980.01 Definitions. In this chapter:

(1) “Department” means the department of health and family services.

(2) “Mental disorder” means a congenital or acquired condition affecting the emotional or volitional capacity that predisposes a person to engage in acts of sexual violence.

(4) “Secretary” means the secretary of health and family services.

(4m) “Serious child sex offender” means a person who has been convicted, adjudicated delinquent or found not guilty or not responsible by reason of insanity or mental disease, defect or illness for committing a violation of a crime specified in s. 948.02 (1) or (2) or 948.025 (1) against a child who had not attained the age of 13 years.

(5) “Sexually motivated” means that one of the purposes for an act is for the actor’s sexual arousal or gratification.

(6) “Sexually violent offense” means any of the following:

(a) Any crime specified in s. 940.225 (1) or (2), 948.02 (1) or (2), 948.025, 948.06 or 948.07.

(b) Any crime specified in s. 940.01, 940.02, 940.05, 940.06, 940.19 (4) or (5), 940.195 (4) or (5), 940.30, 940.305, 940.31 or 943.10 that is determined, in a proceeding under s. 980.05 (3) (b), to have been sexually motivated.

(c) Any solicitation, conspiracy or attempt to commit a crime under par. (a) or (b).

(7) “Sexually violent person” means a person who has been convicted of a sexually violent offense, has been adjudicated delinquent for a sexually violent offense, or has been found not guilty of or not responsible for a sexually violent offense by reason of insanity or mental disease, defect or illness, and who is dangerous because he or she suffers from a mental disorder that makes it substantially probable that the person will engage in acts of sexual violence.

History: 1993 a. 479; 1995 a. 27 s. 9126 (19); 1997 a. 284, 295.

Chapter 980 creates a civil commitment procedure primarily intended to provide treatment and protect the public, not to punish the offender. As such the chapter does not provide for “punishment” in violation of the constitutional prohibitions against double jeopardy or ex post facto laws. State v. Carpenter, 197 Wis. 2d 252, 541 N.W.2d 105 (1995).

Chapter 980 does not violate substantive due process guarantees. The definitions of “mental disorder” and “dangerous” are not overbroad. The treatment obligations under ch. 980 are consistent with the nature and duration of commitments under the chapter and the lack of a precommitment finding of treatability is not offensive to due process requirements. State v. Post, 197 Wis. 2d 279, 541 N.W.2d 115 (1995).

Chapter 980 does not violate equal protection guarantees. The state’s compelling interest in protecting the public justifies the differential treatment of the sexually violent persons subject to the chapter. State v. Post, 197 Wis. 2d 279, 541 N.W.2d 115 (1995).

A child enticement conviction under a statute that had been repealed and recreated is not a sexually violent offense under s. 663.11 (3m) (a) (3) (b) (6) although the former number was not listed therein. State v. Irish, 210 Wis. 2d 107, 565 N.W.2d 161 (Ct. App. 1997).

980.015 Notice to the department of justice and district attorney. (1) In this section, “agency with jurisdiction” means the agency with the authority or duty to release or discharge the person.

(2) If an agency with jurisdiction has control or custody over a person who may meet the criteria for commitment as a sexually violent person, the agency with jurisdiction shall inform each appropriate district attorney and the department of justice regarding the person as soon as possible beginning 3 months prior to the applicable date of the following:

(a) The anticipated discharge from a sentence, anticipated release on parole or extended supervision or anticipated release from imprisonment of a person who has been convicted of a sexually violent offense.

(b) The anticipated release from a secured correctional facility, as defined in s. 938.02 (15m), or a secured child caring institution, as defined in s. 938.02 (15g), or a secured group home, as defined in s. 938.02 (15p), of a person adjudicated delinquent under s. 938.183 or 938.34 on the basis of a sexually violent offense.

(c) The termination or discharge of a person who has been found not guilty of a sexually violent offense by reason of mental disease or defect under s. 971.17.

(3) The agency with jurisdiction shall provide the district attorney and department of justice with all of the following:

(a) The person’s name, identifying factors, anticipated future residence and offense history.

(b) If applicable, documentation of any treatment and the person’s adjustment to any institutional placement.

