

## **CHAPTER 980: COMMITMENT OF SEXUALLY VIOLENT PERSONS**

### **I. INITIAL COMMITMENT PROCESS:**

1. Petition for initial commitment within 90 days of discharge from custody. § 980.015. Wis. Stats.
2. Filing of SVP petition may be filed by DOJ or DA, § 980.02.
  - i. County of conviction for Sexually Violent Offense.
  - ii. County where person will reside when released.
  - iii. County where person is in custody, adult or juvenile facility.
3. Contents of SVP petition. § 980.02(2). Petition must allege evidence of three elements:
  - i. Conviction, Delinquency, or NGI for sexually violent offense.
  - ii. Person has mental disorder
  - iii. Dangerous because mental disorder that makes it more likely than not will engage in future acts of sexual violence.
4. Right to counsel. § 980.03.
5. Pretrial detention of person. § 980.04(1).
6. Probable Cause Hearing. § 980.04
7. Rights of persons subject to petition. § 980.03.
  - i. Right to counsel.
  - ii. Notice of hearings.
  - iii. Right to remain silent.
  - iv. Present and cross examine witnesses.
  - v. Right to trial. § 980.03(3).
    - a. Jury of twelve.
    - b. Unanimous verdict.
8. Burden is on State/Petitioner to prove three elements beyond reasonable doubt. § 980.05(3).
  - i. SVO conviction.
  - ii. Mental disorder.
  - iii. Dangerous/ more likely than not.
9. Right to examination. §980.031.
10. Discovery and inspection; what the parties must disclose. § 980.036.
11. If SVP, committed to care and control of the department of control until person is no longer a sexually violent person. § 980.06.

## **II. RE-EXAMINATION, PETITION FOR SUPERVISED RELEASE, AND DISCHARGE.**

1. Person reexamined within 12 months of initial commitment and every subsequent 12 months. § 980.07
  - i. Examined to determine if appropriate for supervised release or discharge.
  - ii. Department of health appoints an examiner.
  - iii. Person may retain or court may appoint independent examiner.
2. The treating professional shall provide a treatment progress report. § 980.07(4) and (6).
3. Standard is whether the person has made “sufficient progress” and whether the person/patient should be placed on supervised release or discharge.
  - i. Supervised release criteria listed in § 980.08(4)(cg).
  - ii. Discharge criteria listed in § 980.09(3)
  - iii. Supervised release standards may be considered together or separately.
  - iv. Different standards: person not dangerous due to health, age, treatment, or a combination of factors.
4. Within 30 days after reexamination report and TPR submitted to court, Person/patient may petition committing court for supervised release or discharge. § 980.075(2)(a).
5. If indigent, person referred to State Public Defender.
6. Petition usually submitted to SPD without details or supporting documents.
7. Petition may be supported by experts or professional persons. §980.075(4).
8. Often necessary to extend 30 day time limit to review documentary information, consult with person, secure independent evaluation.
9. If petition for discharge, court does “*Arends* review” of petition. Paper review of petition. Sufficient facts alleged by person that no longer SVP. §980.09(2).

## **III. SUPERVISED RELEASE: PETITION AND PROCESS.**

1. May petition if 12 months since commitment or last SR petition, or revocation of SR. §980.08(1).
2. Court shall appoint one or more examiners, report within 30 days.

