

# Civil Commitment of Sexually Violent Persons



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# Civil Commitment of Sexually Violent Persons

1993 Wisconsin Act 479 established procedures for the involuntary civil commitment of individuals found to be sexually violent persons (SVPs). These procedures, which are described in Chapter 980 of the statutes, became effective in June, 1994. In the years that have followed, the Wisconsin Supreme Court, in cases such as State v. Post, 197 Wisconsin Reports 2d 279 (1995), State v. Carpenter, 197 Wisconsin Reports 2d 252 (1995), and State v. Laxton, 254 Wisconsin Reports 2d 185 (2002), has consistently rejected legal challenges to the constitutionality of Chapter 980's civil commitment process. As of July 1, 2012, there were 344 people actively committed as SVPs in Wisconsin. Most were inpatient commitments at the Sand Ridge Secure Treatment Center (SRSTC) in Mauston, while a much smaller number (27) were on community supervised release.

This paper provides an overview of the process by which individuals are committed as SVPs, placed on supervised release, and discharged. In addition, the paper describes the responsibilities the Department of Health Services (DHS) has relating to this program, including the services DHS provides to SVPs. Finally, the paper provides information on SVP populations and the costs of providing services to individuals who have been committed as SVPs.

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## Statutory Commitment Process

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**Commitment Criteria.** An SVP is defined in statute as a person who has been convicted of a sexually violent offense, has been adjudicated delinquent for a sexually violent offense, or has

been found not guilty of or not responsible for a sexually violent offense by reason of insanity or mental disease, defect, or illness, and who is dangerous because he or she suffers from a mental disorder that makes it more likely than not that they will engage in one or more acts of sexual violence.

An "act of sexual violence" is conduct that constitutes the commission of a sexually violent offense. Chapter 980 lists the crimes that are deemed to be sexually violent offenses. The list includes first, second, and third degree sexual assault, first degree sexual assault of a child under age 13, second degree sexual assault of a child under age 16, engaging in repeated acts of sexual assault of the same child, incest with a child, child enticement, and sexual assault of a child placed in substitute care. The statute also provides that any offense that prior to June 2, 1994, was a crime under Wisconsin law, and that is comparable to any of these crimes, is also a sexually violent offense.

In addition, the statutory definition of a sexually violent offense includes a number of other crimes if the crime is determined to have been "sexually motivated," meaning that one of the purposes for the crime was the offender's sexual arousal or gratification or the sexual humiliation or degradation of the victim. These crimes include first degree intentional homicide, first degree reckless homicide, felony murder, second degree intentional homicide, second degree reckless homicide, battery, substantial battery or aggravated battery (including to an unborn child), false imprisonment, taking hostages, kidnapping, stalking, burglary, robbery, and the physical abuse of a child, as well as any offense that prior to June 2, 1994, was a crime under Wisconsin law, is comparable to any crime listed directly

above, and is determined to have been sexually motivated.

Finally, a sexually violent offense may include any solicitation, conspiracy, or attempt to commit any of the above offenses.

**Notice to DOJ and DAs Regarding Persons Who May Be SVPs.** The first step in the SVP civil commitment process is initiated by the state agency with jurisdiction over the person in question. For these purposes, the "agency with jurisdiction" means the agency with authority or duty to release or discharge the person. In most cases, this is the Department of Corrections (DOC).

Chapter 980 states that if an agency with jurisdiction has control or custody of a person who may meet the criteria for commitment as an SVP, it must inform each appropriate district attorney (DA) and the Department of Justice (DOJ) regarding the person as soon as possible beginning 90 days before the person's: (a) anticipated discharge or release, on parole, extended supervision, or otherwise, from a sentence of imprisonment or term of confinement in prison that was imposed for a conviction for a sexually violent offense, from a continuous term of incarceration, any part of which was imposed for a sexually violent offense, or from a placement in a prison, any part of which was required as a result of conviction for a sexually violent offense; (b) anticipated release from a juvenile correctional facility or a secured residential care center for children and youth, if the person was placed in the facility as a result of being adjudicated delinquent on the basis of a sexually violent offense; (c) anticipated release on conditional release, anticipated termination of a commitment order, or anticipated discharge from a commitment order if the person has been found not guilty of a sexually violent offense by reason of mental disease or defect; or (d) anticipated release on parole or discharge if the person was committed under chapter 975 (a commitment process for certain sex offenders that was used prior to July 1, 1980) for a sexually

violent offense.

The agency must provide to the DA and DOJ the person's name, identifying factors, anticipated future residence, offense history, and, if applicable, documentation of any treatment and the person's adjustment to any institutional placement.

**Petitions for Commitment.** If the agency requests that a petition to commit a person as an SVP be filed, either DOJ or the DA may file the petition. The petition may be filed in the circuit court for one of the following: (a) the county in which the person was convicted, adjudicated delinquent for, or found not guilty by reason of mental disease or defect of a sexually violent offense; (b) the county in which the person will reside or be placed following the person's discharge or release; or (c) the county in which the person is in custody under a sentence, a placement to a secured correctional facility, a placement to a juvenile correctional facility, a residential care center for children and youth, or a commitment order. Notwithstanding the above, if DOJ files the petition, it may do so in the Circuit Court for Dane County.

Any petition for SVP commitment must be filed before the person is released or discharged, and must allege that all of the following apply:

- The person has been convicted, found delinquent, or found not guilty because of mental disease or defect of a sexually violent offense.
- The person has a mental disorder.
- The person is dangerous to others because the person's mental disorder makes it likely that he or she will engage in acts of sexual violence.

The petition must state with particularity essential facts to establish probable cause to believe the person is an SVP. If the petition alleges that a sexually violent offense or act that is the basis for

the allegation was an act that was sexually motivated, the petition must state the grounds on which the offense or act is alleged to be sexually motivated.

**Rights of Persons Named in a Petition.** The circuit court for the county in which the SVP petition is filed must give the person who is the subject of the petition reasonable notice of the time and place of each hearing, and may designate additional persons to receive these notices. At any hearing conducted under Chapter 980, unless otherwise stated, the subject of the petition has the right to counsel (if the person claims or appears to be indigent, the court must refer the person to the authority for indigency determinations and, if applicable, appoint counsel), the right to remain silent, the right to present and cross-examine witnesses, and the right to have the hearing recorded by a court reporter.

