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## WISCONSIN LEGISLATIVE COUNCIL

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### **SUPERVISED RELEASE AND DISCHARGE OF SEXUALLY VIOLENT PERSONS**

Room 412 East  
State Capitol

August 8, 2012  
10:00 a.m. – 3:15 p.m.

[The following is a summary of the August 8, 2012 meeting of the Special Committee on Supervised Release and Discharge of Sexually Violent Persons. 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>.]

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#### **Call to Order and Roll Call**

Chair Strachota called the committee to order. The roll was called and a quorum was present.

COMMITTEE MEMBERS PRESENT: Rep. Pat Strachota, Chair; Sens. Tim Cullen and Mary Lazich; and Public Members Mark Bensen, Michael Bohren, Ron Cramer, Shari Hanneman, Ian Henderson, Frank Liska, Rick Oliva, and Anthony Rios.

COMMITTEE MEMBERS EXCUSED: Sen. Alberta Darling, Vice Chair; Rep. Louis Molepske, Jr.; and Public Member Rebecca Dallet.

COUNCIL STAFF PRESENT: Katie Bender-Olson and Michael Queensland, Staff Attorneys.

APPEARANCES: Deborah McCulloch, Institution Director, and Lloyd Sinclair, Court Assessment and Community Program Director, Sand Ridge Secure Treatment Center, Department of Health Services (DHS); and Michael Schaefer, Assistant Attorney General, Department of Justice (DOJ).

#### **Opening Remarks**

Laura Rose, Deputy Director of the Legislative Council Staff, welcomed the members of the Special Committee. Ms. Rose introduced the Legislative Council Staff members assigned to assist the

committee and explained the general rules and guidelines for serving on study committees. She also discussed the process for reimbursement of public member expenses related to committee business.

### **Introduction of Committee Members**

Chair Strachota introduced herself and welcomed the committee members. Chair Strachota also mentioned that Senator Alberta Darling and Representative Louis Molepske would be joining the committee by telephone. Upon the Chair's request, members briefly introduced themselves.

### **Discussion of Materials Distributed**

Katie Bender-Olson and Mike Queensland, Staff Attorneys with the Legislative Council, briefly described Staff Brief 2012-06, *Supervised Release and Discharge of Sexually Violent Persons* (August 2, 2012). The presentation was followed by questions from committee members.

### **Presentations by Invited Speakers From DHS**

***Deborah McCulloch, Institution Director, and Lloyd Sinclair, Court Assessment and Community Program Director, Sand Ridge Secure Treatment Center***

Deborah McCulloch and Lloyd Sinclair provided background on SVP commitments and explained the role of DHS in the ch. 980 commitment process. The presenters also addressed the criteria, historical experience, and current trends relating to discharge and supervised release of SVPs.

Ms. McCulloch noted that when an individual is discharged, it means he or she no longer meets the definition of a "sexually violent person." An individual is most often discharged from commitment because the individual no longer meets the criterion that he is "likely" to commit a new act of sexual violence. Ms. McCulloch also contrasted discharge with supervised release from commitment. She explained that an individual on supervised release still meets the criteria for being an SVP, but also meets the criteria for being granted supervised release. Ms. McCulloch further contrasted discharge and supervised release by explaining that, unlike a person who is discharged, an individual who is on supervised release remains under the control of DHS, has a plan for transitioning to life outside Sand Ridge Secure Treatment Center, and may only leave his home with an escort. She described the direct discharge of SVPs from Sand Ridge after decades of being institutionalized as akin to "jumping off a cliff."

Ms. McCulloch also provided statistics regarding SVP commitments, discharges, and grants of supervised release. She noted that 100 individuals have been placed on supervised release since ch. 980 commitments began in 1994. Of these individuals, approximately 40% have been revoked. Ms. McCulloch further explained that 102 individuals have been discharged from commitment since 1994, and that 73 were discharged directly from the institution, while 29 were discharged after being on supervised release. She noted that the rate of re-offense for individuals on supervised release is approximately 2%. Of the 102 individuals who have been discharged, four sexually re-offended following discharge from supervised release, while three sexually re-offended following discharge directly from the institution.

The committee members asked questions following Ms. McCulloch's remarks. Members inquired about the requirement for GPS tracking of SVPs while on supervised release or following

discharge. DHS explained that individuals on supervised release are monitored with the use of active GPS, whereas individuals that have been discharged are monitored with the use of passive GPS. Members also inquired about discharge for SVPs who have not made significant progress in treatment. The presenters verified that individuals do not need to make significant progress in treatment before being granted discharge.

Mr. Sinclair provided the second portion of the DHS presentation and addressed the topic of assessing SVPs for risk of re-offending. He explained that risk assessment of SVP's was traditionally done using clinical judgment, which was proven to be only slightly more effective than chance in predicting re-offense. Mr. Sinclair also noted the use of actuarial assessment, which applies research findings and professional knowledge to predict re-offense, and the current use of actuarial instruments plus relevant adjustments. He explained two current actuarial instruments, the Static-99 and Static-99R, which are commonly used by mental health professionals. In addition, he explained the 10 "unchangeable" factors that are scored on the actuarial instruments, such as prior sex offenses and the existence of male victims.

