

**SENATE BILL 441 (LRB -3351)**

An Act to renumber and amend 980.08 (4); to amend 980.01 (7), 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. (FE)

2004

02-09.	S.	Introduced by Senators <b>Darling, Brown, Lazich, Kanavas, Roessler, Stepp, Reynolds and Schultz</b> ; cosponsored by Representatives <b>Stone, Suder, Musser, Freese, Nischke, Kreibich, M. Lehman, Jeskewitz, Nass, Albers, Hines, Ladwig, Gielow, McCormick, Kestell, Owens, J. Fitzgerald, Seratti, Vukmir, Hundertmark and Townsend</b> .	
02-09.	S.	Read first time and referred to committee on Judiciary, Corrections and Privacy .....	607
03-01.	S.	Public hearing held.	
03-01.	S.	Fiscal estimate received.	
03-02.	S.	Executive action taken.	
03-03.	S.	Report introduction and adoption of Senate Amendment 1 recommended by committee on Judiciary, Corrections and Privacy, Ayes 5, Noes 0 ( <b>LRB a2393</b> ) .....	660
03-03.	S.	Report passage as amended recommended by committee on Judiciary, Corrections and Privacy, Ayes 5, Noes 0 .....	660
03-03.	S.	Available for scheduling.	
03-03.	S.	Placed on calendar 3-4-2004 by committee on Senate Organization.	
03-04.	S.	Senator Breske added as a coauthor .....	668
03-04.	S.	Senator Coggs added as a coauthor .....	668
03-04.	S.	Senator Carpenter added as a coauthor .....	668
03-04.	S.	Senator Lassa added as a coauthor .....	668
03-04.	S.	Senator Hansen added as a coauthor .....	668
03-04.	S.	Senator Moore added as a coauthor .....	669
03-04.	S.	Placed at the foot of the calendar of 3-4-2004 .....	670
03-04.	S.	Read a second time .....	673
03-04.	S.	Senate amendment 1 <b>adopted</b> .....	673
03-04.	S.	Senate amendment 2 offered by Senators Darling, Plale and Moore ( <b>LRB a2579</b> ) .....	673
03-04.	S.	Senate amendment 2 <b>adopted</b> .....	673
03-04.	S.	Ordered to a third reading .....	673
03-04.	S.	Rules suspended .....	673
03-04.	S.	Senator Jauch added as a coauthor .....	673
03-04.	S.	Senator Erpenbach added as a coauthor .....	673
03-04.	S.	Senator Robson added as a coauthor .....	673
03-04.	S.	Senator Zien added as a coauthor .....	673
03-04.	S.	Senator A. Lasee added as a coauthor .....	673
03-04.	S.	Read a third time and <b>passed</b> , Ayes 33, Noes 0 .....	673
03-04.	S.	Senator Panzer added as a coauthor .....	673
03-04.	S.	Ordered immediately messaged .....	674
03-08.	A.	Received from Senate .....	804
03-08.	A.	Read first time and referred to committee on Rules .....	805
03-11.	A.	Assembly substitute amendment 1 offered by Representatives Krug and Staskunas ( <b>LRB s0469</b> ).	
03-11.	A.	Representative Cullen added as a cosponsor.	
03-11.	A.	Rules suspended to withdraw from committee on Rules and take up.	
03-11.	A.	Read a second time.	
03-11.	A.	Point of order that Assembly substitute amendment 1 not germane well taken.	
03-11.	A.	Decision of the Chair appealed.	
03-11.	A.	Decision of the Chair upheld, Ayes 59, Noes 37.	
03-11.	A.	Representatives Taylor, Sinicki, Turner, Hebl and Molepske added as cosponsors.	
03-11.	A.	Ordered to a third reading.	
03-11.	A.	Rules suspended.	
03-11.	A.	Read a third time and <b>concurred in</b> , Ayes 96, Noes 0.	
03-11.	A.	Ordered immediately messaged.	
03-11.	S.	Received from Assembly concurred in.	

**2003  
ENROLLED BILL**

03en S B- 44/

**ADOPTED DOCUMENTS:**

Orig     Engr           SubAmdt       

03 -335/1/1

Amendments to above (if none, write "NONE"): SA1, SA2

Corrections - show date (if none, write "NONE"): none

Topic relate

3/12/04      [Signature]  
Date                      Enrolling Drafter

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**2003 SENATE BILL 441**

February 9, 2004 - Introduced by Senators DARLING, BROWN, LAZICH, KANAVAS, ROESSLER, STEPP, REYNOLDS and SCHULTZ, cosponsored by Representatives STONE, SUDER, MUSSER, FREESE, NISCHKE, KREIBICH, M. LEHMAN, JESKEWITZ, NASS, ALBERS, HINES, LADWIG, GIELOW, MCCORMICK, KESTELL, OWENS, J. FITZGERALD, SERATTI, VUKMIR, HUNDERTMARK and TOWNSEND. Referred to Committee on Judiciary, Corrections and Privacy.

