# Civil Commitment of Sexually Violent Persons

Informational Paper 52

Wisconsin Legislative Fiscal Bureau

January, 2017

# Civil Commitment of Sexually Violent Persons

Prepared by

Aaron Whitaker

Wisconsin Legislative Fiscal Bureau
One East Main, Suite 301
Madison, WI  53703

# Civil Commitment of Sexually Violent Persons

Chapter 980 of the Wisconsin state statutes establishes procedures for the involuntary civil commitment of individuals found to be sexually violent persons (SVPs), and for the supervised release of those individuals following treatment. The primary goal of this program is to provide treatment to individuals found to be SVPs and to protect the public while the state provides that treatment. As of July 1, 2016, 362 people were committed as SVPs or detained while waiting a commitment determination at the Sand Ridge Secure Treatment Center (SRSTC) in the City of Mauston. An additional 39 individuals were on supervised release at various locations across the state.

This paper provides information on the Department of Health Services (DHS) administration of the SVP program, including data on number of committed SVPs and program costs, an overview of the statutes related to SVPs, and a description of treatment services provided to this population.

## SVP Population and Program Costs

This section provides information on the number of civilly-committed SVPs, and the program's institutional and treatment costs. For additional information on how a person is designated an SVP, and the treatment services provided at SRSTC, see the subsequent sections of this paper.

**Population.** Table 1 shows the average monthly institutional commitments and the number of the Department of Corrections (DOC) referrals for fiscal years 2006-07 through 2015-16. The commitments shown in the table include both civilly-committed SVPs, and individuals detained on "pre-commitment" status who are currently in the statutory process of determining whether they meet the definition of an SVP. This table includes SVPs held at SRSTC and at the Wisconsin Resource Center, (WRC) until consolidation of all SVPs at SRSTC in 2012-13.

**Table 1: Average Monthly Number of Civilly-Committed Individuals and Total DOC Referrals, Fiscal Years 2006-07 through 2015-16**

| Fiscal Year | SRSTC | WRC | Total | Total Referrals from DOC |
|---|---|---|---|---|
| 2006-07 | 279.8 | 73.7 | 353.4 | 47 |
| 2007-08 | 273.2 | 104.1 | 377.3 | 30 |
| 2008-09 | 274.4 | 112.3 | 386.7 | 26 |
| 2009-10 | 285.6 | 90.8 | 376.4 | 24 |
| 2010-11 | 286.4 | 79.2 | 365.6 | 20 |
| 2011-12 | 359.8 | 2.8 | 362.6 | 11 |
| 2012-13 | 353.4 | 0.0 | 353.4 | 18 |
| 2013-14 | 352.3 | 0.0 | 352.3 | 20 |
| 2014-15 | 362.2 | 0.0 | 362.2 | 45 |
| 2015-16 | 362.4 | 0.0 | 362.4 | 13 |

Until 2009-10, the average monthly institutionalized SVP population increased every year since the program's inception in 1994. In the mid-2000s, the SVP population grew rapidly as the number of referrals from the Department of Corrections increased, in part due to the broadening of the definition of an SVP to apply to persons whose mental disorder makes them "more likely than not" to engage in an act of sexual violence. Prior to this change, Chapter 980 defined an SVP as a person whose mental disorder made them "substantially probable" to engage in acts of sexual violence. However, the institutionalized SVP population has held relatively steady over the past decade, with a monthly average from 2006-07 to 2015-16 of approximately 365 individuals.

In 2009, DHS revised the risk assessment tool used to determine an individual's risk of re-offending, which has contributed to the recent plateau in the state's committed SVP population. For example, studies have found that an individual's juvenile behavior does not accurately predict their likelihood of re-offending as an adult, and that individuals are less likely to re-offend as they grow older. As a result, the tool assigns some offenders a lower risk of re-offending than they previously would have received, particularly to juvenile-only offenders and adult offenders over age 60.

To date, no woman has been committed or referred for commitment as an SVP in the program's history. (For that reason, this paper uses masculine gender pronouns in many instances while describing the program.)

*Supervised Release and Discharge.* Following treatment and after meeting certain progress criteria, SVPs may be placed on supervised release in the community, or may be discharged from their commitment if they no longer meet the criteria for definition as a SVP. Table 2 shows the average monthly number of SVPs on supervised release in the community, and the total number of discharges in each fiscal year from 2008-09 through 2015-16.

**Table 2: SVPs Placed on Supervised Release and Discharged from Commitment**

| Fiscal Year | Supervised Release (Monthly Average) | Discharged from Commitment (Annual Total) |
|---|---|---|
| 2008-09 | 14.3 | 17 |
| 2009-10 | 18.8 | 23 |
| 2010-11 | 22.8 | 20 |
| 2011-12 | 23.6 | 7 |
| 2012-13 | 29.5 | 11 |
| 2013-14 | 37.1 | 8 |
| 2014-15 | 40.3 | 1 |
| 2015-16 | 41.8 | 11 |

The number of SVPs placed on supervised release has grown in recent years, reaching a peak of 46 SVPs on supervised release in August and September of 2015. The annual number of SVPs discharged from commitment has generally fallen over the past decade, with one discharge in 2014-15 and 11 in 2015-16.

