

2003 SENATE BILL 441

AN ACT *to renumber and amend* 980.08 (4); *to amend* 980.01 (7), 980.02 (2) (c), 980.08 (3), 980.09 (1) (c) and 980.09 (2) (c); and *to create* 980.01 (1m) and 980.08 (4) (b) 2. of the statutes; **relating to:** the definition of sexually violent person and criteria for supervised release and creating a committee to make recommendations regarding the location of a facility for the treatment of sexual predators.

Analysis by the Legislative Reference Bureau

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

- 1 **SECTION 1.** 980.01 (1m) of the statutes is created to read:
- 2 980.01 **(1m)** “Likely” means more likely than not.
- 3 **SECTION 2.** 980.01 (7) of the statutes is amended to read:
- 4 980.01 **(7)** “Sexually violent person” means a person who has been convicted
- 5 of a sexually violent offense, has been adjudicated delinquent for a sexually violent

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1 offense, or has been found not guilty of or not responsible for a sexually violent
2 offense by reason of insanity or mental disease, defect, or illness, and who is
3 dangerous because he or she suffers from a mental disorder that makes it
4 ~~substantially probable~~ likely that the person will engage in acts of sexual violence.

5 **SECTION 2m.** 980.02 (2) (c) of the statutes is amended to read:

6 980.02 (2) (c) The person is dangerous to others because the person's mental
7 disorder ~~creates a substantial probability~~ makes it likely that he or she will engage
8 in acts of sexual violence.

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

10 980.08 (3) Within 20 days after receipt of the petition, the court shall appoint
11 one or more examiners having the specialized knowledge determined by the court to
12 be appropriate, who shall examine the person and furnish a written report of the
13 examination to the court within 30 days after appointment. The examiners shall
14 have reasonable access to the person for purposes of examination and to the person's
15 past and present treatment records, as defined in s. 51.30 (1) (b), and patient health
16 care records, as provided under s. 146.82 (2) (c). If any such examiner believes that
17 the person is appropriate for supervised release under the ~~criterion~~ criteria specified
18 in sub. (4) (b), the examiner shall report on the type of treatment and services that
19 the person may need while in the community on supervised release. The county shall
20 pay the costs of an examiner appointed under this subsection as provided under s.
21 51.20 (18) (a).

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

24 980.08 (4) (a) The court, without a jury, shall hear the petition within 30 days
25 after the report of the court-appointed examiner is filed with the court, unless the

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1 petitioner waives this time limit. Expenses of proceedings under this subsection
2 shall be paid as provided under s. 51.20 (18) (b), (c), and (d).

3 (b) The court shall grant the petition unless the state proves by clear and
4 convincing evidence ~~that the person is still a sexually violent person and that~~ one of
5 the following:

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

8 (c) In making a decision under ~~this subsection~~ par. (b), the court may consider,
9 without limitation because of enumeration, the nature and circumstances of the
10 behavior that was the basis of the allegation in the petition under s. 980.02 (2) (a),
11 the person's mental history and present mental condition, where the person will live,
12 how the person will support himself or herself, and what arrangements are available
13 to ensure that the person has access to and will participate in necessary treatment,
14 including pharmacological treatment using an antiandrogen or the chemical
15 equivalent of an antiandrogen if the person is a serious child sex offender. A decision
16 under ~~this subsection~~ par. (b) on a petition filed by a person who is a serious child sex
17 offender may not be made based on the fact that the person is a proper subject for
18 pharmacological treatment using an antiandrogen or the chemical equivalent of an
19 antiandrogen or on the fact that the person is willing to participate in
20 pharmacological treatment using an antiandrogen or the chemical equivalent of an
21 antiandrogen.

22 **SECTION 5.** 980.08 (4) (b) 2. of the statutes is created to read:

23 980.08 (4) (b) 2. That the person has not demonstrated significant progress in
24 his or her treatment or the person has refused treatment.

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

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

7 **SECTION 7.** 980.09 (2) (c) of the statutes is amended to read:

8 980.09 (2) (c) If the court is satisfied that the state has not met its burden of
9 proof under par. (b), the person shall be discharged from the custody or supervision
10 of the department. If the court is satisfied that the state has met its burden of proof
11 under par. (b), the court may proceed to determine, using the ~~critereion~~ criteria
12 specified in s. 980.08 (4) (b), whether to modify the person's existing commitment
13 order by authorizing supervised release.

