



WISCONSIN LEGISLATIVE COUNCIL

SEXUALLY VIOLENT PERSON COMMITMENTS

Legislative Council Conference Room, One East Main Street, Suite 401
Madison, Wisconsin

January 31, 2005
1:00 p.m. – 2:35 p.m.

[The following is a summary of the January 31, 2005 meeting of the Special Committee on Sexually Violent Person Commitments. The file copy of this summary has appended to it a copy of each document prepared for or submitted to the committee during the meeting. A digital recording of the meeting is available on our Web site at <http://www.legis.state.wi.us/lc/2004studies.htm>.]

Call to Order and Roll Call

Chair Darling called the meeting to order. The roll was called and a quorum was determined to be present.

COMMITTEE MEMBERS PRESENT: Sen. Alberta Darling, Chair; Sen. Mary Lazich; Reps. Mark Gundrum and Tony Staskunas; and Public Members Rebecca Dallet, Richard Sankovitz, and Sally Tess.

COMMITTEE MEMBERS EXCUSED: Sen. Jeff Plale; Rep. Jeff Stone; and Public Member Mike Nofzinger.

COUNCIL STAFF PRESENT: Ron Sklansky and Don Salm, Senior Staff Attorneys.

Approval of the Minutes of the November 16, 2004 Meeting

Chair Darling asked unanimous consent to approve the minutes of the November 16, 2004 meeting. There was no objection.

Description of Material Distributed and Discussion of Committee Assignment

Ron Sklansky briefly described WLC: 0083/1, noting that it is a redraft of Assembly Substitute Amendment 2 to 2003 Assembly Bill 861, except for the provisions in the Substitute that were enacted as part of 2003 Wisconsin Act 187 and that a new provision was added, relating to battery by a person in a ch. 980 institution. He noted that, in general terms, the draft includes provisions: (1) relating to the more effective exchange of, and access to, information needed by the courts, parole agents, and others,

so that the system can make a better assessment of a person under ch. 980; (2) clarifying how ch. 980 cases are to be conducted, including applicable rules of discovery and rules relating to venue, juries, and use of experts; (3) streamlining and clarifying the current post-commitment scheme; and (4) creating new criminal escape and criminal battery provisions applicable to ch. 980 commitments.

The committee then discussed Memo No. 2, *Clarifications to WLC: 0083/1 Proposed by Thomas Fallon, Department of Justice* (January 27, 2005). That Memo sets forth a number of amendments to the draft (directed, in general, at clarifying provisions in the draft) proposed by Mr. Fallon, an attorney at the Department of Justice, after discussions with state agencies and other interested parties. The amendments, and committee discussion of the amendments, were as follows:

1. **Polygraph.** Amend s. 51.375 (2) (b), Stats., to clarify that polygraph results not only may be disclosed to a ch. 980 committing court, but are also admissible, in the court's discretion, in a ch. 980 proceeding before the court. Mr. Fallon noted that this is directed at post-commitment hearings regarding supervised release, revocation of supervised release and discharge. He added that the use of polygraphs is for the purpose of monitoring and managing sexually violent offenders. There appeared to be no objection to adding this provision to the draft.
2. **Appointment of Examiner Not Required.** Amend proposed s. 980.07 (1) (a) in the draft to clarify that a court is not required to appoint an examiner if supervised release or discharge is supported by the examination conducted by the Department of Health and Family Services (DHFS). Judge Sankovitz said that, under this proposal, the court would still be able to order that an examiner be appointed in appropriate cases. There appeared to be no objection to adding this provision to the draft.
3. **Factors in Treatment Evaluation.** Amend proposed s. 980.07 (1m) in the draft to describe further the factors that should be assessed in a treatment evaluation for potential supervised release, namely adding: (a) "The specific factors associated with the person's risk for committing another sexually violent offense"; and (b) "Any specialized need or conditions associated with the person that must be considered in future treatment planning". There appeared to be no objection to adding these items to the draft.
4. **Factors and Conditions for Supervised Release.** Amend proposed s. 980.07 (c) in the draft to describe further:
 - a. The factors that a court may consider before authorizing supervised release (namely, whether the person has demonstrated significant progress in his or her treatment and whether the person has refused treatment).
 - b. The conditions under which the court may grant supervised release, namely adding that: (1) the person who will be placed on supervised release (a) has not only made sufficient progress in treatment such that the risk that the person will reoffend can be safely managed in the community but that "the person's treatment progress can be sustained in the community" and (b) the person's risk for reoffense has been reduced to a level that it is not likely that the person will reoffend if so placed; and (2) 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.

