



State of Wisconsin
2003 - 2004 LEGISLATURE

LRB-4094/1
MGD&CMH:jld:rs (2)

DUE TODAY
2/13

2003 BILL

Regen

1 AN ACT *to renumber* 46.055; *to renumber and amend* 980.08 (4), 980.08 (5)
2 and 980.08 (6m); *to amend* 20.435 (2) (bj), 46.03 (1), 46.055 (title), 46.058 (2m),
3 46.10 (2), 51.42 (3) (aw) 1. d., 980.01 (7), 980.065 (1m), 980.08 (3), 980.09 (1) (c)
4 and 980.09 (2) (c); and *to create* 46.055 (2), 980.01 (1m), 980.08 (4) (b) 2. to 6.,
5 (d) and (e), 980.08 (5) (a) 5. and 6. and (b) and (6) and 980.085 of the statutes;
6 **relating to:** standard for commitment [✓]of, and supervised release of sexually
7 violent persons. ₂

Analysis by the Legislative Reference Bureau

Under current law, a person who commits a sexually violent offense may be committed to the Department of Health and Family Services (DHFS) after serving a sentence or disposition for the offense if a court finds that the person is a sexually violent person. Current law defines a "sexually violent person" as a person: 1) who has been convicted of, or adjudicated delinquent for, a sexually violent offense or who has been found not guilty of a sexually violent offense by reason of mental disease, defect, or illness; and 2) who is dangerous because he or she suffers from a mental disorder that makes it substantially probable that he or she will engage in acts of sexual violence.

A person committed to DHFS as a sexually violent person is initially placed in institutional care. After 18 months, a sexually violent person may petition the court

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for supervised release, which allows the person to reside in the community subject to the conditions set by the court and to the rules of DHFS. If a person petitions the court for supervised release, the court must grant the petition unless the state proves that it is still substantially probable that the person will engage in future acts of sexual violence if institutionalized care is not continued.

If a court determines that supervised release is appropriate, DHFS must make its best effort to place the person in the county in which the person lived at the time of the sexually violent offense. DHFS and the county in which the person is to be placed must then prepare a plan for treating and monitoring the person upon his or her release. ~~in~~ developing the supervised release plan, ~~DHFS and the county~~, consider the proximity of the person's proposed residence to the homes of certain other sex offenders. Then, within 60 days after the court's determination that supervised release is appropriate, DHFS and the county in which the person is to be placed must submit the supervised release plan to the court for its approval.

INS A ✓

to ✓

INS BV ✓

This bill makes the following changes relating to the commitment, release, and placement of sexually violent persons:

1. Changes the second part of the definition of "sexually violent person." As a result of the change, a person who has committed a sexually violent offense may be committed to DHFS if the state merely shows that the person is dangerous because he or she suffers from a mental disorder that makes it more likely than not (as opposed to substantially probable) that he or she will engage in acts of sexual violence.

2. Provides a new basis for denying a petition for supervised release. Under the bill, the court may deny the petition if the state proves that the person has not shown significant progress in, or has refused to participate in, treatment.

3. Requires any person who is or will be placed on supervised release in a county in which DHFS has established a transitional facility for the placement of such persons to reside in that facility.

4. Requires that, in selecting a residence for a person who will be placed on supervised release in any other county, DHFS and the county must consider the proximity of the proposed residence to certain types of facilities for children, including schools, day care providers, group homes, foster homes, and youth centers. In doing so, DHFS and the county must: a) prepare a list and a map of such facilities in consultation with affected municipalities; b) submit the list and map, along with the address of the proposed residence, to the local common councils and village or town boards; and c) consider any comments from the municipalities regarding the proposed placement before finalizing the supervised release plan. In addition, when submitting the supervised release plan to the court, DHFS and the county must provide the map, the list, and any comments from affected municipalities to the court and to the chief elected official, the police chief, and the sheriff for the community in which the proposed placement is located.

5. Requires that, when the court receives a plan for supervised release, it must hold a hearing to determine whether to approve the plan as submitted by DHFS and the county or whether to order DHFS and the county to modify the plan. The bill requires that the court notify the chief elected official, the police chief, and the sheriff

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INS C ✓

for the community in which the proposed placement is located of the hearing at least five days beforehand.

⑥ Requires any person who is placed on supervised release to actively participate in treatment as a condition of supervised release.

⑦ Creates a committee composed of officials from the city of Milwaukee and Milwaukee County and individual residents of Milwaukee County to prepare recommendations regarding the location of a proposed transitional facility for persons who have been committed to the custody of DHFS as sexually violent persons. The bill specifies the factors that the committee must consider in making its recommendation and specifies that the location must be suitable for the development of a facility that can house the number of people that DHFS expects to be on supervised release in Milwaukee County.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

Fourth, the bill

INS D ✓

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, as affected by 2003 Wisconsin Act 33,
2 is amended to read: s. 980.08 (5), 2001 stats.,

3 20.435 (2) (bj) *Competency examinations and conditional and supervised*
4 *release services.* Biennially, the amounts in the schedule for outpatient competency
5 examinations and for payment by the department of costs for treatment and services
6 for persons released under s. 980.06 (2) (c), 1997 stats., or s. 971.17 (3) (d) or (4) (e)
7 or 980.08 (5) (6) (c) ^{3.} for which the department has contracted with county
8 departments under s. 51.42 (3) (aw) 1. d., with other public agencies, or with private
9 agencies to provide the treatment and services.

10 SECTION 2. 46.03 (1) of the statutes is amended to read:
11 46.03 (1) INSTITUTIONS GOVERNED. Maintain and govern the Mendota and the
12 Winnebago mental health institutes; the secure mental health facility established
13 under s. 46.055 (1); and the centers for the developmentally disabled.

14 SECTION 3. 46.055 (title) of the statutes is amended to read:

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1 **46.055** (title) ~~Secure mental health facility~~ **Facilities for sexually**
2 **violent persons.**

3 **SECTION 4.** 46.055 of the statutes is renumbered 46.055 (1).

4 **SECTION 5.** 46.055 (2) of the statutes is created to read:

5 **46.055 (2)** The department shall submit a report each February 1 to the chief
6 clerk of each house of the legislature, for distribution to the appropriate standing
7 committees under s. 13.172 (3), regarding the effectiveness of its efforts to find and
8 maintain appropriate placements for persons on supervised release under s. 980.06,
9 1997 stats., or s. 980.08 and its anticipated need for finding additional placements
10 in the 5 years following the date of the report.

11 **SECTION 6.** 46.058 (2m) of the statutes is amended to read:

12 **46.058 (2m)** The superintendents of the secure mental health facility
13 established under s. 46.055 (1), the Wisconsin resource center established under s.
14 46.056 and any secure mental health unit or facility provided by the department of
15 corrections under s. 980.065 (2) shall adopt proper means to prevent escapes of
16 persons detained or committed to the facility, center or unit under ch. 980 and may
17 adopt proper means to pursue and capture persons detained or committed to the
18 facility, center or unit under ch. 980 who have escaped. In adopting means under this
19 subsection to prevent escape and pursue and capture persons who have escaped, a
20 superintendent may delegate to designated staff members of the facility, center or
21 unit the power to use necessary and appropriate force, as defined by the department
22 by rule, to prevent escapes and capture escaped persons.

23 **SECTION 7.** 46.10 (2) of the statutes is amended to read:

24 **46.10 (2)** Except as provided in subs. (2m) and (14) (b) and (c), any person,
25 including but not limited to a person admitted, committed or placed under s. 975.01,

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1 1977 stats., s. 975.02, 1977 stats., and s. 975.17, 1977 stats., and ss. 51.10, 51.13,
2 51.15, 51.20, 51.35 (3), 51.37 (5), 51.45 (10), (11), (12) and (13), 55.05, 55.06, 971.14
3 (2) and (5), 971.17 (1), 975.06 and 980.06, receiving care, maintenance, services and
4 supplies provided by any institution in this state including University of Wisconsin
5 Hospitals and Clinics, in which the state is chargeable with all or part of the person's
6 care, maintenance, services and supplies, any person receiving care and services
7 from a county department established under s. 51.42 or 51.437 or from a facility
8 established under s. 49.73, and any person receiving treatment and services from a
9 public or private agency under s. 980.06 (2) (c), 1997 stats., or s. 971.17 (3) (d) or (4)
10 (e) or 980.08 (~~5~~) (6m) (a) and the person's property and estate, including the
11 homestead, and the spouse of the person, and the spouse's property and estate,
12 including the homestead, and, in the case of a minor child, the parents of the person,
13 and their property and estates, including their homestead, and, in the case of a
14 foreign child described in s. 48.839 (1) who became dependent on public funds for his
15 or her primary support before an order granting his or her adoption, the resident of
16 this state appointed guardian of the child by a foreign court who brought the child
17 into this state for the purpose of adoption, and his or her property and estate,
18 including his or her homestead, shall be liable for the cost of the care, maintenance,
19 services and supplies in accordance with the fee schedule established by the
20 department under s. 46.03 (18). If a spouse, widow or minor, or an incapacitated
21 person may be lawfully dependent upon the property for their support, the court
22 shall release all or such part of the property and estate from the charges that may
23 be necessary to provide for those persons. The department shall make every
24 reasonable effort to notify the liable persons as soon as possible after the beginning
25 of the maintenance, but the notice or the receipt thereof is not a condition of liability.

