

2003 DRAFTING REQUEST

Bill

Received: **09/24/2003**

Received By: **mdsida**

Wanted: **As time permits**

Identical to LRB:

For: **Alberta Darling (608) 266-5830**

By/Representing: **Dave**

This file may be shown to any legislator: **NO**

Drafter: **chanaman**

May Contact:

Addl. Drafters: **mdsida**

Subject: **Mental Health - detent/commit
Criminal Law - sex offenses**

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Darling@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Criteria for supervised release for a sex predator

Instructions:

Change "substantially probable" to "likely"; require a person to make progress in treatment in order to be eligible for supervised release

Drafting History:

| <u>Vers.</u> | <u>Drafted</u> | <u>Reviewed</u> | <u>Typed</u> | <u>Proofed</u> | <u>Submitted</u> | <u>Jacketed</u> | <u>Required</u> |
|--------------|------------------------|---------------------|------------------------|----------------|------------------------|------------------------------------|-----------------|
| /? | mdsida 11/10/2003 | | | _____ | | | S&L |
| /1 | chanaman 01/13/2004 | jdyer 01/14/2004 | jfrantze 01/14/2004 | _____ | Inorthro 01/14/2004 | sbasford 02/06/2004 sbasford | |

| <u>Vers.</u> | <u>Drafted</u> | <u>Reviewed</u> | <u>Typed</u> | <u>Proofed</u> | <u>Submitted</u> | <u>Jacketed</u> | <u>Required</u> |
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| | | 01/14/2004 | | _____ | | 02/06/2004 | |

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| | | jdyer | | _____ | | | |

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01/14/2004

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By/Representing: Dave

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May Contact:

Addl. Drafters: mdsida

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Criminal Law - sex offenses

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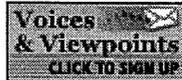
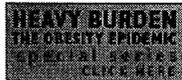
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State tops in release of sexual predators

Milwaukee an anomaly in community placement

By JESSICA McBRIDE and REID J. EPSTEIN
jmcbride@journalssentinel.com

Last Updated: Sept. 21, 2003

Though its failed efforts to find a new Milwaukee home for Billy Lee Morford might suggest otherwise, Wisconsin actually has placed far more so-called sexual predators into neighborhoods than any other state, accounting for nearly a third of all people nationwide who have been released under similar laws.

While those in the treatment field consider that an achievement, others were surprised and concerned to learn of the Badger State's distinction.

While public objections have blocked most placements in Milwaukee County, state officials point to successful placements outside Milwaukee. Yet, 15 of 32 men released on supervision since 1994, when Wisconsin passed Chapter 980, the law that allows civil commitment of some sex offenders after they serve their criminal sentences, have been returned to secure facilities - or face pending efforts to return them - because of rule violations.

Seven men were discharged outright, without supervision (including two into Milwaukee County in the past year), meaning Wisconsin has released a total of 39. The release under supervision of another six is pending.

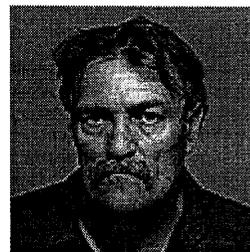
California, with nearly twice the commitments, has released only one person into the community with supervision, and 22 overall.

Laws such as Wisconsin's Chapter 980 allow 16 states to commit certain sex offenders, which some states term "sexual predators," for treatment after their criminal sentences are served. The laws vary somewhat, but they typically target those who victimize children and who suffer a mental disorder and are likely to re-offend.

The U.S. Supreme Court has ruled twice that predator laws in other states are constitutional, largely because they involve civil commitments designed to provide treatment,

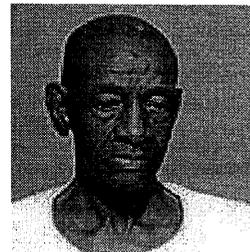
Sexual Predators

Two Cases



Photo/File

The placement of Billy Lee Morford, 57, has sparked outrage over the sexual predator law. He is the only Milwaukee County patient under the law to ever obtain supervised release in the county. He is in a house rented from a non-profit agency on N. 51st St.



Photo/File

Officials had considered placing

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not extra punishment. But if communities continue to reject treated offenders entitled to supervised community placement ordered by a judge, such as Morford's case in Milwaukee, the laws likely will face another legal challenge.