1 **AN ACT to renumber and amend** 980.08 (4); **to amend** 980.01 (7), 980.08 (3),  
 2 980.09 (1) (c) and 980.09 (2) (c); and **to create** 980.01 (1m) and 980.08 (4) (b) 2.  
 3 of the statutes; **relating to:** the definition of sexually violent person and  
 4 criteria for supervised release.

1-4 SA2

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***Analysis by the Legislative Reference Bureau***

Under current law, a "sexually violent person" is 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.

This bill changes the second part of the definition for "sexually violent person" so that a sexually violent person is a person who is dangerous because he or she suffers from a mental disorder that makes it more likely than not that he or she will engage in acts of sexual violence. If a person is found to be more likely to engage in an act of sexual violence than not to engage in an act of sexual violence, then the person meets that part of the definition of "sexually violent person."

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 the person still is found to be a sexually violent person. 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 for supervised release. Supervised release places the person in the custody

**SENATE BILL 441**

of DHFS and subjects him or her 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 authorize supervised release 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.

This bill requires that, if a person petitions the court for supervised release, the court must authorize supervised release unless the state proves that it still is more likely than not that the person will engage in future acts of sexual violence if institutionalized care is not continued or that the person has not shown significant progress in, or has refused to participate in, treatment.

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:*

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

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

**SECTION 2.** 980.01 (7) of the statutes is amended to read:

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

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

980.08 (3) Within 20 days after receipt of the petition, the court shall appoint one or more examiners having the specialized knowledge determined by the court to be appropriate, who shall examine the person and furnish a written report of the examination to the court within 30 days after appointment. The examiners shall have reasonable access to the person for purposes of examination and to the person's

2-9 (SAI)

**SENATE BILL 441**

1 past and present treatment records, as defined in s. 51.30 (1) (b), and patient health  
2 care records, as provided under s. 146.82 (2) (c). If any such examiner believes that  
3 the person is appropriate for supervised release under the ~~critierion~~ criteria specified  
4 in sub. (4) (b), the examiner shall report on the type of treatment and services that  
5 the person may need while in the community on supervised release. The county shall  
6 pay the costs of an examiner appointed under this subsection as provided under s.  
7 51.20 (18) (a).

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

10 980.08 (4) (a) The court, without a jury, shall hear the petition within 30 days  
11 after the report of the court-appointed examiner is filed with the court, unless the  
12 petitioner waives this time limit. Expenses of proceedings under this subsection  
13 shall be paid as provided under s. 51.20 (18) (b), (c), and (d).

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

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

19 (c) In making a decision under ~~this subsection~~ par. (b), the court may consider,  
20 without limitation because of enumeration, the nature and circumstances of the  
21 behavior that was the basis of the allegation in the petition under s. 980.02 (2) (a),  
22 the person's mental history and present mental condition, where the person will live,  
23 how the person will support himself or herself, and what arrangements are available  
24 to ensure that the person has access to and will participate in necessary treatment,  
25 including pharmacological treatment using an antiandrogen or the chemical

**SENATE BILL 441**

1 equivalent of an antiandrogen if the person is a serious child sex offender. A decision  
2 under ~~this subsection~~ par. (b) on a petition filed by a person who is a serious child sex  
3 offender may not be made based on the fact that the person is a proper subject for  
4 pharmacological treatment using an antiandrogen or the chemical equivalent of an  
5 antiandrogen or on the fact that the person is willing to participate in  
6 pharmacological treatment using an antiandrogen or the chemical equivalent of an  
7 antiandrogen.

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

9 980.08 (4) (b) 2. That the person has not demonstrated significant progress in  
10 his or her treatment or the person has refused treatment.

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

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

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

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

25 **SECTION 8. Initial applicability.**

4-24 SAZ



**SENATE AMENDMENT 1,  
TO 2003 SENATE BILL 441**

March 3, 2004 - Offered by COMMITTEE ON JUDICIARY, CORRECTIONS AND PRIVACY.

1 At the locations indicated, amend the bill as follows:

2 **1.** Page 2, line 9: after that line insert:

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

4 980.02 (2) (c) The person is dangerous to others because the person's mental  
5 disorder ~~creates a substantial probability~~ makes it likely that he or she will engage  
6 in acts of sexual violence.  
7

(END)



**SENATE AMENDMENT 2,  
TO 2003 SENATE BILL 441**

March 4, 2004 - Offered by Senators DARLING, PLALE and MOORE.

