

1 **AN ACT** *to repeal* 980.075; *to renumber and amend* 980.08 (3) and 980.09 (intro.); *to*
2 *amend* 980.07 (1), 980.08 (1), 980.08 (4) (a), 980.09 (2) and (3), 980.09 (4), 980.095
3 (1) (a) and 980.11 (2) (intro.); and *to create* 980.07 (7) and (8), 980.08 (2m), 980.08
4 (4) (cj) and 980.09 (1m) of the statutes; **relating to:** supervised release and discharge
5 of individuals committed as sexually violent persons under chapter 980.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This bill draft was prepared for the Joint Legislative Council’s Special Committee on Supervised Release and Discharge of Sexually Violent Persons.

Chapter 980 of the Wisconsin statutes provides a statutory scheme for the involuntary civil commitment of individuals who have completed their criminal sentences and are determined to be “sexually violent persons”. In general, a sexually violent person (SVP) is an individual who has been convicted of a sexually violent offense and who is dangerous because he or she suffers from a mental disorder that makes it likely the person will engage in future acts of sexual violence. Current law contains provisions for the discharge or supervised release of individuals committed under ch. 980.

This draft makes various changes to the discharge and supervised release provisions of ch. 980. These changes include the following:

- Assigning the burden of proof regarding supervised release criteria to the petitioner.
- Extending the timelines within which a court must hold a supervised release hearing or discharge trial.
- Altering the pleading requirement a petitioner must meet before receiving a discharge trial.
- Repealing s. 980.075, stats., relating to the supervised release and discharge petition process, and relocating certain provisions to the statutory sections specifically relating to supervised release and discharge.

- Requiring a court to make a supervised release determination after denying discharge at a discharge trial.
- Requiring a 15-day delay in the execution of a court order granting discharge or supervised release to a committed individual.

COMMENT: The draft contains recommendations submitted by the Wisconsin department of justice (DOJ) at the October 4, 2012 meeting of the special committee.

1 **SECTION 1.** 980.07 (1) of the statutes is amended to read:

2 980.07 (1) If a person is committed under s. 980.06 and has not been discharged under
3 s. 980.09 (4), the department shall appoint an examiner to conduct a reexamination of the
4 person's mental condition within 12 months after the date of the initial commitment order
5 under s. 980.06 and again thereafter at least once each 12 months to determine whether the
6 person has made sufficient progress for the court to consider whether the person should be
7 placed on supervised release or discharged. The examiner shall apply the criteria under s.
8 980.08 (4) (cg) when considering if the person should be placed on supervised release and
9 shall apply the criteria under s. 980.09 (3) when considering if the person should be
10 discharged. At the time of a reexamination under this section, the ~~person who has been~~
11 ~~committed may retain or have the court appoint an examiner as provided under s. 980.031 (3)~~
12 court shall appoint an examiner as provided under s. 980.031 (3) upon request of the
13 committed person or the person may retain an examiner. The county shall pay the costs of an
14 examiner appointed by the court as provided under s. 51.20 (18) (a).

NOTE: Clarifies that a court must appoint an examiner for the committed person if the person requests an examiner at the time of the 12-month reexamination. Removes ambiguity regarding whether a court may choose not to appoint an examiner when a committed person requests an examiner.

15 **SECTION 2.** 980.07 (7) and (8) of the statutes are created to read:

1 980.07 (7) At any time before a hearing under s. 980.08 or 980.09, the department may
2 file a supplemental report if the department determines that the court should have additional
3 information. The court shall accept the supplemental report and permit testimony from the
4 department regarding the report or any relevant portion of the report.

5 (8) When the department provides a copy of the report under s. 980.07 (6) to the person
6 who has been committed under s. 980.06, the department shall provide to the person a
7 standardized petition form for supervised release under s. 980.08 and a standardized petition
8 form for discharge under s. 980.09.

NOTE: Permits the department of health services (DHS) to file a supplemental report at any time prior to a supervised release or discharge hearing. The SECTION also requires DHS to provide petition forms to committed individuals when providing a copy of the person's reexamination report. This language is currently contained in s. 980.075 (1m) (a) and (6), which this draft repeals.