**Examinations.** If the person subject to the SVP petition denies the facts alleged in the petition, the court may appoint at least one qualified licensed physician, licensed psychologist, or other mental health professional to conduct an examination of the person's mental condition and testify at trial. The state may also retain such professionals to examine the person's mental condition and to testify at trial or at any other proceeding under Chapter 980 at which testimony is authorized. Any such professional who is expected to be called as a witness by any party or by the court at any Chapter 980 proceeding must submit a written report of their examination to all parties and the court at least ten days before the proceeding.

Whenever the subject of an SVP petition, or a person who has been committed as an SVP, is required to submit to an examination of his or her mental condition, he or she may retain a licensed physician, licensed psychologist, or other mental health professional to perform an examination. In such event, the examiner must have reasonable

access to the person for the purpose of the examination, as well as to the person's past and present treatment records, patient health care records, past and present juvenile records, and correctional records, including presentence investigation reports. If the person is indigent, the court must, at the request of the person, appoint a qualified and available licensed physician, licensed psychologist, or other mental health professional to perform an examination and participate in the trial or other proceeding on the person's behalf. Upon the order of the court, the cost of providing a court-appointed expert or professional for an indigent person must be paid by the county.

**Detention and Probable Cause Hearings.** Once a petition for commitment is filed, the court reviews the petition to determine whether the alleged SVP should be detained in advance of the hearing. The court can order the person detained only if it determines there is probable cause to believe the person is eligible for commitment as an SVP. Any detention order remains in effect until the petition is dismissed or until the effective date of a commitment order, whichever is applicable.

The court must hold a hearing to determine whether there is probable cause to believe the person named in the petition is an SVP within 30 days after the filing of the petition, unless the court extends that time. If the person named in the petition is in custody under a sentence, disposition order, or commitment and the probable cause hearing will be held after the date on which the person is scheduled to be released or discharged, the probable cause hearing must be held no later than 10 days after the person's scheduled release or discharge date, unless that time is extended by the court. If the subject of a petition claims or appears to be indigent, the court must, prior to a probable cause hearing, refer the person to the authority for indigency determinations and, if applicable, the appointment of counsel.

If, after the hearing, the court determines there is probable cause to believe the person is an SVP, the court must order the person taken into custody and transferred within a reasonable time to an appropriate facility specified by DHS for an evaluation by DHS as to whether the person is an SVP. These evaluations are performed by the SRSTC Evaluation Unit, a group of DHS psychologists housed on the grounds of the Mendota Mental Health Institute in the City of Madison.

If the court determines after a hearing that probable cause does not exist to believe the person is an SVP, the court must dismiss the petition.

**Trials.** A trial to determine whether a person is an SVP must begin no later than 90 days after the date of the probable cause hearing, unless the court grants a continuance. The person who is the subject of the SVP petition, their attorney, or the petitioner may request that a trial under this section be to a jury of 12. If no such request is made, the trial must be to the court, unless the court on its own motion requires the trial be to a jury of 12. A jury verdict under this section is not valid unless it is unanimous.

A person subject to a Chapter 980 proceeding may submit a written motion, supported by affidavit, to change the place of a jury trial on grounds an impartial trial cannot be had in the county where the trial is set to be held. If the court agrees, it must order that the trial be held in any county where an impartial trial can be held. The judge who orders the change in place of the trial must preside at the trial. Alternatively, a court that determines a fair trial cannot be had in the original county can, in some instances, proceed with a trial in the original county with a jury selected in a county where an impartial jury can be found.

At the trial, the state has the burden of proving beyond a reasonable doubt that the person

who is the subject of the petition is an SVP. If the state alleges that the sexually violent offense or act that forms the basis for the petition was sexually motivated, the state must prove beyond a reasonable doubt that the alleged sexually violent act was sexually motivated.

**Discovery, Inspection, and Other Procedural Matters.** Effective August 1, 2006, 2005 Wisconsin Act 434 amended Chapter 980 by adding a number of provisions regarding the discovery and use of evidence in Chapter 980 proceedings. For example, the prosecuting attorney, upon demand, must permit the person subject to Chapter 980 proceedings, or his or her attorney, to inspect and copy all of the following material if it is within the possession, custody, or control of the state:

a. Any written or recorded statement made by the person subject to a Chapter 980 proceeding concerning the allegations in the SVP commitment petition, or concerning any other matters at issue in the trial or proceeding, and the names of witnesses to the written statements of the person subject to this chapter;

b. A written summary of all oral statements of the person subject to a Chapter 980 proceeding that the prosecuting attorney plans to use at the trial or proceeding and the names of witnesses to those oral statements;

c. Evidence obtained by a person acting under the color of law to intercept a wire, electronic or oral communication, where the person is a party to the communication or one of the parties to the communication has given prior consent to the interception;

d. A copy of the criminal record of the person subject to a Chapter 980 proceeding;

e. A list of all witnesses, except rebuttal witnesses or witnesses called for impeachment



only, whom the prosecuting attorney intends to call at the trial or proceeding, together with their addresses, their criminal records, and any relevant written or recorded statement of all such witnesses, including any videotaped oral statement of a child as provided in s. 908.08, and any reports of an examination prepared by a licensed physician, licensed psychologist, or other mental health professional, as provided in Chapter 980;

f. The results of any physical or mental examination or any scientific or psychological test, instrument, experiment, or comparison that the prosecuting attorney intends to offer in evidence at the trial or proceeding, and any raw data that were collected, used, or considered in any manner as part of the examination, test, instrument, experiment, or comparison;

g. Any physical or documentary evidence the prosecuting attorney intends to offer in evidence at the trial or proceeding; and

h. Any exculpatory evidence.

With some exceptions, the person subject to the Chapter 980 petition, or his or her attorney, must permit the prosecuting attorney to inspect and copy a comparable list of materials. If either the prosecuting attorney or the person subject to the Chapter 980 proceeding fails to list a witness or make evidence available for inspection and copying as required, the court must exclude those witnesses or that evidence from the trial unless the party shows good cause for not complying with the requirements.

