

2005 DRAFTING REQUEST

Senate Substitute Amendment (SSA-SB318)

Received: 01/27/2006

Received By: chanaman

Wanted: As time permits

Identical to LRB:

For: Alberta Darling (608) 266-5830

By/Representing: Dave Volz

This file may be shown to any legislator: NO

Drafter: chanaman

May Contact:

Addl. Drafters:

Subject: 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:

Chapter 980 rewrite

Instructions:

See Attached

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>
/?	chanaman 02/09/2006	lkunkel 02/09/2006		_____			
/P1			jfrantze 02/10/2006	_____	sbasford 02/10/2006		
/P2	chanaman 02/24/2006	lkunkel 02/24/2006		_____			
/P3	chanaman	lkunkel	jfrantze	_____		lnorthro	

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*Please
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Sen-
Darling*

Vers. Drafted Reviewed Typed Proofed Submitted Jacketed Required

02/24/2006 _____

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3-2 *[Signature]* <END>

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2/24 <END> 2/24

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**Drafting Instructions for
Proposed Substitute Amendment
to SB 318 or WLC: 0083/2**

1. DHFS reports submitted to Courts under Chapter 980.

- 316 S
- A. Delete the provisions that would be established in s.980.07 that would require the Department of Health & Family Services to submit a statement to the Court concerning each individual -- a recommendation for institutional care, supervised release or discharge. These provisions occur in s. 980.07(2) and 980.07(4) to (7) of WLC: 0083/2. ✓
 - B. Modify the provisions of the draft to delete the requirement that treatment reports need to be provided to an examiner conducting an examination prior to the examination (section 980.07(1m) of the draft). The bill should not specify the timing or sequencing of these reports; it is not necessary. ✓
 - C. Create a new sub-section of 980.07 that would authorize DHFS to file a supplemental report for the Court's consideration if the Department determines that additional information is required in order for the Court to have the most complete information available. The Department would have discretion as to whether a report is filed. A supplemental report could be filed at any time prior to a supervised release or discharge hearing. ✓
 - D. Establish a sub-section of 980.07 that specifies the following in terms of the role of DHFS in the area of periodic reexaminations and reports: (1) DHFS is responsible for providing a process that facilitates the work of mental health professionals charged with responsibilities under the law. (2) DHFS is responsible for attempting to ensure that the Courts have the best available and complete information to guide their actions. The goal of this is to clarify that the examiner's recommendation is based on the professional judgment of that examiner, and the recommendation or report submitted by the examiner does not represent the position of DHFS or the Sand Ridge Secure Treatment Center.

2. Revisions in the Chapter 980 discharge/release processes.

- A. Delete the provisions of WLC: 0083/2 that would establish a new process for discharges and supervised releases that are dependent on exceptions being filed to the DHFS recommendation. Instead, the current petition process for supervised release and discharge would be retained.
- B. Modify the petition process by specifying that the petition has to state which form of release (discharge or supervised release) is being requested and the hearing is limited to addressing that issue.

- C. Modify the passive discharge petition process (980.09(2)) of current law. When a patient does not sign a waiver, require review by the public defender or the patient's attorney, to determine if a petition should be filed on the patient's behalf.
- D. Repeal the current law process that allows a patient to request the DHFS Secretary for permission to petition for discharge (980.09(1)). Modify to permit the patient to request that the Public Defender petition for discharge.
- E. Eliminate the portion of § 112, which discusses process for discharge "with departmental approval."
- F. Eliminate § 119 provision which requires DHFS to be represented by counsel at proceedings.

- repeal

3. Supervised Release Criteria and process.

- A. Eliminate the specific criteria and process proposed for supervised release in WLC: 0083/2.
- B. Establish a bifurcated hearing process for supervised release petitions. In the first phase of the hearing, the Court considers if the petitioner meets five general criteria (enumerated in the following item). If the five criteria are met, the court directs the county to identify residence options and directs DHFS to develop a supervised release plan. Then, the court considers the plan and determines if the sixth criterion has been met. In order to be granted a supervised release, all six criteria must be met.
- C. The following five general criteria must be met in the first phase of the hearing. If one of the criteria is not met, the Court must deny the person's petition for supervised release. If the criterion is met, the Court directs the county to identify residential placement options and directs DHFS to prepare a supervised release plan and submit it to the Court for approval. The court issues a finding that the person may be eligible for supervised release, dependant on the sixth criteria.
 - 1. The person has made significant progress in treatment and the person's treatment progress can be sustained in the community.
 - 2. The person's risk for re-offense has been reduced to a level where it is substantially probable that the person will not re-offend given the conditions and supervision associated with Supervised Release.
 - 3. There is treatment reasonably available in the community that will meet the person's treatment needs, and an individual determined by the Department to be qualified to provide the treatment will provide the treatment.

4. There is a reasonable expectation that the person will comply with treatment requirements and all of the other requirements that will be imposed as a condition of the Supervised Release.
5. A residential placement, the degree of supervision, and ongoing treatment needs of the person required for the safe management of the person in the community can be provided through the allocation of a reasonable level of resources.

D. If the preceding criteria are met, the Court then directs the county to identify residential placement options and directs DHFS to prepare a supervised release plan and submit it to the Court for approval. After receipt of the options and plan, the Court then considers the sixth criteria. If this criterion were not met, the Court would be required to deny the petition.

6. The details of the supervised release plan adequately meet the treatment needs of the individual and the safety needs of the community.

4. Residence search responsibilities.

A. Modify current law to establish the following process, which would occur if the court finds that the person meets the first five criteria for supervised release:

1. Direct the County Social Service Department to submit one or more potential residences to the circuit court for potential inclusion in the supervised release plan. These residences must be submitted within 60 days of the Court's determination that the initial five criteria are met.
2. In addition authorize the following entities to submit potential residential options to the court on the same timeline: the prosecutor, defense counsel, law enforcement, and any local government unit in the County.
3. DHFS may present information to the court on residential options that have been identified by local authorities or by DHFS as potential options.
4. If the preceding process does not identify an appropriate residence, the court may order the county, DHFS, or both, to identify an appropriate residence in that County. An appropriate residential placement is one that would be available within a reasonable allocation of resources.

1/9/06