



WISCONSIN LEGISLATIVE COUNCIL ACT MEMO

2013 Wisconsin Act 84
[2013 Assembly Bill 28]

**Supervised Release and Discharge
of Sexually Violent Persons**

CHAPTER 980 AND CIVIL COMMITMENT

Chapter 980 of the Wisconsin Statutes provides a statutory scheme for the involuntary civil commitment of individuals who have completed their criminal sentences and are determined to be “sexually violent persons” (SVP). Current law contains provisions for the supervised release or discharge of individuals committed under ch. 980.

Supervised release from ch. 980 commitment is a community placement option for individuals who are still under the custody and control of the Department of Human Services (DHS). Before a court may authorize supervised release for a committed individual, that individual must prove that he or she meets five specific criteria relating to treatment progress, likelihood of reoffending, treatment availability, compliance with treatment and conditions, and resources necessary for managing the person on supervised release.

Discharge from ch. 980 commitment is release from civil commitment and, therefore, no longer subject to the care and control imposed by DHS or Department of Corrections (DOC). A court orders discharge when an individual no longer meets the statutory criteria for commitment as an SVP. To be discharged, a committed individual must first petition the court and the petition must meet certain pleading requirements.

WISCONSIN ACT 84

2013 Wisconsin Act 84 was originally drafted by the Special Committee on Supervised Release and Discharge of Sexually Violent Persons and was introduced by the Joint Legislative Council. The Act made changes to the procedures for granting supervised release or discharge of individuals civilly committed under ch. 980. The specific changes are described below.

This memo provides a brief description of the Act. For more detailed information, consult the text of the law and related legislative documents at the Legislature’s Web site at: <http://www.legis.wisconsin.gov>.

Burden of Proof

Under prior law, the statutes setting forth the procedure for supervised release did not specify whether the SVP petitioning for supervised release or the state bore the burden of proof regarding whether the SVP met the criteria for supervised release. However, a decision by the Wisconsin Supreme Court in *State v. West*, 2011 WI 83, assigned the burden of proof to the SVP.

Under Act 84, the statutes specifically assign the SVP petitioning for supervised release the burden of proving that he or she meets the criteria by clear and convincing evidence.

Discharge Petition Pleading Requirement

A discharge petition must meet certain pleading requirements before a court will hold a discharge trial. Under prior law, an SVP was required to allege facts in his or her petition from which a fact-finder could determine the individual's condition had changed since initial commitment such that he or she no longer qualified as a "sexually violent person."

Act 84 alters the pleading requirement which an SVP must meet before his or her discharge petition will receive a discharge trial. Under the Act, an individual must allege facts which *would likely* lead a fact-finder to determine that the individual no longer qualifies as a sexually violent person, rather than alleging facts which *may* lead a fact-finder to this determination.

The Act also alters the time period during which an SVP must show his or her "condition has changed" in order to merit a discharge trial. Under Act 84, an SVP must allege a change occurring since the last discharge trial at which a fact-finder determined that the individual remains a "sexually violent person," rather than a change occurring at any time since the individual was initially committed.

Timeline for Supervised Release or Discharge Jury Trial

Under prior law, a court was required to hold a hearing on an SVP's petition for supervised release within 30 days. Further, an SVP petitioning for discharge was required to request a jury trial within 10 days after filing his or her discharge petition, meaning that the individual must request a jury trial before knowing whether the court would even grant a trial.

Act 84 extends the timeline within which a court must hold a supervised release hearing from 30 days to 120 days. The Act also alters the timeline for requesting a jury trial in discharge proceedings. Rather than requiring the SVP to request a jury trial within 10 days of filing the discharge petition, the Act requires the SVP to request a jury within 10 days after the court determines that a discharge trial is warranted.

Repeal of s. 980.075, Stats.

Prior law contained a provision, s. 980.075, **Patient petition process**, which provided general procedural requirements for supervised release and discharge petitions.

Act 84 repeals s. 980.075, Stats., and relocates nearly all provisions into ss. 980.07, 980.08, and 980.09, Stats.

Delayed Order for Discharge

Under prior law, a court was required to immediately order discharge of a committed individual when that individual no longer qualified as an SVP.

Under Act 84, a court ordering discharge must delay the execution of the order for a period of time, not to exceed 10 days, during which DHS must issue a notice to victims and their family members and must notify DOC.

Supervised Release Criteria

An SVP must meet five specified criteria before a court may grant the SVP supervised release. Under prior law, one of the criteria required that the SVP had made “significant progress in treatment” and that the progress could be sustained while on supervised release. “Significant progress in treatment” meant that the SVP had done all of the following:

- Meaningfully participated in the treatment program specifically designed to reduce the SVP’s risk to reoffend offered at the facility where the SVP is civilly committed.
- Participated in the treatment program at a level that was sufficient to allow the identification of the SVP’s specific treatment needs and then demonstrated, through overt behavior, a willingness to work on addressing the specific treatment needs.
- Demonstrated an understanding of the thoughts, attitudes, emotions, behaviors, and sexual arousal linked to the SVP’s sexual offending and an ability to identify when the thoughts, emotions, behaviors, or sexual arousal occur.
- Demonstrated sufficiently sustained change in the thoughts, attitudes, emotions, and behaviors and sufficient management of sexual arousal such that one could reasonably assume that, with continued treatment, the change could be maintained.

The Act changes the supervised release criteria by requiring that the SVP “is making” significant progress, instead of requiring that the SVP “has made” significant progress in treatment. In addition, the Act changes the definition of “significant progress in treatment.” Rather than requiring the SVP to show completion of each of the requirements, the Act requires that the SVP show that he or she is currently working towards each of the listed requirements.

Supervised Release Determination Requirement

Under prior law, following a discharge trial, the court could choose to evaluate whether the petitioner met the supervised release criteria but was not required to do so.

Act 84 requires a court to consider supervised release for an SVP after denying the SVP discharge at a discharge trial. An SVP is permitted to waive the court’s consideration of supervised release, but the Act treats the waiver as a denial of supervised release for purposes of calculating when an SVP may file a new petition for supervised release.

Approved Activities While on Supervised Release

An SVP on supervised release may not leave his or her home during the first year, except that the SVP is permitted outings for specified reasons under the direct supervision of a DOC escort. Under prior law, an SVP could not leave his or her home except for outings that were for employment purposes, for religious purposes, or for caring for the person's basic living needs.

Act 84 expands the list of activities for which a committed individual on supervised release may leave his or her residence under direct supervision of a DOC escort and requires that all outings be approved by DHS. In addition to the purposes specified under prior law, the Act provides that an SVP may leave his or her residence for volunteer, educational, treatment, exercise, or supervision purposes, or for maintenance of the SVP's residence. The Act also replaces use of the term "home," with the term "residence."

Effective date: December 14, 2013.

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