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

History: 2005 a. 434.

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

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

History: 2005 a. 434.

Insert 10–10

SECTION 10. 980.09 (1m) (d) of the statutes is created to read:

980.09 **(1m)** (d) After receiving a petition for discharge under sub. (1) and upon the request of the person filing the petition, unless the court previously appointed an examiner under s. 980.07 (1) or 980.031 (3) for the current reexamination period, the court shall appoint for the person an examiner having the specialized knowledge determined by the court to be appropriate. If an examination conducted under s. 980.07 (1) within the 6 months preceding the filing of the petition supports discharge, the court may appoint the examiner who conducted that examination as the examiner for the person. The examiner shall have reasonable access to the person for purposes of examination and to the person's past and present treatment records,

as defined in s. 51.30 (1) (b), and patient health care records, as provided in s. 146.82 (2) (c). The county shall pay the costs of an examiner appointed under this paragraph as provided under s. 51.20 (18) (a).

INS NOTE D

State of Wisconsin
2013 – 2014 LEGISLATURE

LRB-1261/P2
CMH:sac:rs

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

gen cat

AN ACT ***to repeal*** 980.075 (title), (1), (1m) (b) and (2); ***to renumber*** 980.07 (6); ***to renumber and amend*** 980.075 (1m) (a), 980.075 (3), 980.075 (5), 980.075 (6) and 980.08 (3); ***to consolidate, renumber and amend*** 980.075 (4) (a) and (b); ***to amend*** 980.01 (3), 980.01 (8), 980.065 (1r), 980.07 (1), 980.07 (4) (b), 980.07 (6m), 980.08 (1), 980.08 (4) (a), 980.08 (4) (cg) 1., 980.08 (9) (a), 980.09 (1), 980.09 (2) and (3), 980.09 (4) and 980.095 (1) (a); and ***to create*** 980.08 (2m), 980.08 (4) (cj), 980.09 (1m) (d) and 980.09 (5) of the statutes; **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 individuals committed as sexually violent persons.

Analysis by the Legislative Reference Bureau

For further information, see the NOTES provided by the Law Revision Committee of the Joint Legislative Council.

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

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This bill was prepared for the Joint Legislative Council's Special Committee on Supervised Release and Discharge of Sexually Violent Persons.

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." In general, a sexually violent person (SVP) is an individual who has been convicted of a sexually violent offense and who is dangerous because he or she suffers from a mental disorder that makes it likely the individual will engage in future acts of sexual violence. Current law contains provisions for the discharge or supervised release of individuals committed under ch. 980.

This draft makes various changes to the discharge and supervised release provisions of ch. 980. 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 parts of s. 980.075, stats., relating to the supervised release and discharge petition process, and renumbering 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 in the execution of a court order granting discharge to a committed individual.

- Altering the criteria which a committed person must meet 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 direct supervision of a department of corrections (DOC) escort.

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

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

NOTE: Part of s. 980.075 is repealed in this bill and parts are renumbered to be parts of s. 980.07, but the only instance of "petitioner" in s. 980.075 was changed to "person." See SECTION 11. Section 980.09 contains one occurrence of "petitioner"; this bill changes it to "person" for consistency. See SECTION 24. Section 980.095 contains one occurrence of "petitioner"; this bill changes it to "person" to be consistent and to eliminate any confusion since that statutory section also discusses the petition under s. 980.02. See SECTION 26.

SECTION 2. 980.01 (8) of the statutes is amended to read:

980.01 **(8)** "Significant progress in treatment" means that the person ~~has done~~ is doing all of the following:

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

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

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

(d) ~~Demonstrated~~ Demonstrating 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.

NOTE: Revises the definition of "significant progress in treatment" to specify that the individual must be participating in treatment programs at a sufficient level and demonstrating the requisite behavior, understanding, and changes, rather than

specifying that the individual has already participated in the treatment or has already demonstrated these behaviors, understandings, and changes.

Under current law, a committed individual must meet 5 specified criteria before a court may grant him or her supervised release. One of the criteria requires that the individual has made "significant progress in treatment" and that the progress can be sustained while on supervised release. Because the draft revises the definition of "significant progress in treatment", a committed individual must currently be engaged in or working towards the requirements set forth in the definition to meet the criterion for supervised release. Corresponding revisions are made in SECTIONS 5 and 18.

SECTION 3. 980.065 (1r) of the statutes is amended to read:

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

NOTE: Expands the list of facilities at which DHS may place a female committed as an SVP to include the Wisconsin Women's Resource Center.

SECTION 4. 980.07 (1) of the statutes is amended to read:

980.07 **(1)** If a person is committed under s. 980.06 and has not been discharged under s. 980.09 (4), the department shall appoint an examiner to conduct a reexamination of the person's mental condition within 12 months after the date of the initial commitment order under s. 980.06 and again thereafter at least once each 12 months 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 shall apply the criteria under s. 980.08 (4) (cg) when considering if the person should be placed on supervised release and shall apply the criteria under s. 980.09 (3) when considering if the person should be discharged. At the time of a reexamination under this section, the ~~person who has been committed may retain or have the~~ court shall appoint an examiner as provided under s. 980.031 (3) upon request of the committed person or the person may retain an examiner. The

NOTE: This bill renumbers 980.075 (1m) (a) to 980.07 (6)(b); see SECTION #.

county shall pay the costs of an examiner appointed by the court as provided under s. 51.20 (18) (a).

NOTE: Clarifies that a court must appoint an examiner for the committed person if the person requests an examiner at the time of the 12–month reexamination. Removes ambiguity regarding whether a court may choose not to appoint an examiner when a committed person requests an examiner.

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

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

NOTE: This change corresponds with the revision in SECTION 2.

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

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

980.07 **(6m)** If a person committed under s. 980.06 is incarcerated at a county jail, state correctional institution, or federal correction institution for a new criminal charge or conviction or because his or her parole was revoked, any reporting requirement under sub. (1), (4), or (6) (a) does not apply during the incarceration period. A court may order a reexamination of the person under sub. (3) if the courts finds reexamination to be necessary. The schedule for reporting established under sub. (1) shall resume upon the release of the person.

SECTION 8. 980.075 (title), (1), (1m) (b) and (2) of the statutes are repealed.

NOTE: This bill relocates portions of the s. 980.075 into ss. 980.07 and 980.09, stats., as described in the notes appearing beneath SECTIONS 9, 10, 11, 12, and 13. This draft also adds identical language from s. 980.075 to s. 980.08. See the note following SECTION 15.

Portions of s. 980.075, patient petition process which this bill repeals and does not relocate to other portions of the chapter appear in s. 980.075 (2), stats., and contain the following: (1) a 30–day deadline for submitting a supervised release or discharge petition that may conflict with more specific deadlines appearing within s. 980.08 and 980.09, stats; and (2) language stating that a person remains committed or remains on supervised release without court review if the person does not file a timely discharge petition.

AP: SWAN

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

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

NOTE: Requires DHS to provide petition forms to committed individuals when providing a copy of the person's reexamination report.

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

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

NOTE: This SECTION relocates s. 980.075 (3), stats., which requires that a committed person or his or her attorney serve a copy of the person's discharge petition and supporting documents on the prosecuting entity.