Mr. Sinclair summarized recent changes in knowledge that have impacted the risk assessment instruments. He noted that a reduction in base rates of re-offending, the realization of the inability to predict juvenile re-offense, the effect of age on recidivism, and the improved assessment of dynamic variables have altered the risk assessment instruments used by mental health professionals. Mr. Sinclair explained that changes in the risk assessment tools can impact the number of individuals discharged from ch. 980 commitments in a given year.

Ms. McCulloch and Mr. Sinclair concluded their presentation by providing a summary and conclusions. They noted that most SVP re-offenses occur after discharge, rather than while on supervised release. Consequently, discharge provides poorer community protection than does supervised release and creates a problem when discharge is easier to obtain for SVPs than is supervised release. To conclude, Ms. McCulloch and Mr. Sinclair posed several questions: (1) should supervised release be a required step before discharge?; and (2) should there be a minimum period during which an SVP must remain successfully on supervised release before discharge?

The committee members asked questions of Ms. McCulloch and Mr. Sinclair regarding experts who evaluate SVPs for re-offense risk, whether other states require supervised release prior to discharge, and whether other states use similar standards. DHS indicated that they would provide further information about the operation of supervised release and discharge in other states that have a commitment process for SVPs. Chair Strachota expressed her intent for the Special Committee to explore methods for placing more SVPs on supervised release prior to, or instead of, direct discharge of these individuals.

### **Presentation by Invited Speaker From DOJ**

#### ***Michael Schaefer, Assistant Attorney General, DOJ***

Michael Schaefer provided remarks to the Special Committee regarding the constitutionality of changes to the existing discharge and supervised release statutory scheme. He noted that any changes must balance the public interest and the needs of the individual. He further emphasized that if a person does not meet the standard for commitment, the availability of supervised release is irrelevant because it is unconstitutional to continue holding the individual.

Mr. Schaefer explained that there are two primary reasons why an SVP is more likely to be a candidate for discharge than for supervised release. First, he noted that the criteria for supervised release are very difficult for an SVP to meet, particularly the criterion requiring significant progress in treatment. Second, he noted that the state of risk assessment procedures impacts the ability of an SVP to seek discharge. Mr. Schaefer explained that the state struggles to effectively oppose discharge when it does not have an expert witness to support its position regarding risk of re-offense.

Mr. Schaefer also provided generally applicable constitutional standards that must be considered when altering the civil commitment scheme. He stated that courts recognize compelling state interests in protecting the public from SVP's and in providing treatment and care to these dangerous individuals. Additionally, Mr. Schaefer expressed that commitment procedures must be narrowly tailored so that they do not apply to individuals who do not meet the criteria for dangerousness. Further, he emphasized that ongoing review of an SVP's mental disorder must be available as part of a constitutional commitment process. Mr. Schaefer also stated that a commitment procedure must provide for regular review of whether the individual still is dangerous. Finally, he noted that the statutory commitment scheme must allow an individual to seek judicial review of whether he still meets commitment criteria in order to be constitutional.

In response to committee questions, Mr. Schaefer explained that courts have not set a constitutional minimum on dangerousness and that the constitutionality of any particular statutory change cannot be known in advance. This is because courts do not provide advisory opinions.

Mr. Schaefer commented on two potential revisions to the discharge and supervised release statutes that the Special Committee could consider. He first referenced the period to which the discharge pleading requirement applies and noted an item that could be clarified. To be granted a discharge hearing, an individual must file a discharge petition that provides facts from which a jury could conclude the individual's *condition has changed* since his initial commitment order, such that he no longer meets the criteria for commitment as an SVP. This language suggests that once an SVP can meet the pleading requirement by asserting facts showing that his condition has changed, the SVP will always meet the pleading requirement into the indefinite future. Mr. Schaefer noted that case law suggests an alternative approach to the pleading requirement. Instead of looking at any condition change since initial commitment, the court may look only at any condition change since the most recent determination of the individual's status (for example, since his discharge trial the previous year). Mr. Schaefer suggested this issue as one for clarification by the committee.

Mr. Schaefer also remarked upon a second potential revision relating to the supervised release statute. He responded to a committee question by noting that the statute does not expressly state which party has the burden to show an individual meets the criteria for supervised release. Mr. Schaefer commented that the Wisconsin Supreme Court interpreted the statute to place the burden of proof on the petitioner. He advised the committee that it could clarify this burden within the statutory language, but that the change would not alter current practice, given the Court's resolution of the question.

### **Presentation of Recommendations From DHS and DOJ**

Chair Strachota announced that the agencies would provide recommendations at future meetings.

### **Other Business**

Chair Strachota announced that the next meeting of the Special Committee on Sexually Violent Persons Supervised Release and Discharge is scheduled for Wednesday, September 19, 2012.

### **Adjournment**

The meeting was adjourned at 3:15 p.m.

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