Parties to a Chapter 980 proceeding, may among other things, ask the court to order the testing or analysis of any item of evidence or raw data that is intended to be introduced at trial, and may seek a protective order that denies, restricts, or defers the listing of witnesses otherwise required under Chapter 980. If the prosecuting attorney or the attorney for the person subject to

the Chapter 980 proceeding certifies that listing a witness as otherwise required by the statute may subject that witness or others to physical or economic harm or coercion, the court may order the deposition of the witness, in which event the name of the witness need not be divulged prior to the deposition. If the witness becomes unavailable or changes his or her testimony, the deposition shall be admissible at the trial as substantive evidence.

The state may present evidence that the person subject to a Chapter 980 proceeding refused to participate in an examination of his or her mental condition that was being conducted for purposes of determining whether to file a petition under the statute. In addition, any licensed physician, licensed psychologist, or other mental health professional may indicate in any written report prepared in conjunction with an examination under Chapter 980 that the person he or she examined refused to participate in the examination.

**Commitment.** If, after a trial, the court or jury determines the person is an SVP, the court must enter a judgment on the finding and commit the person as an SVP. In that event, the court must order the person committed to the custody of DHS for control, care, and treatment until the person is no longer an SVP. Any commitment order must specify that the person be placed in institutional care.

If, after a trial, the court or jury is not satisfied beyond a reasonable doubt that the person is an SVP, the court must dismiss the petition and direct that the person be released unless he or she is under some other lawful restriction.

**DNA Specimens.** The court must require each person who is committed as an SVP to provide a biological specimen to the state crime laboratories for deoxyribonucleic acid (DNA) analysis for use in criminal and delinquency actions and proceedings.

**Institutional Care.** DHS must place a person committed as an SVP at a secure mental health facility, either SRSTC or WRC, or a secure mental health unit or facility provided by the Department of Corrections (DOC). Currently, all SVPs are being committed to SRSTC. In addition, DHS may place a female SVP at Mendota Mental Health Institute, the Winnebago Mental Health Institute near the City of Oshkosh, or a privately operated residential facility that is under contract with DHS. To date, no female has been committed under Chapter 980.

**Periodic Reexaminations.** Unless a person committed as an SVP has been discharged, DHS must appoint an examiner to conduct a reexamination of the person's mental condition within 12 months after an initial commitment and at least once each 12 months thereafter 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. These reexaminations are completed by psychologists in the SRSTC Evaluation Unit. At the time of this reexamination, the person who has been committed may also retain or seek to have the court appoint an examiner. Examiners are required to prepare a written report of the reexamination no later than 30 days after the date of the reexamination, and must provide a copy of the report to DHS. In addition, the court that committed the person may, at any time, order a reexamination of the individual during the commitment period.

At the time of reexamination, the treating professional must also prepare a treatment report that considers the following:

- The specific factors associated with the person's risk for committing another sexually violent offense;
- Whether the person has made significant progress in treatment or has refused treatment;

- The ongoing treatment needs of the person;
- Any specialized needs or conditions associated with the person that must be considered in future treatments.

DHS must submit an annual report, comprised of the treatment report and the reexamination report, to the court that committed the person. DHS must also place a copy of the annual report in the person's treatment records, and provide a copy of the annual report to the person, the DOJ and DA, if applicable, and to the committed person's attorney.

**Patient Petition Process.** When DHS provides a copy of the annual report to the committed person, it must also provide the person a standardized petition form for supervised release and a standardized petition form for discharge. Within 30 days after DHS submits its annual report to the court, the committed person, or their attorney, may submit one of the completed petition forms to the court. If a completed petition form is not filed within a timely manner, the person will remain committed without further review by the court.

If the committed person files a timely petition for supervised release or discharge, he or she may use experts or professional persons to support their petition. The DA or DOJ, whichever is applicable, may also use experts or professional persons to support or oppose any such petition.

**Supervised Release.** A person committed as an SVP 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 or the most recent order for supervised release was revoked. The Director of the facility in which the individual is

placed may file a petition for supervised release on the person's behalf at any time.

Within 20 days after receiving such a petition, the court must appoint one or more examiners with specialized knowledge determined by the court to be appropriate to examine the person and furnish a written report of the examination within 30 days after appointment. The examiners must have reasonable access to the person to conduct the examinations, and to the person's patient health records. If an examiner believes the person is appropriate for supervised release, the examiner must report on the type of treatment and service the person may need while in the community on supervised release.

The court, without a jury, must hear the petition within 30 days after the report of the court-appointed examiner is filed with the court, unless the court for good cause extends this time limit. The court may not authorize supervised release unless it finds that all the following criteria are met: (1) the person has made significant progress in treatment and the person's progress can be sustained while on supervised release; (2) it is substantially probable that the person will not engage in an act of sexual violence while on supervised release; (3) treatment that meets the person's needs and a qualified provider of the treatment are reasonably available; (4) the person can be reasonably expected to comply with his or her treatment requirements and with all of his or her conditions or rules of supervised release imposed by the court or by DHS; and (5) a reasonable level of resources can provide for the level of residential placement, supervision, and ongoing treatment needs that are required for the safe management of the person while on supervised release.

In making its decision, the court may consider, among other things:

- The nature and circumstances of the behavior that was the basis of the allegation in

the original commitment petition;

- The person's mental history and present mental condition;
- Where the person will live;
- How the person will support himself or herself; and
- What arrangements are available to ensure that the person has access to, and will participate in, necessary treatment, including pharmacological treatment using an antiandrogen if the person is a serious child sex offender. A decision whether or not to authorize supervised release for a serious child sex offender cannot be made based on the fact that the person is a proper subject for pharmacological treatment using an antiandrogen or the chemical equivalent of an antiandrogen, or on the fact that the person is willing to participate in pharmacological treatment using an antiandrogen or the chemical equivalent of an antiandrogen.

If the court finds that all the criteria for supervised release are met, the court must select a county responsible for preparing a report for the person's supervised release. The county must submit to DHS, within 60 days, a report identifying prospective residential options for community placement that, among other things, considers the proximity of the potential placement option to the residences of other persons on supervised release and to the residences of persons who are in custody of the DOC and regarding whom a sex offender notification has been issued to law enforcement agencies. The county selected must be the person's county of residence, unless the court has good cause to select a different county. For these purposes, DHS must consider the county of residence to be the county in which the person was physically present with intent to remain in a place of fixed habitation (physical presence being prima facie evidence of such intent) as of the date

the person committed the sexually violent offense that is the basis for their commitment. The court must also authorize the petitioner, his or her attorney, the DA, any law enforcement agency in the county of intended placement, and any local governmental unit in that county, to submit prospective residential options for community placement to DHS within 60 days. The court must then authorize DHS to use these reports, or any other residential options identified by DHS, to prepare a supervised release plan that identifies the proposed residence. The plan must address the person's need, if any, for supervision, counseling, medication, vocational services, and alcohol or other drug abuse treatment.

