



WISCONSIN LEGISLATIVE COUNCIL

SUPERVISED RELEASE AND DISCHARGE OF SEXUALLY VIOLENT PERSONS

Room 412 East
State Capitol

September 19, 2012
10:00 a.m. – 3:50 p.m.

[The following is a summary of the September 19, 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>.]

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; Rep. Louis Molepske, Jr.; and Public Members Mark Bensen, Michael Bohren, Ron Cramer, Shari Hanneman, Ian Henderson, Rick Oliva, and Anthony Rios.

COMMITTEE MEMBERS EXCUSED: Sen. Alberta Darling, Vice Chair; and Public Members Rebecca Dallet and Frank Liska.

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

APPEARANCES: Grace Roberts, Director of Sex Offender Programs for the Division of Community Corrections (DOC); Vincent Rust, Assistant State Public Defender, La Crosse Trial Office, Office of the Public Defender; Holly Bunch, Assistant District Attorney, 980 Unit, Milwaukee County District Attorney's Office; and Michael Schaefer, Assistant Attorney General, Department of Justice (DOJ).

Approval of the Minutes of the Committee's August 8, 2012 Meeting

Senator Lazich moved, seconded by Ms. Hanneman, that the minutes of the committee's August 8, 2012 meeting be approved. The motion was approved by unanimous consent.

Presentations by Invited Speakers

Grace Roberts, Director of Sex Offender Programs for the Division of Community Corrections, DOC

Ms. Roberts provided background on sex offenders and the role of DOC in the ch. 980 commitment process. She also spoke about GPS monitoring of sex offenders.

Ms. Roberts provided statistics regarding sex offenders in Wisconsin. She noted that 22,472 adults are required to provide information to the sex offender registry and that approximately half of these individuals are no longer under state supervision. Over 15,000 sex offenders are required to register for life. In addition, Ms. Roberts provided statistics regarding victims of sex offenses. Almost half of all victims are between 12 and 15 years of age. Furthermore, Ms. Roberts noted that the vast majority of offenders knew their victims before the offense.

Ms. Roberts discussed the process used by DOC to recommend sex offenders for commitment under ch. 980. Approximately one year before release from prison, DOC screens eligible inmates to determine whether the inmate should be referred to the End of Confinement Review Board (ECRB). Of the 18,087 inmates screened from 1992-August 2012, 3,675 inmates were referred to the ECRB. During that same time period, the ECRB has referred 1,893 inmates for a special purpose evaluation by a mental health professional. Of those inmates, 631, or about 3.5% of all inmates that have been screened, have been referred to either DOJ or the appropriate district attorney for possible commitment under ch. 980.

Ms. Roberts went on to describe the DOC's role in the supervised release of individuals committed under ch. 980. DOC, in collaboration with the Department of Health Services (DHS), completes a residence assessment to determine where a committed person on supervised release will live. A number of factors are considered during this assessment, including: how close is the residence to places such as schools, parks, and pools; whether the neighborhood has areas where children congregate; and how many registered sex offenders currently live in that area.

Under contract with DHS, DOC is responsible for monitoring committed individuals on supervised release. There are 48 standard rules for supervised release that each individual must follow. The court can create additional rules, sometimes at the request of DOC, which must be followed. Failure to follow any rule for supervised release may result in a committed individual's supervised release privilege being revoked. During the first year of supervised release, a committed person may only leave their home for limited reasons (e.g., employment, religion, caring for basic living needs) and is under the supervision of a DOC escort whenever they leave their residence. In subsequent years, the rules a committed person is subject to may be relaxed.

Ms. Roberts also spoke about the community notification process. Before a sex offender is released into the community, DOC reaches out to local law enforcement in the area where the offender plans to reside. Law enforcement typically holds a meeting to discuss the case, issues regarding adjustment of the individual, and the rules of supervision that the person will be subject to. Local law

enforcement agencies have discretion as to the amount of information they provide to the community regarding the release of a sex offender.

Ms. Roberts played a video about a community in California in which a sex offender was released. The video can be found at the following link: <http://abcnews.go.com/Nightline/video/sex-offender-door-10494398>. After playing the video, Ms. Roberts noted that offenders are more successful in the community if they have a stable residence, employment, chaperones, and offense-related programming.

