



WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

Memo No. 4

TO: MEMBERS OF THE SPECIAL COMMITTEE ON PLACEMENT OF SEX OFFENDERS

FROM: Anne Sappenfield and Don Salm, Senior Staff Attorneys

RE: Options for Legislation

DATE: December 20, 2006 (Revised December 26, 2006)

This Memo discusses several options for legislation discussed at the November 30, 2006 meeting of the Special Committee. The options are as follows:

1. Create a Definition of “High-Risk Sex Offender” for Purposes Such as Placement and Supervision

In general, a “high-risk sex offender” may be defined by: (a) the offense the person has been convicted of; (b) the characteristics of the offense; (c) the number of offenses the person has been convicted of; (d) whether the person has been committed or considered for commitment as a sexually violent person; (e) the person’s score on a risk assessment instrument; or (f) a combination of any of those factors.

An example of a definition of “high-risk sex offender” the committee may wish to consider is set forth in the report of the California High Risk Sex Offender Task Force, dated August 15, 2006. The task force recommended that offenders that meet the following criteria should be categorized as high risk sex offenders:

- The offender has a specified score on a credible risk assessment instrument that indicates that his or her risk of reoffense is high or moderate-high.
- The offender was evaluated for commitment as a sexually violent person (SVP), but was not committed under the SVP chapter.
- The offender has convictions related to two separate victims with at least one of the two victims being a victim of a sex crime. The second victim may be a victim of a serious or violent offense, such as robbery or residential burglary.

- The offender has one felony conviction of a child sexual assault with a child less than 14 years of age that was predatory in nature. “Predatory” is defined as an act that was directed toward a stranger, a person of casual acquaintance with whom no substantial relationship existed, or an individual with whom a relationship has been established or promoted for the primary purpose of victimization.
- The offender has one felony conviction of a forcible sex offense of a victim 14 years of age or older that is predatory in nature.
- The offender has a criminal history that did not result in convictions for the above sex offenses, but that clearly indicates that a plea was made to an offense that is lesser to a dangerous and serious sex offense.
- The offender meets relevant criteria established by the Department of Corrections (DOC), even if he or she does not meet the criteria listed above.

2. Allow Placement of ch. 980 SVPs on Supervised Release in Huber Facilities

Under the current Huber Law, the county board of any county (or the county boards of two or more counties) may establish, relocate, and maintain an unlocked facility (Huber facility) for use exclusively by persons granted leave privileges. [s. 303.09 (1) and (2), Stats.]

A person in a Huber facility may be allowed to leave to work; seek work; attend school; perform community service; attend certain court proceedings; receive medical treatment; handle family needs; obtain counseling or therapy; attend an assessment to determine the person’s need for counseling or therapy; attend a parenting education program; or meet with the person’s probation, extended supervision, or parole officer; or, if the person has been convicted of causing injury or death by driving while intoxicated, attend a court-ordered assessment or treatment program. These privileges, however, are available only with the approval of the sentencing court or, if the person is confined as a sanction while on extended supervision, the DOC. [ss. 303.08, 973.09, and 973.11, Stats.]

There may be legal and practical concerns relating to the use of Huber facilities to house ch. 980 SVPs who have been released on supervised release. A Huber facility may be too secure of a facility for such placements. Because of constitutional concerns, an SVP under ch. 980 is under a civil commitment and not a criminal sentence and consideration must always be given as to whether actions taken with reference to a ch. 980 SVP, whether at an institution such as Sand Ridge or as part of supervised release plan, are necessary for treatment or are criminal sanctions. Placing a ch. 980 SVP in too secure of a facility, especially if the placement in that facility makes it difficult for the SVP to access the necessary treatment and services related his or her supervised release, may slant the placement toward the criminal sanction spectrum and away from civil commitment. Also, s. 980.08 (6m), Stats., requires the Department of Health and Family Services (DHFS) to arrange for control, care and treatment of the person in the ***“least restrictive manner consistent with the requirements of the person and in accordance with the plan for supervised release approved by the court.”*** Related to the points above, if the placement makes access to necessary treatment and services difficult or impossible (not “reasonably available,” as required under s. 980.08 (4) (cg) 3., Stats.), such a placement runs counter to the purposes of placing the SVP on supervised release in the first place—the placement is not part of the continuum of treatment that it must be under a ch. 980 civil commitment.