Chapter 980 allows DHS, in some circumstances, to revoke an SVP's supervised release. Since the beginning of the program through June, 2016, 58 SVPs have had their supervised release revoked.

Since the beginning of the program in 1994 through June, 2016, 42 SVPs have been discharged from their commitment while on supervised release, and 88 SVPs have been discharged directly from inpatient commitment.

*Diagnosed Disorders.* Every individual committed under Chapter 980 must have a mental disorder that predisposes the person to engage in acts of sexual violence. Individuals may have a combination of multiple predisposing disorders and non-predisposing disorders. Table 3 shows the 10 most common mental disorders found to predispose engagement in acts of sexual violence for the committed SVPs, and the 10 most common mental disorders that did not predispose SVPs to engage in acts of sexual violence as of July 1, 2016.

**Costs.** State general purpose revenue (GPR) funds the institutional and treatment costs related to the civil commitment of SVPs, and monitoring and other costs of supervised release. No federal or local funds support these functions. The Appendix to this paper provides additional detail on the total costs of care for individuals committed as SVPs at SRSTC and WRC from state fiscal year 2011-12 to 2014-15. Expenditure data for 2015-16 was not available from DHS at the time of publication.

*Institutional Costs.* In fiscal year 2014-15, institutional costs at SRSTC totaled $57.7 million. The average annual cost per patient civilly committed at SRSTC is approximately

**Table 3: Ten Most Common Predisposing and Non-Predisposing Diagnoses for Individuals Committed as an SVP, as of July 1, 2016***

| | Number of Individuals | % of Total Committed Individuals |
|---|---|---|
| **Predisposing Diagnoses** | | |
| Antisocial Personality Disorder | 181 | 54.1% |
| Pedophilic Disorder | 171 | 48.6 |
| Other Specified Paraphilic Disorder | 105 | 29.8 |
| Other Specified Personality Disorder | 80 | 22.7 |
| Sexual Sadism Disorder | 38 | 10.8 |
| Alcohol Use Disorder | 25 | 7.1 |
| Psychotic Disorders | 19 | 5.4 |
| Intellectual Developmental Disorders | 12 | 3.4 |
| Exhibitionistic Disorder | 11 | 3.1 |
| Other Substance Use Disorder | 10 | 2.8 |
| **Non-Predisposing Diagnoses** | | |
| Alcohol Use Disorder | 113 | 32.1% |
| Other Substance Use Disorder | 78 | 22.2 |
| Intellectual Developmental Disorder | 51 | 14.5 |
| Mood Disorder | 36 | 10.2 |
| Attention Deficit Hyperactivity Disorder | 22 | 6.3 |
| Psychotic Disorders | 14 | 4.0 |
| Exhibitionistic Disorder | 13 | 3.7 |
| Anxiety Disorders | 11 | 3.1 |
| Learning Disability | 11 | 3.1 |
| Voyeuristic Disorder | 8 | 2.3 |

*Sum of diagnoses exceeds total number of committed individuals because an individual may have more than one diagnosis.

$160,000.

The main source of costs for SRSTC is salary and fringe benefits for staff. As of July 1, 2016, the facility was authorized 301 full-time equivalent (FTE) positions, 284 of which were filled. The two largest categories of SRSTC employees are direct psychiatric care staff (184 authorized FTE positions) and security personnel (94 authorized FTE positions).

Changes in committed SVP populations have led to multiple capacity adjustments at both SRSTC and the WRC, a state-owned secure treatment facility for inmates with severe mental health or behavioral treatment needs. This included several expansions from 2005 to 2009. However, due to the declining SVP population, 2011 Wisconsin Act 32 transferred all SVPs to SRSTC.

*Supervised Release Costs.* In 2014-15, total supervised release costs totaled $3.0 million. The Appendix shows the cost of providing services to individuals on supervised release. These services were provided primarily through contracts with private vendors such as Aurora Residential Alternatives, which provides a wide range of services such as housing, monitoring, and case management, as well as with the Department of Corrections, which provides monitoring services. It costs approximately $61,000 per person per year to provide services to individuals on supervised release.

## Commitment Process

This section outlines the statutory provisions for the civil commitment of SVPs under Chapter 980, as created by 1993 Wisconsin Act 479 and amended by subsequent legislation, with additional detail on DHS implementation of these provisions. Chapter 980 has been the subject of extensive case law since its enactment, with the Wisconsin Supreme Court consistently upholding the constitutionality of the state's civil commitment process.

**Commitment Criteria.** Chapter 980 defines an SVP as a person who meets the following criteria: (a) has been convicted of, adjudicated delinquent for, or found not guilty of or not responsible by reason of insanity or mental disease for a sexually violent offense; and (b) is dangerous because he suffers from a mental disorder that makes it more likely than not that he will engage in acts of sexual violence.

Crimes defined as sexually violent offenses include first-, second-, and third-degree sexual

assault, and other sexual offenses related to children. In addition, a sexually violent offense includes a number of other crimes if the crime is "sexually motivated," meaning that one of the purposes for the crime was the offender's sexual arousal or gratification, or the sexual humiliation or degradation of the victim. These crimes include, among others, first- and second-degree intentional homicide, first- and second-degree reckless homicide, felony murder, and battery. Finally, a sexually violent offense may include any solicitation, conspiracy, or attempt to commit any of the above offenses.

