



## 2013 ASSEMBLY BILL 28

1     **AN ACT** *to repeal* 980.075 (title), (1), (1m) (b) and (2); *to renumber* 980.07 (6);  
2           *to renumber and amend* 980.075 (1m) (a), 980.075 (3), 980.075 (5), 980.075  
3           (6) and 980.08 (3); *to consolidate, renumber and amend* 980.075 (4) (a) and  
4           (b); *to amend* 980.01 (3), 980.01 (8), 980.065 (1r), 980.07 (1), 980.07 (4) (b),  
5           980.07 (6m), 980.08 (1), 980.08 (4) (a), 980.08 (4) (cg) 1., 980.08 (9) (a), 980.09  
6           (1), 980.09 (2) and (3), 980.09 (4) and 980.095 (1) (a); and *to create* 980.08 (2m),  
7           980.08 (4) (cj), 980.09 (1m) (d) and 980.09 (5) of the statutes; **relating to:**  
8           criteria for supervised release from commitment as sexually violent persons,  
9           placement of females committed as sexually violent persons, permitted outings  
10          under direct supervision for individuals on supervised release, and supervised  
11          release and discharge of individuals committed as sexually violent persons.

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*Analysis by the Legislative Reference Bureau*

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

**ASSEMBLY BILL 28****SECTION 1**

1           **SECTION 1.** 980.01 (3) of the statutes is amended to read:

2           980.01 (3) ~~Except in ss. 980.075, 980.09, and 980.095, “petitioner”~~ “Petitioner”  
3 means the agency or person that filed a petition under s. 980.02.

4           \*0034/1.1\***SECTION 2.** 980.01 (8) of the statutes is amended to read:

5           980.01 (8) “Significant progress in treatment” means that the person ~~has done~~  
6 is doing all of the following:

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

10           (b) ~~Participated~~ Participating in the treatment program at a level that was is  
11 sufficient to allow the identification of his or her specific treatment needs and ~~then~~  
12 ~~demonstrated~~ demonstrating, through overt behavior, a willingness to work on  
13 addressing the specific treatment needs.

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

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

21           \*0034/1.2\***SECTION 3.** 980.065 (1r) of the statutes is amended to read:

22           980.065 (1r) Notwithstanding sub. (1m), the department may place a female  
23 person committed under s. 980.06 at Mendota Mental Health Institute, Wisconsin  
24 Women’s Resource Center, Winnebago Mental Health Institute, or a privately  
25 operated residential facility under contract with the department of health services.

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1           **\*0032/1.1\*SECTION 4.** 980.07 (1) of the statutes is amended to read:

2           980.07 (1) If a person is committed under s. 980.06 and has not been discharged  
3 under s. 980.09 (4), the department shall appoint an examiner to conduct a  
4 reexamination of the person's mental condition within 12 months after the date of  
5 the initial commitment order under s. 980.06 and again thereafter at least once each  
6 12 months to determine whether the person has made sufficient progress for the  
7 court to consider whether the person should be placed on supervised release or  
8 discharged. The examiner shall apply the criteria under s. 980.08 (4) (cg) when  
9 considering if the person should be placed on supervised release and shall apply the  
10 criteria under s. 980.09 (3) when considering if the person should be discharged. At  
11 the time of a reexamination under this section, ~~the person who has been committed~~  
12 ~~may retain or have the court~~ shall appoint an examiner as provided under s. 980.031  
13 (3) upon request of the committed person or the person may retain an examiner. The  
14 county shall pay the costs of an examiner appointed by the court as provided under  
15 s. 51.20 (18) (a).

16           **SECTION 5.** 980.07 (4) (b) of the statutes is amended to read:

17           980.07 (4) (b) Whether the person ~~has made~~ is making significant progress in  
18 treatment or has refused treatment.

19           **SECTION 6.** 980.07 (6) of the statutes is renumbered 980.07 (6) (a).