1 At the locations indicated, amend the bill as follows:

2 **1.** Page 1, line 4: after "release" insert "and creating a committee to make  
3 recommendations regarding the location of a facility for the treatment of sexual  
4 predators".

5 **2.** Page 4, line 24: after that line insert:

6 **"SECTION 7m. Nonstatutory provisions.**

7 (1) In this section, "facility for children" means a public or private school, a  
8 group home, as defined in section 48.02 (7) of the statutes, a residential care center  
9 for children and youth, as defined in section 48.02 (15d) of the statutes, a shelter care  
10 facility, as defined in section 48.02 (17) of the statutes, a foster home, as defined in  
11 section 48.02 (6) of the statutes, a treatment foster home, as defined in section 48.02  
12 (17q) of the statutes, a day care center licensed under section 48.65 of the statutes,  
13 a day care program established under section 120.13 (14) of the statutes, a day care

4-24

4-24

1 provider certified under section 48.651 of the statutes, or a youth center, as defined  
2 in section 961.01 (22) of the statutes.

3 (1m) (a) There is created a committee to assist the state in determining the  
4 location for the facility enumerated in 2001 Wisconsin Act 16, section 9107 (1) (d) 1.,  
5 that will be a transitional facility for the housing of persons committed to the custody  
6 of the department of health and family services under chapter 980 of the statutes.

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

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

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

14 1. The chairperson of the Milwaukee County board of supervisors or his or her  
15 designee.

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

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

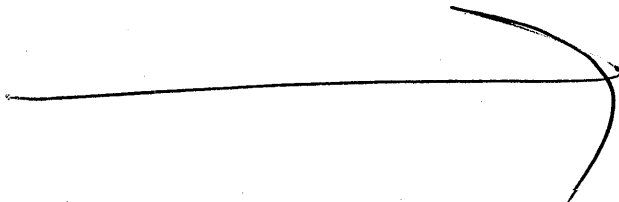
18 4. The district attorney of Milwaukee County or his or her designee.

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

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

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

23 8. One representative of the Intergovernmental Cooperation Council who is not  
24 from the city of Milwaukee.



cl-74

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

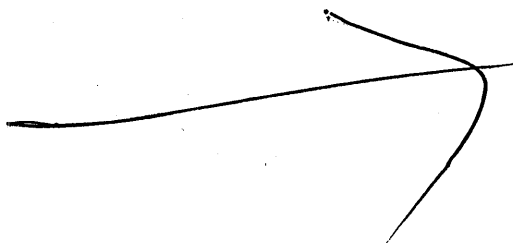
4           10. Four persons, other than elected officials, who are residents of Milwaukee  
5 County, to be appointed as follows:

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

8           b. One by the minority leader of the assembly and one by the minority leader  
9 of the senate. If the speaker of the assembly appointed a resident of the city of  
10 Milwaukee, the minority leader of the assembly may not appoint a resident of the city  
11 of Milwaukee. If the speaker of the assembly appointed a person who is not a resident  
12 of the city of Milwaukee, the minority leader of the assembly may not appoint a  
13 person who is not a resident of the city of Milwaukee. If the majority leader of the  
14 senate appointed a resident of the city of Milwaukee, the minority leader of the  
15 senate may not appoint a resident of the city of Milwaukee. If the majority leader  
16 of the senate appointed a person who is not a resident of the city of Milwaukee, the  
17 minority leader of the senate may not appoint a person who is not a resident of the  
18 city of Milwaukee.

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

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



4-24

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

- 5 1. Community safety.
- 6 2. Proximity to sensitive locations.
- 7 3. Ability to make the facility secure.
- 8 4. Accessibility to treatment for the persons living in the facility.
- 9 5. Payments that may be made in lieu of property taxes.
- 10 6. Availability of tax incentives to a community to locate the facility within its  
11 jurisdiction.
- 12 7. Proximity of the placement to all of the following:
  - 13 a. The residence of other persons on supervised release.
  - 14 b. The residence of persons who are in the custody of the department of  
15 corrections and regarding whom a sex offender notification bulletin has been issued  
16 to law enforcement agencies under section 301.46 (2m) (a) or (am) of the statutes.
  - 17 c. Any facility for children of which the committee is aware.
  - 18 d. Any residential subdivision.

19 (g) No later than December 31, 2004, the committee shall submit a report to  
20 the departments of corrections and health and family services recommending at  
21 least 3 specific locations that the committee determines are appropriate for the  
22 placement of the facility. Each of the locations shall be suitable for the development  
23 of a facility that can house at least the number of persons set forth in the estimate  
24 submitted to the committee under paragraph (em). When considering locations, the

cf-24

1 committee shall make a reasonable effort to reach and to maximize consensus among  
2 its members."

3

(END)