3. For good cause, time limit extension for review of materials, independent evaluation.
4. Report addresses SR criteria set forth in §980.08(4)(cg):
  - i. Significant progress in treatment, sustainable on SR.
    - a. Expert's opinions may vary. Treatment professionals and coordinators at SandRidge, DHS examiners, and independent examiners.
  - ii. Substantially probable that will not engage in SVO while on SR.
  - iii. Treatment and provider available on SR.
  - iv. Person can comply with rules and conditions of SR.
  - v. Resources available for placement, supervision and treatment.
5. Court cannot grant SR unless criteria §980.08(4)(cg) are met.
6. Court may also consider the behavior that was the basis for commitment, §980.08(4)(c); Mental health history and current mental status; where person will live, support self; Available treatment and medication.
7. Other than criteria in §980.08(4)(cg), burden is not enumerated in statute. Statute does not assign to either party. Burden assigned by case law to committed person to establish by clear and convincing evidence that §980.08(4)(cg) criteria are met. *St. v. West*, 2011 WI 83, 336 Wis. 2d 578.
8. SR decided by committing court at SR evidentiary hearing, not by jury. §980.08(4).
9. If SR granted, county of release prepares plan for SR. §980.08(4)(cm)
  - i. County of release is county of residence, which is physical presence and intent to remain, as existed at time person committed SVO. §980.105.
  - ii. For good cause, court may select another county of release.
10. Supervised Release plan, §980.08(4)(d-f).
  - i. Prepared by county department under § 51.42.
  - ii. Department of health services participates in creating plan.
  - iii. DHS SR Plan includes 48 standard rules. Intensive supervision:
    - DHS and DOC, direct supervision.
    - Home confinement for first year. DHS escorts.
    - GPS monitoring (active).
    - Mandatory treatment.
    - Polygraph tests.
    - Random visits.
    - Only DHS approved contacts.
    - DHS controls persons finances.

- iv. Residential placement submitted to court within 60 days, but often takes much longer to find suitable placement.
- v. Plan to identify needs for treatment, counseling, community support, etc.
- vi. SR Plan must be reviewed by court. Must adequately meet needs of person and safety of community. §980.08(4)(g).
- vii. If SR plan inadequate, court orders new plan or that SR not appropriate. §980.08(4)(g).
- viii. Court to notify police and sheriff of SR.
- ix. Victims and family of victims notified of release

11. Allow parties to agree to SR before discharge. Transition from institution to discharge.

- i. Purpose of commitment is to balance community safety with individual's liberty interest. Commitment is not punitive. (*Hendricks; Post; West*).
- ii. Patients must discharged from 980 commitment if not risk to commit sexually violent offenses.
- iii. During SR, high scrutiny of person and continued treatment balances interests of community and person.
- iv. Additional structure of supervised release. Supervision of DHS and DOC.
- v. Transitional period for person to community reduces risk.
- vi. Need procedure for court to grant SR where Discharge is merited, and parties stipulate to SR because also appropriate. Intensive treatment plan and supervision.
- vii. SR more cost effective than institutional treatment.

12. SR revoked if rules violated or need for institutional care. §980.08(a-b)

### **III. DISCHARGE: PETITION AND PROCESS.**

1. If committed under 980, person must be afforded the right to request a jury for discharge hearing. *State v. Post*, 197 Wis. 2d 279, 541 NW2d 115(1995).
2. Person may petition at any time, if can establish that no longer a sexually violent person.
3. May be linked to progress in treatment, but person may no longer be dangerous for other reasons. (E.g, health, age, medication, etc.)
4. Court shall deny petition unless petition alleges facts that person's condition has changed from time of commitment and person is no longer meets the criteria for commitment as a sexually violent person.

5. Court does paper review of petition and attachments. (*Arends* review.)
6. Hearing by court or jury within 90 days of *Arends* review of discharge petition.
7. Jury demand by person or state. Demand within 10 days of filing of petition for discharge. Verdict must be 5 of 6 jurors.
8. Burden of proof is on state.
9. State must prove by clear and convincing evidence person meets criteria for SVP.
10. If state does not meet burden, person shall be discharged.
11. If person discharged because no longer a sexually violent person, no longer under care custody and control of DHS. (Dept of Corrections supervision if on Parole or Extended Supervision.)
12. If discharged, person is subject to lifetime GPS and Sex Offender Registration.
13. During discharge hearing, if burden of proof relevant to discharge satisfied by state, court may simultaneously consider evidence to determine whether person is appropriate for SR. §980.09(4).