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

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

NOTE: This SECTION relocates s. 980.075 (4) (a) and (b), which permits the committed individual and the prosecution to use experts or other professionals to support or oppose a discharge petition.

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

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

NOTE: This SECTION relocates s. 980.075 (5), stats., which requires the court to refer a committed person who does not have an attorney to the office of the state public defender for an indigency determination and appointment of counsel.

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

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

NOTE: Permits the department of health services (DHS) to file a supplemental report at any time prior to a supervised release or discharge hearing.

Creates new language requiring the court to accept any supplemental reports filed by DHS prior to a supervised release or discharge hearing and requires the court to allow DHS to testify about the supplemental report.

SECTION 14. 980.08 (1) of the statutes is amended to read:

980.08 **(1)** Any person who is committed under s. 980.06 may petition the committing court to modify its order by authorizing supervised release if at least 12 months have elapsed since the initial commitment order was entered or at least 12 months have elapsed since the most recent release petition was denied, since

supervised release was denied under to s. 980.09 (4), or since the most recent order for supervised release was revoked. The director of the facility at which the person is placed may file a petition under this subsection on the person's behalf at any time.

NOTE: Prohibits a committed individual from filing a supervised release petition for at least 12 months after a court considers and denies supervised release at a discharge hearing.

Currently, if an individual is denied discharge at a discharge trial, then the court may proceed to consider whether the individual qualifies for supervised release. SECTION 24 of this bill eliminates court discretion to decide whether or not to consider supervised release at a discharge trial and instead requires the court to consider supervised release after denying discharge.

SECTION 15. 980.08 (2m) of the statutes is created to read:

980.08 **(2m)** The person submitting the petition may use experts or professional persons to support his or her petition. The district attorney or the department of justice may use experts or professional persons to support or oppose any petition.

NOTE: Provides that a committed individual and the prosecution may use experts or professionals in supporting or opposing a petition for supervised release. The language is currently contained in s. 980.075 (4) (a) and (b), stats., which this bill renumbers to s. 980.09 (1m) (c) to apply to discharge. It needs to be repeated to apply to s. 980.08, supervised release.

SECTION 16. 980.08 (3) of the statutes is renumbered 980.08 (3) (a) and (b) and amended to read:

980.08 **(3)** (a) Within 20 days after receipt of the petition, the court shall appoint one or more examiners ~~having~~ for the court who have the specialized knowledge determined by the court to be appropriate, who shall examine the person and furnish a written report of the examination to the court within ~~30~~ 60 days after appointment, unless the court for good cause extends this time limit. If the person requests appointment of an examiner within 20 days after the filing of the petition, the court shall appoint an examiner for the person, unless the court appointed an examiner under s. 980.07 (1) or 980.031 (3) for the current reexamination period. If

LPS: this ends up as: 980.031 (3) or 980.07 (1)

a report filed by an examiner appointed under s. 980.07 (1) to conduct a reexamination of the person's mental condition within the 6 months preceding the filing of the petition supports supervised release, the court may appoint that examiner as the examiner for the person under this subsection.

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

NOTE: Renumbers existing s. 980.08 (3) as 2 separate paragraphs.

The SECTION also extends the time period for an examiner to complete an evaluation of the committed person and submit the report to the court from 30 to 60 days, and authorizes the court to extend the time limit for good cause.

The SECTION clarifies that the court appoints an examiner at this stage for purposes of the court. The draft also requires the court to appoint an examiner for the committed person if: (1) the person requests appointment of an examiner; and (2) the court has not previously appointed an examiner for the person under other sections of the chapter during the relevant 12–month reexamination period.

If the committed person requests appointment of his or her own examiner, the SECTION allows the court to appoint the DHS examiner who conducted the person's annual reexamination if: (1) the examiner conducted the examination within the 6 months before the person filed his or her supervised release petition; and (2) the examiner's report supports a grant of supervised release. This will allow the court to appoint an examiner who already conducted an examination of the individual and generated a report favorable to the individual, rather than requiring the court to appoint an additional examiner on behalf of the person.

SECTION 17. 980.08 (4) (a) of the statutes is amended to read:

980.08 **(4)** (a) The court, without a jury, shall hear the petition within ~~30~~ 120 days after the report of the court–appointed examiner appointed under sub. (3) (a) is filed with the court, unless the court for good cause extends this time limit.

Expenses of proceedings under this subsection shall be paid as provided under s. 51.20 (18) (b), (c), and (d).

NOTE: Extends the time period for the supervised release hearing from 30 to 120 days after the examiner's report is filed.

SECTION 18. 980.08 (4) (cg) 1. of the statutes is amended to read:

980.08 **(4)** (cg) 1. The person ~~has made~~ is making significant progress in treatment and the person's progress can be sustained while on supervised release.

NOTE: Revises one of the 5 criteria a committed individual must meet before being granted supervised release to require that the individual is making significant progress in treatment, rather than requiring that the individual has made significant progress in treatment. This change corresponds with the revision in SECTION 2.

SECTION 19. 980.08 (4) (cj) of the statutes is created to read:

980.08 **(4)** (cj) The person has the burden of proving by clear and convincing evidence that the person meets the criteria in par. (cg).

NOTE: Provides that the person petitioning for supervised release bears the burden of proving 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.

SECTION 20. 980.08 (9) (a) of the statutes is amended to read:

980.08 **(9)** (a) As a condition of supervised release granted under this chapter, for the first year of supervised release, the court shall restrict the person on supervised release to the person's ~~home~~ residence except for outings approved by the department of health services that are under the direct supervision of a department of corrections escort and that are for employment or volunteer purposes, ~~for~~ religious purposes, educational purposes, treatment and exercise purposes, or supervision purposes, or residence maintenance, or for caring for the person's basic living needs.

NOTE: 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. Specifically, in addition to existing purposes, the bill provides that a committed individual may leave his or her residence for volunteer, educational, treatment, exercise or supervision purposes, or for maintenance of his residence. The bill also replaces use of the term "home", with the term "residence".

SECTION 21. 980.09 (1) of the statutes is amended to read:

980.09 **(1)** A committed person may petition the committing court for discharge at any time. The court shall deny the petition under this section without a hearing unless the petition alleges facts from which the court or jury ~~may~~ would likely conclude the person's condition has changed since ~~the date of his or her initial commitment order~~ the most recent order denying a petition for discharge after a hearing on the merits, or since the date of his or her initial commitment order if the person has never received a hearing on the merits of a discharge petition, so that the person ~~does not meet~~ no longer meets the criteria for commitment as a sexually violent person.

NOTE: Alters the pleading requirement which a petitioner must meet before his or her discharge petition will receive a discharge trial. The SECTION requires a petitioner to allege facts which *would likely* lead a fact–finder to determine he or she no longer qualifies as an SVP, rather than alleging facts which *may* lead a fact–finder to this determination.

This SECTION also alters the time period during which a petitioner must show his or her "condition has changed" in order to merit a discharge trial. The language requires a petitioner to allege a change occurring since the last discharge trial at which a fact–finder determined that he or she remains an SVP.