**Commitment Process.** The process for civil commitment of a person as an SVP includes the following steps: (a) notice of release from other custody; (b) petition for commitment; (c) examination; (d) probable cause hearing; and (e) trial.

*Notice.* The agency with authority to release or discharge a person who may be an SVP (referred to in statute as the "agency with jurisdiction") begins the SVP civil commitment process. In most cases, DOC is the agency with jurisdiction for offenders serving sentences in correctional institutions.

If a person may meet the criteria for commitment as an SVP, the agency must inform each appropriate district attorney and the Department of Justice (DOJ) regarding the person as soon as possible, beginning 90 days before the anticipated date of any of the following: (a) discharge or release on parole, extended supervision, or otherwise, from a prison sentence for which any part was imposed for a sexually violent offense; (b) release from a juvenile correctional facility or a secured residential care center for children and youth, if the person was placed in the facility on the basis of a sexually violent offense; (c) conditional release, termination of a commitment order, or discharge from a commitment order if the person has been found not guilty of a sexually violent offense by reason of mental disease or defect; or (d) release on parole or discharge of a person committed for a sexually violent offense under Chapter 975, the former commitment process for certain sex offenders.

The agency must provide to the district attorney and DOJ the person's name, identifying factors, anticipated future residence, offense history, and documentation of any treatment and adjustment to an institutional placement.

DOC uses a three-stage review process to decide whether to recommend SVP commitment of a person nearing release from a DOC facility. The first review involves an initial administrative screening to determine whether an individual meets the statutory criteria for commitment. The second review is completed by the End of Confinement Review Board, composed of DOC employees trained to perform risk assessment for sex offenders. The Board reviews the case of each sex offender scheduled for release from DOC. If the Board determines the case does not meet the criteria for commitment under Chapter 980, DOC does not pursue commitment.

If the Board refers a case for further review, a DOC psychologist in the forensic evaluation unit conducts a special purpose evaluation to help determine whether the case should be referred for commitment. If DOC seeks commitment, the prosecution typically uses this evaluation in the probable cause hearing and any subsequent trial. DHS uses a similar review process in determining whether to recommend commitment of any individuals in DHS custody.

*Petition.* The agency with jurisdiction may request the filing of a petition to commit a person as an SVP. Either DOJ or the district attorney may file the petition in the circuit court for one of the following counties: (a) where the person was convicted, adjudicated delinquent for, or found not guilty by reason of mental disease or defect of a sexually violent offense; (b) where the person will reside or be placed following the person's discharge or release; (c) where the person is

in custody under a sentence or other placement; or (d) if DOJ files the petition, in the Circuit Court for Dane County.

Any petition for SVP commitment must be filed before the person's release or discharge. The petition must state essential facts to establish probable cause to believe the person is an SVP, and the grounds on which any offense or act is alleged to be sexually motivated.

The circuit court must give the subject of the petition reasonable notice of the time and place of each hearing, and may notify additional people. In general, at any hearing conducted under Chapter 980, the subject of the petition has the right to counsel, to remain silent, to present and cross-examine witnesses, and to have the hearing recorded by a court reporter. If the person claims or appears to be indigent, the court must refer the person to the authority for indigency determinations and, if applicable, appoint counsel.

*Examinations.* If the subject of the petition denies the facts in the petition, the court may appoint at least one qualified licensed physician, licensed psychologist, or other mental health professional to conduct an examination of the person's mental condition and testify at trial. The state may also retain such professionals to examine the person's mental condition and to testify at trial or other proceeding.

Whenever the subject of a petition, or a person committed as an SVP, must submit to an examination of his mental condition, he may retain a physician, psychologist, or other mental health professional to perform an examination. If the person is indigent, the court must, at the request of the person, appoint a qualified and available professional to perform an examination and participate in the trial or other proceeding on the person's behalf. The county must pay the cost of providing this court-appointed professional.

The examiner must have reasonable access to the person for the purpose of the examination, as well as to the person's treatment records, patient health care records, juvenile records, and correctional records, including pre-sentence investigation reports. Any such professional expected to be called as a witness must submit a written report of their examination to all parties and the court at least ten days before the proceeding.

*Detention and Probable Cause Hearings.* The court reviews any filed petition to determine whether to detain the alleged SVP in advance of the hearing. The court can order detainment only if probable cause exists to believe the person meets the criteria for commitment as an SVP. Any detention order remains in effect until the dismissal of the petition, or until the effective date of a commitment order. As of July 1, 2016, 38 individuals were detained at SRSTC in this "pre-commitment status."

The court must hold a hearing to determine whether probable cause exists to believe the person named in the petition is an SVP. If, after the hearing, the court finds that probable cause does not exist, the court must dismiss the petition. If the court determines probable cause exists, the court must order the person taken into custody and transferred within a reasonable time to an appropriate facility specified by DHS for an evaluation. The SRSTC Evaluation Unit, a group of DHS psychologists located at the Mendota Mental Health Institute, performs these evaluations.

*Trials.* Generally, a trial must begin no later than 90 days after the date of the probable cause hearing. The subject of the petition, their attorney, or the petitioner may request a 12-member jury trial. If no such request is made, the trial must be to the court, unless the court requires a jury trial. Only unanimous jury verdicts are valid.

