

1999 DRAFTING REQUEST**Bill**Received: **09/23/98**Received By: **olsenje**Wanted: **As time permits**

Identical to LRB:

For: **Administration-Budget**By/Representing: **Jablonsky**This file may be shown to any legislator: **NO**Drafter: **olsenje**

May Contact:

Alt. Drafters:

Subject: **Mental Health - miscellaneous**Extra Copies: **DAK**

Topic:

DOA:.....Jablonsky - Supervised release of sexually violent persons

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/1	olsenje 10/26/98	gilfokm 11/18/98	ismith 11/20/98	_____	lrb_docadmin 11/20/98		S&L
/2	olsenje 01/30/99	gilfokm 01/30/99	martykr 01/31/99	_____	lrb_docadmin 01/31/99		S&L
/3	olsenje 02/2/99	gilfokm 02/3/99	jfrantze 02/3/99	_____	lrb_docadmin 02/3/99		S&L

FE Sent For:

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/2	olsenje 01/30/99	gilfokm 01/30/99	martykr 01/31/99	_____	lrb_docadmin 01/31/99		S&L
FE Sent For:		1/3-2-3-99 KMG	2/6/3	2/6/3 1/3 <END>			

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FE Sent For: *12-1-30-99 kmg* *km/31* *JH km/31*
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1?	olsenje	1-11-19-98 King	ES 11/20	BS/LP 11/20			
		12-1-30-99 King					

FE Sent For:

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0284

DHFS

Department of Health and Family Services
1999-2001 Biennial Budget Statutory Language Request
September 14, 1998

Supervised Community Release for Sexually Violent Persons

Current Language

Sections 980.06, 980.07, 980.08

Proposed Change

1. Amend s.980.06, .07 and .08 to provide that a court may order supervised release for a Sexually Violent Person (SVP) only if the person to be released would not need a secure facility in the community and if the cost of supervised release would not exceed the cost of care in the SVP unit at the Wisconsin Resource Center. (See attached.)
2. Amend s.980.06 (2)(c) and 980.08 (5) to provide that, if no other county is willing to take an SVP whom the court decides is suitable for supervised release, the person's county of residence must prepare a plan and place the person on supervised release in that county. (See attached.)
3. Create s. 980.06 (2)(cm) and s.980.08 (5m) to require that, when a person's county of residence is required to prepare a plan for supervised release, the court must hold a hearing on whether the plan should be approved at which the county and municipality where the person will live can submit evidence. If the court approves the plan, the county or municipality cannot block the placement. (See attached.)

Effect of the Change

1. The proposed changes will allow some measure of fiscal accountability in the supervised release program, so that a court cannot place an individual on supervised release whose cost of placement would exceed the cost of the institutional SVP program.
2. Counties will not be able to refuse supervised release placement to an individual who resided in that county, unless the plan created for the individual is more costly than institutional placement.

Rationale for the Change

A recent Court of Appeals decision court case, known as Sprosty, found that, if a trial court orders supervised release for a patient, the trial court cannot subsequently order the person

committed to institutional care based only on a lack of suitable placement facilities or treatment resources. The home county of the individual in this case had argued that it had no suitable facilities to treat the individual, but the Court of Appeals decided that, nevertheless, the home county was required to develop a plan for placement of the patient in the community. This decision has the potential to raise costs dramatically in the supervised release program. If courts order patients into the community and communities are unwilling or unable to provide adequate facilities for the patient, it is possible that the Department may have to build its own community-based facilities to house and treat the patient. This provision would require courts to review the cost of placement before ordering supervised release and would assure that placements would be made in counties of residence, when possible.

Desired Effective Date: Upon Passage of Bill
Agency: DHFS
Agency Contact: Ellen Hadidian
Phone: 266-8155

PROPOSED CH. 980 "SPROSTY" AMENDMENTS

Section 980.06(2)(b) is amended to read:

An order for commitment under this section shall specify either institutional care or supervised release. In determining whether commitment shall be for institutional care or for supervised release, the court may consider, without limitation because of enumeration, the nature and circumstances of the behavior that was the basis of the allegation in the petition under s. 980.02(2)(a), 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. The court shall order institutional care if the court finds [both/either] of the following:

1. That it is substantially probable that the person will engage in acts of sexual violence unless the person resides in a facility with a level of security comparable to a secure mental health unit or facility under s. 980.065.

2. That the daily cost of creating or contracting for the necessary programs and facilities for control, care and treatment of the person on supervised release would exceed the daily cost of control, care and treatment at a secure mental health unit or facility under s. 980.065. ~~The department shall arrange for control, care and treatment of the person in the least restrictive manner consistent with the requirements of the person and in accordance with the court's commitment order.~~

Section 980.06(2)(d) is amended to read:

An order for supervised release places the person in the custody and control of the department. The department shall arrange for control, care and treatment of the person in the least restrictive manner consistent with the requirements of the person and in accordance with the court's commitment order. A person on supervised release is subject to the conditions set by the court and to the rules of the department. Before a person is placed on supervised release by the court under this section, the court shall so notify the municipal police department and county sheriff for the municipality and county in which the person will be residing. The notification requirement under this paragraph does not apply if a municipal police department or county sheriff submits to the court a written statement waiving the right to be notified. If the department alleges that a released person has violated any condition or rule, or that the safety of others requires that supervised release be revoked, he or she may be taken into custody under the rules of the department. The department shall submit a statement showing probable cause of the detention and a petition to revoke the order for supervised release to the committing court and the regional office of the state public defender responsible for handling cases in the county where the committing court is located within 48 hours after the detention. The court shall hear the petition within 30 days, unless the hearing or time deadline is waived by the

detained person. Pending the revocation hearing, the department may detain the person in a jail or in a hospital, center or facility specified by s. 51.15 (2) . The state has the burden of proving by clear and convincing evidence that any rule or condition of release has been violated, or that the safety of others requires that supervised release be revoked. If the court determines after hearing that any rule or condition of release has been violated, or that the safety of others requires that supervised release be revoked, it may revoke the order for supervised release and order that the released person be placed in an appropriate institution until the person is discharged from the commitment under s. 980.09 or until again placed on supervised release under s. 980.08.

Section 980.07(1) is amended to read:

If a person has been committed under s. 980.06 and has not been discharged under s. 980.09 , the department shall conduct an examination of his or her mental condition within 6 months after an initial commitment under s. 980.06 and again thereafter at least once each 12 months for the purpose of determining whether the person has made sufficient progress to be considered by the court for ~~entitled to transfer to a less restrictive facility,~~ ~~to supervised release or to discharge.~~ At the time of a reexamination under this section, the person who has been committed may retain or, if he or she is indigent and so

requests, the court may appoint a qualified expert or a professional person to examine him or her.

Section 980.08(3) is amended to read:

Within 20 days after receipt of the petition, the court shall appoint one or more examiners having 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 days after appointment. The examiners 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 set forth in sub. (4)(a) and (b), the examiner shall report on the type of treatment and services that the person may need while in the community on supervised release.

Section 980.08(4) is amended to read:

The court, without a jury, shall hear the petition within 30 days after the report of the court-appointed examiner is filed with the court, unless the petitioner waives this time limit. Expenses of proceedings under this subsection shall be paid as provided under s. 51.20 (18). In making a decision under this subsection, the court may consider, without limitation because of enumeration, the nature and circumstances of the behavior that

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was the basis of the allegation in the petition under s. 980.02
(2) (a), 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.
The court shall grant the petition unless the state proves by
clear and convincing evidence that the person is still a sexually
violent person and [both/either] of the following:

(a) That ~~that~~ it is still substantially probable that the
person will engage in acts of sexual violence if the person does
not reside in a facility with a level of security comparable to a
secure mental health unit or facility under s. 980.065. ~~is not~~
continued in institutional care

(b) That the daily cost of creating or contracting for the
necessary programs and facilities for control, care and treatment
of the person on supervised release would exceed the daily cost
of control, care and treatment at a secure mental health unit or
facility under s. 980.065. In making a decision under this
subsection, the court may consider, without limitation because of
enumeration, the nature and circumstances of the behavior that
was the basis of the allegation in the petition under s. 980.02
(2) (a), 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.

PROPOSED CH. 980 "SPROSTY" AMENDMENTS -- ADDENDA

Section 980.06(2)(c) is amended to read:

If the court finds that the person is appropriate for supervised release, the court shall notify the department. The department and the county department under s. 51.42 in the county of residence of the person, as determined under s. 980.105, shall prepare a plan that identifies the treatment and services, if any, that the person will receive in the community. The plan shall address the person's need, if any, for supervision, counseling, medication, community support services, residential services, vocational services, and alcohol or other drug abuse treatment. The department may contract with a county department, under s. 51.42(3)(aw)1.d., with another public agency or with a private agency to provide the treatment and services identified in the plan. The plan shall specify who will be responsible for providing the treatment and services identified in the plan. The plan shall be presented to the court for its approval within 21 days after the court finding that the person is appropriate for supervised release, unless the department, county department and person to be released request additional time to develop the plan. If the county department of the person's county of residence declines to prepare a plan, the department may arrange for another county to prepare the plan if that county agrees to prepare the plan and if the person will be living in that county. If the department is unable to arrange for another county to prepare a plan, the court shall ~~designate a county department to~~

A

~~prepare the plan, order the county department in the person's county of residence to prepare the plan and place the person on supervised release in that county, except that the court may not so designate the county department in the county where the facility in which the person was committed for institutional care is located unless that county is also the person's county of residence.~~

Section 980.06(2)(cm) is created to read:

The court shall issue a written order approving or disapproving the plan prepared under par. (c) after holding a hearing under this paragraph. At least X days prior to the hearing under this paragraph, the court shall give written notice of the hearing to the person, the district attorney or attorney general as appropriate, the department, the county department that prepared the plan, and the chief executive officers of the municipality and county and of the governing bodies of the municipality and county in which the person would reside under the plan. At the hearing, evidence may be presented by the person and the district attorney or attorney general, by any chief executive officer who received notice, or designee, and, at the request of the court, by the department and the county department that prepared the plan. Based on the evidence presented at the hearing and the provisions of the plan, the court shall approve the plan if the court finds that the plan provides adequate treatment and services to the person and adequate protection to

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the community. If the court approves the plan, the department and county department that prepared the plan shall implement the plan, and neither the municipality nor county in which the person will reside under the plan, nor any subunit, officer or employee thereof, may exercise any discretionary authority he, she or it would otherwise possess to prevent implementation of the plan.

Section 980.08(5) is amended to read:

If the court finds that the person is appropriate for supervised release, the court shall notify the department. The department and the county department under s. 51.42 in the county of residence of the person, as determined under s. 980.105, shall prepare a plan that identifies the treatment and services, if any, that the person will receive in the community. The plan shall address the person's need, if any, for supervision, counseling, medication, community support services, residential services, vocational services, and alcohol or other drug abuse treatment. The department may contract with a county department, under s. 51.42(3)(aw)1.d., with another public agency or with a private agency to provide the treatment and services identified in the plan. The plan shall specify who will be responsible for providing the treatment and services identified in the plan. The plan shall be presented to the court for its approval within 60 days after the court finding that the person is appropriate for supervised release, unless the department, county department and person to be released request additional time to develop the

plan. If the county department of the person's county of residence declines to prepare a plan, the department may arrange for another county to prepare the plan if that county agrees to prepare the plan and if the person will be living in that county. If the department is unable to arrange for another county to prepare a plan, the court shall ~~designate a county department to prepare the plan,~~ order the county department in the person's county of residence to prepare the plan and place the person on supervised release in that county, ~~except that the court may not so designate the county department in the county where the facility in which the person was committed for institutional care is located unless that county is also the person's county of residence.~~

Section 980.08(5m) is created to read:

The court shall issue a written order approving or disapproving the plan prepared under sub. (5) after holding a hearing under this subsection. At least X days prior to the hearing under this subsection, the court shall give written notice of the hearing to the person, the district attorney or attorney general as appropriate, the department, the county department that prepared the plan, and the chief executive officers of the municipality and county and of the governing bodies of the municipality and county in which the person would reside under the plan. At the hearing, evidence may be presented by the person and the district attorney or attorney general, by

(10)

any chief executive officer who received notice, or designee, and, at the request of the court, by the department and the county department that prepared the plan. Based on the evidence presented at the hearing and the provisions of the plan, the court shall approve the plan if the court finds that the plan provides adequate treatment and services to the person and adequate protection to the community. If the court approves the plan, the department and county department that prepared the plan shall implement the plan, and neither the municipality nor county in which the person will reside under the plan, nor any subunit, officer or employe thereof, may exercise any discretionary authority he, she or it would otherwise possess to prevent implementation of the plan.