Creates new language requiring the court to accept any supplemental reports filed by DHS prior to a supervised release or discharge hearing and requires the court to allow DHS to testify about the supplemental report.

9 **SECTION 3.** 980.075 of the statutes is repealed.

NOTE: Repeals s. 980.075, **Patient petition process.** This draft relocates portions of the statute into ss. 980.07, 980.08, and 980.09, stats., as described in the notes appearing beneath SECTIONS 2, 5, and 10.

Portions of the statute which this draft repeals and does not relocate to other portions of the chapter appear in s. 980.075 (2), stats., and contain the following: (1) a 30-day deadline for submitting a supervised release or discharge petition that may conflict with more specific deadlines appearing within s. 980.08 and 980.09, stats; and (2) language stating that a person remains committed or remains on supervised release without court review if the person does not file a timely discharge petition.

10 **SECTION 4.** 980.08 (1) of the statutes is amended to read:

1 980.08 (1) Any person who is committed under s. 980.06 may petition the committing
2 court to modify its order by authorizing supervised release if at least 12 months have elapsed
3 since the initial commitment order was entered or at least 12 months have elapsed since the
4 most recent release petition was denied pursuant to s. 980.09 (4), or the most recent order for
5 supervised release was revoked. The director of the facility at which the person is placed may
6 file a petition under this subsection on the person's behalf at any time.

NOTE: Prohibits a committed individual from filing a supervised release petition for at least 12 months after a court considers and denies supervised release at a discharge hearing.

Currently, if an individual is denied discharge at a discharge trial, then the court may proceed to consider whether the individual qualifies for supervised release. SECTION 12 of this draft eliminates court discretion to decide whether or not to consider supervised release at a discharge trial and instead requires the court to consider supervised release after denying discharge.

7 **SECTION 5.** 980.08 (2m) of the statutes is created to read:

8 980.08 (2m) The petitioner may use experts or professional persons to support his or
9 her petition. The district attorney or the department of justice may use experts or professional
10 persons to support or oppose any petition.

NOTE: Provides that a committed individual and the prosecution may use experts or professionals in supporting or opposing a petition for supervised release. The language is currently contained in s. 980.075 (4) (a) and (b), stats., which this draft repeals.

11 **SECTION 6.** 980.08 (3) of the statutes is renumbered 980.08 (3) (a) and (b) and amended
12 to read:

13 980.08 (3) (a) Within 20 days after receipt of the petition, the court shall appoint one
14 or more examiners having for the court who have the specialized knowledge determined by
15 the court to be appropriate, who shall examine the person and furnish a written report of the
16 examination to the court within ~~30~~ 60 days after appointment, unless the court for good cause

1 extends this time limit. If the person requests appointment of an examiner within 20 days after
2 the filing of the petition, the court shall appoint an examiner for the person, unless the court
3 appointed an examiner under s. 980.07 (1) or 980.031 (3) for the current reexamination
4 period. If a report filed by an examiner appointed under s. 980.07 (1) to conduct a
5 reexamination of the person's mental condition within the 6 months preceding the filing of the
6 petition supports supervised release, the court may appoint that examiner as the examiner for
7 the person under this subsection.

8 (b) The examiners appointed under par. (a) shall have reasonable access to the person
9 for purposes of examination and to the person's past and present treatment records, as defined
10 in s. 51.30 (1) (b), and patient health care records, as provided under s. 146.82 (2) (c). If any
11 such examiner believes that the person is appropriate for supervised release under the criteria
12 specified in sub. (4) (cg), the examiner shall report on the type of treatment and services that
13 the person may need while in the community on supervised release. The county shall pay the
14 costs of an examiner appointed under ~~this subsection~~ par. (a) as provided under s. 51.20 (18)
15 (a).

NOTE: Renumbers existing s. 980.08 (3) as 2 separate paragraphs.

The SECTION also extends the time period for an examiner to complete an evaluation of the committed person and submit the report to the court from 30 to 60 days, and authorizes the court to extend the time limit for good cause.

The SECTION clarifies that the court appoints an examiner at this stage for purposes of the court. The draft also requires the court to appoint an examiner for the committed person if: (1) the person requests appointment of an examiner; and (2) the court has not previously appointed an examiner for the person under other sections of the chapter during the relevant 12-month reexamination period.