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

An order for supervised release places the person in the custody and control of DHS, which must arrange for the control, care, and treatment of the person in the least restrictive manner, consistent with the requirements of the person and in accordance with the plan approved by the court.

The statutes prohibit DHS from arranging the placement of any individual on supervised release in a facility that did not exist before January 1, 2006.

A person on supervised release is subject to the conditions set by the court and to DHS rules. Within 10 days of imposing a rule, DHS must file with the court any additional rule of supervision not inconsistent with the rules or conditions imposed by the court. If DHS wants to change a rule or condition of supervision imposed by the

court, it must obtain the court's approval.

Before the court places a person on supervised release, the court must notify the municipal police department and county sheriff for the municipality and county in which the person will be residing, unless these law enforcement agencies submit to the court a written statement waiving the right to be notified. In addition, further detailed notice to local law enforcement is provided by DHS through the special bulletin notice requirements under s. 301.46(2m) of the statutes.

**Revocation of Supervised Release.** If DHS believes a person on supervised release, or awaiting placement on supervised release, has violated or threatened to violate any condition or rule of supervised release, DHS may petition for the revocation of the order granting supervised release or may detain the person. If DHS believes a person on supervised release or awaiting placement on supervised release is a threat to the safety of others, DHS must detain the person and petition for revocation of the order granting supervised release.

If DHS determines that an order granting supervised release should be revoked, it must file with the court a statement alleging the violation or threatened violation and a petition to revoke the order. DHS must provide a copy of the statement and the petition to the applicable regional Office of the State Public Defender. If DHS has detained the person, it must file the statement and the petition and provide them to the applicable Office of the State Public Defender within 72 hours after the detention. Pending the revocation hearing, DHS may detain the person in jail or in a secure mental health facility.

The court must hear the petition to revoke supervised release within 30 days, unless the hearing or time deadline is waived by the detained person. The court must make a final decision on the petition within 90 days of the petition. If the

court finds, by clear and convincing evidence, that any rule or condition of release has been violated, and the court finds that the violation of the rule or condition merits revocation of the order granting supervised release, the court may revoke the order for supervised release and order the person to be placed in institutional care, where they must remain until discharged from commitment or placed again under supervised release.

If the court finds after a hearing, by clear and convincing evidence, that the safety of others requires that supervised release be revoked, the court must revoke the order for supervised release and order the person placed in institutional care, where they must remain until they are discharged from commitment or placed on supervised release.

**Discharge.** A committed person can petition the court for discharge at any time. The court must review the petition within 30 days and may hold a hearing to determine if the petition contains facts from which the court or jury may conclude the person does not meet the criteria of an SVP. In so doing, the court must consider current or past reports submitted by DHS, relevant facts in the petition and in the state's written responses, arguments of counsel, and any supporting documentation. If the court determines the petition does not contain facts from which a court or jury may conclude the person does not meet the criteria for commitment, the court must deny the petition. If the court determines that facts exist from which a court or jury could conclude the person does not meet the criteria for commitment, the court must hold a hearing within 90 days, at which time the state has the burden of proving by clear and convincing evidence that the person meets the criteria for commitment as an SVP. The DA or DOJ, whichever filed the original petition, or the petitioner or his or her attorney, may request a trial be to a jury of six. In such case, no verdict is valid or received unless at least five of the jurors agree to it. If the court or jury is satis-

fied the state has not met its burden of proof, the petitioner must be discharged from the custody of DHS. If the court or jury is satisfied the state has met its burden of proof, the court may proceed to modify the petitioner's existing commitment order by authorizing supervised release.

**Reversal, Vacation, or Setting Aside of Judgment Relating to a Sexually Violent Offense.** If, at any time after a person is committed as an SVP, a judgment relating to a sexually violent offense committed by the person is reversed, set aside, or vacated and that sexually violent offense was a basis for the allegation made in the original commitment petition, the committed person may bring a motion for post commitment relief in the court that committed the person. If the sexually violent offense in question was the sole basis for the allegation under the original commitment petition and there are no other judgments relating to a sexually violent offense by the person, the court must reverse, set aside, or vacate the judgment that the individual was an SVP, vacate the commitment order, and discharge the person from the custody of DHS. If the sexually violent offense was the sole basis for the allegation under the original commitment petition, but there are other judgments relating to a sexually violent offense committed by the person that have not been reversed, set aside, or vacated, or if the sexually violent offense was not the sole basis for the allegation in the original commitment petition, the court must determine whether to grant the person a new commitment trial because the reversal, setting aside, or vacating of the judgment for the sexually violent offense would probably change the result of the trial.

**Notice Concerning Supervised Release or Discharge.** If a court places a person under supervised release or discharges the person, DHS must make a reasonable attempt to notify: (a) the victim of the act of sexual violence; (b) an adult member of the victim's family, if the victim died as a result of the act of sexual violence; or (c) the

victim's parent or legal guardian, if the victim is younger than 18 years old. In addition, DHS must notify DOC. The notice must include the name of the SVP and the date the person is placed on supervised release or discharged. DHS must also prepare cards for the individuals described above. These cards have space for individuals to provide their names and addresses, the name of the person committed as an SVP, and any other information DHS determines is necessary. DHS must distribute these cards, without charge, to DOJ or DAs, which must provide the cards, without cost, to the specified individuals. Individuals may then send completed cards to DHS. All records or portions of records of DHS that relate to mailing addresses of these individuals are not subject to inspection or copying, except as needed to comply with a request by DOC for victim notification purposes.

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### **Program Implementation**

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The preceding section of this paper outlined the statutory provisions related to the commitment, release, and discharge of SVPs. This section provides additional information concerning the implementation of the SVP statute, including a discussion of the treatment provided to SVPs at SRSTC.