Under sub. (7), a “mental disorder that makes it substantially probable that the person will engage in acts of sexual violence” is a disorder that predisposes the affected person to sexual violence. A person diagnosed with “antisocial personality disorder” coupled with another disorder may be found to be sexually violent. State v. Adams, 225 Wis. 2d 60, 588 N.W.2d 336 (Ct. App. 1998).

Definitions in ch. 980 serve a legal, and not medical, function. The court will not adopt a definition of pedophilia for ch. 980 purposes. State v. Zanelli, 223 Wis. 2d 545, 589 N.W.2d 687 (Ct. App. 1998).

That the state’s expert’s opinion that pedophilia is a lifelong disorder did not mean that commitment was based solely on prior bad acts rather than a present condition. Jury instructions are discussed. State v. Matek, 223 Wis. 2d 611, 589 N.W.2d 441 (Ct. App. 1998).

As used in this chapter, “substantial probability” and “substantially probable” both mean much more likely than not. This standard for dangerousness does not violate equal protection nor is the term unconstitutionally vague. State v. Curet, 227 Wis. 2d 389, 597 N.W.2d 697 (1999).

The definition of “sexually violent person” includes conduct prohibited by a previous version of a statute enumerated in sub. (6) as long as the conduct prohibited under the predecessor statute remains prohibited under the current statute. State v. Pharm, 2000 WI App 167, 238 Wis. 2d 97, 617 N.W.2d 163.


Any agency or officer, employee or agent of an agency is immune from criminal or civil liability for any acts or omissions as the result of a good faith effort to comply with this section.


The "appropriate district attorney" under sub. (2) is the district attorney in the county of conviction or the county to which prison officials propose to release the person. The Department of Corrections, or the county of conviction or the county to which prison officials propose to release the person.


The petition shall state the grounds on which the department of justice decides to file a petition under this paragraph, it shall file the petition before the date of the release or discharge of the person.

If the department of justice does not file a petition under par. (a), the district attorney for one of the following:

1. The county in which the petition was convicted of a sexually violent offense, adjudicated delinquent for a sexually violent offense or found not guilty of or not responsible for a sexually violent offense by reason of insanity or mental disease, defect or illness.

2. The county in which the person will reside or be placed upon his or her discharge from a sentence, release on parole or extended supervision, or release from imprisonment, from a secured correctional facility, as defined in s. 938.02 (15m), from a secured child caring institution, as defined in s. 938.02 (15g), from a secured group home, as defined in s. 938.02 (15p), or from a commitment order.

A petition filed under this section shall allege that all of the following apply to the person alleged to be a sexually violent person:

(a) The person satisfies any of the following criteria:

1. The person has been convicted of a sexually violent offense.

2. The person has been found delinquent for a sexually violent offense.

3. The person has been found not guilty of a sexually violent offense by reason of mental disease or defect.

4. The person is within 90 days of discharge or release, on parole, extended supervision or otherwise, from a sentence that was imposed for a conviction for a sexually violent offense, from a secured correctional facility, as defined in s. 938.02 (15m), from a secured child caring institution, as defined in s. 938.02 (15g), or from a secured group home, as defined in s. 938.02 (15p), if the person was placed in the facility for being adjudicated delinquent under s. 938.183 or 938.34 on the basis of a sexually violent offense or from a commitment order that was entered as a result of a sexually violent offense.

(b) The person has a mental disorder.

(c) The person is dangerous to others because the person’s mental disorder creates a substantial probability that he or she will engage in acts of sexual violence.

A petition filed under this section shall state with particularity essential facts to establish probable cause to believe the person is a sexually violent person. If the petition alleges that a sexually violent offense or act that is a basis for the allegation under sub. (2) (a) was an act that was sexually motivated as provided under s. 980.01 (6) (b), the petition shall state the grounds on which the offense or act is alleged to be sexually motivated.

A petition under this section shall be filed in any of the following:

(a) The circuit court for the county in which the person was convicted of a sexually violent offense, adjudicated delinquent for a sexually violent offense or found not guilty of a sexually violent offense by reason of mental disease or defect.