14 **SECTION 7m. Nonstatutory provisions.**

15 (1) In this section, "facility for children" means a public or private school, a
16 group home, as defined in section 48.02 (7) of the statutes, a residential care center
17 for children and youth, as defined in section 48.02 (15d) of the statutes, a shelter care
18 facility, as defined in section 48.02 (17) of the statutes, a foster home, as defined in
19 section 48.02 (6) of the statutes, a treatment foster home, as defined in section 48.02
20 (17q) of the statutes, a day care center licensed under section 48.65 of the statutes,
21 a day care program established under section 120.13 (14) of the statutes, a day care
22 provider certified under section 48.651 of the statutes, or a youth center, as defined
23 in section 961.01 (22) of the statutes.

24 (1m) (a) There is created a committee to assist the state in determining the
25 location for the facility enumerated in 2001 Wisconsin Act 16, section 9107 (1) (d) 1.,

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1 that will be a transitional facility for the housing of persons committed to the custody
2 of the department of health and family services under chapter 980 of the statutes.

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

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

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

10 1. The chairperson of the Milwaukee County board of supervisors or his or her
11 designee.

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

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

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

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

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

17 7. One representative of the Milwaukee County Law Enforcement Executives
18 Association who is not from the city of Milwaukee.

19 8. One representative of the Intergovernmental Cooperation Council who is not
20 from the city of Milwaukee.

21 9. Three persons, other than elected officials, who are residents of Milwaukee
22 County but two of whom may not be residents of the city of Milwaukee, to be
23 appointed by the governor.

24 10. Four persons, other than elected officials, who are residents of Milwaukee
25 County, to be appointed as follows:

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1 a. One by the speaker of the assembly and one by the majority leader of the
2 senate, appointed before the appointments in subdivision 10. b.

3 b. One by the minority leader of the assembly and one by the minority leader
4 of the senate. If the speaker of the assembly appointed a resident of the city of
5 Milwaukee, the minority leader of the assembly may not appoint a resident of the city
6 of Milwaukee. If the speaker of the assembly appointed a person who is not a resident
7 of the city of Milwaukee, the minority leader of the assembly may not appoint a
8 person who is not a resident of the city of Milwaukee. If the majority leader of the
9 senate appointed a resident of the city of Milwaukee, the minority leader of the
10 senate may not appoint a resident of the city of Milwaukee. If the majority leader
11 of the senate appointed a person who is not a resident of the city of Milwaukee, the
12 minority leader of the senate may not appoint a person who is not a resident of the
13 city of Milwaukee.

14 (e) The committee shall elect the chair of the committee from the individuals
15 appointed under paragraph (d) 9. and 10.

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

21 (f) The committee shall hold public hearings in Milwaukee County regarding
22 the selection of a location of the facility. The committee shall consider all of the
23 following factors when determining the criteria for the location of the facility or when
24 determining specific locations for the facility:

- 25 1. Community safety.

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- 1 2. Proximity to sensitive locations.
- 2 3. Ability to make the facility secure.
- 3 4. Accessibility to treatment for the persons living in the facility.
- 4 5. Payments that may be made in lieu of property taxes.
- 5 6. Availability of tax incentives to a community to locate the facility within its
- 6 jurisdiction.
- 7 7. Proximity of the placement to all of the following:
- 8 a. The residence of other persons on supervised release.
- 9 b. The residence of persons who are in the custody of the department of
- 10 corrections and regarding whom a sex offender notification bulletin has been issued
- 11 to law enforcement agencies under section 301.46 (2m) (a) or (am) of the statutes.
- 12 c. Any facility for children of which the committee is aware.
- 13 d. Any residential subdivision.
- 14 (g) No later than December 31, 2004, the committee shall submit a report to
- 15 the departments of corrections and health and family services recommending at
- 16 least 3 specific locations that the committee determines are appropriate for the
- 17 placement of the facility. Each of the locations shall be suitable for the development
- 18 of a facility that can house at least the number of persons set forth in the estimate
- 19 submitted to the committee under paragraph (em). When considering locations, the
- 20 committee shall make a reasonable effort to reach and to maximize consensus among
- 21 its members.

SECTION 8. Initial applicability.

- 23 (1) The treatment of section 980.01 (1m) and (7) of the statutes, the
- 24 renumbering and amendment of section 980.08 (4) of the statutes, and the creation

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SECTION 8

1 of section 980.08 (4) (b) 2. of the statutes first apply to hearings, trials, and
2 proceedings that are commenced on the effective date of this subsection.

3 (END)