2ND CASE of Level 1 printed in FULL format.

In re the Commitment of Larry J. Sprosty: State of Wisconsin, Petitioner-Respondent, v. Larry J. Sprosty,
Respondent-Appellant.

No. 97-3524

COURT OF APPEALS OF WISCONSIN, DISTRICT FOUR

1998 Wisc. App. LEXIS 896

August 6, 1998, Released

NOTICE: [*1] THIS OPINION HAS NOT BEEN RELEASED FOR PUBLICATION IN THE PERMANENT LAW REPORTS. UNTIL RELEASED, IT IS SUBJECT TO REVISION OR WITHDRAWAL.

PRIOR HISTORY: APPEAL from a order of the circuit court for Crawford County: MICHAEL KIRCHMAN, Judge.

DISPOSITION: Reversed and cause remanded with directions.

CORE TERMS: supervised, prepare, supervision, confinement, social services agency, sex offender, county department, halfway house, committing, placement, designate, arrange, locate, sexual, unambiguous, statutory interpretation, substance abuse, treatment plan, unavailable, designated, confined, alcohol, notify

JUDGES: Before Dykman, P.J., Vergeront and Deininger, JJ.

OPINIONBY: DYKMAN

OPINION: DYKMAN, P.J. Larry J. Sprosty appeals from an order denying his supervised release under Chapter 980, Stats. Sprosty argues that the committing court erred when it ordered his continued confinement after it had approved his supervised release. We conclude that § 980.08(5), Stats., requires that a person be released if the trial court determines that supervised release is appropriate, regardless of whether the Department of Health and Family Services (DHFS) locates an appropriate treatment facility willing to accept the person. We therefore reverse and remand with directions.

Background

In 1995, Larry J. Sprosty was committed as a sexual predator under Chapter 980, Stats. On February 1, 1996, Sprosty filed a motion for supervised release. At his ev-

identary hearing, experts testified that although Sprosty needed to continue [*2] his participation in sex offender and substance abuse treatment, he could do so while living in the community under close supervision. The trial court agreed and granted the petition for supervised release. In the written order, the trial court stated that the Department of Corrections through the Wisconsin Resource Center should be notified of this order and that the Department of Probation and Parole of the county of residence or intended residence of Sprosty shall prepare a plan identifying the treatment and services that he would receive in the community. In the meantime, the court ordered that Sprosty remain in custody until further order of the court.

Heather Leach, a social worker for the Wisconsin Resource Center (WRC), corresponded with the trial court regarding the treatment and services that Sprosty required. She stated that the WRC clinical staff believed that an adequate and appropriate treatment and service plan would include halfway house placement followed by placement in the community on electronic monitoring, intensive and long-term sex offender treatment with a qualified experienced provider, alcohol and substance abuse treatment, and high risk supervision by a [*3] Sex Offender Intensive Supervision Program (SO-ISP) Agent. Leach indicated that she was having difficulty locating a county in which a halfway house, sex offender treatment, and sex offender supervision were all available. She stated that Crawford County, which was Sprosty's county of residence, lacked all of these resources. Leach did locate four counties, Dane, Milwaukee, La Crosse and Portage, that had sex offender treatment, SO-ISP supervision, and at least one halfway house; however, several of these facilities refused to admit Sprosty into their programs.

On April 11, 1997, the court held a status conference. The court agreed that Crawford County should be ordered to prepare a plan. On May 29, 1997, the court entered a formal order to that effect.

In June 1997, two hearings were held regarding the

preparation of Sprosty's community treatment plan. At these hearings, the Crawford County district attorney stated that its experts were unable to develop an appropriate plan for Sprosty's supervised release. Specifically, he stated that Crawford County did not have the resources to address Sprosty's various treatment needs in a community setting. After listening to the county's report, [*4] the court stated the following:

Last September 27th this Court made a finding that Mr. Sprosty could be released on supervised release in the community, provided that certain conditions necessary for the safety of the community and for his treatment and supervision could be developed or satisfied and the Court requested that state and county to prepare a plan. That plan has been presented and supplemented. Basically the plan indicates that what is necessary to accommodate the needs for treatment for supervision and for protection of the community are unavailable at this time, not only in Crawford County but elsewhere. The Court can not compel private agencies to accept Mr. Sprosty and the State attempted to make contact with some private agencies who would not accept Mr. Sprosty into their halfway house or treatment program. The Court will not require the State to build facilities in order to provide supervised release for Mr. Sprosty and the Court will not release Mr. Sprosty under conditions that are less than necessary to insure Mr. Sprosty's treatment and protection of the public and supervision of Mr. Sprosty.

Thereafter, the trial court entered [*5] an order denying Sprosty's supervised release and returned him to secured confinement. Sprosty appeals.

Discussion

Sprosty argues that once the court determined that his release was appropriate, it had no authority under § 980.08, Stats., to order his continued confinement simply because the state and county agencies could not locate an appropriate facility willing to accept him. Whether a court properly interpreted and applied the law in ordering a patient's continued confinement under Chapter 980 presents a question of law that we review de novo. *State v. Keding*, 214 Wis. 2d 362, 366, 571 N.W.2d 450, 452 (Ct. App. 1997).

Whether § 980.08(5), Stats., allows a court to order a person's continued confinement after it has determined that supervised release is appropriate presents a question of statutory interpretation. The goal of statutory interpre-

tion is to ascertain the intent of the legislature. *MCI Telecomm. Corp. v. State*, 203 Wis. 2d 392, 400, 553 N.W.2d 284, 287 (Ct. App. 1996), aff'd, 209 Wis. 2d 310, 562 N.W.2d 594 (1997). Our first inquiry is to the language of the statute. *Id.* If the meaning is clear and unambiguous, our inquiry [*6] ends and we apply the language of the statute to facts of the case. *Id.* at 400, 553 N.W.2d at 288. But, if the language is ambiguous, we may examine the scope, history, context, subject matter and purpose of the statute. *Id.*

Section 980.08, Stats., deals with the supervised release of persons committed under the sexual offender program. Section 980.08(1) permits any person committed for institutional care in a secure facility to petition the committing court for supervised release. Section 980.08(3) sets out an examination procedure in which court-appointed specialists examine the person to determine whether supervised release is appropriate. Section 980.08(4) states that within thirty days after the examination reports are filed, the court shall hear the petition. The court shall grant the petition "unless the state proves by clear and convincing evidence that the person is still a sexually violent person and that it is still substantially probable that the person will engage in acts of sexual violence if the person is not confined in a secure mental health unit or facility." See § 980.08(4). The court has a great deal of discretion in making this determination. [*7] Section 980.08(4).

The disputed statutory provision in this case is § 980.08(5), Stats. This subsection deals with the procedures that are to be followed after a committing court has determined that supervised release is appropriate. Section 980.08(5) reads, in pertinent part, as follows:

If the court finds that the person is appropriate for supervised release, the court shall notify the DHFS. DHFS and the county social services agency in the county of residence of the person ... shall prepare a plan that identifies the treatment and services, if any, that the person will receive in the community. The plan shall address the person's need, if any, for supervision, counseling, medication, community support services, residential services, vocational services, and alcohol or other drug abuse treatment. The department may contract with a county department, ... with another public agency or with a private agency to provide the treatment and services identified in the plan. The plan shall specify who will be responsible for providing the treatment and services identified in the plan. The plan shall be presented to the court for its ap-

proval within 60 days after [*8] the court finding that the person is appropriate for supervised release, unless the department, county department and person to be released request additional time to develop the plan. If the county department of the person's county of residence declines to prepare a plan, the department may arrange for another county to prepare the plan if that county agrees to prepare the plan and if the person will be living in that county. If the department is unable to arrange for another county to prepare a plan, the court shall designate a county department to prepare the plan, order the county department to prepare the plan and place the person on supervised release in that county.

(Emphasis added.)

We conclude that § 980.08(5), Stats., requires a person's release once the court has determined that release is appropriate. n1 After it determines supervised release to be appropriate, the court must notify DHFS. DHFS then contacts the social services agency in the county in which the person resides, and together they must prepare a plan that identifies the treatment and services that the person is to receive in the community. After the plan is prepared, DHFS may then contract [*9] with the county social services agency, another public agency, or a private agency to provide the treatment and services identified in the plan. However, if the social services agency in the person's county of residence declines to prepare a plan, DHFS may then arrange with another county to prepare the plan if the person will be living in that county. If DHFS is unable to find another county willing to prepare the plan, the court must then designate a county social services agency to prepare the plan, order it to prepare the plan, and place the person on supervised release in that county. In the end, the court and the DHFS are responsible for making sure that an appropriate treatment plan is developed and that the person is placed on supervised release in a community.

n1 The word "shall" is given mandatory meaning

when it is used in a statute. *Karow v. Milwaukee County Serv. Comm'n*, 82 Wis. 2d 565, 570, 263 N.W.2d 214, 217 (1978).

In this case, the court ordered Crawford County to prepare a plan, [*10] and Crawford County declined to develop a plan, because it did not have the appropriate resources to treat Sprosty's various needs. Several private facilities in other counties that could provide the necessary treatment and services declined to do so. As a result, the court apparently decided that there were no other options available, and it ordered that Sprosty remain confined in a secured facility.

We conclude that the unambiguous statutory language did not permit the court to order continued confinement. Section 980.08(5), Stats., requires that if the person's county of residence is unable or unwilling to prepare a plan, and no other counties agree to prepare a plan or accept the person into their program, the committing court must designate a county for placement. There is no exception within § 980.08(5), which states that a court can refuse to order release after it has determined that release is appropriate. If necessary treatment programs and facilities are currently unavailable, as apparently was the situation in this case, the county designated by the court carries the burden of creating or contracting for the necessary programs and facilities. Therefore, we conclude that [*11] Crawford County, which apparently was the county designated by the court at the April 11 hearing to prepare a plan and arrange for Sprosty's placement, or another county which the court may designate on remand, has the burden of creating the programs that are required for Sprosty's treatment and supervision. Accordingly, we reverse and remand with directions to order a county to do what is necessary for Sprosty's release.

By the Court.-Order reversed and cause remanded with directions.

Recommended for publication in the official reports.



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-0284/1

JEO: King

See edit log
10/26

Dr Note

DOA:.....Jablonsky – Supervised release of sexually violent persons

FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

do not generate catalog

1

AN ACT...; relating to: supervised release of persons committed for treatment

2

as a sexually violent person.

Analysis by the Legislative Reference Bureau

HEALTH AND HUMAN SERVICES

MENTAL ILLNESS AND DEVELOPMENTAL DISABILITIES

Current law provides a procedure for involuntarily committing sexually violent persons to the department of health and family services (DHFS) for control, care and treatment. A sexually violent person is a person who has been convicted of certain sexually violent offenses and who is dangerous because he or she suffers from a mental disorder that makes it substantially probable ~~the~~ ^{that} the person will engage in acts of sexual violence.

When a person is found by a judge or jury to be a sexually violent person, the person must be committed to the custody of DHFS. The court that commits the person must specify whether the person is to be placed in institutional care or on supervised release in the community, and DHFS must arrange for control, care and treatment of the person in the least restrictive manner consistent with the requirements of the person and in accordance with the court's commitment order.