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1 **SECTION 8.** 51.42 (3) (aw) 1. d. of the statutes is amended to read:

2 51.42 (3) (aw) 1. d. Provide treatment and services that are specified in a
3 conditional release plan approved by a court for a person who is a county resident and
4 is conditionally released under s. 971.17 (3) or (4) or that are specified in a supervised
5 release plan approved by a court under s. 980.06 (2) (c), 1997 stats., ~~or~~ s. 980.08 (5)
6 (6) (c)³ ✓ If the county department provides treatment and services under this
7 subdivision, the department of health and family services shall, from the
8 appropriation under s. 20.435 (2) (bj), pay the county department for the costs of the
9 treatment and services.

Plain

10 **SECTION 9.** 980.01 (1m) of the statutes is created to read:

11 980.01 (1m) "Likely" means more likely than not.

, 2001 stats., ✓ or s.
980.08 ✓

12 **SECTION 10.** 980.01 (7) of the statutes is amended to read:

13 980.01 (7) "Sexually violent person" means a person who has been convicted
14 of a sexually violent offense, has been adjudicated delinquent for a sexually violent
15 offense, or has been found not guilty of or not responsible for a sexually violent
16 offense by reason of insanity or mental disease, defect, or illness, and who is
17 dangerous because he or she suffers from a mental disorder that makes it
18 substantially probable likely that the person will engage in acts of sexual violence.

19 **SECTION 11.** 980.065 (1m) of the statutes is amended to read:

20 980.065 (1m) The department shall place a person committed under s. 980.06
21 at the secure mental health facility established under s. 46.055 (1), the Wisconsin
22 resource center established under s. 46.056 or a secure mental health unit or facility
23 provided by the department of corrections under sub. (2).

24 **SECTION 12.** 980.08 (3) of the statutes is amended to read:

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1 980.08 (3) Within 20 days after receipt of the petition, the court shall appoint
2 one or more examiners having the specialized knowledge determined by the court to
3 be appropriate, who shall examine the person and furnish a written report of the
4 examination to the court within 30 days after appointment. The examiners shall
5 have reasonable access to the person for purposes of examination and to the person's
6 past and present treatment records, as defined in s. 51.30 (1) (b), and patient health
7 care records, as provided under s. 146.82 (2) (c). If any such examiner believes that
8 the person is appropriate for supervised release under the ~~criterion~~ criteria specified
9 in sub. (4) (b), the examiner shall report on the type of treatment and services that
10 the person may need while in the community on supervised release. The county shall
11 pay the costs of an examiner appointed under this subsection as provided under s.
12 51.20 (18) (a).

13 **SECTION 13.** 980.08 (4) of the statutes is renumbered 980.08 (4) (a) and
14 amended to read:

15 980.08 (4) (a) The court, without a jury, shall ~~hear the petition~~ proceed under
16 par. (b) within 30 days after the report of the court-appointed examiner is filed with
17 the court, unless the petitioner waives this time limit. Expenses of proceedings
18 under this subsection shall be paid as provided under s. 51.20 (18) (b), (c), and (d).

19 **(b)** The court shall ~~grant~~ deny the petition ~~unless if~~ the state proves ^{by} clear
20 and convincing evidence ~~that the person is still a sexually violent person and that any~~
21 of the following:

22 1. That it is still ~~substantially probable~~ likely that the person will engage in acts
23 of sexual violence if the person is not continued in institutional care.

24 **(c)** In making a decision under ~~this subsection~~ par. (b), the court may consider,
25 without limitation because of enumeration, the nature and circumstances of the

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1 behavior that was the basis of the allegation in the petition under s. 980.02 (2) (a),
2 the person's mental history and present mental condition, where the person will
3 might live, how the person will support himself or herself, and what arrangements
4 are available to ensure that the person has access to and will participate in necessary
5 treatment, including pharmacological treatment using an antiandrogen or the
6 chemical equivalent of an antiandrogen if the person is a serious child sex offender.

7 **(6g)** A decision under ~~this subsection~~ sub. (4) (b) or (6) (c) on a petition filed by VIA
8 a person who is a serious child sex offender may not be made based on the fact that
9 the person is a proper subject for pharmacological treatment using an antiandrogen
10 or the chemical equivalent of an antiandrogen or on the fact that the person is willing
11 to participate in pharmacological treatment using an antiandrogen or the chemical
12 equivalent of an antiandrogen.

13 **SECTION 14.** 980.08 (4) (b) 2. to 6., (d) and (e) of the statutes are created to read:

14 980.08 (4) (b) 2. That the person has not demonstrated significant or
15 satisfactory progress in his or her treatment or the person has refused treatment.

16 3. That there is no treatment reasonably available in the community that
17 meets all of the following requirements:

- 18 a. The treatment will meet the person's ongoing treatment needs.
- 19 b. The treatment will be provided by a department-approved provider.
- 20 c. The treatment provider has presented a specific course of treatment to the
21 department, has agreed to assume responsibility for ^{provide} the treatment, will report
22 progress to the department on a regular basis, and will report violations immediately
23 to the department, consistent with the treatment and supervision needs of the
24 person.

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1 4. That the person has not agreed to comply with the conditions of, or
2 department rules regarding, supervised release or the requirements of the
3 treatment provider, or the person is likely to violate such conditions, rules, or
4 requirements.

5 5. That a major discipline report was issued regarding the person during the
6 6 months immediately preceding the hearing.

7 6. That supervised release is not in the best interest of the person.

8 (d) The court may defer hearing evidence or making a finding regarding
9 whether the state has met its burden under par. (b) 1., 3., or 6. until it conducts a
10 hearing under sub. (6) (b).

11 (e) If the court does not deny the petition under par. (b), the court shall notify
12 the department and proceed under sub. (6).

13 **SECTION 15.** 980.08 (5) of the statutes is renumbered 980.08 (5) (a) and
14 amended to read:

15 980.08 (5) (a) ~~If the court finds that the person is appropriate for supervised~~
16 ~~release does not deny the petition under sub. (4) (b), the court shall notify the~~
17 ~~department. The department shall make its best effort to arrange for placement of~~
18 ~~the person in a residential facility or dwelling that is in the person's county of~~
19 ~~residence, as determined by the department under s. 980.105. The department and,~~
20 ~~except as provided in par. (c), the county department under s. 51.42 in the person's~~
21 ~~county of residence of the person shall~~ make its best effort to prepare a supervised
22 release plan that identifies for the person that does all of the following:

23 1. Identifies the treatment and services, if any, that the person will receive in
24 the community. ~~The plan shall address~~

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1 2. Addresses the person's need, if any, for supervision, counseling, medication,
2 community support services, residential services, vocational services, and alcohol or
3 other drug abuse treatment. ~~In developing a plan for where the person may reside~~
4 ~~while on supervised release, the department shall consider the proximity of any~~
5 ~~potential placement to the residence of other persons on supervised release and to~~
6 ~~the residence of persons who are in the custody of the department of corrections and~~
7 ~~regarding whom a sex offender notification bulletin has been issued to law~~
8 ~~enforcement agencies under s. 301.46 (2m) (a) or (am). If the person is a serious child~~
9 ~~sex offender, the plan shall address~~

10 3. Addresses the person's need for pharmacological treatment using an
11 antiandrogen or the chemical equivalent of an antiandrogen. ~~The department may~~
12 ~~contract with a county department, under s. 51.42 (3) (aw) 1. d., with another public~~
13 ~~agency or with a private agency to provide the treatment and services identified in~~
14 ~~the plan. The plan shall specify if the person is a serious child sex offender.~~

15 4. Specifies who will be responsible for providing the treatment and services
16 identified in the plan. ~~The plan shall be presented to the court for its approval within~~
17 ~~60 days after the court finding that the person is appropriate for supervised release,~~
18 ~~unless the department, county department and person to be released request~~
19 ~~additional time to develop the plan.~~

20 (c) The department shall make its best effort to arrange for placement of the
21 person in a residential facility or dwelling that is in the person's county of residence.