(b) The circuit court for the county in which the person is in custody under a sentence, a placement to a secured correctional facility, as defined in s. 938.02 (15m), from a secured child caring institution, as defined in s. 938.02 (15g), from a secured group home, as defined in s. 938.02 (15p), or from a commitment order.

(c) The court in the county in which the person is in custody under a sentence, a placement to a secured correctional facility, as defined in s. 938.02 (15m), a secured child caring institution, as defined in s. 938.02 (15g), or a secured group home, as defined in s. 938.02 (15p), or from a commitment order.

Notwithstanding sub. (4), if the department of justice decides to file a petition under sub. (1) (a), it may file the petition in the circuit court for Dane County.


A ch. 980 commitment is not an extension of a commitment under ch. 975, and s. 975.12 does not limit the state’s ability to seek a separate commitment under ch. 980 of a person originally committed under ch. 975. State v. Post, 197 Wis. 2d 279, 541 N.W.2d 115 (1995).

For purposes of determining the proper time to file a ch. 980 petition under sub. (2) (ag), a sentence imposed for a sexually violent offense includes a sentence imposed consecutively to any sentence for a sexually violent offense. State v. Keith, 216 Wis. 2d 61, 573 N.W.2d 888 (Ct. App. 1997).

In as used in this chapter, “substantial probability” and “substantially probable” both mean much more likely than not. This standard for dangerousness does not violate equal protection nor is the term unconstitutionally vague. State v. Curiel, 227 Wis. 2d 423, 597 N.W.2d 697 (1999).

In deciding whether there is a substantial probability that the subject will commit future acts of sexual violence, the trier of fact is free to weigh expert testimony that contests and decide which is more reliable, to accept or reject an expert’s testimony, including accepting only parts of the testimony, and to consider all non−expert testimony. State v. Kienert, 227 Wis. 2d 423, 597 N.W.2d 712 (1999).

To the extent that s. 938.35 (1) prohibits the admission of delinquency adjudications in ch. 980 proceedings, it is repealed by implication. State v. Matthew A.B. 231 Wis. 2d 688, 605 N.W.2d 596 (Ct. App. 1999).

In a trial on a petition filed under sub. (2), the state has the burden to prove beyond a reasonable doubt that the petition was filed within 90 days of the subject’s release or discharge based on a sexually violent offense. State v. Thiell, 2001 WI 67, 242 Wis. 2d 625, 617 N.W.2d 321.

While a commitment under ch. 980 is civil, a court does not lose subject matter jurisdiction because a petition is filed under a criminal case number. State v. Pharm, 2000 WI App 167, 238 Wis. 2d 97, 617 N.W.2d 163.

The mandatory release date is not excluded in determining whether under sub. (2) (ag) a petition is filed within “90 days of discharge or release.” State v. Pharm, 2000 WI App 167, 238 Wis. 2d 97, 617 N.W.2d 163.

The time limit in sub. (2) (ag) is mandatory. There is no authority for the state to hold a person beyond the discharge date of a criminal sentence in order to file a ch. 980 petition. State v. Thomas, 2000 WI App 162, 238 Wis. 2d 216, 617 N.W.2d 230.

Although sub. (2) (ag) refers to the current juvenile code, ch. 938, and makes no reference to the 1993−94 juvenile code, ch. 48, the circuit court has authority to proceed under ch. 980 against a person adjudicated delinquent under the former ch. 48. State v. Gibbons, 2001 WI App 83, 242 Wis. 2d 640, 625 N.W.2d 666.

The “juvenile” inapplicable to juveniles. The concept of consecutive sentences is foreign in the context of juvenile adjudications and dispositions. It was proper under sub. (2) (ag) to file a ch. 980 petition two days prior to the defendant’s discharge from the sexual offense disposition although the defendant was subject to another adjudication that did not expire. State v. Wólfe, 2001 WI App 136, 246 Wis. 2d 233, 631 N.W.2d 240.

Chapter 980 provides its own procedures for commencing actions, and, as such, ch. 801 and 802 are inapplicable to the commencement of ch. 980 actions. State v. Wólfe, 2001 WI App 136, 246 Wis. 2d 233, 631 N.W.2d 240.

