



## Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #440

### **Civil Commitment of Sexually Violent Persons -- New Units at Sand Ridge Secure Treatment Center, and Contract Beds for Excess Inpatient Population (DHFS -- Institutions)**

#### *Bill Section*

[LFB 2007-09 Budget Summary: Page 334, #1 and Page 335, #2]

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#### **CURRENT LAW**

Under Chapter 980 of the statutes, if an individual is found to meet the statutory definition of a sexually violent person (SVP), the court must commit that individual to the custody of the Department of Health and Family Services (DHFS) until such time as they are determined to no longer be an SVP. Wisconsin law defines an SVP as a person who has been convicted of a sexually violent offense, has been adjudicated delinquent for a sexually violent offense, or has been found not guilty of or not responsible for a sexually violent offense by reason of insanity or mental disease, defect, or illness, and who is dangerous because he or she suffers from a mental disorder that makes it more likely than not that they will engage in one or more acts of sexual violence. This definition reflects 2003 Wisconsin Act 187, which effective April 22, 2004, changed the definition of an SVP from a person whose mental disorder made it "substantially probable" they would engage in acts of sexual violence, to a person whose mental disorder makes it "more likely than not" they will engage in such an act.

For purposes of Chapter 980, a "sexually violent offense" includes a range of criminal offenses, including but not limited to first, second, and third degree sexual assault, first degree sexual assault of a child under age 13, second degree sexual assault of a child under age 16, engaging in repeated acts of sexual assault of the same child, incest with a child, child enticement, and sexual assault of a child placed in substitute care. Included in this list are several offenses, including third degree sexual assault, that were added effective August 1, 2006, pursuant to 2005 Wisconsin Act 434.

The state agency with jurisdiction over a person, typically the Department of Corrections, must notify the Department of Justice and the local district attorney if a person under its jurisdiction may meet the criteria for commitment as an SVP. DOC must provide this notice as soon as possible beginning 90 days prior to the person's anticipated discharge or release. The Department of Justice or the district attorney, in turn, can then petition the court to commit the person as an SVP. If, after a trial, the court or jury determines the person is an SVP, the court must enter a judgment on the finding and commit the person as an SVP.

Following commitment, an SVP is placed either at the Sand Ridge Secure Treatment Center (SRSTC) in Mauston, or the Wisconsin Resource Center (WRC) near Oshkosh. As of February 28, 2007, there were 274 Chapter 980 inpatients at SRSTC, and 85 Chapter 980 inpatients at WRC. Those inpatient totals included 295 individuals who have been committed as SVPs, and 64 individuals who were being detained on a pre-commitment basis under Chapter 980. The term "pre-commitment" refers to a person who has had their probable cause hearing, or who has waived the timelines for a probable cause hearing, and is being detained pending a trial court decision on the petition to have them committed as an SVP.

Individuals committed as SVPs are eligible to receive treatment, though some choose not to participate. In addition, SVPs are periodically re-examined to determine whether they have made sufficient treatment progress for the court to consider whether they should be placed on supervised release or discharged. Before an SVP can be granted supervised release, the court must find, among other things, that the SVP has made significant progress in treatment, that such progress can be sustained while the person is on supervised release, and that it is substantially probable that the person will not engage in an act of sexual violence while on supervised release. As of February 28, 2007, there were 16 SVPs on community supervised release in Wisconsin, with five other SVPs awaiting placement.

## **GOVERNOR**

*Staff Units at SRSTC.* Provide \$3,477,200 GPR and 91.10 positions in 2008-09 to fund staff, supplies, and one-time costs for four new 25-bed units at SRSTC. Under the bill, two 25-bed units would open in January, 2009, and the other two units would open in April, 2009.

*Contracted Beds in County Jails.* Provide \$56,800 GPR in 2007-08 and \$423,000 GPR in 2008-09 for DHFS to contract for beds in county jails to temporarily house SVPs before the units at SRSTC are available.

## **DISCUSSION POINTS**

1. Several recent changes to Chapter 980 have increased the rate at which individuals in Wisconsin are being committed as SVPs. The most significant change occurred under 2003 Wisconsin Act 187, which effective April 22, 2004, broadened the definition of an SVP from a person whose mental disorder made it "substantially probable" they would engage in acts of sexual

violence, to a person whose mental disorder made it "more likely than not" they would engage in such an act.