20           **SECTION 7.** 980.07 (6m) of the statutes is amended to read:

21           980.07 (6m) If a person committed under s. 980.06 is incarcerated at a county  
22 jail, state correctional institution, or federal correction institution for a new criminal  
23 charge or conviction or because his or her parole was revoked, any reporting  
24 requirement under sub. (1), (4), or (6) (a) does not apply during the incarceration  
25 period. A court may order a reexamination of the person under sub. (3) if the courts

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1 finds reexamination to be necessary. The schedule for reporting established under  
2 sub. (1) shall resume upon the release of the person.

3 \*0032/1.3\*SECTION 8. 980.075 (title), (1), (1m) (b) and (2) of the statutes are  
4 repealed.

5 SECTION 9. 980.075 (1m) (a) of the statutes is renumbered 980.07 (6) (b) and  
6 amended to read:

7 980.07 (6) (b) When the department provides a copy of the report under s.  
8 ~~980.07 (6)~~ par. (a) to the person who has been committed under s. 980.06, the  
9 department shall provide to the person a standardized petition form for supervised  
10 release under s. 980.08 and a standardized petition form for discharge under s.  
11 980.09.

12 SECTION 10. 980.075 (3) of the statutes is renumbered 980.09 (1m) (a) and  
13 amended to read:

14 980.09 (1m) (a) If the person files a petition for discharge under s. ~~980.09 sub.~~  
15 (1) without counsel, the court shall serve a copy of the petition and any supporting  
16 documents on the district attorney or department of justice, whichever is applicable.  
17 If the person petitions for discharge under s. ~~980.09 sub. (1)~~ through counsel, his or  
18 her attorney shall serve the district attorney or department of justice, whichever is  
19 applicable.

20 SECTION 11. 980.075 (4) (a) and (b) of the statutes are consolidated, renumbered  
21 980.09 (1m) (c) and amended to read:

22 980.09 (1m) (c) ~~The petitioner~~ If a person files a petition for discharge under  
23 sub. (1), the person may use experts or professional persons to support his or her  
24 petition. ~~(b)~~ The district attorney or the department of justice may use experts or  
25 professional persons to support or oppose any petition filed under sub. (1).

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1           **SECTION 12.** 980.075 (5) of the statutes is renumbered 980.09 (1m) (b) and  
2 amended to read:

3           980.09 **(1m)** (b) ~~Subject to s. 980.03 (2) (a), before proceeding under s. 980.08~~  
4 ~~or 980.09 but~~ If the person files a petition for a discharge under sub. (1) without  
5 counsel, as soon as circumstances permit, the court shall refer the matter to the  
6 authority for indigency determinations under s. 977.07 (1) and appointment of  
7 counsel under s. 977.05 (4) (j) ~~if the person is not represented by counsel.~~

8           **SECTION 13.** 980.075 (6) of the statutes is renumbered 980.07 (7) and amended  
9 to read:

10           980.07 **(7)** At any time before a hearing under s. 980.08 or 980.09, the  
11 department may file a supplemental report if the department determines that court  
12 should have additional information. The court shall accept the supplemental report  
13 and permit testimony from the department regarding the report or any relevant  
14 portion of the report.

15           \***0032/1.4**\***SECTION 14.** 980.08 (1) of the statutes is amended to read:

16           980.08 **(1)** Any person who is committed under s. 980.06 may petition the  
17 committing court to modify its order by authorizing supervised release if at least 12  
18 months have elapsed since the initial commitment order was entered or at least 12  
19 months have elapsed since the most recent release petition was denied, since  
20 supervised release was denied under s. 980.09 (4), or since the most recent order for  
21 supervised release was revoked. The director of the facility at which the person is  
22 placed may file a petition under this subsection on the person's behalf at any time.

23           \***0032/1.5**\***SECTION 15.** 980.08 (2m) of the statutes is created to read:

24           980.08 **(2m)** The person submitting the petition may use experts or  
25 professional persons to support his or her petition. The district attorney or the

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1 department of justice may use experts or professional persons to support or oppose  
2 any petition.