If the court decides to place the person on supervised release, DHFS and the county social services department (county department) of the person's county of residence must prepare a plan for the treatment and services that the person will receive while on supervised release. If the county department of the person's county

of residence declines to prepare a plan, DHFS must try to find another county department to prepare the plan and arrange for placement of the person in that county. If DHFS is unable to find another county department to prepare the plan, the court must choose a county department to prepare the plan, order that county department to prepare the plan and place the person on supervised release in that county. However, the court may not choose the county department of a county where there is a facility for the detention, evaluation or institutional placement of sexually violent persons unless that county is also the county of residence of the person being placed on supervised release. The court of appeals has held that once a court has ordered a person placed on supervised release, the person must be released and DHFS and the county responsible for preparing the plan must provide or contract for appropriate treatment and services or, if such treatment and services are not available, create them. *State v. Sprosty*, __ Wis. 2d. __ (Ct. App. 1998).

This bill makes the following changes relating to supervised release of sexually violent persons:

1. The bill establishes new guidelines for a court's decision concerning whether to place a person on supervised release. Under the bill, a court may not order a person to be placed on supervised release if the court finds both of the following: a) that it is substantially probable that the person will engage in acts of sexual violence unless the person resides in a facility with a level of security comparable to that of a secure mental health unit or facility; and b) that the daily cost of creating or contracting for the necessary programs and facilities for control, care and treatment of the person on supervised release would exceed the daily cost of control, care and treatment of the person at a secure mental health unit or facility.

2. The bill makes changes in how a court designates a county department to prepare a plan for supervised release of a person. Under the bill, as under current law, if the person's county of residence declines to prepare a plan DHFS may arrange for another county to prepare the plan. However, if DHFS is unable to find another county to prepare the plan, the court must order the county department of the person's county of residence to prepare the plan instead of choosing the county department of almost any other county, as under current law.

3. The bill creates a new procedure which a court must use to approve or disapprove a supervised release plan. Under the bill, the court must hold a hearing on a proposed supervised release plan within 30 days after the plan is presented to the court. Based on evidence provided at the hearing, the court must approve the plan if it determines that the plan provides adequate treatment and services to the person and adequate protection to the community. Likewise, the court must disapprove the plan if it determines that the plan does not provide adequate treatment and services to the person and adequate protection to the community. If the court approves the plan the court must also order the person placed on supervised release in the county that prepared the plan. Finally, the bill requires DHFS and the county department that prepared the plan to implement the plan and allows DHFS

to ask the court for any orders that are necessary to ensure implementation of the plan.

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

1 **SECTION 1.** 20.435 (2) (bj) of the statutes is amended to read:

2 20.435 (2) (bj) *Conditional and supervised release treatment and services.*

3 Biennially, the amounts in the schedule for payment by the department of costs for
4 treatment and services for persons released under s. 971.17 (3) (d) or (4) (e), 980.06
5 (2) (e) [✓](~~cr~~) or 980.08 (5) [✓](~~d~~), for which the department has contracted with county
6 departments under s. 51.42 (3) (aw) 1. d., with other public agencies or with private
7 agencies to provide the treatment and services.

History: 1971 c. 125 ss. 138 to 155, 522 (1); 1971 c. 211, 215, 302, 307, 322; 1973 c. 90, 198, 243; 1973 c. 284 s. 32; 1973 c. 308, 321, 322, 333, 336; 1975 c. 39 ss. 153 to 173, 152 (1), (2); 1975 c. 41 s. 52; 1975 c. 82, 224, 292; 1975 c. 413 s. 18; 1975 c. 422, 423; 1975 c. 430 ss. 1, 2, 80; 1977 c. 29 ss. 236 to 273, 1657 (18); 1977 c. 112; 1977 c. 203 s. 106; 1977 c. 213, 233, 327; 1977 c. 354 s. 101; 1977 c. 359; 1977 c. 418 ss. 129 to 137, 924 (18) (d), 929 (55); 1977 c. 428 s. 115; 1977 c. 447; 1979 c. 32 s. 92 (11); 1979 c. 34, 48; 1979 c. 102 s. 237; 1979 c. 111, 175, 177; 1979 c. 221 ss. 118g to 133, 2202 (20); 1979 c. 238, 300, 331, 361; 1981 c. 20 ss. 301 to 356b, 2202 (20) (b), (d), (g); 1981 c. 93 ss. 3 to 8, 186; 1981 c. 298, 314, 317, 359, 390; 1983 a. 27 ss. 318 to 410, 2202 (20); 1983 a. 192, 199, 245; 1983 a. 333 s. 6; 1983 a. 363, 398, 410, 427; 1983 a. 435 ss. 2, 3, 7; 1983 a. 538; 1985 a. 24, 29, 56, 73, 120, 154, 176, 255, 281, 285, 332; 1987 a. 27, 339, 368, 398, 399, 402; 1987 a. 403 ss. 25, 256; 1987 a. 413; 1989 a. 31, 53; 1989 a. 56 ss. 13, 259; 1989 a. 102; 1989 a. 107 ss. 11, 13, 17 to 37; 1989 a. 120, 122, 173, 199, 202, 318, 336, 359; 1991 a. 6, 39, 189, 269, 275, 290, 315, 322; 1993 a. 16, 27, 76, 98, 99, 168, 183, 377, 437, 445, 446, 450, 469, 479, 490, 491; 1995 a. 27 ss. 806 to 961r, 9126 (19); 1995 a. 77, 98; 1995 a. 216 ss. 26, 27; 1995 a. 266, 276, 289, 303, 404, 417, 440, 448, 464, 468; 1997 a. 27 ss. 211, 214, 216, 217, 527 to 609; 1997 a. 35, 105, 231, 237, 280, 293.

8 **SECTION 2.** 46.10 (2) of the statutes is amended to read:

9 46.10 (2) Except as provided in subs. (2m) and (14) (b) and (c), any person,
10 including but not limited to a person admitted, committed or placed under s. 975.01,
11 1977 stats., s. 975.02, 1977 stats., and s. 975.17, 1977 stats., and ss. 51.10, 51.13,
12 51.15, 51.20, 51.35 (3), 51.37 (5), 51.45 (10), (11), (12) and (13), 55.05, 55.06, 971.14
13 (2) and (5), 971.17 (1), 975.06 and 980.06[✓], receiving care, maintenance, services and
14 supplies provided by any institution in this state including University of Wisconsin
15 Hospitals and Clinics, in which the state is chargeable with all or part of the person's
16 care, maintenance, services and supplies, any person receiving care and services
17 from a county department established under s. 51.42 or 51.437 or from a facility
18 established under s. 49.73, and any person receiving treatment and services from a

1 public or private agency under s. 971.17 (3) (d) or (4) (e), 980.06 (2) (e) (cv) or 980.08
2 (5) (e) and the person's property and estate, including the homestead, and the spouse
3 of the person, and the spouse's property and estate, including the homestead, and,
4 in the case of a minor child, the parents of the person, and their property and estates,
5 including their homestead, and, in the case of a foreign child described in s. 48.839
6 (1) who became dependent on public funds for his or her primary support before an
7 order granting his or her adoption, the resident of this state appointed guardian of
8 the child by a foreign court who brought the child into this state for the purpose of
9 adoption, and his or her property and estate, including his or her homestead, shall
10 be liable for the cost of the care, maintenance, services and supplies in accordance
11 with the fee schedule established by the department under s. 46.03 (18). If a spouse,
12 widow or minor, or an incapacitated person may be lawfully dependent upon the
13 property for their support, the court shall release all or such part of the property and
14 estate from the charges that may be necessary to provide for those persons. The
15 department shall make every reasonable effort to notify the liable persons as soon
16 as possible after the beginning of the maintenance, but the notice or the receipt
17 thereof is not a condition of liability.

History: 1971 c. 125; 1971 c. 213 s. 5; 1973 c. 90 ss. 223, 223m, 560 (3); 1973 c. 198, 333; 1975 c. 39 ss. 347 to 350, 734; 1975 c. 41, 94; 1975 c. 189 s. 99 (2); 1975 c. 198, 199, 224; 1975 c. 413 s. 18; 1975 c. 428; 1975 c. 430 ss. 6, 80; 1977 c. 29, 203; 1977 c. 418 ss. 294 to 295, 924 (50), 929 (18); 1977 c. 428; 1977 c. 447 s. 206; 1977 c. 449 ss. 75, 497; 1979 c. 34; 1979 c. 102 ss. 236 (4), 237; 1979 c. 117, 221, 331; 1981 c. 20 ss. 755 to 758, 2202 (20) (i), (m); 1981 c. 81; 1983 a. 27 ss. 955m, 2202 (20); 1985 a. 29, 176, 281, 332; 1987 a. 307; 1989 a. 31, 56, 96, 212; 1991 a. 39, 221, 315, 316; 1993 a. 16, 27, 385, 437, 446, 479, 481; 1995 a. 27 ss. 2054, 2055, 9130 (4); 1995 a. 77, 224, 404; 1997 a. 3, 27, 35, 237, 308.

18 **SECTION 3.** 51.42 (3) (aw) 1. d. of the statutes is amended to read:

19 51.42 (3) (aw) 1. d. Provide treatment and services that are specified in a
20 conditional release plan approved by a court for a person who is a county resident and
21 is conditionally released under s. 971.17 (3) or (4) or that are specified in a supervised
22 release plan approved by a court under s. 980.06 (2) (e) (cr) or 980.08 (5) (d). If the
23 county department provides treatment and services under this subdivision, the

1 department of health and family services shall, from the appropriation under s.
2 20.435 (2) (bj), pay the county department for the costs of the treatment and services.

History: 1971 c. 125; 1973 c. 90, 198, 333, 336; 1975 c. 39, 198, 199, 224, 422; 1975 c. 428 s. 16; 1975 c. 430 ss. 24 to 31, 80; 1977 c. 26 ss. 37, 38, 75; 1977 c. 29 ss. 612 to 623p, 1656 (18); 1977 c. 193; 1977 c. 203 s. 106; 1977 c. 272; 1977 c. 354 s. 101; 1977 c. 418, 428, 447; 1979 c. 34, 117, 177, 221, 330, 355; 1981 c. 20 ss. 923 to 942, 2202 (20) (d), (n), (q); 1981 c. 93 ss. 105 to 122, 186; 1981 c. 329; 1983 a. 27 ss. 1106 to 1112, 2202 (20); 1983 a. 189 ss. 44, 329 (5); 1983 a. 192, 239, 365, 375, 524; 1985 a. 29, 120, 176; 1987 a. 3, 27, 199, 339, 366; 1989 a. 31, 122; 1991 a. 39, 274, 315; 1993 a. 16, 437, 445; 1995 a. 27 ss. 3260 to 3262, 9126 (19), 9145 (1); 1995 a. 64, 77, 92, 201, 224, 276, 352, 417; 1997 a. 27, 164, 237, 268.

3 SECTION 4. 980.06 (2) (b) of the statutes is renumbered 980.06 (2) (b) (intro.)

4 and amended to read:

5 980.06 (2) (b) (intro.) An order for commitment under this section shall specify
6 either institutional care or supervised release. The court shall order institutional
7 care if it finds all of the following:

8 (bm) ✓ In determining under par. (b) whether commitment shall be for
9 institutional care or for supervised release, the court may consider, without
10 limitation because of enumeration, the nature and circumstances of the behavior
11 that was the basis of the allegation in the petition under s. 980.02 (2) (a), the person's
12 mental history and present mental condition, where the person will live, how the
13 person will support himself or herself, and what arrangements are available to
14 ensure that the person has access to and will participate in necessary treatment,
15 including pharmacological treatment using an antiandrogen or the chemical
16 equivalent of an antiandrogen if the person is a serious child sex offender. In deciding
17 whether to order supervised release of person who is a serious child sex offender, the
18 court may not consider, as a factor in making its decision, that the person is a proper
19 subject for pharmacological treatment using an antiandrogen or the chemical
20 equivalent of an antiandrogen or that the person is willing to participate in
21 pharmacological treatment using an antiandrogen or the chemical equivalent of an
22 antiandrogen. ~~The department shall arrange for control, care and treatment of the~~

1 person in the least restrictive manner consistent with the requirements of the person
2 and in accordance with the court's commitment order.