"People in the (Milwaukee) community have got to realize we have to put them somewhere," said Rebecca Dallet, one of two prosecutors who handle such cases in Milwaukee County. If they can't, she said, it could lead to more constitutional challenges.

Numbers jumped

Wisconsin's release numbers have risen in part because of a little-known clarification in practice within the state Department of Health and Family Services, which oversees treatment and supervision of those committed under Chapter 980.

Before 2000, "there was an understanding of the law that an evaluator would not recommend supervised release until the patient had demonstrated significant progress in treatment," said Dennis Doren, evaluation director at the Sand Ridge Secure Treatment Center in Mauston, and a national authority on sex offender civil commitment laws.

In 2000, Doren said, the department clarified for doctors that even if a patient has not progressed in treatment - or has refused treatment - the doctor should recommend release if the patient's needs and risks could be managed in the community.

The release rate doubled.

Doren said the move was in response to a 1999 legislative mandate that all Chapter 980 offenders start treatment in a secure facility. That effectively stopped judges from sending Chapter 980 subjects from prison directly into supervised release.

Twelve men released from commitment went that route before 1999. Four were later returned to Sand Ridge because they violated rules, according to state records.

Audrey Skwierawski, the other Milwaukee prosecutor who handles Chapter 980 commitments, said she and Dallet didn't know about the department's modified approach until informed by a reporter.

"I'm surprised," she said. "I personally think it would be relevant in evaluating someone's risk in the community whether they progressed in treatment to that point."

Prosecutor Dallet said Robert Carney, 74, is a perfect example. A Health and Family Services doctor recommended his release, even though, Dallet said, "he has never done treatment. He believes the girls he assaulted consented and wanted it, and they are 9- and 10-year-old girls. He does not appreciate the wrong he did."

In November, a judge ordered Carney's release, but Carney remains confined at Sand Ridge because no appropriate residence has been found.

Different in Milwaukee

Officials had considered placing Carney with Morford, 57, in a house rented from a non-profit agency on N. 51st St., where Morford has been living since June 2, making him the first Chapter 980 patient from Milwaukee County to ever obtain supervised release in the county.

Robert Carney, 74, with Morford. But the public outrage over the address for Morford, and two alternative sites proposed since then, scuttled that plan. A doctor recommended Carney's release even though Carney has never received treatment. Carney remains confined because a suitable residence has not been found.

Quotable

“ Wisconsin is doing the best job of moving people through. That is what this is supposed to be about -- people are supposed to be treated and integrated back into the community. ”

- H. Lawrence Fitch, of the Maryland Department of Health and Mental Hygiene

“ It's certainly nothing that I want to go printing T-shirts up about, that's for sure. ”

- Jeff Plale, Wisconsin Democratic state senator from South Milwaukee

But the public outrage over that address for Morford, and two alternative sites proposed since then, scuttled that plan. State officials are now trying to purchase Morford a home. The trouble the state is having finding a placement for Morford mirrors that of Shawn Schulpius. The state tried unsuccessfully for 21/2 years to find a place for him to live. Then, a judge pulled his release in 2000.

Morford's supervision is extremely strict. He can't leave the house without an escort. So why can't officials find a place for him to live, when dozens of Chapter 980 cases have been placed in other Wisconsin counties?

"The concentration of media is clearly a factor," said Steve Watters, the director of the Sand Ridge center. "I'm unaware of any other setting where you have television crews and newspaper reporters who sprint to the location right after the announcement."

In other communities around the state, officials often do not notify the public of specific addresses, and they do not have as many politicians eager to oppose the releases.

"Some cases we will spend months and months looking for placement outside Milwaukee County for individuals," Watters said. But, unlike in Milwaukee, placements have been found.

The Milwaukee challenge will only grow; of the 260 people confined under Chapter 980, about 57 come from Milwaukee County, and the state tries to return offenders to the county of their conviction.

About half the Chapter 980 patients released on supervision have been returned to Sand Ridge for treatment or face petitions for their return.

They include a man released into a Manitowoc County nursing home accused of touching the breast of a female patient, a man in Rock County who purchased Viagra without approval, and a Dane County man who was charged with a sexual assault while on release - a charge that was dismissed - but who was convicted of resisting an officer, state records show. Another man, granted supervised release in Douglas County, had it revoked for unsupervised contact with minors and then was released again.

Watters acknowledged that some could argue that Chapter 980 patients are being released too early by judges.

"In the long run, we shouldn't have revocations occurring," he said. "It does represent that the supervision is pretty tight and taken very seriously."