Since density of, and proximity of, SVPs in a single area has been cited as a significant concern in placement, there may be issues and problems that arise from placing SVPs placed in one Huber facility or “close together” Huber facilities. Section 301.03 (19), Stats., requires DOC to work to minimize, to the greatest extent possible, the **residential population density** of sex offenders who are placed on probation, parole, or extended supervision or who are SVPs placed on supervised release. Under s. 980.04 (4) (e), Stats., the county department preparing the report identifying options for community placement must “consider the proximity of any potential placement to the residence of other persons on supervised release and to the residence of persons who are in the custody of the DOC and regarding whom a sex offender notification bulletin has been issued to law enforcement agencies under s. 301.46 (2m) (a) or (am).”

2. Allow the Use of Shared Living Arrangements for Sex Offenders Released to Probation, Parole, or Supervision of for ch. 980 SVPs Who Have Been Released on Supervised Release

With reference to the use of “shared living arrangements” for ch. 980 SVPs who have been released on supervised release, see the last paragraph of the comment on “Placement in Huber Facilities,” above (relating to proximity considerations in placement). As noted above, s. 301.03 (19), Stats., requires DOC to work to minimize, to the greatest extent possible, the **residential population density** of sex offenders who are placed on probation, parole, or extended supervision or who are SVPs placed on supervised release. It is not clear whether shared living arrangements would violate, or run counter to, this requirement. If there is a concern, this provision would be revised to specifically permit shared living arrangements.

3. Placement of Certain SVPs Released to Supervised Release in SVP’s City, Village, or Town of Residence

Under current law, if the court finds that all of the statutorily specified criteria are met, the court must select a county to prepare a placement report as described below. Unless the court has good cause to select another county, the court must select the person’s county of residence as determined by DHFS. The court may not select a county where there is a facility in which persons committed to institutional care under ch. 980 are placed unless that county is also that person’s county of residence.

A person’s county of residence is determined by: (a) considering residence as the voluntary concurrence of physical presence with intent to remain in a place of fixed habitation; and (b) considering physical presence as a prima facie evidence of intent to remain. DHFS must apply these criteria to the facts that existed on the date that the person committed the sexually violent offense. [s. 983.105, Stats.]

The court is required to authorize the petitioner, the person’s attorney, the district attorney, any law enforcement agency in the county of intended placement, and any local governmental unit in the county of intended placement to submit **prospective residential options for community placement** to DHFS within 60 days following the selection of the county as described above. [s. 980.08 (4) (cm) and (d), Stats., as created by 2005 Wisconsin Act 434.]

2005 Wisconsin Act 431 would have modified the statutes relating to where an SVP released to supervised release could reside, effective July 1, 2007. However, the subsection in which several of these changes were made (s. 980.08 (5), Stats.) was repealed by 2005 Wisconsin Act 434, so these provisions of Act 431 are also repealed and will not go into effect. Under the portion of the statutes

affected by Act 431 that was repealed, DHFS was required to make its best effort to arrange for placement in a residential facility or dwelling that is in the person's county of residence. If that county contained a first class city (currently, only Milwaukee County), DHFS was required to arrange for placement in the person's city, village, or town of residence. A person could have been placed in another city, village, or town if DHFS approved placement of the person with the person's spouse, parent, or adult sibling. Act 431 also provided that, if the person's county of residence declined to prepare a plan, DHFS could arrange for the county in which the person was convicted or a county in which a sex offender treatment facility is located to prepare the plan if that county agreed to do so.

To recreate the provision of Act 431 that was repealed, legislation could be drafted that provides that if the person is placed in his or her county of residence and the county of residence is a county that contains a first class city, DHFS shall arrange for placement of the person in a residential facility or dwelling that is in the person's city, village, or town of residence, except that DHFS may arrange for placement of the person outside the person's city, village, or town of residence if DHFS approves placement of the person with the person's spouse, parent, or adult sibling.

4. Require Exclusion or Child Safety Zones for Sex Offenders

Under current law, effective July 1, 2007, certain child sex offenders will be required to be tracked using global positioning system (GPS) technology. For these offenders, DOC is required to create individualized exclusion and inclusion zones, if necessary to protect public safety. "Exclusion zone" is defined as a zone in which a person who is GPS tracked is prohibited from entering except for purposes of traveling through to get to another destination. "Inclusion zone" is defined as a zone in which such a person is prohibited from leaving.