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

980.09 **(1m)** (d) After receiving a petition for discharge under sub. (1) and upon the request of the person filing the petition, unless the court previously appointed an examiner under s. 980.031 (3) or 980.07 (1) for the current reexamination period, the court shall appoint for the person an examiner having the specialized knowledge determined by the court to be appropriate. If an examination conducted under s. 980.07 (1) within the 6 months preceding the filing of the petition supports discharge, the court may appoint the examiner who conducted that examination as the examiner for the person. The examiner shall have reasonable access to the person for purposes of examination and to the person's past and present treatment records, as defined in s. 51.30 (1) (b), and patient health care records, as provided in s. 146.82

(2) (c). The county shall pay the costs of an examiner appointed under this paragraph as provided under s. 51.20 (18) (a).

NOTE: The SECTION creates a new statutory section relating to appointment of an examiner for the person petitioning for discharge. The bill specifies that a court must appoint an examiner for the person if the person is indigent and requests an examiner after submitting a discharge petition to the court.

However, the court is not required to appoint an additional examiner for the person if the court previously appointed an examiner for the person at the time of the person's annual reexamination. Further, instead of appointing a new examiner for the person, the court may appoint an examiner who already completed an examination of the person under certain circumstances. The court may appoint an examiner who previously examined the person if: (1) the examiner completed a reexamination of the person within the 6 months before the person filed his or her petition for discharge; and (2) the examination recommended discharge.

SECTION 23. 980.09 (2) and (3) of the statutes are amended to read:

980.09 **(2)** ~~The court shall review the petition within 30 days and~~ In reviewing the petition, the court may hold a hearing to determine if ~~it contains facts from which the court or jury may conclude that the person does not meet~~ the person's condition has sufficiently changed such that a court or jury would likely conclude the person no longer meets the criteria for commitment as a sexually violent person. In determining under this subsection whether ~~facts exist that might warrant such a conclusion~~ the person's condition has sufficiently changed such that a court or jury would likely conclude that the person no longer meets the criteria for commitment, the court ~~shall~~ may consider the record, including evidence introduced at the initial commitment trial or the most recent trial on a petition for discharge, any current or past reports filed under s. 980.07, relevant facts in the petition and in the state's written response, arguments of counsel, and any supporting documentation provided by the person or the state. If the court determines that the ~~petition~~ record does not contain facts from which a court or jury ~~may~~ would likely conclude that the person ~~does not meet~~ no longer meets the criteria for commitment, the court shall deny the petition. If the court determines that ~~facts exist~~ the record contains facts

from which a court or jury ~~could~~ would likely conclude the person ~~does not meet~~ no longer meets the criteria for commitment, the court shall set the matter for ~~hearing~~ trial.

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

NOTE: Alters the procedure for court review of a discharge petition in determining whether the court must hold a discharge trial. Under current law, a court may hold a hearing to determine whether the petition meets the pleading requirement. The hearing is an initial hearing that addresses the sufficiency of the petition itself, unlike a discharge trial which occurs later and determines whether the petitioner remains an SVP.

The SECTION also alters the pleading requirement a petitioner must meet before receiving a discharge trial. Under current law, the petitioner's discharge petition must allege facts from which a court or jury *may* conclude that he no longer qualifies as an SVP. The bill instead provides that a petitioner's discharge petition must allege facts from which a court or jury *would likely* conclude he no longer qualifies as an SVP. The SECTION also specifies that a court may review the entire record in determining whether the petitioner's condition has sufficiently changed to warrant a discharge trial.

The SECTION uses the word "trial" instead of the word "hearing" so that the SECTION refers to discharge trials rather than discharge hearings. This distinguishes between an initial hearing held by a court to determine the sufficiency of a discharge petition and a full trial on the merits.

SECTION 24. 980.09 (4) of the statutes is amended to read:

980.09 **(4)** If the court or jury is satisfied that the state has not met its burden of proof under sub. (3), the ~~petitioner~~ person shall be discharged from the custody of the department. If the court or jury is satisfied that the state has met its burden of proof under sub. (3), the court ~~may~~ shall proceed under s. 980.08 (4) to determine whether to modify the ~~petitioner's~~ person's existing commitment order by authorizing supervised release, unless the person waives consideration of the

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

NOTE: Requires a court to consider supervised release for a petitioner after denying discharge at a discharge trial. Under current law, the court may choose to evaluate whether the petitioner meets the supervised release criteria, but is not required to do so.

The SECTION permits a petitioner to waive the court's consideration of supervised release, but treats the waiver as a denial of supervised release for purposes of calculating when a committed person may file a petition for supervised release.

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

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

NOTE: Specifies that a court ordering discharge of a person from commitment must delay execution of the order for a period of time, not to exceed 10 working days, during which DHS must issue notice to victims and their family members and notify DOC.

SECTION 26. 980.095 (1) (a) of the statutes is amended to read:

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

NOTE: Alters the deadline by which a petitioner must request a jury trial in discharge proceedings. Under current law, a petitioner must request a jury trial within 10 days of filing his discharge petition, which requires the petitioner to request a jury trial before the court determines whether or not he will receive a trial on his discharge petition. The SECTION specifies that a petitioner must request a jury trial within 10 days after the court determines that his or her petition warrants a trial.

Changes "hearing" to "trial" to be consistent with changes under s. 980.09 (3). See SECTION 23.

(END)

Hanaman, Cathlene

From: Bender-Olson, Katherine
Sent: Wednesday, February 06, 2013 11:43 AM
To: Hanaman, Cathlene
Subject: RE: SVP Study Committee Draft for Introduction

Cathlene,

Thank you for fixing our Chapter 980 Study Committee draft [LRB -1261/P2]. I just have a few very minor items for you:

- Page 2, LRB Analysis – the section references Notes provided by the "Law Revision Committee." I was not sure if this was intentional, or if you meant to reference the Study Committee?
- Page 13, line 6 – there is an extra "the"
- Page 14, line 1 – there may be a comma needed after the word "criteria"

Otherwise, the draft looks great. I'm sorry that you had to go back and renumber the sections that we repealed and recreated. Though I cannot promise I've learned and won't do this again in the future, I will certainly try not to!

Thanks again,
Katie

From: Hanaman, Cathlene
Sent: Wednesday, January 23, 2013 3:49 PM
To: Bender-Olson, Katherine
Subject: RE: SVP Study Committee Draft for Introduction

I am almost done. I renumbered some items (versus repealing and then creating) and fixed a few cross-references. I tried my best to imitate your explanatory notes, so sorry in advance for my (potentially many) note-writing faux pas!

Good day!

From: Bender-Olson, Katherine
Sent: Wednesday, January 16, 2013 12:45 PM
To: Hurley, Peggy; Hanaman, Cathlene
Cc: Queensland, Michael
Subject: SVP Study Committee Draft for Introduction

Ladies,

The Joint Legislative Council voted this morning to introduce the attached draft (WLC: 0051/1). The draft came out of the Chapter 980 Sexually Violent Persons Study Committee. I did not know who would be handling it, so I am sending the draft to both of you.

Sorry in advance for the (potentially many) drafting mistakes.