22 If the county department of the person's county of residence declines to prepare a
23 plan, the department may arrange for another county to prepare the plan if that
24 county agrees to prepare the plan and if the person will be living in that county. If
25 the department is unable to arrange for another county to prepare a plan, the court

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1 shall designate a county department to prepare the plan, and order the county
2 department to prepare the plan ~~and place the person on supervised release in that~~
3 ~~county~~, except that the court may not so designate the county department in any
4 county where there is a facility in which persons committed to institutional care
5 under this chapter are placed unless that county is also the person's county of
6 residence.

7 **SECTION 16.** 980.08 (5) (a) 5. and 6. and (b) and (6) of the statutes are created
8 to read:

9 980.08 (5) (a) 5. Identifies where the person shall live.

10 6. Includes a written agreement from the person providing the housing
11 described in subd. 5. to accept the person who will reside there, to provide the level
12 of security required by the court, and to immediately report to the department if the
13 person leaves the housing without authorization. This subdivision does not apply
14 to a person to whom sub. (6g) applies. *s. 980.085 ✓*

15 (b) Before submitting a supervised release plan to the court under sub. (6) (a)
16 for a person other than one to whom s. 980.085 applies, the department and county
17 department shall do all of the following in the order specified:

18 1. Identify a proposed placement. In identifying any proposed placement, the
19 department and the county department shall consider the proximity of the
20 placement to all of the following:

21 a. The residence of other persons on supervised release.

22 b. The residence of persons who are in the custody of the department of
23 corrections and regarding whom a sex offender notification bulletin has been issued
24 to law enforcement agencies under s. 301.46 (2m) (a) or (am).

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1 c. Any facility for children described in subd. 2. of which the department or the
2 county department is aware.

3 2. Prepare a list and a map of all public or private schools, group homes, as
4 defined in s. 48.02 (7), residential care centers for children and youth, as defined in
5 s. 48.02 (15d), shelter care facilities, as defined in s. 48.02 (17), foster homes, as
6 defined in s. 48.02 (6), treatment foster homes, as defined in s. 48.02 (17q), day care
7 centers licensed under s. 48.65, day care programs established under s. 120.13 (14),
8 day care providers certified under s. 48.651, and youth centers, as defined in s. 961.01
9 (22), that are located within one mile of any proposed residence. The department and
10 the county department shall work with the municipality in which the residence is
11 located and each municipality within one mile of the residence in preparing the list
12 and the map.

13 3. Submit the address of the proposed placement, the list, and the map to the
14 common council or the village or town board for the municipality in which the
15 residence is located and each municipality within one mile of the residence. Each
16 such common council or village or town board shall review the list and map and may
17 provide the department and the county department comments regarding the risks
18 that the use of the proposed placement might entail for the community based on its
19 proximity to any facility included in the list.

20 4. Consider any comments that it receives under subd. 3.

21 (6) (a) The department and the county department shall present the plan for
22 supervised release prepared under sub. (5) and, unless s. 980.085 (1) applies, the list
23 and map of facilities for children prepared under sub. (5) (b) 2. and the comments
24 submitted under sub. (5) (b) 3. to the court no less than ⁹⁰~~60~~ days after ~~the court finding~~
25 ~~that the person is appropriate for supervised release,~~ unless the department, county

✓ the notification under ✓ sub. (4) (e) ✓

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1 department, and person to be released request additional time to develop the plan.
 2 When the department and county department submit the plan to the court, the
 3 department and county department shall notify the individuals identified under par.
 4 (b) 1. to 3. of the residence identified in the plan. Unless s. 980.085 (1) applies, the
 5 department and the county department shall also provide those individuals copies
 6 of the list and map of facilities for children compiled under sub. (5) (b) 2. and the
 7 comments submitted under sub. (5) (b) 3. If any of those individuals receiving the
 8 list notifies the department in writing of a facility that the department and county
 9 department are required to include on the list, but that is not on the list, the
 10 department shall notify the court of the additional facility before the hearing under
 11 par. (b).

12 (b) After receiving the plan, the court shall hold a hearing regarding the plan.
 13 The court shall notify all of the following of the hearing at least 5 days before the
 14 hearing:

- 15 1. The sheriff for the county in which the residence identified under sub. (5) (a)
- 16 5. is located. *as defined in s. 229.821 (3),* ✓
- 17 2. The police chief for the political subdivision in which the residence identified
- 18 under sub. (5) (a) 5. is located. *municipality* ✓
- 19 3. The chief elected official of the political subdivision in which the residence
- 20 identified under sub. (5) (a) 5. is located. *shall do one of the following:*

21 (c) After ~~reviewing the plan~~ *the plan*, the court ~~may~~ *shall* ^{¶ 1.} order the department and county
 22 department to modify ~~it~~ ^{¶ 2.} ~~The court may~~ ^{but} deny the petition ^{only} if the state proves,
 23 by clear and convincing evidence, that the plan does not provide sufficient security
 24 to protect the community. ^{¶ 3.} ~~Subject to s. 980.085, the court does not deny a petition~~

on that sub. (4) (b) 1., 3., or 6. applies ✓

conducting the hearing

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1 ~~for supervised release under this paragraph or sub. (4) (b), the court shall~~ approve
2 the supervised release plan and grant the petition.

3 SECTION 17. 980.08 (6m) of the statutes is renumbered 980.08 (6m) (a) and
4 amended to read:

5 980.08 (6m) (a) An order for supervised release places the person in the custody
6 and control of the department. The department shall arrange for control, care and
7 treatment of the person in the least restrictive manner consistent with the
8 requirements of the person and, except as provided in s. 980.085 (2), in accordance
9 with the plan for supervised release approved by the court under sub. (5). (6) (c). The
10 department may contract with a county department, under s. 51.42 (3) (aw) 1. d.,
11 with another public agency, or with a private agency to provide the treatment and
12 services identified in the plan. *scored*, and the conditions specified in subd. 2. and 5.

✓ 3

letter

980.085(2) ✓

13 1. (b) A person on supervised release is subject to the conditions set by the court
14 ~~and to the rules of the department. The court shall require as a condition of~~
15 ~~supervised release that the person actively participate in treatment.~~

16 (c) Before a person is placed on supervised release by the court under this
17 section, the court shall so notify the municipal police department and county sheriff
18 for the municipality and county in which the person will be residing. The notification
19 requirement under this subsection does not apply if a municipal police department
20 or county sheriff submits to the court a written statement waiving the right to be
21 notified.

22 (d) If the department alleges that a released person has violated any condition
23 or rule, or that the safety of others requires that supervised release be revoked, he
24 or she may be taken into custody under the rules of the department. The department
25 shall submit a statement showing probable cause of the detention and a petition to

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1 revoke the order for supervised release to the committing court and the regional
2 office of the state public defender responsible for handling cases in the county where
3 the committing court is located within 72 hours after the detention, excluding
4 Saturdays, Sundays and legal holidays. The court shall hear the petition within 30
5 days, unless the hearing or time deadline is waived by the detained person. Pending
6 the revocation hearing, the department may detain the person in a jail or in a
7 hospital, center or facility specified by s. 51.15 (2). The state has the burden of
8 proving by clear and convincing evidence that any rule or condition of release has
9 been violated, or that the safety of others requires that supervised release be
10 revoked. If the court determines after hearing that any rule or condition of release
11 has been violated, or that the safety of others requires that supervised release be
12 revoked, it may revoke the order for supervised release and order that the released
13 person be placed in an appropriate institution until the person is discharged from the
14 commitment under s. 980.09 or until again placed on supervised release under this
15 section.

16 **SECTION 18.** 980.085 of the statutes is created to read:

17 **980.085 Placements in transitional facilities.** (1) If a court, on or after the
18 effective date of this subsection ... [revisor inserts date], places a person on
19 supervised release in a county in which the department has a vacancy in a
20 transitional facility for the placement of such persons, including the facility
21 enumerated in 2001 Wisconsin Act 16, section 9107 (1) (d) 1., the court may not
22 approve a supervised release plan for the person unless the plan requires that the
23 person reside in the facility.