In creating exclusion zones, DOC must focus on areas where children congregate, with perimeters of 100 to 250 feet, and on areas where the person has been prohibited from going as a condition of probation, extended supervision, parole, conditional release, or supervised release.

The Act also requires DOC to ensure that the person's GPS tracking device, or any comparable technology used with respect to the person, immediately alerts DOC and the local law enforcement agency having jurisdiction over the exclusion or inclusion zone if: (a) the person stays in an exclusion zone that is created for him or her for any period longer than the time needed to travel through the zone to get to another destination; or (b) leaves any inclusion zone that is created for him or her.

Under the Act, DOC may use passive positioning tracking for a person who is subject to lifetime GPS tracking once the person completes his or her sentence, including any probation, parole, or extended supervision. "Passive positioning system tracking" is defined as tracking using a system that monitors, identifies, and records a person's position.

Legislation could be drafted to require either the sentencing court or DOC to establish exclusion zones or child safety zones for specified sex offenders, whether they are subject to GPS tracking or not, while they are under the supervision of DOC.

5. Expand the Information Available on DOC Website Relating to Registered Sex Offenders

Under current s. 301.46 (5n) (a), Stats., DOC is required to provide access to information concerning registered sex offenders by creating and maintaining an Internet site and by any other means that DOC determines is appropriate. The information provided through the Internet site must be organized in a manner that allows a person using the Internet site to obtain the statutorily specified information that DOC is required to provide the person and other information that DOC determines is necessary to protect the public.

Under s. 301.46 (5) (bm), Stats., DOC must provide on the required Internet site the following information concerning persons registered under s. 301.45, Stats.:

- a. If the person is a ch. 980 SVP a notice, written in red letters, of that status.
- b. A ***current color photograph*** of the person, if available, and a ***physical description*** including sex, race, height, weight, eye color, and hair color.
- c. The person's name and home address.
- d. Whether the person has responded to the last contact letter from DOC.
- e. The crime committed for which the person must register.
- f. Any conditions of the person's supervised release, except for any condition that may reveal the identity of the victim of the crime that the person committed for which he or she must register.
- g. The date, time, and place of any scheduled hearings for supervised release or discharge under ch. 980.
- h. The name and court of the judge who authorized supervised release or discharge for the person.
- i. The most recent date on which the information was updated.

There has been a recommendation to expand the list of required information on the DOC website to include:

- a. If applicable, specific information relating to the registered sex offender's risk assessment status.
- b. Specific information relating to the registered sex offender's current employment and schooling and, with reference to an offender who is currently under DOC or DHFS control, his or her complete employment and school history since being released to probation, parole, or extended supervision, or being released under supervised release under ch. 980.
- c. Multiple current color photographs (instead of the current requirement of just one color photograph) of the registered sex offender, updated at least annually.

- d. A specific description of any distinguishing marks on the body of the registered sex offender.

6. Provide the Public With Educational Materials Relating to Sex Offenders and Prevention of Sexual Assault

Currently, information relating to sexual abuse and assault of children is available on the Wisconsin DOC Sex Offender Registry, DHFS, and the Department of Justice websites. Available information is enclosed with this Memo. In addition, the Wisconsin Children's Trust Fund is planning to launch a website in the Spring of 2007 that will provide information and resources on prevention of sexual abuse of children.

7. Require In-Person Registration of Sex Offender Every Six Months and Require Photography at That Time

Under current law, in general, a person required to register as a sex offender must notify DOC once each calendar year, as directed by DOC, of his or her name, date of birth, Social Security number, residential address, work and school addresses, and vehicle license plate numbers and descriptions. A person who is subject to lifetime registration must provide this information to DOC every 90 days. [s. 301.45 (3) (b), Stats.] DOC notifies registrants by mail of requirements to update registry information. The registrant must verify the accuracy of the registry information and provide any updated information within 10 days after receiving the notice by signing and returning a confirmation receipt and designated form to DOC. [s. 301.45 (2) (g), Stats., and s. DOC 332.06 (4), Wis. Adm. Code.]

Current law also permits DOC to require a registrant to provide DOC with a recent photograph of the registrant. DOC may require a registrant to report to a place designated by DOC, including a law enforcement office or station, for the purpose of obtaining the photograph.

Legislation could be drafted to require in-person registration every six months and to require that the person's photograph be taken at the time of the in-person registration.

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Enclosure