Have a good day,
Katie

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State of Wisconsin
2013 – 2014 LEGISLATURE

LRB–1261/~~P2~~ P3
CMH:sac:~~rs~~ ce

Today if possible

PRELIMINARY DRAFT – NOT READY FOR INTRODUCTION

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regen cat

AN ACT ***to repeal*** 980.075 (title), (1), (1m) (b) and (2); ***to renumber*** 980.07 (6); ***to renumber and amend*** 980.075 (1m) (a), 980.075 (3), 980.075 (5), 980.075 (6) and 980.08 (3); ***to consolidate, renumber and amend*** 980.075 (4) (a) and (b); ***to amend*** 980.01 (3), 980.01 (8), 980.065 (1r), 980.07 (1), 980.07 (4) (b), 980.07 (6m), 980.08 (1), 980.08 (4) (a), 980.08 (4) (cg) 1., 980.08 (9) (a), 980.09 (1), 980.09 (2) and (3), 980.09 (4) and 980.095 (1) (a); and ***to create*** 980.08 (2m), 980.08 (4) (cj), 980.09 (1m) (d) and 980.09 (5) of the statutes; **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 individuals committed as sexually violent persons.

Analysis by the Legislative Reference Bureau

For further information, see the NOTES provided by the Law Revision Committee of the Joint Legislative Council.

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

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This bill was prepared for the Joint Legislative Council's Special Committee on Supervised Release and Discharge of Sexually Violent Persons.

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." In general, a sexually violent person (SVP) is an individual who has been convicted of a sexually violent offense and who is dangerous because he or she suffers from a mental disorder that makes it likely the individual will engage in future acts of sexual violence. Current law contains provisions for the discharge or supervised release of individuals committed under ch. 980.

This draft makes various changes to the discharge and supervised release provisions of ch. 980. 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 parts of s. 980.075, stats., relating to the supervised release and discharge petition process, and renumbering 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 in the execution of a court order granting discharge to a committed individual.

- Altering the criteria which a committed person must meet 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 direct supervision of a department of corrections (DOC) escort.

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

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

NOTE: Part of s. 980.075 is repealed in this bill and parts are renumbered to be parts of s. 980.07, but the only instance of "petitioner" in s. 980.075 was changed to "person." See SECTION 11. Section 980.09 contains one occurrence of "petitioner"; this bill changes it to "person" for consistency. See SECTION 24. Section 980.095 contains one occurrence of "petitioner"; this bill changes it to "person" to be consistent and to eliminate any confusion since that statutory section also discusses the petition under s. 980.02. See SECTION 26.

SECTION 2. 980.01 (8) of the statutes is amended to read:

980.01 **(8)** "Significant progress in treatment" means that the person ~~has done~~ is doing all of the following:

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

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

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

(d) ~~Demonstrated~~ Demonstrating 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.

NOTE: Revises the definition of "significant progress in treatment" to specify that the individual must be participating in treatment programs at a sufficient level and demonstrating the requisite behavior, understanding, and changes, rather than

specifying that the individual has already participated in the treatment or has already demonstrated these behaviors, understandings, and changes.

Under current law, a committed individual must meet 5 specified criteria before a court may grant him or her supervised release. One of the criteria requires that the individual has made "significant progress in treatment" and that the progress can be sustained while on supervised release. Because the draft revises the definition of "significant progress in treatment", a committed individual must currently be engaged in or working towards the requirements set forth in the definition to meet the criterion for supervised release. Corresponding revisions are made in SECTIONS 5 and 18.

SECTION 3. 980.065 (1r) of the statutes is amended to read:

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

NOTE: Expands the list of facilities at which DHS may place a female committed as an SVP to include the Wisconsin Women's Resource Center.

SECTION 4. 980.07 (1) of the statutes is amended to read:

980.07 **(1)** If a person is committed under s. 980.06 and has not been discharged under s. 980.09 (4), the department shall appoint an examiner to conduct a reexamination of the person's mental condition within 12 months after the date of the initial commitment order under s. 980.06 and again thereafter at least once each 12 months 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 shall apply the criteria under s. 980.08 (4) (cg) when considering if the person should be placed on supervised release and shall apply the criteria under s. 980.09 (3) when considering if the person should be discharged. At the time of a reexamination under this section, the ~~person who has been committed may retain or have the~~ court shall appoint an examiner as provided under s. 980.031 (3) upon request of the committed person or the person may retain an examiner. The

county shall pay the costs of an examiner appointed by the court as provided under s. 51.20 (18) (a).

NOTE: Clarifies that a court must appoint an examiner for the committed person if the person requests an examiner at the time of the 12–month reexamination. Removes ambiguity regarding whether a court may choose not to appoint an examiner when a committed person requests an examiner.

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

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

NOTE: This change corresponds with the revision in SECTION 2.

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

NOTE: This bill renumbers 980.075 (1m) (a) to 980.07 (6) (b); see SECTION 9.

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

980.07 **(6m)** If a person committed under s. 980.06 is incarcerated at a county jail, state correctional institution, or federal correction institution for a new criminal charge or conviction or because his or her parole was revoked, any reporting requirement under sub. (1), (4), or (6) (a) does not apply during the incarceration period. A court may order a reexamination of the person under sub. (3) if the courts finds reexamination to be necessary. The schedule for reporting established under sub. (1) shall resume upon the release of the person.

SECTION 8. 980.075 (title), (1), (1m) (b) and (2) of the statutes are repealed.

NOTE: This bill relocates portions of s. 980.075 into ss. 980.07 and 980.09, stats., as described in the notes appearing beneath SECTIONS 9, 10, 11, 12, and 13. This draft also adds identical language from s. 980.075 to s. 980.08. See the note following SECTION 15.

Portions of s. 980.075, patient petition process, which this bill repeals and does not relocate to other portions of the chapter appear in s. 980.075 (2), stats., and contain the following: (1) a 30–day deadline for submitting a supervised release or discharge petition that may conflict with more specific deadlines appearing within s. 980.08 and 980.09, stats; and (2) language stating that a person remains committed or remains on supervised release without court review if the person does not file a timely discharge petition.

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

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

NOTE: Requires DHS to provide petition forms to committed individuals when providing a copy of the person's reexamination report.

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

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

NOTE: This SECTION relocates s. 980.075 (3), stats., which requires that a committed person or his or her attorney serve a copy of the person's discharge petition and supporting documents on the prosecuting entity.

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

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

NOTE: This SECTION relocates s. 980.075 (4) (a) and (b), which permits the committed individual and the prosecution to use experts or other professionals to support or oppose a discharge petition.

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

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

NOTE: This SECTION relocates s. 980.075 (5), stats., which requires the court to refer a committed person who does not have an attorney to the office of the state public defender for an indigency determination and appointment of counsel.

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

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

NOTE: Permits the department of health services (DHS) to file a supplemental report at any time prior to a supervised release or discharge hearing.

Creates new language requiring the court to accept any supplemental reports filed by DHS prior to a supervised release or discharge hearing and requires the court to allow DHS to testify about the supplemental report.

SECTION 14. 980.08 (1) of the statutes is amended to read:

980.08 **(1)** Any person who is committed under s. 980.06 may petition the committing court to modify its order by authorizing supervised release if at least 12 months have elapsed since the initial commitment order was entered or at least 12 months have elapsed since the most recent release petition was denied, since

supervised release was denied under s. 980.09 (4), or since the most recent order for supervised release was revoked. The director of the facility at which the person is placed may file a petition under this subsection on the person's behalf at any time.

NOTE: Prohibits a committed individual from filing a supervised release petition for at least 12 months after a court considers and denies supervised release at a discharge hearing.