24 (2) If, on or after the effective date of this subsection ... [revisor inserts date],
25 a person is on supervised release in a county in which the department has a vacancy

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1 in a transitional facility for the placement of such persons, including the facility
2 enumerated in 2001 Wisconsin Act 16, section 9107 (1) (d) 1., the department, after
3 allowing the person a reasonable amount of time to move there, shall require the
4 person to reside in the facility as a condition of supervised release, notwithstanding
5 what the person's supervised release plan provides under s. 980.08 (5) (a) 5.

6 **SECTION 19.** 980.09 (1) (c) of the statutes is amended to read:

7 980.09 (1) (c) If the court is satisfied that the state has not met its burden of
8 proof under par. (b), the petitioner shall be discharged from the custody or
9 supervision of the department. If the court is satisfied that the state has met its
10 burden of proof under par. (b), the court may proceed to determine, using the ~~criteria~~
11 criteria specified in s. 980.08 (4) (b), whether to modify the petitioner's existing
12 commitment order by authorizing supervised release.

13 **SECTION 20.** 980.09 (2) (c) of the statutes is amended to read:

14 980.09 (2) (c) If the court is satisfied that the state has not met its burden of
15 proof under par. (b), the person shall be discharged from the custody or supervision
16 of the department. If the court is satisfied that the state has met its burden of proof
17 under par. (b), the court may proceed to determine, using the ~~criteria~~ criteria
18 specified in s. 980.08 (4) (b), whether to modify the person's existing commitment
19 order by authorizing supervised release.

20 **SECTION 21. Nonstatutory provisions.**

21 (1) (a) There is created a committee to assist the state in determining the
22 location for the facility enumerated in 2001 Wisconsin Act 16, section 9107 (1) (d) 1.,
23 that will be a transitional facility for the housing of persons committed to the custody
24 of the department of health and family services under chapter 980 of the statutes.

BILL

1 (b) The departments of corrections and health and family services shall provide
2 necessary administrative support services to the committee.

3 (c) The department of administration shall reimburse members of the
4 committee for their actual and necessary expenses incurred in carrying out their
5 functions, from the appropriation under section 20.505 (4) (ba) of the statutes, within
6 the budget authorized under section 16.40 (14) of the statutes.

7 (d) The members of the committee shall be:

8 1. The chairperson of the Milwaukee County board of supervisors or his or her
9 designee.

10 2. The chief of police of the city of Milwaukee or his or her designee.

11 3. The county executive of Milwaukee County or his or her designee.

12 4. The district attorney of Milwaukee County or his or her designee.

13 5. The mayor of the city of Milwaukee or his or her designee.

14 6. The sheriff of Milwaukee County or his or her designee.

15 7. A representative of the Milwaukee County Law Enforcement Executives
16 Association who is not from the city of Milwaukee.

17 8. A representative of the intergovernmental cooperation council who is not
18 from the city of Milwaukee.

19 9. Three other individuals who are residents of Milwaukee County, 2 of whom
20 do not reside in the city of Milwaukee, to be appointed by the governor.

21 10. Two members who reside in Milwaukee County, at least one of whom resides
22 outside of the city of Milwaukee, to be appointed by the senate majority leader.

23 11. Two members who reside in Milwaukee County, at least one of whom resides
24 outside of the city of Milwaukee, to be appointed by the speaker of the assembly.

BILL

1 (e) The committee shall elect the chair of the committee from the 3 individuals
2 whom the governor appoints to the committee.

3 (f) No later than June 1, 2004, the department of health and family services
4 shall provide the committee an estimate of the maximum number of persons likely
5 to be placed in Milwaukee County on supervised release under section 980.06, 1997
6 stats., or section 980.08 of the statutes at any one time between that date and
7 February 1, 2009.

8 (g) The committee shall hold public hearings in Milwaukee County regarding
9 the selection of a location for the facility.

10 (h) Subject to paragraph (i) no later than December 31, 2004, the committee
11 shall submit a report to the departments of corrections and health and family
12 services recommending at least 3 specific locations for the facility. Each of the
13 locations shall be suitable for the development of a facility that can house at least the
14 number of persons set forth in the estimate submitted to the committee under
15 paragraph (f). The committee shall consider all of the following factors when making
16 its recommendations:

- 17 1. Community safety.
- 18 2. Proximity to sensitive locations.
- 19 3. Ability to make the facility secure.
- 20 4. Accessibility to treatment for the persons living in the facility.
- 21 5. Payments that may be made in lieu of property taxes.
- 22 6. Availability of tax incentives to a community to locate the facility within its
23 jurisdiction.
- 24 7. Proximity to any residence or facility under section 980.08 (5) (b) 1. a. to c.
25 of the statutes, as created by this act.

BILL

1 (i) When acting under paragraph (h), the committee may not recommend any
2 location in a municipality that is located in a county with a population that exceeds
3 500,000 if the total number of persons incarcerated at any facility located in that
4 municipality exceeds 1 percent of the municipality's population.

SECTION 22. Initial applicability.

6 (1) DEFINITION OF SEXUALLY VIOLENT PERSON. The treatment of section 980.01
7 (1m) and (7) of the statutes first applies to hearings, trials, and other proceedings
8 that are commenced on the effective date of this subsection.

9 (2) PETITIONS FOR SUPERVISED RELEASE. The treatment of section ⁹980.08 (6) and
10 ~~(6m)~~ (with respect to the requirement that the person actively participate in
11 ~~treatment~~) of the statutes, the renumbering and amendment of section 980.08 (4)
12 and (5) of the statutes, and the creation of section ⁹⁸⁰980.08 (4) (b) 2. to 6., (d), and (e)
13 and (5) (a) 5. and 6. and (b) of the statutes first apply to [✓]petitions for supervised
14 release that are ~~first filed~~ ^{first filed} on the effective date of this subsection.

(END)

commenced

✓ proceedings regarding

980.09 (1)(c) ✓ and (2)(c) ✓

and 980.085 ✓ (1)

INS 19/14 ✓

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INSERT A

Current law specifies what the plan must contain (such as what services the person will receive in the community). In addition, current law requires DHFS, when

2

INSERT B

(This two-part hearing process, in which the court determines whether supervised release is appropriate before reviewing the supervised release plan, is sometimes referred to as a bifurcated hearing.)

3

INSERT C

This bill makes a number of changes relating to the commitment, release, and placement of sexually violent persons. First, the bill changes the second part of the definition of "sexually violent person." As a result of the change, a person who has committed a sexually violent offense may be committed to DHFS if the state merely shows that the person is dangerous because he or she suffers from a mental disorder that makes it more likely than not (as opposed to substantially probable) that he or she will engage in acts of sexual violence.

Second, the bill substantially modifies the existing bifurcated hearing process. Under the bill, the court considers whether the person may be appropriate for supervised release as a first step, but only with respect to certain issues. Specifically, the court must assess whether: 1) it is still likely that the person will engage in acts of sexual violence if the person is not continued in institutional care; 2) whether the person has demonstrated significant or satisfactory progress in his or her treatment or the person has refused treatment; 3) whether there is appropriate treatment that is reasonably available in the community; 4) whether the person has agreed to comply with conditions, rules, and requirements for supervised release and whether the person is likely to violate such conditions, rules, or requirements; 5) whether a major discipline report was issued regarding the person during the six months immediately preceding the hearing; and 6) whether supervised release is in the best interest of the person. If the state proves by clear and convincing evidence that the person is not appropriate for supervised release under any of these criteria, the court must deny the petition.

If the court does not deny the petition at that stage of the process, it refers the case to DHFS for the preparation of a supervised release plan, which, under the bill, must identify where the person will live. If the county in which the person will be placed has a transitional facility for the placement of sexually violent persons, the plan must provide for the placement of the person in that facility. (See below for additional discussion of the bill's requirements regarding the siting of such a facility.) If the person is to be placed in anywhere else, DHFS and the county department must follow the procedure established under the bill regarding selecting the placement. Initially, DHFS and the county department must consider the proximity of any proposed residence to certain types of facilities for children, including schools, day

(which they must do within 90 days after the court refers the case to DHFS) - 2 -

INSERT C CONT

care providers, group homes, foster homes, and youth centers. In doing so, DHFS and the county must: 1) prepare a list and a map of such facilities in consultation with affected municipalities; 2) submit the list and map, along with the address of the proposed residence, to the local common councils and village or town boards; and 3) consider any comments from the municipalities regarding the proposed placement before finalizing the supervised release plan. Then, when submitting the supervised release plan to the court, DHFS and the county must provide the map, the list, and any comments from affected municipalities to the court and to the chief elected official, the police chief, and the sheriff for the community in which the proposed placement is located.