Mr. Fallon explained that, with these changes, the court will be looking at the whole picture of a sexually violent person (SVP) in deciding whether to grant the SVP supervised release. He said that it does not make sense, for purposes of supervised release, to require the prosecutor to prove once again that the person is an SVP. Instead, attention should be directed at whether the SVP is at such a level of risk that he or she can be granted supervised release. He added that the question of whether the person is an SVP is one for the discharge hearing and not the supervised release determination. There was substantial discussion about the new release condition relating to an SVP's risk level for reoffense. There appeared to be no objection to adding these provisions to the draft.

- 5. County Time Limit.** Amend proposed s. 980.07 (7) (c) in the draft to require a county, within 30 days of a court order, to identify prospective residential options for placement of a person under supervised release. Mr. Fallon noted that there is currently a significant problem with getting counties involved in this process and that this time requirement would be at least one step toward getting counties more involved. He added that the 30-day time limit was an arbitrary choice, but that 30 or 45 days seem to make sense in light of the requirement that the whole plan be completed within 60 days. Judge Sankovitz noted that Milwaukee County already has a process in these cases so the 30-day time limit would not be a problem there, but he questioned whether it would be appropriate for smaller counties that do not have a process in place. Senator Lazich noted that perhaps a laundry list of prohibited locations (e.g., near a school or childcare center) should be added similar to the one contained in Act 187. Mr. Fallon responded that a laundry list may make it impossible to find a residential option, adding that some SVPs may, in fact, do well in certain locations that would be in the laundry list. Mr. Sklansky noted that Act 187 indicated that the Milwaukee siting committee, established in a nonstatutory provision in the Act, should consider whether certain places set forth in the laundry list are nearby the facility, but did not prohibit locating the facility near any site on the list. He added that the provisions in the draft and current law could be expanded as to what the court may consider in these situations. After further discussion, there appeared to be no objection to including the 30-day provision as set forth in the draft.
- 6. Court to Consider Facts and Counsels' Arguments.** Amend proposed s. 980.093 (2) in the draft to clarify that a court must consider assertions of fact and counsels' arguments in determining whether to deny a petition for discharge. Mr. Fallon noted that these changes give the court more information necessary to "weed out" frivolous petitions and codifies current court decisions. There appeared to be no objection to adding these changes to the draft.

The staff noted that the State Public Defender's office had submitted, prior to the meeting, comments on the draft and at least one suggestion for a change in the draft.

Chair Darling indicated that she would like to go forward with a final consideration of the draft that is before the committee and the amendments to the draft suggested at this meeting. She added that

the revision of ch. 980 is a complex topic and that meetings could go on for many months with nothing being introduced for legislative consideration.

There was a general consensus that: (1) WLC: 0083/1, along with the amendments presented at this meeting, should be placed on a mail ballot for a committee vote; and (2) if the mail ballot was inconclusive and indicated that another meeting of the Special Committee was necessary, the next meeting would be at the call of the Chair.

Other Business

There was no other business brought before the committee.

Plans for Future Meetings

The next meeting of the Special Committee will be at the call of the Chair.

Adjournment

The meeting was adjourned at 2:35 p.m.

DLS:RS:jal