The state has the burden of proving beyond a reasonable doubt that the subject of the petition is an SVP, and that any alleged that the sexually

violent offense or act that forms the basis for the petition was sexually motivated, the state must prove this beyond a reasonable doubt.

A person may request to change the place of a jury trial on grounds that an impartial trial cannot be had in the county where the trial is scheduled. If the court agrees, it must move the trial to a county where an impartial trial can be held. The judge who orders the change in place of the trial must preside at the trial. In some instances, a court can proceed with a trial in the original county with a jury selected in a county where an impartial jury can be found.

Certain provisions apply to the discovery and use of evidence in Chapter 980 proceedings. For example, the prosecuting attorney must permit the person, or his attorney, to inspect and copy certain material, such as any statement made by the person concerning the petition, a written summary of all oral statements of the subject that the prosecuting attorney plans to use at the trial, or a copy of the criminal record of the subject.

With some exceptions, the subject of a petition, or his attorney, must permit the prosecuting attorney to inspect and copy a comparable list of materials. If either the prosecuting attorney or the subject fails to list a witness or make evidence available for inspection and copying as required, the court must exclude those witnesses or that evidence from the trial unless the party shows good cause for not complying with the requirements.

Parties to a Chapter 980 proceeding may, among other requests, ask the court to order the analysis of any item of evidence or raw data intended to be introduced at trial, and may seek a protective order that denies, restricts, or defers the listing of witnesses otherwise required by statute. If the prosecuting attorney or the attorney for the person certifies that listing a witness as otherwise required by the statute may subject that witness or others to physical or economic harm or coercion, the court may order the deposition of the witness, and the name of the witness need not be divulged prior to the deposition. If the witness becomes unavailable or changes his or her testimony, the deposition shall be admissible at the trial as substantive evidence.

The state may present evidence that the person refused to participate in an examination of his mental condition conducted for purposes of determining whether to file a petition under the statute. In addition, any physician, psychologist, or other mental health professional may indicate in any written report prepared in conjunction with an examination under Chapter 980 that the person refused to participate in the examination.

*Commitment*. If the court or jury determines the person meets the criteria of an SVP, the court must enter a judgment on the finding and commit that person to the custody of DHS for control, care, and treatment until the person is no longer meets the definition of an SVP. Any commitment order must require placement of the person in institutional care. The court must require the person to provide a biological specimen to the state crime laboratories for DNA analysis for use in criminal and delinquency actions and proceedings.

If the court or jury is not satisfied beyond a reasonable doubt that the person meets the criteria of an SVP, the court must dismiss the petition and direct that the person be released unless he is under some other lawful restriction.

*Reexamination.* DHS must conduct a reexamination of the person's mental condition within 12 months after an initial commitment and at least once every 12 months thereafter to determine whether the court should consider supervised release or discharge for that person. The SRSTC Evaluation Unit conducts these reexaminations.

At the time of this reexamination, the person may also retain or seek to have the court appoint

an examiner. Examiners must prepare a written report of the reexamination no later than 30 days after the date of the reexamination, and must provide a copy of the report to DHS. In addition, the court that committed the person may, at any time, order a reexamination of the individual during the commitment period.

The treating professional must also prepare a report listing the specific factors associated with the person's risk for committing another sexually violent offense, whether the person is making significant progress in treatment or has refused treatment, the ongoing treatment needs of the person, and any specialized needs or conditions to consider in future treatments.

DHS must submit the treatment report and the reexamination report to the court that committed the person. DHS must also place a copy of the annual report in the person's treatment records, and provide a copy of the annual report to the person, the DOJ and district attorney, if applicable, and to the committed person's attorney.

**Institutional Care.** DHS must place a person committed as an SVP at a secure mental health facility, either SRSTC or WRC, or a secure mental health unit or facility provided by DOC. Currently, all SVPs are housed at SRSTC.

Though no woman has been committed as an SVP in the program's history, statutes allow DHS to place a female SVP at Mendota Mental Health Institute, the Wisconsin Women's Resource Center, the Winnebago Mental Health Institute, or a privately operated residential facility under contract with DHS.

*Residential Units.* Residential units at SRSTC are generally organized by treatment track (see following section for more information on treatment), with patients assigned to units based on treatment status and track, phase in treatment, and specialized needs. Each of the four complexes has several 25-bed units that house patients with similar treatment needs and characteristics. The A complex primarily serves patients in pre-treatment status and patients that require more structure to gain or maintain behavioral control. The B complex primarily serves patients with cognitive impairments. The N complex primarily serves patients with more elevated psychopathic traits. The P Complex primarily serves patients in later phases of treatment.

SRSTC also has several specialized treatment units: a skilled care unit that serves patients who require closer observation and nursing care for acute or chronic physical health care needs; a supportive learning program unit for patients with mental health needs; a nine-bed unit for patients who may be verbally or physically aggressive; and a nine-bed unit for patients transitioning to the community on supervised release.

*Security.* SRSTC is significantly more secure than other DHS-administered facilities such as the state's mental health institutes. The facility is surrounded with an electrified fence and a razor ribbon fence, and officers monitor activities throughout the facility and by armed perimeter patrol and video surveillance.

DHS administrative rules define the Department's authority regarding the custody and control of persons committed as SVPs. The primary security objectives are to protect the public, staff and patients, and to allow patients to participate in treatment and activities in a safe setting.