DHFS and the county

After the court receives a plan for supervised release, it must hold a hearing to determine whether to approve the plan and whether to grant the petition for supervised release. The bill requires that the court notify the chief elected official, the police chief, and the sheriff for the community in which the proposed placement is located of the hearing at least five days beforehand. After reviewing the plan, the court must: 1) order DHFS and the county (department) to modify the plan; 2) deny the petition for supervised release, but only if the state proves by clear and convincing evidence that the community would not be adequately protected under the plan; or 3) approve the plan and grant the petition.

the

Third, bill ~~NO~~ ~~Q~~
INSERT D

1

~~Q~~ Fifth, if DHFS establishes a transitional facility of the type described in the preceding paragraph, it must move any sexually violent person who is on supervised release in the county in which the facility is located into the facility if it has a vacancy there for that person.

2

INSERT 15/15

3

SECTION 1. 980.08 (6m) (b) 2. of the statutes is created to read:

4

980.08 (6m) (b) 2. A person on supervised release shall actively participate in treatment as a condition of supervised release.

5

INSERT 19/14

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7

~~Q~~ ~~#~~ **CONDITIONS OF SUPERVISED RELEASE.** The treatment of section 980.085 (2), the renumbering and amendment of section 980.08 (6m) of the statutes, and the creation of section 980.08 (6m) (b) 2. first apply to persons on supervised release on the effective date of this subsection.

8

9

10

of the statutes

(end ins)

Dsida, Michael

From: Dake, Marsha
Sent: Tuesday, February 17, 2004 3:50 PM
To: Dsida, Michael
Subject: Rep. Stone's bill LRB 4094/2

Mike,

Rep. Stone has been asked if "residential subdivisions" could be added to the list of facilities that must be identified and considered when determining the location of a sexual predator facility. Rep. Stone is concerned that it may raise the question of constitutionality.

What do you recommend?

Thanks -

Marsha

p/c to Marsha —

Told her it shouldn't be a problem



State of Wisconsin
2003 - 2004 LEGISLATURE

LRB-4094/2-03
MGD&CMH:jld:rs (3)

2003 BILL

Thurs

Regen

1 AN ACT *to renumber* 46.055; *to renumber and amend* 980.08 (4), 980.08 (5)
2 and 980.08 (6m); *to amend* 20.435 (2) (bj), 46.03 (1), 46.055 (title), 46.058 (2m),
3 46.10 (2), 51.42 (3) (aw) 1. d., 980.01 (7), 980.065 (1m), 980.08 (3), 980.09 (1) (c)
4 and 980.09 (2) (c); and *to create* 46.055 (2), 980.01 (1m), 980.08 (4) (b) 2. to 6.,
5 (d) and (e), 980.08 (5) (a) 5. and 6. and (b) and (6), 980.08 (6m) (b) 2. and 980.085
6 of the statutes; **relating to:** standard for commitment and supervised release
7 of sexually violent persons.

Analysis by the Legislative Reference Bureau

Under current law, a person who commits a sexually violent offense may be committed to the Department of Health and Family Services (DHFS) after serving a sentence or disposition for the offense if a court finds that the person is a sexually violent person. Current law defines a "sexually violent person" as a person: 1) who has been convicted of, or adjudicated delinquent for, a sexually violent offense or who has been found not guilty of a sexually violent offense by reason of mental disease, defect, or illness; and 2) who is dangerous because he or she suffers from a mental disorder that makes it substantially probable that he or she will engage in acts of sexual violence.

A person committed to DHFS as a sexually violent person is initially placed in institutional care. After 18 months, a sexually violent person may petition the court

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for supervised release, which allows the person to reside in the community subject to the conditions set by the court and to the rules of DHFS. If a person petitions the court for supervised release, the court must grant the petition unless the state proves that it is still substantially probable that the person will engage in future acts of sexual violence if institutionalized care is not continued.

If a court determines that supervised release is appropriate, DHFS must make its best effort to place the person in the county in which the person lived at the time of the sexually violent offense. DHFS and the county in which the person is to be placed must then prepare a plan for treating and monitoring the person upon his or her release. Current law specifies what the plan must contain (such as what services the person will receive in the community). In addition, current law requires DHFS, when developing the supervised release plan, to consider the proximity of the person's proposed residence to the homes of certain other sex offenders. Then, within 60 days after the court's determination that supervised release is appropriate, DHFS and the county in which the person is to be placed must submit the supervised release plan to the court for its approval. (This two-part hearing process, in which the court determines whether supervised release is appropriate before reviewing the supervised release plan, is sometimes referred to as a bifurcated hearing.)

This bill makes a number of changes relating to the commitment, release, and placement of sexually violent persons. First, the bill changes the second part of the definition of "sexually violent person." As a result of the change, a person who has committed a sexually violent offense may be committed to DHFS if the state merely shows that the person is dangerous because he or she suffers from a mental disorder that makes it more likely than not (as opposed to substantially probable) that he or she will engage in acts of sexual violence.

Second, the bill substantially modifies the existing bifurcated hearing process. Under the bill, the court considers whether the person may be appropriate for supervised release as a first step, but only with respect to certain issues. Specifically, the court must assess: 1) whether it is still likely that the person will engage in acts of sexual violence if the person is not continued in institutional care; 2) whether the person has demonstrated significant or satisfactory progress in his or her treatment or the person has refused treatment; 3) whether there is appropriate treatment that is reasonably available in the community; 4) whether the person has agreed to comply with conditions, rules, and requirements for supervised release and whether the person is likely to violate such conditions, rules, or requirements; 5) whether a major discipline report was issued regarding the person during the six months immediately preceding the hearing; and 6) whether supervised release is in the best interest of the person. If the state proves by clear and convincing evidence that the person is not appropriate for supervised release under any of these criteria, the court must deny the petition.

If the court does not deny the petition at that stage of the process, it refers the case to DHFS for the preparation of a supervised release plan, which, under the bill, must identify where the person will live. If the county in which the person will be placed has a transitional facility for the placement of sexually violent persons, the plan must provide for the placement of the person in that facility. (See below for

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residential
Subdivisions

to read

additional discussion of the bill's requirements regarding the siting of such a facility.) If the person is to be placed in anywhere else, DHFS and the county must follow the procedure established under the bill regarding selecting the placement. Initially, DHFS and the county must consider the proximity of any proposed residence to certain types of facilities for children, including schools, day care providers, group homes, foster homes, and youth centers. In doing so, DHFS and the county must: 1) prepare a list and a map of such facilities, in consultation with affected municipalities; 2) submit the list and map, along with the address of the proposed residence, to the local common councils and village or town boards; and 3) consider any comments from the municipalities regarding the proposed placement before finalizing the supervised release plan. Then, when DHFS and the county submit the supervised release plan to the court (which they must do within 90 days after the court refers the case to DHFS), DHFS and the county must provide the map, the list, and any comments from affected municipalities to the court and to the chief elected official, the police chief, and the sheriff for the community in which the proposed placement is located.

After the court receives a plan for supervised release, it must hold a hearing to determine whether to approve the plan and whether to grant the petition for supervised release. The bill requires that the court notify the chief elected official, the police chief, and the sheriff for the community in which the proposed placement is located of the hearing at least five days beforehand. After reviewing the plan, the court must: 1) order DHFS and the county to modify the plan; 2) deny the petition for supervised release, but only if the state proves by clear and convincing evidence that the community would not be adequately protected under the plan; or 3) approve the plan and grant the petition.

Third, the bill requires any person who is on supervised release to actively participate in treatment as a condition of supervised release.

Fourth, the bill creates a committee composed of officials from the city of Milwaukee and Milwaukee County and individual residents of Milwaukee County to prepare recommendations regarding the location of a proposed transitional facility for persons who have been committed to the custody of DHFS as sexually violent persons. The bill specifies the factors that the committee must consider in making its recommendation and specifies that the location must be suitable for the development of a facility that can house the number of people that DHFS expects to be on supervised release in Milwaukee County.

Fifth, if DHFS establishes a transitional facility of the type described in the preceding paragraph, it must move any sexually violent person who is on supervised release in the county in which the facility is located into the facility if it has a vacancy there for that person.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

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1 **SECTION 1.** 20.435 (2) (bj) of the statutes, as affected by 2003 Wisconsin Act 33,
2 is amended to read:

3 20.435 (2) (bj) *Competency examinations and conditional and supervised*
4 *release services.* Biennially, the amounts in the schedule for outpatient competency
5 examinations and for payment by the department of costs for treatment and services
6 for persons released under s. 980.06 (2) (c), 1997 stats., s. 980.08 (5), 2001 stats., or
7 s. 971.17 (3) (d) or (4) (e) or 980.08 ~~(5)~~ (6) (c) 3., for which the department has
8 contracted with county departments under s. 51.42 (3) (aw) 1. d., with other public
9 agencies, or with private agencies to provide the treatment and services.