When a ch. 980 petition was filed within 90 days of release from a sentence for an offense that was not a sexually violent offense, which was being served concurrently with a shorter sentence imposed for a sexually violent offense, the petition was timely. State v. Treadway, 2002 WI App 195, ___ Wis. 2d ___, 651 N.W.2d 334.

Rights of persons subject to petition. (1) The circuit court in which a petition under s. 980.02 is filed shall conduct all hearings under this chapter. The court shall give the person who is the subject of the petition reasonable notice of the time and place of each such hearing. The court may designate additional persons to receive these notices.

(2) Except as provided in ss. 980.09 (2) (a) and 980.10 and without limitation by enumeration, at any hearing under this chapter, the person who is the subject of the petition has the right to:

(a) Counsel. If the person claims or appears to be indigent, the court shall refer the person to the authority for indigency determinations under s. 977.07 (1) and, if applicable, the appointment of counsel.

(b) Remain silent.

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If the person named in the petition is not in custody, the court shall hold the probable cause hearing within a reasonable time after the filing of the petition.

(3) If the court determines after a hearing that there is probable cause to believe that the person named in the petition is a sexually violent person, the court shall order that the person be taken into custody if he or she is not in custody and shall order the person to be transferred within a reasonable time to an appropriate facility for an evaluation as to whether the person is a sexually violent person. If the court determines that probable cause does not exist to believe that the person is a sexually violent person, the court shall dismiss the petition.

(4) The department shall promulgate rules that provide the qualifications for persons conducting evaluations under sub. (3).

(5) If the person named in the petition claims or appears to be indigent, the court shall, prior to the probable cause hearing under sub. (2), refer the person to the authority for indigency determinations under s. 977.07 (1) and, if applicable, the appointment of counsel.

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tion is based is not sufficient to establish beyond a reasonable doubt that the person has a mental disorder.

(5) If the court or jury determines that the person who is the subject of a petition under s. 980.02 is a sexually violent person, the court shall enter a judgment on that finding and shall commit the person as provided under s. 980.06. If the court or jury is not satisfied beyond a reasonable doubt that the person is a sexually violent person, the court shall dismiss the petition and direct that the person be released unless he or she is under some other lawful restriction.

Chapter 980, as amended, is not a punitive criminal statute. Because whether a statute is punitive is a threshold question for both double jeopardy and ex post facto analysis, neither of those clauses is violated by ch. 980. State v. Rachel, 2002 WI 81, 254 Wis. 2d 215, 646 N.W.2d 375.

The mere limitation of a committed person’s access to supervised release does not impose a restraint to the point that it violates due process. As amended, ch. 980 serves the legitimate and compelling state interests of providing treatment to the dangerous mentally ill and protecting the public from the dangerously mentally ill. The statute and is narrowly tailored to meet those interest, and, as such, it does not violate substantive due process. State v. Rachel, 2002 WI 81, 254 Wis. 2d 215, 646 N.W.2d 375.

Commitment under ch. 980 does not require a separate factual finding that an individual’s mental disorder involves serious difficulty for the person in controlling his or her behavior. Proof that the person’s mental disorder predisposes the individual to engage in acts of sexual violence and establishes a substantial probability that the person will again commit acts those necessarily and implicitly includes proof that the person’s mental disorder involves serious difficulty in controlling his or her behavior. State v. Laxton, 2002 WI 82, 254 Wis. 2d 185, 647 N.W.2d 784.

980.063 Deoxyribonucleic acid analysis requirements. (1) If a person is found to be a sexually violent person under this chapter, the court shall require the person to provide a biological specimen to the state crime laboratories for deoxyribonucleic acid analysis.

(b) The results from deoxyribonucleic acid analysis of a specimen under par. (a) may be used only as authorized under s. 167.77.

(2) The department of state justice shall promulgate rules providing for procedures for defendants to provide specimens under sub. (1) and for the transportation of those specimens to the state crime laboratories for analysis under s. 167.77.

