

HEALTH SERVICES -- CARE AND TREATMENT SERVICES

Supervised Release of Sexually Violent Persons

Motion:

Move to incorporate the provisions of LRB-3274/P9 into the bill, which would change requirements relating to plans for supervised release of sexually violent persons (SVPs) and representation of SVPs by the state Public Defender.

**County Plans for the Release of SVPs**

*Report Preparation and Content.* Specify that if a court finds that an individual has meet all the criteria for supervised release, the court must order the county of the person's residence, as determined by the Department of Health Services (DHS), to prepare a report to submit to DHS. Require counties to create a temporary committee to prepare the report for the county, consisting of: (a) the county human services department; (b) a representative from DHS; (c) a local probation or parole officer; (d) the county corporation counsel or his or her designee; and (e) a representative of the department of the county that is responsible for land conservation. Specify that the report would identify an appropriate residential option in that county while the person is on supervised release and demonstrate that the county has contacted the landlord for that residential option and that the landlord has committed to enter into a lease.

Specify that the county shall consider the following factors when identifying an appropriate residential option: (a) the distance between the person's placement and any school premises, child care facility, public park, place of worship, or youth center; (b) if the person committed a sexually violent offense against an adult at risk or an elder adult at risk, the distance between the person's placement and a nursing home or assisted living facility; and (c) if the person is a serious child sex offender, the distance between the person's placement and a property where a child's primary residence exists. Eliminate current law provisions requiring that the residential option identified in the supervised release plan be a specific distance from the above locations.

*Consultation with Law Enforcement Agencies.* Specify that when preparing the report, the county must consult with a local law enforcement agency having jurisdiction over the residential option. Permit the law enforcement agency to submit a written report that provides information relating to the residential option, and, if the law enforcement agency submits a report, the county department must include the agency's report when the county department submits its report to DHS.

*Deadline for Submission of Report and Penalties.* Require the county to submit its report to DHS within 120 days following the court order, rather than 60 days as required under current law. Provide that a county that does not submit its report within 120 days violates the person's rights

under s. 51.61 of the statutes, and that each day that the county does not submit a report after the 120 days have expired constitutes a separate violation. Specify that any damages beyond costs and reasonable actual attorney fees recovered by the person for a violation would be deposited into a new PR appropriation that would authorize DHS to use all moneys it receives from this source to fund payments of costs associated with housing persons on supervised release.

Specify that within the first 12 months following the effective date of the bill, the time limit for counties to submit the report to DHS shall be 180 days, rather than 120 days.

*DHS Assistance in Preparing Report.* Provide that, in order to assist the county in identifying appropriate residential options in the report, require DHS, within 30 days after the court orders the county to prepare a report, to determine the identity and location of known and registered victims of the person's acts by searching its victim database and consulting with the Office of Victim Services in the Department of Corrections, the Department of Justice, and the county coordinator of victims and witnesses services in the county of intended placement, the county where the person was convicted, and the county of commitment. Provide that the county may consult with DHS on other matters while preparing the report, and require DHS to respond as soon as practically possible.

*DHS Preparation of Supervised Release Plans.* Require the court to direct DHS to use the report to prepare a supervised release plan for the person that identifies the residential option the county identified in its report. Specify that the plan would also address the person's need, if any, for supervision, counseling, medication, community support services, residential services, vocational services, and alcohol and other drug abuse treatment. Require DHS to use the supervised release plan to the court within 30 days after the county submits its report to DHS. Permit DHS to grant one extension of up to 30 days for good cause. Repeal current law requirement that the Department may not arrange placement in a facility that did not exist before January 1, 2006

*Determination of County of Residence.* Specify that in determining the person's county of residence for the purposes of the supervised release process, if current law procedures are insufficient, the Department shall find that the county of residence is the county in which, on the date that the person committed the sexually violent offense that resulted in the sentence, placement, or commitment, the person would have been a resident for the purposes of social security disability insurance eligibility.

*Initial Applicability.* Specify that these changes shall apply to all petitions for supervised release under Chapter 980 currently pending at the time of the effective date of the bill.

### **State Public Defender Counsel**

Provide that, in any situation under Chapter 980 ("Sexually Violent Persons Commitments") in which the person has a right to be represented by council, the court must refer the person as soon as practicable to the state Public Defender, who would be required to appoint counsel for the person without a determination of indigency. Modify references to Chapter 977 ("State Public Defender") to reflect this change.

Provide that, at the conclusion of any proceeding under Chapter 980 in which the Public Defender has provided counsel for a person, the court may inquire as to the person's ability to reimburse the state for the costs of representation. Provide that, if the court determines that the person is able to make reimbursement for all or part of the costs of representation, the court may order the person to reimburse the state an amount up the maximum amount established in the Public Defender's fee schedule. Upon request, require the Public Defender to conduct a determination of indigency and report the results of the determination in court.

Provide that reimbursements would be made to the clerk of courts of the county where the proceedings took place, which would transmit payments to the county treasurer, who would be required to deposit 25% of the payment amount in the county treasury and transmit the remainder to the Department of Administration, for deposit to the general fund and credited to the Public Defender's PR appropriation that supports legal representation provided by the private bar.

Require the clerk of courts for each count to report, by January 31 of each year, to the state Public Defender the total amount of reimbursements ordered for Chapter 980 cases, in the previous calendar year and the total amount of reimbursements paid to the clerk of courts in the previous year.

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Note:

This motion would incorporate LRB 3274/P9, relating to plans for supervised release of sexually violent persons (SVPs), and representation of SVPs by the Public Defender, into the bill.

Under current law, when a court approves a petition for supervised release, it orders DHS and the individual's county of residence to develop a supervised release plan within 60 days, subject to court approval. Community teams that include the patient, a DHS staff person who specializes in the supervised release program, a probation and parole agent, and treatment providers, develop these plans. The teams may also include law enforcement officials, family members, employers, property owners, sponsors and other parties.

In determining the county of residence, DHS is required to consider residence as the voluntary concurrence of physical presence with intent to remain in a place of fixed habitation and must consider physical presence as prima facie evidence of intent to remain. DHS must apply this definition to the facts that existed on the date that the person committed the sexually violent offense that resulted in their sentence, placement, or commitment.

The county must submit a report identifying prospective residential options for community placement that, among other things, considers the proximity to the residences of other persons on supervised release, including a limitation that any residential option shall be located not less than 1,500 feet from any school premises, child care facility, public park, place of worship, or youth center. The petitioner, his attorney, the district attorney, any law enforcement agency in the county of intended placement, or any local governmental unit in that county, may also submit prospective residential options for community placement to DHS. DHS must use these reports, or any other

residential options identified by DHS, to prepare plan that identifies the proposed residence. The plan must address any need for supervision, counseling, medication, vocational services, and alcohol or other drug abuse treatment.

If the court determines the plan meets the person's treatment needs and the safety needs of the community, it must approve the plan for supervised release. If, however, the court determines the plan does not adequately meet those needs, it must determine that supervised release is not appropriate or direct the preparation of another supervised release plan.

The changes to the provisions related to the Public Defender would mirror current law provisions for commitment cases under Chapter 51 ("State Alcohol, Drug Abuse, Developmental Disabilities and Mental Health Act") and Chapter 55 ("Protective Service System").