10 **SECTION 2.** 46.03 (1) of the statutes is amended to read:

11 46.03 (1) INSTITUTIONS GOVERNED. Maintain and govern the Mendota and the
12 Winnebago mental health institutes; the secure mental health facility established
13 under s. 46.055 (1); and the centers for the developmentally disabled.

14 **SECTION 3.** 46.055 (title) of the statutes is amended to read:

15 **46.055 (title) ~~Secure mental health facility~~ Facilities for sexually**
16 **violent persons.**

17 **SECTION 4.** 46.055 of the statutes is renumbered 46.055 (1).

18 **SECTION 5.** 46.055 (2) of the statutes is created to read:

19 46.055 (2) The department shall submit a report each February 1 to the chief
20 clerk of each house of the legislature, for distribution to the appropriate standing
21 committees under s. 13.172 (3), regarding the effectiveness of its efforts to find and
22 maintain appropriate placements for persons on supervised release under s. 980.06,
23 1997 stats., or s. 980.08 and its anticipated need for finding additional placements
24 in the 5 years following the date of the report.

25 **SECTION 6.** 46.058 (2m) of the statutes is amended to read:

BILL

1 46.058 (2m) The superintendents of the secure mental health facility
2 established under s. 46.055 (1), the Wisconsin resource center established under s.
3 46.056 and any secure mental health unit or facility provided by the department of
4 corrections under s. 980.065 (2) shall adopt proper means to prevent escapes of
5 persons detained or committed to the facility, center or unit under ch. 980 and may
6 adopt proper means to pursue and capture persons detained or committed to the
7 facility, center or unit under ch. 980 who have escaped. In adopting means under this
8 subsection to prevent escape and pursue and capture persons who have escaped, a
9 superintendent may delegate to designated staff members of the facility, center or
10 unit the power to use necessary and appropriate force, as defined by the department
11 by rule, to prevent escapes and capture escaped persons.

12 **SECTION 7.** 46.10 (2) of the statutes is amended to read:

13 46.10 (2) Except as provided in subs. (2m) and (14) (b) and (c), any person,
14 including but not limited to a person admitted, committed or placed under s. 975.01,
15 1977 stats., s. 975.02, 1977 stats., and s. 975.17, 1977 stats., and ss. 51.10, 51.13,
16 51.15, 51.20, 51.35 (3), 51.37 (5), 51.45 (10), (11), (12) and (13), 55.05, 55.06, 971.14
17 (2) and (5), 971.17 (1), 975.06 and 980.06, receiving care, maintenance, services and
18 supplies provided by any institution in this state including University of Wisconsin
19 Hospitals and Clinics, in which the state is chargeable with all or part of the person's
20 care, maintenance, services and supplies, any person receiving care and services
21 from a county department established under s. 51.42 or 51.437 or from a facility
22 established under s. 49.73, and any person receiving treatment and services from a
23 public or private agency under s. 980.06 (2) (c), 1997 stats., or s. 971.17 (3) (d) or (4)
24 (e) or 980.08 (5) (6m) (a) and the person's property and estate, including the
25 homestead, and the spouse of the person, and the spouse's property and estate,

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

15 **SECTION 8.** 51.42 (3) (aw) 1. d. of the statutes is amended to read:

16 51.42 (3) (aw) 1. d. Provide treatment and services that are specified in a
17 conditional release plan approved by a court for a person who is a county resident and
18 is conditionally released under s. 971.17 (3) or (4) or that are specified in a supervised
19 release plan approved by a court under s. 980.06 (2) (c), 1997 stats., or s. 980.08 (5),
20 2001 stats., or s. 980.08 (6) (c) 3. If the county department provides treatment and
21 services under this subdivision, the department of health and family services shall,
22 from the appropriation under s. 20.435 (2) (bj), pay the county department for the
23 costs of the treatment and services.

24 **SECTION 9.** 980.01 (1m) of the statutes is created to read:

25 980.01 (1m) "Likely" means more likely than not.

BILL

1 **SECTION 10.** 980.01 (7) of the statutes is amended to read:

2 980.01 (7) “Sexually violent person” means a person who has been convicted
3 of a sexually violent offense, has been adjudicated delinquent for a sexually violent
4 offense, or has been found not guilty of or not responsible for a sexually violent
5 offense by reason of insanity or mental disease, defect, or illness, and who is
6 dangerous because he or she suffers from a mental disorder that makes it
7 ~~substantially probable~~ likely that the person will engage in acts of sexual violence.

8 **SECTION 11.** 980.065 (1m) of the statutes is amended to read:

9 980.065 (1m) The department shall place a person committed under s. 980.06
10 at the secure mental health facility established under s. 46.055 (1), the Wisconsin
11 resource center established under s. 46.056 or a secure mental health unit or facility
12 provided by the department of corrections under sub. (2).

13 **SECTION 12.** 980.08 (3) of the statutes is amended to read:

14 980.08 (3) Within 20 days after receipt of the petition, the court shall appoint
15 one or more examiners having the specialized knowledge determined by the court to
16 be appropriate, who shall examine the person and furnish a written report of the
17 examination to the court within 30 days after appointment. The examiners shall
18 have reasonable access to the person for purposes of examination and to the person’s
19 past and present treatment records, as defined in s. 51.30 (1) (b), and patient health
20 care records, as provided under s. 146.82 (2) (c). If any such examiner believes that
21 the person is appropriate for supervised release under the ~~criterion~~ criteria specified
22 in sub. (4) (b), the examiner shall report on the type of treatment and services that
23 the person may need while in the community on supervised release. The county shall
24 pay the costs of an examiner appointed under this subsection as provided under s.
25 51.20 (18) (a).

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1 **SECTION 13.** 980.08 (4) of the statutes is renumbered 980.08 (4) (a) and
2 amended to read:

3 980.08 (4) (a) The court, without a jury, shall hear ~~the petition~~ proceed under
4 par. (b) within 30 days after the report of the court-appointed examiner is filed with
5 the court, unless the petitioner waives this time limit. Expenses of proceedings
6 under this subsection shall be paid as provided under s. 51.20 (18) (b), (c), and (d).

7 **(b)** The court shall ~~grant~~ deny the petition ~~unless if~~ if the state proves any of the
8 following by clear and convincing evidence ~~that the person is still a sexually violent~~
9 ~~person and that:~~

10 1. That it is still ^{plain} ~~substantially probable~~ likely that the person will engage in acts
11 of sexual violence if the person is not continued in institutional care.

12 **(c)** In making a decision under ~~this subsection~~ par. (b), the court may consider,
13 without limitation because of enumeration, the nature and circumstances of the
14 behavior that was the basis of the allegation in the petition under s. 980.02 (2) (a),
15 the person's mental history and present mental condition, where the person ~~will~~
16 might live, how the person will support himself or herself, and what arrangements
17 are available to ensure that the person has access to and will participate in necessary
18 treatment, including pharmacological treatment using an antiandrogen or the
19 chemical equivalent of an antiandrogen if the person is a serious child sex offender.

20 **(6g)** A decision under ~~this subsection~~ sub. (4) (b) or (6) (c) on a petition filed by
21 a person who is a serious child sex offender may not be made based on the fact that
22 the person is a proper subject for pharmacological treatment using an antiandrogen
23 or the chemical equivalent of an antiandrogen or on the fact that the person is willing
24 to participate in pharmacological treatment using an antiandrogen or the chemical
25 equivalent of an antiandrogen.

BILL

1 **SECTION 14.** 980.08 (4) (b) 2. to 6., (d) and (e) of the statutes are created to read:

2 980.08 (4) (b) 2. That the person has not demonstrated significant or
3 satisfactory progress in his or her treatment or the person has refused treatment.

4 3. That there is no treatment reasonably available in the community that
5 meets all of the following requirements:

6 a. The treatment will meet the person's ongoing treatment needs.

7 b. The treatment will be provided by a department-approved provider.

8 c. The treatment provider has presented a specific course of treatment to the
9 department, has agreed to provide the treatment, will report progress to the
10 department on a regular basis, and will report violations immediately to the
11 department, consistent with the treatment and supervision needs of the person.

12 4. That the person has not agreed to comply with the conditions of, or
13 department rules regarding, supervised release or the requirements of the
14 treatment provider, or the person is likely to violate such conditions, rules, or
15 requirements.