~~NOTE: NOTE: Par. (b) is shown as affected by two acts of the 1997 legislature and as merged by the revisor under s. 13.93 (2) (c). NOTE:~~

History: 1993 a. 479; 1995 a. 276; 1997 a. 27, 275, 284; s. 13.93 (2) (c).

3 **SECTION 5.** 980.06 (2) (b) 1. and 2. of the statutes are created to read:

4 980.06 (2) (b) 1. That it is substantially probable that the person will engage
5 in acts of sexual violence unless the person resides in a facility with a level of security
6 comparable to that of a secure mental health unit or facility under s. 980.065.

7 2. That the daily cost of creating or contracting for the necessary programs and
8 facilities for control, care and treatment of the person on supervised release would
9 exceed the daily cost of control, care and treatment of the person at a secure mental
10 health unit or facility under s. 980.065.

11 **SECTION 6.** 980.06 (2) (c) of the statutes is amended to read:

12 980.06 (2) (c) If the court finds that the person is appropriate for supervised
13 release, the court shall notify the department. The department and the county
14 department under s. 51.42 in the county of residence of the person, as determined
15 under s. 980.105, shall prepare a plan that identifies the treatment and services, if
16 any, that the person will receive in the community. If the county department of the
17 person's county of residence declines to prepare a plan, the department may arrange
18 for another county to prepare the plan if that county agrees to prepare the plan and
19 if the person will be living in that county. If the department is unable to arrange for
20 another county to prepare a plan, the court shall order the county department of the
21 person's county of residence to prepare the plan.

22 (cg) The plan prepared under par. (c) shall address the person's need, if any, for
23 supervision, counseling, medication, community support services, residential
24 services, vocational services, and alcohol or other drug abuse treatment. If the

1 person is a serious child sex offender, the plan shall address the person's need for
2 pharmacological treatment using an antiandrogen or the chemical equivalent of an
3 antiandrogen. ~~The department may contract with a county department, under s.~~
4 ~~51.42 (3) (aw) 1. d., with another public agency or with a private agency to provide~~
5 ~~the treatment and services identified in the plan.~~ The plan shall specify who will be
6 responsible for providing the treatment and services identified in the plan.

7 (cm) 2. The plan prepared under par. (c) shall be presented to the court for its
8 approval within 21 days after the court finding that the person is appropriate for
9 supervised release, unless the department, county department and person to be
10 released request additional time to develop the plan. If the county department of the
11 person's county of residence declines to prepare a plan, the department may arrange
12 for another county to prepare the plan if that county agrees to prepare the plan and
13 if the person will be living in that county. If the department is unable to arrange for
14 another county to prepare a plan, the court shall designate a county department to
15 prepare the plan, order the county department to prepare the plan and place the
16 person on supervised release in that county, except that the court may not so
17 designate the county department in any county where there is a facility in which
18 persons are detained or evaluated under s. 980.04 or in which persons committed to
19 institutional care under this chapter are placed, unless that county is also the
20 person's county of residence. The court shall hold a hearing on the plan within 30
21 days after the plan is presented to the court, unless the department, county
22 department and person to be released agree to a later hearing date. At least 10 days
23 before the hearing under this subdivision, the court shall give written notice of the
24 hearing to the person to be released, the district attorney or department of justice,
25 whichever is applicable, the department, the county department that prepared the

1 plan, the chief executive officer of the county in which the person would reside under
2 the plan and the chief executive officer of the city, village or town in which the person
3 would reside under the plan. The person, the district attorney or the attorney
4 general, whichever is applicable, and any chief executive officer who received notice
5 of the hearing, or the chief executive officer's designee, may present evidence at the
6 hearing. The county department that prepared the plan and the department may
7 present evidence at the hearing if requested to do so by the court.

~~NOTE: NOTE: Par. (c) is shown as affected by two acts of the 1997 legislature and as merged by the revisor under s. 13.93 (2) (c). NOTE:~~

History: 1993 a. 479; 1995 a. 276; 1997 a. 27, 275, 284; s. 13.93 (2) (c).

8 **SECTION 7.** 980.06 (2) (cm) 1. of the statutes is created to read:

9 980.06 (2) (cm) 1. In this paragraph, "chief executive officer" means a mayor,
10 city manager, village president, town chairperson, county executive or chairperson
11 of the county board of supervisors.

12 **SECTION 8.** 980.06 (2) (cr) and (cv) of the statutes are created to read:

13 980.06 (2) (cr) Based on the provisions of the plan and on the evidence
14 presented at the hearing under par. (cm) 2., the court shall determine whether the
15 plan provides adequate treatment and services to the person and adequate
16 protection to the community. If the court finds that the plan does not provide
17 adequate treatment and services to the person and adequate protection to the
18 community, the court shall issue a written order disapproving the plan. If the court
19 finds that the plan provides adequate treatment and services to the person and
20 adequate protection to the community, the court shall issue a written order
21 approving the plan and placing the person on supervised release in the county that
22 prepared the plan.

23 (cv) The county department that prepared the plan and the department shall
24 implement a plan approved by the court under par. (cr). In implementing the plan,

1 the department may contract with a county department, under s. 51.42 (3) (aw) 1.
2 d., with another public agency or with a private agency to provide the treatment and
3 services identified in the plan. The department may request the court to make such
4 orders as are necessary to ensure implementation of the plan.

5 **SECTION 9.** 980.06 (2) (d) of the statutes is amended to read:

6 980.06 (2) (d) An order for supervised release places the person in the custody
7 and control of the department. The department shall arrange for control, care and
8 treatment of the person in the least restrictive manner consistent with the
9 requirements of the person and in accordance with the plan for supervised release
10 approved by the court under par. (cr) or s. 980.08 (5) (d), whichever is applicable. A
11 person on supervised release is subject to the conditions set by the court and to the
12 rules of the department. Before a person is placed on supervised release by the court
13 under this section, the court shall so notify the municipal police department and
14 county sheriff for the municipality and county in which the person will be residing.
15 The notification requirement under this paragraph does not apply if a municipal
16 police department or county sheriff submits to the court a written statement waiving
17 the right to be notified. If the department alleges that a released person has violated
18 any condition or rule, or that the safety of others requires that supervised release be
19 revoked, he or she may be taken into custody under the rules of the department. The
20 department shall submit a statement showing probable cause of the detention and
21 a petition to revoke the order for supervised release to the committing court and the
22 regional office of the state public defender responsible for handling cases in the
23 county where the committing court is located within 48 hours after the detention.
24 The court shall hear the petition within 30 days, unless the hearing or time deadline
25 is waived by the detained person. Pending the revocation hearing, the department

1 may detain the person in a jail or in a hospital, center or facility specified by s. 51.15
2 (2). The state has the burden of proving by clear and convincing evidence that any
3 rule or condition of release has been violated, or that the safety of others requires that
4 supervised release be revoked. If the court determines after hearing that any rule
5 or condition of release has been violated, or that the safety of others requires that
6 supervised release be revoked, it may revoke the order for supervised release and
7 order that the released person be placed in an appropriate institution until the
8 person is discharged from the commitment under s. 980.09 or until again placed on
9 supervised release under s. 980.08.

History: 1993 a. 479; 1995 a. 276; 1997 a. 27, 275, 284; s. 13.93 (2) (c).

10 **SECTION 10.** 980.07 (1) of the statutes is amended to read:

11 980.07 (1) If a person has been committed under s. 980.06 and has not been
12 discharged under s. 980.09, the department shall conduct an examination of his or
13 her mental condition within 6 months after an initial commitment under s. 980.06
14 and again thereafter at least once each 12 months for the purpose of determining
15 whether the person has made sufficient progress ~~to be entitled to transfer to a less~~
16 ~~restrictive facility, to~~ for the court to consider whether the person should be placed
17 on supervised release or to discharge discharged. At the time of a reexamination
18 under this section, the person who has been committed may retain or, if he or she is
19 indigent and so requests, the court may appoint a qualified expert or a professional
20 person to examine him or her.

History: 1993 a. 479.

21 **SECTION 11.** 980.08 (3) of the statutes is amended to read:

22 980.08 (3) Within 20 days after receipt of the petition, the court shall appoint
23 one or more examiners having the specialized knowledge determined by the court to
24 be appropriate, who shall examine the person and furnish a written report of the

1 examination to the court within 30 days after appointment. The examiners shall
2 have reasonable access to the person for purposes of examination and to the person's
3 past and present treatment records, as defined in s. 51.30 (1) (b), and patient health
4 care records, as provided under s. 146.82 (2) (c). If any such examiner believes that
5 the person is appropriate for supervised release under the criteria specified in sub.
6 (4) (a) 1. to 3., the examiner shall report on the type of treatment and services that
7 the person may need while in the community on supervised release.

History: 1993 a. 479; 1995 a. 276; 1997 a. 27, 275, 284; s. 13.93 (2) (c).

8 **SECTION 12. 980.08 (4) of the statutes is renumbered 980.08 (4) (a) (intro.) and**
9 **amended to read:**

10 980.08 (4) (a) (intro.) The court, without a jury, shall hear the petition within
11 30 days after the report of the court-appointed examiner is filed with the court,
12 unless the petitioner waives this time limit. Expenses of proceedings under this
13 subsection shall be paid as provided under s. 51.20 (18). The court shall grant the
14 petition unless the state proves all of the following by clear and convincing evidence
15 that:

16 1. That the person is still a sexually violent person ~~and that.~~
17 2. That it is still substantially probable that the person will engage in acts of
18 sexual violence if the person is ~~not continued in institutional care~~ does not reside in
19 a facility with a level of security comparable to a secure mental health unit or facility
20 under s. 980.065.

21 (b) In making a decision under ~~this subsection~~ par. (a), the court may consider,
22 without limitation because of enumeration, the nature and circumstances of the
23 behavior that was the basis of the allegation in the petition under s. 980.02 (2) (a),
24 the person's mental history and present mental condition, where the person will live,

1 how the person will support himself or herself and what arrangements are available
2 to ensure that the person has access to and will participate in necessary treatment,
3 including pharmacological treatment using an antiandrogen or the chemical
4 equivalent of an antiandrogen if the person is a serious child sex offender. A decision
5 under this ~~subsection~~ paragraph on a petition filed by a person who is a serious child
6 sex offender may not be made based on the fact that the person is a proper subject
7 for pharmacological treatment using an antiandrogen or the chemical equivalent of
8 an antiandrogen or on the fact that the person is willing to participate in
9 pharmacological treatment using an antiandrogen or the chemical equivalent of an
10 antiandrogen.

~~NOTE-NOTE: Sub. (4) is shown as affected by two acts of the 1997 legislature and as merged by the revisor under s. 13.93 (2) (c).NOTE:~~

History: 1993 a. 479; 1995 a. 276; 1997 a. 27, 275, 284; s. 13.93 (2) (c).

11 **SECTION 13.** 980.08 (4) (a) 3. of the statutes is created to read:

12 980.08 (4) (a) 3. That the daily cost of creating or contracting for the necessary
13 programs and facilities for control, care and treatment of the person on supervised
14 release would exceed the daily cost of control, care and treatment of the person at a
15 secure mental health unit or facility under s. 980.065.