2. Table 1 identifies the year-end total Chapter 980 inpatient population at WRC and SRSTC for fiscal years 2002-03 through 2005-06, as well as the total Chapter 980 inpatient population on February 28, 2007. Table 1 also identifies the annual increase in the Chapter 980 inpatient population for each fiscal year, as well as the average monthly increase during that year.

**TABLE 1**

**Chapter 980 Inpatient Populations at WRC and SRSTC**

	<u>2002-03</u>	<u>2003-04</u>	<u>2004-05</u>	<u>2005-06</u>	<u>2006-07 (8 Months)</u>
Total Year-End Chapter 980 Inpatient Population at WRC and SRSTC	257	279	301	334	359
Annual Increase in Chapter 980 Inpatient Population at WRC and SRSTC	12	22	22	33	25
Average Monthly Increase During the Fiscal Year	1.00	1.83	1.83	2.75	3.13

3. As Table 1 indicates, the Chapter 980 inpatient population has increased at an increasing rate following enactment of 2003 Wisconsin Act 187. Specifically, that population increased at the rate of 1.00 person per month in 2002-03, 1.83 persons per month in 2003-04, 1.83 persons per month in 2004-05, and 2.75 persons per month in 2005-06. Through the first eight months of 2006-07, the combined Chapter 980 inpatient population at WRC and SRSTC has increased at the rate of 3.13 persons per month. As a result of this rising population, the Chapter 980 inpatient population as of February 28, 2007, was 96% of the combined operating capacity of WRC and SRSTC.

4. To address these rising inpatient populations, the administration has proposed building a 300-bed addition to SRSTC. The State Building Commission's recommendations on the 2007-09 capital budget include the construction of this 300-bed addition. The current project timeline anticipates that the first additional 100 beds at SRSTC will be completed by January, 2009. However, the issues addressed in this paper pertain to the costs required to staff and operate these additional SVP units at SRSTC. As discussed below, the timing of those expenditures depends in large measure on the rate at which one assumes the Chapter 980 inpatient population will increase during the next several years.

5. The administration estimates that the Chapter 980 inpatient population will increase at the rate of four persons per month during the remainder of 2006-07 and during each month of the 2007-09 biennium. The administration bases that forecast on the increasing populations reflected in Table 1, as well as several recent changes to Chapter 980 that may increase the rate of growth in the

## Chapter 980 population.

6. The first such statutory change, effective August 1, 2006, expanded the list of crimes that constitute a "sexually violent offense" under Chapter 980 to include, among others, third degree sexual assault. The second statutory change cited by the administration as the basis for an increased rate of growth in the Chapter 980 population requires a court to find that an SVP has made "significant progress in treatment" before the person can be granted community supervised release. Under prior law, the court was authorized to grant supervised release unless the state proved by clear and convincing evidence that the SVP had not made significant progress in treatment. This statutory change also went into effect August 1, 2006.

7. The administration's projection is also premised, in part, upon the rate at which DOC refers individuals to the Department of Justice and local district attorneys. As described above, Chapter 980 requires DOC to notify DOJ and the local district attorney if a person scheduled for release or discharge may satisfy the statutory definition of an SVP. The DOJ or the district attorney can then file a petition in state court to have the person committed as an SVP. Historically, a high percentage of cases DOC refers to DOJ and local district attorneys become the subject of an SVP petition in state court, and historically, a high percentage of persons who are the subject of an SVP petition are eventually committed as SVPs. In 2004-05, DOC referred an average of 3.5 individuals to DOJ and district attorneys. In 2005-06, the rate of referrals rose to 4.33 persons per month. For the first eight months of 2006-07, the referral rate has been 4.125 persons per month.

8. Based on these factors, the Committee could conclude that the administration's estimate that the Chapter 980 inpatient population at WRC and SRSTC will increase by four persons per month during the remainder of FY 2007 and throughout the 2007-09 biennium is reasonable.

9. The Committee could also conclude that a slightly lower growth rate of 3.5 persons per month is reasonable. There are several reasons why the Committee could assume this lower growth rate projection. First, while 3.5 persons per month is lower than the administration's projected growth rate, it is still higher than the rates of growth heretofore experienced in the Chapter 980 inpatient population. Therefore, a growth rate of 3.5 persons per month incorporates the higher rates of growth that have occurred in the Chapter 980 population to date, while also providing for a slight increase in growth due to the factors identified by the administration in its projections.