980.065 Institutional care for sexually violent persons. (1m) The department shall place a person committed under s. 980.06 at the Wisconsin resource center established under s. 46.055, the Wisconsin resource center established under s. 46.056 or a secure mental health unit or facility provided by the department of corrections under sub. (2).

(1r) Notwithstanding sub. (1m), the department may place a female person committed under s. 980.06 at the Wisconsin resource center established under s. 46.055, the Wisconsin resource center established under s. 46.056 or a secure mental health unit or facility provided by the department of corrections under sub. (2).

(2) The department may contract with the department of corrections for the provision of a secure mental health unit or facility for persons committed under s. 980.06. The department shall operate a secure mental health unit or facility provided by the department of corrections under this subsection and shall promulgate rules governing the custody and discipline of persons placed by the department in the secure mental health unit or facility provided by the department of corrections under this subsection.

980.066 Commitment. If a court or jury determines that the person who is the subject of a petition under s. 980.02 is a sexually violent person, the court shall order the person to be committed to the custody of the department for correction, care and treatment until such time as the person is no longer a sexually violent person. A commitment order under this section shall specify that the person be placed in institutional care.

980.067 Activities of grounds. The superintendent of the facility at which a person is placed under s. 980.065 may allow the person to leave the grounds of the facility under escort. The department of health and family services shall promulgate rules for the administration of this section.

980.07 Periodic reexamination; Report. (1) If a person has been committed (as Amended, 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 for the court to consider whether the person should be placed on supervised release or discharged. At the time of a reexamination under this section, the person who has been committed may retain or seek to have the court appoint an examiner as provided under s. 980.03 (4).

(2) Any examiner conducting an examination under this section shall prepare a written report of the examination no later than
30 days after the date of the examination. The examiner shall place a copy of the report in the person's medical records and shall provide a copy of the report to the court that committed the person under s. 980.06.

(3) Notwithstanding sub. (1), the court that committed a person under s. 980.06 may order a reexamination of the person at any time during the period in which the person is subject to the commitment order.

History: 1993 a. 479; 1999 a. 9.

The 6-month period under sub. (1) for the 1st reexamination does not begin to run until the court conducts the dispositional hearing and issues an initial commitment order under s. 980.06 (2). State v. Marberry, 231 Wis. 2d 581, 605 N.W.2d 512 (Ct. App. 1999).

As part of an annual review, an involuntary medication order must be reviewed following the same procedure used to obtain the initial order. State v. Anthony D.B. 2000 WI 94, 237 Wis. 2d 465, 560 N.W.2d 435.

It is within the committed person's discretion to ask for an independent examination. The trial court does not have discretion to refuse the request. State v. Thinel, 2001 WI App 32, 241 Wis. 2d 465, 626 N.W.2d 26.

The 6–month time period in sub. (1) for an initial reexamination is mandatory. When DHFS took nearly two years to provide a reexamination, release was the only appropriate remedy. State ex rel. Marbery v. Macht, 2002 WI App 133, ___, Wis. 2d ___, 648 N.W.2d 522.

980.08 Petition for supervised release. (1) Any person who is committed under s. 980.06 may petition the committing court to modify its order by authorizing supervised release if at least 18 months have elapsed since the initial commitment order was entered or at least 6 months have elapsed since the most recent release petition was denied or the most recent order for supervised release was revoked. The director of the facility at which the person is placed may file a petition under this subsection on the person's behalf at any time.

(2) If the person files a timely petition without counsel, the court shall serve a copy of the petition on the district attorney or department of justice, whichever is applicable and, subject to s. 980.05 (2), order the appropriate health care agency to examine the person. The health care agency shall make its best effort to arrange for placement of the person in the county of residence of the person. If the person is a serious child sex offender, the department shall submit a statement showing probable cause of the existence of a sex offender notification bulle- tin has been issued to law enforcement agencies under s. 301.46 (2m) (a) or (am). 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 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 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.

(6m) 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 plan for supervised release approved by the court under sub. (5). 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 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 subsection 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 72 hours after the detention, excluding Saturdays, Sundays and legal holidays. 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 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 this section.