16 **SECTION 14.** 980.08 (5) of the statutes is renumbered 980.08 (5) (a) and
17 amended to read:

18 980.08 (5) (a) If the court finds that the person is appropriate for supervised
19 release, the court shall notify the department. The department and the county
20 department under s. 51.42 in the county of residence of the person, as determined
21 under s. 980.105, shall prepare a plan that identifies the treatment and services, if
22 any, that the person will receive in the community. If the county department of the
23 person's county of residence declines to prepare a plan, the department may arrange
24 for another county to prepare the plan if that county agrees to prepare the plan and

1 if the person will be living in that county. If the department is unable to arrange for
2 another county to prepare a plan, the court shall order the county department of the
3 person's county of residence to prepare the plan.

4 (b) The plan prepared under par. (a) shall address the person's need, if any, for
5 supervision, counseling, medication, community support services, residential
6 services, vocational services, and alcohol or other drug abuse treatment. If the
7 person is a serious child sex offender, the plan shall address the person's need for
8 pharmacological treatment using an antiandrogen or the chemical equivalent of an
9 antiandrogen. ~~The department may contract with a county department, under s.~~
10 ~~51.42 (3) (aw) 1. d., with another public agency or with a private agency to provide~~
11 ~~the treatment and services identified in the plan.~~ The plan shall specify who will be
12 responsible for providing the treatment and services identified in the plan.

13 (c) 2. The plan prepared under par. (a) shall be presented to the court ~~for its~~
14 approval within 60 days after the court finding that the person is appropriate for
15 supervised release, unless the department, county department and person to be
16 released request additional time to develop the plan. ~~If the county department of the~~
17 ~~person's county of residence declines to prepare a plan, the department may arrange~~
18 ~~for another county to prepare the plan if that county agrees to prepare the plan and~~
19 ~~if the person will be living in that county. If the department is unable to arrange for~~
20 ~~another county to prepare a plan, the court shall designate a county department to~~
21 ~~prepare the plan, order the county department to prepare the plan and place the~~
22 ~~person on supervised release in that county, except that the court may not so~~
23 ~~designate the county department in any county where there is a facility in which~~
24 ~~persons committed to institutional care under this chapter are placed unless that~~
25 ~~county is also the person's county of residence. The court shall hold a hearing on the~~

1 plan within 30 days after the plan is presented to the court, unless the department,
2 county department and person to be released agree to a later hearing date. At least
3 10 days before the hearing under this subdivision, the court shall give written notice
4 of the hearing to the person to be released, the district attorney or department of
5 justice, whichever is applicable, the department, the county department that
6 prepared the plan, the chief executive officer of the county in which the person would
7 reside under the plan and the chief executive officer of the city, village or town in
8 which the person would reside under the plan. The person, the district attorney or
9 the attorney general, whichever is applicable, and any chief executive officer who
10 received notice of the hearing, or the chief executive officer's designee, may present
11 evidence at the hearing. The county department that prepared the plan and the
12 department may present evidence at the hearing if requested to do so by the court.

~~NOTE: NOTE. Sub. (5) is shown as affected by two acts of the 1997 legislature and as merged by the revisor under s. 13.93 (2) (c). NOTE:~~

History: 1993 a. 479; 1995 a. 276; 1997 a. 27, 275, 284; s. 13.93 (2) (c).

13 **SECTION 15.** 980.08 (5) (c) 1. of the statutes is created to read:

14 980.08 (5) (c) 1. In this paragraph, "chief executive officer" means a mayor, city
15 manager, village president, town chairperson, county executive or chairperson of the
16 county board of supervisors.

17 **SECTION 16.** 980.08 (5) (d) and (e) of the statutes are created to read:

18 980.08 (5) (d) Based on the provisions of the plan and on the evidence presented
19 at the hearing under par. (c) 2., the court shall determine whether the plan provides
20 adequate treatment and services to the person and adequate protection to the
21 community. If the court finds that the plan does not provide adequate treatment and
22 services to the person and adequate protection to the community, the court shall
23 issue a written order disapproving the plan. If the court finds that the plan provides
24 adequate treatment and services to the person and adequate protection to the

1 community, the court shall issue a written order approving the plan and placing the
2 person on supervised release in the county that prepared the plan.

3 (e) The county department that prepared the plan and the department shall
4 implement a plan approved by the court under par. (d). In implementing the plan,
5 the department may contract with a county department, under s. 51.42 (3) (aw) 1.
6 d., with another public agency or with a private agency to provide the treatment and
7 services identified in the plan. The department may request the court to make such
8 orders as are necessary to ensure implementation of the plan.

9 **SECTION 932³. Initial applicability; health and family services.**

10 (1) SUPERVISED RELEASE AND PERIODIC REEXAMINATION OF SEXUALLY VIOLENT
11 PERSONS.

12 (a) *Initial commitment orders.* The amendment of ~~section~~ 980.06 (2) (c) and (d) of the
13 statutes, the renumbering and amendment of section 980.06 (2) (b) of the statutes,
14 and the creation of section 980.06 (2) (b) 1. and 2., (cm) 1., (cr) and (cv) of the statutes
15 first ~~applies~~ ^{apply} to initial commitments orders in cases in which judgment is entered
16 under section 980.05 (5) of the statutes on the effective date of this paragraph.

17 (b) *Periodic reexamination.* The treatment of section 980.07 (1) of the statutes
18 first applies to examinations of a sexually violent person that occur on the effective
19 date of this paragraph.

20 (c) *Petitions for supervised release.* The amendment of section 980.08 (3) of the
21 statutes, the renumbering and amendment of section 980.08 (4) and (5) of the
22 statutes and the creation of section 980.08 (4) (a) 3. and (5) (c) 1., (d) and (e) of the
23 statutes first ~~applies~~ ^{apply} to petitions for supervised release filed on the effective date of
24 this paragraph.

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(END)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0284/1dn

JEO:.....

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In addition to making the changes requested, I have substantially reorganized ss. 980.06 (2) (b) and (c) and 980.08 (4) and (5), stats., so that the various requirements are in a more logical order. To help you review the changes made by the draft, I have included an appendix to this drafter's note that shows what the relevant paragraphs under ss. 980.06 (2) and 980.08 (4) and (5) would look like if this draft were enacted.

When reviewing the draft, please note the following:

1. If my understanding is correct, the draft is intended in part to deal with the problems that can arise when a court determines that supervised release is appropriate even though the court has had no input from DHFS and the county department on the practicality (or impossibility) of creating and implementing a supervised release plan. *State v. Sprosty*, __ Wis. 2d __ (Ct. App. 1998); compare *State v. Castillo*, 205 Wis. 2d 599, 617 (Ct. App. 1996) (Brown, J., concurring in part, dissenting in part), and *State v. Keding*, 214 Wis. 2d 362, 369 (Ct. App. 1997).

✓ However, the changes requested in the drafting instructions and made by this draft do not seem to solve this problem, for the following reason: The draft specifies that in deciding between institutional care and supervised release, a court must compare the daily cost of treatment and services under each alternative even though the supervised release plan is not actually prepared until after the court has decided that the person is appropriate for supervised release. See ss. 980.06 (2) (c) and 980.08 (5), stats.

If the court does not have a proposed supervised release plan to look at when choosing the type of commitment, how will it know what the daily cost of supervised release will be? For the daily cost comparison requirement to work, won't DHFS and a county department have to prepare a supervised release plan in every case before the court specifies the type of commitment under s. 980.06, stats., (unless all the parties agree that institutional care is the only option) or before the court decides a petition for supervised release under s. 980.08, stats.? Or do you want to provide some other mechanism for informing the court of the daily cost of supervised release? Alternatively, do you want the court to make a sort of "provisional" decision that a person is appropriate for supervised release, subject to being presented with a more detailed plan, and then make the daily cost comparison when the plan is presented? (See also item # 5, below.)

2. Following the draft language supplied with the request, proposed ss. 980.06 (2) (b) 1. ✓ and 980.08 (4) (a) 2. ✓ refer to the need for the person to reside in a facility "with

See

a level of security comparable to a secure mental health unit or facility under s. 980.065". This seems to assume that all institutional care is in a secure mental health unit or facility, although in theory (if not in practice) an institutional care placement can be at any mental health unit or facility, including one less secure than a secure mental health unit or facility. Section 980.065 (1m), stats. Do you want s. 980.065 (1m), stats., to say that all institutional care commitments must be to a secure mental health unit or facility? This change would seem to be in keeping with the change made in s. 980.07 (1), stats., and the apparent elimination of the requirement that institutional care placements be subject to the "least restrictive manner" requirement. (See item # 7, below.)

Also, if the person needs a level of security "comparable" to a secure mental health unit or facility, won't a judge just be ordering institutional care anyway? If so, the 2nd criterion concerning daily cost would seem to be unnecessary. Maybe you mean proposed ss. 980.06 (2) (b) 1. and 2. and 980.08 (4) (a) 2. and 3. to say that a court should not grant supervised release if: a) the person has to be placed in some sort of residential facility because of the need for public protection; and 2) the cost of that facility along with other needed treatment and services exceeds the cost of institutional care under s. 980.065, stats. If that is your intent, the draft can be changed accordingly.

3. Following the draft language supplied with the request, proposed ss. 980.06 (2) (b) 2. and 980.08 (4) (a) 3. refer only to the cost of "creating or contracting for" programs and facilities. Is that broad enough? Will there be situations in which programs and facilities are not being created (because they already exist) or contracted for (because they're being provided directly)? If so, those costs cannot be included in the calculation of the daily cost of "creating or contracting for" programs and facilities. If you want to include those costs, the draft can be changed to say something like "the daily cost of providing" etc.

Also, with respect to the daily cost calculation, note that because of the way it is worded a court must deny supervised release if (as an example) the daily cost of supervised release is \$101 and the daily cost of institutional care is \$100. There may be challenges to a scheme by which supervised release decisions in certain cases come down to cost. (One appellate judge has read *State v. Carpenter*, 197 Wis. 2d 252 (1995), and *State v. Post*, 197 Wis. 2d 279 (1995), to have determined that ch. 980 is not an unconstitutional punitive statute because the law accounts for the possibility that a sexual predator may not need to be placed in institutional care to receive effective treatment and that "because the trial court is constitutionally required under *Post* and *Carpenter* to focus only on the treatment needs of the person, what resources DHSS [sic] happens to have available is simply not relevant to the calculus that the trial court performs when it writes the dispositional order." *State v. Castillo*, 205 Wis. 2d 599, 616, 618 (Ct. App. 1996) (Brown, J., concurring in part, dissenting in part).)

Further, what is the relationship between the daily cost calculations required under this draft and the committed person's rights under s. 51.61 (1) (e) and (f), stats.? The daily cost calculation requirement appears to conflict with those enumerated patients' rights. Should ch. 980 ~~committees~~ be exempted from ~~them~~ or should an exception to them be made for ch. 980 supervised release cases? (See also item # 7, below.)

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persons committed under

these patients' rights

4. With respect to the new requirement for a hearing ^{ring} on the supervised release plan, I tried to integrate the timing and requirements for the hearing into current law. Specifically, I have the provision for the hearing follow the requirements for when the plan must be presented. Also, the draft language supplied with the request did not specify the timing of the hearing. This draft says 30 days after presentation of the plan, unless the parties agree to a later date. You may specify a different number if you choose. Nor did the draft language contain a specific number of days before the hearing for the various interested parties to be notified; instead it referred to "X days". This draft says 10 days, but again you may specify a different number.

Also, I wasn't sure about your intent on the presentation of evidence by DHFS and the county department. Do you want them to be able to present evidence *only* if the judge requests them to do so? And if the judge requests them to present evidence, *must* they ~~do~~ do so, or can they decline?

5. With respect to a court's approval or disapproval of a proposed supervised release plan, what happens if the court disapproves the proposed plan? Does the person not get supervised release? Or must DHFS and the county department come up with a new plan? The answer to these questions might depend on ~~your~~ your response to item # 1, above: If the court can make a provisional supervised release decision, then I suppose that ~~he or she~~ can ultimately deny supervised release based on ^{the} cost of an adequate plan or on the lack of any adequate plan at all.