If the committed person requests appointment of his or her own examiner, the SECTION allows the court to appoint the DHS examiner who conducted the person's annual reexamination if: (1) the examiner

conducted the examination within the 6 months before the person filed his or her supervised release petition; and (2) the examiner's report supports a grant of supervised release. This will allow the court to appoint an examiner who already conducted an examination of the individual and generated a report favorable to the individual, rather than requiring the court to appoint an additional examiner on behalf of the person.

1 **SECTION 7.** 980.08 (4) (a) of the statutes is amended to read:

2 980.08 (4) (a) The court, without a jury, shall hear the petition within ~~30~~ 120 days after
3 the report of the court-appointed examiner appointed under sub. (3) (a) is filed with the court,
4 unless the court for good cause extends this time limit. Expenses of proceedings under this
5 subsection shall be paid as provided under s. 51.20 (18) (b), (c), and (d).

NOTE: Extends the time period for the supervised release hearing from 30 to 120 days after the examiner's report is filed.

COMMENT: The SECTION specifies that the court must hold a supervised release hearing within 120 days after the court's *own examiner* files an examination report. SECTION 6 above provides that the court may appoint 2 examiners: one for itself and one for the committed person. Therefore, the committee may consider whether to require a hearing within 120 days of the filing of an examination report by the court's own examiner or within 120 days of the filing of a report by *either* examiner.

6 **SECTION 8.** 980.08 (4) (cj) of the statutes is created to read:

7 980.08 (4) (cj) The person has the burden of proving by clear and convincing evidence
8 that the person meets the criteria in par. (cg).

NOTE: Provides that the person petitioning for supervised release bears the burden of proving he or she meets the criteria by clear and convincing evidence, codifying the Wisconsin Supreme Court's decision in *State v. West*, 2011 WI 83.

9 **SECTION 9.** 980.09 (intro.) of the statutes is renumbered 980.09 (1) and, as renumbered,
10 is amended to read:

11 980.09 (1) A committed person may petition the committing court for discharge at any
12 time. The court shall deny the petition under this section without a hearing unless the petition

1 alleges facts from which the court or jury ~~may~~ would likely conclude the person's condition
2 has changed since the date of his or her initial commitment order, or the most recent order
3 denying a petition for discharge after a hearing on the merits, so that the person ~~does not meet~~
4 no longer meets the criteria for commitment as a sexually violent person.

NOTE: Alters the pleading requirement which a petitioner must meet before his or her discharge petition will receive a discharge trial. The SECTION requires a petitioner to allege facts which *would likely* lead a fact-finder to determine he or she no longer qualifies as an SVP, rather than alleging facts which *may* lead a fact-finder to this determination.

This SECTION also alters the time period during which a petitioner must show his "condition has changed" in order to merit a discharge trial. The language requires a petitioner to allege a change occurring since the last discharge trial at which a fact-finder determined that he remains an SVP.

COMMENT: Is it clear that the petitioner must allege a change occurring since the last trial denying discharge if he or she has received a trial? Would it be more clear to include language such as the following:

The court shall deny the petition under this section without a hearing unless the petition alleges facts from which the court or jury would likely conclude the person's condition has changed since the most recent order denying a petition for discharge after a hearing on the merits, or since the date of his or her initial commitment order if the person has never received a hearing on the merits of a discharge petition, so that the person no longer meets the criteria for commitment as a sexually violent person.

5 **SECTION 10.** 980.09 (1m) of the statutes is created to read:

6 980.09 (1m) (a) If the person files a petition for discharge under s. 980.09 without
7 counsel, the court shall serve a copy of the petition and any supporting documents on the
8 district attorney or department of justice, whichever is applicable. If the person petitions for
9 discharge under s. 980.09 through counsel, his or her attorney shall serve the district attorney
10 or department of justice, whichever is applicable.

1 (b) If the person files a petition for discharge under s. 980.09 without counsel, as soon
2 as circumstances permit, the court shall refer the matter to the authority for indigency
3 determinations under s. 977.07 (1) and appointment of counsel under s. 977.05 (4) (j) if the
4 person is not represented by counsel.