Currently, if an individual is denied discharge at a discharge trial, then the court may proceed to consider whether the individual qualifies for supervised release. SECTION 24 of this bill eliminates court discretion to decide whether or not to consider supervised release at a discharge trial and instead requires the court to consider supervised release after denying discharge.

SECTION 15. 980.08 (2m) of the statutes is created to read:

980.08 **(2m)** The person submitting the petition may use experts or professional persons to support his or her petition. The district attorney or the department of justice may use experts or professional persons to support or oppose any petition.

NOTE: Provides that a committed individual and the prosecution may use experts or professionals in supporting or opposing a petition for supervised release. The language is currently contained in s. 980.075 (4) (a) and (b), stats., which this bill renumbers to s. 980.09 (1m) (c) to apply to discharge. It needs to be repeated to apply to s. 980.08, supervised release.

SECTION 16. 980.08 (3) of the statutes is renumbered 980.08 (3) (a) and amended to read:

980.08 **(3)** (a) Within 20 days after receipt of the petition, the court shall appoint one or more examiners ~~having~~ for the court who have the specialized knowledge determined by the court to be appropriate, who shall examine the person and furnish a written report of the examination to the court within ~~30~~ 60 days after appointment, unless the court for good cause extends this time limit. If the person requests appointment of an examiner within 20 days after the filing of the petition, the court shall appoint an examiner for the person, unless the court appointed an examiner under s. 980.031 (3) or 980.07 (1) for the current reexamination period. If

a report filed by an examiner appointed under s. 980.07 (1) to conduct a reexamination of the person's mental condition within the 6 months preceding the filing of the petition supports supervised release, the court may appoint that examiner as the examiner for the person under this subsection.

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

NOTE: Renumbers existing s. 980.08 (3) as 2 separate paragraphs.

The SECTION also extends the time period for an examiner to complete an evaluation of the committed person and submit the report to the court from 30 to 60 days, and authorizes the court to extend the time limit for good cause.

The SECTION clarifies that the court appoints an examiner at this stage for purposes of the court. The draft also requires the court to appoint an examiner for the committed person if: (1) the person requests appointment of an examiner; and (2) the court has not previously appointed an examiner for the person under other sections of the chapter during the relevant 12–month reexamination period.

If the committed person requests appointment of his or her own examiner, the SECTION allows the court to appoint the DHS examiner who conducted the person's annual reexamination if: (1) the examiner conducted the examination within the 6 months before the person filed his or her supervised release petition; and (2) the examiner's report supports a grant of supervised release. This will allow the court to appoint an examiner who already conducted an examination of the individual and generated a report favorable to the individual, rather than requiring the court to appoint an additional examiner on behalf of the person.

SECTION 17. 980.08 (4) (a) of the statutes is amended to read:

980.08 **(4)** (a) The court, without a jury, shall hear the petition within ~~30~~ 120 days after the report of the court–appointed examiner appointed under sub. (3) (a) is filed with the court, unless the court for good cause extends this time limit.

Expenses of proceedings under this subsection shall be paid as provided under s. 51.20 (18) (b), (c), and (d).

NOTE: Extends the time period for the supervised release hearing from 30 to 120 days after the examiner's report is filed.

SECTION 18. 980.08 (4) (cg) 1. of the statutes is amended to read:

980.08 **(4)** (cg) 1. The person ~~has made~~ is making significant progress in treatment and the person's progress can be sustained while on supervised release.

NOTE: Revises one of the 5 criteria a committed individual must meet before being granted supervised release to require that the individual is making significant progress in treatment, rather than requiring that the individual has made significant progress in treatment. This change corresponds with the revision in SECTION 2.

SECTION 19. 980.08 (4) (cj) of the statutes is created to read:

980.08 **(4)** (cj) The person has the burden of proving by clear and convincing evidence that the person meets the criteria in par. (cg).

NOTE: Provides that the person petitioning for supervised release bears the burden of proving 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.

SECTION 20. 980.08 (9) (a) of the statutes is amended to read:

980.08 **(9)** (a) As a condition of supervised release granted under this chapter, for the first year of supervised release, the court shall restrict the person on supervised release to the person's ~~home~~ residence except for outings approved by the department of health services that are under the direct supervision of a department of corrections escort and that are for employment or volunteer purposes, ~~for~~ religious purposes, educational purposes, treatment and exercise purposes, supervision purposes, or residence maintenance, or for caring for the person's basic living needs.

NOTE: 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. Specifically, in addition to existing purposes, the bill provides that a committed individual may leave his or her residence for volunteer, educational, treatment, exercise or supervision purposes, or for maintenance of his residence. The bill also replaces use of the term "home", with the term "residence".

SECTION 21. 980.09 (1) of the statutes is amended to read:

980.09 **(1)** A committed person may petition the committing court for discharge at any time. The court shall deny the petition under this section without a hearing unless the petition alleges facts from which the court or jury ~~may~~ would likely conclude the person's condition has changed since ~~the date of his or her initial commitment order~~ the most recent order denying a petition for discharge after a hearing on the merits, or since the date of his or her initial commitment order if the person has never received a hearing on the merits of a discharge petition, so that the person ~~does not meet~~ no longer meets the criteria for commitment as a sexually violent person.

NOTE: Alters the pleading requirement which a petitioner must meet before his or her discharge petition will receive a discharge trial. The SECTION requires a petitioner to allege facts which *would likely* lead a fact–finder to determine he or she no longer qualifies as an SVP, rather than alleging facts which *may* lead a fact–finder to this determination.

This SECTION also alters the time period during which a petitioner must show his or her "condition has changed" in order to merit a discharge trial. The language requires a petitioner to allege a change occurring since the last discharge trial at which a fact–finder determined that he or she remains an SVP.

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

980.09 **(1m)** (d) After receiving a petition for discharge under sub. (1) and upon the request of the person filing the petition, unless the court previously appointed an examiner under s. 980.031 (3) or 980.07 (1) for the current reexamination period, the court shall appoint for the person an examiner having the specialized knowledge determined by the court to be appropriate. If an examination conducted under s. 980.07 (1) within the 6 months preceding the filing of the petition supports discharge, the court may appoint the examiner who conducted that examination as the examiner for the person. The examiner shall have reasonable access to the person for purposes of examination and to the person's past and present treatment records, as defined in s. 51.30 (1) (b), and patient health care records, as provided in s. 146.82

(2) (c). The county shall pay the costs of an examiner appointed under this paragraph as provided under s. 51.20 (18) (a).

NOTE: The SECTION creates a new statutory section relating to appointment of an examiner for the person petitioning for discharge. The bill specifies that a court must appoint an examiner for the person if the person is indigent and requests an examiner after submitting a discharge petition to the court.

However, the court is not required to appoint an additional examiner for the person if the court previously appointed an examiner for the person at the time of the person's annual reexamination. Further, instead of appointing a new examiner for the person, the court may appoint an examiner who already completed an examination of the person under certain circumstances. The court may appoint an examiner who previously examined the person if: (1) the examiner completed a reexamination of the person within the 6 months before the person filed his or her petition for discharge; and (2) the examination recommended discharge.