3 \*0032/1.6\*SECTION 16. 980.08 (3) of the statutes is renumbered 980.08 (3) (a)  
4 and amended to read:

5 980.08 (3) (a) Within 20 days after receipt of the petition, the court shall  
6 appoint one or more examiners having for the court who have the specialized  
7 knowledge determined by the court to be appropriate, who shall examine the person  
8 and furnish a written report of the examination to the court within 30 60 days after  
9 appointment, unless the court for good cause extends this time limit. If the person  
10 requests appointment of an examiner within 20 days after the filing of the petition,  
11 the court shall appoint an examiner for the person, unless the court appointed an  
12 examiner under s. 980.031 (3) or 980.07 (1) for the current reexamination period. If  
13 a report filed by an examiner appointed under s. 980.07 (1) to conduct a  
14 reexamination of the person's mental condition within the 6 months preceding the  
15 filing of the petition supports supervised release, the court may appoint that  
16 examiner as the examiner for the person under this subsection.

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

25 \*0032/1.7\*SECTION 17. 980.08 (4) (a) of the statutes is amended to read:

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1           980.08 (4) (a) The court, without a jury, shall hear the petition within ~~30~~ 120  
2           days after the report of the court–appointed examiner appointed under sub. (3) (a)  
3           is filed with the court, unless the court for good cause extends this time limit.  
4           Expenses of proceedings under this subsection shall be paid as provided under s.  
5           51.20 (18) (b), (c), and (d).

6           **\*0034/1.3\*SECTION 18.** 980.08 (4) (cg) 1. of the statutes is amended to read:  
7           980.08 (4) (cg) 1. The person ~~has made~~ is making significant progress in  
8           treatment and the person’s progress can be sustained while on supervised release.

9           **\*0032/1.8\*SECTION 19.** 980.08 (4) (cj) of the statutes is created to read:  
10          980.08 (4) (cj) The person has the burden of proving by clear and convincing  
11          evidence that the person meets the criteria in par. (cg).

12          **\*0034/1.4\*SECTION 20.** 980.08 (9) (a) of the statutes is amended to read:  
13          980.08 (9) (a) As a condition of supervised release granted under this chapter,  
14          for the first year of supervised release, the court shall restrict the person on  
15          supervised release to the person’s ~~home~~ residence except for outings approved by the  
16          department of health services that are under the direct supervision of a department  
17          of corrections escort and that are for employment or volunteer purposes, ~~for~~ religious  
18          purposes, educational purposes, treatment and exercise purposes, supervision  
19          purposes, or residence maintenance, or for caring for the person’s basic living needs.

20          **\*0032/1.9\*SECTION 21.** 980.09 (1) of the statutes is amended to read:  
21          980.09 (1) A committed person may petition the committing court for discharge  
22          at any time. The court shall deny the petition under this section without a hearing  
23          unless the petition alleges facts from which the court or jury ~~may~~ would likely  
24          conclude the person’s condition has changed since ~~the date of his or her initial~~  
25          ~~commitment order~~ the most recent order denying a petition for discharge after a

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1 hearing on the merits, or since the date of his or her initial commitment order if the  
2 person has never received a hearing on the merits of a discharge petition, so that the  
3 person ~~does not meet~~ no longer meets the criteria for commitment as a sexually  
4 violent person.

5 **SECTION 22.** 980.09 (1m) (d) of the statutes is created to read:

6 980.09 (1m) (d) After receiving a petition for discharge under sub. (1) and upon  
7 the request of the person filing the petition, unless the court previously appointed  
8 an examiner under s. 980.031 (3) or 980.07 (1) for the current reexamination period,  
9 the court shall appoint for the person an examiner having the specialized knowledge  
10 determined by the court to be appropriate. If an examination conducted under s.  
11 980.07 (1) within the 6 months preceding the filing of the petition supports discharge,  
12 the court may appoint the examiner who conducted that examination as the  
13 examiner for the person. The examiner shall have reasonable access to the person  
14 for purposes of examination and to the person's past and present treatment records,  
15 as defined in s. 51.30 (1) (b), and patient health care records, as provided in s. 146.82  
16 (2) (c). The county shall pay the costs of an examiner appointed under this paragraph  
17 as provided under s. 51.20 (18) (a).