Generally, the rules provide guidance for staff in the use of force to deal with a disturbance or emergency, to prevent escapes, and to pursue and capture escapees. The rules describe circumstances where staff may use lethal force and less than lethal force, and limitations on staff's use of firearms and other incapacitating devices. In addition, facilities must adopt written policies and procedures to ensure proper training for staff who may need to use force.

The rules provide the facility Director discretion to allow a patient to leave the grounds of a facility under staff escort for a purpose consistent with the therapeutic interests of the patient and the security interests of the community. Purposes for such permission can include visiting a dying relative, receiving medical services unavailable at the facility, and engaging in pre-placement activities under a supervised release plan.

In addition, state statutes make several distinctions between the rights of individuals detained or committed as SVPs and other patients admitted to treatment facilities, either on a voluntary or involuntary basis. Individuals committed as SVPs also do not have the same rights as civilly-committed patients at the state mental health institutes. For example, an officer or staff member at SRSTC may open a patient's mail and inspect it for contraband, or may read the mail if the Director determines the mail could pose a threat to security or treatment at the facility. Other examples include the Department's authority to lock individuals who are detained or committed as SVPs in their rooms during the night shift, to use restraints during transportation and isolation during hospital stays, and to film or tape detained or committed SVPs for security purposes without the patient's consent under certain circumstances.

## Supervised Release and Discharge from Commitment

There are two main avenues by which DHS may release an SVP from an institutional setting: supervised release and discharge. When DHS provides a copy of the annual reexamination report to the committed person, it must also provide the person a petition form for supervised release, and a petition form for discharge. The committed person or their attorney may complete and submit this form to the court. If the person does not file a completed petition in a timely manner, the person will remain committed without further review by the court.

If the committed person files a petition for supervised release or discharge, he may use experts or professionals to support their petition. The district attorney or DOJ may also use experts or professionals to support or oppose any such petition.

If a court places a person under supervised release or discharges the person, DHS must notify DOC and make a reasonable attempt to notify the following: (a) the victim of the act of sexual violence; (b) an adult member of the victim's family, if the victim died as a result of the act of sexual violence; or (c) the victim's parent or legal guardian, if the victim is younger than 18 years old.

**Supervised Release.** An SVP may be allowed to live outside of an institutional setting, with continued supervision by DHS and limits on his activities and movement, if he meets certain standards for progress in treatment.

*Petition.* A person committed as an SVP may petition the court to authorize supervised release if at least 12 months have passed since the initial commitment, or since the most recent denial of a release petition or most recent revocation of supervised release. SRSTC may file a petition for supervised release on the person's behalf at any time.

*Criteria for Supervised Release.* The court must appoint one or more examiners with appropriate specialized knowledge to examine the person and write a report. The examiners must have reasonable access to the person and to the person's patient health records to conduct the examinations. If an examiner believes supervised release would be appropriate for the person, the examiner must report on the type of treatment and services the person may need while in the community on supervised release.

The SVP must meet all of the following criteria to receive approval for supervised release: (a) the person is making significant progress in treatment and that progress can be sustained while on supervised release; (b) it is substantially probable that the person will not engage in an act of sexual violence while on supervised release; (c) treatment that meets the person's needs and a qualified provider of the treatment are reasonably available; (d) the person can be reasonably expected to comply with treatment requirements and with all conditions or rules of supervised release imposed by the court or by DHS; and (e) a reasonable level of resources can meet the residential placement, supervision, and ongoing treatment needs required for the safe management of the person while on supervised release.

In making its decision, the court may consider the nature and circumstances of the behavior that formed the original petition, the person's mental history and present mental condition, where the person will live, how the person will be supported, and what arrangements are available to ensure that the person can access and will participate in necessary treatment.

If the court finds that all the criteria for supervised release are met, the court must select a county responsible for preparing a report for the person's supervised release. The county selected must be the person's county of residence, unless the court has good cause to select a different county.

*Placement and Plan.* When the court approves a petition for supervised release, it orders DHS and the individual's county of residence to develop a supervised release plan within 60 days, subject to court approval. Community teams that include the patient, a DHS staff person who specializes in the supervised release program, a probation and parole agent, and treatment providers, develop these plans. The teams may also include law enforcement officials, family members, employers, property owners, sponsors and other parties. The Director, the Court Assessment and Community Programs Director of SRSTC, and the Supervised Release Program Manager oversee this process, in collaboration with DOC.

The county must submit a report identifying prospective residential options for community placement that, among other things, considers the proximity to the residences of other persons on supervised release. The petitioner, his attorney, the district attorney, any law enforcement agency in the county of intended placement, or any local governmental unit in that county, may also submit prospective residential options for community placement to DHS. DHS must use these reports, or any other residential options identified by DHS, to prepare plan that identifies the proposed residence. The plan must address any need for supervision, counseling, medication, vocational services, and alcohol or other drug abuse treatment.

If the court determines the plan meets the person's treatment needs and the safety needs of the community, it must approve the plan for supervised release. If, however, the court determines the plan does not adequately meet those needs, it must determine that supervised release is not appropriate or direct the preparation of another supervised release plan.

An order for supervised release places the person in the custody and control of DHS, which must arrange for the care and treatment of the person in the least restrictive manner, consistent with the requirements of the person and in accordance with the plan approved by the court. DHS may not place any individual on supervised release in a facility that did not exist before January 1, 2006.