6. This draft does not include the suggested language placing a putative limit on the discretion of local authorities. To do so would raise questions about court orders under other statutes that do not limit the discretion of local authorities. A court order that a supervised release plan be implemented should be sufficient. In the event ^{that} it is not, the draft specifies that DHFS can go back to the court for such additional orders as may be necessary (including contempt).

7. By eliminating the "least restrictive manner" language from s. 980.06 (2) (b), stats. (which becomes s. 980.06 (2) (bm) in this draft), and moving it to s. 980.06 (2) (d), stats., the "least restrictive manner" requirement will apparently apply only to orders of commitment that specify supervised release but *not* to orders of commitment that specify institutional care. Is that your intent? If so, the draft should probably also amend s. 51.61 (1) (e), stats., which provides a ch. 980 ~~committee~~ ^{person committed under} with the right to the least restrictive conditions necessary to achieve the purposes of commitment. Also, to the extent that the general application of the "least restrictive manner" requirement to a ch. 980 commitment was a factor in the Wisconsin supreme court deciding that the law does not violate substantive due process (see *State v. Post*, 197 Wis. 2d 279, 313 (1995)), changing the law to apply the requirement only to commitments specifying supervised release may prompt renewed constitutional challenges. Note, however, that the Kansas statute upheld by the U.S. Supreme Court did not contain a "least restrictive alternative" requirement. *Kansas v. Hendricks*, __ U.S. __, 117 S. Ct. 2072 (1997).

8. Please review the initial applicability provision carefully. In order to avoid possible confusion concerning pending commitment orders and pending petitions for supervised release, the changes in s. 980.06 (4), stats., are keyed to the date on which

the court

the

that

Person committed under

stat

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on which
a person is found to be a sexually violent person, and the changes to s. 980.08, stats., are keyed to the date a petition for supervised release is filed. Is that okay, or do you want different initial applicability provisions?

Please let me know if you have any questions or changes.

Jefren E. Olsen
Legislative Attorney
266-8906

APPENDIX

This is how the relevant provisions of s. 980.06 (2) would look if this draft were to be enacted:

980.06 (2) (b) An order for commitment under this section shall specify either institutional care or supervised release. The court shall order institutional care if it finds all of the following:

1. That it is substantially probable that the person will engage in acts of sexual violence unless the person resides in a facility with a level of security comparable to that of a secure mental health unit or facility under s. 980.065.

2. That the daily cost of creating or contracting for the necessary programs and facilities for control, care and treatment of the person on supervised release would exceed the daily cost of control, care and treatment of the person at a secure mental health unit or facility under s. 980.065.

(bm) In determining under par. (b) whether commitment shall be for institutional care or for supervised release, the court may consider, without limitation because of enumeration, the nature and circumstances of the behavior that was the basis of the allegation in the petition under s. 980.02 (2) (a), 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 or the chemical equivalent of an antiandrogen if the person is a serious child sex offender. In deciding whether to order supervised release of person who is a serious child sex offender, the court may not consider, as a factor in making its decision, that the person is a proper subject for pharmacological treatment using an antiandrogen or the chemical equivalent of an antiandrogen or that the person is willing to participate in pharmacological treatment using an antiandrogen or the chemical equivalent of an antiandrogen.

(c) If the court finds that the person is appropriate for supervised release, the court shall notify the department. The department and the

county department under s. 51.42 in the county of residence of the person, as determined under s. 980.105, shall prepare a plan that identifies the treatment and services, if any, that the person will receive in the community. If the county department of the person's county of residence declines to prepare a plan, the department may arrange for another county to prepare the plan if that county agrees to prepare the plan and if the person will be living in that county. If the department is unable to arrange for another county to prepare a plan, the court shall order the county department of the person's county of residence to prepare the plan.

(cg) The plan prepared under par. (c) shall address the person's need, if any, for supervision, counseling, medication, community support services, residential services, vocational services, and alcohol or other drug abuse treatment. If the person is a serious child sex offender, the plan shall address the person's need for pharmacological treatment using an antiandrogen or the chemical equivalent of an antiandrogen. The plan shall specify who will be responsible for providing the treatment and services identified in the plan.

(cm) 1. In this paragraph, "chief executive officer" means a mayor, city manager, village president, town chairperson, county executive or chairperson of the county board of supervisors.

2. The plan prepared under par. (c) shall be presented to the court within 21 days after the court finding that the person is appropriate for supervised release, unless the department, county department and person to be released request additional time to develop the plan. The court shall hold a hearing on the plan within 30 days after the plan is presented to the court, unless the department, county department and person to be released agree to a later hearing date. At least 10 days before the hearing under this subdivision, the court shall give written notice of the hearing to the person to be released, the district attorney or department of justice, whichever is applicable, the department, the county department that prepared the plan, the chief executive officer of the county in which the person would reside under the plan and the chief executive officer of the city, village or town in which the person would reside under the plan. The person, the district attorney or the attorney general, whichever is applicable, and any chief executive officer who received notice of the hearing, or the chief executive officer's designee, may present evidence at the hearing. The county department that prepared the plan and the department may present evidence at the hearing if requested to do so by the court.

(cr) Based on the provisions of the plan and on the evidence presented at the hearing under par. (cm) 2., the court shall determine whether the plan provides adequate treatment and services to the person and adequate protection to the community. If the court finds that the plan does not provide adequate treatment and services to the person and adequate protection to the community, the court shall issue a written order disapproving the plan.

If the court finds that the plan provides adequate treatment and services to the person and adequate protection to the community, the court shall issue a written order approving the plan and placing the person on supervised release in the county that prepared the plan.

(cv) The county department that prepared the plan and the department shall implement a plan approved by the court under par. (cr). In implementing the plan, the department may contract with a county department, under s. 51.42 (3) (aw) 1. d., with another public agency or with a private agency to provide the treatment and services identified in the plan. The department may request the court to make such orders as are necessary to ensure implementation of the plan.

This is how the relevant provisions of s. 980.08 (4) and (5) would look if this draft were to be enacted:

980.08 (4) (a) The court, without a jury, shall hear the petition within 30 days after the report of the court-appointed examiner is filed with the court, unless the petitioner waives this time limit. Expenses of proceedings under this subsection shall be paid as provided under s. 51.20 (18). The court shall grant the petition unless the state proves all of the following by clear and convincing evidence:

1. That the person is still a sexually violent person.
2. That it is still substantially probable that the person will engage in acts of sexual violence if the person does not reside in a facility with a level of security comparable to a secure mental health unit or facility under s. 980.065.
3. That the daily cost of creating or contracting for the necessary programs and facilities for control, care and treatment of the person on supervised release would exceed the daily cost of control, care and treatment of the person at a secure mental health unit or facility under s. 980.065.

(b) In making a decision under par. (a), the court may consider, without limitation because of enumeration, the nature and circumstances of the behavior that was the basis of the allegation in the petition under s. 980.02 (2) (a), 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 or the chemical equivalent of an antiandrogen if the person is a serious child sex offender. A decision under this paragraph on a petition filed by a person who is a serious child sex offender may not 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.

(5) (a) If the court finds that the person is appropriate for supervised release, the court shall notify the department. The department and the county department under s. 51.42 in the county of residence of the person, as determined under s. 980.105, shall prepare a plan that identifies the treatment and services, if any, that the person will receive in the community. If the county department of the person's county of residence declines to prepare a plan, the department may arrange for another county to prepare the plan if that county agrees to prepare the plan and if the person will be living in that county. If the department is unable to arrange for another county to prepare a plan, the court shall order the county department of the person's county of residence to prepare the plan.

(b) The plan prepared under par. (a) shall address the person's need, if any, for supervision, counseling, medication, community support services, residential services, vocational services, and alcohol or other drug abuse treatment. If the person is a serious child sex offender, the plan shall address the person's need for pharmacological treatment using an antiandrogen or the chemical equivalent of an antiandrogen. The plan shall specify who will be responsible for providing the treatment and services identified in the plan.

(c) 1. In this paragraph, "chief executive officer" means a mayor, city manager, village president, town chairperson, county executive or chairperson of the county board of supervisors.

2. The plan prepared under par. (a) shall be presented to the court within 60 days after the court finding that the person is appropriate for supervised release, unless the department, county department and person to be released request additional time to develop the plan. The court shall hold a hearing on the plan within 30 days after the plan is presented to the court, unless the department, county department and person to be released agree to a later hearing date. At least 10 days before the hearing under this subdivision, the court shall give written notice of the hearing to the person to be released, the district attorney or department of justice, whichever is applicable, the department, the county department that prepared the plan, the chief executive officer of the county in which the person would reside under the plan and the chief executive officer of the city, village or town in which the person would reside under the plan. The person, the district attorney or the attorney general, whichever is applicable, and any chief executive officer who received notice of the hearing, or the chief executive officer's designee, may present evidence at the hearing. The county department that prepared the plan and the department may present evidence at the hearing if requested to do so by the court.

(d) Based on the provisions of the plan and on the evidence presented at the hearing under par. (c) 2., the court shall determine whether the plan

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provides adequate treatment and services to the person and adequate protection to the community. If the court finds that the plan does not provide adequate treatment and services to the person and adequate protection to the community, the court shall issue a written order disapproving the plan. If the court finds that the plan provides adequate treatment and services to the person and adequate protection to the community, the court shall issue a written order approving the plan and placing the person on supervised release in the county that prepared the plan.

(e) The county department that prepared the plan and the department shall implement a plan approved by the court under par. (d). In implementing the plan, the department may contract with a county department, under s. 51.42 (3) (aw) 1. d., with another public agency or with a private agency to provide the treatment and services identified in the plan. The department may request the court to make such orders as are necessary to ensure implementation of the plan.

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0284/1dn
JEO:kmg:ijs

November 20, 1998

In addition to making the changes requested, I have substantially reorganized ss. 980.06 (2) (b) and (c) and 980.08 (4) and (5), stats., so that the various requirements are in a more logical order. To help you review the changes made by the draft, I have included an appendix to this drafter's note that shows what the relevant paragraphs under ss. 980.06 (2) and 980.08 (4) and (5) would look like if this draft were enacted.

When reviewing the draft, please note the following:

1. If my understanding is correct, the draft is intended in part to deal with the problems that can arise when a court determines that supervised release is appropriate even though the court has had no input from DHFS and the county department on the practicality (or impossibility) of creating and implementing a supervised release plan. *State v. Sprosty*, __ Wis. 2d. __ (Ct. App. 1998); compare *State v. Castillo*, 205 Wis. 2d 599, 617 (Ct. App. 1996) (Brown, J., concurring in part, dissenting in part), and *State v. Keding*, 214 Wis. 2d 362, 369 (Ct. App. 1997).

However, the changes requested in the drafting instructions and made by this draft do not seem to solve this problem, for the following reason: the draft specifies that in deciding between institutional care and supervised release, a court must compare the daily cost of treatment and services under each alternative even though the supervised release plan is not actually prepared until after the court has decided that the person is appropriate for supervised release. See ss. 980.06 (2) (c) and 980.08 (5), stats.

If the court does not have a proposed supervised release plan to look at when choosing the type of commitment, how will it know what the daily cost of supervised release will be? For the daily cost comparison requirement to work, won't DHFS and a county department have to prepare a supervised release plan in every case *before* the court specifies the type of commitment under s. 980.06, stats., (unless all of the parties agree that institutional care is the only option) or *before* the court decides a petition for supervised release under s. 980.08, stats.? Or do you want to provide some other mechanism for informing the court of the daily cost of supervised release? Alternatively, do you want the court to make a sort of "provisional" decision that a person is appropriate for supervised release, subject to being presented with a more detailed plan, and then make the daily cost comparison when the plan is presented? (See also item # 5, below.)