18 **\*0032/1.11\*SECTION 23.** 980.09 (2) and (3) of the statutes are amended to read:

19 980.09 (2) ~~The court shall review the petition within 30 days and~~ In reviewing  
20 the petition, the court may hold a hearing to determine if it contains facts from which  
21 the court or jury may conclude that the person does not meet the person's condition  
22 has sufficiently changed such that a court or jury would likely conclude the person  
23 no longer meets the criteria for commitment as a sexually violent person. In  
24 determining under this subsection whether facts exist that might warrant such a  
25 conclusion the person's condition has sufficiently changed such that a court or jury

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1 would likely conclude that the person no longer meets the criteria for commitment,  
2 the court shall may consider the record, including evidence introduced at the initial  
3 commitment trial or the most recent trial on a petition for discharge, any current or  
4 past reports filed under s. 980.07, relevant facts in the petition and in the state's  
5 written response, arguments of counsel, and any supporting documentation  
6 provided by the person or the state. If the court determines that the ~~petition~~ record  
7 does not contain facts from which a court or jury ~~may~~ would likely conclude that the  
8 person ~~does not meet~~ no longer meets the criteria for commitment, the court shall  
9 deny the petition. If the court determines that ~~facts exist~~ the record contains facts  
10 from which a court or jury ~~could~~ would likely conclude the person ~~does not meet~~ no  
11 longer meets the criteria for commitment, the court shall set the matter for hearing  
12 trial.

13 (3) The court shall hold a ~~hearing~~ trial within 90 days of the determination that  
14 the ~~petition contains facts from which the court or jury may conclude that the person~~  
15 ~~does not meet~~ person's condition has sufficiently changed such that a court or jury  
16 would likely conclude that the person no longer meets the criteria for commitment  
17 as a sexually violent person. ~~The~~ At trial, the state has the burden of proving by clear  
18 and convincing evidence that the person meets the criteria for commitment as a  
19 sexually violent person.

20 \*0032/1.12\*SECTION 24. 980.09 (4) of the statutes is amended to read:

21 980.09 (4) If the court or jury is satisfied that the state has not met its burden  
22 of proof under sub. (3), the ~~petitioner~~ person shall be discharged from the custody of  
23 the department. If the court or jury is satisfied that the state has met its burden of  
24 proof under sub. (3), the court ~~may~~ shall proceed under s. 980.08 (4) to determine  
25 whether to modify the ~~petitioner's~~ person's existing commitment order by

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1 authorizing supervised release, unless the person waives consideration of the  
2 criteria in s. 980.08 (4) (cg). If the person waives consideration of these criteria, the  
3 waiver is a denial of supervised release for purposes of s. 980.08 (1).

4 **SECTION 25.** 980.09 (5) of the statutes is created to read:

5 980.09 (5) If a court orders discharge of a committed person under this section,  
6 the court shall stay the execution of the order so that the department may comply  
7 with its statutory duties under s. 980.11 (2) and (3). The stay of execution may not  
8 exceed 10 working days and shall be for as short a period as necessary to permit the  
9 department to comply with s. 980.11 (2) and (3).

10 **\*0032/1.13\*SECTION 26.** 980.095 (1) (a) of the statutes is amended to read:

11 980.095 (1) (a) The district attorney or the department of justice, whichever  
12 filed the original petition, or the ~~petitioner~~ person who filed the petition for discharge  
13 or his or her attorney may request that a ~~hearing~~ trial under s. 980.09 (3) be to a jury  
14 of 6. A jury trial is deemed waived unless it is demanded within 10 days of the ~~filing~~  
15 ~~of the petition for discharge~~ determination by the court that a court or jury would  
16 likely conclude under s. 980.09 (1) that the person's condition has sufficiently  
17 changed.

18

(END)