Laws elsewhere

H. Lawrence Fitch, Forensic Services director for the Maryland Department of Health and Mental Hygiene, conducted a survey of sexual offender civil commitment laws in 16 states in July 2002.

He found that about 2,500 people were confined in 16 states, but only 86 had been released.

"Most states have released almost no one," Fitch said.

At the time of the survey, Wisconsin accounted for 24 of those 86 releases. Since then, Wisconsin has released 15 more Chapter 980 patients. Wisconsin and Arizona accounted for 68% of the releases in 2002. In contrast, Illinois and Minnesota each had released one; Florida, four; and Washington state - which had the nation's first law - only nine.

The majority of those released in Arizona live in a transitional building on the grounds of a state secure treatment center - not in residential neighborhoods.

"Wisconsin is doing the best job of moving people through," said Fitch. "That is what this is supposed to be about - people are supposed to be treated and integrated back into the community. In some states, people have bought into the idea that this is simply extended

confinement."

Others aren't so pleased.

State Sen. Jeff Plale (D-South Milwaukee), who opposed Morford's relocation to a south side Milwaukee neighborhood, said: "It's certainly nothing that I want to go printing T-shirts up about, that's for sure.

"I'm kind of shocked, actually, that we lead the nation in this. It's troubling," Plale said.

Wisconsin's relatively high release numbers are partly explained by the fact that the state has committed more offenders than many states; it was the second state to pass such a civil commitment law.

Of all convicted sex offenders potentially eligible for commitment under Chapter 980, Wisconsin's Department of Corrections refers about 7% of them to prosecutors, who seek civil commitment for about 75% of those.

In Wisconsin, only patients who are "substantially probable" to re-offend can be denied release. Other states have lower thresholds, said Watters.

Wisconsin's law means that if an offender is 50% likely to re-offend, release is required.

California, with 432 commitments, has released only 22 since passing its law in 1995 and had released only seven at the time of the Fitch study. Most were freed by courts, but only one was released under community supervision. Plans to have him live in the San Jose area generated public outcry this summer as landlords backed out. He now lives in a trailer on prison grounds.

George Bukowski, who runs California's program, said Wisconsin's high release numbers may be due to a greater tolerance and lower population density, but they also might be the result of other factors.

"Maybe we need to talk to people in Wisconsin," he said.

Costs have climbed

When Chapter 980 was passed, officials estimated that 10 people per year would be committed and that annual operating costs would be around \$3.6 million.

But now Wisconsin spends \$26 million a year to detain, treat and supervise those committed, according to Watters, director of the Sand Ridge center, which itself cost about \$40 million. It costs about \$100,000 a year to house someone there, while the price for supervised release is about \$35,000 annually.

Other states face rising costs, as well. California is scheduled to build a \$350 million hospital for its committed sex offenders.

In Washington, sexual predators are first released into a transitional center on an island served by a ferry. Eight have gone on to community placement in 13 years. A judge has ordered another transitional site built on the mainland.

"I think the problem with the laws has been that the view at the time they were conceived didn't account for the whole picture, the mission of treatment and the process of release," said Mark Seling, superintendent of the current Washington facility. "That's really where the problems lie. We are all trying to learn."

From the Sept. 22, 2003 editions of the Milwaukee Journal Sentinel

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State of Wisconsin
2003 - 2004 LEGISLATURE

LRB-3351/1
CMH&MGD:.....

D-NOTE
WEDNESDAY

JG

2003 BILL

1 AN ACT ...; relating to: definition of sexually violent person and criteria for ✓
2 supervised release.

ngencat

the

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 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

BILL

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:

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.

History: 1993 a. 479; 1995 a. 27 s. 9126 (19); 1997 a. 284, s. 5.

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
16 past and present treatment records, as defined in s. 51.30 (1) (b), and patient health
17 care records, as provided under s. 146.82 (2) (c). If any such examiner believes that

BILL

1 the person is appropriate for supervised release under the ~~criteria~~ criteria specified
2 in sub. (4) (b), the examiner shall report on the type of treatment and services that
3 the person may need while in the community on supervised release. The county shall
4 pay the costs of an examiner appointed under this subsection as provided under s.
5 51.20 (18) (a).

6 **History:** 1993 a. 479; 1995 a. 276; 1997 a. 27, 275, ~~274~~; 1999 a. 9 ss. 3223L, 3232p to 3238d; 1999 a. 32; 2001 a. 16.

