

## 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.

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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

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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.

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

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

11          980.08 (3) Within 20 days after receipt of the petition, the court shall appoint  
12 one or more examiners having the specialized knowledge determined by the court to  
13 be appropriate, who shall examine the person and furnish a written report of the  
14 examination to the court within 30 days after appointment. The examiners shall  
15 have reasonable access to the person for purposes of examination and to the person’s

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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 ~~criterion~~ 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

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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 ~~criterion~~  
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 ~~criterion~~ 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.**

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

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**(END)**