History: 1993 a. 479; 1995 a. 276; 1997 a. 27, 275, 284; 1999 a. 9 ss. 3232L, 3232p to 3238d; 2001 a. 16.

Cross Reference: See also ch. HFS 98, Wis. adm. code.

Sub. (6m) (formerly s. 980.06 (2) (d)) requires post-hearing notice to the local law enforcement agencies.

In re Commitment of Goodson, 1995 Wis. 2d 426, 544 N.W.2d 611 (Cl. App. 1996).

Whether in a proceeding for an initial ch. 980 commitment or a later petition for supervision, there is no requirement that the state prove the person is treatable.

State v. Serbert, 220 Wis. 2d 308, 582 N.W.2d 745 (Cl. App. 1998).

There is no exception under sub. (5) for a court to refuse to order relieves after it determines that release is appropriate. If treatment programs are not available, the court shall order a county, through DHFS, to prepare a plan and place the person on supervised release in that county. The court may order the county to create or modify programs or facilities are necessary to accommodate the supervised release.

State v. Sprosty, 227 Wis. 2d 316, 595 N.W.2d 692 (1999).

As used in this chapter, “substantial probability” and “substantially probable” both mean much more likely than not. This standard for dangerousness does not violate equal protection nor is the term unconstitutionally vague.


An institutionalized sex offender who agreed to a stipulation providing supervised release, giving up his right to a jury trial on his discharge petition in exchange, had a constitutional right to enforcement of the agreement. State v. Kraeger, 2001 WI App 77, 242 Wis. 2d 793, 626 N.W.2d 83.

An indigent sexually violent person is constitutionally entitled to assistance of counsel in bringing a first appeal as of right from a denial of his or her petition for supervised release. State ex rel. Seibert v. Macht, 2001 WI 67, 242 Wis. 2d 79, 627 N.W.2d 881.

A person subject to a proceeding to revoke supervised release is entitled to the same due process protections as acused persons in probation and parole revocation proceedings. Notice of the grounds that are the basis for the revocation must be given.

A court can only base a revocation on the grounds of public safety under sub. (6m) when notice has been properly given. State v. VanBorkhons, 2001 WI App 190, 247 Wis. 2d 247, 633 N.W.2d 236.

A sexual assault result from a non-consensual act and the person’s behavior need not be criminal before the court can conclude that there is a substantial probability that a person will reoffend if institutional care is not continued. The relevant inquiry under sub. (4) is whether the evidence indicates a likelihood to reoffend. State v. Sprosty, 2001 WI App 231, 248 Wis. 2d 480, 636 N.W.2d 213.

A trial court’s decision whether to grant a request for conditional release is subject to a de novo standard of review. The trial court properly exercised its discretion in making its decision. State v. Wenk, 2001 WI App 268, 248 Wis. 2d 714, 637 N.W.2d 417.

**980.09** Petition for discharge; procedure. (1) Petition with secretary’s approval. (a) If the secretary determines at any time that a person committed under this chapter is no longer a sexually violent person, the secretary shall authorize the person to petition the committing court for discharge. The person shall file the petition with the court and serve a copy upon the department of justice or the district attorney’s office that filed the petition under s. 980.02 (1), whichever is applicable. The court, upon receipt of the petition for discharge, shall order a hearing to be held within 45 days after the date of receipt of the petition.

(b) At a hearing under this subsection, the district attorney or the department of justice shall serve a copy of the original petition, shall represent the state and shall have the right to have the petitioner examined by an expert or professional person of his, her or its choice. The hearing shall be before the court without a jury.

The state has the burden of proving by clear and convincing evidence that the petitioner is still a sexually violent person.

(c) If the court is satisfied that the state has not met its burden of proof under par. (b), the petitioner shall be discharged from the custody or supervision of the department. If the court is satisfied that the state has met its burden of proof under par. (b), the court may proceed to determine, using the criterion specified in s. 980.08 (4), whether to modify the petitioner’s existing commitment order by authorizing supervised release.

