

2003 Senate Bill 441

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2003 WISCONSIN ACT 187

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.

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

980.02 (2) (c) The person is dangerous to others because the person’s mental disorder ~~creates a substantial probability~~ makes it likely that he or she 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 past and present treatment records, as defined in s. 51.30 (1) (b), and patient health care records, as provided under s. 146.82 (2) (c). If any such examiner believes that the person is appropriate for supervised release under the ~~criteria~~ criteria specified in sub. (4) (b), the examiner shall report on the type of treatment and services that the person may need while in the community on supervised release. The county shall pay the costs of an examiner appointed under this subsection as provided under s. 51.20 (18) (a).

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

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

* Section 991.11, WISCONSIN STATUTES 2001-02 : Effective date of acts. “Every act and every portion of an act enacted by the legislature over the governor’s partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated” by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

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

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

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

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

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

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

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

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

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

SECTION 7m. Nonstatutory provisions.

(1) In this section, "facility for children" means a public or private school, a group home, as defined in section 48.02 (7) of the statutes, a residential care center for

children and youth, as defined in section 48.02 (15d) of the statutes, a shelter care facility, as defined in section 48.02 (17) of the statutes, a foster home, as defined in section 48.02 (6) of the statutes, a treatment foster home, as defined in section 48.02 (17q) of the statutes, a day care center licensed under section 48.65 of the statutes, a day care program established under section 120.13 (14) of the statutes, a day care provider certified under section 48.651 of the statutes, or a youth center, as defined in section 961.01 (22) of the statutes.

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

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

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

(d) The members of the committee shall be:

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

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

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

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

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

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

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

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

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

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

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

b. One by the minority leader of the assembly and one by the minority leader of the senate. If the speaker of the assembly appointed a resident of the city of Milwaukee, the minority leader of the assembly may not appoint a resident of the city of Milwaukee. If the speaker of the assembly appointed a person who is not a resident of the city of Milwaukee, the minority leader of the assembly may not appoint a person who is not a resident of the city of Milwaukee. If the majority leader of the senate appointed a resident of the city of Milwaukee, the minority leader of the senate may not appoint a resident of the city of Milwaukee. If the majority leader of the senate appointed a person who is not a resident of the city of Milwaukee, the minority leader of the senate may not appoint a person who is not a resident of the city of Milwaukee.

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

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

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

1. Community safety.
2. Proximity to sensitive locations.
3. Ability to make the facility secure.

4. Accessibility to treatment for the persons living in the facility.

5. Payments that may be made in lieu of property taxes.

6. Availability of tax incentives to a community to locate the facility within its jurisdiction.

7. Proximity of the placement to all of the following:

a. The residence of other persons on supervised release.

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

c. Any facility for children of which the committee is aware.

d. Any residential subdivision.

(g) No later than December 31, 2004, the committee shall submit a report to the departments of corrections and health and family services recommending at least 3 specific locations that the committee determines are appropriate for the placement of the facility. Each of the locations shall be suitable for the development of a facility that can house at least the number of persons set forth in the estimate submitted to the committee under paragraph (em). When considering locations, the committee shall make a reasonable effort to reach and to maximize consensus among its members.

SECTION 8. Initial applicability.

(1) The treatment of section 980.01 (1m) and (7) of the statutes, the renumbering and amendment of section 980.08 (4) of the statutes, and the creation of section 980.08 (4) (b) 2. of the statutes first apply to hearings, trials, and proceedings that are commenced on the effective date of this subsection.