5 (c) The petitioner may use experts or professional persons to support his or her petition.

6 (d) The district attorney or the department of justice may use experts or professional
7 persons to support or oppose any petition.

8 (e) After receiving the petition for discharge and upon the request of the person, the
9 court shall appoint an examiner for the person, unless the court previously appointed an
10 examiner under ss. 980.07 (1) and 980.031 (3) for the current reexamination period, having
11 the specialized knowledge determined by the court to be appropriate who shall examine the
12 person. If discharge is supported by an examination conducted under s. 980.07 (1) within the
13 6 months preceding the filing of the petition, the court may appoint the examiner who
14 conducted that examination as the examiner for the person. The examiner shall have
15 reasonable access to the person for purposes of examination and to the person's past and
16 present treatment records, as defined in s. 51.30 (1) (b), and patient health care records, as
17 provided in s. 146.82 (2) (c). The county shall pay the costs of an examiner appointed under
18 this subsection as provided under s. 51.20 (18) (a).

NOTE: Requires that a committed person or his or her attorney serve a copy of the person's discharge petition and supporting documents on the prosecuting entity. This language is currently contained in s. 980.075 (3), stats., which this draft repeals.

The SECTION also requires the court to refer a committed person who does not have an attorney to the office of the state public defender for an indigency determination and appointment of counsel. This language is currently contained in s. 980.075 (5), stats., which this draft repeals.

The SECTION permits the committed individual and the prosecution to use experts or other professionals to support or oppose a discharge petition. This language is currently contained in s. 980.075 (4) (a) and (b), which this draft repeals.

The SECTION also creates a new statutory section relating to appointment of an examiner for the person petitioning for discharge. The draft specifies that a court must appoint an examiner for the person if the person is indigent and requests an examiner after submitting a discharge petition to the court.

However, the court is not required to appoint an additional examiner for the person if the court previously appointed an examiner for the person at the time of the person's annual reexamination. Further, instead of appointing a new examiner for the person, the court may appoint an examiner who already completed an examination of the person under certain circumstances. The court may appoint an examiner who previously examined the person if: (1) the examiner completed a reexamination of the person within the 6 months before the person filed his or her petition for discharge; and (2) the examination recommended discharge.

1 **SECTION 11.** 980.09 (2) and (3) of the statutes are amended to read:

2 980.09 (2) ~~The court shall review the petition within 30 days and may hold a hearing~~
3 In reviewing the petition, the court may hold a non-evidentiary hearing to determine if it
4 contains facts from which the court or jury may conclude that the person does not meet the
5 person's condition has sufficiently changed such that a court or jury would likely conclude the
6 person no longer meets the criteria for commitment as a sexually violent person. In
7 determining under this subsection whether ~~facts exist that might warrant such a conclusion,~~
8 the person's condition has sufficiently changed such that a court or jury would likely conclude
9 that the person no longer meets the criteria for commitment, the court shall consider the record,
10 including evidence introduced at the initial commitment trial or the most recent trial on a
11 petition for discharge, any current or past reports filed under s. 980.07, relevant facts in the
12 petition and in the state's written response, arguments of counsel, and any supporting
13 documentation provided by the person or the state. If the court determines that the ~~petition~~

1 record does not contain facts from which a court or jury ~~may~~ would likely conclude that the
2 person ~~does not meet~~ no longer meets the criteria for commitment, the court shall deny the
3 petition. If the court determines that ~~facts exist~~ the record does contain facts from which a
4 court or jury ~~could~~ would likely conclude the person ~~does not meet~~ no longer meets the criteria
5 for commitment, the court shall set the matter for ~~hearing~~ trial.

6 (3) The court shall hold a hearing trial within 90 days of the determination that the
7 petition contains facts from which the court or jury may conclude that the person does not meet
8 the person's condition has sufficiently changed such that a court or jury would likely conclude
9 that the person no longer meets the criteria for commitment as a sexually violent person. The
10 At trial, the state has the burden of proving by clear and convincing evidence that the person
11 meets the criteria for commitment as a sexually violent person.

