees.

*Terry C. Anderson, Director, Legislative Council Staff
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STUDY ASSIGNMENT: The Special Committee is directed to review the current process for granting supervised release and discharging persons who have been committed as sexually violent persons under ch. 980, Stats. The committee shall: determine what level of judicial input regarding the determination whether to grant a sexually violent person supervised release or discharge from a civil commitment under ch. 980 is appropriate; review the criteria for determining whether a person is fit for supervised release and determine whether this criteria should be modified; and review the criteria for determining whether a person should be discharged from his or her civil commitment to determine whether the criteria are appropriate.

14 MEMBERS: 2 Representatives; 3 Senators; and 9 Public Members.

LEGISLATIVE COUNCIL STAFF: Katie Bender-Olson and Michael Queensland, Staff Attorneys; and Kelly Mautz, Support Staff.

COMMITTEE MATERIALS LIST

[Copies of documents are available at www.legis.wisconsin.gov/lc]

Results of January 16, 2013 Joint Legislative Council Meeting				
<ul style="list-style-type: none"> • Results letter. 				
Recommendation to the Joint Legislative Council (January 16, 2013)	Joint Legislative Council Agenda			
<ul style="list-style-type: none"> • Report to the Joint Legislative Council, LCR 2013-03, <i>Special Committee on Supervised Release and Discharge of Sexually Violent Persons</i> (January 7, 2013). • WLC: 0051/1, relating to criteria for supervised release from commitment as sexually violent persons under chapter 980, placement of females committed as sexually violent persons, and permitted outings under direct supervision for individuals on supervised release from commitment; supervised release and discharge of individuals committed as sexually violent persons under chapter 980. 				
December 12, 2012 Mail Ballot				
<ul style="list-style-type: none"> • WLC: 0051/1, relating to criteria for supervised release from commitment as sexually violent persons under chapter 980, placement of females committed as sexually violent persons, and permitted outings under direct supervision for individuals on supervised release from commitment; supervised release and discharge of individuals committed as sexually violent persons under chapter 980. • Mail ballot. • Notice of mail ballot. • Results of mail ballot. 				
November 14, 2012 Meeting	Notice	Agenda	Audio	Minutes
<ul style="list-style-type: none"> • WLC: 0032/1, relating supervised release and discharge proceedings. • WLC: 0034/1, relating to supervised release. • WLC: 0035/1, relating to petitions for discharge. 				
October 4, 2012 Meeting	Notice	Agenda	Audio	Minutes
<ul style="list-style-type: none"> • Memo No. 1, <i>Options for Study Committee Consideration</i> (dated September 27, 2012). • Handout, <i>Potential Modifications to Ch. 980 for Consideration by the Special Committee on Supervised Release and Discharge of Sexually Violent Persons</i>, distributed by the Department of Justice. • Presentation, <i>Review of Chapter 980 Supervised Release and Discharge</i>, by Judge Michael O. Bohren, Waukesha County (October 4, 2012). • Handout distributed by Public Member Frank Liska. 				

September 19, 2012 Meeting	Notice	Agenda	Audio	Minutes
<ul style="list-style-type: none"> • Handout, <i>Chapter 980: Commitment of Sexually Violent Persons</i>, provided by Vincent Rust, Assistant State Public Defender, La Crosse Trial Office, Office of the State Public Defender. • Handout, <i>Supervised Release Rules</i>, provided by Vincent Rust, Assistant State Public Defender, La Crosse Trial Office, Office of the State Public Defender. • Presentation, Department of Corrections, by Grace Roberts, Director of Sex Offender Programs for the Division of Community Corrections. • Notes by Holly Bunch, Assistant District Attorney, 980 Unit, Milwaukee County District Attorney's Office (September 19, 2012). 				
August 8, 2012 Meeting	Notice	Agenda	Audio	Minutes
<ul style="list-style-type: none"> • Staff Brief 2012-06, <i>Supervised Release and Discharge of Sexually Violent Persons</i> (August 2, 2012). • Testimony by Michael G. Schaefer, Assistant Attorney General, Department of Justice (August 8, 2012). • Presentation, <i>Department of Health Services - Wisconsin Sexually Violent Persons Program Sand Ridge Secure Treatment Center</i>, by Deborah McCulloch, Director, and Lloyd Sinclair, Court Assessment and Community Programs Director, Sand Ridge Secure Treatment Center (August 8, 2012). 				