10. Second, the Committee could decide that it is too early to determine how, if at all, recent statutory changes cited by the administration in its projections may affect Chapter 980 populations. For instance, while the burden SVPs must satisfy in order to be granted supervised release increased beginning August 1, 2006, the administration is also projecting that the number of SVPs on community supervised release will actually grow during the upcoming biennium, from 16 as of February 28, 2007, to 22 by the end of 2007-08, and 25 by the end of 2008-09. The Committee could also conclude that it is unclear whether, or to what degree, adding such crimes as third degree sexual assault to the definition of a sexually violent offense under Chapter 980 will increase the rate at which persons are committed as SVPs. In addition, the Committee could

conclude that even if these recent statutory changes will impact future SVP populations, that impact may not work its way into inpatient population during the upcoming biennium.

11. Table 2 compares the total Chapter 980 inpatient population for the remainder of 2006-07, and for the 2007-09 biennium, assuming an average monthly increase of 4.0 persons versus an average monthly increase of 3.5 persons. Those two different assumptions are reflected in Scenario A and Scenario B, respectively, in Table 2. (Note that both Scenario A and Scenario B incorporate the fact that a 30-bed SVP unit is scheduled to open at WRC in May, 2007, thereby increasing the operational capacity at that facility by 29.)

**TABLE 2**

	<b>SCENARIO A</b>				<b>SCENARIO B</b>				
	Total Operating Capacity at WRC & SRSTC	Total Ch. 980 Population	Population in Excess of Operating Capacity	Pop. as a % of Operating Capacity	Total Operating Capacity at WRC & SRSTC	Total Ch. 980 Population	Population in Excess of Operating Capacity	Pop. as a % of Operating Capacity	
<b>Second Half Fiscal Year 2007</b>									
January, 2007	375	354		94%	375	354		94%	
February	375	359		96	375	359		96	
March	375	363		97	375	363		97	
April	375	367		98	375	366		98	
May	404	371		92	404	370		91	
June	404	375		93	404	373		92	
<b>Fiscal Year 2007-08</b>									
July, 2007	404	379		94%	404	377		93%	
August	404	383		95	404	380		94	
September	404	387		96	404	384		95	
October	404	391		97	404	387		96	
November	404	395		98	404	391		97	
December	404	399		99	404	394		98	
January, 2008	404	403		100	404	398		98	
February	404	407	3	101	404	401		99	
March	404	411	7	102	404	405	1	100	
April	404	415	11	103	404	408	4	101	
May	404	419	15	104	404	412	8	102	
June	404	423	19	105	404	415	11	103	
<b>Fiscal Year 2008-09</b>									
July, 2008	404	427	23	106%	404	419	15	104%	
August	404	431	27	107	404	422	18	104	
September	404	435	31	108	404	426	22	105	
October	404	439	35	109	404	429	25	106	
November	404	443	39	110	404	433	29	107	
December	404	447	43	111	404	436	32	108	
January, 2009	452	451		100	452	440		97	
February	452	455	3	101	452	443		98	
March	452	459	7	102	452	447		99	
April	500	463		93	452	450		100	
May	500	467		93	476	454		95	
June	500	471		94	476	457		96	

12. Under Scenario A, which incorporates the administration's projected population growth rate of 4.0 persons per month, the Chapter 980 inpatient population at WRC and SRSTC will exceed the combined operating capacity of the two facilities by February, 2008. (DHFS considers operating capacity to be 96% of total facility capacity.) The Governor's bill would address that excess population by opening two 25-bed units at SRSTC in January, 2009, and two additional 25-bed units at SRSTC in April, 2009.

13. Under Scenario B, which incorporates a slightly lower projected population growth rate of 3.5 persons per month, the excess Chapter 980 population would be addressed by adding two 25-bed units in January, 2009, and one additional 25-bed unit in May, 2009.

14. Under the Governor's bill, as reflected in Scenario A, the combined cost of opening two 25-bed units at SRSTC in January, 2009, and two additional 25-bed units at SRSTC in April, 2009, would be \$3,447,200 in 2008-09. That recommendation is based on current expenditure and staffing levels at the existing SRSTC units. The Governor's bill assumes staff is hired two months before additional units are opened in order to provide the requisite training and orientation. This assumption is also based on the experience at SRSTC and WRC.