In determining whether to recommend that DOJ petition for SVP commitment of a person nearing his release date, DOC uses a three-stage review process. The first review involves an initial administrative screening to determine whether an individual meets the statutory criteria for commitment. The second review is completed by the End of Confinement Review Board, which is composed of DOC employees who have received training on risk assessment for sex offenders. The Board reviews the case of each sex offender scheduled for release from DOC. If the Board

determines the case does not meet the criteria for commitment under Chapter 980, the case is cleared and commitment is no longer pursued. If a case is referred for further review, a DOC psychologist, employed as a member of the forensic evaluation unit, conducts a special purpose evaluation (SPE). This evaluation helps officials determine whether the case should be referred for commitment. If commitment is sought, the SPE is typically used by the prosecution to show probable cause, and is often used during the commitment trial by the prosecution. DHS uses a similar review process in determining whether to recommend to DOJ individuals who are in DHS custody.

All individuals who are detained or committed as SVPs are admitted as patients to SRSTC. All patients, whether detained or committed, are offered the specialized evidence-based SVP treatment program and related services. Treatment is voluntary and those patients who do not consent to participate in treatment are considered to have "pre-treatment" status. DHS staff continues to encourage these patients to engage in treatment. Individuals who initially agree to treatment but later refuse to sign consent for treatment, or behave in a way that is incompatible with treatment, may revert to pre-treatment status. Patients who do consent to treatment are referred for assessment in order to determine the patients' specific treatment needs and barriers and to determine which treatment track the patient will be assigned.

**Residential Units at SRSTC.** Residential units at SRSTC are organized by treatment track and phase in treatment. Patients are assigned to units based on treatment status, treatment track, phase in treatment and specialized needs. Each of the four complexes has several 25-bed units that house patients with similar treatment needs and characteristics. The A complex serves as the admission unit and primarily serves patients who are in pre-treatment status. The B complex pri-

marily serves patients who have serious and persistent mental illness, cognitive disabilities or both. The N complex primarily serves patients who are higher in psychopathy and those with serious treatment interfering factors or are in pre-treatment status. The P Complex primarily serves patients who are higher in psychopathy that are in later phases of treatment and those who do not have serious treatment interfering factors. SRSTC also has a skilled care unit that serves patients who require closer observation and nursing care for physical or mental health issues. SRSTC has two smaller nine-bed specialized treatment units; one for patients who are aggressive and another for patients who are transitioning to the community on supervised release.

**Treatment Programs.** The SVP treatment program follows three principles which research consistently indicates improves the effectiveness of offender treatment. These principles are the Risk, Need, and Responsivity principles. The Risk Principle requires concentrating more intense treatment on higher risk offenders. All individuals committed under Chapter 980 are, by definition, considered high-risk offenders. The Need Principle requires that treatment be focused on social and psychological factors that predispose a person to offending. The SVP program combines an individualized identification of these factors through the treatment process with using the Structured Risk Assessment framework to assess empirically identified psychological risk factors. The Responsivity Principle requires using treatment methods to which offenders are generally responsive and tailoring treatment to the learning style of the individual. The SVP program seeks to tailor treatment to the learning style of the individual through the use of treatment tracks and individualization within tracks based on detailed assessments. In seeking effective methods it employs cognitive behavioral methods, trains and supervises treatment providers to develop an effective therapist style, and makes extensive use of motivational interviews.

The SVP treatment program employs a three-phase model to structure the program. Phase 1 programming works with patients to meaningfully engage in the SVP treatment program. It focuses on assisting patients in building the attitudes, skills, and motivations that are necessary for effective treatment participation. Phase 1 is particularly attentive to assisting patients to learn to better regulate their impulses and emotions, and more generally in assisting them with personality disorder-related issues.

Phase 2 programming works with patients to develop a shared understanding of their specific treatment needs, including an understanding of the factors that contributed to their past offending. During this phase, patients work on objectively seeing how these factors have affected them in the past and how they continue to affect them in the present. Achieving this requires attending specifically to the thoughts, attitudes, emotions, behaviors, and sexual arousal linked to their sexual offending and learning to recognize when these thoughts, emotions, behaviors, or sexual arousal occur. As patients become aware of the impact of these factors, therapists assist them in discovering and developing the motivation required to overcome these problems.

Phase 3 programming works with patients to assist them in effectively managing their personal risk factors and developing healthier ways of functioning in order to transition to the community. Within each of these defined phases patients advance if and when they demonstrate satisfactory progress in the earlier phases.

The SVP population is diverse, varying greatly in the level of cognitive functioning and in the degree to which psychopathic traits are present. This diversity can make it challenging to deliver effective treatment services. The SVP treatment program seeks to respond to these challenges in several ways. First, treatment always begins with a comprehensive assessment. Second, treatment

services are divided into four tracks, according to the degree of cognitive functioning and level of psychopathic traits. Third, within each track, treatment services are further individualized based on the patient's neuropsychological profile.

The SVP treatment program at SRSTC currently consists of four primary treatment tracks: (1) the Conventional Program; (2) the Corrective Thinking Program; (3) the Choices and Opportunities for Meaningful Personal Achievement in a Supportive Setting Program (COMPASS); and (4) the Adapted Corrective Thinking Program.

*The Conventional Track.* The Conventional Treatment Track is designed to treat patients without significant cognitive deficits and with no more than moderate levels of psychopathic traits. This does not mean that patients in the track are homogenous. IQs can range from the lower end of the average range to those who have superior intelligence. Similarly, patients in this track range from those largely absent of psychopathic traits to those presenting moderate levels of these traits. This diversity requires that treatment services be significantly individualized within the track.

Although patients in this track tend to be less impaired than those in the other tracks this does not mean that the psychological risk factors underlying their offending are necessarily less marked. Treatment in this track is, however, more similar to treatment that would be provided in high intensity DOC programs.

Phase 1 of the Conventional Treatment Track focuses on patients' self-management and learning how to participate in treatment. Phase 2 focuses on patients learning to understand themselves through life history review and analysis of past offenses. Phase 3 focuses on living in a healthier way and community preparedness.

*The Corrective Thinking Track.* The Correc-

tive Thinking (CT) Treatment Track is designed specifically for offenders with marked psychopathic traits and normal levels of cognitive functioning. These individuals require a treatment approach that can: (1) initially address the personality disorder traits that interfere with the conventional treatment process; and (2) simultaneously monitor and address these traits during the conventional aspect of sex offender treatment. The CT program begins with an extensive intervention to ameliorate the personality disorder traits and treatment interfering factors that impede progress in the later stages of treatment.