A person on supervised release is subject to the conditions set by the court and to DHS rules. DHS must file with the court any additional rule of supervision not inconsistent with the rules or conditions imposed by the court. The court must

approve any changes to the rules or conditions of supervision.

In general, before the court places a person on supervised release, it must notify the municipal police department and county sheriff for the municipality and county where the person will reside. DHS must also provide further detailed notice to local law enforcement under the special bulletin notice requirements.

*Monitoring and Restrictions on Activities.* Currently, DHS contracts with DOC to provide supervision through DOC probation and parole agents. Since July 1, 2007, DOC has maintained lifetime global positioning system (GPS) tracking of all individuals on supervised release and most individuals a court discharges under Chapter 980. In addition, DOC probation and parole agents have regular face-to-face meetings with individuals on supervised release. The supervised release program also includes scheduled and unscheduled monitoring checks, polygraph examinations, and escorted transportation for supervised activities.

During the first year of supervised release an individual placed in the community may not leave their personal residence, except for employment or volunteer purposes, religious purposes, educational purposes, treatment and exercise purposes, supervision purposes, residence maintenance, or for caring for the person's basic living needs. All other outings are prohibited during the first year following release. A DOC escort must accompany the individual whenever they leave their residence for these purposes. DOC contracts with a private vendor for escort services.

DHS contracts with the same vendor for monitoring, chaperone, and transportation services. Most individuals on supervised release live in individual residences or homes, rather than in group homes. Individuals on supervised release continue to participate in group or individual treatment and programming, and also receive assistance in obtaining employment, performing activities of daily living, and furthering their education.

*Revocation.* DHS may petition for the revocation of the order granting supervised release or may detain the person if it believes a person on supervised release, or awaiting placement on supervised release, has violated or threatened to violate any condition or rule of supervised release. If DHS believes such a person presents a threat to the safety of others, DHS must detain the person and petition for revocation of the order granting supervised release.

If DHS determines that an order granting supervised release should be revoked, it must file with the court a statement alleging the violation or threatened violation and a petition to revoke the order. DHS must provide a copy of the statement and the petition to the applicable regional Office of the State Public Defender. Pending the revocation hearing, DHS may detain the person in jail or in a secure mental health facility.

If the court finds that the person has violated any rule or condition of release, and that the violation of the rule or condition merits revocation of the order granting supervised release, the court may revoke the order for supervised release and order the person to be placed in institutional care. The person must remain in such care until discharged from commitment or placed again under supervised release. If the court finds that the safety of others requires revocation of supervised release, the court must revoke the order for supervised release and order the person placed in institutional care, where they must remain until they are discharged from commitment or placed on supervised release. As of July 1, 2016, DHS has revoked supervised release for a total of 58 individuals since the program's inception, including three in 2014-15 and 10 in 2015-16.

**Discharge.** A person can petition the court for discharge at any time. The court may hold a hearing to determine if the petition contains facts from which the court or jury may conclude the person does not meet the criteria of an SVP. The court must consider current or past reports submitted by DHS, relevant facts in the petition and the state's written responses, arguments of counsel, and any supporting documentation.

If the court determines the petition does not contain facts that conclude the person no longer meets the criteria for commitment, the court must deny the petition. If the court determines that facts exist from which a court or jury could conclude the person does not meet the criteria for commitment, the court must hold a hearing within 90 days, at which time the state has the burden of proving by clear and convincing evidence that the person meets the criteria for commitment as an SVP.

The district attorney or DOJ, whichever filed the original petition, or the petitioner or his attorney, may request a trial by a six-member jury. In such case, the verdict is valid only if at least five of the jurors agree to it. As with the original Chapter 980 commitment trial, the state has the burden of proving that the person meets the criteria for commitment. If the court or jury determines that the state has not met its burden of proof, the petitioner must be discharged from DHS custody; if the court or jury determines that the state has met its burden of proof, the court may modify the petitioner's existing commitment order by authorizing supervised release. As of July 1, 2016, a total of 130 individuals have been discharged from commitment since the program's inception, including one in 2014-15 and 11 in 2015-16.

**Reversal of Judgment.** In addition to supervised release or discharge, a person committed as an SVP may have the original judgment reversed. If a judgment relating to a sexually violent offense is reversed, set aside, or vacated, and that sexually violent offense was a basis for the allegation made in the original commitment petition, the committed person may bring a motion for post-commitment relief.

If the sexually violent offense in question was the sole basis for the allegation under the original commitment petition, and no other judgments relate to a sexually violent offense by the person, the court must reverse the judgment that the individual was an SVP, vacate the commitment order, and discharge the person from custody. If other previous judgments relate to an unreversed sexually violent offense, or if the reversed offense was not the sole basis for the original commitment, the court must determine whether to grant the person a new commitment trial.

## Treatment Services

SRSTC provides specialized evidence-based SVP treatment programs and related services. Treatment of the social and psychological factors that predispose an SVP to commit a sexually violent offense are central to the state's civil commitment provisions. Courts have affirmed that the procedures under Chapter 980 are intended to provide treatment and protect the public, rather than acting as additional "punishment" of the SVP in violation of prohibition on double jeopardy.