SECTION 23. 980.09 (2) and (3) of the statutes are amended to read:

980.09 **(2)** ~~The court shall review the petition within 30 days and~~ In reviewing the petition, the court may hold a hearing to determine if ~~it contains facts from which the court or jury may conclude that the person does not meet~~ the person's condition has sufficiently changed such that a court or jury would likely conclude the person no longer meets the criteria for commitment as a sexually violent person. In determining under this subsection whether ~~facts exist that might warrant such a conclusion~~ the person's condition has sufficiently changed such that a court or jury would likely conclude that the person no longer meets the criteria for commitment, the court ~~shall~~ may consider the record, including evidence introduced at the initial commitment trial or the most recent trial on a petition for discharge, any current or past reports filed under s. 980.07, relevant facts in the petition and in the state's written response, arguments of counsel, and any supporting documentation provided by the person or the state. If the court determines that the ~~petition~~ record does not contain facts from which a court or jury ~~may~~ would likely conclude that the person ~~does not meet~~ no longer meets the criteria for commitment, the court shall deny the petition. If the court determines that ~~facts exist~~ the record contains facts

from which a court or jury ~~could~~ would likely conclude the person ~~does not meet~~ no longer meets the criteria for commitment, the court shall set the matter for ~~hearing~~ trial.

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

NOTE: Alters the procedure for court review of a discharge petition in determining whether the court must hold a discharge trial. Under current law, a court may hold a hearing to determine whether the petition meets the pleading requirement. The hearing is an initial hearing that addresses the sufficiency of the petition itself, unlike a discharge trial which occurs later and determines whether the petitioner remains an SVP.

The SECTION also alters the pleading requirement a petitioner must meet before receiving a discharge trial. Under current law, the petitioner's discharge petition must allege facts from which a court or jury *may* conclude that he no longer qualifies as an SVP. The bill instead provides that a petitioner's discharge petition must allege facts from which a court or jury *would likely* conclude he no longer qualifies as an SVP. The SECTION also specifies that a court may review the entire record in determining whether the petitioner's condition has sufficiently changed to warrant a discharge trial.

The SECTION uses the word "trial" instead of the word "hearing" so that the SECTION refers to discharge trials rather than discharge hearings. This distinguishes between an initial hearing held by a court to determine the sufficiency of a discharge petition and a full trial on the merits.

SECTION 24. 980.09 (4) of the statutes is amended to read:

980.09 **(4)** If the court or jury is satisfied that the state has not met its burden of proof under sub. (3), the ~~petitioner~~ person shall be discharged from the custody of the department. If the court or jury is satisfied that the state has met its burden of proof under sub. (3), the court ~~may~~ shall proceed under s. 980.08 (4) to determine whether to modify the ~~petitioner's~~ person's existing commitment order by authorizing supervised release, unless the person waives consideration of the

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

NOTE: Requires a court to consider supervised release for a petitioner after denying discharge at a discharge trial. Under current law, the court may choose to evaluate whether the petitioner meets the supervised release criteria, but is not required to do so.

The SECTION permits a petitioner to waive the court's consideration of supervised release, but treats the waiver as a denial of supervised release for purposes of calculating when a committed person may file a petition for supervised release.

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

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

NOTE: Specifies that a court ordering discharge of a person from commitment must delay execution of the order for a period of time, not to exceed 10 working days, during which DHS must issue notice to victims and their family members and notify DOC.

SECTION 26. 980.095 (1) (a) of the statutes is amended to read:

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

NOTE: Alters the deadline by which a petitioner must request a jury trial in discharge proceedings. Under current law, a petitioner must request a jury trial within 10 days of filing his discharge petition, which requires the petitioner to request a jury trial before the court determines whether or not he will receive a trial on his discharge petition. The SECTION specifies that a petitioner must request a jury trial within 10 days after the court determines that his or her petition warrants a trial.

Changes "hearing" to "trial" to be consistent with changes under s. 980.09 (3). See SECTION 23.

(END)

State of Wisconsin
2013 – 2014 LEGISLATURE

LRB-1261/P3
CMH:sac:

PRELIMINARY DRAFT – NOT READY FOR INTRODUCTION

Mov a.m. – no changes

repeal

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

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This bill is explained in the NOTES provided by the Joint Legislative Council in the bill.

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

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This bill was prepared for the Joint Legislative Council's Special Committee on Supervised Release and Discharge of Sexually Violent Persons.

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." In general, a sexually violent person (SVP) is an individual who has been convicted of a sexually violent offense and who is dangerous because he or she suffers from a mental disorder that makes it likely the individual will engage in future acts of sexual violence. Current law contains provisions for the discharge or supervised release of individuals committed under ch. 980.

This draft makes various changes to the discharge and supervised release provisions of ch. 980. 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 parts of s. 980.075, stats., relating to the supervised release and discharge petition process, and renumbering 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 in the execution of a court order granting discharge to a committed individual.

- Altering the criteria which a committed person must meet 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 direct supervision of a department of corrections (DOC) escort.

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

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

NOTE: Part of s. 980.075 is repealed in this bill and parts are renumbered to be parts of s. 980.07, but the only instance of "petitioner" in s. 980.075 was changed to "person." See SECTION 11. Section 980.09 contains one occurrence of "petitioner"; this bill changes it to "person" for consistency. See SECTION 24. Section 980.095 contains one occurrence of "petitioner"; this bill changes it to "person" to be consistent and to eliminate any confusion since that statutory section also discusses the petition under s. 980.02. See SECTION 26.

SECTION 2. 980.01 (8) of the statutes is amended to read:

980.01 **(8)** "Significant progress in treatment" means that the person ~~has done~~ is doing all of the following:

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

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

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

(d) ~~Demonstrated~~ Demonstrating 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.

NOTE: Revises the definition of "significant progress in treatment" to specify that the individual must be participating in treatment programs at a sufficient level and demonstrating the requisite behavior, understanding, and changes, rather than

specifying that the individual has already participated in the treatment or has already demonstrated these behaviors, understandings, and changes.

Under current law, a committed individual must meet 5 specified criteria before a court may grant him or her supervised release. One of the criteria requires that the individual has made "significant progress in treatment" and that the progress can be sustained while on supervised release. Because the draft revises the definition of "significant progress in treatment", a committed individual must currently be engaged in or working towards the requirements set forth in the definition to meet the criterion for supervised release. Corresponding revisions are made in SECTIONS 5 and 18.

SECTION 3. 980.065 (1r) of the statutes is amended to read:

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

NOTE: Expands the list of facilities at which DHS may place a female committed as an SVP to include the Wisconsin Women's Resource Center.

SECTION 4. 980.07 (1) of the statutes is amended to read:

980.07 **(1)** If a person is committed under s. 980.06 and has not been discharged under s. 980.09 (4), the department shall appoint an examiner to conduct a reexamination of the person's mental condition within 12 months after the date of the initial commitment order under s. 980.06 and again thereafter at least once each 12 months 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 shall apply the criteria under s. 980.08 (4) (cg) when considering if the person should be placed on supervised release and shall apply the criteria under s. 980.09 (3) when considering if the person should be discharged. At the time of a reexamination under this section, the ~~person who has been committed may retain or have the~~ court shall appoint an examiner as provided under s. 980.031 (3) upon request of the committed person or the person may retain an examiner. The

county shall pay the costs of an examiner appointed by the court as provided under s. 51.20 (18) (a).