Psychopathic features, personality disorder traits, and general criminality are the focus of Phase 1 of the CT track. As patients in CT display an ability to consistently manage the behaviors associated with these characteristics, they may advance to Phase 2. As a participant in Phase 2, the CT patient learns to identify the individual psychological factors that contributed specifically to their past offending. Once an agreed upon identification of these factors has been achieved and the patient has demonstrated motivation to work on them they may move into Phase 3. In Phase 3 they work on managing their identified sexual offense risk factors and developing healthier functioning.

*The COMPASS Track.* The COMPASS Treatment Track is designed specifically for cognitively impaired patients and others who have difficulty functioning in various life areas but who do not show marked levels of psychopathic traits. COMPASS stands for Choices and Opportunities for Meaningful Personal Achievement in a Supportive Setting. Patients generally have below average IQs and/or show deficits in processing speed, executive functioning, or memory scores. They may also be placed in the track because of a severe learning disorder or because severe and persistent mental illness suppresses working memory or executive functioning. As a consequence the COMPASS population is a het-



erogeneous mix of those with intellectual disabilities, mental illness, learning disabilities, and other disabilities.

The COMPASS program is tailored for those who have difficulty learning through traditional methods, in an effort to address their sexual offending and related factors, and prepare them to live offense-free in the community. As a result, the material is presented in various ways to best meet the individual needs of patients. Visual illustrations are used extensively, as are methods such as role-plays and collages. Games are sometimes used to review material, as retention and memory are issues for COMPASS patients. Groups generally need to be shorter, to fit attention spans, and may be held more frequently than in other tracks. Examples across various life areas may need to be given in order to help patients generalize the material.

The focus of Phase One of the COMPASS track is patient self-management, as well as addressing factors which may interfere with making progress in treatment. Basic concepts of COMPASS are taught in Phase One (e.g., "Old Me" or the negative part of oneself which is selfish and hurts others versus "New Me" which is prosocial). In Phase Two, work is centered on identification of risk factors which led or may lead to offending, as well as development of positive coping skills. Phase Three focuses on building one's "New Me" identity to ensure living safely and productively in the community.

*The Adaptive Corrective Thinking (ACT) Track.* The Adaptive Corrective Thinking (ACT) treatment track is designed and adapted to address and accommodate the specific special needs of patients with elevated psychopathy traits and impaired cognitive functioning. The ACT population is a heterogeneous mix of individuals with intellectual disabilities, mental illness, learning disabilities, and other disabilities. These patients generally have difficulty benefiting from usual

treatment approaches and methods. The purpose of ACT treatment is to address patients' psychological risk factors for sexual and general recidivism and prepare them to live effectively in the community. Adaptations in treatment approach to address cognitive deficits include a slower pace, multiple modality presentations, use of less abstract concepts and language, repetition, role-play, mentoring, encouragement and support while also addressing treatment interfering factors in the same way that the CT track does.

In ACT, the focus of Phase One is "Treatment Engagement" where patients develop a therapeutic alliance with facilitators and learn the skills necessary to engage meaningfully in the treatment process. The focus of Phase 2 is "Problem Identification" where patients identify self-defeating life patterns, including their psychological risk factors. Once they demonstrate motivation to learn healthier sexual and general self-management strategies and skills patients are ready for Phase 3. The focus of Phase 3 is strengthening patients' self-management and developing a "Healthy Lifestyle" where patients build a healthy support network and practice healthy self-management and social relationships while preparing to reintegrate into the community.

In addition to the primary treatment programs mentioned above, a number of other treatment services are generally available to patients in the SVP treatment program at SRSTC, including individualized treatment, education, therapeutic recreation, vocational and occupational activities, pharmacological treatment, behavior treatment, and polygraph evaluation.

**Security.** DHS has promulgated administrative rules that define the Department's authority regarding the custody and control of persons committed as SVPs. Under these rules, the stated primary security objectives of DHS are to protect the public, staff and patients and to afford pa-

tients the opportunity to participate in treatment and activities in a safe setting.

Generally, the rules require written policies and procedures to prevent escapes, and establish a systematic progression of force based on a perceived level of threat to guide staff in the use of force in a disturbance or emergency, to prevent escapes, and to pursue and capture escapees. These rules describe circumstances where staff at these facilities may use lethal force and less than lethal force, and limitations on staff's use of firearms and other incapacitating devices. In addition, these facilities are required to adopt written policies and procedures to ensure that staff who may be called upon to use force are properly trained.

The rules provide the facility Director discretion to allow a patient to leave the grounds of a facility under staff escort for a purpose that is consistent with the therapeutic interests of the patient and the security interests of the community, including: (a) to visit a dying or deceased relative under security conditions imposed by the facility director; (b) to receive medically necessary health services that are not available at the facility; and (c) to engage in pre-placement activities when the patient has a proposed or approved supervised release plan.

In addition, due to security issues associated with the Chapter 980 population, the state statutes make several distinctions between the rights of individuals who are detained or committed as SVPs and other patients who are admitted to treatment facilities, either on a voluntary or involuntary basis. For example, an officer or staff member at a facility where an SVP is detained or committed may delay delivery of the mail to the patient for a reasonable period of time to verify whether the person named as the sender actually sent the mail, may open the mail and inspect it for contraband, or may, if the officer or staff member cannot determine whether the mail con-

tains contraband, return the mail to the sender, along with notice of the facility mail policy. The Director may authorize a member of the facility's treatment staff to read the mail if the Director or the Director's designee has reason to believe the mail could pose a threat to security at the facility or seriously interfere with the treatment, rights or safety of others. Other examples include the Department's authority to lock individuals who are detained or committed as SVPs in their rooms during the night shift, to use restraints during transportation and isolation during hospital stays, and to film or tape detained or committed SVPs for security purposes without the patient's consent (although DHS may not film a patient in a bedroom or bathroom without the patient's consent unless they are engaged in dangerous or disruptive behavior). Individuals committed as SVPs do not have the same rights as patients as other civilly-committed patients at the two state mental health institutes.

SRSTC is significantly more secure than Mendota Mental Health Institute and the Winnebago Mental Health Institute. The facility is completely surrounded with an electrified, razor ribbon fence, and officers monitor activities near the fence 24 hours per day, both by armed perimeter patrol and video surveillance.