Ms. Roberts also provided information about the sex offender registry and the registry website, which is maintained by DOC. She noted that people committed under ch. 980 are required to register for life. Furthermore, if a person is required to register they must do so even if they are living outside of Wisconsin. In addition, she noted that persons discharged from their commitment under ch. 980 do not have a different designation on the registry website than other offenders.

Ms. Roberts explained how GPS monitoring works. She explained that active GPS provides the ability to monitor a person's location in real time whereas passive monitoring involves monitoring where a person has been in the past after data is downloaded to a device inside a person's residence. In the near future, all sex offenders subject to GPS monitoring will wear a device that allows for active monitoring. Ms. Roberts noted that certain GPS devices allow the DOC to tell if a person leaves an inclusion zone or enters an exclusion zone and some devices can determine if a person has been consuming alcohol.

Ms. Roberts summarized DOC's role in the direct discharge of ch. 980 commitments. DOC helps the offender find a place to live and provides information about sex offender registry requirements and the use of GPS monitoring. In addition, DOC participates in the community notification process. Ms. Roberts also explained that offenders who are no longer subject to state supervision may refuse to wear a GPS device, although no offender has refused so far. Chair Strachota stated that this is an issue that may need to be looked at in the future, but is outside the scope of the Special Committee's charge.

Ms. Roberts indicated that it is beneficial to the community if a committed individual is discharged from supervised release rather than being discharged directly from an institution. Supervised release allows the person to make reentry plans, build life skills, gain employment, and participate in valuable programming. She went on to describe several cases where a committed person was discharged directly from an institution which led to poor outcomes for the individual and the community. In contrast, she could not think of any "horror stories" related to a committed person's actions while on supervised release--largely due to the structure and rules provided by supervised release.

Vincent Rust, Assistant State Public Defender, La Crosse Trial Office, Office of the Public Defender

Mr. Rust discussed the ch. 980 commitment process and the periodic review of these commitments. In addition, he provided information about the State Public Defender's (SPD) role.

Mr. Rust noted that every ch. 980 case is different. Many individuals that are committed have been victims of physical or sexual abuse themselves. In addition, there are no uniform factors, such as age or physical health that are common to this group of people. Mr. Rust described a few ways in which a person can become less dangerous, and thus, improve likelihood that they will be discharged. These

variables include: positive experience in treatment, change in health status, change in age, and change in evidence-based science that affects the actuarial tables used to determine risk.

Mr. Rust also spoke about the purpose and benefits of supervised release. He stated that ch. 980 is not a punitive statute, but rather its intent is to protect the community and to achieve a balance between the committed individual's rights to due process and liberty with the community's right to be safe. He noted that supervised release is beneficial because it prepares the committed individual to reach a level of non-dangerousness and allows the individual to gain community living skills while under a high level of scrutiny.

Mr. Rust made two recommendations to the Special Committee. First, he recommended that the burden of proof for supervised release be shifted from the committed individual to the state. Second, he recommended that a mechanism be created that allows the parties to stipulate to supervised release, even if the person does not satisfy the criteria for supervised release.

Mr. Rios commented that the most difficult criterion for individuals to satisfy is the requirement that the person has made significant progress in treatment. Mr. Rust agreed, and said that this prong was not as important as others because it does not implicate an individual's risk to the community.

Senator Lazich commented on the increasing trend in the number of discharges from ch. 980 commitments since the use of the Static-99r assessment table. She indicated a concern that the use of this table allows for more people to be discharged than is desirable. She also said that she would provide committee members a memorandum from the Legislative Fiscal Bureau that shows this trend.

Holly Bunch, Assistant District Attorney, 980 Unit, Milwaukee County District Attorney's Office

Ms. Bunch provided information about ch. 980 release mechanisms--supervised release and discharge--in addition to information about risk assessment tools and options for legislation. Ms. Bunch noted that ch. 980 does not require that a particular risk assessment tool be used, but that practice dictates that the Static-99r be used. Scores on this test range from 0-12, with 12 being the highest level of risk. Except for the highest risk sex offenders, the new norms for risk are approximately 1/3 lower than previously predicted by the Static-99. This means that some individuals who were appropriate for commitment under the Static-99 are no longer appropriate for commitment under the Static-99r. She explained that offenders age 60 and older have a three-point reduction from their original score, making it much more likely that once a committed person reaches age 60 he will be released.

