



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2005 Assembly Bill 1091

**Assembly Substitute
Amendment 1 and Assembly
Amendment 1 to Assembly
Substitute Amendment 1**

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Assembly Bill 1091 generally relates to sexually violent person commitment proceedings. Assembly Substitute Amendment 1 to the bill accomplishes the following:

1. Under current law, a sexually violent person, among others, may be filmed or taped for security purposes without the person's consent, except in a bedroom or bathroom. *The substitute amendment* provides that the person may be taped or filmed in a bedroom or bathroom if the person is engaged in dangerous or violent behavior. A treatment activity also may be filmed or taped to assess quality of treatment or to facilitate clinical staff supervision.
2. *The substitute amendment* removes the bill's credit for time served in the custody of the Department of Health and Family Services (DHFS) if the offender was confined during that time and the confinement and the offender's criminal conviction resulted from the same course of conduct.
3. *The substitute amendment* adds to the definition of the term "sexually violent offense" the crime of battery creating a substantial risk of great bodily harm if the battery was sexually motivated.
4. *The substitute amendment* newly creates a definition of the term "significant progress in treatment" involving participation in treatment, a willingness to work on addressing problems, an understanding of the causes of sexual arousal, a change in the personal causes of sexual arousal, and management of sexual arousal.
5. *The substitute amendment* newly defines the term "substantially probable" to mean more likely than not.

6. **Assembly Bill 1091** requires DHFS to prepare a treatment report when a sexually violent person is being reexamined during commitment; the report is submitted to the examiner. **The substitute amendment** requires that the report be prepared by a treating professional and then be submitted to DHFS.
7. **Assembly Bill 1091** requires that the reexamination report include an assessment of risk, a determination of whether safe management in the community is possible, and a determination of whether treatment is available in the community. DHFS must send the treatment report, the reexamination report, and its own recommendations to the court. If the report concludes that commitment criteria are not met, DHFS must petition for discharge. Within 30 days of the court submission, the person may object and the parties will litigate the issue of supervised release. If there is no objection to the report, either commitment continues or DHFS pursues, before the court, its own recommendations for supervised release or discharge. **The substitute amendment** simplifies this process by providing that:
 - a. DHFS must submit an annual report to the court. The report consists of the reexamination report and the treatment report.
 - b. When the annual report is made to the court, DHFS must provide the sexually violent person with a standardized petition form for supervised release and a standardized petition form for discharge.
 - c. Within 30 days after the DHFS submission of the annual report, the sexually violent person may petition for supervised release or discharge. If a petition is not timely filed, the person remains committed.
8. **The substitute amendment** restates the following criteria that a court must find in order to authorize supervised release:
 - a. The person has made significant progress in treatment and the progress can be sustained.
 - b. It is substantially probably that the person will not engage in an act of sexual violence while on supervised release.
 - c. Treatment is reasonably available.
 - d. Compliance by the person can be reasonably expected.
 - e. A reasonable level of resources can be provided for the level of residential placement, supervision, and ongoing treatment needs for the safe management of the person will be available.
9. **Assembly Bill 1091** requires a court-selected county, presumptively the sexually violent person's county of residence, to prepare a plan when supervised release is ordered. **The substitute amendment in addition** provides that the sexually violent person, the person's attorney, the district attorney, and a law enforcement agency in the county of intended placement may submit prospective residential options for community placement to DHFS. If

the plan meets the treatment needs of the person and the safety needs of the community, the court must approve the plan and determine that supervised release is appropriate. If either factor is not met, the court must determine that supervised release is not appropriate or order the preparation of another plan.

10. *The substitute amendment* newly provides that a court, following a hearing regarding the revocation of supervised release, may consider alternatives to revocation.
11. *Assembly Bill 1091* provides that at a discharge hearing the Department of Justice will represent DHFS, but, if the departments have adverse interests, DHFS must be represented by agency counsel or an attorney that it retains. *The substitute amendment* does not contain this provision.

Assembly Amendment 1 to the substitute amendment makes a number of technical corrections. In addition, the Assembly amendment does the following:

1. Creates a definition of the term “treating professional.”
2. Provides that the time limits for required reexaminations of a sexually violent offender will be tolled, or delayed, if the offender is otherwise incarcerated at a county jail, state correctional institution, or federal correction institution for a new criminal charge or conviction or because the person’s parole was revoked.

Legislative History

On March 7, 2006, the Assembly Committee on Judiciary:

1. Adopted Assembly Amendment 1 to Assembly Substitute Amendment 1 on a vote of Ayes, 8; Noes, 0.
2. Adopted Assembly Substitute Amendment 1 on a vote of Ayes, 7; Noes, 1.
3. Recommended passage of Assembly Bill 1091, as amended, on a vote of Ayes, 7; Noes, 1.

RS:ksm:rv