NOTE: Clarifies that a court must appoint an examiner for the committed person if the person requests an examiner at the time of the 12–month reexamination. Removes ambiguity regarding whether a court may choose not to appoint an examiner when a committed person requests an examiner.

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

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

NOTE: This change corresponds with the revision in SECTION 2.

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

NOTE: This bill renumbers 980.075 (1m) (a) to 980.07 (6) (b); see SECTION 9.

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

980.07 **(6m)** If a person committed under s. 980.06 is incarcerated at a county jail, state correctional institution, or federal correction institution for a new criminal charge or conviction or because his or her parole was revoked, any reporting requirement under sub. (1), (4), or (6) (a) does not apply during the incarceration period. A court may order a reexamination of the person under sub. (3) if the courts finds reexamination to be necessary. The schedule for reporting established under sub. (1) shall resume upon the release of the person.

****NOTE: This bill renumbers s. 980.07 (6) to be 980.07 (6) (a). See SECTION 6.

SECTION 8. 980.075 (title), (1), (1m) (b) and (2) of the statutes are repealed.

NOTE: This bill relocates portions of s. 980.075 into ss. 980.07 and 980.09, stats., as described in the notes appearing beneath SECTIONS 9, 10, 11, 12, and 13. This draft also adds identical language from s. 980.075 to s. 980.08. See the note following SECTION 15.

Portions of s. 980.075, patient petition process, which this bill repeals and does not relocate to other portions of the chapter appear in s. 980.075 (2), stats., and contain the following: (1) a 30–day deadline for submitting a supervised release or discharge petition that may conflict with more specific deadlines appearing within s. 980.08 and 980.09, stats; and (2) language stating that a person remains committed or remains on supervised release without court review if the person does not file a timely discharge petition.

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

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

NOTE: Requires DHS to provide petition forms to committed individuals when providing a copy of the person's reexamination report.

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

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

NOTE: This SECTION relocates s. 980.075 (3), stats., which requires that a committed person or his or her attorney serve a copy of the person's discharge petition and supporting documents on the prosecuting entity.

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

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

NOTE: This SECTION relocates s. 980.075 (4) (a) and (b), which permits the committed individual and the prosecution to use experts or other professionals to support or oppose a discharge petition.

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

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

NOTE: This SECTION relocates s. 980.075 (5), stats., which requires the court to refer a committed person who does not have an attorney to the office of the state public defender for an indigency determination and appointment of counsel.

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

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

NOTE: Permits the department of health services (DHS) to file a supplemental report at any time prior to a supervised release or discharge hearing.

Creates new language requiring the court to accept any supplemental reports filed by DHS prior to a supervised release or discharge hearing and requires the court to allow DHS to testify about the supplemental report.

SECTION 14. 980.08 (1) of the statutes is amended to read:

980.08 **(1)** Any person who is committed under s. 980.06 may petition the committing court to modify its order by authorizing supervised release if at least 12 months have elapsed since the initial commitment order was entered or at least 12 months have elapsed since the most recent release petition was denied, since

supervised release was denied under s. 980.09 (4), or since the most recent order for supervised release was revoked. The director of the facility at which the person is placed may file a petition under this subsection on the person's behalf at any time.

NOTE: Prohibits a committed individual from filing a supervised release petition for at least 12 months after a court considers and denies supervised release at a discharge hearing.

Currently, if an individual is denied discharge at a discharge trial, then the court may proceed to consider whether the individual qualifies for supervised release. SECTION 24 of this bill eliminates court discretion to decide whether or not to consider supervised release at a discharge trial and instead requires the court to consider supervised release after denying discharge.

SECTION 15. 980.08 (2m) of the statutes is created to read:

980.08 **(2m)** The person submitting the petition may use experts or professional persons to support his or her petition. The district attorney or the department of justice may use experts or professional persons to support or oppose any petition.

NOTE: Provides that a committed individual and the prosecution may use experts or professionals in supporting or opposing a petition for supervised release. The language is currently contained in s. 980.075 (4) (a) and (b), stats., which this bill renumbers to s. 980.09 (1m) (c) to apply to discharge. It needs to be repeated to apply to s. 980.08, supervised release.

SECTION 16. 980.08 (3) of the statutes is renumbered 980.08 (3) (a) and amended to read:

980.08 **(3)** (a) Within 20 days after receipt of the petition, the court shall appoint one or more examiners ~~having~~ for the court who have the specialized knowledge determined by the court to be appropriate, who shall examine the person and furnish a written report of the examination to the court within ~~30~~ 60 days after appointment, unless the court for good cause extends this time limit. If the person requests appointment of an examiner within 20 days after the filing of the petition, the court shall appoint an examiner for the person, unless the court appointed an examiner under s. 980.031 (3) or 980.07 (1) for the current reexamination period. If

a report filed by an examiner appointed under s. 980.07 (1) to conduct a reexamination of the person's mental condition within the 6 months preceding the filing of the petition supports supervised release, the court may appoint that examiner as the examiner for the person under this subsection.

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

NOTE: Renumbers existing s. 980.08 (3) as 2 separate paragraphs.

The SECTION also extends the time period for an examiner to complete an evaluation of the committed person and submit the report to the court from 30 to 60 days, and authorizes the court to extend the time limit for good cause.

The SECTION clarifies that the court appoints an examiner at this stage for purposes of the court. The draft also requires the court to appoint an examiner for the committed person if: (1) the person requests appointment of an examiner; and (2) the court has not previously appointed an examiner for the person under other sections of the chapter during the relevant 12–month reexamination period.

If the committed person requests appointment of his or her own examiner, the SECTION allows the court to appoint the DHS examiner who conducted the person's annual reexamination if: (1) the examiner conducted the examination within the 6 months before the person filed his or her supervised release petition; and (2) the examiner's report supports a grant of supervised release. This will allow the court to appoint an examiner who already conducted an examination of the individual and generated a report favorable to the individual, rather than requiring the court to appoint an additional examiner on behalf of the person.

SECTION 17. 980.08 (4) (a) of the statutes is amended to read:

980.08 **(4)** (a) The court, without a jury, shall hear the petition within ~~30~~ 120 days after the report of the court–appointed examiner appointed under sub. (3) (a) is filed with the court, unless the court for good cause extends this time limit.

Expenses of proceedings under this subsection shall be paid as provided under s. 51.20 (18) (b), (c), and (d).

NOTE: Extends the time period for the supervised release hearing from 30 to 120 days after the examiner's report is filed.

SECTION 18. 980.08 (4) (cg) 1. of the statutes is amended to read:

980.08 **(4)** (cg) 1. The person ~~has made~~ is making significant progress in treatment and the person's progress can be sustained while on supervised release.

NOTE: Revises one of the 5 criteria a committed individual must meet before being granted supervised release to require that the individual is making significant progress in treatment, rather than requiring that the individual has made significant progress in treatment. This change corresponds with the revision in SECTION 2.

SECTION 19. 980.08 (4) (cj) of the statutes is created to read:

980.08 **(4)** (cj) The person has the burden of proving by clear and convincing evidence that the person meets the criteria in par. (cg).

NOTE: Provides that the person petitioning for supervised release bears the burden of proving 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.