**Implementation of the Supervised Release Program.** As previously indicated, when the court approves a petition for supervised release, it orders DHS and the individual's county of residence to develop a supervised release plan within 60 days, which is submitted to the court for its approval. These plans are developed by "community teams" that include the patient, a DHS staff person who specializes in the supervised release program, a probation and parole agent, and treatment providers. The teams may also include law enforcement officials, family members, employers, landlords, sponsors and other parties. The program's oversight is provided by the Director and the Court Assessment and Community

Programs Director of SRSTC, the Supervised Release Program Manager and in collaboration with a DOC liaison.

Each plan describes services the individual will receive from DHS and contracted entities. Currently, DHS contracts with DOC to provide supervision through DOC probation and parole agents. Since July 1, 2007, DOC is required to maintain lifetime tracking, through a global positioning system, of all individuals who are on supervised release and all individuals a court discharges under Chapter 980. In addition, DOC probation and parole agents have regular face-to-face meetings with individuals on supervised release. The supervised release program also includes scheduled and unscheduled monitoring checks, polygraph examinations, and escorted transportation for supervised activities.

Under current law, during the first year of supervised release an individual placed in the community is restricted to their personal residence. Further, these individuals are only permitted to leave their residence for the purpose of employment, religion, or for caring for the individual's basic living needs. All other outings are prohibited during the first year following release. Any time an individual is outside of their personal residence, they are required to be monitored by a DOC escort.

DHS contracts with ATTIC Correctional Services, Inc. for certain monitoring, chaperone, and transportation services. Most individuals on supervised release live in individual residences or homes -- very few live in group homes. Individuals on supervised release continue to participate in group or individual treatment and programming. They may also receive assistance in obtaining employment, activities of daily living, and furthering their education.

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## Program Data

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This section provides information regarding SVP populations and the costs of providing services to those individuals.

**Recent Trends in SVP Populations.** Until 2009-10, the average monthly institutionalized SVP population increased every year since the program began. Between state fiscal years 2002-03 and 2006-07, the SVP population grew rapidly as reflected in the increasing numbers of referrals from DOC and the increase in the number of individuals committed to a DHS treatment facility during this period. This was likely due, in part, to the change in definition of an SVP that was enacted in 2003 Wisconsin Act 187. This act broadened the definition of an SVP to include persons whose mental disorder makes them "more likely than not" to engage in an act of sexual violence. Prior to this change, Chapter 980 defined an SVP as a person whose mental disorder made them "substantially probable" to engage in acts of sexual violence.

The institutionalized SVP population has been decreasing since 2009-10. Tables 1 and 2, respectively, show the number of DOJ referrals and average monthly institutional commitments for fiscal years 2000-01 through 2011-12. Institutional commitments reflected in Table 2 include individuals who are located in these facilities on a "pre-commitment" basis (meaning people who have had their probable cause hearing or who have waived the timelines for that hearing and who are being detained, but who have not yet been committed as SVPs) as well as those who have been committed as SVPs. As Table 2 indicates, the average monthly institutionalized SVP population peaked at 387 patients in 2008-09, but decreased to 363 patients in 2011-12.

The decrease in the state's SVP population

**Table 1: Annual and Average Monthly Referrals for SVP Commitment**

Fiscal Year	No. of Cases Referred to DOJ from DOC	Average Referrals Per Month
2000-01	22	1.8
2001-02	26	2.2
2002-03	31	2.6
2003-04	35	2.9
2004-05	42	3.5
2005-06	52	4.3
2006-07	47	3.9
2007-08	30	2.5
2008-09	26	2.2
2009-10	24	2.0
2010-11	20	1.7
2011-12	11	0.9

**Table 2: SVP Institutional Commitments**

Fiscal Year	WRC	SRSTC	Total
2000-01*	228.75	6.00	234.75
2001-02	73.17	170.25	243.42
2002-03	55.42	198.75	254.17
2003-04	57.75	196.50	254.25
2004-05	56.83	229.58	286.42
2005-06	55.83	267.42	323.25
2006-07	73.67	279.75	353.42
2007-08	104.08	273.17	377.25
2008-09	112.25	274.42	386.67
2009-10	90.83	285.58	376.42
2010-11	79.17	286.42	365.59
2011-12**	2.75	359.83	362.58

\* SRSTC opened in June 2001.

\*\* All SVP at WRC were transferred to SRSTC by August 2011.

since 2008-09 has been attributed to the application of a risk assessment tool, the Static-99R, which replaced the previous risk assessment tool, the Static-99, in 2009. The actuarial assessment tool is based on a meta-analysis of research and academic literature that has found many individuals are less likely to re-offend than previously thought. For example, studies have shown that the rate of sexual re-offending in the United States has decreased substantially over the past 10 years and that an individual's juvenile behav-

ior is not an accurate predictor of their likelihood to re-offend as an adult. Research has also found that individuals are less likely to re-offend as they grow older. As a result, the Static-99R assigns a lower risk of re-offending to some offenders and to juvenile-only offenders and adult offenders over age 60 in particular.

Fluctuations in the SVP population have led to multiple capacity adjustments at both SRSTC and WRC. For example, the total SVP population exceeded 100% of the then-existing total operational SVP capacity at WRC and SRSTC on several occasions in calendar year 2005. For these purposes, DHS defines "total operational capacity" as 96% of total absolute capacity (total number of physical beds). To address this, both SRSTC and WRC were expanded to accommodate the projected growth in the SVP population. In April, 2006, two additional 30-bed SVP units were opened at WRC. The first additional SVP unit, a non-treatment unit, opened in October, 2006. The second additional unit opened in April, 2007, and was a SVP treatment unit.

SRSTC has also gone through several expansions, first with the opening of two existing 25-bed units, one in October, 2005, and another in January, 2006, and second with the construction of a new 200-bed housing unit, which was funded as part of the 2007-09 capital budget. Due to the declining rate of growth in the SVP population, four of the new units remained vacant and unstaffed.

With the SVP population continuing to decline, 2011 Wisconsin Act 32 transferred all SVPs at WRC to SRSTC. In 2010-11, there was an average of 79 institutionalized persons at WRC and 286 at SRSTC. Moving all SVPs to SRSTC consolidated the SVP population and allowed DHS to reduce the number of unused units, from four at SRSTC to three at WRC.