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(2) Petition without secretary’s approval. (a) A person may petition the committing court for discharge from custody or supervision without the secretary’s approval. At the time of an examination under s. 980.07 (1), the secretary shall provide the committed person with a written notice of the person’s right to petition the court for discharge over the secretary’s objection. The notice shall contain a waiver of rights. The secretary shall forward the notice and waiver form to the court with the report of the department’s examination under s. 980.07. If the person does not affirmatively waive the right to petition, the court shall set a probable cause hearing to determine whether facts exist that warrant a hearing to determine whether the person is still a sexually violent person. The committed person has a right to have an attorney represent him or her at the probable cause hearing, but the person is not entitled to be present at the probable cause hearing.

(b) If the court determines at the probable cause hearing under par. (a) that probable cause exists to believe that the committed person is no longer a sexually violent person, then the court shall set a hearing on the issue. At a hearing under this paragraph, the committed person is entitled to be present and to the benefit of the protections afforded to the person under s. 980.03. The district attorney or the department of justice, whichever filed the original petition, shall represent the state at a hearing under this paragraph. The hearing under this paragraph shall be to the court. The state shall have the right to have the committed person evaluated by experts chosen by the state. At the hearing, the state has the burden of proving by clear and convincing evidence that the committed person is still a sexually violent person.

(c) If the court is satisfied that the state has not met its burden of proof under par. (b), the person shall be discharged from the custody or supervision of the department. If the court is satisfied that the state has met its burden of proof under par. (b), the court may proceed to determine, using the criterion specified in s. 980.08 (4), whether to modify the person’s existing commitment order by authorizing supervised release.

History: 1993 a. 479; 1999 a. 9.

Persons committed under ch. 980 must be afforded the right to request a jury for discharge hearings under this section. State v. Post, 197 Wis. 2d 279, 541 N.W.2d 115 (1995).

Sub. (2) (a) does not contemplate an evidentiary hearing as is provided under sub. (2) (b). Under sub. (2) (a), the hearing is a paper review of the reexamination reports. The hearing is only a means to make recommendations to the court, and not a vehicle to undo frivolous petitions. State v. Paulick, 213 Wis. 2d 432, 570 N.W.2d 626 (Cl. App. 1997).

The right to counsel under sub. (2) (a) is subject to the same standards and procedures for resolving right to counsel issues as in criminal cases. State v. Thiel, 2001 WI App 32, 241 Wis. 2d 465, 623 N.W.2d 20.

Sub. (2) (a) does not allow unlimited submission of evidence, but does allow the submission of a second medical examination report. State v. Thayer, 2001 WI App 51, 241 Wis. 2d 417, 626 N.W.2d 811.

**980.10** Additional discharge petitions. In addition to the procedures under s. 980.09, a committed person may petition the committing court for discharge at any time, but if a person has previously filed a petition for discharge without the secretary’s approval and the court determined, either upon review of the petition or following a hearing, that the person’s petition was frivolous or that the person was still a sexually violent person, then the court shall deny any subsequent petition under this section without a hearing unless the petition contains facts upon which a court could find that the condition of the person had so changed that a hearing was warranted. If the court finds that a hearing is warranted, the court shall set a probable cause hearing in accordance with s. 980.09 (2) (a) and continue proceedings under s. 980.09 (2) (b), if appropriate. If the person has not previously filed a petition for discharge without the secretary’s approval, the court shall set a probable cause hearing in accordance with s. 980.09 (2) (a) and continue proceedings under s. 980.09 (2) (b), if appropriate.

History: 1993 a. 479.

Persons committed under ch. 980 must be afforded the right to request a jury for discharge hearings under this section. State v. Post, 197 Wis. 2d 279, 541 N.W.2d 115 (1995).

Wisconsin Statutes Archive.
980.101 Reversal, vacation or setting aside of judgment relating to a sexually violent offense; effect. (1) In this section, “judgment relating to a sexually violent offense” means a judgment of conviction for a sexually violent offense, an adjudication of delinquency on the basis of a sexually violent offense, or a judgment of not guilty of a sexually violent offense by reason of mental disease or defect.