16 5. That a major discipline report was issued regarding the person during the
17 6 months immediately preceding the hearing.

18 6. That supervised release is not in the best interest of the person.

19 (d) The court may defer hearing evidence or making a finding regarding
20 whether the state has met its burden under par. (b) 1., 3., or 6. until it conducts a
21 hearing under sub. (6) (b).

22 (e) If the court does not deny the petition under par. (b), the court shall notify
23 the department and proceed under sub. (6).

24 **SECTION 15.** 980.08 (5) of the statutes is renumbered 980.08 (5) (a) and
25 amended to read:

BILL

1 980.08 (5) (a) ~~If the court finds that the person is appropriate for supervised~~
2 ~~release~~ does not deny the petition under sub. (4) (b), ~~the court shall notify the~~
3 ~~department. The department shall make its best effort to arrange for placement of~~
4 ~~the person in a residential facility or dwelling that is in the person's county of~~
5 ~~residence, as determined by the department under s. 980.105. The department and,~~
6 ~~except as provided in par. (c), the county department under s. 51.42 in the person's~~
7 ~~county of residence of the person shall~~ make its best effort to prepare a supervised
8 release plan that identifies for the person that does all of the following:

9 1. Identifies the treatment and services, if any, that the person will receive in
10 the community. ~~The plan shall address~~

11 2. Addresses the person's need, if any, for supervision, counseling, medication,
12 community support services, residential services, vocational services, and alcohol or
13 other drug abuse treatment. ~~In developing a plan for where the person may reside~~
14 ~~while on supervised release, the department shall consider the proximity of any~~
15 ~~potential placement to the residence of other persons on supervised release and to~~
16 ~~the residence of persons who are in the custody of the department of corrections and~~
17 ~~regarding whom a sex offender notification bulletin has been issued to law~~
18 ~~enforcement agencies under s. 301.46 (2m) (a) or (am). If the person is a serious child~~
19 ~~sex offender, the plan shall address~~

20 3. Addresses the person's need for pharmacological treatment using an
21 antiandrogen or the chemical equivalent of an antiandrogen. ~~The department may~~
22 ~~contract with a county department, under s. 51.42 (3) (aw) 1. d., with another public~~
23 ~~agency or with a private agency to provide the treatment and services identified in~~
24 ~~the plan. The plan shall specify if the person is a serious child sex offender.~~

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1 4. Specifies who will be responsible for providing the treatment and services
2 identified in the plan. ~~The plan shall be presented to the court for its approval within~~
3 ~~60 days after the court finding that the person is appropriate for supervised release,~~
4 ~~unless the department, county department and person to be released request~~
5 ~~additional time to develop the plan.~~

6 (c) The department shall make its best effort to arrange for placement of the
7 person in a residential facility or dwelling that is in the person's county of residence.
8 If the county department of the person's county of residence declines to prepare a
9 plan, the department may arrange for another county to prepare the plan if that
10 county agrees to prepare the plan and if the person will be living in that county. If
11 the department is unable to arrange for another county to prepare a plan, the court
12 shall designate a county department to prepare the plan, and order the county
13 department to prepare the plan ~~and place the person on supervised release in that~~
14 ~~county~~, except that the court may not so designate the county department in any
15 county where there is a facility in which persons committed to institutional care
16 under this chapter are placed unless that county is also the person's county of
17 residence.

18 **SECTION 16.** 980.08 (5) (a) 5. and 6. and (b) and (6) of the statutes are created
19 to read:

20 980.08 (5) (a) 5. Identifies where the person shall live.

21 6. Includes a written agreement from the person providing the housing
22 described in subd. 5. to accept the person who will reside there, to provide the level
23 of security required by the court, and to immediately report to the department if the
24 person leaves the housing without authorization. This subdivision does not apply
25 to a person to whom s. 980.085 applies.

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1 (b) Before submitting a supervised release plan to the court under sub. (6) (a)
2 for a person other than one to whom s. 980.085 applies, the department and county
3 department shall do all of the following in the order specified:

4 1. Identify a proposed placement. In identifying any proposed placement, the
5 department and the county department shall consider the proximity of the
6 placement to all of the following:

7 a. The residence of other persons on supervised release.

8 b. The residence of persons who are in the custody of the department of
9 corrections and regarding whom a sex offender notification bulletin has been issued
10 to law enforcement agencies under s. 301.46 (2m) (a) or (am).

11 c. Any facility for children described in subd. 2. of which the department or the
12 county department is aware.

13 → *d. Any residential subdivision.*
14 2. Prepare a list and a map of all public or private schools, group homes, as
15 defined in s. 48.02 (7), residential care centers for children and youth, as defined in
16 s. 48.02 (15d), shelter care facilities, as defined in s. 48.02 (17), foster homes, as
17 defined in s. 48.02 (6), treatment foster homes, as defined in s. 48.02 (17q), day care
18 centers licensed under s. 48.65, day care programs established under s. 120.13 (14),
19 day care providers certified under s. 48.651, *and* youth centers, as defined in s. 961.01
20 (22), *and residential subdivisions* that are located within one mile of any proposed residence. The department and
21 the county department shall work with the municipality in which the residence is
22 located and each municipality within one mile of the residence in preparing the list
23 and the map.

24 3. Submit the address of the proposed placement, the list, and the map to the
25 common council or the village or town board for the municipality in which the
residence is located and each municipality within one mile of the residence. Each

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1 such common council or village or town board shall review the list and map and may
 2 provide the department and the county department comments regarding the risks
 3 that the use of the proposed placement might entail for the community based on its
 4 proximity to any facility included in the list. *for children described in subd. 2.*

5 4. Consider any comments that it receives under subd. 3. *any residential subdivision or*

6 (6) (a) The department and the county department shall present the plan for
 7 supervised release prepared under sub. (5) and, unless s. 980.085 (1) applies, the list
 8 and map of facilities for children *and residential subdivisions* prepared under sub. (5) (b) 2. and the comments
 9 submitted under sub. (5) (b) 3. to the court no less than 90 days after the notification
 10 under sub. (4) (e), unless the department, county department, and person to be
 11 released request additional time to develop the plan. When the department and
 12 county department submit the plan to the court, the department and county
 13 department shall notify the individuals identified under par. (b) 1. to 3. of the
 14 residence identified in the plan. Unless s. 980.085 (1) applies, the department and
 15 the county department shall also provide those individuals copies of the list and map
 16 of facilities for children compiled under sub. (5) (b) 2. and the comments submitted
 17 under sub. (5) (b) 3. If any of those individuals receiving the list notifies the
 18 department in writing of a facility that the department and county department are
 19 required to include on the list, but that is not on the list, the department shall notify
 20 the court of the additional facility before the hearing under par. (b).

21 (b) After receiving the plan, the court shall hold a hearing regarding the plan.
 22 The court shall notify all of the following of the hearing at least 5 days before the
 23 hearing:

24 1. The sheriff for the county in which the residence identified under sub. (5) (a)
 25 5. is located. ✓

or residential subdivision

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1 2. The police chief for the municipality in which the residence identified under
2 sub. (5) (a) 5. is located.

3 3. The chief elected official, as defined in s. 229.821 (3), of the municipality in
4 which the residence identified under sub. (5) (a) 5. is located.

5 (c) After conducting the hearing, the court shall do one of the following:

6 1. Order the department and county department to modify the plan.

7 2. Deny the petition, but only if the state proves, by clear and convincing
8 evidence, that the plan does not provide sufficient security to protect the community
9 or that sub. (4) (b) 1., 3., or 6. applies.

10 3. Subject to s. 980.085, approve the supervised release plan and grant the
11 petition.

12 **SECTION 17.** 980.08 (6m) of the statutes is renumbered 980.08 (6m) (a) and
13 amended to read:

14 980.08 (6m) (a) An order for supervised release places the person in the custody
15 and control of the department. The department shall arrange for control, care and
16 treatment of the person in the least restrictive manner consistent with the
17 requirements of the person and, except as provided in s. 980.085 (2), in accordance
18 with the plan for supervised release approved by the court under sub. (5). (6) (c) 3.
19 The department may contract with a county department, under s. 51.42 (3) (aw) 1.
20 d., with another public agency, or with a private agency to provide the treatment and
21 services identified in the plan. ✓

22 (b) 1. A person on supervised release is subject to the conditions set by the court
23 and to, the rules of the department, and the conditions specified in subd. 2. and s.
24 980.085 (2).