Treatment is voluntary and patients who consent to treatment are assessed to determine the patients' specific treatment needs, and to determine the appropriate treatment track for the patient. Patients who do not consent to participate in the core treatment are classified as in "pre-treatment" status. Individuals who initially agree to treatment but later withdraw consent for treatment, or behave in a way that is incompatible with treatment, may revert to pre-treatment status. SRSTC staff encourages these patients to en-

gage in the core SVP treatment. Although individuals in pre-treatment status have not consented to the core treatment program described below, they may receive other specialized treatment services.

The SVP population varies greatly in the level of cognitive functioning and severity of psychopathic traits. This diversity presents treatment challenges, which the SVP program seeks to address in several ways. First, treatment always begins with a comprehensive assessment. Second, treatment services are divided into four tracks, according to the degree of cognitive functioning and level of psychopathic traits. Third, within each track, treatment services are further individualized based on the patient's neuropsychological profile.

The SVP treatment program follows the "Risk-Need-Responsivity" model to improve treatment effectiveness. The "risk" principle requires concentrating more intense treatment on higher-risk offenders. All individuals committed under Chapter 980 are, by definition, considered high-risk offenders. The "need" principle requires that treatment focuses on social and psychological factors that predispose a person to offending. The SVP program combines an individualized identification of these factors within a structured risk assessment framework to assess psychological risk factors. The "responsivity" principle requires using treatment methods to which offenders respond, and tailoring treatment to the individual's learning style through the use of treatment tracks and individualization within tracks. The program employs cognitive behavioral methods, trains and supervises treatment providers and other clinical staff to develop an effective therapist style, and makes extensive use of person-centered approaches.

**Treatment Phases.** The SVP treatment program employs a three-phase model. Within each of these defined phases patients advance if and when they demonstrate satisfactory progress in the earlier phases.

During Phase 1, patients begin to meaningfully engage in the SVP treatment program. This phase focuses on assisting patients in building the attitudes, skills, and motivations for effective treatment participation. Phase 1 assists patients in learning to better regulate their impulses and emotions, and to become more pro-social in attitude and behavior.

In Phase 2, patients work to develop a shared understanding of their specific treatment needs, and of the factors that contributed to their past offenses. Patients work to objectively see how these factors have affected them in the past and how they affect them in the present. Achieving this requires attending specifically to the thoughts, attitudes, emotions, behaviors, and sexual arousal linked to their sexual offending and learning to recognize when they occur. Therapists assist the patients to develop the motivation and skills to manage these problems.

Finally, in Phase 3, patients work to effectively manage their personal risk factors and develop healthier ways of functioning, including the development of protective factors, in order to transition to the community.

**Treatment Tracks.** The SVP treatment program currently consists of four primary treatment tracks: (a) conventional; (b) corrective thinking (CT); (c) choices and opportunities for meaningful personal achievement in a supportive setting (COMPASS); and (d) achieving capability to thrive (ACT). Table 4 provides the number of SVPs participating in the core treatment programs, as of October 15th, 2016.

The *conventional treatment track* treats patients without significant cognitive impairments and with no more than moderate levels of psychopathic traits. The level of psychopathy and intelligence vary among patients within this track, requiring significant individualization of

**Table 4: Treatment Participation by Treatment Track, October 15th, 2016**

| Treatment Track | Participants |
|---|---|
| ACT | 78 |
| CT | 94 |
| Conventional | 74 |
| COMPASS | 65 |
| Total | 311 |
| Percent of Total Population Participating in Core Treatment | 86% |

services.

Phase 1 of the conventional track focuses on patients' self-management and learning how to participate in treatment. Phase 2 focuses on patients learning to understand themselves through life history review and analysis of past offenses. Phase 3 focuses on living in a healthier way and community preparedness.

The *CT treatment track* treats patients with marked psychopathic traits and without significant cognitive impairments. These individuals require a treatment approach that initially addresses the personality disorder traits that interfere with the treatment process. The CT program begins with an extensive intervention to address the personality disorder traits and treatment interfering factors that impede treatment.

Phase 1 of the CT track focuses on psychopathic features, personality disorder traits, and general criminality. As patients in CT display an ability to consistently manage the behaviors associated with these characteristics, they may advance to Phase 2. In Phase 2, a patient learns to identify the psychological factors that contributed specifically to their offenses. Once the patient and treatment team achieve an agreed-upon identification of these factors, and the patient has demonstrated motivation to work on those factors, the patient may move into Phase 3. In Phase 3, patients work to manage the identified risk factors and develop healthier functioning.

The *COMPASS treatment track* treats patients with cognitive impairments, and others who have difficulty functioning in various life areas, but who do not show marked levels of psychopathic traits. The COMPASS population includes a mix of individuals with intellectual disabilities, mental illness, learning disabilities, and other disabilities. Patients generally have below-average IQs, and other cognitive deficits. Patients in this track may also have a severe learning disorder or a severe mental illness that impairs working memory or executive functioning.

The COMPASS program is tailored for those who have difficulty learning through traditional methods, in an effort to address their sexual offending and related factors, and prepare them to live in the community. The program presents material in ways to best meet the needs of patients, such as visual illustrations, role-plays, collages, or games. This track offers shorter, more frequent sessions than in other tracks.