2. Following the draft language supplied with the request, proposed ss. 980.06 (2) (b) 1. and 980.08 (4) (a) 2. refer to the need for the person to reside in a facility "with

a level of security comparable to a secure mental health unit or facility under s. 980.065". This seems to assume that all institutional care is in a secure mental health unit or facility, although in theory (if not in practice) an institutional care placement can be at any mental health unit or facility, including one less secure than a secure mental health unit or facility. See section 980.065 (1m), stats. Do you want s. 980.065 (1m), stats., to say that all institutional care commitments must be to a secure mental health unit or facility? This change would seem to be in keeping with the change made in s. 980.07 (1), stats., and the apparent elimination of the requirement that institutional care placements be subject to the "least restrictive manner" requirement. (See item # 7, below.)

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Further, what is the relationship between the daily cost calculations required under this draft and the committed person's rights under s. 51.61 (1) (e) and (f), stats.? The daily cost calculation requirement appears to conflict with those enumerated patients' rights. Should persons committed under ch. 980 be exempted from these patients'

rights, or should an exception to them be made for ch. 980 supervised release cases? (See also item # 7, below.)

4. With respect to the new requirement for a hearing on the supervised release plan, I tried to integrate the timing and requirements for the hearing into current law. Specifically, I have the provision for the hearing following the requirements for when the plan must be presented. Also, the draft language supplied with the request did not specify the timing of the hearing. This draft says 30 days after presentation of the plan, unless the parties agree to a later date. You may specify a different number if you choose. Nor did the draft language contain a specific number of days before the hearing for the various interested parties to be notified; instead it referred to "X days". This draft says 10 days, but again you may specify a different number.

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5. With respect to a court's approval or disapproval of a proposed supervised release plan, what happens if the court disapproves the proposed plan? Does the person not get supervised release? Or must DHFS and the county department come up with a new plan? The answer to these questions might depend on your response to item # 1, above: if the court can make a provisional supervised release decision, then I suppose that the court can ultimately deny supervised release based on the cost of an adequate plan or on the lack of any adequate plan at all.

6. This draft does not include the suggested language placing a putative limit on the discretion of local authorities. To do so would raise questions about court orders under other statutes that do not limit the discretion of local authorities. A court order that a supervised release plan be implemented should be sufficient. In the event that it is not, the draft specifies that DHFS can go back to the court for such additional orders as may be necessary (including contempt).

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8. Please review the initial applicability provision carefully. In order to avoid possible confusion concerning pending commitment orders and pending petitions for supervised release, the changes in s. 980.06 (2), stats., are keyed to the date on which a person is found to be a sexually violent person, and the changes to s. 980.08, stats., are keyed to the date on which a petition for supervised release is filed. Is that okay, or do you want different initial applicability provisions?

Please let me know if you have any questions or changes.

Jefren E. Olsen
Legislative Attorney
266-8906

APPENDIX

This is how the relevant provisions of s. 980.06 (2) would look if this draft were to be enacted:

980.06 (2) (b) An order for commitment under this section shall specify either institutional care or supervised release. The court shall order institutional care if it finds all of the following:

1. That it is substantially probable that the person will engage in acts of sexual violence unless the person resides in a facility with a level of security comparable to that of a secure mental health unit or facility under s. 980.065.

2. That the daily cost of creating or contracting for the necessary programs and facilities for control, care and treatment of the person on supervised release would exceed the daily cost of control, care and treatment of the person at a secure mental health unit or facility under s. 980.065.

(bm) In determining under par. (b) whether commitment shall be for institutional care or for supervised release, the court may consider, without limitation because of enumeration, the nature and circumstances of the behavior that was the basis of the allegation in the petition under s. 980.02 (2) (a), 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 or the chemical equivalent of an antiandrogen if the person is a serious child sex offender. In deciding whether to order supervised release of person who is a serious child sex offender, the court may not consider, as a factor in making its decision, that the person is a proper subject for pharmacological treatment using an antiandrogen or the chemical equivalent of an antiandrogen or that the person is willing to

participate in pharmacological treatment using an antiandrogen or the chemical equivalent of an antiandrogen.

(c) If the court finds that the person is appropriate for supervised release, the court shall notify the department. The department and the county department under s. 51.42 in the county of residence of the person, as determined under s. 980.105, shall prepare a plan that identifies the treatment and services, if any, that the person will receive in the community. If the county department of the person's county of residence declines to prepare a plan, the department may arrange for another county to prepare the plan if that county agrees to prepare the plan and if the person will be living in that county. If the department is unable to arrange for another county to prepare a plan, the court shall order the county department of the person's county of residence to prepare the plan.

(cg) The plan prepared under par. (c) shall address the person's need, if any, for supervision, counseling, medication, community support services, residential services, vocational services, and alcohol or other drug abuse treatment. If the person is a serious child sex offender, the plan shall address the person's need for pharmacological treatment using an antiandrogen or the chemical equivalent of an antiandrogen. The plan shall specify who will be responsible for providing the treatment and services identified in the plan.

(cm) 1. In this paragraph, "chief executive officer" means a mayor, city manager, village president, town chairperson, county executive or chairperson of the county board of supervisors.

2. The plan prepared under par. (c) shall be presented to the court within 21 days after the court finding that the person is appropriate for supervised release, unless the department, county department and person to be released request additional time to develop the plan. The court shall hold a hearing on the plan within 30 days after the plan is presented to the court, unless the department, county department and person to be released agree to a later hearing date. At least 10 days before the hearing under this subdivision, the court shall give written notice of the hearing to the person to be released, the district attorney or department of justice, whichever is applicable, the department, the county department that prepared the plan, the chief executive officer of the county in which the person would reside under the plan and the chief executive officer of the city, village or town in which the person would reside under the plan. The person, the district attorney or the attorney general, whichever is applicable, and any chief executive officer who receives notice of the hearing, or the chief executive officer's designee, may present evidence at the hearing. The county department that prepared the plan and the department may present evidence at the hearing if requested to do so by the court.

(cr) Based on the provisions of the plan and on the evidence presented at the hearing under par. (cm) 2., the court shall determine whether the plan

provides adequate treatment and services to the person and adequate protection to the community. If the court finds that the plan does not provide adequate treatment and services to the person and adequate protection to the community, the court shall issue a written order disapproving the plan. If the court finds that the plan provides adequate treatment and services to the person and adequate protection to the community, the court shall issue a written order approving the plan and placing the person on supervised release in the county that prepared the plan.

(cv) The county department that prepared the plan and the department shall implement a plan approved by the court under par. (cr). In implementing the plan, the department may contract with a county department, under s. 51.42 (3) (aw) 1. d., with another public agency or with a private agency to provide the treatment and services identified in the plan. The department may request the court to make such orders as are necessary to ensure implementation of the plan.

This is how the relevant provisions of s. 980.08 (4) and (5) would look if this draft were to be enacted:

980.08 (4) (a) The court, without a jury, shall hear the petition within 30 days after the report of the court-appointed examiner is filed with the court, unless the petitioner waives this time limit. Expenses of proceedings under this subsection shall be paid as provided under s. 51.20 (18). The court shall grant the petition unless the state proves all of the following by clear and convincing evidence:

1. That the person is still a sexually violent person.
2. That it is still substantially probable that the person will engage in acts of sexual violence if the person does not reside in a facility with a level of security comparable to a secure mental health unit or facility under s. 980.065.
3. That the daily cost of creating or contracting for the necessary programs and facilities for control, care and treatment of the person on supervised release would exceed the daily cost of control, care and treatment of the person at a secure mental health unit or facility under s. 980.065.

(b) In making a decision under par. (a), the court may consider, without limitation because of enumeration, the nature and circumstances of the behavior that was the basis of the allegation in the petition under s. 980.02 (2) (a), 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 or the chemical equivalent of an antiandrogen if the person is a serious child sex offender. A decision under this paragraph on a petition filed by a person who is a serious child sex

offender may not 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.

(5) (a) If the court finds that the person is appropriate for supervised release, the court shall notify the department. The department and the county department under s. 51.42 in the county of residence of the person, as determined under s. 980.105, shall prepare a plan that identifies the treatment and services, if any, that the person will receive in the community. If the county department of the person's county of residence declines to prepare a plan, the department may arrange for another county to prepare the plan if that county agrees to prepare the plan and if the person will be living in that county. If the department is unable to arrange for another county to prepare a plan, the court shall order the county department of the person's county of residence to prepare the plan.

(b) The plan prepared under par. (a) shall address the person's need, if any, for supervision, counseling, medication, community support services, residential services, vocational services, and alcohol or other drug abuse treatment. If the person is a serious child sex offender, the plan shall address the person's need for pharmacological treatment using an antiandrogen or the chemical equivalent of an antiandrogen. The plan shall specify who will be responsible for providing the treatment and services identified in the plan.

(c) 1. In this paragraph, "chief executive officer" means a mayor, city manager, village president, town chairperson, county executive or chairperson of the county board of supervisors.

2. The plan prepared under par. (a) shall be presented to the court within 60 days after the court finding that the person is appropriate for supervised release, unless the department, county department and person to be released request additional time to develop the plan. The court shall hold a hearing on the plan within 30 days after the plan is presented to the court, unless the department, county department and person to be released agree to a later hearing date. At least 10 days before the hearing under this subdivision, the court shall give written notice of the hearing to the person to be released, the district attorney or department of justice, whichever is applicable, the department, the county department that prepared the plan, the chief executive officer of the county in which the person would reside under the plan and the chief executive officer of the city, village or town in which the person would reside under the plan. The person, the district attorney or the attorney general, whichever is applicable, and any chief executive officer who receives notice of the hearing, or the chief executive officer's designee, may present evidence at the hearing. The county

department that prepared the plan and the department may present evidence at the hearing if requested to do so by the court.

(d) Based on the provisions of the plan and on the evidence presented at the hearing under par. (c) 2., the court shall determine whether the plan provides adequate treatment and services to the person and adequate protection to the community. If the court finds that the plan does not provide adequate treatment and services to the person and adequate protection to the community, the court shall issue a written order disapproving the plan. If the court finds that the plan provides adequate treatment and services to the person and adequate protection to the community, the court shall issue a written order approving the plan and placing the person on supervised release in the county that prepared the plan.

(e) The county department that prepared the plan and the department shall implement a plan approved by the court under par. (d). In implementing the plan, the department may contract with a county department, under s. 51.42 (3) (aw) 1. d., with another public agency or with a private agency to provide the treatment and services identified in the plan. The department may request the court to make such orders as are necessary to ensure implementation of the plan.

Olsen, Jefren

From: Jablonsky, Sue
Sent: Wednesday, January 27, 1999 4:14 PM
To: Olsen, Jefren
Subject: FW: LRB 0284

-----Original Message-----

From: Hadidan, Ellen
Sent: Wednesday, January 27, 1999 3:19 PM
To: Jablonsky, Sue
Subject: LRB 0284

Sorry- thought I had sent you this yesterday. This draft was written to answer the questions the drafter had about this request. Would you please forward this to LRB? If you have any questions, give me a call. Thanks.



980-chngs-draft2.doc

PROPOSED CHANGES IN LRB-0284/1 IN RESPONSE TO 11/20/98 DRAFTER'S NOTE¹

✓ 20.435(2)(bj) -- same as LRB-0284/1

✓ 46.055 of the statutes is created to read:

[title] ***Secure Treatment Center.*** The department shall establish at a location in central Wisconsin a secure mental health facility under s. 980.065 for the detention, evaluation and institutional care of persons under ch. 980, and shall govern, maintain and operate that facility once established.