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1 (c) Before a person is placed on supervised release by the court under this
2 section, the court shall so notify the municipal police department and county sheriff
3 for the municipality and county in which the person will be residing. The notification
4 requirement under this subsection does not apply if a municipal police department
5 or county sheriff submits to the court a written statement waiving the right to be
6 notified.

7 (d) If the department alleges that a released person has violated any condition
8 or rule, or that the safety of others requires that supervised release be revoked, he
9 or she may be taken into custody under the rules of the department. The department
10 shall submit a statement showing probable cause of the detention and a petition to
11 revoke the order for supervised release to the committing court and the regional
12 office of the state public defender responsible for handling cases in the county where
13 the committing court is located within 72 hours after the detention, excluding
14 Saturdays, Sundays and legal holidays. The court shall hear the petition within 30
15 days, unless the hearing or time deadline is waived by the detained person. Pending
16 the revocation hearing, the department may detain the person in a jail or in a
17 hospital, center or facility specified by s. 51.15 (2). The state has the burden of
18 proving by clear and convincing evidence that any rule or condition of release has
19 been violated, or that the safety of others requires that supervised release be
20 revoked. If the court determines after hearing that any rule or condition of release
21 has been violated, or that the safety of others requires that supervised release be
22 revoked, it may revoke the order for supervised release and order that the released
23 person be placed in an appropriate institution until the person is discharged from the
24 commitment under s. 980.09 or until again placed on supervised release under this
25 section.

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1 **SECTION 18.** 980.08 (6m) (b) 2. of the statutes is created to read:

2 980.08 **(6m)** (b) 2. A person on supervised release shall actively participate in
3 treatment as a condition of supervised release.

4 **SECTION 19.** 980.085 of the statutes is created to read:

5 **980.085 Placements in transitional facilities.** (1) If a court, on or after the
6 effective date of this subsection [revisor inserts date], places a person on
7 supervised release in a county in which the department has a vacancy in a
8 transitional facility for the placement of such persons, including the facility
9 enumerated in 2001 Wisconsin Act 16, section 9107 (1) (d) 1., the court may not
10 approve a supervised release plan for the person unless the plan requires that the
11 person reside in the facility.

12 (2) If, on or after the effective date of this subsection [revisor inserts date],
13 a person is on supervised release in a county in which the department has a vacancy
14 in a transitional facility for the placement of such persons, including the facility
15 enumerated in 2001 Wisconsin Act 16, section 9107 (1) (d) 1., the department, after
16 allowing the person a reasonable amount of time to move there, shall require the
17 person to reside in the facility as a condition of supervised release, notwithstanding
18 what the person's supervised release plan provides under s. 980.08 (5) (a) 5.

19 **SECTION 20.** 980.09 (1) (c) of the statutes is amended to read:

20 980.09 (1) (c) If the court is satisfied that the state has not met its burden of
21 proof under par. (b), the petitioner shall be discharged from the custody or
22 supervision of the department. If the court is satisfied that the state has met its
23 burden of proof under par. (b), the court may proceed to determine, using the ~~criteria~~
24 criteria specified in s. 980.08 (4) (b), whether to modify the petitioner's existing
25 commitment order by authorizing supervised release.

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1 **SECTION 21.** 980.09 (2) (c) of the statutes is amended to read:

2 980.09 (2) (c) If the court is satisfied that the state has not met its burden of
3 proof under par. (b), the person shall be discharged from the custody or supervision
4 of the department. If the court is satisfied that the state has met its burden of proof
5 under par. (b), the court may proceed to determine, using the ~~riterion~~ criteria
6 specified in s. 980.08 (4) (b), whether to modify the person's existing commitment
7 order by authorizing supervised release.

8 **SECTION 22. Nonstatutory provisions.**

9 (1) (a) There is created a committee to assist the state in determining the
10 location for the facility enumerated in 2001 Wisconsin Act 16, section 9107 (1) (d) 1.,
11 that will be a transitional facility for the housing of persons committed to the custody
12 of the department of health and family services under chapter 980 of the statutes.

13 (b) The departments of corrections and health and family services shall provide
14 necessary administrative support services to the committee.

15 (c) The department of administration shall reimburse members of the
16 committee for their actual and necessary expenses incurred in carrying out their
17 functions, from the appropriation under section 20.505 (4) (ba) of the statutes, within
18 the budget authorized under section 16.40 (14) of the statutes.

19 (d) The members of the committee shall be:

20 1. The chairperson of the Milwaukee County board of supervisors or his or her
21 designee.

22 2. The chief of police of the city of Milwaukee or his or her designee.

23 3. The county executive of Milwaukee County or his or her designee.

24 4. The district attorney of Milwaukee County or his or her designee.

25 5. The mayor of the city of Milwaukee or his or her designee.

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1 6. The sheriff of Milwaukee County or his or her designee.

2 7. A representative of the Milwaukee County Law Enforcement Executives
3 Association who is not from the city of Milwaukee.

4 8. A representative of the intergovernmental cooperation council who is not
5 from the city of Milwaukee.

6 9. Three other individuals who are residents of Milwaukee County, 2 of whom
7 do not reside in the city of Milwaukee, to be appointed by the governor.

8 10. Two members who reside in Milwaukee County, at least one of whom resides
9 outside of the city of Milwaukee, to be appointed by the senate majority leader.

10 11. Two members who reside in Milwaukee County, at least one of whom resides
11 outside of the city of Milwaukee, to be appointed by the speaker of the assembly.

12 (e) The committee shall elect the chair of the committee from the 3 individuals
13 whom the governor appoints to the committee.

14 (f) No later than June 1, 2004, the department of health and family services
15 shall provide the committee an estimate of the maximum number of persons likely
16 to be placed in Milwaukee County on supervised release under section 980.06, 1997
17 stats., or section 980.08 of the statutes at any one time between that date and
18 February 1, 2009.

19 (g) The committee shall hold public hearings in Milwaukee County regarding
20 the selection of a location for the facility.

21 (h) Subject to paragraph (i) no later than December 31, 2004, the committee
22 shall submit a report to the departments of corrections and health and family
23 services recommending at least 3 specific locations for the facility. Each of the
24 locations shall be suitable for the development of a facility that can house at least the
25 number of persons set forth in the estimate submitted to the committee under

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1 paragraph (f). The committee shall consider all of the following factors when making
2 its recommendations:

- 3 1. Community safety.
- 4 2. Proximity to sensitive locations.
- 5 3. Ability to make the facility secure.
- 6 4. Accessibility to treatment for the persons living in the facility.
- 7 5. Payments that may be made in lieu of property taxes.
- 8 6. Availability of tax incentives to a community to locate the facility within its
9 jurisdiction.
- 10 7. Proximity to any residence or facility under section 980.08 (5) (b) 1. a. to c.
11 of the statutes, as created by this act.

12 (i) When acting under paragraph (h), the committee may not recommend any
13 location in a municipality that is located in a county with a population that exceeds
14 500,000 if the total number of persons incarcerated at any facility located in that
15 municipality exceeds 1 percent of the municipality's population.

SECTION 23. Initial applicability.

17 (1) DEFINITION OF SEXUALLY VIOLENT PERSON. The treatment of section 980.01
18 (1m) and (7) of the statutes first applies to hearings, trials, and other proceedings
19 that are commenced on the effective date of this subsection.

20 (2) PETITIONS FOR SUPERVISED RELEASE. The treatment of sections 980.09 (1) (c)
21 and (2) (c) and 980.085 (1) of the statutes, the renumbering and amendment of
22 section 980.08 (4) and (5) of the statutes, and the creation of section 980.08 (4) (b) 2.
23 to 6., (d), and (e) and (5) (a) 5. and 6. and (b) of the statutes first apply to proceedings
24 regarding petitions for supervised release that are commenced on the effective date
25 of this subsection.

Northrop, Lori

From: Dake, Marsha
Sent: Wednesday, February 18, 2004 4:01 PM
To: LRB.Legal
Subject: Draft review: LRB 03-4094/3 Topic: Supervised release of sex predators

It has been requested by <Dake, Marsha> that the following draft be jacketed for the ASSEMBLY:

Draft review: LRB 03-4094/3 Topic: Supervised release of sex predators

LRB-4094/3

MGB + CMH

CCC

to

2003 AB-861

#. Page 19, line 3: after "(i)" insert
a comma.

(END)

JLD



State of Wisconsin
2003-2004 LEGISLATURE

CORRECTIONS IN:

2003 ASSEMBLY BILL 861

Prepared by the Legislative Reference Bureau
(February 20, 2004)

1. Page 19, line 3: after "(i)" insert a comma.

(END)