(2) If, at any time after a person is committed under s. 980.06, a judgment relating to a sexually violent offense committed by the person is reversed, set aside, or vacated and that sexually violent offense was a basis for the allegation made in the petition under s. 980.02 (2)(a), the person may bring a motion for postcommitment relief in the court that committed the person. The court shall proceed as follows on the motion for postcommitment relief:

(a) If the sexually violent offense was the sole basis for the allegation under s. 980.02 (2) (a) and there are no other judgments relating to a sexually violent offense committed by the person, the court shall reverse, set aside, or vacate the judgment under s. 980.05 (5) that the person is a sexually violent person, vacate the commitment order, and discharge the person from the custody or supervision of the department.

(b) If the sexually violent offense was the sole basis for the allegation under s. 980.02 (2) (a) but there are other judgments relating to a sexually violent offense committed by the person that have not been reversed, set aside, or vacated, or if the sexually violent offense was not the sole basis for the allegation under s. 980.02 (2) (a), the court shall determine whether to grant the person a new trial under s. 980.05 because the reversal, setting aside, or vacating of the judgment for the sexually violent offense would probably change the result of the trial.

(3) An appeal may be taken from an order entered under sub. (2) as from a final judgment.

History: 2001 a. 16.

980.105 Determination of county of residence. The department shall determine a person’s county of residence for the purposes of this chapter by doing all of the following:

(1) The department shall consider residence as the voluntary concurrence of physical presence with intent to remain in a place of fixed habitation and shall consider physical presence as prima facie evidence of intent to remain.

(2) The department shall apply the criteria for consideration of residence and physical presence under sub. (1) to the facts that existed on the date that the person committed the sexually violent offense that resulted in the sentence, placement or commitment that was in effect when the petition was filed under s. 980.02.

History: 1995 a. 276; 2001 a. 16.

980.11 Notice concerning supervised release or discharge. (1) In this section:

(a) “Act of sexual violence” means an act or attempted act that is a basis for an allegation made in a petition under s. 980.02 (2) (a).

(b) “Member of the family” means spouse, child, sibling, parent or legal guardian.

(c) “Victim” means a person against whom an act of sexual violence has been committed.

(2) If the court places a person on supervised release under s. 980.08 or discharges a person under s. 980.09 or 980.10, the department shall do all of the following:

(am) Make a reasonable attempt to notify whichever of the following persons is appropriate, if he or she can be found, in accordance with sub. (3):

1. The victim of the act of sexual violence.

2. An adult member of the victim’s family, if the victim died as a result of the act of sexual violence.

3. The victim’s parent or legal guardian, if the victim is younger than 18 years old.

(bm) Notify the department of corrections.

(3) The notice under sub. (2) shall inform the department of corrections and the person under sub. (2) (am) of the name of the person committed under this chapter and the date the person is placed on supervised release or discharged. The department shall send the notice, postmarked at least 7 days before the date the person committed under this chapter is placed on supervised release or discharged, to the department of corrections and to the last known address of the person under sub. (2) (am).

(4) The department shall design and prepare cards for persons specified in sub. (2) (am) to send to the department. The cards shall have space for these persons to provide their names and addresses. The department shall provide the cards, without charge, to the department of justice and district attorneys. The department shall provide the cards, without charge, to persons specified in sub. (2) (am). These persons may send completed cards to the department of health and family services. All records or portions of records of the department of health and family services that relate to mailing addresses of these persons are subject to inspection or copying under s. 19.35 (1), except as needed to comply with a request by the department of corrections under s. 301.46 (3) (d).


980.12 Department duties; costs. (1) Except as provided in ss. 980.03 (4) and 980.08 (3), the department shall pay from the appropriations under s. 20.435 (2) (a) and (bm) for all costs relating to the evaluation, treatment and care of persons evaluated or committed under this chapter.

(2) By February 1, 2002, the department shall submit a report to the legislature under s. 13.172 (2) concerning the extent to which pharmacological treatment using an antiandrogen or the chemical equivalent of an antiandrogen has been required as a condition of supervised release under s. 980.06, 1997 stats., or s. 980.08 and the effectiveness of the treatment in the cases in which its use has been required.


980.13 Applicability. This chapter applies to a sexually violent person regardless of whether the person engaged in acts of sexual violence before, on or after June 2, 1994.

History: 1993 a. 479.