Ms. Bunch noted that supervised release is always preferable to discharge. However, she has concerns specific to Milwaukee County about providing housing for a person on supervised release. Because Milwaukee County is unable to provide housing to individuals on supervised release, the county is unable to stipulate to placing a person on supervised release, an option used in other parts of the state.

Ms. Bunch also provided the committee with some options for legislation. She was in favor of limiting the ability to seek discharge to once a year; providing prosecutors with greater means to obtain experts; shifting the burden of proof to the committed individual for discharge trials; and changing the pleading requirement to make it more difficult to obtain a discharge trial. In response to a question from Mr. Bensen, Ms. Bunch said that she would support requiring supervised release before discharge and changing the "more likely than not" standard for ch. 980 commitment to something less than that.

Senator Darling indicated that the committee should look carefully at Ms. Bunch's suggestions to ensure that they are constitutional.

Committee Discussion

Chair Strachota addressed a few options provided by DOJ at the August 8, 2012 meeting. At the Chair's request, Assistant Attorney General Michael Schaefer answered questions from the committee members.

First, the committee discussed an option to propose statutory language to clarify which party bears the burden of proof regarding supervised release criteria and the level of proof that applies. Chair Strachota explained that the statutes setting forth the procedure for supervised release do not specify whether the sexually violent person (SVP) petitioning for supervised release or the state has the burden of proof regarding whether the SVP meets the criteria for supervised release.

She noted that the Wisconsin Supreme Court resolved the issue by holding that the SVP petitioning for supervised release bears the burden to prove he meets each of the criteria by clear and convincing evidence. *State v. West*, 2011 WI 83. Committee members did not raise any concerns regarding changing the statute to reflect the interpretation in *West*.

The committee also discussed the possibility of proposing statutory language specifying a different time period during which an SVP must establish that his or her condition has changed in order to be granted a discharge hearing. Chair Strachota explained that current law specifies that a court must deny an SVP's petition for discharge without a hearing unless the petition "alleges facts from which the court or jury may conclude the person's condition has changed since the date of his or her initial commitment order so that the person does not meet the criteria for commitment as a sexually violent person." [s. 980.09 (1), Stats.]

Mr. Schaefer suggested that the committee could clarify that an SVP must show his condition has changed since the most recent court or jury determination that he or she is still an SVP, rather than showing his condition has changed since his initial commitment. The committee members did not raise objections to making this change.

Mr. Schaefer also suggested that the committee could propose an amendment s. 980.09, Stats., regarding petitions for discharge, to make the language consistent in describing the court's task in reviewing a discharge petition. The statute governing discharge proceedings uses inconsistent language to describe the court's task in reviewing a discharge petition. Mr. Schaefer noted that the inconsistent language creates confusion about a court's review. Committee members came to a general agreement that the language should be consistent.

Mr. Schaefer also addressed an earlier discussion about shifting the burden of proof at a discharge hearing to the committed person. Mr. Schaefer believes that such a change would likely be unconstitutional as a violation of due process. However, Mr. Schaefer did say that supervised release is different than discharge. He said that it is appropriate to place the burden on the committed person for a supervised release hearing because the court is not making a determination whether the person should still be committed.

Mr. Schaefer also commented on an earlier discussion about requiring a committed person to be on supervised release before being discharged. He agreed that placing committed persons on supervised

release before discharge would be beneficial; however he had some concerns about the constitutionality of making it a requirement.

Mr. Schaefer also indicated that the level of dangerousness a committed person presents need not be above 50%, as it is in current law. Some states do not assign a numerical value to the required level of dangerousness to be committed. It is not easy to ascertain from case law the minimum level of dangerousness that could be applied, but Mr. Schaefer said that he would try to come up with some options for a different standard before the next meeting.

Other Business

Chair Strachota announced that the next meeting of the Special Committee on Supervised Release and Discharge of Sexually Violent Persons is scheduled for Thursday, October 4, 2012. In addition, the chair provided information from DHS about the cost of supervising SVP's. The annual cost of housing a committed person at the Sand Ridge Secure Treatment Center is approximately \$150,000/year and the annual cost of monitoring a person on supervised release is approximately \$75,000/year.

Adjournment

The meeting was adjourned at 3:50 p.m.

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