SECTION 20. 980.08 (9) (a) of the statutes is amended to read:

980.08 **(9)** (a) As a condition of supervised release granted under this chapter, for the first year of supervised release, the court shall restrict the person on supervised release to the person's ~~home~~ residence except for outings approved by the department of health services that are under the direct supervision of a department of corrections escort and that are for employment or volunteer purposes, ~~for~~ religious purposes, educational purposes, treatment and exercise purposes, supervision purposes, or residence maintenance, or for caring for the person's basic living needs.

NOTE: 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. Specifically, in addition to existing purposes, the bill provides that a committed individual may leave his or her residence for volunteer, educational, treatment, exercise or supervision purposes, or for maintenance of his residence. The bill also replaces use of the term "home", with the term "residence".

SECTION 21. 980.09 (1) of the statutes is amended to read:

980.09 **(1)** A committed person may petition the committing court for discharge at any time. The court shall deny the petition under this section without a hearing unless the petition alleges facts from which the court or jury ~~may~~ would likely conclude the person's condition has changed since ~~the date of his or her initial commitment order~~ the most recent order denying a petition for discharge after a hearing on the merits, or since the date of his or her initial commitment order if the person has never received a hearing on the merits of a discharge petition, so that the person ~~does not meet~~ no longer meets the criteria for commitment as a sexually violent person.

NOTE: Alters the pleading requirement which a petitioner must meet before his or her discharge petition will receive a discharge trial. The SECTION requires a petitioner to allege facts which *would likely* lead a fact–finder to determine he or she no longer qualifies as an SVP, rather than alleging facts which *may* lead a fact–finder to this determination.

This SECTION also alters the time period during which a petitioner must show his or her "condition has changed" in order to merit a discharge trial. The language requires a petitioner to allege a change occurring since the last discharge trial at which a fact–finder determined that he or she remains an SVP.

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

980.09 **(1m)** (d) After receiving a petition for discharge under sub. (1) and upon the request of the person filing the petition, unless the court previously appointed an examiner under s. 980.031 (3) or 980.07 (1) for the current reexamination period, the court shall appoint for the person an examiner having the specialized knowledge determined by the court to be appropriate. If an examination conducted under s. 980.07 (1) within the 6 months preceding the filing of the petition supports discharge, the court may appoint the examiner who conducted that examination as the examiner for the person. The examiner shall have reasonable access to the person for purposes of examination and to the person's past and present treatment records, as defined in s. 51.30 (1) (b), and patient health care records, as provided in s. 146.82

(2) (c). The county shall pay the costs of an examiner appointed under this paragraph as provided under s. 51.20 (18) (a).

NOTE: The SECTION creates a new statutory section relating to appointment of an examiner for the person petitioning for discharge. The bill specifies that a court must appoint an examiner for the person if the person is indigent and requests an examiner after submitting a discharge petition to the court.

However, the court is not required to appoint an additional examiner for the person if the court previously appointed an examiner for the person at the time of the person's annual reexamination. Further, instead of appointing a new examiner for the person, the court may appoint an examiner who already completed an examination of the person under certain circumstances. The court may appoint an examiner who previously examined the person if: (1) the examiner completed a reexamination of the person within the 6 months before the person filed his or her petition for discharge; and (2) the examination recommended discharge.

SECTION 23. 980.09 (2) and (3) of the statutes are amended to read:

980.09 **(2)** ~~The court shall review the petition within 30 days and~~ In reviewing the petition, the court may hold a hearing to determine if ~~it contains facts from which the court or jury may conclude that the person does not meet~~ the person's condition has sufficiently changed such that a court or jury would likely conclude the person no longer meets the criteria for commitment as a sexually violent person. In determining under this subsection whether ~~facts exist that might warrant such a conclusion~~ the person's condition has sufficiently changed such that a court or jury would likely conclude that the person no longer meets the criteria for commitment, the court ~~shall~~ may consider the record, including evidence introduced at the initial commitment trial or the most recent trial on a petition for discharge, any current or past reports filed under s. 980.07, relevant facts in the petition and in the state's written response, arguments of counsel, and any supporting documentation provided by the person or the state. If the court determines that the ~~petition~~ record does not contain facts from which a court or jury ~~may~~ would likely conclude that the person ~~does not meet~~ no longer meets the criteria for commitment, the court shall deny the petition. If the court determines that ~~facts exist~~ the record contains facts

from which a court or jury ~~could~~ would likely conclude the person ~~does not meet~~ no longer meets the criteria for commitment, the court shall set the matter for ~~hearing~~ trial.

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

NOTE: Alters the procedure for court review of a discharge petition in determining whether the court must hold a discharge trial. Under current law, a court may hold a hearing to determine whether the petition meets the pleading requirement. The hearing is an initial hearing that addresses the sufficiency of the petition itself, unlike a discharge trial which occurs later and determines whether the petitioner remains an SVP.

The SECTION also alters the pleading requirement a petitioner must meet before receiving a discharge trial. Under current law, the petitioner's discharge petition must allege facts from which a court or jury *may* conclude that he no longer qualifies as an SVP. The bill instead provides that a petitioner's discharge petition must allege facts from which a court or jury *would likely* conclude he no longer qualifies as an SVP. The SECTION also specifies that a court may review the entire record in determining whether the petitioner's condition has sufficiently changed to warrant a discharge trial.

The SECTION uses the word "trial" instead of the word "hearing" so that the SECTION refers to discharge trials rather than discharge hearings. This distinguishes between an initial hearing held by a court to determine the sufficiency of a discharge petition and a full trial on the merits.

SECTION 24. 980.09 (4) of the statutes is amended to read:

980.09 **(4)** If the court or jury is satisfied that the state has not met its burden of proof under sub. (3), the ~~petitioner~~ person shall be discharged from the custody of the department. If the court or jury is satisfied that the state has met its burden of proof under sub. (3), the court ~~may~~ shall proceed under s. 980.08 (4) to determine whether to modify the ~~petitioner's~~ person's existing commitment order by authorizing supervised release, unless the person waives consideration of the

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

NOTE: Requires a court to consider supervised release for a petitioner after denying discharge at a discharge trial. Under current law, the court may choose to evaluate whether the petitioner meets the supervised release criteria, but is not required to do so.

The SECTION permits a petitioner to waive the court's consideration of supervised release, but treats the waiver as a denial of supervised release for purposes of calculating when a committed person may file a petition for supervised release.

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

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

NOTE: Specifies that a court ordering discharge of a person from commitment must delay execution of the order for a period of time, not to exceed 10 working days, during which DHS must issue notice to victims and their family members and notify DOC.

SECTION 26. 980.095 (1) (a) of the statutes is amended to read:

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

NOTE: Alters the deadline by which a petitioner must request a jury trial in discharge proceedings. Under current law, a petitioner must request a jury trial within 10 days of filing his discharge petition, which requires the petitioner to request a jury trial before the court determines whether or not he will receive a trial on his discharge petition. The SECTION specifies that a petitioner must request a jury trial within 10 days after the court determines that his or her petition warrants a trial.

Changes "hearing" to "trial" to be consistent with changes under s. 980.09 (3). See SECTION 23.

(END)

Barman, Mike

From: Bender-Olson, Katherine
Sent: Monday, February 11, 2013 11:06 AM
To: LRB.Legal
Subject: Draft Review: LRB -1261/1 Topic: Study committee draft on sexually violent persons

Please Jacket LRB -1261/1 for the ASSEMBLY.