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

9 980.08 (4) (a) The court, without a jury, shall hear the petition within 30 days
10 after the report of the court-appointed examiner is filed with the court, unless the
11 petitioner waives this time limit. Expenses of proceedings under this subsection
12 shall be paid as provided under s. 51.20 (18) (b), (c), and (d).

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

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

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

BILL

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

7 **History:** 1993 a. 479; 1995 a. 276; 1997 a. 27, 275, 284; 1999 [✓] ss. 3223L, 3232p to 3238d; 1999 a. 32; 2001 a. 16.

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 ^{of plain} ~~criteria~~ ^{criteria}
 16 criteria specified in s. 980.08 (4) (b), [✓] whether to modify the petitioner's existing
 17 commitment order by authorizing supervised release.

18 **History:** 1993 a. 479; 1999 a. 9. [✓]

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

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

History: 1993 a. 479; 1999 a. 9.

SECTION 8. Initial applicability.

BILL

9

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 ~~applies~~^{apply} to hearings, trials, and
4 proceedings that ~~begin~~^{are commenced} on the effective date of this subsection.

are commenced

(END)

D-note
↓

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3351/1dn

CMH:.....

JL

Date

Dave:

and Jessica

This bill could raise an equal protection issue. The Equal Protection clause requires similar treatment for similarly situated individuals unless reasonable and practical grounds exist for a distinction. *State of Wisconsin v. Hezzie R.*, 219 Wis. 2d 849, 580 N.W.2d 660 (1998). The court has found that persons who are committed under ch. 980 are similarly situated to persons who are committed under ch. 51. *State v. Post*, 197 Wis. 2d 279, 541 N.W.2d 115 (1995).

The term "substantially probable" was adopted in ch. 980 to provide consistency with ch. 51 (see Drafter's Note to 1994 AB-3). In ch. 51, the term is used in a manner similar to its use in ch. 980 to describe the degree to which a person is likely to harm others before he or she is found to be dangerous. The court has interpreted the term as "much more likely than not" in both ch. 51 and ch. 980. *State v. Curiel*, 227 Wis. 2d 389, 597 N.W.2d 697 (1999). In *Curiel*, the equal protection challenge failed because the plaintiff did not demonstrate that persons committed under ch. 51 are treated differently than persons committed under ch. 980. This bill, however, changes the term to mean "more likely than not" in only ch. 980 so a party could demonstrate that persons committed under ch. 51 are treated differently than persons committed under ch. 980. Therefore, without reasonable and practical grounds for the distinction, a court could find that this definition change violates the Equal Protection Clause.

The court, however, may find reasonable and practical grounds for the distinction. The court has upheld provisions that did not afford persons committed under ch. 980 the same privacy and confidentiality as individuals committed under ch. 51 because the legislature determined that persons predisposed to sexual violence pose a higher level of danger and require different treatment than do other classes of mentally ill or mentally disabled persons, justifying distinct legislative approaches. *State v. Burgess*, 2003 WI 71, 262 Wis. 2d 354, 665 N.W.2d 124. Likewise, the court may find that the differences in commitment standards that this bill creates does not deny equal protection of the law to persons committed under ch. 980 due to their level of danger and unique treatment needs. In any case, I wanted you to be aware of the issue.

Cathlene Hanaman
Legislative Attorney
Phone: (608) 267-9810
E-mail: cathlene.hanaman@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3351/1dn
CMH:jld:jf

January 14, 2004

Dave and Jessica:

This bill could raise an equal protection issue. The Equal Protection Clause requires similar treatment for similarly situated individuals unless reasonable and practical grounds exist for a distinction. *State of Wisconsin v. Hezzie R.*, 219 Wis. 2d 849, 580 N.W.2d 660 (1998). The court has found that persons who are committed under ch. 980 are similarly situated to persons who are committed under ch. 51. *State v. Post*, 197 Wis. 2d 279, 541 N.W.2d 115 (1995).

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Cathlene Hanaman
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Basford, Sarah

From: Ford, Katherine
Sent: Friday, February 06, 2004 10:50 AM
To: LRB.Legal
Subject: Draft review: LRB 03-3351/1 Topic: Criteria for supervised release for a sex predator

It has been requested by <Ford, Katherine> that the following draft be jacketed for the SENATE:

Draft review: LRB 03-3351/1 Topic: Criteria for supervised release for a sex predator