✓ 46.10(2) -- same as LRB-0284/1

✓ 51.42(3)(aw) -- same as LRB-0284/1

✓ 980.06(2)(a) of the statutes is amended to read:

(a) The court shall enter an initial commitment order under this section pursuant to a hearing held as soon as practicable after the judgment that the person who is the subject of a petition under s. 980.02 is a sexually violent person is entered. If the court lacks sufficient information to make the determination required by par. (b) immediately after trial, it may adjourn the hearing and order the department to **submit to the court a written report and recommendation as to whether the criteria of par. (b) are met. The written report and recommendation shall be based on** conduct a predisposition investigation using the procedure in s. 972.15 or a supplementary mental examination **conducted in accordance with s. 971.17 (2) (b) to (f), or both, together with any other investigation or inquiry the department deems relevant to determining whether the criteria of par. (b) are met to assist the court in framing the commitment order. A supplementary mental examination under this paragraph shall be conducted in accordance with s. 971.17 (2) (b) to (f).**

¹ Note: suggested changes to draft are shown in bold type.

980.06(2)(b) of the statutes is amended to read:

(b) 1. An order for commitment under this section shall specify either institutional care or supervised release. **Except as provided in subd. 2, the court shall order institutional care if it finds that it is substantially probable that the person will engage in acts of sexual violence unless the person resides in a facility with a level of security comparable to that of a secure mental health unit or facility under s. 980.065.**

(b1m) -- same as LRB-0284/1

980.06(2)(b)2 is created to read:

(bt)

2. If the person who is the subject of the petition establishes it is likely the cost of supervised release would not exceed the cost of institutional care, the court may adjourn the hearing and order the department to prepare a provisional supervised plan in the manner set forth in par. (c). The court shall set a continued dispositional hearing within 30 days of the original dispositional hearing. Based on the provisional supervised release plan and other evidence received at the continued dispositional hearing, the court shall order institutional care if it determines that the cost of supervised release would exceed the cost of institutional care, and shall order supervised release if it determines that the cost of supervised release would not exceed the cost of institutional care. Within the meaning of this subdivision, the cost of supervised release is the daily cost of providing all necessary programs and facilities for control, care and treatment of the person on supervised release and the cost of institutional care is the daily cost of programs and facilities for control, care and treatment of the person at a secure mental health unit or facility under s. 980.065.

cf. will already have decided on I.C. ble of secure facility need, or out offer (b)

this may already be a cont'd hrg.

what about other factors? is a deficiency of plan to meet & protect?

980.06(2)(c) of the statutes is amended to read:

✓(c) If the court finds that the person is appropriate for supervised release, the court shall notify the department. The department and the county department under s. 51.42 in the county of residence of the person, as determined under s. 980.105, shall prepare a plan that identifies the treatment and services, if any, that the person will receive in the community. If the county department of the person's county of residence declines to prepare a plan, the department may arrange for another county to prepare the plan if that county agrees to prepare the plan and if the person will be living in that county. If the department is unable to arrange for another county to prepare a plan, the court shall designate a county department to prepare the plan, order the county department to prepare the plan and place the person on supervised release in that county, except that the court may not so designate the county department in any county where there is a facility in which persons committed to institutional care under this chapter are placed, unless that county is also the person's county of residence.

✓(cg) -- same as LRB-0284/1

✓(cm) 2. The plan prepared under par. (c) shall be presented to the court for its approval within 21 days after the court finding that the person is appropriate for supervised release, unless the department, county department and person to be released request additional time to develop the plan. ~~If the county department of the person's county of residence declines to prepare a plan, the department may arrange for another county to prepare the plan if that county agrees to prepare the plan and if the person will be living in that county. If the department is unable to arrange for another county to prepare a plan, the court shall designate a county department to prepare the plan, order the county department to prepare the plan and place the person on supervised release in that county, except that the court may not so designate the county department in any county where there is a facility in which persons are~~

~~detained or evaluated under s. 980.04 or in which persons committed to institutional care under this chapter are placed, unless that county is also the person's county of residence. The court shall hold a hearing on the plan within 30 days after the plan is presented to the court, unless the department, county department and person to be released agree to a later hearing date. At least 10 days before the hearing under this subdivision, the court shall give written notice of the hearing to the person to be released, the district attorney or department of justice, whichever is applicable, the department, the county department that prepared the plan, the chief executive officer of the county in which the person would reside under the plan and the chief executive officer of the city, village or town in which the person would reside under the plan. The person, the district attorney or the attorney general, whichever is applicable, and any chief executive officer who receives notice of the hearing, or the chief executive officer's designee, may present evidence at the hearing. **The county department that prepared the plan and the department may present evidence at the hearing, and shall do so if requested by the court.**~~

✓ 980.06(2)(cm)1 -- same as LRB-0284/11.

✓ 980.06(2)(cr) is created to read:

Based on the provisions of the plan and on the evidence presented at the hearing under par. (cm)2., the court shall determine whether the plan provides adequate treatment and services to the person and adequate protection to the community. If the court finds that the plan does not provide adequate treatment and services to the person **or** adequate protection to the community, the court shall issue a written **decision and** order disapproving the plan **and ordering the department and the county that prepared the plan to revise the plan within a time specified by the court in the order.** If the court finds that the plan provides adequate treatment and services to the person and adequate protection to the community, the

court shall issue a written **decision and** order approving the plan and placing the person on supervised release in the county that prepared the plan. **A court order approving a plan under this paragraph shall be served upon any chief executive officer who received notice of the hearing under paragraph (cm) and shall direct that neither the municipality nor county in which the person will reside under the plan, nor any subunit, officer or employe thereof, may exercise any discretionary authority he, she or it would otherwise possess to prevent implementation of the plan.**

✓ 980.06(2)(cr) -- same as LRB-0284/1

✓ 980.06(2)(d) -- same as LRB-0284/1

✓ **980.065(1m) is amended to read:**

The department ~~shall~~ may place a person committed to institutional care under s. 980.06 (2) (b) at a ~~mental health unit or facility, including a the secure mental health unit or facility~~ at the Wisconsin resource center established under s. 46.056, the secure mental health facility established by the department under s. 46.055 or a secure mental health unit or facility provided by the department of corrections under **sub. (2).**

✓ 980.07(1) -- same as LRB-0284/1

✓ 980.08(3) of the statutes is amended to read:

Within 20 days after receipt of the petition, the court shall appoint one or more examiners having 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 days after appointment. The examiners 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) (a)**, the examiner shall report on the type of treatment and services that the person may need while in the community on supervised release.

980.08 (4) of the statutes is renumbered 980.08 (4) (a) and amended to read:

(a) The court, without a jury, shall hear the petition within 30 days after the report of the court-appointed examiner is filed with the court, unless the petitioner waives this time limit. Expenses of proceedings under this subsection shall be paid as provided under s. 51.20 (18). The court shall grant the petition unless the state proves by clear and convincing evidence that the person is still a sexually violent person and that it is still substantially probable that the person will engage in acts of sexual violence **unless the person resides in a facility with a level of security comparable to that of a secure mental health unit or facility under s. 980.065 if the person is not continued in institutional care.** In making a decision under this subsection, the court may consider, without limitation because of enumeration, the nature and circumstances of the behavior that was the basis of the allegation in the petition under s. 980.02 (2) (a), 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 or the chemical equivalent of an antiandrogen if the person is a serious child sex offender. A decision under this subsection on a petition filed by a person who is a serious child sex offender may not 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.

980.08 (4) (b) of the statutes is created to read:

If the court finds that the person is still a sexually violent person and that it is still substantially probable that the person will engage in acts of sexual violence unless the person resides in a facility with a level of security comparable to that of a secure mental health unit or facility under s. 980.065, but the person establishes it is likely the cost of supervised release would not exceed the cost of institutional care, the court may adjourn the hearing and order the department to prepare a provisional supervised plan in the manner set forth in sub. (5). The court shall set a continued hearing within 30 days of the original hearing. Based on the provisional supervised release plan and other evidence received at the continued hearing, the court shall order continued institutional care if it determines that the cost of supervised release would exceed the cost of institutional care, and shall order supervised release if it determines that the cost of supervised release would not exceed the cost of institutional care. Within the meaning of this subdivision, the cost of supervised release is the daily cost of providing all necessary programs and facilities for control, care and treatment of the person on supervised release and the cost of institutional care is the daily cost of programs and facilities for control, care and treatment of the person at a secure mental health unit or facility under s. 980.065.

✓ 980.08 (4) (a) 3. -- no provision

✓ 980.08 (5) of the statutes is renumbered 980.08 (5) (a) and amended to read:

(5) (a) If the court finds that the person is appropriate for supervised release, the court shall notify the department. The department and the county department under s. 51.42 in the county of residence of the person, as determined under s. 980.105, shall prepare a plan that

identifies the treatment and services, if any, that the person will receive in the community. If the county department of the person's county of residence declines to prepare a plan, the department may arrange for another county to prepare the plan if that county agrees to prepare the plan and if the person will be living in that county. If the department is unable to arrange for another county to prepare a plan, the court shall designate a county department to prepare the plan, order the county department to prepare the plan and place the person on supervised release in that county, except that the court may not so designate the county department in any county where there is a facility in which persons committed to institutional care under this chapter are placed, unless that county is also the person's county of residence.

✓(b) -- same as LRB-0284/1

✓(c) 2.

The plan prepared under par. (a) shall be presented to the court for its approval within 21 days after the court finding that the person is appropriate for supervised release, unless the department, county department and person to be released request additional time to develop the plan. ~~If the county department of the person's county of residence declines to prepare a plan, the department may arrange for another county to prepare the plan if that county agrees to prepare the plan and if the person will be living in that county. If the department is unable to arrange for another county to prepare a plan, the court shall designate a county department to prepare the plan, order the county department to prepare the plan and place the person on supervised release in that county, except that the court may not so designate the county department in any county where there is a facility in which persons are detained or evaluated under s. 980.04 or in which persons committed to institutional care under this chapter are placed, unless that county is also the person's county of residence. The court shall hold a~~

hearing on the plan within 30 days after the plan is presented to the court, unless the department, county department and person to be released agree to a later hearing date. At least 10 days before the hearing under this subdivision, the court shall give written notice of the hearing to the person to be released, the district attorney or department of justice, whichever is applicable, the department, the county department that prepared the plan, the chief executive officer of the county in which the person would reside under the plan and the chief executive officer of the city, village or town in which the person would reside under the plan. The person, the district attorney or the attorney general, whichever is applicable, and any chief executive officer who receives notice of the hearing, or the chief executive officer's designee, may present evidence at the hearing. **The county department that prepared the plan and the department may present evidence at the hearing, and shall do so if requested by the court.**

✓ 980.08 (5) (c) 1. -- same as LRB-0284/1

✓ 980.08 (5) (d) of the statutes is created to read:

Based on the provisions of the plan and on the evidence presented at the hearing under par. (c) 2., the court shall determine whether the plan provides adequate treatment and services to the person and adequate protection to the community. If the court finds that the plan does not provide adequate treatment and services to the person **or** adequate protection to the community, the court shall issue a written **decision and** order disapproving the plan **and ordering the department and the county that prepared the plan to revise the plan within a time specified by the court in the order.** If the court finds that the plan provides adequate treatment and services to the person and adequate protection to the community, the court shall issue a written **decision and** order approving the plan and placing the person on supervised release in the county that prepared the plan. **A court order approving a plan**

under this paragraph shall be served upon any chief executive officer who received notice of the hearing under paragraph (c) 2. and shall direct that neither the municipality nor county in which the person will reside under the plan, nor any subunit, officer or employe thereof, may exercise any discretionary authority he, she or it would otherwise possess to prevent implementation of the plan.

✓ 980.08(5)(e) -- same as LRB-0284/1

✓ Non-statutory provisions -- same as LRB-0284/1

~~How do you get a permit~~

980.06 (2) ~~ad.~~

Found to be SUP

cf. order
~~Report~~

Commit log

I.C. or S.R.?

- use factors in (bm)

Deciding factor: secure facility, need
except

facility
under
980.065

plan prep

If person establishes
cost issue
~~plan~~
(like (c))

log on plan

~~log on cost
etc.~~

~~if plan from here~~
cost comparison ~~deny~~

revision
if necessary

approve/deny