NOTE: Alters the procedure for court review of a discharge petition in determining whether the court must hold a discharge trial. Under current law, a court may hold a hearing to determine whether the petition meets the pleading requirement. The hearing is an initial hearing that addresses the sufficiency of the petition itself, unlike a discharge trial which occurs later and determines whether the petitioner remains an SVP. The SECTION specifies that this initial hearing is a non-evidentiary hearing.

The SECTION also alters the pleading requirement a petitioner must meet before receiving a discharge trial. Under current law, the petitioner's discharge petition must allege facts from which a court or jury *may* conclude that he no longer qualifies as an SVP. The draft instead provides that a petitioner's discharge petition must allege facts from which a court or jury *would likely* conclude he no longer qualifies as an SVP. The SECTION also specifies that a court must review the entire record in determining whether the petitioner's condition has sufficiently changed to warrant a discharge trial.

The SECTION uses the word "trial" instead of the word "hearing" so that the SECTION refers to discharge trials rather than discharge hearings. This distinguishes between an initial hearing held by a court to determine the sufficiency of a discharge petition and a full trial on the merits.

COMMENT: 1. In its request for modifications to s. 980.09 (2), stats., DOJ requested that the draft specify that an initial discharge hearing to review the sufficiency of the petition be “non-evidentiary”. This term does not currently appear in the Wisconsin statutes. Should it be included in this draft?

2. The draft provides that a court shall consider “the record” when it reviews a discharge petition to determine whether the petition merits a trial. Does this term provide sufficient explanation?

1 **SECTION 12.** 980.09 (4) of the statutes is amended to read:

2 980.09 (4) If the court or jury is satisfied that the state has not met its burden of proof
3 under sub. (3), the petitioner shall be discharged from the custody of the department. If the
4 court or jury is satisfied that the state has met its burden of proof under sub. (3), the court may
5 shall proceed under s. 980.08 (4) to determine whether to modify the petitioner’s existing
6 commitment order by authorizing supervised release, unless the person waives consideration
7 of the criteria in s. 980.08 (4) (cg). A waiver of consideration of these criteria shall be
8 considered a denial of supervised release for purposes of s. 980.08 (1).

NOTE: Requires a court to consider supervised release for a petitioner after denying discharge at a discharge trial. Under current law, the court may choose to evaluate whether the petitioner meets the supervised release criteria, but is not required to do so.

The SECTION permits a petitioner to waive the court’s consideration of supervised release, but treats the waiver as a denial of supervised release for purposes of calculating when a committed person may file a petition for supervised release.

9 **SECTION 13.** 980.095 (1) (a) of the statutes is amended to read:

10 980.095 (1) (a) The district attorney or the department of justice, whichever filed the
11 original petition, or the petitioner or his or her attorney may request that a hearing under s.
12 980.09 (3) be to a jury of 6. A jury trial is deemed waived unless it is demanded within 10 days
13 of the filing of the petition for discharge determination by the court that a court or jury would
14 likely conclude the person’s condition has sufficiently changed pursuant to s. 980.09 (1).

NOTE: Alters the deadline by which a petitioner must request a jury trial in discharge proceedings. Under current law, a petitioner must request a jury trial within 10 days of filing his discharge petition, which requires the petitioner to request a jury trial before the court determines whether or not he or she will receive a trial on his discharge petition. The SECTION specifies that a petitioner must request a jury trial within 10 days after the court determines that his or her petition warrants a trial.

1 **SECTION 14.** 980.11 (2) (intro.) of the statutes is amended to read:

2 980.11 (2) (intro.) If the court places a person on supervised release under s. 980.08 (4)
3 or discharges a person under s. 980.09 (4), the court shall stay execution of the order for 15
4 days and the department shall do all of the following:

NOTE: Specifies a 15-day delay before execution of a court's order discharging a person from commitment or placing the person on supervised release. Under current law, the court's order for discharge or supervised release may be executed immediately.

COMMENT: DOJ explained that when court orders are executed immediately, DHS does not have sufficient time to make required notifications to the person's victims or to arrange for GPS monitoring of the person. DOJ noted that "15 days" was merely a suggestion, and the committee may wish to consult with DHS or the department of corrections regarding an appropriate period of delay before discharge or supervised release. Does the committee wish to specify a different period of time?

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(END)