The number of SVPs placed on supervised

release has grown slightly in recent years. For example, in fiscal year 2008-09, there were on average 14 SVPs on community supervised release per month. On average, two more SVPs were awaiting placement. In fiscal year 2011-12, the average number of SVPs on community supervised release was 24 per month, with a monthly average of one individual awaiting placement.

As explained above, Chapter 980 allows DHS, in some circumstances, to seek the revocation of an SVP's supervised release. From April, 1994, through June, 2012, 33 SVPs have had their supervised release revoked.

DHS also tracks the number of SVPs whose civil commitment terminated. Between April, 1994 and June, 2012, 29 patients who were on supervised release were subsequently granted a discharge from their commitment, and 75 persons had been discharged from inpatient commitment.

### Diagnosed Disorders

Every individual committed under Chapter 980 must have a mental disorder that predisposes the person to engage in acts of sexual violence. Table 3 shows the ten most common mental disorders that were found to predispose engagement in acts of sexual violence for the SVPs committed at SRSTC as of November 1, 2012. In addition, Table 4 shows the ten most common mental disorders that committed SVPs were diagnosed with, but were not found to predispose them to engage in acts of sexual violence. Individuals may have a combination of multiple predisposing disorders and non-predisposing disorders.

### Program Costs

*Total State Institutional Costs.* Table 5 summarizes the total costs of care for individuals committed as SVPs and served at SRSTC and WRC during the six-year period 2005-06 through 2011-12. Operations costs shown for SRSTC include expenditures relating to debt service payments.

**Table 3: Ten Most Common Predisposing Diagnoses For Individuals Committed as an SVP as of November 1, 2012**

Diagnosed Disorder	Count*	%*
Antisocial Personality Disorder	178	50.4%
Pedophilia	164	46.5
Paraphilia Not Otherwise Specified	99	28.0
Other Personality Disorders	93	26.3
Sadism	29	8.2
Psychotic Disorder	16	4.5
Exhibitionism	12	3.4
Alcohol Abuse/Dependency	12	3.4
Other AODA	12	3.4
Intellectual Functioning Deficit	11	3.1

\*Individuals may have more than one predisposing disorder.

**Table 4: Ten Most Common Non-Predisposing Diagnoses For Individuals Committed as an SVP as of November 1, 2012**

Diagnosed Disorder	Count*	%*
Alcohol Abuse/Dependency	116	32.9%
Other AODA	96	27.2
Mood Disorder	50	14.2
Intellectual Functioning Deficit	47	13.3
Psychotic Disorder	24	6.8
Attention Deficit Hyperactivity Disorder (ADHD)	24	6.8
Exhibitionism	16	4.5
Learning Disability	16	4.5
Voyeurism	10	2.8
Other Non-sexual Disorder	10	2.8

\*Individuals may have more than one non-predisposing disorder.

*Supervised Release Costs.* Table 6 summarizes the cost of providing services to individuals who are on supervised release, by vendor, during that same six-year period. The table shows that in these years, these costs were primarily paid through contracts with ATTIC Correctional Services and Lutheran Social Services, both of which provide a wide range of services to SVP clients, including housing, monitoring, and case management services, and DOC, which provides monitoring services to SVPs and individuals who

**Table 5: Expenditures for State Institutional Costs of Services to SVPs**

	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12
Sand Ridge Secure Treatment Center Operations	\$36,604,400	\$37,738,000	\$41,443,300	\$41,481,900	\$44,176,000	\$50,046,800
Fuel and Repair and Maintenance	<u>745,000</u>	<u>786,200</u>	<u>895,000</u>	<u>853,100</u>	<u>901,000</u>	<u>864,900</u>
Subtotal	\$37,349,400	\$38,524,200	\$42,338,400	\$42,335,000	\$45,077,000	\$50,911,700
Wisconsin Resource Center*	<u>\$7,622,900</u>	<u>\$10,415,000</u>	<u>\$11,235,000</u>	<u>\$9,967,400</u>	<u>\$9,877,000</u>	<u>\$1,028,400</u>
Total	\$44,972,300	\$48,939,200	\$53,573,400	\$52,302,400	\$54,954,000	\$51,940,100

\*Estimated. Based on WRC's total costs, multiplied by the percentage of the facility's total population that are SVPs or detained prior to their commitment as SVPs. The average in 2009-10 was approximately 22%.

**Table 6: Expenditures for Supervised Release Services, by Vendor**

Vendor	Type of Service	2007-08	2008-09	2009-10	2010-11	2011-12
ATTIC Correctional Services	Comprehensive Services (Housing, Monitoring, Transportation, Case Management and Other Services)	\$578,800	\$495,300	\$796,300	\$1,012,600	\$1,261,700
Lutheran Social Services*	Comprehensive Services (Housing, Monitoring, Transportation, Case Management and Other Services)	748,100	530,300	0	0	0
Rock Valley Community Abilities, Inc.	Residential Facility	0	16,700	29,900	87,400	80,900
Other Private Vendors	Various	<u>700</u>	<u>142,200</u>	<u>364,100</u>	<u>690,100</u>	<u>678,400</u>
Subtotal -- Supervised Release Only		\$1,327,600	\$1,200,600	\$1,257,500	\$1,857,200	\$2,088,300
Department of Corrections	DOC Contract Total Payments	\$757,400	\$762,000	\$871,700	\$883,800	\$893,400
	Supervision - Conditional Release	539,600	523,800	509,600	493,200	562,900
	Supervision - Supervised Release	109,500	96,400	121,900	153,900	141,500
	Specific costs identified for SR Clients - GPS Equipment & Escorts	<u>108,300</u>	<u>141,800</u>	<u>240,200</u>	<u>236,731</u>	<u>188,993</u>
Total - Supervised Release Only		\$1,545,400	\$1,438,800	\$1,619,600	\$2,247,700	\$2,418,800

\*The contract with Lutheran Social Services was discontinued in 2008-09.

are on conditional release (individuals who were committed to the custody of DHS because they were found by a court to be not guilty by reason of mental disease or defect). The contract with Lutheran Social Services was discontinued in

2008-09. In 2011-12, it cost approximately \$83,900 per person per year to provide services to individuals that were on supervised release. The average monthly supervised release population during this period was 24 individuals.