Phase 1 of the COMPASS track focuses on patient self-management and factors which may interfere with treatment progress. In Phase 2, treatment focuses on identification of risk factors which led or may lead to offending, and development of positive coping skills. Phase 3 focuses on building a "New Me" identity and protective factors to ensure safe and productive living in the community.

The *ACT treatment track* addresses the specific needs of patients with treatment needs in these main areas: (a) deviant sexual interests or behaviors; (b) high levels of psychopathy; (c) cognitive deficits; or (d) significant history of trauma or substance abuse. Patients have a wide range of needs, requiring unique and tailored treatment within the track. This track adapts treatment by proceeding at a slower pace, presenting information in multiple ways, and using more concrete concepts and language, repetition, role-

plays, mentoring, encouragement, and support.

In ACT, Phase 1 focuses on "treatment engagement" to develop a therapeutic alliance with facilitators and learn the skills necessary to engage in the treatment process. Phase 2 focuses on "strengths and problem identification" to help a patient recognize their particular strengths and risk factors. Patients may move on to Phase 3 after demonstrating motivation to learn healthier sexual and general self-management strategies and skills. Phase 3 focuses on strengthening patients' self-management and developing a "healthy lifestyle," where patients build a support network and practice healthy social relationships while preparing to reintegrate into the community.

**Other Treatments.** In addition to the four primary treatment tracks, patients may participate in a number of other treatment services, including individualized treatment, education, therapeutic recreation, vocational and occupational activities, and pharmacological treatment. Specific treatment programs include dialectical behavior therapy for patients with cognitive or emotional issues that prevent engagement in treatment, eye movement desensitization reprocessing for patients with traumatic stress disorders, and behavior therapy to help patients with issues of deviant sexual arousal.

## Additional Resources

Additional information on Chapter 980 and the civil commitment of SVPs is available through the following resources:

Wisconsin Department of Health Services
*www.dhs.wisconsin.gov/sandridge/index.htm*

Legislative Audit Bureau Audit Report (August, 2013)
*www.legis.wisconsin.gov/lab/reports/13-12full.pdf*

Wisconsin State Law Library
*www.wilawlibrary.gov/topics/justice/crimlaw/sexassault.php*

## APPENDIX

## Expenditures for State Institutional and Supervised Costs of Services to SVPs

| | 2011-12 | 2012-13 | 2013-14 | 2014-15 |
|---|---|---|---|---|
| **Institutional Costs** | | | | |
| *Sand Ridge Secure Treatment Center (SRSTC)* | | | | |
| Operations | | | | |
| Staff Costs | $37,541,300 | $36,788,300 | $37,854,100 | $40,632,400 |
| Supplies and Services | 4,674,600 | 4,979,500 | 4,963,400 | 6,063,600 |
| Medical Services | 4,885,400 | 3,141,100 | 3,791,600 | 4,157,800 |
| Food | 636,300 | 650,100 | 663,000 | 681,000 |
| Capital | 25,200 | 120,800 | 80,000 | 70,600 |
| *Operations Subtotal* | *$47,762,800* | *$45,679,800* | *$47,352,100* | *$51,605,400* |
| | | | | |
| Fuel, Repair and Maintenance | 864,900 | 876,700 | 953,500 | 905,800 |
| Debt Service | 2,284,000 | 7,037,700 | 7,329,700 | 5,172,700 |
| *SRSTC Total* | *$50,911,700* | *$53,594,200* | *$55,635,300* | *$57,683,900* |
| | | | | |
| Wisconsin Resource Center* | $1,028,400 | $0 | $0 | $0 |
| | | | | |
| **Total Institutional Costs** | **$51,940,100** | **$53,594,200** | **$55,635,300** | **$57,683,900** |
| | | | | |
| **Supervised Release Costs** | | | | |
| *Private Contracts* | | | | |
| ATTIC Correctional Services** | $1,261,700 | $1,384,000 | $1,264,600 | $107,900 |
| Aurora Residential Alternatives** | 0 | 56,300 | 99,900 | 863,400 |
| Rock Valley Community Programs*** | 80,900 | 0 | 0 | 80,700 |
| Abilities, Inc.*** | 67,300 | 67,000 | 66,800 | 66,800 |
| Other Private Vendors | 678,400 | 872,700 | 1,012,000 | 1,288,500 |
| *Private Contract Subtotal* | *$2,088,300* | *$2,380,000* | *$2,443,300* | *$2,407,300* |
| | | | | |
| *Department of Corrections* | | | | |
| Supervision - Supervised Release | $141,500 | $169,600 | $171,000 | $192,000 |
| GPS Equipment and Escorts | 189,000 | 92,700 | 108,600 | 124,600 |
| Direct Supervision Escort | 0 | 253,000 | 315,200 | 283,200 |
| *Department of Corrections Subtotal* | *$330,500* | *$515,300* | *$594,800* | *$599,800* |
| | | | | |
| **Total Supervised Release Costs** | **$2,418,800** | **$2,895,300** | **$3,038,100** | **$3,007,100** |
| | | | | |
| **Total Institutional and Supervised Release Costs** | **$54,358,900** | **$56,489,500** | **$58,673,400** | **$60,690,800** |

* All SVPs transferred from WRC to SRSTC by August, 2011.
** Provides comprehensive services, including housing, monitoring, transportation, case management, and other services.
*** Provides residential services.