15. Under Scenario B, the estimated expenditures in 2008-09 would be \$2,960,800, or \$486,400 less than the Governor's bill. These lower expenditures would result from the fact that under Scenario B, only one 25-bed unit would be opened in May, 2009, rather than two 25-bed units opening in April, 2009, as the Governor's bill assumes. Under Scenario B, the number of additional FTE positions required 2008-09 would also decrease by 17.55, as compared to the Governor's bill.

16. Even if the Committee decides that 3.5 persons per month is a more realistic projected growth rate, it could still approve the Governor's recommendation to open two additional 25-bed units at SRSTC in April, 2009 (in addition to the two 25-bed units that would be opened in January, 2009). While proceeding in that fashion would create additional capacity at SRSTC in the short run, DHFS argues that opening 50 beds at one time is more efficient in terms of staff training and orientation. DHFS also argues that any excess capacity at SRSTC in the short run would allow the Department to house appropriate patients in the same housing unit, a key element of the treatment program that has been compromised due to current population pressures.

17. Table 2 also includes a column entitled "Population in Excess of Operating Capacity." That column tracks the extent to which the projected Chapter 980 inpatient population under each Scenario would exceed the combined operational capacity at WRC and SRSTC. For instance, under Scenario A, the Chapter 980 population will exceed the total operating capacity at WRC and SRSTC by February, 2008, and will grow to an excess population of 43 individuals by December, 2008. Under Scenario B, the projected excess population over time is lower, due to the lower rate of population growth reflected in Scenario B.

18. The Governor's bill includes funding for DHFS to contract with county jails to house this excess Chapter 980 population until the initial phase of the SRSTC expansion is completed.

Under the bill, only persons detained on a "pre-commitment" status would be temporarily housed at county jails.

19. The bill provides \$479,800 to allow DHFS to pay county jails to house this excess Chapter 980 population. That recommendation is based on the rate of \$55 per person per day, which is the estimated daily rate DHFS would pay county jails to house inmates, multiplied by the total number of days in 2008-09 needed to house the excess Chapter 980 population. DHFS has recently revised the estimated cost for contract beds in 2008-09 downward to \$437,300, an estimate that better reflects the administration's assumption that the Chapter 980 inpatient population will grow by four persons per month. Consequently, the Committee could reduce funding in the bill by \$42,500 GPR in 2008-09 to reflect the administration's revised estimate. Finally, if the slightly lower population growth rate of 3.5 persons per month under Scenario B is used, the projected cost of these "contract beds" in the 2007-09 biennium would be \$277,700, or \$202,100 lower than the Governor's bill.

**ALTERNATIVES TO BILL**

**A. Cost of Staffing Additional Units at SRSTC**

1. Approve the Governor's recommendation.

ALT A1	Change to Bill		Change to Base	
	Funding	Positions	Funding	Positions
GPR	\$0	0.00	\$3,477,200	91.10

2. Modify the Governor's recommendation by opening one 25-bed unit at SRSTC in May, 2009, rather than two 25-bed units in April, 2009. Reduce funding by \$486,400 GPR and delete 17.55 position in 2008-09. Under this alternative, two 25-bed units would still be opened at SRSTC in January, 2009, as under the Governor's recommendation.

ALT A2	Change to Bill		Change to Base	
	Funding	Positions	Funding	Positions
GPR	-\$486,400	- 17.55	\$2,960,800	73.55

**B. Cost of Contract Beds in County Jails for Excess Chapter 980 Population**

1. Approve the Governor's recommendation.

ALT B1	Change to Bill	Change to Base
	Funding	Funding
GPR	\$0	\$479,800

2. Modify the Governor's recommendation by deleting \$42,500 GPR in 2008-09 to contract with counties to house the excess Chapter 980 inpatient population. This alternative reflects the Department's most recent estimate of these costs, based upon the assumption that inpatient population will increase by 4.0 persons per month.

<b>ALT B2</b>	<b>Change to Bill Funding</b>	<b>Change to Base Funding</b>
GPR	- \$42,500	\$437,300

3. Modify the Governor's recommendation by deleting \$16,700 GPR in 2007-08 and \$185,400 GPR in 2008-09 to contract with counties to house the excess Chapter 980 inpatient population. This alternative is premised upon a lower rate of increase in the Chapter 980 population than assumed under the bill.

<b>ALT B3</b>	<b>Change to Bill Funding</b>	<b>Change to Base Funding</b>
GPR	- \$202,100	\$277,700

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